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Inclusionary housing policies in Latin America: São Paulo, Brazil in dialogue with Bogotá, Colombia

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ABSTRACT

This article examines the impact of affordable housing agendas in Latin America, specifically in São Paulo, Brazil and Bogotá, Colombia. These cities were pioneers in the conception of ‘inclusionary housing policies’, which use urban planning instruments to produce affordable housing by capturing the land value generated by real estate dynamics. In these cities land values are stimulated by incentives that incorporate affordable housing into market-rate developments using different models of public-private partnerships. The paper analyses the use of urban instruments such as land reserves and those that require percentages of land, building rights or financial resources to go to private builders willing to produce affordable housing. It shows the unquestioned incorporation of international affordable housing agendas. From a struggle to guarantee the right to housing, the issue of creating affordable housing has been appropriated to expand frontiers for real estate-financial markets. The dimension and complexity of housing needs have been ignored, raising serious questions about the sole solution currently provided (housing as private property) and the effects of federal anti-cyclical housing policies on socio-territorial inequalities. Some proposals are progressive, while others deepen the submission of policy to real-estate financial logics and are beset with contradictions: to provide land and financial resources for the production of new units, these public-private partnerships often lead to further socio-spatial segregation.

KEYWORDS housing policies; master plan; Bogotá; Colombia; São Paulo; Brazil

Introduction

One of the important challenges for urban planning in Latin America is to provide land and affordable housing to low-income families in areas with basic infrastructure, thereby promoting diversity, equity, racial integration and social cohesion. This mission has become increasingly difficult in a neo-liberal context in which the responsibility for the provision of housing is transferred to a financialised real-estate market, which always operates to

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extract the highest return on land (Fernandez & Aalbers, 2016; Rolnik, 2015).

The growing tendency to rely on market dynamics for housing provision has been the subject of an extensive planning debate in Europe and North America (Aalbers & Gibb, 2014; Kadi & Ronald, 2014; Madden & Marcuse, 2016) and has recently been taken up in Latin America. In Brazil, the focus has been on the financialisation of housing (Rolnik, 2013, 2015; Royer, 2014; Shimbo, 2012; Fix, 2007). In both Colombia and Brazil there has been growing debate over new urban instruments used as 'inclusionary housing policies' (in Colombia, see Cuervo & Jaramillo, 2010; Pinto, 2008; Maldonado, 2012, 2016; in Brazil, see Santoro, 2015; Rolnik & Santoro, 2014). These policies use tools of urban planning to create affordable housing by capturing the land surplus-value generated by real-estate market dynamics, which are stimulated by providing incentives to private developers to include affordable housing within market-oriented developments under various models of public-private partnerships (PPPs) (Calavita & Mallach, 2010).

The central argument of this paper is that social needs have been subordinated to economic agendas, and that the production of new units of affordable housing justifies and mobilises support for urban regulations which ultimately result in the production of economically exclusive urban developments that consolidate social inequality. The article looks at two Latin American cities – São Paulo, Brazil and Bogotá, Colombia – in which support has been mobilised for novel urban regulations that promote the construction of affordable housing. The justification of building affordable housing obfuscates complex real estate operations and serves to legitimise them, despite their meagre and often delayed (or never delivered) results in terms of housing units constructed, all especially troublesome outcomes in consideration of the quantity, diversity, and complexity of housing needs (Santoro, 2015). In São Paulo, the provision of housing entered the urban regulation agenda with the creation of Urban Operations (*Operações Urbanas*) and, more recently, with Urban Intervention Projects (*Projetos de Intervenção Urbana*). The new units of housing supply produced by these urban regulations are considered to be in the public interest, which has been used to justify greater profits for the private developers involved in these urban transformations, as well as the possibility of incorporating public land, the awarding of construction rights, and the delivery of public cash subsidies to developers to execute these projects. However, these new models generally result in the demolition of more homes than those that are replaced one-for-one. They also ignore the actual housing needs of residents, are slow to deliver permanent housing solutions, and frequently do not benefit the households that were evicted, especially those with very

low income or no income, or those with no way to prove their income to take on a mortgage.

The paper starts with the argument that international concepts have been imported – such as the quantitative ‘housing deficit’ and the use of ‘affordable housing’ policies, yet they are far removed from the context of diverse housing needs in these two countries. The urban realities in Colombia and Brazil require variegated policies, such as slum upgrading, strategies to reduce the number of doubled-up households, improvements to existing housing developments, land regularisation, among others, including the production of new units. Consequently, a policy based solely on new construction within an ownership model for housing cannot be the only solution in these two national contexts. Such a singular approach does not at all engage with the entirety of vulnerabilities and oppressions that families in these contexts face, and completely ignores structural inequalities along the axes of socio-economic status, gender and race in these two formerly colonised countries; Brazil as a former Portuguese colony and Colombia as a former Spanish colony.

The dissemination of this supply-focused housing agenda happened, as in other countries, after the international subprime mortgage crisis in 2008. This explains why the agenda gained traction not only in the Latin American cases, but also in other countries during the same period. It is also why the solutions are completely market- and profit-driven, as we try to argue in this paper.

Subsequently, this article analyses the adoption of urban instruments to produce affordable housing, highlighting how affordable housing production is being subjected to highest and best use considerations in the financialised real estate markets in the cities of São Paulo and Bogotá. During the 2000s Latin America has appeared to be a laboratory for the concepts and agendas of international affordable housing policies, with a gradual incorporation of their urban planning instruments, including land reserves, requirements to reserve a percentage of land in each development or urban transformation, the awarding of construction rights, and the earmarking of financial resources to produce affordable housing.

The gradual incorporation of the logic of financialisation into housing policies combines profit-making operations with housing provision and other types of uses. The new policies may include new forms of urban governance based on the reduced role of the state as the producer of housing. Public assets, such as land and financial resources, are used to stimulate the market to produce housing with lower risks and more guarantees to private entities. This insulates large-scale urban interventions from changes in the political climate and creates the opportunity to steer resources and profits that the financial market possesses towards interventions for housing construction (Mendonça, 2016; Santoro, 2014).

This article concludes by raising examples of different policies which demonstrate that the subjugation of urban and housing policy to the logic of a financialised real-estate market does not always proceed in a linear fashion. There are proposals for policies considered to be progressive that coexist simultaneously with policies that intensify the subjugation of public administration to the logic of capital, as is the case with the Public–Private Partnership (PPP) for housing proposed in São Paulo.

Imported concepts: the housing deficit and affordable housing

In both São Paulo and Bogotá, as in many other contexts, the current housing conditions present different challenges for urban policymaking than those found in Western Europe and North America, which suggests a need to review these concepts.

First, the concept of a deficit is insufficient to comprehend housing policies in Latin America. The housing deficit numbers are large, and consequently they are often used to justify large-scale policies. The deficit comprises between 21.6% and 25.4% of all families in Latin America;¹ Colombia had a housing deficit in 2016 of some 2.2 million families (Ministerio de Vivienda, Ciudad y Territorio [MVCT], 2014), whereas Brazil's deficit totaled 5.24 million residences in 2012. Most of the deficit is among extremely poor families, who are unable to bear the costs of acquiring housing on the private market. In Brazil, the housing deficit is growing mainly because of one category: cost-burdened households, a state which results in households being forced to make tradeoffs between housing costs and other expenses associated with daily life. But more than simply a large number, the housing deficit is diverse and complex. In both countries, various other social difficulties coexist with housing needs. Approaches that consider aspects such as race, gender, informal work, and violence are essential so that policies can transcend measurements of inequality which only consider income or class.

Second, the concept of affordable housing cannot attend to the diverse and complex framework of housing needs while simultaneously privileging the real estate market's profit-driven logic. The international literature uses the concept of affordable housing with regard to the provision of housing solutions for families that have low or moderate incomes. The 'affordable' price is exceeded when a family pays more than a certain percentage of its income to obtain adequate housing (Hulchanski, 1995). Households that spend above this percentage on housing costs are known as 'cost burdened' (Tighe & Mueller, 2013, p. 75).² Affordable housing programmes do not necessarily require that the families have incomes; rather, they determine which programmes families are eligible for based on family income, and offer

different subsidies. But these measures have made the provision of housing dependent on the ability to provide builders the high profits expected from real estate products. If the family income is not high enough to generate a private return, the private developer or contractor receives subsidies.

Affordable housing policies begin by calculating the average income and by determining what families are able to pay, but in both Brazil and Colombia income is highly sensitive to labour policy at the federal level, while affordable housing programmes and eligibility criteria are determined by subnational governments, creating challenges for affordable housing programme administration. In these countries the values of a monthly minimum wage, and multiples of this monthly wage, are used to index housing demand, while the value of the monthly minimum wage is based on the federal government's political decisions associated with the regulation of labour. Income received through governmental programmes that transfer cash to families also affects the income ranges on which housing policies are based. In Brazil, the federal government increased the minimum wage dramatically between 2000 and 2014 with severe consequences for housing policies that were designed at the state or municipal level. For example, in São Paulo, housing policies which were originally targeted towards low-income families were distorted severely because of the changing definition of the monthly minimum wage, with the end result of making middle- and high-income households eligible for these policies (and housing units). Similarly, the Colombian Housing Ministry found that families earning less than two times the minimum monthly wage could not obtain loans, and therefore, did not have access to subsidised housing programmes, thereby excluding 48% of Colombian families from these programmes (MVCT, 2014, p. 88). These challenges are amplified by governmental efforts to control the size of housing and its type. Another criticism of affordable housing programmes includes the problems that arise if families are not able to pay the mortgages or the rent on time because of income fluctuations, or because the cost of housing increases more than initially forecast after programme beneficiaries take residence.

Another challenge in São Paulo was that, until 2014, it was the private developer who chose which families could buy the new affordable units instead of the government, which in theory is responsible for defining the priorities and the public interest. The selection standards used by banks and builders did not take into consideration non-income factors, for example by prioritising the selection families who already live in the vicinity, nor did they give priority to families involuntarily evicted because of the impact of a development project, or to those with other needs.

A second concern regarding affordable housing policies is that they emphasise designating land for mixed-income developments. This is

considered to be a positive development by those who argue that housing policies should serve various family income ranges, because if there is no supply for middle-income households, they will occupy the units that would otherwise be affordable to lower income households. Another positive take on affordable housing policies is their role in densifying abandoned downtown regions and areas which are transitioning from one use to another, such as former industrial districts, by bringing families to these under-occupied regions, which simultaneously creates a better usage of areas with good urban infrastructure while helping to avoid urban sprawl. To accomplish these goals, inclusionary housing policies have become requirements in urban re-structuring plans for centrally located neighbourhoods with strong infrastructure. Nevertheless, the Latin American cases examined demonstrate that there has been greater production of units in areas outside of the areas planned for urban restructuring, where land is cheaper.

Critics of the agenda to promote mixed-income developments have argued that it obscures the fact that the goal of urban renewal is being subjugated to a profit-driven logic, and that mixed-use developments wind up driving up land prices. In theory, these urban policy tools were designed to confront the difficulty of finding land for housing affordable to the poor. In practice, they have been used to create real estate opportunities that combine more profitable uses with less profitable ones such as affordable housing – which becomes incidental, and is produced in smaller quantities – advertised as socio-economically integrated developments. This occurs even as developers pressure local governments to donate public land and subsidies, as we intend to demonstrate in the cases that follow.

These critiques raise the question: why do the major references in housing policy promote measures that do not engage with actual housing needs? Instead, the private market appears to dictate the vocabulary used in these policies. Moreover, the priority given to increasing the supply of housing assumes an increasingly important place for the reproduction of the economic and political systems, which generate new challenges for urban renewal processes and for grassroots movements.

A third critique of affordable housing policies shows that this agenda ultimately mobilises public resources – personnel, time, and regulatory instruments, as well as financial, land and construction rights – around a single strategy: to produce new housing units. And, in Latin America, this singular strategy is also based on private ownership, constructing enterprises for buying and selling, not for rent policies (Rolnik, 2015).

The diversity and complexity of Latin American housing needs demand variegated policies. These would include slum upgrading (*urbanização de favelas*), strategies to reduce doubled-up households, and improvements to

existing subsidised housing developments, in addition to the production of new units. Nevertheless, policies and resources used in the past decade have been focused on the provision of new housing units. As a result, recent federal programmes have turned away from an issue that was historically addressed in Latin America: slum upgrading (Cardoso & Denaldi, 2018).

In the 2000s, both Colombia and Brazil created large federal programmes to provide housing based on supply-side subsidies for the housing acquisition under a private ownership model.

The Brazilian federal programme *Minha Casa Minha Vida* (PMCMV – ‘My Home My Life’) was launched in 2008, with the challenge of being an anti-cyclical policy designed to avoid the effects of the global economic crisis sparked by the crash of the U.S. mortgage market. The Brazilian government’s reaction to the crisis was to adopt measures to expand credit (and infrastructure). The initial goal was to produce one million homes, 400,000 of which would be for families with income between zero and three times the monthly minimum wage. A recent evaluation of the impact of the programme showed that it sparked an expansion in the construction sector, but it did not meet expectations for reducing the housing deficit. Between 2009 and 2013, the programme approved and delivered some 3.22 million new residences, while the housing deficit was reduced by some 350,000 residences between 2007 and 2012 (IPEA, 2013). Not all of the residences were purchased by those who most needed them, with some being purchased by higher-income groups. It also had an effect which ran contrary to the programme’s goals, in that it heated up real estate markets and contributed to the appreciation of land prices, making housing acquisition even more difficult.

In 2010, the Colombian government began a policy called ‘*locomotiva habitacional*’, whose initial goal was the construction of 1 million homes, nearly 650,000 of which would be affordable. In 2012, Colombia created the Free Housing Programme (*Programma de Vivienda Gratuita – PVG*) whose ‘no-cost model was based on the *Minha Casa Minha Vida* programme’ (MVCT, 2014, p. 58), with one key difference: ownership of the residences could not be transferred to the residents. Other programmes with subsidised interest rates were also created to counteract a dip in housing purchases by middle-class families. The subsidy programme also guaranteed that anticipated financial returns would go to banks, in that they placed all of the public resources into a specific fund in advance, from which payments were regularly issued to the banking institutions that managed the subsidies (MVCT, 2014, p. 64).

The existence of housing policies that offered total or partial subsidies is a positive development over previous decades. Nevertheless, many of the

criticisms made of Brazil's *Minha Casa Minha Vida* programme, for example, were also made of housing policies that existed during the country's dictatorship.³ What is new is that by concentrating resources and personnel to implement programmes that produce new units, the supply-focused agenda precluded a broader approach that could have encompassed programmes for favela upgrading (Cardoso and Denaldi, 2018), improvements to existing low-income housing projects, anti-displacement programmes, and other programmes that address the range of difficulties that low-income urban populations encounter.

The growing usage of urban policy instruments for affordable housing supply

The push to adopt the 'public-private partnership' model, an effort undertaken by various associations that encourage marketised approaches to governance, arrived relatively recently in Brazil and Colombia during the 1990s. This was a moment associated with a strong impetus for deregulation, and for the idea that the state must reorganise itself to manage an ongoing fiscal crisis by retreating from its historic role as the direct financier and agent of urban development. These ideas were paired with privatisation policies and the liberalisation of markets, structural changes which Harvey (1989) referred to as 'entrepreneurialism'.⁴ The adoption of these ideas entailed the transformation, to a greater or lesser degree depending on the country or city, of the role of the state in urban planning and administration. In the 2000s, the symbiosis between state and capital became more explicit, and the policies under consideration steadily began to envision the state operating within market dynamics – with regulations that increasingly favour the private sector, to the detriment of broader social goals.

In Latin America, Brazil and Colombia have been pioneers in the implementation of inclusionary housing policies due to the passage of national laws that were considered to be progressive – in Brazil, the City Statute (Lei Federal no. 10.257/01) and in Colombia, the Urban Reform law (Ley 9ª de 1989) and the Land Development Law (Ley 388 de 1997). All of these statutes were enacted in contexts considered to be peripheral to the global real estate market, and where regulations historically left zoning control modalities and associated measures more flexible, in a 'regulated deregulation' process (Aalbers, 2016). The following text examines the urban planning instruments in these countries.

There is little literature to date on the history behind the implementation of Colombia's main legal framework, unlike in Brazil, where there is a vast literature on its respective legal framework and which helped to

consolidate the version of this process as a result of the redemocratisation process in the 1980s, when the country exited its military dictatorship. Various Brazilian authors highlight the effort of the urban reform movement, which was able to consolidate its objectives within newly approved legal frameworks while championing democratisation (Fernandes, 2007). In Colombia, according to Pinto (2008), the process of approving the Land Development Law involved the participation of local and international actors, including advisors from Madrid. Gustavo Carrión (2008) discusses this moment as part of the debates on the organisation of the Colombian State, framed by the Constitutional debate in the 1980s. In Brazil, the new legislation was part of the lobby for democracy as the country witnessed the end of the Dictatorship and the beginning of a democratic period, after the approval of the 1988 Constitution. Although Colombia was one of the few Latin American countries that did not experience a dictatorship between 1970 and 1980 – despite being a historically militarised country due to the guerrilla warfare linked to drug trafficking – the country nevertheless joined its neighbours in the discussions on the organisation of the State. These different processes resulted in varied regulatory content; however, in both cases the legal developments were very focused on instruments for urban intervention. New regulations contain tools for urban planning intervention that were absorbed into an agenda for privatisation. This agenda became established in both conservative and liberal governments, in both countries and in both cities.

Land reserves for the production of affordable housing

Brazil's inclusionary housing policies developed out of the first experiences with land reserves in zoning, which sought to expand access to land for populations who are not served by the market. The most important such innovation was the Special Social Interest Zones (ZEIS). ZEIS are a zoning overlay that were initially developed to recognise the existence of informal settlements, but they were later transformed into overlays for areas considered to be underutilised, unused, or upon which no improvements have been made. A ZEIS designation in unused or underutilised areas, known as 'Vacancy ZEIS', requires that new construction or building improvements prioritise the creation of affordable housing (Rolnik & Santoro, 2014).⁵ They are a key instrument for elaborating housing policy because their objective is to produce housing for low-income populations *ex ante* through proactive urban policy, avoiding the high costs of horizontal development of *favelas* and *ex post* slum upgrading processes, which are generally calamitous and protracted. Vacancy ZEIS seek to overcome the regime of the 'highest and best use' in zoning. They also aim to reverse the historical role

of zoning as creating land reserves for the elite, by instead reserving land for the least economically privileged while striving to correct urban segregation.

Challenges for ZEIS include the fact that the model for housing production in these areas is based on private ownership, and consequently ZEIS areas can be gentrified as units are eventually sold to higher income families. Other coordinated policies are needed, such as subsidised rentership policies in publicly owned properties, with management shared between residents and public administrators in order to regulate resident turnover, to guarantee that the occupants are actually families in need and that the units serve to avoid the displacement of low-income groups on an ongoing basis.

The case of the ZEIS in São Paulo

Nearly 10% of developed land in São Paulo was demarcated as ZEIS in the city's 2002 Master Plan, but only 1% of the city's land urbanised area was demarcated as Vacancy ZEIS in underutilised or vacant parcels, in which there is a mandatory minimum percentage of area dedicated to the production of affordable housing. To accomplish these goals, developers were to receive incentives, such as free building rights and density bonuses. Vacancy ZEIS require that 40% of each site be used for Social-Interest Housing (*Habitação de Interesse Social* – HIS),⁶ 40% for moderate income housing (*habitação do mercado popular*), and 20% for other uses. As we see, a mixed-income model was utilised.

Critics of this policy argue that it was not effective from 2002 to 2014, given that very few housing developments were constructed in these areas. The political context did not work in favor of ZEIS, as there was no active support on behalf of city administration to activate them. The ineffectiveness of this tool can be explained in part by a mayoral decree that made the same density bonus available inside of ZEIS parcels also available in non-ZEIS parcels, which were generally on lower cost land, reinforcing the production of housing for low-income populations in peripheral areas. But there were also 'distortions' in the use of the ZEIS: (i) some were used completely for institutional uses, such as schools or health clinics, which was permitted by a mayoral decree issued after passage of the Master Plan; (ii) some were used exclusively to construct high-income housing projects, which was permitted because they were approved under previous regulations or even approved by a special council that evaluated exceptional cases; (iii) other areas remain unoccupied given the difficulty of approving projects in environmentally protected areas which have more restrictive building requirements (Santoro, 2015). After 2009, there was increased production of affordable housing both inside and outside of ZEIS areas due to

the creation of the *Minha Casa Minha Vida* programme, but the aforementioned increasing minimum wage at the time meant that ZEIS became available for middle-class families, undermining their original objectives.

There were few improvements in the 2014 master plan. In 2013, to meet the updated figures on housing demand, it was determined that 42 km² of land resources would be necessary; ultimately, only 8 km² were zoned as ZEIS. This context sparked the need for new strategies (Plano Municipal de Habitação 2009–2014).

The first strategy, which was needed in order to overcome political resistance to the Master Plan and ensure its approval, was to distinguish two types of Vacancy ZEIS. The first was referred to as ‘grassroots ZEIS’ and satisfied the interests of grassroots social movements by requiring a higher mandatory percentage (60%) of floor area built for HIS (noting that families who earn within this income range comprise the majority of the housing deficit). The underlying rationale was that public sector actors would build in these areas, since it was known that private developers were not interested in these development requirements. This wound up freezing these areas because the real estate market was not interested to build on, and the state did not have the resources for all the expected housing supply. Another, referred to as ‘market-rate ZEIS’, incorporated the request for a ZEIS type which permitted a larger percentage of HMP and a smaller percentage of HIS, making the development more profitable (Santoro, 2015). Here, it is possible to see how real estate profits influence the very design of urban regulation, determining the ratio of affordable housing that is attractive for profitable ventures.

A second strategy for modifying ZEIS consisted of increasing the number of ZEIS perimeters to encompass approximately 41 km², but even so, the perimeters that grew most were the ‘occupied ZEIS’ (Santoro, 2015), which are predominantly in outlying urban areas. Again, this meant that the regulation deviated from its main objectives.

The third strategy was to combine ZEIS with other mechanisms included in the federal City Statute, whose objectives would allow pressuring property owners to make their lands available for housing production and to comply with the social function of property.⁷ These mechanisms included the triad of ‘Subdivision, Construction, and Compulsory Use’ (*PEUC*); the progressive taxation on vacant land and buildings (*IPTU no tempo*); and the expropriation of properties which are delinquent in property taxes (*Desapropriação com Títulos de Dívida Pública*). Nearly, 505 properties in ZEIS have been notified of their non-compliance with the social function of property since 2014, but by December 2018, 189 owners had requested project approvals and 20 had given a use to their building, although not all of these uses were for housing. Unlike Colombia, the tools for compliance

with the social function of property in Brazil do not require the project's land use be evaluated, which can allow the property to go on the market for lucrative uses that are not necessarily in the public interest.

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

According to Maldonado et al. (2006) one of the central concerns of Colombia's landmark legislation was the 'search for solutions to the problem of locating housing and land with infrastructure in order to house the poorest segments of the population' (Maldonado et al., 2006, p. 13). The Territorial Development Law (*Ley de Desarrollo Territorial*) in particular created instruments related to the production of affordable housing, to be adopted and be more clearly defined by cities' Land Use Plans (*Planos de Ordenamiento Territorial* – POTs).

To illustrate the challenges of the Colombian law, Maldonado (2012) highlighted that it is possible to reserve land by demarcating it for Priority-Interest Housing (VIP)⁸ using an instrument known as the Declaration of Development Priority (*Declarat ria de Desarrollo Prioritario*). This measure recognises the right of the local government to determine, through plans and policies, if a property is in compliance with its social function. In other words, the instrument can limit the right to private property.

The Declaration of Development Priority allows a municipality to auction lands that the owner has not developed or built upon in periods that range from 1 year (for areas with existing infrastructure, generally in more centralised urban locations) to 3 years (in regions identified for development in more peripheral parts of cities). The state can replace the non-compliant owner with a third-party owner who accepts the conditions of building affordable housing at pre-specified percentages and prices. To accomplish this, the Declaration of Development Priority is established in the Land Use Plan, and every four years the municipal administration should determine how many residences are needed and demarcate the necessary amount of land necessary for housing production for that four-year period. The Declaration can also be foreseen in the Social and Economic Development Plans developed during each local administration's term, with strategies and parameters to implement the Land-Use Plan, as took place in Bogot .

Maldonado describes that 660 hectares were declared to be of Development Priority in Bogot  in 2008. In analysing land prices, 16% of the land would be expropriated at prices that would make the production of affordable housing unfeasible, so this land was not designated. In addition, several of the properties were small – less than 200 m² – and so could not easily be used to produce multifamily housing; and about 334 hectares of land were in high-risk areas due to floods or displacement

(Maldonado, 2008a). Again, the instrument reveals itself to have shortcomings in terms of producing housing for lower income groups, even when the government is the primary agent of development.

Areas for Urban Operations (*Áreas de Actuación Urbanística*) is another instrument which was established to promote affordable housing, either through the qualification of one determined use in zoning, or by determining a mandatory percentage of area reserved for VIP and for social-interest housing (*Vivienda de Interés Social – VIS*).⁹ These areas can be defined in each partial (or district) plan for urban requalification or expansion, foreseen by the municipal Land Use Plan.

Although this instrument has not been widely used, Bogotá approved an option to have qualification of land for VIS in its Development Plan, but then had to regulate the measure. The national government wound up regulating the issue first, preempting the municipality from issuing its own regulations. The measure did not become established as an obligation of urban law. This is an important example of when the resistance to using the instrument comes from national government, which overrode the regulatory role of Bogotá, and in doing so created political turmoil.

Inclusionary housing obtained through regulation of urban restructuring

Regulations for urban restructuring that incorporate inclusionary housing policies are designed with the goal of capturing part of the appreciating value of land as the urban fabric transforms, during processes in which the uses and modalities of land use are modified. The recovery of value can take place by obtaining financial payments, by requiring a contribution in the form of a land donation, or in the form of building rights for uses that generate few or no profits but which are in the public interest, also known in the international literature as ‘social extractions’. These methods are associated with the idea that urban development can be self-financing, and are seen as a form of “compensation to owners” when social or public interest uses are imposed.

They consist, therefore, in: making affordable housing a condition for the approval of large developments; making affordable housing a requirement in exchange for use of building rights; or making affordable housing viable by allocating a percentage of the units in the development to ‘social renter-ship’ programmes units or for sale at prices that permits very low-income groups to buy or rent them. In this final case, the requirement is generally set such that 10–20% of the units produced are for families who are not able to purchase market rate housing. That is, a developer can contribute to a specific fund or donate a portion of land to a public land bank, or to a

municipally incorporated or cooperative company (Calavita & Mallach, 2010).

Affordable housing in consortial urban operations in São Paulo

Since the 1990s, São Paulo has worked with what are called Urban Operations, and with other instruments for urban renewal that can promote affordable housing projects, but little has been done with them.

Consortial Urban Operations were designated in municipal Master Plans to promote urban transformations in downtown renewal projects, or for regions undergoing a transition in their use (former industrial zones, for example), among others. An urban plan must be developed, which determines which structural interventions will transform the area, and indicates which infrastructure projects and urban improvements can be funded using the captured surplus land value. Revenue generated from density bonus increases (in which developers pay revenue in exchange for the right to build above the normal height limit for the area, in pre-defined geographic areas), goes to a specific fund which is earmarked for the needed urban interventions in that same area. This means that the funds remain separate from the general municipal budget. The surplus value of the property in the area of the Operation is produced by, and captured through, bonds called Certificates of Additional Construction Potential (CEPACs), which are offered via auctions regulated by the federal Securities Commission (*Comissão de Valores Mobiliários*).

A critical perspective on this process based on the experience in São Paulo shows that: (i) the appreciation of the land is produced and captured in the same region, in a process of compounding land appreciation; (ii) the Operations do not result in plans for urban transformation, but rather describe a list of interventions, most of which are for road infrastructure and consequently privilege private individual transportation; (iii) there is no relationship between the costs of intervention and the benefits accrued through the sale of density bonuses; and (iv) because there is no time limit by which the interventions must all be completed, nor phases for implementation, some of the interventions are executed and others are not (Fix, 2007; Santoro, 2015).

Urban Operations have the potential to be one of the best tools for promoting HIS; however, experience has shown that: (i) most of the resources obtained through this instrument do not fund housing. This is confirmed by data from the municipal government demonstrating that investments towards affordable housing in the Operations were under 10% (2014) and investments used towards housing were at their highest when used for the expropriation of lands that were made more expensive by the appreciation of land value that occurred because of the Operation; (ii) the market has

not produced HIS in many of the ZEIS demarcated within these perimeters, especially those located in areas being transformed by the real estate market; (iii) perimeters of the Operations were expanded to include settlements and favelas that could receive housing improvements, creating a type of periphery at the perimeter of an Operation, isolating the centre of the city from the effects that affordable housing could have on land prices; (iv) little of the housing constructed in the ZEIS is of good quality and there is an insufficient number of units to attend to all of the families who were displaced to make way for improvements and (v) that the housing solutions adopted for low-income residents, either relocation or compensation, may not be suitable and do not guarantee the ability of the population to remain in these zones (Santoro, 2015). These are the most obvious examples of policies that legitimised processes of urban transformation that entrench existing inequalities. The housing solutions adopted continue to produce meagre results, and are not coordinated to respond to the general situation of housing needs.

New instruments promoting social-interest housing in São Paulo's 2014 master plan

The Master Plan approved in 2014 foresaw an expansion of financial resources for the production of social-interest housing in specified areas to be restructured, but it did not mandate land reserves in these regions (unless there were already ZEIS in the areas), nor did it mandate the exchange of construction rights for the production of social-interest housing, and thus it maintained the logic of producing social-interest housing in the areas that are peripheral to urban transformation perimeters.

Although the Master Plan offered new instruments for producing social-interest housing, it also offered alternative tools to developers that are economically more attractive. Consequently, developers ended up choosing to undertake projects not requiring the production of social-interest housing in the same region of urban transformation, or they have undertaken large-scale developments in areas of the city with cheaper land values, outcomes which reproduce an exclusionary city with socio-spatial segregation. The alternative tools in the new Master Plan allow the market to avoid the objectives of the urban regulations, which became ineffective.

One example of such an alternative tool is found in the proposal for Urban Intervention Projects (*Projetos de Intervenção Urbana* – PIUs), whose minimum content does specify a mandatory guarantee of resources or of percentages of land for the production of social-interest housing, which are only required when a plan is combined with other instruments such as Consortial Urban Operations or Areas of Urban Intervention – (*Áreas de Intervenção Urbanística* – AIUs). In these cases at least 25% of the resources

collected must be allocated for social-interest housing, preferentially for the purchase of sites and lots.

Another regulation pertaining to financial resources requires that 30% of the resources obtained from the sale of construction potential in the entire city, obtained via an instrument for development exactions (*Outorga Onerosa do Direito de Construir*), be deposited in the Urban Development Fund – FUNDURB and be preferably used in ‘ZEIS for vacant lands’ (ZEIS 3).

Another instrument, the Solidarity Quota, foreseen in the São Paulo’s 2014 Master Plan, established that for each new large development, urban plan, or building project, social-interest housing be produced by the developer, or that the developer donate land or resources so that the government can produce social-interest housing (for families earning up to six times to the monthly minimum wage). The largest innovation here was the adoption of a tool that would produce housing at the time and place where the urban development took place, and would be linked to the project’s permit. Nevertheless, when the Master Plan was approved, the area of the developments to which this requirement applied increased from 10,000 m² of total floor area (and not of the total parcel area, as in earlier drafts of the Master Plan) to 20,000 m², causing many developments to be exempted. Moreover, alternatives to this requirement were created, making it possible: (i) to build housing in nearly the entire area of the city which already had full basic infrastructure (within the Macro-Zone for Urban Organisation and Improvement); (ii) or to donate land valued at the equivalent to 10% of the total value of the development, calculated according to the Land Value Registry, a value which corresponds to only about 80% of the market value or even, (iii) to deposit this amount in the FUNDURB, where the funding should be ‘prioritised’ for the purchase of land or subsidy for the production of social-interest housing, ‘preferentially’ in ZEIS 3. Developers almost always prefer these options than to produce social-interest housing within a development, with rare exceptions.

Mandatory percentages of land for affordable housing in Colombia

In relation to the mandatory percentages of land and units destined to affordable housing, the Colombian Land Development Law establishes that municipal land use plans should determine percentages of land that will be dedicated to VIP and VIS housing¹⁰ in new urban developments, with two options: urban expansion and urban renewal. The Partial Plans,¹¹ on the other hand, determine the allocation of these lands, and the percentage of VIP and VIS housing required can vary depending on the area. In addition, a federal decree created percentages of public spaces required to be donated in land subdivision projects with VIS. As was previously discussed, the place where housing will be constructed, can also be determined by a

municipality's Declaration of Priority Interest, which demarcates land for VIP.

Mandatory percentages: Partial plans and Bogotá

In the cases of the Partial Plans, the Land Use Plan for Bogotá adopted different percentages for each district that prepares its own partial plan for urban expansion: Ciudad Norte, the wealthiest region of the city, must produce 20% of VIS and 15% of VIP; while Ciudad Sur and Ciudad Occidental should promote 50% VIP and 30% VIS. Moreover, all urban land must have 20% VIS, without a mandatory requirement for VIP (the percentages are applied considering the buildable land area in the partial plan, with the exceptions of areas containing road infrastructure and public space, and areas of environmental preservation). Partial Plans should establish when and in what phases these residences should be built. Note that there was a clear increase in the requirement for low-income housing in regions of the city where poor families are already concentrated and in irregularly occupied areas, relative to the more expensive regions, where the mandatory requirement is only 15%. Again, the regulations did not ultimately disrupt the rationale behind land values, nor have they modified patterns of socio-territorial segregation, even though more affordable housing units have been produced.

A more recent revision of the Bogotá plan sparked a discussion about the possibility that any and all developments must allocate 30% of their land for VIP – in addition to the mandatory percentages on buildable land in areas of urban expansion or urban reorganisation which were designated in the prior Plan and named in the Land Development Law. The debate moved forward and produced a rule very similar to the Solidarity Quota in São Paulo: all and any development should allocate 20% of its land for VIP on the same parcel, or the obligation could be transferred to another place in the city or satisfied via a cash transfer (thus creating alternatives to the on-site requirement). That means Bogotá permitted alternatives that impeded the materialisation of the instrument's initial objective, which was to produce on-site affordable housing.

Macroprojects

The Macroprojects were called for in Colombia's Land Development Law in 1997, but it was only in 2011 that they gained a specific regulation, the National Macroprojects of Social Interest (Law 1,469/11), which represents a set of administrative decisions on planning, finance, and land use management for executing large-scale urban developments for the production of affordable housing within certain cities or regions. They can be constituted

by the national government on land areas that can comprise more than one municipality. Brazil recently approved a similar Metropolis Statute (Federal Law no. 13.089/15) which also allows for inter-municipal urban operations, but without the requirement to produce affordable housing.

The instrument in Colombia was questioned and in its first iteration was considered unconstitutional and annulled, under the argument that it violated municipal autonomy by introducing changes in municipal Land Use Plans, and because it imposed conditions on the municipalities. Some of the parameters for affordable housing units in the federal law were more permissive than the municipal ones,¹² which critics argued would produce high density housing with low quality of life for residents (Maldonado, 2008b). However, the annulment was modified shortly thereafter and the instrument has been widely used.

Since 2012, through the total subsidy programme Free Housing Programme, the majority of federal resources for VIP and VIS were used in Macroprojects: more than 55,000 housing units were permitted and 43,000 housing units in areas with urban infrastructure were delivered within twelve Macroproject areas, in which the potential construction was more than 183,000 units (MVCT, 2014, pp. 66–69).

None of the projects have been completed, but all are located in peripheral areas and include the large scale production of affordable housing, reproducing patterns in which the poorest households live in the most distant areas. One of the Macroprojects is in the municipality of Soacha (which borders Bogotá, close to the Bogotá River), and calls for the construction of 140,000 units, 90% of which is to be VIP or VIS, of which some 50 thousand units have been built. The construction is to take place at a rate of nearly 14,000 units per year, generating a demand for public transportation and a strong dependence on the Bus Rapid Transit system, which already suffers from excess demand.

The subsidy model has been long criticised in Latin America, ever since the case of a Chilean housing policy which had perverse results for socio-spatial segregation (Sabatini, 2000). Criticisms made of this programme gain a new dimension in light of the Bogotá case, which saw two major changes. Bogotá accelerated the creation of public–private partnerships, either directly or in partnership with public entities, via calls for large-scale projects with very small units, suited to large builders. The contracts required that participating builders had considerable prior experience and large capital reserves, given that the payments were to be made at the end of construction. Bogotá also allowed for substantial changes in land use than what had been established by municipal Land Use Plans,¹³ and approval was granted even more quickly than regional or partial plans, to allow urban expansion, guaranteeing private developers' earnings in this

transformation, but without guaranteeing the provision of urban infrastructure, the requirements for which were reduced (Maldonado, 2016). An evaluation of the impact of this policy was that '[they] have sometimes contrived to create the problem neighbourhoods of the future. Offering families a home for nothing does not solve the fundamental problem facing the poor and their very low incomes' (Gilbert, 2014, p. 1).

Subordinating social needs to economic agendas: a non-linear progression

Recent studies of these two cities show that the subordination of urban and housing policy to the logic of the real estate and financial markets does not always progress in a one-way, linear fashion. New proposals sought to resist the emphasis on policies based on this logic, such as, perhaps, the policy for social rentership proposed in the Housing Plan (2016) of the government of former São Paulo Mayor Fernando Haddad Paulo (2013–2016), or the urban renewal plans of 'Bogotá Humana' (2012) under the government of Gustavo Petro (2012–2015), both considered progressive. But simultaneously, proposals have been enacted that intensify the subordination of public administration to the logic of capital, as took place with the public–private housing partnership proposed in São Paulo. Some of these are commented on below.

According to Maldonado (2016), the 'Bogotá Humana' programme (2012) sought to improve the siting of affordable housing units by moving the projects to more central regions that already had infrastructure, decreasing the scale of the projects and promoting a socio-economic integration, altering the processes of outward urban expansion via urban renewal plans. It also took note of the land market, reducing prices by using the subsidies of the Free Housing Programme. Additionally, it sought to revive subsidies for low-income housing organisations, encouraging mechanisms to support housing built by community organisations and units built by residents themselves.

The first source of resistance was political: the Ministry of Housing issued a national decree that restricted the use of resources in the Free Housing Programme to areas for urban expansion. Even so, the municipal government began to apply the policy in more central areas, using its own resources and municipal land, in a more fragmented manner and with a reduced number of units per parcel, limiting the price of the residence. The Bogotá government sought to practise good management of the projects by engaging with developers, and began to construct 20,000 VIP units and organise projects for another 10,000, through other partial plans in more central regions.

Resistance additionally came from neighbours and from middle- and upper-class families, who went as far as to file a suit to stop the projects, questioning the use of public land, arguing that the areas could receive more profitable uses than social housing. This is another demonstration that the neoliberal logic is absorbed, even in an abstract manner, in the argument of citizens about what is in the public interest, a concept that is routinely in dispute in Latin America. This resistance demands that the programmes be accompanied by ample discussions with residents to reduce opposition. Discussions are also needed with the programme beneficiaries about life in an apartment building.

The contradictions of the Public–Private partnership for housing in São Paulo

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

Here, we see an agenda that transforms housing policy objectives merely into quantitative goals of units produced. This goal was well received by the São Paulo municipal administration at the time, which had also proposed building 55,000 new housing units in four years, and they thus soon adhered to the partnership, ceding public lands to do so.

To make the public–private partnership model possible, the São Paulo state government entity responsible for housing production was disassembled; it did not receive resources and its production was limited. A public company was created, the Companhia Paulista de Parcerias (CPP), and it was linked to a fund comprised of resources in money, property and financial assets (such as receivables and others), to serve as a guarantee of the annual payment for various public–private partnerships, not only the PPP for housing. The fund functioned as a ‘collateral account’, but also to insulate the payments from political shifts in the local government.

The economic and financial model contemplated at Housing PPP was complex: subsidies from the Minha Casa Minha Vida programme; donations or provision of public land for the production of affordable housing; and that the new developments could have a mix of income and mix of uses including uses that are more profitable. These options are not usually

considered in the PPP model. Moreover, the PPPs allowed the private developers to recommend the parcels to be expropriated. This has historically been a wish of market actors, who organised lobbies at the federal, state and municipal level to transform the laws that govern this issue. Presently, the ability to determine which parcels will be expropriated is the prerogative of the government and must consider the public interest (a concept, which as mentioned, is in constant dispute).

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

The projects require a large volume of financial and territorial resources, and they commit municipal budgets to the PPPs for at least 20 years (a federal law limits the amount of the budget that can be paid towards PPPs to 5% of net annual revenue).¹⁴ The public lands provided are not included in the accounting of the flow of resources, so that it can be announced as a programme that does not involve public funds.

The guarantees of the government's financial obligation to the private-sector agent are comprised of, among other items, land, and some of the lands in the CPP's fund are occupied by low-income families. This means that if they were to be auctioned to private companies, the families would have to be evicted and would lose their housing. This is in clear contradiction to the policy's goal of creating new housing units for low-income populations.

For example, some of the lands controlled by the CPP in the region of the Consortial Urban Operation for Águas Espraiadas, a district in the south-eastern region of the city of São Paulo, even had families evicted to make way for corporate offices. The evictions stem from the rationale of needing to have financial guarantees for the programme. In a similar vein, the Evictions Observatory, part of the LabCidade research unit at the School of Architecture and Urbanism at the University of São Paulo, recently found that most of the threats and evictions it has mapped in São Paulo take place in the process of slum upgrading projects (2016 and 2017). That is, it is the affordable housing policy itself that threatens and causes evictions. The rationale supporting the policy is based on the rules of economic and legal models, and does not address the full setting of housing needs.

Moreover, some observers of the public-private partnerships affirm that the adherence of the private builders has been quite limited, given the economic and political crisis at the time the government announced its public call for bids (Mendonça, 2016; Santoro, 2014). Despite the criticisms, administrators continue to improve the model and to propose public-private partnerships for other municipalities. There is no resistance to the partnership model, given that the contradictions found are very

abstract for the grassroots housing movements, which see triumphs in the production of new units, and do not take into consideration the increased number of evictions, intervening in each of the evictions, but on a one-by-one basis.

Final remarks

The article has sought to show that Latin America has experimented with various housing programmes and urban regulations that have incorporated, without a critical lens, the international concepts and agendas of *affordable housing*. This approach completely ignores the size of the housing problem, as well as the degree of poverty, and the complexity and diversity of housing needs, which are all combined with overlapping social vulnerabilities. This calls into question the singular solution of providing new housing units combined with a private ownership model. Moreover, the policy of giving subsidies and increasing the financing capacity for affordable housing beneficiaries has contributed to the inflation of land prices, deepening socio-spatial inequalities, and is a factor in the continuing production of large scale housing projects on the peripheries of cities, which are devoid of the benefits of city living.

In the two countries studied in this article, there are new initiatives for regulating urban transformations with the objective of promoting affordable housing, sometimes through establishing land reserves via zoning mechanisms, sometimes by determining compulsory percentages of land, square metres of floor area, and/or financial resources to promote affordable housing in more central regions that already have infrastructure.

Although the debate appears to address issues relevant to the creation of new policies, the loosening of measures and the creation of regulatory alternatives on behalf of the market causes the inclusionary housing policies to fall into political discredit. However, these findings are more normative than practical. All of these initiatives confronted resistance from the private sector; they have encountered various legal and political obstacles, which have been translated into a weakening of the more progressive instruments and the creation of alternative rules. The result is a reproduced pattern of peripheral expansion, while city administrators who want to fulfill quantitative, and not qualitative goals, for housing production, act as defenders of these relaxed rules. In both cities, the topic of social housing appears to be mobilised to open economic and territorial fronts for the market to produce housing for higher income groups. Modifications to the regulations create options that are more attractive to the private market. The model of the segregated and gentrified city remains, and continues to challenge inclusionary policies.

Urban programmes to create housing have been transformed more into an economic question than a social one. This can be seen in the vocabulary used and in urban regulations that serve the interest of the real estate market, creating increasing entryways for financial capital, while broadening the concept of the 'public interest' beyond recognition (a concept which is currently completely in dispute). Public lands and financial assets are provided to private real estate developers, subordinating policies to create housing for low-income families to a financial rationale that is in conformity with an international neoliberal agenda and which does not truly engage with the urban reality of Latin America.

Notes

1. Data constructed by Centro Nacional de la Construcción, en Colombia, used by National Government to present the Housing programs, using the year of 2012 as reference.
2. This percentage, dubbed as the 'gold-rule', has increased internationally over time, from 20% in Canada in the 1950s to 30% in the 1980s, for example, after economic models were conducted to test for elasticity between housing consumption and household income (Hulchanski, 1995).
3. Some of these criticisms include that a higher percent of the investments made were targeted towards financing homes for middle- and high-income households than were for low-income households, and that resources were channelled largely to large cities, among others.
4. Van Loon, Oosterlynck, and Aalbers (2018) argue that 'managerialism' is moving into 'entrepreneurialism and financialization', transforming urban governance into more financialized forms, in the Netherlands and Belgium.
5. Rolnik and Santoro (2014) analysed the implementation of Vacancy ZEIS from their origins in the 1990s to 2012 and found they have been used to: (i) expand the land available for the production of Social-Interest Housing (HIS) (see footnote 5); (ii) recognise the right to housing and avoid displacement and evictions, which are often violent, or even to inform judicial actions in areas where residents were evicted that subsequently mandated the construction of social interest housing; (iii) offer and place land on the market through strong negotiations and mediation orchestrated by government, which is active in the construction of housing policy and (iv) gain production scale, which is even better if combined with housing policies to finance demand, as in the case of the Minha Casa Minha Vida programme in São Paulo. But there was also a negative aspect of the use of Vacancy ZEIS in that they were doing 'more of the same' that is, (v) reproducing the poor use of regulatory instruments to produce housing on smaller lots or useful areas, with less urban infrastructure, reproducing the precariousness of settlements in new areas.
6. In São Paulo, the concepts used as affordable housing through defining income ranges, based on the value of monthly minimum wage. The 2002 Master Plan created a category known as Social-Interest Housing (*Habitação de Interesse Social* – HIS), comprising households income between 0 and 6 monthly minimum wages, and Popular-Market Housing (*Habitação do Mercado Popular* – HMP), for households earning between 6 and 16 monthly minimum wages. After the dramatic increases of the minimum wage in the 2000s, which completely distorted these references for household income, the 2014 Master Plan divided HIS into two categories, with families earning between 0 and 3 monthly minimum wages being HIS-1, and those earning between 3 and 6 monthly minimum wages as HIS-2. Families earning between 6 up to 10 minimum wages were classified as HMP. Similar to international critiques, the Brazilian case has witnessed an overvaluation of the income ranges for which housing programmes were designed, primarily benefiting higher income families.

7. In the 1990s Brazil and Colômbia focused on land regulation to combat vacant land and land speculation, in an attempt to overcome their patrimonialist structures. The concept of the 'social function of property', enshrined in the 1988 Brazilian Constitution, qualifies the absolute power of private property owners, subjecting property to collective public interests.
8. Within the Bogotá master plan, Priority Interest Housing (in Spanish, *Vivienda de Interés Prioritário – VIS*), focuses on the lowest income groups; housing units are defined as having a floor area limit of approximately of 42 m². In the last review of Bogota POT, it encompassed families with incomes up to US\$270 (in 2011 values).
9. Within the Bogotá Master Plan, the designation Social-Interest Housing (in Spanish, *VIS – Vivienda de Interés Social*) roughly corresponds to the Brazilian designation for Popular Market Housing (HMP), and has a floor area limit of approximately 55 m².
10. There have been two kinds of affordable housing in Colombia, defined in related to the median income of families: Priority-Interest Housing (VIP), for the lowest-income households, and Social-Interest Housing (VIS), roughly analogous to popular market housing (HMP) in Brazil.
11. Partial Plans are areas defined by municipal rules, and in Bogotá and Medellín varied generally between 3 and 10 hectares.
12. For example, the minimum unit size in the federal law was 35 m² for one family, 70 m² for two families, and 120 m² for groups.
13. A major distinction of the Colombian case is the interference of the national government in the determination of the location of the projects, through the federal Macroprojects instrument, which is imposed from the top down on local land use agendas.
14. Lei Federal n° 11.079/2004, art. 28.

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