

Journal of Comparative Urban Law and Policy

Volume 4

Issue 1 *Festschrift II in Honor of Julian Conrad Juergensmeyer on the Occasion of His Retirement: International Perspectives on Urban Law & Policy*

Article 26

2020

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Romulo S.R. Sampaio

FGV Law Rio, romulo.sampaio@fgv.br

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Recommended Citation

Sampaio, Romulo S.R. (2020) "Affordable Housing Policies in Brazil," *Journal of Comparative Urban Law and Policy*. Vol. 4 : Iss. 1 , Article 26, 427-455.

Available at: <https://readingroom.law.gsu.edu/jculp/vol4/iss1/26>

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AFFORDABLE HOUSING POLICIES IN BRAZIL

Rômulo S. R. Sampaio

HISTORICAL BACKGROUND OF AFFORDABLE HOUSING POLICIES IN BRAZIL

Affordable housing became one of the biggest and most complex worldwide urban challenges in the twentieth century. It is linked directly to the growing urbanization phenomenon experienced in virtually all countries due to a variety of different factors.¹ In Latin America this problem is even acuter, considering its high percentage of urban dwellers in comparison with the world average: over 85% against roughly 50% worldwide, according to UN-HABITAT.²

In Brazil, the problem of affordable housing in urban areas finds a distinctive causal relationship with exclusionary rural settlement policies throughout the nineteenth and twentieth century. Historically, the unequal distribution of rural land and the lack of successful policies to incentivize small farmers forced rural dwellers to migrate to cities in search of better opportunities. This massive wave of rural migrants coincided with the rapid industrialization growth experienced by Brazil during the 1960s and 1970s. To better understand the magnitude of this migration phenomenon within Brazil, between 1950 and 2000 the country's urban population in cities with 20,000 or more dwellers increased from 11 million to 125 million.³ But this transition from a rural to an urban industrialized economy did not ensure better salaries or an improvement in social rights to those new urban dwellers.⁴

¹ See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 6, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited n 23 September 2019. “Like other Latin American countries, Brazil presented a rapid and intense urbanization process. The rate of urbanization increased from 35 percent in 1950 to 80 percent in 2000. In one generation, starting in the 1950s, the country transformed an agrarian-based population into a predominantly urban society.”

² UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 5, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited n 23 September 2019.

³ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula* [Housing policy and social inclusion in Brazil: historical review and new perspectives under the Lula government] *Revista Eletrônica de Arquitetura e Urbanismo*, São Paulo, n.1, p.70–104, 2008, p. 73, available at: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

⁴ ROLNIK, Raquel. *Guerra dos Lugares* [The War of Places]. *Boitempo*, 2015, p. 267.

A scenario of economic growth not matched by a decrease in social inequality was made worse by an exclusionary urban property regime⁵ fueled by the lack of basic infrastructure. Those who were arriving in cities in search of jobs during the industrialization period of the 1960s and 1970s were, consequently, forced to settle illegally in vague and open land, hillsides and other unsuited land.⁶

Those illegal settlements grew rapidly into shantytowns, or “favelas”.⁷ It did not take long for the housing deficit in urban areas in Brazil to become a relevant and pressing problem calling for federal government attention and action. According to the UN-HABITAT, “[d]espite the important achievements in economic and social development, the extent of informal settlements and the spatial segregation of low-income groups demonstrate that critical aspects of underdevelopment in Brazil are related to urban and housing issues.”⁸ Throughout the twentieth century, Brazil attempted different policies to try to

⁵ FERNANDES, Edésio. *Constructing the ‘Right To the City’ in Brazil*. Social and Legal Studies 16:201, 2007, p. 203, available at <http://sls.sagepub.com/content/16/2/201>, last visited on 27 August 2018, noting that “[r]esulting from the combination of speculative land markets, clientelist political systems, elitist urban planning practices and exclusionary legal regimes – which have long affirmed individual ownership rights over the constitutional principle of the social function of property – for some time now Brazil’s process of informal urban development has not been the exception, but the main socio-economic way to produce urban space in the country. It is a phenomenon that has structured Brazil’s consolidated urban order, as such it needs to be confronted.”

⁶ See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 6, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019. “Urban growth outpaced the development of infrastructure, basic services and housing alternatives in cities. One of the most striking characteristics of Brazilian urbanization was the unequal pattern of land access and distribution of public investments in urban areas. Brazilian cities are still essentially divided in areas occupied by wealthier groups, which are well-equipped, have good access to infrastructure and housing; and areas occupied by the poor, where public investment is lacking and housing conditions are precarious. Historically, the urban planning practice, instead of working to diminish such gaps, has either neglected or contributed to emphasize the urban fragmentation and the sociospatial exclusion of the poor.”

⁷ FERNANDES, Edésio. *Constructing the ‘Right To the City’ in Brazil*. Social and Legal Studies 16:201, 2007, p. 203, available at <http://sls.sagepub.com/content/16/2/201>, last visited on 27 August 2018. “In many different ways, in the past two decades the process of informal access to land and housing has increased in large, medium-sized, and even in small cities. In fact, despite the association commonly made between informal urban development and large cities (all cities with more than 500,000 inhabitants have *favelas*), the precarious, illegal occupation of the territory can also be identified in all kinds of cities and regions of the country.”

⁸ UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 6, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019.

fight the growing demand for housing within the country's urban environment. Those policies are briefly analyzed herein.

The 1946 Low-Income Housing Foundation Program

It is worth noticing that before the 1960s, affordable housing in urban areas throughout Brazil followed an unsystematic and unplanned pattern of self-construction in unsuitable or illegal spaces, public or private, in the suburban areas of towns. Until 1930 there was no governmental involvement in the construction of affordable houses in Brazilian cities.⁹ After the 1930s, with the growing migration process from rural to urban areas in its initial stages, the government attempted to regulate rental prices of housing units through a “decree-law” known as the *1942 Inquilinato Law*. The result of such law was that landlords were discouraged from investing in new housing units. By the mid-1940s over 75% of the housing stocks in Brazil were in the rental market.¹⁰

In an attempt to anticipate the growing deficit of affordable housing, the federal government instituted in 1946 the Low-Income Housing Foundation (“*Fundação Casa Popular*”, in Portuguese or simply “FCP”).¹¹ Before that, pension funds managed by employees of governmentally-owned companies concentrated scarce and fragmented initiatives designed to provide affordable housing for their associates.¹² A policy of very little reach and restricted to those

⁹ See MAGNABOSCO, Ana Lelia; FREITAS, Fernando Garcia. *A Política Habitacional Brasileira* [The Brazilian Housing Policy] -in- *Dialogue Brazil and European Union: Social Housing, Finance and Subsidies*. WHITEHEAD, Christine; FREITAS, Fernando Garcia; ROSA, Júnia Santa; ROSSBACH, Anacláudia. (editors). Ministério das Cidades. Cities Alliance, 2015, p. 83. See also UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019. “Since the emergence of the housing shortage in Brazilian cities in the end of the 19th century, different types of accommodation were provided to the low-income households until the 1930s, all by the private sector. The housing stock was essentially composed of rental houses, popularly known as *cortiços*, and characterized by very low-quality building and sanitary standards.”

¹⁰ UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 10, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019, detailing the period leading to and following the *1942 Inquilinato Law* and stressing that “[d]uring the decades following the enactment of the *Inquilinato Law* in 1942, the rental housing ration decreased significantly and by the 1990s it accounted for 22 per cent of the housing stock.”

¹¹ Created by Decree-law 9,218, 1 May 1946, Portuguese version available at <https://www2.camara.leg.br/legin/fed/declei/1940-1949/decreto-lei-9218-1-maio-1946-417087-publicacaooriginal-1-pe.html>, last visited on 11 June 2019.

¹² AZEVEDO, S. and ANDRADE, LAG. *Habitação e populismo: a Fundação da Casa Popular*. In: *Habitação e Poder: da Fundação da Casa Popular ao Banco Nacional Habitação* [online]. Rio de Janeiro: Centro Edelstein de Pesquisas Sociais, 2011, p. 1. ISBN: 978-85-

employed and associated with a pension fund. The 1946 FCP was the first federal policy aimed at providing social housing to low-income people.¹³ Its focus was fourfold: (i) basic infrastructure (water, sewage, electricity and social assistance); (ii) investment in the construction supply sector; (iii) research aimed at lowering building costs; and (iv) the building of social housing to sell or rent to low-income urban dwellers.¹⁴

As the years went by after the conception of FCP, the little progress achieved in those four main objectives revealed a failure due to the program's overambition. Financial and administrative constraints together with a political hurdle of interfering on matters of municipal federative authority undermined the program.¹⁵ In an attempt to narrow the overall reach of FCP, in 1952 the Ministry of Labor issued a regulation restricting investment in urban infrastructure associated with social housing. Only whenever indispensable to the building project, urban infrastructure investment was authorized under this then new regulation. Whenever that was the case, according to that same rule, municipalities would have to secure the federal investment with local taxes. Because a very small percentage of municipalities could secure those federal governmental investments due to their poor financial situation, the FCP was limited severely in its initial scope to proving mainly for the construction of social housing.¹⁶ Very little urban infrastructure was built.

7982-055-7. Available from SciELO Books, <http://books.scielo.org>, last visited on 11 June 2019.

¹³ MAGNABOSCO, Ana Lelia; FREITAS, Fernando Garcia. *A Política Habitacional Brasileira* [The Brazilian Housing Policy] -in- *Dialogue Brazil and European Union: Social Housing, Finance and Subsidies*. WHITEHEAD, Christine; FREITAS, Fernando Garcia; ROSA, Júnia Santa; ROSSBACH, Anacláudia. (editors). Ministério das Cidades. Cities Alliance, 2015, p. 84.

¹⁴ MAGNABOSCO, Ana Lelia; FREITAS, Fernando Garcia. *A Política Habitacional Brasileira* [The Brazilian Housing Policy] -in- *Dialogue Brazil and European Union: Social Housing, Finance and Subsidies*. WHITEHEAD, Christine; FREITAS, Fernando Garcia; ROSA, Júnia Santa; ROSSBACH, Anacláudia. (editors). Ministério das Cidades. Cities Alliance, 2015, p. 84. The focus on urban infrastructure within the FCP initiative was introduced by Decree-law n. 9,777, 6 September 1946, available at http://www.planalto.gov.br/ccivil_03/Decreto-Lei/1937-1946/Del9777.htm, last visited 11 June 2019.

¹⁵ AZEVEDO, S. and ANDRADE, LAG. *Habitação e populismo: a Fundação da Casa Popular*. In: *Habitação e Poder: da Fundação da Casa Popular ao Banco Nacional Habitação* [online]. Rio de Janeiro: Centro Edelstein de Pesquisas Sociais, 2011, p. 3. ISBN: 978-85-7982-055-7. Available from SciELO Books, <http://books.scielo.org>, last visited on 11 June 2019.

¹⁶ AZEVEDO, S. and ANDRADE, LAG. *Habitação e populismo: a Fundação da Casa Popular*. In: *Habitação e Poder: da Fundação da Casa Popular ao Banco Nacional Habitação* [online]. Rio de Janeiro: Centro Edelstein de Pesquisas Sociais, 2011, p. 4. ISBN: 978-85-7982-055-7. Available from SciELO Books, <http://books.scielo.org>, last visited on 11 June 2019. The same author points out that the housing projects were chosen by municipal request. Municipalities were responsible for providing the estate upon which the houses were to be

Even with a much narrower scope, funding remained an additional problem to FCP. The federal government imposed a 1% tax over every property transaction of over 100 thousand “cruzeiros” (the currency at the time). This tax was planned to serve a distributive purpose, providing that the housing transaction of the wealthier would fund that of the poorer. But it did not work as planned. States were responsible to collect and then transfer the tax to FCP. However, they did not have the proper incentive to do so, because the political and administrative costs were too high. Those states collecting the tax would not transfer it to FCP. Individuals, in turn, started to manipulate the true amount of real estate transactions to avoid the amount over which the tax would be due. In light of this failure, the federal government extinguished the tax in 1951 and started funding FCP through the national and overall budget. FCP had to start competing for the limited federal resources. Throughout the following ten years after the tax was extinguished, FCP’s annual budget decreased tenfold.¹⁷

With very little financial capacity, the selection process of cities to host social housing programs soon became highly politicized. Whether or not a municipality could provide for the necessary support to receiving the federal investment, the order of requests and the need of the local population were criteria left out of the decision-making process to select eligible cities.¹⁸ The selection process of those individuals who would be eligible to apply for the subsidized credit was also very flawed. Those citizens with close connections with politicians were favored. Politicians manipulated the waiting line in search of increasing their electoral base.¹⁹ The result of such practice was that the very poor were excluded. The process ended up contaminated by a clientelist practice

built and the basic infrastructure composed of water, sewage and electricity. This infrastructure could be paid by the federal government so long municipalities secure those payments with local taxes.

¹⁷ AZEVEDO, S. and ANDRADE, LAG. *Habitação e populismo: a Fundação da Casa Popular*. In: *Habitação e Poder: da Fundação da Casa Popular ao Banco Nacional Habitação* [online]. Rio de Janeiro: Centro Edelstein de Pesquisas Sociais, 2011, p. 13. ISBN: 978-85-7982-055-7. Available from SciELO Books, <http://books.scielo.org>, last visited on 11 June 2019.

¹⁸ AZEVEDO, S. and ANDRADE, LAG. *Habitação e populismo: a Fundação da Casa Popular*. In: *Habitação e Poder: da Fundação da Casa Popular ao Banco Nacional Habitação* [online]. Rio de Janeiro: Centro Edelstein de Pesquisas Sociais, 2011, p. 14. ISBN: 978-85-7982-055-7. Available from SciELO Books, <http://books.scielo.org>, last visited on 11 June 2019.

¹⁹ AZEVEDO, S. and ANDRADE, LAG. *Habitação e populismo: a Fundação da Casa Popular*. In: *Habitação e Poder: da Fundação da Casa Popular ao Banco Nacional Habitação* [online]. Rio de Janeiro: Centro Edelstein de Pesquisas Sociais, 2011, p. 5. ISBN: 978-85-7982-055-7. Available from SciELO Books, <http://books.scielo.org>, last visited on 11 June 2019.

further undermining the program's ability to solve the housing deficit in Brazil.²⁰

In light of the failures of the affordable housing policy instituted in 1946, the program was shifted in 1964, right after the military coup.²¹ But by then, the housing deficit had increased significantly beginning a serious urban crisis. To illustrate how rapidly Brazil was dragged into urban chaos, it is worth noticing the growing increase of favela inhabitants throughout the years. In 1973, 70,000 people lived in favelas in São Paulo, or 1% of the city's dwellers. In 1991, those numbers skyrocketed to 900,000, or 9% of the São Paulo population. In 2000, the city had 1,2 million people residing in favelas, or 11% of the population and this percentage remained pretty much the same until 2010. In Rio de Janeiro, in 2010, 23% of the city's population lived in favelas.²²

These numbers indicate that before the urbanization crisis, the country had the opportunity to deal with a much simpler problem by providing housing solutions to prepare the urban space for the growing contingent of rural migrants who started to relocate to cities. Housing programs in Europe could have been used as useful guidance to inspire Brazil.²³ However, exclusionary urban policies, elitist planning and the lack of a true welfare state turned into insurmountable obstacles to an effective affordable housing program that could solve the problem before the urbanization crises hit in the 1960s and 1970s. The FCP program became a hostage of populist politicians. As a result, when a new affordable housing program was instituted in 1964, the problem was of a much greater magnitude.

²⁰ AZEVEDO, S. and ANDRADE, LAG. *Habitação e populismo: a Fundação da Casa Popular*. In: *Habitação e Poder: da Fundação da Casa Popular ao Banco Nacional Habitação* [online]. Rio de Janeiro: Centro Edelstein de Pesquisas Sociais, 2011, p. 9. ISBN: 978-85-7982-055-7. Available from SciELO Books, <http://books.scielo.org>, last visited on 11 June 2019.

²¹ See CODATO, Adriano Nervo. *O Golpe de 1964 e o Regime de 1968: Aspectos Conjunturais e Variáveis Históricas* [The 1964 Military Coup and the Regime of 1968: conjunctural aspects and historical variables]. *História: Questões & Debates*, Curitiba, n. 40, p. 11-36, 2004, Editora UFPR, describing the 1964 Military Coup in Brazil.

²² ROLNIK, Raquel. *Guerra dos Lugares* [The War of Places]. *Boitempo*, 2015, p. 277.

²³ See KUSHNER, James A. *Comparative Urban Planning Law. An Introduction to Urban Land Development Law in the United States through the Lens of Comparing the Experience of Other Nations*. Carolina Academic Press, 2003, p. 300, noting that “[m]ost western European nations set national and local policy to construct and support a substantial supply of social housing, either through direct construction, the provision of housing allowances, or a combination of the two.”

FROM THE CREATION OF THE HOUSING NATIONAL BANK AND THE HOUSING FINANCIAL SYSTEM IN 1964 TO THE AFFORDABLE HOUSING POLICIES OF THE LAST DECADE OF THE TWENTIETH CENTURY

By the end of the twentieth century, Brazil faced a major housing crisis embedded in its major cities. It was made worse by the lack of basic infrastructure such as access to clean water, sewage, public transportation, electricity and waste collection and disposal systems. An underlying challenge for providing for affordable housing quickly became a much deeper problem of formally recognizing those illegal urban settlements and providing them with basic infrastructure while also dealing with high rates of criminal activities and parallel control of the territory by drug lords and militia. According to Rolnik, this parallel control of poor urban settlements can be attributed to the country's failure in delivering the social promises of the 1988 Constitution (including the right to housing)²⁴ due to the economic crises of the 1980s and 1990s which augmented the social inequality by reducing dramatically the income of the blue-collar working force. Criminality, in turn, became an economic alternative and a social and moral reference to the youth belonging to minority groups living in excluded areas of the urban territory.²⁵

In order to fight the housing deficit in major cities, soon after the 1964 military coup, the new regime created a governmentally owned bank, called the Housing National Bank (or *Banco Nacional de Habitação*, in Portuguese "BNH"). Through BNH, Brazil adopted for the first time a national housing policy inspired by subsidized credit to incentivize individuals to purchase their own house. This policy was influenced by the interests of developers and was inspired by the U.S. model of savings and loans.²⁶ But it also created jobs by fostering the construction sector matching one of the main objectives of the military regime which was strengthening the country's economy. The other main objective by which the military government justified the 1964 coup was to avoid a growing communist influence within the Brazilian society. Focusing on private property instead of a program of public housing was aligned with that military objective. According to the first BNH president, Sandra Cavalcanti, a

²⁴ See MAGNABOSCO, Ana Lelia; FREITAS, Fernando Garcia. *A Política Habitacional Brasileira* [The Brazilian Housing Policy] -in- *Dialogue Brazil and European Union: Social Housing, Finance and Subsidies*. WHITEHEAD, Christine; FREITAS, Fernando Garcia; ROSA, Júnia Santa; ROSSBACH, Anacláudia. (editors). Ministério das Cidades. Cities Alliance, 2015, p. 85, describing how the credit system adopted in Brazil followed the North-American "Savings and Loans" model, which was also used in Uruguay and Chile.

²⁵ ROLNIK, Raquel. *Guerra dos Lugares* [The War of Places]. Boitempo, 2015, p. 273.

²⁶ For a description of the savings and loan system in the United States, see Federal Deposit Insurance Corporation ("FDIC"). *The Savings and Loan Crisis and Its Relationship to Banking*. Available at https://www.fdic.gov/bank/historical/history/167_188.pdf, last visited on 28 September 2019.

house owner is usually a more conservative individual whose primary interest is to defend her private property.²⁷

BNH secured subsidized loans. But for the policy to succeed, the government had to make sure the population would have savings in order to have access to credit. To address this potential lack of savings by the country's population, in 1967 Brazil passed a law instituting a mandatory retention of 8% of all formal workers' salaries. Every employer became compelled to retain 8% of its workers' monthly income and deposit in a federally managed account named Workers Severance Fund (or *Fundo de Garantia por Tempo de Serviço*, in Portuguese, "FGTS").²⁸ The money deposited in the FGTS account belongs to the worker, but it can only be withdrawn in very limited situations. One of them is to purchase a house. This mandatory savings was added to every individual's voluntary savings to form the Brazilian System of Savings and Loans (or *Sistema Brasileiro de Poupança e Empréstimo*, "SBTE").

The total sum of money in the SBTE made for a sort of endowment, by which the revenues thereof are used by the government to subsidize the housing credit and finance housing developers and water distribution and sewage infrastructure. The FGTS mandatory savings program still exists in Brazil. However, because the FGTS is linked to those individuals with a formal employment relationship, the program does not reach the least poor sector of the population and it is subject to the macroeconomic performance of the country. In times of big unemployment rates, a relevant portion of the population is left out of the program and so are those working in the informal market, a very relevant contingent of the Brazilian working force.²⁹

BNH was extinct in 1986. In 22 years of operation, the Housing Financial System [*Sistema Financeiro de Habitação* – "SFH"] (composed of BNH, real estate credit companies and real estate credit bonds) financed the construction of 4,3 million new houses. Of this total, 2,4 million units were dedicated to low income people financed by FGTS resources and 1,9 million houses targeted the middle class and were financed by SBTE resources.³⁰ Up

²⁷ See ROLNIK, Raquel. *Guerra dos Lugares* [The War of Places]. Boitempo, 2015, p. 282.

²⁸ FGTS "...is the cornerstone of the directed credit system for social housing. It is funded by the monthly compulsory contributions of salaried employees into accounts linked to the workers managed by CAIXA [the governmentally-owned bank]." See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The 'My House My Life' Programme – Programa Minha Casa Minha Vida*. 2013, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019.

²⁹ According to the Brazilian Institute of Geography and Statistics (IBGE), currently about 40% of the country's labor force are informal workers. See <https://economia.uol.com.br/empregos-e-carreiras/noticias/redacao/2018/12/05/ibge-trabalhadores-informalidade-brasil-2017.htm>, last visited on 28 September 2019.

³⁰ According to Magnabosco, the SFH was fundamental to the country economic growth and to urban development in Brazil because it generated a large volume of credit for very poor

until 2000, after the extinction of BNH but still under the SFH, 6,5 million new houses were built and 90% of the urban population had access to a water distribution system.³¹ After BNH was extinct, another governmentally-owned bank became the financial agent in charge of managing the SFH: *Caixa Econômica Federal*, “CEF”.³² Despite such significant numbers, the total amount of new homes under the SFH program represented 25% of all houses built in the country during the 1964-1986 period.³³

Notwithstanding the relatively significant numbers in terms of new homes built under the BNH, the lack of a more comprehensive policy prevented the country from reaching a solution that could solve the housing deficit in major urban areas. Lack of governmental technical support on areas such as finance, administrative organization and urban planning to poor communities in informal settlements led to a chaotic process of occupation of spaces in major cities. Without official assistance and any urban policy capable of combating the exclusionary regime in place, those city dwellers living in a precarious situation were forced into a savage competition for informal occupation of unsuitable urban spaces. Those areas illegally occupied were then filled by self-constructed structures (usually in phases, following each individual’s cashflow) without any regard whatsoever to any building code provision.³⁴ This process

families and channelized a lot of resources for infrastructure development. See MAGNABOSCO, Ana Lelia; FREITAS, Fernando Garcia. *A Política Habitacional Brasileira [The Brazilian Housing Policy] -in- Dialogue Brazil and European Union: Social Housing, Finance and Subsidies*. WHITEHEAD, Christine; FREITAS, Fernando Garcia; ROSA, Júnia Santa; ROSSBACH, Anacláudia. (editors). Ministério das Cidades. Cities Alliance, 2015, p. 87.

³¹ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula* [Housing policy and social inclusion in Brazil: historical review and new perspectives under the Lula government] *Revista Eletrônica de Arquitetura e Urbanismo*, São Paulo, n.1, p.70–104, 2008, p. 73, available at: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

³² CEF or CAIXA “...is the largest federal public bank in Brazil and a major player in the housing finance system. It accounts for a significant part of the direct credit system (the *Fundo Brasileiro de Poupança e Empréstimo*) and uses most of the Workers Severance Fund (*Fundo de Garantia por Tempo de Serviço*) for housing finance. CAIXA is responsible for the distribution of public subsidies related to housing.” See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019.

³³ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula* [Housing policy and social inclusion in Brazil: historical review and new perspectives under the Lula government] *Revista Eletrônica de Arquitetura e Urbanismo*, São Paulo, n.1, p.70–104, 2008, p. 73, available at: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

³⁴ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula* [Housing policy and social inclusion in Brazil: historical

resulted, inevitably, in favelas prone in the following decades to parallel state control by criminal organizations. These criminal enterprises soon started subjugating millions of honest working low-income people residing in favelas.

Bonduki raised additional problems to the BNH housing policy related to the military administration of the program: authoritarian management, lack of public participation and social accountability in the conception of programs and projects and lack of alternatives to a private property solution to the housing problem, like social rent and self-building programs.³⁵ The same author noted also that because the program was based on subsidizing credit to individuals through the financial sector, a relevant contingent of very poor people who did not have access to the banking system was left out.³⁶ Those who did not access the housing program ended up settling in unfit and illegal areas of town under very precarious conditions contributing to the increase of the urban crisis in the twentieth century.

On the flip side, those who were able to have access to subsidized credit moved on to acquire standardized-type and low-quality housing units usually far away from the main areas of cities. Areas without access whatsoever to public amenities and infrastructure.³⁷ Without any regard to cultural, environmental and community dynamics, those housing projects built under the BNH program did not meet urban planning criteria and pushed poor people to the outskirts of major cities.³⁸

review and new perspectives under the Lula government] *Revista Eletrônica de Arquitetura e Urbanismo*, São Paulo, n.1, p.70–104, 2008, p. 74, *available at*: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

³⁵ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula* [Housing policy and social inclusion in Brazil: historical review and new perspectives under the Lula government] *Revista Eletrônica de Arquitetura e Urbanismo*, São Paulo, n.1, p.70–104, 2008, p. 74, *available at*: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

³⁶ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula* [Housing policy and social inclusion in Brazil: historical review and new perspectives under the Lula government] *Revista Eletrônica de Arquitetura e Urbanismo*, São Paulo, n.1, p.70–104, 2008, p. 74, *available at*: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

³⁷ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula* [Housing policy and social inclusion in Brazil: historical review and new perspectives under the Lula government] *Revista Eletrônica de Arquitetura e Urbanismo*, São Paulo, n.1, p.70–104, 2008, p. 74, *available at*: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

³⁸ See THOMÊ, Cynthia. *Evolução do Direito à Moradia no Brasil* [The Evolution of the Right to Housing in Brazil] -in- CUNHA FILHO, Alexandre J. Carneiro; NERY, Ana Rita de Figueiredo; ARAÚJO, Alexandra Fuchs de. (orgs). *Direito Urbanístico* [Urban Law], São Paulo: Quartier Latin, 2016, p. 249, linking the historical deficit in urban planning in Brazil and the corresponding negative impacts in aggravating the country's housing deficit.

In the early 1980s, the economic model implemented by the military government faced a severe recession. Unemployment rates skyrocketed. The capacity of individuals to pay their mortgages diminished. The numbers of new subsidized credit for social housing decreased significantly. The military regime reduced arbitrarily the monetary interest of monthly payments so that people could keep affording their mortgages. This, in turn, caused a big financial hole in the SFH. BNH was extinct in 1986 soon after the military government was deposed in 1985.³⁹

Inaugurating the then recently re-democratization period starting in 1986, the 1988 Constitution featured the right to housing as one of the country's fundamental right to all citizens. However, due to the collapse of the SFH subsidized credit for social housing was significantly reduced during the 1990s. With the extinction of BNH in 1986, the financial operation was transferred to the governmentally-owned bank, CEF, but without the structure of a national housing policy like the one established under the BNH by the military regime. Extremely high rates of inflation during the early 1990s prevented the continuation of a policy based on subsidized credit. Several policies aimed at stabilizing the country's economy and at solving the financial hole in the BNH left Brazil without any concerted national housing policy until 2003 with the creation of the Ministry of Cities.⁴⁰

With the federal housing program impaired due to the financial crisis during the 1980s and 1990s and the impoverishment of the population, States and municipalities had to take greater responsibility for dealing with what became a critical urban problem. State and municipal housing programs found constitutional grounds on the concurrent authority the then recent Constitution (1988) granted to them on housing issues. As a consequence, creative municipal and state programs of community joint building efforts and direct rental subsidies for very poor people under critical conditions⁴¹ were used in a highly

³⁹ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula* [Housing policy and social inclusion in Brazil: historical review and new perspectives under the Lula government] *Revista Eletrônica de Arquitetura e Urbanismo*, São Paulo, n.1, p.70–104, 2008, p. 75, *available at*: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

⁴⁰ MAGNABOSCO, Ana Lelia; FREITAS, Fernando Garcia. *A Política Habitacional Brasileira* [The Brazilian Housing Policy] -in- *Dialogue Brazil and European Union: Social Housing, Finance and Subsidies*. WHITEHEAD, Christine; FREITAS, Fernando Garcia; ROSA, Júnia Santa; ROSSBACH, Anacláudia. (editors). Ministério das Cidades. Cities Alliance, 2015, p. 83.

⁴¹ According to Renato Balbim, social rent policies are not part of a structured national affordable housing strategy. Few experiences observed are scattered, partial or to coupe with emergency situations like extreme natural events forcing poor people out of their houses who are then contemplated with a rental subsidy for a limited period of time. *See* BALBIM, Renato. *Serviço de Moradia Social ou Locação Social: Alternativas à Política Habitacional*. [Social Housing Service or Social Rent: Alternatives to the Housing Policy]. Brazilian Institute of Applied Economic Reserch (“IPEA”), 2015, p. 15, *available at*

decentralized basis throughout the country and paid for with financial resources from the public budget.⁴² But as noted by a UN-HABITAT report, during this period, “...local administrators were critically constrained by limited resources and deficient technical apparatus to design and implement programmes and projects.”⁴³

Most of the resources spent on housing policies during the 1990s were concentrated on subsidized finance of used property or to the acquisition of construction materials - both policies of limited reach to fight the housing deficit Brazil faced. The first one did not incentivize economic growth and employment generation. In addition, it benefited mostly middle class where the problem of affordable housing was much less acute than that in the poor layer of the Brazilian society. To put into perspective, between 1995 and 2003, 78.84% of the available resources to housing were dedicated to families with income of five times the minimum wage. Only 8.47% of the resources were dedicated to families with income of three times or less the country’s minimum wage. Those low-income families represented 83.2% of Brazil’s housing deficit.⁴⁴

As per the policy of subsidized finance for building supplies, it rapidly became an incentive for more informal settlements away from the public infrastructure. The government had invested into the urbanization of such informal settlements, but incentivizing the acquisition of building supplies would make the problem endless not only because of the sprawling incentive it created but also because those informal settlements did not provide for adequate housing conditions. An additional obstacle to overcome was the enormous amount of public resources urbanization policies required. A great deal of

http://repositorio.ipea.gov.br/bitstream/11058/5787/1/td_2134.pdf, last visited on 28 September 2019.

⁴² See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 11, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019. “In the mid-1990s, the responsibilities regarding social housing programmes were transferred to the Ministry of Social Welfare and a move towards decentralization and transfer of responsibilities from national to local governments took place. In practice, this initially meant a substantial withdrawal of the national Government from housing and urban matters.”

⁴³ See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p.11, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019.

⁴⁴ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula* [Housing policy and social inclusion in Brazil: historical review and new perspectives under the Lula government] *Revista Eletrônica de Arquitetura e Urbanismo*, São Paulo, n.1, p.70–104, 2008, p. 80, available at: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

resources the country did not dispose of was demanded in terms of infrastructure, land tenure regularization and the technical work needed for the conception of zoning laws to fully integrate those very poor areas into the formal city.⁴⁵

In 1999, during the second presidential term initiated in 1998 with the reelection of president Fernando Henrique Cardoso, and Executive Order (MP 1,823) created the Residential Leasing Program (or *Programa de Arrendamento Residencial*, in Portuguese, “PAR”). The PAR turned into law by Congress in 2001 (Law 10,188). It constitutes a program designed to convey resources for the purchase of urban land and the construction or renovation of housing units. Private construction companies are hired to build the housing units which are owned by the Residential Leasing Fund (or *Fundo de Arrendamento Residencial*, in Portuguese “FAR”) with the fiduciary property in the name of the governmentally-owned bank CEF. Once built, those families earning no more than 6 minimum wages per month, living in cities of more than 100,000 inhabitants are entitled to apply for a lease for a period of 180 months, with the right of preference in the purchase of the unit offsetting the amount paid during the leasing period. The lease faced a cap of 0.7 percent of the price of the housing unit and it was further decreased in 2007 to 0.5 percent to enable least poor families to access the program. Default of more than 60 consecutive days allows for the summary eviction. In 2007, Law 11,474 allowed for the possibility of an anticipation of the acquisition so that the tenant would not have to wait for 15 years before exercising her right of preference. In such a case, the lease would turn into a conventional subsidized mortgage. Between 1999 and 2005, the PAR invested approximately R\$ 4,187 million BRL (1 million USD) to finance 177,150 housing units in 1,223 different housing developments. After 2005, those numbers decreased due to an increase in the price of urban land and housing units within areas served by public infrastructure. But the PAR, nevertheless, constituted an important affordable housing alternative within the mix of different programs to provide low-income families with their housing right.⁴⁶

⁴⁵ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula* [Housing policy and social inclusion in Brazil: historical review and new perspectives under the Lula government] *Revista Eletrônica de Arquitetura e Urbanismo*, São Paulo, n.1, p.70–104, 2008, p. 79, available at: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

⁴⁶ For a more detailed description of the PAR, see BONATES, Mariana Fialho. *O Programa de Arrendamento Residencial – PAR: acesso diferenciado à moradia e à cidade*. [The Residential Leasing Program – RLP: differentiated access to housing and to the city] *Revista de Pesquisa em Arquitetura e Urbanismo do Programa de Pós-Graduação do Departamento de Arquitetura e Urbanismo EESC-USP*, n. 7, p. 147-164, 2008, available at file:///C:/Users/romulo.sampaio/Downloads/44729-Texto%20do%20artigo-53281-1-10-20120924.pdf, last visited 22 September 2019.

Against this brief historical overview, Brazil entered the 21st century with a massive housing deficit in its now highly urbanized territory: over 80%. If the last decade of the 20th century was marked by the lack of resources due to a difficult internal economic environment, at least Congress managed to pass the 2001 City Statute, a long awaited statute which implemented the general legal housing and urban concepts embedded in the 1988 Constitution. Of particular interest, the 2001 Act provided implementation guidelines for the right to the city and the social function of the property. The next century had the constitutional and legal framework in place to advance on affordable housing policies. That period is the subject of the next topic.

THE NEW CONSTITUTIONAL REGIME, THE 2001 CITY STATUTE, THE 2003 MINISTRY OF CITIES AND THE NATIONAL SYSTEM OF SOCIAL INTEREST HOUSING

The evolution of the Brazilian legal and institutional framework on affordable housing during the 2000s did not match the implementation of the corresponding public policies. Many novel legal provisions, such as the social function of the property and of the city, for instance, were much more inspirational than their ability to provide for a substantive impact in practice. Despite many doctrinal controversies regarding the reach, extent and implications of the social function concept, since its formal conception in the 1934 Constitution, it survived through all subsequent constitutional regimes (1937, 1946, 1967 and 1988) and made its way into various laws imposing different degrees of limitations on the use of rural and urban property.⁴⁷ This all happened throughout the 20th century when Brazil experienced the aforementioned urbanization crisis. This legal and institutional paradigm shift initiated 30 years earlier, during the 1970s, fostered by a greater degree of civil society mobilization towards better urban living conditions.⁴⁸

⁴⁷ CUNHA, Alexandre dos Santos. *The Social Function of Property in Brazilian Law*. Fordham Law Review. Volume 80. Issue 3. 2011, p. 1175-6, listing laws that embraced limitations on the use of the property pursuant to the constitutional concept of the social function of the property.

⁴⁸ See FERNANDES, Edésio. *Implementing the urban reform agenda in Brazil*. Environment & Urbanization. International Institute for Environment and Development (IIED), Vol 19(1): 177-189, p. 179. “From the mid-1970s and especially the early 1980s, important cracks appeared in the long-standing military regime as a result of a powerful combination of factors: the growing social mobilization through trade unions, civic organizations, social movements, residents’ associations, groups linked to the progressive branch of the Catholic Church, and other collective channels; the reorganization of traditional political parties and the creation of new ones expressing renewed political claims for political-institutional change, particularly through democratic elections and the strengthening of local government; and also, to a lesser extent, the rearrangements within land and property capital. The first significant attempts at the democratization of urban management at the municipal level can be identified in the mid-1970s.”

Housing was prominently featured in the new constitutional regime inaugurated by the 1988 Constitution. Articles 5, item XXII, 6, and 182⁴⁹ of the Brazilian Constitution featured prominently the social function of property, the right to housing, and the right to the city. Housing was also an important pillar of the 2001 City Statute, marking once and for all, a new legal paradigm not only for affordable housing policies but for a more inclusive, democratic and just urban planning process.⁵⁰ But as described above, due to an enormous financial crisis and high inflation rates during the 1990s, Brazil was not able to advance meaningfully on a program of affordable housing. Strong economic measures were adopted during this period, featuring the “Real” Plan in 1993⁵¹ and the 2000 Fiscal Responsibility Law.⁵² The first one fixed the high inflation

⁴⁹ Art. 5, item XXII: “property shall comply with its social function”; Art. 6: “Education, health, nutrition, labor, housing, leisure, social security, protection of motherhood and childhood and assistance to the destitute, are social rights, in accordance with this Constitution.”; Art. 182: “The urban development policy carried out by the County Governments, according to general guidelines fixed by law, is intended to order the full development of the social functions of the cities and to guarantee the well-being of their inhabitants.” An English version of the Brazilian Constitution is available at https://www.constituteproject.org/constitution/Brazil_2014.pdf, last visited on 23 September 2019.

⁵⁰ See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 1, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019. “A benchmark of the achievements of housing and urban sectors in Brazil is the enactment in 2001 of the City Statute, which regulates articles 182 and 183 of the Constitution on the social function of the private property and the social function of the city. By elaborating on the principle of the social function of the property and of the city, the Statute set the basis for a new legal and political paradigm for urban land use and development control. The Statute replaced the centralized and individualistic rationale of urban and land planning by a range of legal, urban and fiscal instruments to be used by municipal administrations to regulate urban land and property markets according to the principles of social inclusion and environmental sustainability.”

⁵¹ See Brazilian Central Bank. *The Real Plan*. Available at <https://www.bcb.gov.br/en/monetarypolicy/realplan>, last visited on 28 September 2019. Noting that “[b]etween 1985 and 1993, the Brazilian policymakers implemented six ineffective stabilization plans. The Real Plan (“Plano Real”), launched in mid-1993, was a groundbreaking achievement against the inflationary spiral that afflicted Brazil since the mid-80s. The disinflation process was remarkably fast: the IPCA’s annual inflation declined from 4,922% in June 1994 to 916% in December 1994. A new currency, the Real, came into force on July 1, 1994, embodying a major milestone in the Brazilian inflationary history.”

⁵² See Brazilian Court of Audit (Tribunal de Contas da União – TCU). *The Fiscal Responsibility Law*. available at <https://portal.tcu.gov.br/english/inside-tcu/the-fiscal-responsibility-law/>, last visited on 28 September 2019. “The Fiscal Responsibility Law (*Lei de Responsabilidade Fiscal - LRF*) is an important statute in the Brazilian legal framework, passed in 2000, that provides orientation and guidelines for budgetary and financial affairs at the three levels of government. It contains conditions for public debt assumption, loan guarantees, budget deficits and tax exemptions and limits government expenditures, in particular with employees. It also mandates that certain documents related to accounting and

rates that undermined the capacity of poor people to have access to credit and the second imposed upon public officials very restricted rules of responsible fiscal management, limiting politicians' uncontrolled desire to overspend the public budget with populist measures.

With the country's economy in order and an international favorable environment, the 2001 elected president, Luis Ignácio Lula da Silva, from the leftist working party, was able to reinstitute an affordable housing program under the management of the Ministry of Cities, created in 2003. The legal framework was in place, with the 1988 Constitution and the 2001 City Statute. The world was undergoing robust growth rates during the early years of the 2000s. That, in turn, augmented international appetite for Brazilian commodities reflecting very positively on the country's economy. For the first time in the Brazilian democratic history, the working party took power. Expectations were high for the advancement in social policies, since the working party was very much inspired by the principles of a social democracy-type of government leaning quite strongly to the left side of the political spectrum. All very favorable variables for Brazil to put in place a solid and comprehensive affordable housing program to solve once and for all the persistent urban crisis.⁵³

The 2000 census alerted the new government to the magnitude of the housing problem. In the ten years since the 1991 census, the number of favelas increased 22.5%. This exponential growth, though, does not match the increase in the number of favela inhabitants, which was much higher. Favelas underwent a relevant process of densification. To illustrate the magnitude of the housing problem, data shows that between 20-40% of the urban population of the country's major metropolitan areas are living in favelas.⁵⁴ Putting differently, an enormous number of people living in unsuitable housing conditions. That same population excluded from the formal city helped to elect the working party and deposited high hopes on the new government's capability to solve the housing problem.

planning must be published by governments periodically, to ensure the transparency of public accounts. Finally, the law carries clear penalties for non-compliance.”

⁵³ See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 1, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited n 23 September 2019, noting that affordable housing during the 2000 “...counted on an enhanced institutional and policy framework that has better equipped local governments and improved tools.”

⁵⁴ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula* [Housing policy and social inclusion in Brazil: historical review and new perspectives under the Lula government] *Revista Eletrônica de Arquitetura e Urbanismo*, São Paulo, n.1, p.70–104, 2008, pp. 88-9, available at: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

One first step towards tackling the housing deficit was to increase coordination among the federal, state and municipal governments. Since the 1988 Constitution they all shared concurrent authority over housing policies.⁵⁵ With the 1990s fiscal crisis, the few uncoordinated and unplanned housing programs conceived and implemented at the three levels of the Brazilian federation led to very little results and wasted precious resources. That was when, in preparation for his 2002 campaign, the working party adopted a “Housing Project” construed by the “Citizenship Institute”, a non-profit organization that had the then presidential candidate Lula serving as its general coordinator. This project was the foundation for the housing program conducted under the working party’s government initiated in 2003.⁵⁶

According to the conceivers of the Housing Project, it was envisioned to be a study beyond a campaign program. The project was designed to collect, compile and reflect the views of all levels of government, academia, NGOs, social justice movements and whomever else had an interest in affordable housing issues and an input to share. The study revealed that the FGTS (“the compulsory savings”) resources had great potential if reverted to effective affordable housing policies, considering the fund was experiencing an exponential growth in deposits. Due to the aforementioned constitutional concurrent authority on housing issues, additional sources of funding could be sought at state and municipal level. As a matter of fact, some states, like Sao Paulo already invested significant sums in affordable housing programs. In summary, what the Housing Project proposed was an integrated approach between the many agencies, autarchies and departments at all levels of the federation to foster an effective institutional design with a broad mandate to include urban development and a well-planned financial project and strategy. The institutional coordination would be under the mandate of a proposed Ministry of Cities. The financial model was still inspired in the private housing program through subsidies, but with due care for the least poor who would be entitled to greater levels of upfront subsidies.⁵⁷

⁵⁵ Article 23 items IX and X: “The Union, States, Federal District and Counties, shall have joint powers to: IX – promote programs for construction of housing and improvement of conditions of living and basic sanitation; X – combat the causes of poverty and the factors of marginalization, promoting the social integration of the underprivileged.” An English version of the Brazilian Constitution is available at https://www.constituteproject.org/constitution/Brazil_2014.pdf, last visited on 23 September 2019.

⁵⁶ A full version of the Housing Project is available at <https://erminiamaricato.files.wordpress.com/2015/07/projeto-moradia.pdf>, last visited on 23 September 2019.

⁵⁷ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula* [Housing policy and social inclusion in Brazil: historical review and new perspectives under the Lula government] *Revista Eletrônica de Arquitetura e*

When the working party won the 2002 election, the Housing Project was put into motion. The Ministry of Cities was created in 2003 with a coordination mandate.⁵⁸ During the years following the creation of the Ministry of Cities, the government increased significantly the level of investment in subsidies for housing acquisition with a higher focus on poor families.⁵⁹ Governmental action in this area also responded to the lobby of private construction companies and social housing movements. In 2006, the monetary authority (National Monetary Council, or *Conselho Monetário Nacional*, in Portuguese “CMN”), issued a resolution imposing upon banks an obligation to invest a share of all voluntary savings in housing mortgages.

In addition, in 2006, Congress passed Law 11,124, creating the National System of Social Interest Housing (*Sistema Nacional de Habitação de Interesse Social*, in Portuguese, or “SNHIS”). Within SNHIS, the 2006 Law instituted the National Social Housing Fund (“FNHIS”)⁶⁰ to concentrate all resources directed to affordable housing programs to boost investment in housing subsidies for poor families.⁶¹ The SNHIS was created with the primary purpose of: (i) allowing poor families to have access to urban land and to sustainable and adequate housing conditions; (ii) implementing housing investment and

Urbanismo, São Paulo, n.1, p.70–104, 2008, pp. 91, 92 and 94, *available at*: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

⁵⁸ According to the UN-HABITAT, “[T]he urban and housing sectors gained leverage with the creation, in 2003, of the Ministry of the Cities. A breakthrough occurred in the formulation of social housing policy with a series of legal and policy measures the Ministry implemented to enable the design and restructuring of social housing programmes.” UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 13, *available at* <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited n 23 September 2019.

⁵⁹ See MAGNABOSCO, Ana Lelia; FREITAS, Fernando Garcia. *A Política Habitacional Brasileira [The Brazilian Housing Policy] -in- Dialogue Brazil and European Union: Social Housing, Finance and Subsidies*. WHITEHEAD, Christine; FREITAS, Fernando Garcia; ROSA, Júnia Santa; ROSSBACH, Anacláudia. (editors). Ministério das Cidades. Cities Alliance, 2015, p. 83, noting that the new subsidy policy instituted from 2003 onwards in Brazil was very similar to the one adopted in Chile in which the subsidy is explicit, proportional to the price of the house and applied directly to the acquisition of new units.

⁶⁰ The FNHIS “...was established in 2004 to coordinate transfers, subsidies, financial resources and funding to support social housing programmes of the National Housing Policy.” UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, *available at* <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited n 23 September 2019

⁶¹ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula [Housing policy and social inclusion in Brazil: historical review and new perspectives under the Lula government]* Revista Eletrônica de Arquitetura e Urbanismo, São Paulo, n.1, p.70–104, 2008, pp. 99-100, *available at*: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

subsidies policies and programs aimed at poor families; and (iii) articulating, monitoring and supporting all governmental agencies responsible for affordable housing policies. Investments to achieve those broad objectives were also broad and contemplated, through the FNHIS, funding for housing acquisition, construction, improvements and social lease in urban and rural areas; development of urban land for affordable housing; urbanization, community equipment, land titling programs of areas of social interest; water sewage infrastructure and improvements in houses in degraded urban areas; among others approved by the FNHIS Steering Committee.⁶² Inspired by a decentralization premise, the FNHIS contemplated transferring resources to states and municipalities conditional upon the development of a Master Plan and Local Plans for Social Interest Housing.⁶³

The financial subsidies contemplated by the 2005 Law were also broad in scope. They contemplated direct subsidies to poor families to increase their payment capacity, the equalization to present value of those credit operations offered by financial institutions to reduce the burden of mortgages; federal, state and municipal tax breaks or reductions applied to the affordable housing development; and construction process, and other non-financial subsidies aimed at reducing construction costs or housing acquisition.⁶⁴

The 2005 SNHIS Act improved significantly the broad house objectives set forth in the 1988 Constitution and in the 2001 City Statute. It was conceived and proposed by civil society to Congress through a “popular initiative” and it was aimed at providing the general broad housing provisions with concrete tools. Through coordinated actions, the 2005 SNHIS Act was designed to foster the development of affordable housing on vacant urban spaces. Also, aligned with a 2001 City Statute objective to avoid speculative retention of urban property and the use of governmentally-owned vacant buildings, the affordable housing policy went after those urban areas already served by public infrastructure. In an attempt to solve the historically chaotic illegal settlement of public spaces by poor rural migrants in urban areas, the City Statute provided incentive for land titling programs and urbanization strategies, provisions that could be fostered by the 2005 SNHIS Act. Providing poor families with title to urban land was also a social justice policy to make up for decades of

⁶² Art. 11 of Law 11,124/2006.

⁶³ “The Local Plan for Social Interest Housing must be elaborated by municipal administrations. It represents the consolidation of the National Housing Policy at local level. The plan comprise a set of guidelines, objectives, indicators and instruments to intervene in the housing sector at the local level, ensuring that interventions conform to, or are in line with, national, state and municipal housing policies.” UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019.

⁶⁴ Art. 23 of Law 11,124/2006.

exclusionary urban development planning that prevented them from the right to access urban spaces. The combination of the 2001 City Statute and the 2005 SNHIS Act envisioned to construe a broad affordable housing right, one that would also seek an inclusive right to a sustainable city by encompassing all associated urban infrastructure and the right of all urban dwellers to take part in the decision-making process.⁶⁵

At the dawn of the 2008 worldwide financial crisis, in 2007, the federal government launched a comprehensive program to foster investment and improvement in the country's infrastructure. This program was named "Acceleration Growth Program", or *Programa de Aceleração do Crescimento* in Portuguese ("PAC"). Investment in sewage infrastructure and urbanization of favelas was contemplated under PAC.⁶⁶ Combined with greater investment in affordable housing subsidies, the construction and improvement of major cities' infrastructure was an important pillar to providing the population with more adequate living conditions.⁶⁷ Brazil was approaching the end of the first decade of the 21st century with a promising legal and institutional framework in place to solve the country's unjust housing deficit, which, by then, was at about

⁶⁵ For a detailed study on the implementation of the 2005 SNHIS Act, see Sistema nacional de habitação de interesse social à luz do novo marco legal urbanístico: subsídios para implementação nos estados e municípios; Lei Federal nº 11.124/05 / Vários autores. - São Paulo: Instituto Pólis, 2008, available at http://www.bibliotecadigital.abong.org.br/bitstream/handle/11465/380/POLIS_sistema_nacional_habita%c3%a7%c3%a3o_interesse_social.pdf?sequence=1&isAllowed=y, last visited on 21 September 2019.

⁶⁶ According to Freitas e Magnabosco, the PAC program transferred a lot of federal resources to local governments with the objective of providing for improvements in housing, infrastructure and the land tenure situation in favelas. FREITAS, Fernando Garcia; MAGNABOSCO, Ana Lelia; *Subsídios Habitacionais no Brasil* [Housing Subsidies in Brazil] -in- *Dialogue Brazil and European Union: Social Housing, Finance and Subsidies*. WHITEHEAD, Christine; FREITAS, Fernando Garcia; ROSA, Júnia Santa; ROSSBACH, Anacláudia. (editors). Ministério das Cidades. Cities Alliance, 2015, p. 104. See also UN-HABITAT, the Guarantor Housing Fund "is a private facility created to provide full or partial guarantee of loan repayment for beneficiaries of the Minha Casa, Minha Vida programme in case of default. It is intended to mitigate risks to the financial agent. The housing fund's assets are drawn from Government resources and quotas paid by financial agents that operate in the Minha Casa, Minha Vida Programme." UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The 'My House My Life' Programme – Programa Minha Casa Minha Vida*. 2013, p. 26 available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited n 23 September 2019. "The programme mobilizes unprecedented federal government resources for slum upgrading. In the first phase (2007-2010), the programme managed to reach scale: a total of 759 slum-upgrading interventions have benefited 1.62 million families nationwide."

⁶⁷ BONDUKI, Nabil. *Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula* [Housing policy and social inclusion in Brazil: historical review and new perspectives under the Lula government] Revista Eletrônica de Arquitetura e Urbanismo, São Paulo, n.1, p.70–104, 2008, pp. 103, available at: http://www.usjt.br/arq.urb/numero_01/artigo_05_180908.pdf, last visited on 29 May 2019.

8 million houses out of which 90% was concentrated at the least poor household layer (those earning less than 3 minimum wages monthly).⁶⁸ But the 2008 financial crises had a devastating effect on the country's affordable housing policies.

From a broad and inclusive housing policy built into the 1988 Constitution and the 2001 City Statute, to the inclusionary provisions of the SNHIS and multi-solution approach for the housing problem provided by the Ministry of Cities and legal instruments built on the 2001 City Statute and 2005 SNHIS Act,⁶⁹ the federal government shift in 2009 towards a centralized and developers-centered policy with the launching of the “My House, My Life, or *Minha Casa, Minha Vida* in Portuguese - MCMV” program (Law 11,977). The MCMV was crafted through a joint effort involving the federal government and large construction companies as a counter-cyclical policy to offset some of the negative impacts of the 2008 world financial crisis.⁷⁰ Those corporations grew exponentially in previous years by heavy investments from large national and international private equity funds leading them to successful IPO processes during the early years of the 2000.⁷¹ With the 2008 worldwide crisis

⁶⁸ According to Sistema nacional de habitação de interesse social à luz do novo marco legal urbanístico: subsídios para implementação nos estados e municípios; Lei Federal nº 11.124/05 / Vários autores. - São Paulo: Instituto Pólis, 2008, p. 6, *available at* http://www.bibliotecadigital.abong.org.br/bitstream/handle/11465/380/POLIS_sistema_nacional_habita%c3%a7%c3%a3o_interesse_social.pdf?sequence=1&isAllowed=y, last visited on 21 September 2019.

⁶⁹ According to Magnabosco, institutional and legal progress made during the first half of the 2000 decade allowed for the recovery of housing credit which, in turn, benefited significantly poor families. See MAGNABOSCO, Ana Lelia; FREITAS, Fernando Garcia. *A Política Habitacional Brasileira* [The Brazilian Housing Policy] -in- *Dialogue Brazil and European Union: Social Housing, Finance and Subsidies*. WHITEHEAD, Christine; FREITAS, Fernando Garcia; ROSA, Júnia Santa; ROSSBACH, Anacláudia. (editors). Ministério das Cidades. Cities Alliance, 2015, p. 89.

⁷⁰ See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 31 *available at* <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited n 23 September 2019. “*The international economic crisis – with its epicenter in the United States subprime mortgage crash in 2008 – affected Brazil through generating market uncertainty and slowing the construction industry. From the outset, the crisis backdrop underlay the political decision of the Brazilian government to place housing production at the core of counter-cyclical policy. Thus, the My House, My Life Programme was designed as a stimulus package to integrate national efforts to overcome the global financial crisis, creating direct demand in employment-intensive sectors and improving the access to housing.*”

⁷¹ See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 78 *available at* <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited n 23 September 2019. “*Since 2005, some of the main companies in the construction sector started opening capital in the stock market, causing profound impacts on the Brazilian real estate market. Shares the construction sector captured between 2005 and 2007 prompted companies to invest heavily as well as expand financially and geographically throughout the country.*”

international investors sold their shares and the stock prices of the major Brazilian construction companies dropped significantly. To save those companies from collapsing and inspired in an anti-crisis model of fostering consumption, the federal government launched the MCMV program impairing the recent progress in a more inclusive, comprehensive and participatory affordable housing policy that was being put in place since the 2002 presidential election.⁷²

The 2009 My House My Life Program (Law 11,977)

Increasing consumption through a set of policies became one of the most important drives of the economic model put in place by the government to face the international economic recession. The expansion of the “*Bolsa Família*” program, a direct monthly stipend paid to poor people, a progressive increase in the minimum wage and direct financial subsidies to the acquisition of durable goods such as refrigerators, TVs and other domestic appliances were amongst those governmental actions to increase the quality of life of poor families and to create what was so-called a “new middle class”.⁷³ The MCMV program, launched in 2009 by Law 11,977,⁷⁴ was aligned with that strategy with the positive side of fostering the economy.⁷⁵ By incentivizing new construction, the

⁷² See ROLNIK, Raquel. *Guerra dos Lugares* [The War of Places]. Boitempo, 2015, p. 299.

⁷³ “The increase in the minimum wage combined with wealth redistribution policies has contributed to enlarge the consumer market and improve living conditions in Brazil. Per capita gross domestic product has increased from USD 7,400 in 2000 to USD 10,800 in 2010, a growth of 45 percent. Evidence of this growth is the country’s large income mobility in recent years, referred as ‘the growth of the middle class’. Since 2003, almost 50 million households have joined ‘class C’, which embodies the middle class in Brazil. In the same period, 23 million households have been lifted out of ‘class E’, the poorest group with a monthly per capita lower than half the minimum wage. Poverty and extreme poverty rates are decreasing but they still remain significant. In 2010, 8 percent of the population (16.2 million people) lived in conditions of extreme poverty, with incomes of less than BRL 70 a month (USD 38). UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 5, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019.

⁷⁴ “Since the launch of My House, My Life in 2009, amendments to the law have been consistently endorsed to modify, adapt and improve programme implementation and performance.” For a list containing the main laws and amendments to the 2009 MCMV Law, see UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 34 available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019.

⁷⁵ See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 31 available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019. “The Programme aims to stimulate the production and acquisition of new housing units for the low-income population in Brazil. To do this, the Programme creates special mechanisms to mobilize the private sector to build homes for this income bracket, and

government would continue to create jobs and to keep the economy moving during one of the world's worst financial crisis.⁷⁶ While the world was facing a drastic recession in the aftermath of the 2008 financial hit, Brazil was experiencing economic growth and low unemployment rates due to the government's overflow of funding into the economy to incentivize consumption.⁷⁷ The country would pay a high price years later as a result of the government's fiscal irresponsibility, by overspending during a scenario of international recession.⁷⁸

Up until 2007, with the world economy still blooming, approximately 550 thousand new houses were financed with the compulsory (FGTS) and voluntary (SBTE) savings' resources, totaling 40 billion Reais (10 billion dollars) in mortgages. Construction companies, leveraged by private equity money and IPOs, arrived in 2007 with a land stock comprised of 6,5 million square feet of urban land in various Brazilian cities.⁷⁹ Those companies were prepared to release into the market around 200 thousand affordable housing units.⁸⁰ When presented to the government, in a political move, the president

designs innovative arrangements of subsidy and finance for selected beneficiaries to acquire new homes.”

⁷⁶ See ROLNIK, Raquel. *Guerra dos Lugares* [The War of Places]. Boitempo, 2015, p. 299.

⁷⁷ See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, pp. 1, 5, and 78, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019. “[T]he Programme [MCMV] sets its foundation on a strong policy of upfront subsidies and increased housing credit, which has been possible because of Brazil's consistent economic growth and well-focused social agenda over the last decade.” (...) “The growth of investments in social areas was fairly constant during Da Silva's presidency, and has served the dual purpose of improving living conditions and alleviating the effects of the global economic crises: between 2008 and 2009, welfare-oriented investments increased 11.5 percent.” Also noting that “In 2010, the Brazilian construction sector experienced practically full employment.”

⁷⁸ See The Economist. *Has Brazil Blown it?*. 2013, available at <https://www.economist.com/news/leaders/21586833-stagnant-economy-bloated-state-and-mass-protests-mean-dilma-rousseff-must-change-course-has>, last visited on 28 September 2019.

⁷⁹ See ROLNIK, Raquel. *Guerra dos Lugares* [The War of Places]. Boitempo, 2015, p. 192.

⁸⁰ See UN-HABITAT, the Guarantor Housing Fund “is a private facility created to provide full or partial guarantee of loan repayment for beneficiaries of the Minha Casa, Minha Vida programme in case of default. It is intended to mitigate risks to the financial agent. The housing fund's assets are drawn from Government resources and quotas paid by financial agents that operate in the Minha Casa, Minha Vida Programme.” UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 21 available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019. “The segment of social housing constitutes an area of expansion for the private market. Large-scale companies that have traditionally focused on high-income segments have created strategies to embrace this “new” market. The profile of companies

proposed to those private companies an increase to 1 million new housing units to contemplate, at a larger scale, least poor families.⁸¹ Construction companies had significant interest at stake matching the government's desire to minimize the impact of the international crisis in the country's economy right before the 2010 presential campaign. This combination left the government exposed to the private companies' lobby and resulted, therefore, in the 2009 MCMV Act (Law 11,977).⁸²

The 2009 MCMV was a subsidy program divided into three different categories. The first one, contemplated families earning no more than 1,6 thousand BRL (or approximately 400 USD). Almost entirely subsidized, housing units under this first category were built by private companies and distributed by municipal governments. The governmentally-owned bank CEF serving as the financial agent would buy those units from the construction companies and those poor families contemplated by local authorities would pay 5% of their monthly income. The difference in building costs and the amount paid by those poor families was covered by the FAR.⁸³ The second category

performing in the market can be described by large-scale and high income oriented companies that have created subsidiary affiliated societies to target the low-income segment and the emergence of companies that are specialized in this income niche.”

⁸¹ See ROLNIK, Raquel. *Guerra dos Lugares* [The War of Places]. Boitempo, 2015, p. 301.

⁸² It is worth noticing that the MCMV was an extremely good deal for private developers, because “...the Government has designed a system of subsidy transfer and housing finance to reduce the risks for construction companies and support low-income groups that had no market share to acquire housing units on a regular basis. Equally important, the construction sector received fiscal incentives and institutional changes to improve and speed up project approval and execution at the local level.” UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 33 available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019.

⁸³ A Family falling under this first category would return to the fund a maximum of 9,6 thousand BRL (2,400 USD) of a housing unit costing no more than 76 thousand BRL (19,000 USD). FREITAS, Fernando Garcia; MAGNABOSCO, Ana Lelia; *Subsídios Habitacionais no Brasil* [Housing Subsidies in Brazil] -in- *Dialogue Brazil and European Union: Social Housing, Finance and Subsidies*. WHITEHEAD, Christine; FREITAS, Fernando Garcia; ROSA, Júnia Santa; ROSSBACH, Anacláudia. (editors). Ministério das Cidades. Cities Alliance, 2015, p. 99. The reasoning for using the FAR and not the National Social Housing and the Workers Severance funds was to gain flexibility and to make it easier for municipalities in terms of management. That is why the federal government transferred about 16.5 billion BRL (4 billion USD) to the FAR during the first phase of the MCMV program (2009-2001). UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 37 available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019. “[T]he design of the Leasing Fund allows for a more flexible transfer of federal resources and procurement processes of housing production, especially when the private sector is the executor. In contrast to the Social Housing and the Severance funds, the Leasing facility is not subject to the supervision of an external and deliberative council as well

was designed for families earning between 1,6 thousand BRL (400 USD) and 3,1 thousand BRL (USD 800). Families would have a direct subsidy of up to 23 thousand BRL (5,800 USD), corresponding to about 20% of the housing unit price at the signing of the purchase contract. Those families would also be granted very favorable interest rates guaranteed by the Guarantor Housing Fund (or *Fundo Garantidor de Habitação*, in Portuguese “FGHab”).⁸⁴ For the third category, families earning more than 5 thousand BRL (1,300 USD), the benefit was restricted to lower interest rates and the guarantee of the FGHab.⁸⁵ By 2013, the number of housing units financed by the MCMV program skyrocketed and reached 1,1 million, the largest amount in Brazilian history.⁸⁶ Beneficiaries of the first category are given unrestricted property rights after 10 years of the amortization period when they are also entitled to commercialize the housing units. If beneficiaries anticipate the amortization period, they lose the subsidy

as the allocation of resources dispense bidding processes. Thus, the Leasing Fund is more malleable and is thought to be more in line with the interests of engaging the private sector. On the other hand, this fund does not come through the mechanisms of social control and accountability of the National Social Housing and the Workers Severance funds, which has been an object of criticism.”

⁸⁴ According to the UN-HABITAT, the Guarantor Housing Fund “is a private facility created to provide full or partial guarantee of loan repayment for beneficiaries of the *Minha Casa, Minha Vida* programme in case of default. It is intended to mitigate risks to the financial agent. The housing fund’s assets are drawn from Government resources and quotas paid by financial agents that operate in the *Minha Casa, Minha Vida* Programme. (...) “The Guarantor Fund was designed to tackle one of the major dilemmas of previous Brazilian housing programmes: the absence of a mechanism, whether private or public, to provide full or partial guarantees of loan repayment, and mitigate the risks to the financial agent. Such a mechanism was essential to break the stigma of high risk that financing for low-income groups carry and secure the involvement of private stakeholders in the financing scheme of underserved income categories.” UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 39, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019.

⁸⁵ ROLNIK, Raquel. *Guerra dos Lugares* [The War of Places]. Boitempo, 2015, pp. 303-305.

⁸⁶ MAGNABOSCO, Ana Lelia; FREITAS, Fernando Garcia. *A Política Habitacional Brasileira* [The Brazilian Housing Policy] -in- *Dialogue Brazil and European Union: Social Housing, Finance and Subsidies*. WHITEHEAD, Christine; FREITAS, Fernando Garcia; ROSA, Júnia Santa; ROSSBACH, Anacláudia. (editors). Ministério das Cidades. Cities Alliance, 2015, p. 89. During the first phase of the program, of the total 1 million housing units, “... 40 per cent were intended for Group 1 (400,000 units) and 40 per cent for Group 2 (400,000 units). The other 200,000 units were planned to cater to Group 3. Moreover, the Programme’s goal is to focus on metropolitan regions and large cities where the housing problems and demand are most evident.” UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 33 available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019.

and must pay the integral amount of the unit they were assigned.⁸⁷ A special focus was given to women. According to a UN-HABITAT report, during the first phase, “...80 percent of housing contracts were signed by female-headed households” and in case of a divorce, regardless of the marital arrangement, the women withholds the property rights to the housing unit under the first category.⁸⁸

The MCMV program also enabled the participation of social movements and community-based organization through a specific modality called the MCMV Entities (MCMV-E). The MCMV program lacked the broad social engagement affordable housing policies have experienced throughout the initial years of the working party government, but through the MCMV-E modality and because a great portion of low-income families were being contemplated by the program, the claim for ampler social participation was rather timid.⁸⁹ The role of community associations within the MCMV-E is described by the UN-HABITAT as one of “...organizing and enrolling the demand, acquiring land, as well as for elaborating, executing and managing projects.”⁹⁰

The MCMV program had to overcome the challenge of finding available and affordable urban land to put in place the ambitious residential construction plan. Different modalities were envisioned: (i) local governments could intermediate agreements between landowners and developers or assist associations with the negotiations and execution of an agreement with landowners; (ii) landowners could seek a developer on their own; and (iii) developers could use their own land bank, which was significant at the time as stated above, or buy on their own directly from landowners. The City Statute was an effective legal tool for local governments through their master plans to foster the creation of areas suitable for the development of affordable housing complexes. Legal tools such as Special Zones of Social Interest; land parceling, building and compulsory use; progressive property tax, expropriation with governmental bonds and real estate consortium could be used to tackle the

⁸⁷ UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 47, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019. Explaining that the rationale of such provision is to prevent “...widespread commercialization of housing units and safeguard the social purpose of public subsidies.”

⁸⁸ UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 97, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019.

⁸⁹ See ROLNIK, Raquel. *Guerra dos Lugares* [The War of Places]. Boitempo, 2015, pp. 301-303.

⁹⁰ UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 33 available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019.

problem of urban land availability.⁹¹ The program also created incentives for the selection of sites giving preference to those served by public infrastructure.⁹² During the second phase of MCMV, more specific regulation imposed a requirement of basic infrastructure as a prerequisite for site selection.⁹³ A decade later, though, those incentives and requirements were insufficient to guarantee minimum infrastructure for selected sites. Many housing projects ended up contributing to accelerate the urban sprawling to areas underserved by urban infrastructure.⁹⁴ The sprawl resulting from the MCMV has been the subject of severe criticism due to the negative effect of exacerbating social segregation.⁹⁵

⁹¹ UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 39, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019. “[P]riority is given to projects that involve (a) the donation by states and municipalities of land in serviced urban areas for the implementation of housing schemes linked to the My House, My Life Programme; (b) the implementation by states and municipalities of tax exemption measures directed to social housing schemes; and (c) the implementation municipalities of the instruments of City Statute aimed at tackling urban land speculation.”

⁹² Notwithstanding, “[t]he most common arrangement of land access comprises private developers buying land or using their own stock to propose and develop housing projects, usually for groups 2 and 3. Other forms of land provision are based on partnerships between municipal governments and private developers, involving land donation or additional subsidies which local administrations provide for land acquisition. These are commonly applied to the modalities targeting Group I – Residential Leasing fund and My House, My Life Entities – for which supply and affordability of land is a major concern and one of the main constraints for housing construction.” UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 39, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019.

⁹³ UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 40, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019. “More precise regulations regarding the provision of infrastructure were introduced in the second phase of the My House, My Life Programme. Federal Law 12.424 of 2011 specifies that land plots for housing schemes must be served with basic infrastructure that allows household connections to water supply and electricity networks, including access roads, street lighting, sanitation and water drainage systems. Moreover, project approval must consider the existence or commitment of local government (preferably a master plan) to install or expand public facilities related to education, health, leisure and public transport.”

⁹⁴ See ROLNIK, Raquel. *Guerra dos Lugares* [The War of Places]. Boitempo, 2015, p. 307, stressing that many affordable housing projects under MCMV were built in the worst areas of towns, where land was cheaper.

⁹⁵ See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The ‘My House My Life’ Programme – Programa Minha Casa Minha Vida*. 2013, p. 109, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019, referring to those criticisms related to social segregation in the MCMV program.

An additional obstacle resided in the fact that most housing units were built in the format of gated condominiums in major Brazilian cities to offset the high prices of urban land. In its first phase, the MCMV did not allow for mixed spaces. Built in the peripheries, far from the urban fabric, residents were left with no socioeconomic option. Little attention was paid to the social cultural dynamics for the lifestyle in condominiums. Management fees, rules of conduct and the daily administration of shared spaces constituted radical innovation in the lifestyle of many residents. Poor quality housing units built to maximize the developers' profit margins required anticipated maintenance which added to the unforeseeable costs of many of the contemplated residents. Very little attention to sustainability criteria was required from developers leaving those household units victims of poor architectural design and detached from the most recent trends on sustainable and smart urban planning.⁹⁶ Lastly, because developers sought cheap urban land in the unserved suburban areas, many housing projects were subjugated by criminal enterprises. Many residents were forced out by militia groups and many others are having to pay a compulsory fee imposed by criminals in exchange for a pseudo protection.⁹⁷

With the extinction of the Ministry of Cities by the recently-elected president in 2018, the MCMV program was integrated into the State Department (*Secretaria de Governo* in Portuguese). According to official information made available at the State Department website, during the period 2011-2014, the government contracted the construction of 2,75 million housing units in 5,239 different municipalities. Since 2009, 3,76 million houses were built through

⁹⁶ See UN-HABITAT. *Scaling-Up Affordable Housing Supply in Brazil – The 'My House My Life' Programme – Programa Minha Casa Minha Vida*. 2013, pp. 81, 84, 86, 89 and 109, available at <http://mirror.unhabitat.org/pmss/listItemDetails.aspx?publicationID=3453>, last visited on 23 September 2019. "The livelihood aspects of housing were not considered in the initial design of My House, My Life. Commercial activities were not allowed in the projects catering to Group I" (...) "Social housing programmes cannot underestimate the importance of livelihood" (...) "The impacts of such interventions are limited if households receive a house but remain poor or excluded from gaining income". (...) "...condominium housing schemes imply relatively high costs of maintenance for households – for example in taxes and security charges – and require a strong process of adaptation to the rules and norms of buildings hosting many households." (...) "[T]he Programme does not stipulate a minimum cost that needs to be spent on each unit which, associated with CAIXA and local government's lack of control over construction may result in poor quality housing." (...) "Preliminary assessments indicate that many housing schemes developed in the urban fringes have insufficient connection to the existing urban fabric, which has ramifications in terms transport and infrastructure costs, and in the quality of life of residents." (...) "My House, My Life has an inconsistent approach to environmental sustainability. While commended for adopting sustainable principles at the level of the household (e.g. energy efficient approaches such as solar panels and renewable energy consumption mechanisms), the Programme is less successful at the neighborhood and urban scale, in particular in terms of the architectural design of housing and the model of urban land use."

⁹⁷ See ROLNIK, Raquel. *Guerra dos Lugares* [The War of Places]. Boitempo, 2015, p. 315, referring to an empirical research demonstrating many housing projects under MCMV are dominated by drug cartels or criminal militias.

investments of about 244,2 billion BRL (61 billion USD). The third phase of the program started in 2015 and the government envisioned the construction of an additional 3 million new homes.⁹⁸ In order for the government to achieve such an ambitious goal, it will have to overcome the aforementioned obstacles, but with a special emphasis on two of them: (i) finding affordable urban land served by public infrastructure; and (ii) keeping the necessary flow of investments needed. The first step towards the solution for the first problem was taken by Congress with the enactment of Law 13,465 of 1 July 2017. This law provided for land tenure regularization of rural and urban land. In urban areas, the law contemplated legal, urban, environmental and social measures dedicated to regularization of informal settlements and the housing titling of those squatters.⁹⁹ Because in many Brazilian cities informal settlements are integrated into the urban fabric, once implemented by local governments, the regularization of those areas tend to address the problems of land affordability, proximity to infrastructure and the due care for the social cultural dynamics of housing policies. As per the financial problem, the new government is facing the challenge of approving fiscal responsibility reforms in Congress to drag the country out of one of its worst economic recessions to make room for a reinvestment cycle in social policies like the one experienced during the 2000s.

⁹⁸ Secretaria de Governo [State Department], Minha Casa Minha Vida [My House My Life], *available at* <http://www.secretariadegoverno.gov.br/iniciativas/internacional/fsm/eixos/inclusao-social/minha-casa-minha-vida>, last visited on 23 September 2019.

⁹⁹ Article 9, Law 13,465/2017, Portuguese version *available at* http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/113465.htm, last visited on 28 September 2019.