HOUSING POLICY CHALLENGES: DEMOCRATISATION OF ACCESS TO URBAN LAND AND AFFORDABLE HOUSING

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ABSTRACT

Affordable housing and democratisation of access to urban land are central challenges for housing policies. Urban planning strategies have been discussed worldwide to extend the right to adequate housing for low-income population, such as inclusionary policies. As inclusionary zoning, the Special Zones of Social Interest (ZEIS) are a Brazilian instrument proposed by the Federal Law 10.257/2001 – City Statute, which aims to expand the access to land for those whose possibility is closed in the market. This study aims to evaluate if municipal Master Plans (aimed at regulating urban policies) continue to mention the ZEIS, due to the revision of the first plans approved after the City Statute. We studied 39 Brazilian municipalities in the São Paulo macrometropolis and analysed the content of their Master Plans by a quantitative and comparative approach. We verified that the instrument was still valid in quantitative terms. However, the ZEIS has been distorted, in qualitative terms, due to distortions of some of its principles or the lack of necessary details for its effective application.

Keywords: Special Zones of Social Interest. Master Plan. City Statute. Urban land. Affordable housing.

RESUMO

A democratização do acesso à terra urbana e a habitação acessível são desafios centrais para a política habitacional. Algumas estratégias relacionadas com a expansão do direito à moradia adequada para a população de baixa renda vêm sendo discutidas pelo planejamento urbano mundialmente, incluindo às políticas de inclusão. Similar ao zoneamento inclusivo, as Zonas Especiais de Interesse Social (ZEIS) são um instrumento brasileiro proposto pela Lei Federal 10.257/2001 – Estatuto da Cidade, que busca expandir o acesso à terra para aqueles que não encontram essa possibilidade no mercado. Esse estudo tem como objetivo verificar se as ZEIS continuam a ser mencionadas na principal lei de desenvolvimento urbano municipal, o Plano Diretor, considerando que a primeira geração de planos aprovados após o Estatuto da Cidade está sendo revisada. Essa pesquisa estudou municípios brasileiros localizados na macrometrópole Paulista e analisou o conteúdo dos planos diretores através de uma abordagem quantitativa e qualitativa. Observou-se que, quantitativamente, o instrumento não foi abandonado em termos quantitativos; no entanto, as ZEIS têm sido esvaziadas, em termos qualitativos, devido à distorção de alguns princípios ou a falta de detalhamentos necessários para sua efetiva aplicação.

INTRODUCTION

Affordable housing and democratisation of access to urban land are central challenges for housing policies. The discussion of affordable housing recognises the needs of a population whose income is insufficient to access it in the market without assistance (MILLIGAN et al., 2004). The control of exchange value over property rights imposes a great resistance to the extension of the right to adequate housing for the low-income population, restricting its access only to those who can acquire it (ALFONSIN, 2004).

Access to land is a worldwide determinant to allow affordable housing. Therefore, urban planning strategies have been discussed. Based on the experience of the USA, Greenstein and Sungu-Eryilmaz (2005) stated that a viable way to achieve affordable housing is to acquire it without including an exchange value via Community Land Trusts (CLT). CLT refers to non-profit community organisations that aim to provide affordable housing, preserve land ownership, and rent built houses. Another common strategy is the inclusionary zoning policies, which achieve affordable housing by capturing resources created by the market (CALAVITA; MALLACH, 2010). This practice, originated in the USA during the early 1970s, refers to programs, regulations, or laws for private developers to expand land productivity. This would enable the development of real estate businesses and social interests (CALAVITA; MALLACH, 2010).

In Latin America, providing land and affordable housing to low-income families in areas with basic infrastructure is a major challenge (SANTORO, 2019). A similar strategy to inclusionary zoning in Brazil is the Special Zones of Social Interest (ZEIS). The main difference between them is that the ZEIS reserves specific areas in the city for social housing to expand access to land for those unable to find this possibility in the market (ROLNIK; SANTORO, 2013; SANTORO, 2019). The ZEIS is an instrument initially conceived to recognise informal settlements by allowing special urban rules. Later, it was also used as a land reserve for new social housing production, ZEIS in urban voids (SANTORO, 2019). Some Brazilian cities, such as Recife/PE and Belo Horizonte/MG, already employed regularisation ZEIS since the 1980s (MIRANDA; MORAES, 2007; SANTO AMORE, 2013) and, in the 1990s, Diadema/SP used the instrument for the first time to reserve urban land (MOURAD, 2000).

Despite the potential of the ZEIS and the City Statute, their effectiveness was put into perspective. These questions gained relevance since the significant changes in public administration during the 1970s, which Harvey (2005) called urban entrepreneurship. Besides, neoliberalism has changed due to its strategic character (DARDOT; LAVAL, 2019), configuring a ‘new neoliberalism’ more aggressive than its predecessor. Such developments may show that current coalitions will increase disputes over urban land, hindering the regulation of the land market and its direction toward social justice practices.

After almost two decades since the promulgation of the City Statute, we aimed to verify if the municipal Master Plan continues to mention the ZEIS, considering the revision of the first plans approved after the City Statute, which resulted in a second generation of Master Plans. We hypothesised that cities, inserted in urban entrepreneurship (HARVEY, 2005) and subjected to a neoliberal rationality (DARDOT; LAVAL, 2019), are abandoning some of the principles of Urban Reform in Brazil and failing to adopt one of its main urban instruments, the ZEIS. Although the ZEIS is present in the plans, this does not guarantee their effectiveness. The discourse used in the Master Plans might show perspectives for Urban Reform principles, such as the democratisation of access to urban land and affordable housing in Brazil.

We studied a few Brazilian municipalities in the São Paulo macrometropolis and analysed the content of their Master Plans to confirm this hypothesis. We were unable to confirm our hypothesis. However, the instrument has been distorted, in qualitative terms,
due to the deviation from some of its principles or the lack of necessary details for their effective application.

Special Zone of Social Interest: achievements, challenges, and contradictions

The ZEIS is an instrument that may enable it to face the affordable housing problem and to democratise access to urban land, since it recognises the low-income population as the producers in the city. When reserving vacant land, the instrument tries to avoid speculative retention and redirect its use for social housing. Besides, the ZEIS might efficiently protect the vulnerable population by establishing restrictive urban parameters. The definition of a maximum lot size or a maximum income range might reduce the pressure on low-income families and avoid gentrification (MIRANDA; MORAES, 2007). Ferreira and Motisuke (2007) systematised some limits to apply the ZEIS. Other City Statute instruments also address them, such as the lack of political priority, management discontinuity, and disputes in its application. On the other hand, ZEIS has some specific challenges, such as architectural and urban space quality and participative management in its implementation. Thus, the literature on the effectiveness of the ZEIS shows its potentials, which demonstrate that the instrument still has advantages, despite the limitations and restrictions observed since its first known implementation in the municipality of Recife, in the state of Pernambuco, in the 1980s.

One point of view about the ZEIS emphasises its ability to define ‘the poor place in the city’ (SANTO AMORE, 2013) and to reverse the processes of social and spatial segregation. This potential may be reached when a Master Plan mentions and demarcates the ZEIS, including recognising informal settlements and contemplating vacant land with infrastructure. Jesus and Denaldi (2018) studied the program Minha Casa Minha Vida (My House My Life) in some cities in the metropolitan area of São Paulo and stated that the application of urban instruments, especially the ZEIS, positively influenced the choice of more suitable locations for social housing. The purpose of the ZEIS is to allow special urban rules to expand access to land (ROLNIK; SANTORO, 2013). However, special parameters must be established according to urban insertion and the quality of the built environment. Otherwise, this flexibility might lead to other problems, such as social and spatial segregation, housing implantation in areas without infrastructure, and occupation of environmentally fragile areas (BRAGA, 2016). Some authors have argued that the instrument reinforces spatial segregation rather than reversing it (CORIOLANO; RODRIGUES; OLIVEIRA, 2013; GOULART; TERC; OTERO, 2016; MASTRODI; ZACCARA, 2016). Lago (2004) stated that the ZEIS institutionalised the ‘minimums’ of welfare produced by urban spoliation, legitimising these parameters in and outside the regularised territories.

The ZEIS could still be an adequate tool to face the housing deficit by contributing to social housing production for low-income populations. A helpful detail in Master Plans would be the definition of a maximum income range for social housing in the ZEIS, since the lack of this parameter benefits the real estate market. However, we must be careful, due to some examples such as São Paulo/SP, which used the ZEIS for housing production for medium-income families (BORELLI, 2015; CALDAS, 2009). This problem is also related with the managerial capacity of the local Housing Policy Sector to control the destination of the houses to families in the low income range, especially in cases of private production. Besides, the ‘anti-ZEIS rationality’, spread by the discourse of its economic infeasibility, illustrates an attempt to make the maximum income range more flexible. Consequently, the ZEIS would stop meeting the income bracket priority that includes families with incomes between zero and three minimum wages (AFFONSO, 2013).

At the same time, the ZEIS is a self-applicable instrument, since, together with other anti-speculative instruments, it can reduce the advantage of real estate speculation and, consequently, land prices (SANTO AMORE, 2013). Conclusions about reduced land
prices demand a complex analysis, which might confirm that the instrument was unable to achieve this purpose. However, demarcation instruments such as the ZEIS ensure the production of social housing and the essential role of public power in enabling social housing, regardless of its price (AFFONSO, 2013). Public management could combine other strategies for affordable housing, such as properly tax areas that received public investments and use the revenue to purchase land for housing production in the ZEIS. Moreover, Master Plans must associate the ZEIS with other anti-speculative instruments, such as the compulsory subdivision, building or use of land and the progressive taxation of vacant land. These would pressure landowners to make their land available for social housing or work as an alternative to traditional expropriation processes (BORELLI, 2015). However, this articulation is unusual in Brazilian cities, which often fail to demarcate the incidence areas of these instruments (SANTOS JUNIOR; MONTADON, 2011).

The bureaucratic application of the ZEIS goes beyond the potential articulation of the instrument, also relying on political concerns, which may be the path for its inclusion in the Master Plans and its implementation. We may discuss that the pressure from housing movements managed to establish the ZEIS in the popular participation during planning. The management council proposed in São Paulo (SANTO AMORE, 2013) is a good example of this, since these experiences showed the importance of active social participation. In the Nova Luz project, an urban renovation project in the centre of São Paulo/SP, social pressure resulted in the establishment of a ZEIS management council to elaborate an Urbanisation Plan for the ZEIS, pushing the municipality to review some of the points of the original urban proposal to meet popular demands (HIRATA; SAMORA, 2012). The Master Plan law can offer these management councils or participatory forums to implement the ZEIS with social participation.

Methods

This study analysed the ZEIS in Master Plans, comparing first- and second-generation plans approved after the City Statute. The first generation of Master Plans was concluded in 2008 and the second generation was supposed to be finalised ten years later, in accordance with the disposals of the City Statute Law. Our study sample was defined by selecting Brazilian cities, located in the São Paulo macrometropolis, which had approved Master Plan generations.

The State of São Paulo uses the terminology ‘São Paulo macrometropolis’ to refer to a territory composed of 174 cities, belonging to five metropolitan areas (i.e., São Paulo – RMSP, Campinas – RMC, Sorocaba – RMS, Santos – RMBS, and Vale do Paraíba and North Coast – RMVPLN), two urban agglomerations (i.e., Piracicaba - AUP and Jundiaí – AUJ), and the Bragança microregion (URB). This terminology is based on academic studies and assumes the existence of a continuous urbanised fabric that unites these regions into a large conglomerate. One of the largest urban agglomerations in the Southern Hemisphere, this territory has 33.65 million inhabitants, of which 2.68 million people live in subnormal agglomerates (EMPLASA, 2019). Approximately 97% of the cities of this conglomerate must elaborate Master Plans. Our research on websites of the Brazilian Institute of Geography and Statistics (2019), city halls, and city councils showed that 139 cities approved at least the first generation of Master Plans. However, only 39 revised them until 2019. These were the cities selected to assess whether Master Plans continue to mention the ZEIS.

The academic discussion around the instrument supported the analysis of which details are essential in Master Plans for the effectiveness of the ZEIS. An analysis was performed based on this literature review on whether these details were discussed in the
plans by a quantitative and comparative approach to verify the continuity of the ZEIS in Master Plans as an instrument to democratise access to urban land. Thus, four criteria were considered to analyse both generations of plans: (1) mention and demarcation of regularised and those in the urban voids; (2) definition of the maximum income eligible for housing production in the ZEIS; (3) articulation between the ZEIS and the compulsory subdivision, building or use of land and the progressive taxation of vacant land; and (4) the provision of management councils or participatory forums. Comparatively, all the ZEIS information extracted from the 39 investigated plans were systematised and included in maps to enable the visualisation of each criterion. A critical reading of the law was also incorporated in the analysis to deepen our interpretation of the instrument. Although the effectiveness of the ZEIS is only verified in the management process during the implementation steps of Master Plans, this approach can indicate the treatment given in the main instrument of territorial planning in Brazil and the idea in the design of the social housing policy.

Results - How Master Plans of the São Paulo Macrometropolis treat the ZEIS

Contrary to our initial hypothesis that cities are abandoning the instrument, our study observed that the percentage of cities that mentioned the Special Zones of Social Interest in their plans increased from approximately 77% to 85% when comparing the first and second generation of Master Plans. However, these quantitative numbers are insufficient evidence to claim that cities that mentioned the instrument are using it to democratise access to urban land. We must emphasise the case of Campinas, which is the head of its metropolitan area and the third most populous city in the State of São Paulo. In its first Master Plan, Campinas mentioned that the two main categories of the ZEIS and social housing could only be approved if they were in certain areas of the city, which included ZEIS in urban voids. Before revising its Master Plan in 2018, the city started to change the approach of the instrument via a Complementary Law 70/2014, which established that social housing could be approved in every urban area of the city. The second generation of the Master Plan complied with this determination and removed the mention of ZEIS in urban voids, which regressed the recognition of the ZEIS as an instrument to democratise urban land.

We also emphasise that some cities only mentioned the instrument in their zoning laws. However, these laws disregarded some of the details that must be present in Master Plans, such as more assertive guidelines on the income bracket, articulation with other urban instruments, and the mention of management councils. Although many cities mentioned the instrument, 15% out of 39 analysed plans failed to mention ZEIS in urban voids in the first generation (Figure 1). This fact weakens the potential of the instrument to provide land and affordable housing in areas with infrastructure, failing to contemplate one of its main objectives, which is to reserve land for social housing and, consequently, to regulate the land market. The other 15% failed to express in law the two main categories of the instrument, that is, these cities stated that the goal of the ZEIS was to regularise and to provide housing but did not create categories to regularised ZEIS or those in urban voids. The lack of clear categories may hinder the implementation of the instrument, since urban policies and parameters differ for occupied and vacant areas. The second generation of the instrument showed similar numbers (Figure 2). Therefore, less than half of the cities in both generations of plans mentioned categories for both types of ZEIS.

1 The compulsory subdivision, building or use of land and the progressive taxation of land are two instruments established by the City Statute Law that oblige landowners of vacant lands to approve and implant a real estate venture within a period determined by the law.
Most cities fail to contemplate in their Master Plans the first essential detail to effectively implement the instrument: its demarcation on the map. We observed that, in their first-generation Master Plans (Figure 3), 26% of the cities failed to indicate areas destined for housing regularisation or production, while 10% demarcated only occupied areas (regularised ZEIS). Another 18%, in theory, demarcated the ZEIS, but the maps or attachments of their laws were either illegible or unavailable, resulting in only 23% that demarcated both regularised ZEIS and those in urban voids. The numbers for second-generation Master Plans (Figure 4) showed more positive perspectives, since the number of cities that demarcated both categories of the ZEIS on a map more than doubled the first-generation ones. The number of maps or attachments either illegible or unavailable also reduced, possibly because they are more recent plans.

Figure 1. Mention of the categories of ZEIS in first-generation Master Plans. Source: Elaborated by the authors, based on first-generation Master Plans.

Figure 2. Mention of the categories of the ZEIS in second-generation Master Plans. Source: Elaborated by the authors, based on second-generation Master Plans.
Although these achievements are relevant, few cities demarcated the ZEIS in central urban areas or next to them, confirming the criticisms that the instrument frequently reinforces spatial segregation. Except for the city of São Paulo, which demarcated the ZEIS in central areas in both Master Plan generations. The cartographic analysis verified that some cities demarcated the ZEIS in areas characterised by factors other than social interest, such as Santa Bárbara d’Oeste (2nd generation), Tremembé (2nd generation), Votorantim (1st and 2nd generations), and Rio Claro (1st and 2nd generations).

Many plans lacked details on the maximum income range for housing production in the ZEIS. In first-generation Master Plans (Figure 5), 54% of the cities failed to show any number on the maximum income range for housing production. Furthermore, only
15% defined this range and another 8% defined it in a specific law dealing with the ZEIS. The numbers of second-generation Master Plans (Figure 6) showed a significant evolution in the detailing of the maximum income range for housing production in the ZEIS, since the percentage of cities that failed to define a maximum income range dropped to 44%. However, the cities that defined this range failed to prioritise serving families with incomes from zero to three minimum wages. Furthermore, few cities determined the minimum percentage that must be produced for social interest housing and those that can be destined to popular market housing, a modality that can cover a population with an income above three minimum wages.

Figure 5. Details of the maximum income range in first-generation Master Plans. 
Source: Elaborated by the authors, based on first-generation Master Plans.

Figure 6. Details of the maximum income range in second-generation Master Plans. 
Source: Elaborated by the authors, based on second-generation Master Plans.
The applicability is compromised in both Master Plan generations by the lack of strategies that could accelerate land use. The articulation between the ZEIS and the compulsory subdivision, building or use of land and the progressive taxation of vacant land, is still fragile, since 44% of first-generation Master Plans failed to relate the ZEIS to any other City Statute instrument, whereas 51% of second-generation ones failed to do so. This does not mean these cities failed to mention these instruments, but they did not directly relate them to the areas the ZEIS demarcated or established a priority for their application. Few cities proposed this articulation in both Master Plan generations, suggesting that cities are not exploring the potential of combining these urban instruments to enable social housing production. Furthermore, the management fails to understand the ZEIS as a shared instrument with the society. ZEIS management councils or similar organs were barely present in first-generation Master Plans, since we found them in only 10% of the cities analysed. The numbers of the second generation are more pessimistic, since 69% of the plans do not mention management councils or similar organs either in their Master Plans or in specific laws, and we found ZEIS management councils in only two Master Plans. This weakening of management councils may result in the approval of projects without social participation, lacking urban and architectural quality, and mainly aimed at the interests of the real estate market. Thus, it is remarkable that the roots of the ZEIS in Brazil have community participation as the main principle of its conception, as we can see in the PREZEIS experience achieved in Recife in the 1980s.

Discussion and conclusion – What is happening with the ZEIS nowadays?

Although we were unable to confirm our hypothesis that cities are failing to adopt the ZEIS as one of the main urban instruments of the City Statute, we noticed some issues. The ZEIS disposals showed gaps, absences, and inconsistencies in the first-generation Master Plan. Many plans have mentioned the instrument, but most of them failed to observe essential mechanisms to implement it. This finding agrees with other studies on the effectiveness of City Statute instruments, such as Ferreira and Motisuke (2007), Caldas (2009), Borelli (2015), and Jesus and Denaldi (2018). While many Master Plans failed to include the necessary disposals to implement the instrument, fostering it as a formality, others did not achieve the essential changes in revising the access to urban land. This relates to the difficulty to increase social housing production, especially by the private sector (GATTI, 2010), or to protect the families by regularisation processes. The city of São Paulo is a good example for a complete and sophisticated institutional arrangement for the ZEIS with difficulties to direct and increment social housing production. On the other hand, the second-generation Master Plans maintained almost the same numbers, increasing them in some aspects and decreasing them in others, showing that it was an irrelevant change in the treatment of the instrument to redirect it to its principles. Thus, we must emphasise that this second generation is only a revision of the first one, which explains the similar indicators. Our sample showed that only 22% of municipalities reviewed their Master Plans, which may seem unimpressive, but these municipalities contain 59% of the macrometropolis population, mainly because the municipality of São Paulo is responsible for 36% of its total inhabitants. Besides, we can claim that those municipalities that reviewed their Master Plans are the most committed to territorial ordinance, since most of them met the deadline for revising their Master Plans.

Lack of details and distortions, such as using the ZEIS for areas that are not characterised by social interest, may show that, although the instrument has not been abandoned in quantitative terms, its purpose of democratising access to urban land has been gradually subverted within the Master Plans. However, we must question if this distortion is an effect of a neoliberal rationality, aimed at urban entrepreneurship. While we can claim that cities failed to develop the necessary details to implement the instrument in their second-generation Master Plans, we must be cautious when claiming the opposite: this is not an evident rupture, since lack of details and distortions were already present in their first generation. Nonetheless, we
may claim that this adaptation to market interest has appeared in the last few years. If social housing gained a new breath in Brazil in the 2000s with the institutional facilities and the increase of public financial programs, the ZEIS, as an instrument of territorial ordinance, followed this tendency. Maybe we can see it as a complementary instrument to facilitate these market operations or help municipalities to freely locate their more vulnerable population. The traditional process of social segregation continues to be the feature of the urban planning process in the Brazilian cities.

The main indicators that confirm that the ZEIS is being used for traditional processes of socio-territorial exclusion in second-generation Master Plans are: the inadequate location of the ZEIS in urban voids on their maps, farther from central areas; the maximum income range of the families eligible for the ZEIS, above three minimum wages and the emptying of the popular management of the ZEIS without establishing a popular council for each. These three aspects caught our attention during our analyses due to their significant reformulation in most of the laws. These are the only feasible paths for the market to obtain action fronts against real estate entrepreneurship. For the market, the more housing consumers, the greater the profit from sales. The articulation of the lower medium class in acquiring real estate products guaranteed by public resources in partnership operations guides the ZEIS as a part of the housing policies developed by its main law of territorial planning. This is enough reason to not abandon the instrument. Thus, the incorporation of the peripheral location of these lands in social housing for the low medium class enables the successful action of real estate developers.

The exclusion of the participatory structure in the ZEIS by most municipalities relates to the decrease of social participation in the public decisions, as a symptom of the recent intensification of neoliberalism, and to the strategy of removing housing social movements from the organisation of their own space. A contradictory point of view about which is the better way to set up the popular space drives a reaction from the public power in adopting a top-down strategy in the Brazilian regularisation process. This attitude intensifies the struggle to access urban land. A way to avoid the hostility from social movements is to deinstitutionalize them from law mechanisms. Whenever land value is overestimated, its titling, a regularising step, has another significance and must be pursued in the ZEIS or any other no-ZEIS land. This was postulated by the latest Brazilian regularisation law 13.465/17, focused on the titling process of land rather than the qualification of settlements and the adoption of infrastructure works. Besides, the law ignores the ZEIS as a step for the bottom-up process.

By adopting a structuralist vision, we could question if we regressed in detailing the instrument, since it was never capable of structurally change the scope of housing policies in Brazil. However, this is not the tone with which we intend to end our analysis, but rather to understand Urban Reform as a non-linear movement, which involves revisions and evaluations, but cannot be considered closed. By adopting this perspective, we may understand Urban Reform as a possible open ‘crack’. The continuity of the ZEIS in second-generation Master Plans may mean that some struggles have already been overcome. In searching perspectives for Urban Reform, we would need to understand the discussions behind the ZEIS in these cities, the urban planning practices and the political position of its agents: in a context with sparse details, why did some cities develop the necessary details the instrument required? Is an urban planning culture focused on social matters that enable some cities to maintain it? Thus, we start to understand the ZEIS in Master Plans as a mark in a process of conflict and dispute that begins before the Master Plan mentioning the ZEIS and remaining during its implementation process.

An agenda of social and territorial justice will always be a subject to the challenges related to access to urban land, the discussion around affordable housing and the democratisation of access to urban land faced by urban planning policies worldwide. The understanding on who this instrument should serve may help us to expand this ‘crack’ opened by the Urban Reform in
Brazil, but despite its usefulness, its maintenance in the Master Plans is essential to those who fight for the democratisation of access to urban land. Mentions to the ZEIS do not guarantee their effectiveness. However, they allow this dispute, while the continuity of the instrument evidences that, almost two decades after the City Statute, the ZEIS continues to be meaningful in the struggle to democratise access to urban land, although distorted in many cases.

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