

Inclusionary Housing Policies in Latin America: São Paulo, Brazil in dialog with Bogotá, Colombia

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This work was supported by the Fundação de Amparo à Pesquisa do Estado de São Paulo – FAPESP.

Paper draft for discussion NYU 02-25-2019, sent to a special number of Special Issue on Housing Policy in Latin America and the Caribbean

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Introduction

One of the important challenges for urban planning in Latin American is to provide affordable housing to low-income families in areas with infrastructure, thereby promoting diversity, equity, with racial mixture and social cohesion. This mission has become increasingly difficult in a neoliberal context that transfers the responsibility for housing production to the real estate-financial market, which always operates to extract the highest profitability from land (Aalbers & Fernandes, 2016; Rolnik, 2015).

The growing trend to use market dynamics to determine the provision and consumption of housing has been the object of a vast urban debate in Europe and North America (Aalbers & Gibb, 2014; Kadi & Ronald, 2014; Madden & Marcuse, 2016) and has recently been absorbed in Latin America. In Brazil, the focus has been on the financialization of housing (Rolnik, 2016, 2013; Royer, 2014; Shimbo, 2012; Fix, 2007). In both Colombia and Brazil there has been growing debate over the use of new urban instruments used as “inclusionary housing policies” (in Colombia, see Jaramillo & Cuervo, 2010; Pinto, 2008; Maldonado, 2016, 2011; in Brazil, see Santoro, 2015; Rolnik & Santoro, 2014). These policies use urban planning and related policies to create affordable housing. They often depend on capturing the land surplus-value generated by the dynamics of the real estate market, stimulated by the provision of incentives to private developers to incorporate housing at accessible prices as part of market-rate developments. Various models of public private partnerships (PPPs) have been developed under this agenda (Calavita & Mallach, 2010).

The main argument of this paper points that social needs have been subordinated to the economic agendas in which production of new units of affordable housing justify and mobilize urban regulation, that ends producing exclusive and concentrated urban developments. The article looks at two Latin American cities - São Paulo, Brazil and Bogotá, Colombia - in which urban regulation has been mobilized, designed and justified for affordable housing new unit construction. This fact hides and legitimizes more complex real estate operations, with residual, time-consuming and often postponed results of housing provision, especially if we compare with the quantity, diversity and complexity of housing needs (Santoro, 2015). In São Paulo, for example, housing production entered the urban regulation agenda through Urban Operations and, more recently, Urban Intervention Projects, as justification for changes in market interest. The new units of housing supply of these urban regulations are considered as a public interest of the project. And for that reason allows the possibility of incorporating land and rights to build public, in addition to cash subsidies, for this. But generally expels more than replace homes, ignore the real housing situations found, delay to give a final housing solution and many times, is not destined to the public that were removed, usually without income or with very low income, or with no way to prove income and acquire the housing mortgage. This works also as a mechanism of debt transfer.

The paper starts with the argument that there is an import of international concepts - such as the quantitative "housing deficit" and the use of "affordable housing" policies - that are little related to the diversified framework of housing needs in these two countries. Their urban reality would require diverse policies, such as urbanization of slums, reduction of housing density, housing improvements, land regularization, among others, which also include the production of new units. A policy based on new units construction combined with private property model can not be the only housing solution against this framework. Without considering that they do not

dialogue at all with the sum of vulnerabilities and oppression that the families are subjected, completely ignoring the social, gender and race, structural inequalities in these two countries, Brazil Portuguese colony, Colombia Spanish colony.

The dissemination of this housing supply agenda happened, as in others countries, after the international mortgage crises at 2008, that explain these America Latina cases, but others countries, at the same period. That's why it's completely marked oriented, and financialy oriented, as we try to argue in this paper.

In the sequence, it analyzes the incorporation of the urbanistic instruments that produce affordable housing, highlighting how happens the subordination of the housing production to the logics of profitability of the real-estate financialized market in the cities of São Paulo and Bogota. The years 2000 seems to be a Latin American laboratory which has used the concepts and agenda of affordable housing international policies, with a gradual incorporation of urban planning instruments that reserve land, require percentages of land in each urban development or transformation, reserve rights to build or stamp financial resources to produce affordable housing.

The gradual incorporation of the logic of financialization to housing policies aggregates other profit making operations, such as housing services or other types of uses. The policies may include other forms of urban governance based on the reduction of the state as the producer of housing. Public assets, such as land and financial resources, are used to stimulate the market to produce housing with lower risk and more guarantees. This isolates the urban operations for the construction of new houses from political oscillations and creates the opportunity to steer resources and profits obtained in the financial market to operations for housing construction (Mendonça, 2016; Santoro, 2014).

In the end, it brings examples of different policies that show that the submission of urban and housing policy to the logics of the financial real estate market does not always walk linearly. There are proposals for policies considered to be progressive that coexist simultaneously with policies that intensify the submission of public management to the logic of capital, as occurs with the Housing PPP proposed in São Paulo.

Import of concepts: housing deficit and affordable housing

In both São Paulo and Bogotá, as in many other contexts, housing conditions present different challenges to urban policies than Western Europe and North America, which appoint to the need to revise concepts.

First, the concept of deficit is not enough to adress housing policies in America Latina. The numbers are big, so they're often used to justify large-scale policies. The Latin America housing deficit reached between 21.6 to 5.4% of the families (CENAC, 2012), Colombia had a housing deficit in 2016 of some 2.2 million families (MVCT, 2014), Brazil reached 5.24 million residences in 2012. Most of the deficit is among extremely poor families, unable to meet the costs of acquiring housing on the market. In Brazil, also, the housing deficit is growing mainly in one category: households with excessive spending on rent which obviously has implications on other dimensions of daily life. More than large, it's diverse and complex. In both countries, various other vulnerabilities coexist with the housing need. Approaches that consider aspects

such as race, gender, informal work and violence are essential so that policies can overcome the situation of inequality measured only according to income or class.

Second, the concept of “affordable housing” does not meet the diverse and complex framework of housing needs while privilege real estate market logic of profitability. The international literature uses the concept of “affordable housing” for the provision of housing solutions for families that have low or moderate income. The “affordable” price is exceeded when a family pays more than a certain percentage of its income to obtain adequate housing, a percentage that has increased internationally (Hulchanski, 1995). Spending above this percentage is known as “*cost burned*” (Tighe & Mueller, 2013, p. 75). The policies to provide affordable housing do not necessarily require that the families have income. They determine which programs families are eligible for based on family income, and offer different subsidies. But these measures have made the provision of housing dependent on the ability to provide builders the high profits expected from real estate products. If the family income is not enough for that, the enterprises receive subsidies.

A first review of “affordable housing” policies consists in how to calculate the average income and if families are able to pay. In both Brazil and Colombia the values of the minimum wage are used to index housing demand and are based on political decisions of the federal government that regulate labor. The income transfer programs also affect the income ranges on which housing policies are based. At Brazil, federal government increased the minimum wage, totally distorting the income for which the São Paulo policy was aimed, consequently making the policies (and housing) available to families with higher incomes. In Colombia, families with less than 2 minimum wages could not obtain financing, and therefore, did not have access to the housing programs, which excluded 48% of Colombian families (MVCT, 2014, p. 88). These amplifies the challenges by seeking to control the size of housing and its type. Another criticism of affordable housing programs is their lack of analysis if the families are able to pay the mortgages or the rent in time, or if the costs for housing increase more than initially forecast.

Also in São Paulo, until 2014, it was the entrepreneur who chose which families could buy the new units. Instead of government, which in thesis should define the priorities and the public interest. The income standards used by banks and builders do not consider who lives in the region, give priority to families involuntarily evicted or to those with other needs.

A second review of “affordable housing” policies is that they end up designing territories for the “mix of uses and income”. This is faced as positive by those who argue that housing policies should serve various family income ranges, because if there is no supply for the middle classes, they would occupy the places of the lower income. Or those who urge about the affordable housing relevant role in increasing the population density of abandoned downtown regions, or changing former industrial districts, bringing families to these poorly occupied regions. This also helps to avoid urban sprawl. To do so, the inclusionary housing policies enter the lexicon required by the urban re-structuring plans for consolidated regions. Nevertheless, the cases studied show that there has been greater production of units in areas peripheral to the urban restructuring plans, where land is cheaper.

The criticism consists that the “mixed used and income” agenda hide the submission of the renewal agenda to the logics of land profitability, which wound up driving up land prices. In thesis, urban policy tools were designed to confront the difficulty in finding land for housing

accessible to the poor. Yet they have been used to create real estate opportunities that combine more profitable uses with less profitable ones – residual uses, in smaller quantity – disseminated in a mix of uses. This is combined with pressures from developers for donations of public land and subsidies, as we intend to demonstrate at the cases that follow.

Considering all of these criticisms, why are the main references for housing policy measures that have little dialog with the real situation of housing needs? The private market appears to determine the vocabulary used in these policies. Moreover, the supply of housing assumes an increasingly important place for the reproduction of the economic-political system, imposing new challenges for urban renewal processes and for social movements.

A third review of “affordable housing” policies shows that this agenda ends up mobilizing the public resources – personell, time and regulatory instruments, as well as financial, land and building rights – around a single policy: to produce new housing units. And, in Latin America, this single policy is also based on private property, constructing enterprises for buying and selling (Rolnik, 2015).

The diversity and complexity of Latin American housing needs should require different policies. This includes slum upgrading (*favelas* urbanization), the reduction of density of occupied areas, improvements to existing housing as well as the production of new units. Nevertheless, policies and resources used in the past decade have been concentrated on the provision of new housing. Recent federal programs have turned away from a theme historically addressed in Latin America: slum upgrading (Cardoso & Denaldi, 2018).

In the decade of 2000, both Colombia and Brazil began large federal programs to provide housing based on subsidizing demand for acquisition of housing under a private property model.

The Brazilian federal program Minha Casa Minha Vida (PMCMV) [My Home My Life] was launched in 2008, with the challenge of being an anti-cyclical policy designed to avoid the effects of the global economic crisis sparked by the crash in the U.S. mortgage market. The reaction of the government was to adopt measures to expand credit (and infrastructure). The initial goal was to produce 1 million homes, 400 thousand of these to family income between zero and three minimum wages. A recent evaluation of the impact of the program showed that it sparked an expansion in the construction sector, but did not meet expectations for reducing the housing deficit. Between 2009 and 2013, the program delivered and contracted some 3.22 million new residences, while the housing deficit was reduced by some 350 thousand residences between 2007 and 2012 (IPEA, 2013). Not all of the residences were purchased by those who most needed them, but by families with higher income. It also had an opposite effect, it heated up real estate markets, contributing to inflating land prices, making access to housing even more difficult.

In 2010 the Colombian government began a policy called “housing locomotive”, whose initial goal was the construction of 1 million homes, nearly 650 thousand of which would be “affordable housing”. In 2012, Colombia created the Free Housing Program (*Programa de Vivienda Gratuita – PVG*) whose “model of gratuity was based on the Minha Casa Minha Vida program” (MVCT, 2014, p. 58), with one difference: ownership of the residences could not be transferred to the residents. Other programs with subsidized interest rates were also created to fight the drop in housing purchases by middle class families. The subsidy program also guaranteed the expected financial returns to banks, and provided all of the public resources in an

anticipated manner and periodically for a specific fund, providing revenues (MVCT, 2014, p. 64).

The existence of housing policies that offered total or partial subsidies is a positive development over previous decades. Nevertheless, many of the criticisms made of Brazil's *Minha Casa Minha Vida*, for example, were also made of the housing policies during the country's dictatorship¹. What is new is that this agenda blocked – by concentrating resources and personnel in the implementation of production of new units – a broader agenda that included programs for the reurbanization of favelas (Cardoso and Denaldi, 2018), local intervention, housing improvements, and other programs that address the range of vulnerabilities of urban populations through policies that seek keep people in their homes and avoid evictions.

The growing incorporation of urban policy instruments for affordable housing supply

The agenda of “public-private partnership” formula, by various types of associations between state and market, arrived lately at Brazil and Colômbia, at 1990s. This moment was associated to the idea that state must reorganize itself given the fiscal crisis and its retreat as a financer and direct producer of urban development. And also with the agenda of strong stimulus for deregulation and privatization policies and the liberation of markets, structural changes that Harvey (1989) called “entrepreneurialism”². This involves the transformation, to a greater or lesser degree depending on the country or city, in the presence of the state in urban planning and administration. At 2000s, the symbiosis between state and capital is more explicit, and the policies examined move towards a situation where the state operates within market dynamics – with increasingly regulations that increasingly favor the private sector, in detriment to broader social goals.

In Latin America, Brazil and Colombia had been pioneers in the implementation of inclusionary housing policies through national laws that were considered to be progressive – the City Statute (Lei Federal nº 10.257/01) in Brazil and the Urban Reform law (Ley 9ª de 1989) and the Land Development Law (Ley 388 de 1997) in Colombia. Both were enacted in a context considered peripheral to the global real estate market in which regulations historically left zoning controls and associated measures more flexible, in a “*regulated deregulation*” process (Aalbers, 2016). The text below looks at urban instruments in the countries studied.

There is little written literature on the process of implementing the main Colombian legal frameworks, unlike Brazil, whose process of approval of its legal frameworks was vastly described and helped to consolidate the version of this process as a result of the redemocratization process in the 1980s. Brazilian authors point to the struggle of the urban reform movement that consolidated in the legal frameworks approved for the democratization of the country (Fernandes, 2007). According to Pinto (2008), the process of approving Colombian law 388 involved the participation of local and international actors, including advisors from Madrid. Gustavo Carrión (2008) treats this moment as part of the discussions about the

¹ Some of them were that the investment was higher for financing houses to middle and upper classes, that the resources were concentrated on metropolis, and others.

² Loon et al. (2018) recent paper argue that “managerialism” is moving into “entrepreneurialism and finalization”, transforming urban governance into more financialized forms, in Netherlands and Belgium.

organization of the Colombian State, framed by the Constitution debate, at 1980s. In Brazil the new legislation was part of a democratic bet, the country lived the end of the Dictatorship and beginning of the democratic period, after approval of the Constitution of 1988. Whereas Colombia was one of the few Latin American countries that did not have dictatorship between years 1970 and 1980 – although it is considered a country that has historically been militarized, in the face of the distant experience of the rural x urban guerrilla linked to drug trafficking – nevertheless accompanied its neighbors in the discussion on the organization of the State. These diverse processes resulted in diverse regulatory contents, but both of them very instrumental. It contains urbanistic tools that were absorbed by the privatist agenda that engendered both right and left governments in both countries, in both cities.

Land reserve for the production of affordable housing

Brazil's inclusionary housing policies are derived from the first experiences with land reserves in zoning, which sought to expand the access to land for populations that do not find this possibility in the market. The most important were the Special Social Interest Zones (ZEIS) initially conceived to recognize the existence of informal settlements, these were later transformed into zoning over areas considered underutilized, without use or not built on, where it would be required that priority be given to construct new affordable housing units. These were called "ZEIS for vacant land" (Rolnik & Santoro, 2014)³. This is a key instrument in the construction of a housing policy because its objective is to produce housing for low-income populations *ex ante*, through urban policy, to avoid the high costs of urban sprawl and *ex post* urbanization processes, which are generally traumatic. The ZEIS for vacant land seeks to overcome the dictatorship of "more and better use" of zoning. Aims to revert the role of zoning to create land reserves for the elite, and reserve it for the most poor while striving to correct urban segregation.

As the housing production is based on private property, the area can be gentrified by passing the ownership for higher income families. So the ZEIS regulation could help to gentrify places, in a perverse way. Articulated policies are needed, such as social rent policy, for reserved public properties, with shared management, that can help to control the rotation of families, guaranteeing that the occupants continue to be families that need the housing and avoiding evictions.

³ Rolnik and Santoro (2014) analyzed the implementation of the "ZEIS for vacant land" since its conception in the 1990s until 2012 and found it has been used to: (i) expand the offer of land for production of social interest housing; (ii) recognize the right to housing and avoid forced removals, which are often violent, or even to instruct judicial actions that called for the construction of social interest housing in areas where residents were evicted; (iii) offer and place land on the market through strong negotiations and mediation orchestrated by government, which is active in the construction of housing policy; and (iv) gain production scale, which is even better if combined with housing policies to finance demand, as in the case of the Minha Casa Minha Vida program in São Paulo. But there was also a negative aspect, related to doing "more of the same" that is, (v) reproducing the poor use of regulatory instruments to produce housing on smaller lots or useful areas, with less urban infrastructure, reproducing the precariousness of settlements in new areas.

The case of the ZEIS in São Paulo

Nearly 10% of the urbanized area of São Paulo was demarcated as ZEIS in the city's 2002 master plan, but only 1% on areas considered to be vacant or underutilized. These zones had a mandatory percentage of area dedicated to the production of affordable housing. To do that they would receive incentives, like free building rights and the opportunity to build at higher density, for example. The "ZEIS of vacant land" require that 40% of the site be used for low-income affordable housing, 40% for popular market housing and 20% for other uses. As we see, the "mixed used" model was designed.

Arguments have been made that the program has not been effective from 2002-2014, based on isolated cases. The political context did not collaborate, there was no active administrative action in support of implementing it. The ineffectiveness can be explained in part by decrees that allowed the production of housing with the same bonus as ZEIS, outside the ZEIS, generally on lands with lower prices, reinforcing the supply of housing for low income populations in peripheral areas. But there were also "distortions" in the occupation of the ZEIS: (i) some were used completely for institutional uses, which was permitted by decrees issued after passage of the master plan; (ii) some had only upper income housing projects in the entire zone, which was permitted because they were approved under previous regulations or even authorized by a special council that evaluated exceptional cases; (iii) other areas remain unoccupied given the difficulty of approving projects in environmentally protected areas, with more restricted norms (Santoro, 2015). After 2009 there was increased production of affordable housing (inside and outside the ZEIS) with the Minha Casa Minha Vida program, but the increasing minimum wage at the time opened the ZEIS to a middle class presence, distorting the initial objectives.

There were little advances in the 2014 master plan. In 2013, to meet the new housing needs it was determined that 42 km² of land resources would be necessary, although only 8 km² were zoned as ZEIS. This review sparked the need for some strategies (Plano Municipal de Habitação 2009-2014).

First one, which was needed to overcome resistance and approve the master plan, was to distinguish two types of "ZEIS for empty land". One for social movements, which would require a higher mandatory percentage (60%) of area built for families with low-income (between 0 and 3 minimum wages), majority of housing deficit. The idea was that government would build in these areas, private developers were not interested, which wound up freezing these areas. Another, nicknamed as "market ZEIS", incorporated the request for a ZEIS with a larger area for production of popular market housing and a smaller area for the even lower cost affordable housing, making the product more profitable (Santoro, 2015). Here it's possible to see how real estate profits design the urban regulation, determining the percentages that are interesting for profitable ventures.

A second strategy consisted in the expansion and review of perimeters of the ZEIS, to approximately 41 km², but even so, the perimeters that grew most were the "occupied ZEIS" (Santoro, 2015). Again, regulation deviate from its main objectives.

The third was to combine ZEIS with other mechanisms included in the federal City Statute, whose objectives would allow pressuring property owners to make their lands available for this

production and to comply with the social function of land⁴. These mechanisms included the triad: subdivision, construction, compulsory use; property taxation that is progressive over time; and expropriation with public bonds. Nearly 505 properties in ZEIS have been notified since 2014, but until December 2018, 189 entering project approvals and 20 occupied the building, not all of them with housing projects. Unlike Colombia, the tools for compliance with the social function of property in Brazil do not need to be combined with a qualification of land use, which can allow the property to enter the market with more profitable uses and not necessarily in the public interest.

Land reserve in Colombia: qualification of land for affordable housing interest

According to Maldonado et al. (2006) one of the central concerns of Colombia's main legal instruments was the "search for optional solutions for the problems of access to urbanized land and housing for the poorest sectors of the population" (Maldonado et al., 2006, p. 13). The Territorial Development Law in particular provides instruments related to the production of affordable housing, to be adopted and better regulated by municipalities in their Land Use Plans (POTs).

To illustrate the challenges of the Colombian law, Maldonado (2012) indicated that it would be possible to reserve land by demarcating it for Public Interest Housing (*VIP*) using an instrument known as the Declaration of Priority Development. This measure recognizes the right of the public administration to determine, through plans and policies, if a property is in compliance with its social function. In other words, the instrument could limit the right to private property.

The declaration of priority interest allows a municipality to auction lands that the owner has not urbanized or built upon in periods that range from 1 year (for urbanized land) to 3 years (in regions identified for sprawl). State can replace this owner to one that accepts the conditions to build affordable housing at previously established percentages and prices. To do so, the Declaration of Priority Interest should be established in the Land Use Plan and every four years each municipal administration should determine how many residences are needed and demarcate the lands destined for this production in this period. The Declaration can also be called for in the Social and Economic Development Plans developed by each government, with strategies and parameters to implement the Land Use Plan, as took place in Bogotá.

Maldonado describes that 660 hectares were declared of priority interest in Bogotá, in 2008. By observing prices, 16% of the land would be expropriated at prices that would make the production of affordable housing unfeasible, so they didn't choose this land. In addition to them, several properties were small – less than 200 m² – difficulting the use to produce multifamily housing; and about 334 hectares of land were in high-risk areas, either by flooding or by mass removal (Maldonado, 2008). Again, the instrument becomes lukewarm to production for lower income brackets, including by the public power.

So-called Areas for Urban Operations (*Áreas de Actuación Urbanística*) is another instrument established for the promotion of affordable housing, either through the qualification of use in

⁴ At 1990s Brazil and Colombia bet at land regulation to combat vacant land and land speculation, trying to overcome their patrimonialist structure. The concept of social function of land in Brazilian Constitution 1988 should help to relativize the absolute power of the private property owners, subjecting it to collective public interests.

zoning, or by determining a mandatory percentage of area reserved for social housing, which can be defined in each partial (or district) plan for urban requalification or expansion, foreseen by the municipal Land Use Plan.

Although this instrument has not been widely used, Bogotá approved an option to have qualification of land for affordable housing in its Development Plan, but then had to regulate the measure. The national government wound up regulating the issue first, which prevented the municipality from issuing the regulations. The measure did not become established as an obligation of urban law. This is an important example when the resistance of using the instrument come from national government, overlapping the regulatory role of Bogotá, in a political crisis.

Inclusionary Housing obtained through regulation of urban re-structuring

The regulations for urban restructuring that embody inclusionary housing policies are designed to capture land value obtained individually with the urban transformation process, and redistribution. This renewal can take place by obtaining resources, by requiring a counterpart such as a reserve of land or building rights for non or lowly profitable uses (if it is a public interest) known in the international literature as “social extractions”. These are associated to the idea that urban development can be self-financing, and are seen as a form of “compensation to owners” when social or public interest uses are imposed.

They consist, therefore, in: making affordable housing a condition for approval of large developments; or as a requirement in exchange for use of building rights; or made viable by allocating a percentage of property in a development for social rent units or for those sale at prices that allow that the poorest population to buy or rent them, generally set at 10% to 20% of the units produced, destined to families who are not able to purchase market rate housing. That is, a developer can contribute to a specific fund or donate a portion of land to a public land bank, or a municipally incorporated or cooperative company (Calavita & Malatch, 2010).

Affordable Housing in Consortial Urban Operations in São Paulo

Since the 1990s São Paulo has worked with what are called Urban Operations, or other instruments for urban renewal that could promote affordable housing projects, but few have been executed.

Consortial Urban Operations were designated in the municipal master plans to promote urban transformations in urban renewal projects for downtown regions, or for regions in a process of transition of use (former industrial zones for example), among others. An urban plan should be defined, which calls for structural intervention that would help transform the area, and indicate which forms of infrastructure and improvements can be used to recuperate the surplus value of land. The revenue from the sale of construction rights, permitted to increase density in these regions, goes to a specific fund that will be earmarked for the needed urban interventions, isolating the funds from the government budget. The surplus value of the property in the area of the Operation is produced and captured through Building Rights Certificates (*CEPACs*), which are bonds that are issued to private parties through auctions regulated by the federal Securities Commission (*Comissão de Valores Mobiliários*).

A critical perspective on this process based on the experience in São Paulo shows that: (i) the valorization of land is produced and captured in the same region, in a process of revaluation; (ii)

the Operations have not presented urban transformation plans, but only describe a list of interventions, most of them for road infrastructure, which privileges individual transportation: (iii) there is no relationship between the costs of intervention and the benefits earned through the sale of construction potential; and (iv) because there is no time limit, or phases for implementation, some interventions are executed and others not (Fix, 2007; Santoro, 2015).

The instrument for Urban Operations can be one of the best tools for promoting affordable housing, however, experience has shown that: (i) most of the resources obtained through this instrument do not go to housing policies, the municipal government has declared that investments in affordable housing in the Operations did not reach 10% (2014) and when they were high, were used for the appropriation of lands made expensive by the very valorization that the area suffered with the Operation; (ii) that the market has not produced affordable housing in many of the ZEIS demarcated within these perimeters, especially those located in areas in transformation by the real estate market; (iii) perimeters were expanded to include settlements and favelas that could receive housing improvements, creating a type of periphery at the perimeter of an Operation, isolating the center of the city from the effects that affordable housing could have on land prices; (iv) that little of the housing constructed in the ZEIS selected are of good quality and do not even serve all of the families who were removed ; and (v) that the housing solution adopted, either relocation or indemnification, may not be suitable and do not guarantee the permanence of the population in these zones (Santoro, 2015). These is the most obvious exemple of policies that legitimated processes of urban transformation that increase concentration; while the housing solutions adopted continue to be residual; and not articulated to the general situation of housing needs.

New instruments for the promotion of affordable housing in the São Paulo master plan of 2014

The Master Plan approved in 2014 planed an expansion of financial resources for the production of affordable housing in the areas to be restructured, but did not make it mandatory to reserve land in these regions (unless there was already a ZEIS in the area), or establish building rights to be used for the production of affordable housing, or even, maintain the logic of production of affordable housing in the peripheral areas of the perimeters in transformation.

Even if the Master Plan has offered new instruments for producing affordable housing, it has also offered economically more interesting and alterative tools to developers, who have opted for projects that do not demand the production of social housing in the same region of urban transformation or for large-scale developments on cheaper lands. These options reproduce the exclusionary city with socio-territorial segregation. The alternatives allow the market to avoid the objectives of the urban regulations, which became ineffective.

One alternative can be found in the proposal for Urban Intervention Projects - UIPs, whose minimum content did not call for a mandatory guarantee of percentages of land for the production of affordable housing, or resources, which are only required when a plan is combined with other financial instruments such as Urban Operations in Consortium or Areas of Urban Intervention - AUIs, in which case at least 25% of the resources collected must be destined for affordable housing, preferentially for the purchase of sites and lots. When combined with other instruments, this requirement does not apply.

Another regulation concerning financial resources proposes that 30% of the resources obtained from the sale of construction potential in the entire city, obtained by the instrument for the

Award at Cost of the Right to Build, be deposited in the Urban Development Fund – FUNDURB and be preferably used in “ZEIS for vacant lands” (ZEIS 3).

Another instrument, the Solidarity Quota, originally proposed for the São Paulo master plan of 2014, would establish that for each new large development, urban plan or building project, affordable housing be produced by the developer, or land or resources donated to government to produce affordable housing. The largest innovation was the incorporation of a tool that would produce housing at the time and place where the urban development took place, and determined by its licensing. Nevertheless, when the master plan was approved, the area of the developments affected increased from 10 thousand m² of computable built area (not of the total area) to 20 thousand m², dispensing many developments that are bigger than that from this requirement. Moreover, alternatives were created, making it possible: (i) to build the housing in nearly the entire urbanized area of the city (according to the Macro-zoning for Urban Organization and Qualification); (ii) or to donate land of value equivalent to 10% of the value of the total area of the development, calculated according to the Land Value Registration, an amount that corresponds to only about 80% of the market value or even, (iii) to deposit this amount in the FUNDURB, whose use should give priority to the purchase of land or subsidy to the production of affordable housing, “preferentially” in ZEIS 3. Developers almost always prefer these options than to produce affordable housing within a development.

Mandatory percentages of land for affordable housing in Colombia

In relation to the mandatory percentages of land and units destined to affordable housing, Colombian Law 388 establishes that the municipal Land Use Plans should determine percentages of land that will be destined to affordable housing⁵ in new urban developments, with two options: urban expansion and urban renewal. The Partial Plans⁶, in a different manner, determine the allocation of these lands, and the percentage of special housing required can vary, depending on the area. In addition, a federal decree required that subdivisions with affordable housing include a certain percentage of land as public space for leisure and public equipment. As mentioned, the place where the housing will be constructed, can also be determined by a municipality’s Declaration of Priority Interest, which demarcates land for public interest housing.

Mandatory percentages: Partial Plans and Bogotá

In the cases of the Partial Plans, the Land Use Plan for Bogotá adopted different percentages for each district that should prepare its own plan for urban expansion: Ciudad Norte, the wealthiest region of the city, should produce 20% of affordable housing and 15% of priority interest housing; while the Ciudad Sur and Ciudad Occidental should promote 50% priority interest housing and 30% affordable housing. Moreover, all urban land must have 20% affordable housing, without a mandatory requirement for public interest housing (the percentages are applied considering the useful area of the land in the partial plan, discounting the areas of road

⁵ There’s been defined two kinds of affordable housing are defined by the housing prices, proportionally at median income of the families: Priority Interest Housing (VIP), for the poorest, and Social Interest Housing (VIS), a kind of market popular housing.

⁶ Partial Plans area is defined by municipal rules, and at Bogotá and Medellín, varied, generally, between 3 and 10 hectares.

infrastructure, public space and environmental preservation areas). District plans should establish when and in what phases these residences should be built. There is clearly a considerably higher requirement for popular housing in regions of the city where poor families are already concentrated, and that are irregularly occupied, than in the more expensive regions. Again, it doesn't changed a lot the land prices logic and the socio-territorial segregation, even that have produced new affordable housing units.

The most recent revision of the Bogotá plan sparked a discussion about the possibility that all and any development must cede 30% of its land for priority interest housing – in addition to mandatory percentages on useful land in areas of urban expansion or urban reorganization. The debate advanced and produced a rule very similar to the Solidarity Quota in São Paulo: all and any development should cede 20% of its land for affordable housing on the same land, or to be transferred to another place in the city or provided through a payment in money (thus creating alternatives). That means Bogotá created alternatives that impeded the application of the instrument's initial objectives: produce affordable housing at the same land.

Macroprojects

The Macroprojects were in Colombian law 388/97, but only in 2011 they gain a specific regulation, the National Macroprojects of Social Interest (Law 1.469/11) that correspond to a set of administrative land planning, financial and management decisions for executing a large scale urban development for the production of affordable housing. The initiative has to be of the National Government on territories that can involve more than one municipality. Brazil recently approved a similar Metropolis Statute (Federal Law nº 13.089/15) which also allows for intermunicipal urban operations, but without the requirement to produce affordable housing.

The instrument in Colombia was questioned and had its first version considered unconstitutional and was annulled, under the argument that it violated municipal autonomy, introducing changes in municipal Land Use Plans, and imposing conditions on the municipalities. Some of the parameters of the federal law were more permissive than the municipal ones⁷, which critics argued would produce high densities with low quality of life (Maldonado, 2008). However, this annulment was soon reviewed and the instrument has been widely used.

Since 2012, with the total subsidy or Free Housing Program, the majority of federal resources for affordable housing were used in Macroprojects: more than 55 thousand housing units were licensed and 43 thousand housing units with urban infrastructure were delivered in 12 Macroprojects, whose potential construction involves more than 183 thousand units (MVCT, 2014, pp. 66-69).

None of the projects are complete, but all are located in peripheral areas and include large scale production of housing at accessible prices, reproducing the concentration of the most poor in distant areas. One of the macroprojects is in the municipality of Soacha (which borders Bogotá, close to the Rio Bogotá), and calls for construction of 140 thousand units, 90% of affordable housing, of which some 50 thousand units have been built, at a construction rate of nearly 14 thousand units per year, generating a demand for public transportation and a strong dependence on the Bus Rapid Transit system, which already suffers from excess demand.

⁷ Such as minimum lots of 35 m² per family, 70 m² for two families, and 120 m² for groups.

The subsidy model has been long criticized in Latin America, since the case of a Chilean housing policy which had perverse territorial results (Sabatini, 2000). Criticisms made of this program gain a new dimension in light of the Bogotá case, which accelerates the contracting of public-private partnerships, through calls for large-scale projects with very small units, destined for large builders. The contracts require that participating builders have considerable prior experience and large capital reserves, given that the payments are made at the end of construction. The projects also entail substantial changes in zoning as established by municipal Land Use Plans⁸, and are approved even more quickly than regional or partial plans, to allow urban expansion, guaranteeing private developers earnings in this transformation, without guaranteeing the provision of urban infrastructure, requirements for which were reduced (Maldonado, 2016). An evaluation of the impact of this policy was that “[they] have sometimes contrived to create the problem neighborhoods of the future. Offering families a home for nothing does not solve the fundamental problem facing the poor and their very low incomes” (Gilbert, 2014, p. 1).

Submission do not always proceed linearly

Recent studies of these two cities show that the submission of urban and housing policy to the logics of the real estate-financial market do not always proceed linearly. Recent proposals sought to resist the emphasis on policies based on this logic, such as, perhaps, the policy for social rental proposed in the Housing Plan (2016) of the government of former São Paulo Mayor Fernando Haddad Paulo (2013-2016), or the urban renewal plans of “Bogotá mais Humana” (2012) under the government of Gustavo Petro (2012-2015), both considered progressive. But simultaneously, proposals have been enacted that intensify the submission of public administration to the logics of capital, as took place with the public-private housing partnership proposed in São Paulo. Some of these are commented on below.

According to Maldonado (2016), the “Bogotá Humana” program (2012) sought to improve the localization of affordable housing by moving the projects to more central regions that already had infrastructure, decreasing the scale of the projects and promoting a social mix, altering the processes of urban expansion for urban renewal plans. It also observed the land market, reducing housing final prices by using the subsidies of the Free Housing Program. It also sought to revive subsidies for low income housing organizations, encouraging mechanisms to support housing built by community organizations and self-built production.

The first resistance was political: the Ministry of Housing issued a decree that restricted the use of resources in the Free Housing Program to areas for urban expansion. Even so, the municipal government began the policy in more central areas, using its own resources and municipal land, in a more fragmented manner and with a reduced number of units per lot, limiting the price of the residence. The Bogotá government sought to conduct good management of the projects by dialoging with builders, and began to construct 20 thousand public interest housing units and organize projects for another 10 thousand, through other regional plans in more central regions.

⁸ A major distinction of the Colombian case is the interference of the national government in the determination of the location of the projects, through the federal Macroprojects instrument, which is imposed from top down on local land use agendas.

Than resistance came from neighbors and from middle and upper class families, and a suit was filed to stop the projects, questioning the use of public land, arguing that the areas could receive more profitable uses than social housing. This is another demonstration that the neoliberal logic is incorporated, even in an abstract manner, in the argument of citizens about what is in the public interest, a concept that is in constant dispute in Latin America. This resistance demands that the programs be accompanied by broad discussions with residents to reduce opposition. Discussions are also needed with the beneficiaries about life in a condominium.

The contradictions of the Public-Private Housing Partnerships in São Paulo

The version of the public-private housing partnership in São Paulo in 2014 consisted in a public bid for the construction and management of 14,124 units of affordable housing and popular market housing in central regions of the city as well as housing services, described as pre- and post-occupation, technical and social work, support for condominium management, management of housing financing and maintenance of the buildings for 20 years, with a total estimated value of R\$ 7.34 billion (close to US\$ 3.21 billion in 2014), which practically limited participation to only the largest construction companies.

Here appears the agenda that transforms the housing policy into quantitative goals of units produced. This goal was well received by the São Paulo municipal government, which had also proposed building 55 thousand new housing units in 4 years, and soon adhered to the partnership, ceding public lands.

To make possible the public-private partnership model, the São Paulo state government entity responsible for housing production was dismantled, did not receive resources and had its production limited. A public company was created, the Companhia Paulista de Parcerias (CPP), and was associated to a fund composed of resources in money, property and financial assets (such as receivables and others), to serve as a guarantee of the annual payment for various public-private partnerships, not only for housing. The fund functioned as a “collateral account”, but also to distance the payments from the political oscillations of government.

The complex economic-financial model considered: subsidies from the Minha Casa Minha Vida program; donations or provision of public land for production of affordable housing; that the construction could have mixed uses including those that are more profitable, options not usually considered in the PPP model; in addition to the guarantee described above, and others. Moreover, the PPPs allowed the private developers to indicate the lands to be expropriated. This has been a historic request of the market actors, which organized lobbies at the federal, state and municipal level to transform the laws that govern the issue and determine that these decisions are prerogative of government and should consider the public interest (a concept, which as mentioned, is in constant dispute).

The criticism showed that the model implemented involved contradictions. Designed to transform central regions of the city, it expanded the boundaries of the measures to the entire urbanized area of the city.

The projects require a large volume of resources in land and finance, and commit municipal budgets to the PPPs for at least 20 years (a federal law limits this amount to 5% of net annual

revenue)⁹. The public lands provided are not included in the accounting of the flow of resources, so they are announced as programs that do not involve public funds.

The guarantees that the counter payments will occur, among others, are composed of lands, and some of the lands in the CPP's fund are occupied by poor families. This means that if they were to be auctioned to private companies, the families would have to be removed and would lose their housing. This, is a clear contradiction with the goal of the policy to create new housing units for this population.

And more, some lands controlled by the CPP in the region of the Urban Operation in Cortium Águas Espraiadas had families evicted to make way for corporate offices! The evictions follow the logic of the need to have financial guarantees for the program. In a similar direction, the Observatory of Evictions of the LabCidade FAUUSP recently found that most of the threats and evictions it has mapped in São Paulo take place in projects for affordable housing policy (2016-2017). That is, it is the policy itself that threatens and removes. The logic adopted for the policy is based on the rules of the economic and legal model, while it comes far from addressing the situation of housing needs.

Moreover, some observers of the public-private partnerships affirm that the adherence of the private builders has been quite limited, given the economic and political crisis at the time the public bid was published (Mendonça, 2016; Santoro, 2014). Despite the criticisms, administrators continue to adjust the model and propose public-private partnerships for other municipalities. There is almost no resistance to the partnership model, given that the contradictions found are very abstract for the movements that struggle for housing, which see conquests in the production of new units, and do not calculate the increased evictions, with each group acting in isolation.

Final remarks

The article sought to show that Latin American has experimented with various housing programs and urban regulation that has incorporated, without questioning, the international concepts and agenda of *affordable housing*. The programs completely ignore the degree of poverty, diversity and complexity of the housing needs, which are combined with an overlapping of vulnerabilities. This questions the sole solution of providing housing under a private property model. Moreover, the policy of subsidies and increased financing capacity has led to the inflation of land prices, deepening territorial inequalities, and collaborating to the continuity of large scale, peripheral housing production, segregated from the city.

The two countries observed have new initiatives for regulating urban transformations, with the objective of promoting housing at affordable prices, either through establishing land reserves and zoning mechanisms, or by determining compulsory percentages of land to attain the goals, as well as the number of square meters built and the financial resources to promote this model of housing in more central regions that already have infrastructure.

Although the debate appears to address issues relevant to the construction of new policies, the flexibilization of measures and creation of regulatory alternatives to serve the market, allows the inclusionary housing policies to fall into political discredit. The results are more normative than

⁹ Lei Federal nº 11.079/2004, art. 28.

practical. All of these initiatives suffered resistance from the private market that have encountered various legal and political obstacles and translated by the creation of alternative rules and weakened the more progressive instruments. That, once again, reproduce the standard of peripheral expansion, defended by administrators who want to fulfill quantitative and not qualitative goals for housing production. While, in both cities, the theme of social housing appears to be mobilized to open economic and territorial fronts for the market to produce for other income groups. Modifications in the regulations create options that are more interesting to the private market. The model of the segregated and gentrified city remains, and continues to challenge the inclusionary policies.

Urban programs to create housing have been treated more as economic than social policies. This can be seen in the vocabulary used and in urban regulations that serve the interest of the real estate market, creating increasing opportunities for financial capital, while exacerbating the concept of public interest (which is now in complete dispute). Public lands and financial assets are provided to private real estate developers, submitting policies to create housing for poor families to a financial logic adapted to an international neoliberal agenda that has little dialog with the urban reality of Latin America.

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