

Principles, bases and challenges of the National Programme to Support Sustainable Urban Land Regularisation in Brazil

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Abstract

Since the 1980s, a few Brazilian municipalities have confronted the growing problem of informal settlements through land regularisation programmes, but, while there have been localised advances, these programmes on the whole have left much to be desired, and most municipalities still have to formulate their own land regularisation programmes. The action of the federal government has been very inefficient: up to 2002, despite the existence of a few support programmes and a few lines of finance for municipalities, there was no integrated and comprehensive approach to the question of the informal production of space. Recognising the scale, seriousness, and the implications of the informal urban development process, in 2003 the federal government, through the Ministry of Cities, for the first time formulated a national policy on this question to orient all the specific programmes, in all spheres of government, relating to regularisation of urban informal settlements.

This paper aims to present and discuss critically the terms of this national policy. Following a general identification of the overall context determining the process of growing informal urban land development in Brazil, as well as the possibilities for, and constraints of, state action on the matter, the paper discusses the main strategies and actions of mobilisation, articulation, and intervention which have been formulated in the context of the National Programme to Support Sustainable Urban Land Regularisation. Special attention will be placed on the challenges involved in the regularisation of consolidated informal settlements in areas belonging to the Union.

The paper concludes that the Ministry of Cities has managed to advance significantly in formulating a comprehensive national policy and in creating the legal-institutional bases of the National Programme for the Support of Sustainable Land Regularisation. However, the national policy is still merely a declaration of intentions and the regularisation programme is still an isolated and ineffective action, above all without any significant impact on the Brazilian reality. There are still many structural obstacles that are of conceptual, political, institutional, and financial nature. These need to be confronted by the Ministry of Cities and the federal government as a whole, so that the objectives of the national policy can be realised.

1 Introduction

The socioeconomic development model that has required rapid urbanisation in Brazil has produced cities heavily marked by the presence of peripheral areas. About 83% of Brazilians are reported to live in urban areas. According to data from several sources, 26 million people living in urban areas do not have access to water; 14 million are not served by rubbish collection; 83 million are not connected to sewage systems; and 70% of the collected sewage is not treated. Other figures suggest that despite the often long distances involved, 52 million Brazilians walk to work, given the high costs of public transportation. The national housing deficit has been estimated as 7.2 million units; even more alarmingly, the number of existing vacant properties has been estimated as 5.5 million units. Sociospatial segregation, environmental degradation, and urban violence are increasing.

Moreover, tens of millions of Brazilians have not have access to urban and housing other than through informal, and mostly illegal, processes and mechanisms. Although the data is imprecise, it is realistic to say that more than 50% of the people living in urban areas have access to land and housing through informal processes. For several decades, Brazilians have been self-constructing a precarious, vulnerable and insecure habitat in favelas, irregular and clandestine land subdivisions, irregular housing projects, front-and-back houses, as well as occupying public land, steep hills, preservation areas, water reservoirs and riverbanks. Resulting from the combination of speculative land markets, clientelist political systems, elitist urban planning practices and exclusionary legal regimes – which have affirmed individual ownership rights over the constitutional principle of the socioenvironmental function of urban property and of the city - for a long time Brazil's process of informal urban development has not been the exception, but the main socioeconomic way to produce urban space in the country.¹

It is a phenomenon that has structured Brazil's consolidated urban order, and as such it needs to be confronted. In its many different ways, the process of informal access to land and housing has increased in large, middle-sized, and even in small cities. In fact, despite the association commonly made between informal urban development and large cities (all cities with more than 500,000 inhabitants have favelas), the precarious, illegal occupation of the territory can also be identified in all cities and regions of the country. According to official data, favelas exist in 80% of the cities with 100,000 to 500,000 inhabitants, and in 45% of those with a population of 20,000 to 100,000 inhabitants. Irregular settlements can be increasingly identified in small cities – 36% of the cities with less than 20,000 inhabitants have irregular land subdivisions and 20% of them have favelas.

Although it can be by no means reduced to the poorest social groups, the informal production of the habitat in urban areas among such groups needs to be urgently confronted, given the grave socioeconomic, urban, environmental, and political

implications of the phenomenon, not only for the residents of informal settlements, but also for the cities and the urban population as a whole.

Since the 1980s, a few municipalities have confronted the problem of informal settlements through land regularisation programmes, but the truth is that while there have been localised advances, these programmes on the whole have left much to be desired. Moreover, most municipalities still have to formulate their own land regularisation programmes.² Only two or three states have formulated regularisation programmes.

Also the action of the federal government has been very inefficient. Up to 2002, despite the existence of a few support programmes and a few lines of finance for municipalities, there was no integrated and comprehensive approach at the national level to the question of the informal production of space. In 2003, recognising the scale, seriousness, and the implications of the informal urban development process, the federal government, through the newly created Ministry of Cities, for the first time formulated a national policy and a corresponding national programme on this question. The policy was to orient all the specific programmes in all spheres of government, relating to regularisation of urban informal settlements already consolidated and occupied by low-income groups.

This paper aims to present the National Policy to Support Sustainable Urban Land Regularisation, and it begins by discussing its nature, assumptions, and general and specific objectives, as well as the bases of the resulting National Programme to Support Sustainable Urban Land Regularisation. Special attention will be given to the national programme's legal, financial, urbanistic and institutional strategies. The paper then proposes a critical discussion about the main mobilisation, articulation and intervention actions that have been undertaken within the ambit of the national programme as from 2003, stressing the main existing challenges to the progress of governmental action. Special attention will be given to the discussion concerning the regularisation of consolidated informal settlements on public land belonging to the Union.

The paper concludes that, despite the fact that the Ministry of Cities has managed to advance significantly in formulating a comprehensive national policy and in creating the legal-institutional bases of the National Programme to Support Sustainable Urban Land Regularisation, the national policy is still merely a declaration of intentions and the national programme is still an isolated and ineffective action, above all without any significant impact on the Brazilian reality. There are still many structural obstacles that are of conceptual, political, institutional and financial nature. These need to be confronted by the Ministry of Cities and the federal government as a whole, so that the objectives of the national policy can be realised and for the objectives and targets of the supporting programme to be reached.

2 Principles of the National Policy to Support Sustainable Urban Land Regularisation

Up to 2002, there were some federal programmes directly or indirectly addressing informal settlements, such as the Programa Habitar Brasil – BID (HBB) and Caixa Economica Federal’s “Building Materials Programme”. However, there was no national policy to articulate these programmes, thus expressing the objectives of the federal government. It was in this context that the Secretariat for Urban Programmes in the Ministry of Cities, in a pioneering way, proposed and discussed at national level the terms of such a national policy.

2.1 Nature of the national policy

First of all, it needs to be said that the federal government had necessarily to take into account the distribution of legal-political competencies established in the 1988 Federal Constitution and by the 2001 City Statute, particularly on the question of land use control in general, and land regularisation in particular, in order to formulate a national policy compatible with the legal order in force and with the sociopolitical processes historically produced in the country. In this context, the federal government recognised the central role of municipalities, and to a lesser degree of the states, in confronting the problems resulting from informal land development and in formulating and implementing regularisation programmes of consolidated informal settlements in urban areas.

The problem of informal urban development is notably massive and requires a broad intervention by the public authorities – informality reaches 80% in some cases – but the fact is that the country’s sociopolitical history over the past 20 years has been one of political-institutional decentralisation, so much so that the role of municipalities in Brazil’s federalism is unique in the world, even given due respect to all the existing financial limitations. However, many attempts have been made to address informal land development proposing magical solutions, without vigorously addressing the constitutional, political or legal order. Many such proposals expect immediate intervention by the federal government (through the Ministry of Cities, created in January 2003) to solve the growing urban and socioenvironmental problems, thus simply ignoring the municipal competences. This is clearly an expression of the historical neglect in confronting the urban question at the national level, as well as of the absence of a national policy on regularisation. However, it is important to understand that the position of the federal government in this field is very constrained and precise.

In fact, the action of federal government has the intention of supporting, complementing and/or supplementing the action of municipal and state governments, intervening in a more direct way (although always in a partnership with municipalities and states) only if the occupied land is owned by the Union, especially if the consolidated settlements meet the criteria for the special concession of use for housing purposes introduced by Provisional Measure no. 2.220 in 2001. If considering these limits, the role of federal government has great sociopolitical importance, given the extent and implications of the problem of informal urban development. There is an urgent need to create a sufficiently

integrated front of intra and intergovernmental action, as well as various forms of partnerships between the State and civil society, so as to confront the problem. The federal government has the best conditions to promote and lead such a front.

2.2 Conditions and assumptions of the National Policy to Support to Sustainable Urban Land Regularisation

The federal government is aware that regularisation programmes, at whatever level they are formulated, have an intrinsically curative or remedial nature, and that, in order to be sustainable, such programmes should always be implemented within a broad context of public, urban, and housing policies, in all spheres of government. Such combined policies should aim at intervening in the land and property market, thus having effective control over the processes through which urban land is accessed, with a view to breaking the perverse cycle which has historically produced urban informality and to prevent the illegal production of cities.

Therefore, regularisation programmes necessarily have to be combined with:

- the production of new social housing developments and serviced sites for low-income groups, by the public authorities in all spheres of government;
- the opening of new lines of official credit and housing finance, especially for the population between 0-3 minimum salaries;
- inclusive urban planning and democratic management of cities, especially through the instruments, mechanisms and processes of urban land use as per the 2001 City Statute, in order to induce the occupation of vacant land, rehabilitation of urban centres and the full realisation of the socioenvironmental function of urban property. In particular, the question of land regularisation should be considered as one of the central axes in formulating municipal master plans, such as required by the 1988 Federal Constitution and the 2001 City Statute;
- the use of redistributive fiscal and extrafiscal policies, as well as mechanisms for surplus value-capture by the public authorities, always in the terms of the 2001 City Statute;
- the creation of mechanisms and processes of various orders to involve the formal land and property market in the production of regular serviced sites and buildings for the low-income population in good locations, accessible prices, and sufficient quantities.

However, one should no longer ignore the enormity of the already established problem of informal settlements, and the urgency to address these.

In this context, the Ministry of Cities coordinated throughout 2003 a full process of discussion of the bases of a 'National Policy of Support to Sustainable Urban Land Regularisation,' with the following bases:

- the recognition of the social right to housing and security of tenure as fundamental human rights, in accordance with the 1988 Federal Constitution and the terms of the Global Campaign for Secure Tenure of UN-HABITAT;
- access to urban land as realisation of the constitutional principle of the socioenvironmental function of property (whether private or public) and of the city;
- the supremacy of Public Law over Private Law in the regulation of the urban order and in the interpretation and application of the 2001 City Statute;
- an understanding of the curative nature of the regularisation programmes, which need to be implemented within a broad context of public policies in all spheres of government;
- the need to reconcile urbanistic and environmental regularisation with legal regularisation; and
- the need to contribute to the revival of the processes of social mobilisation around the discussion of informal urban development, especially through the recognition of effective popular participation in all the stages of the process of regularisation.

According to the current urban-legal framework – set by the 1988 Constitution and consolidated by both the 2001 City Statute and the 2001 Provisional Measure no. 2.220 - there are two distinct situations in Brazil today related to informal settlements:

- settlements in which the residents have the collective right to regularisation, independently on the willingness of the public authorities; and
- settlements in which the regularisation policies still insert themselves, as was traditionally the case, in the realm of discretionary action of the public authorities.

Therefore, not all informal settlements have to be regularised, for instance very recent occupations. Neither are all consolidated informal settlements upgradeable. For instance, based on safety, health or environmental reasons, the public authorities may not recognise the right of the residents to stay on the occupied areas. But, the big advancement of the legal order is that in these cases, the right to housing continues to prevail, meaning the public authorities have to offer concrete and acceptable conditions for the relocation of residents.

Although it has specific legal characteristics, the question of land regularisation of consolidated settlements in urban areas is an aspect of the broader social right to housing, secured through the 1988 Federal Constitution, and as such must be treated within the context of an articulated housing policy.

2.3 Objectives of the national policy

The National Policy to Support Sustainable Urban Land Regularisation that was proposed by the Ministry of Cities in 2003 was based on the principle that land regularisation is a broad process, which cannot or should not be reduced solely to its legal dimension, as the legal regularisation of occupied areas and plots has to be reconciled with the urbanistic and environmental regularisation of the settlements, as well as with the introduction of

socioeconomic programmes (especially generating employment and income) and other governmental programmes that propose the full integration of the informal settlement residents into the economy of the city and the urban society.

The main general objectives of this national policy are:

- to support municipalities and states in the implementation of the 2001 City Statute, with emphasis on the new legal instruments of land regularisation in the City Statute and in Provisional Measure no. 2.220/2001 and on the need to widen and democratise access to urban land for the lowest income groups;
- to promote the integration of land regularisation programmes (combining upgrading and legalisation) in all levels of government, with inclusive urban planning policies and democratic urban management strategies; and
- to promote the integrated recognition of social and constitutional rights to housing and environmental preservation, quality of life, and preservation of natural resources.

The main specific objectives of the national policy are:

- to promote the recognition of the new rights recognised by the legal-urban order - especially the special urban *usucapiao* (prescriptive acquisition/adverse possession), the concession of the real right to use, the special concession of use for housing purposes, and surface rights - and their full utilisation, emphasising that they are new forms of real property rights;
- to prioritise the collective use of these instruments, in order to give collective legal solutions to urban and social problems that are essentially collective;
- to remove the obstacles to land regularisation that still stem from the federal legislation, be they related to land laws, registration laws, urban laws, environmental laws, judicial procedural laws, administrative laws, fiscal laws, criminal laws, etc.;
- to create conditions for the full recognition and validation of titles representing the new rights mentioned above, by the public and private credit and finance agencies, as well as by the public opinion; and
- to encourage various forms of partnerships with civil society, promoting full popular participation in all stages of the land regularisation interventions and thus contributing to the revival of the social mobilisation processes through the discussion about informal urban development, in a way that socially includes communities living in informal settlements to a full extent.

3 The bases of the National Programme to Support Sustainable Urban Land Regularisation

Based on the above assumptions and objectives, the Ministry of Cities's Secretariat for Urban Programmes defined the terms of the National Programme to Support Sustainable

Urban Land Regularisation, seeking especially to reconcile the proposed objectives, principles, mechanisms, processes and resources.

The national programme is structured into four principal support strategies, which are, or need to be, fully integrated, namely, legal, financial, urbanistic/planning and administrative/institutional support strategies.

3.1 Strategies for legal support

The strategies for legal support aim to:

- discuss the necessity to revise the federal legislation directly and indirectly linked to the question of land regularisation;
- sensitise and inform the legal actors and engage them in dialogue about the land regularisation process, e.g. judges, prosecutors for the government, Law Faculties and registrars, with a view to recognising the new collective rights consolidated by the 2001 City Statute and to enable their registration;
- give sociolegal assistance to NGOs and residents' associations, so that they can propose legal actions of special urban *usucapiao* and the administrative claim for the special concession of use for housing purposes; and
- promote a new legal culture based on principles of the socioenvironmental function of urban property and of the city.

3.2 Strategies for financial support

The strategies for financial support aim to:

- identify and centralise resources of programmes that already exist or are being created in the context of the federal government – out the budget of the Ministry of Cities or other ministries – which could be applied to the financing of land regularisation programmes in all spheres of government;
- to capture resources of the private initiative for the formation of public-private partnerships; and
- to capture resources from international financial and cooperation agencies for financial support to regularisation programmes in all spheres of government.

3.3 Strategies of urbanistic/planning support

The strategies of urbanistic/planning support aim to:

- promote the sensitisation, informing of, and dialogue with, essential actors such as the national entities representing architects, engineers, geographers and cartographers; Architecture and Planning, Engineering, Geography Faculties, and other professional entities active in the area of urbanism, to give technical support at the lowest cost and in specific patterns/models related to regularisation; and

- confront the ongoing problems of informal occupation of risky areas and other areas of environmental value.

3.4 *Strategies for administrative/institutional support*

Last, but not least, the strategies for administrative/institutional support aim to:

- promote the construction of a basis for a permanent dialogue with municipalities and municipal and state organs, with a view to strengthen the discussion on land regularisation within the context of the ongoing processes of the elaboration of municipal master plans and to disseminate the democratic use of planning processes and instruments such as ZEIS (Special Zones of Social Interest) to minimise the pressure of the land and property market and to guarantee the permanence of the occupants in regularised areas (i.e. prevent their displacement by the market);
- support a revision of municipal urban regulations and of constructive parameters, especially in the ZEIS;
- develop a database of experiences, legislation, and literature to orient/inform the municipal and state programmes on land regularisation; and
- promote systematic exchange of information among all spheres of government with a view to provide elements for decision-making processes.

3.5 *Actions in occupied areas that are owned by the Union*

As will be explained in more detail below, the National Secretariat for Urban Programmes committed itself to promoting an interministerial integration aiming to:

- discuss the possibility of urban, legal and social regularisation of consolidated informal settlements on land belonging to the Union, with a base in Provisional Measure no. 2.220/2001;
- remove wherever possible the obstacles to regularisation of settlements on *terrenos de marinha* (coastal land) belonging to the Union; and
- promote, together with the Secretariat for the Union's Patrimony/Ministry of Planning, the modernisation of the cadastre of the Union's patrimony, with emphasis on the areas affected by Provisional Measure no. 2.220/2001.

3.6 *Support to municipalities*

The National Secretariat for Urban Programmes also proposed to coordinate a series of actions with a view to giving technical and financial support for:

- contracts of technical cooperation to improve/promote land regularisation programmes of the municipalities and states;
- the realisation of municipal cadastres for the identification, mapping, and registration of existing informal settlements;

- technical and legal assistance to municipalities and states for the development and improvement of municipal land regularisation programmes;
- the formation of a national network of partners to give technical, legal, and social support to municipalities and states in their regularisation activities;
- the formation of all sorts of partnerships to discuss urbanistic/planning, legal, and social regularisation as well as the most appropriate actions to promote regularisation of settlements on private land and on land belonging to municipalities and states, with a basis in the 2001 City Statute;
- the development of an information system to identify the different ownership and tenure regimes and their consequences;
- analysis and revision of existing regularisation policies of municipalities and states in a way that tests, supports, and evaluates them;
- jointly disseminate the actions of the Ministry of Cities and the scope of available programmes to municipalities, states and society, and to disseminate information on the other existing sources of resources such as the housing subsidy programme and the Habitat Brasil Programme - HBB, as well as discussions on other possible sources such as the World Bank, the Cities Alliance, cooperation agencies of foreign governments, international NGOs, the Lincoln Institute of Land Policy, UN-HABITAT and UNDP.

Priority was given to

- municipalities with already initiated upgrading and land regularisation activities and relying on resources from the federal government;
- states and municipalities convening with the Ministry of Cities;
- municipalities with identified occupations on Union land;
- municipalities that are integrated into metropolitan regions; and
- municipalities selected by the Programme of Zero Hunger.

4 Actions and challenges of the national programme: a critical overview

Since 2003, the National Secretariat for Urban Programmes has undertaken various actions of mobilisation, articulation and intervention to launch, consolidate, legitimise, and expand the regularisation programme nationally. Some qualitative and quantitative targets were defined for the short (2003-4), medium (2003-6) and long (2003-7) terms, and a first, incipient effort was made to territorialise the reach of the national programme.

This section discusses critically the principal difficulties the regularisation programme has encountered, and what the main challenges are for it to contribute effectively towards the confrontation of the growing problem of informal development in Brazil.

4.1 Discussion in the federal government as a whole

The first challenge to the Ministry of Cities is to place the question of regularisation at the centre of the agenda for political action of the federal government as a whole. This

requires a systematic, and combative, effort of providing information, promoting interministerial articulation, and applying pressure for adequate budgetary resources.

In this context, a Working Group was created in 2003 on the theme of land regularisation, in the context of the Committee of Federative Articulation, presided over by the Civil Presidential House. This committee was a pioneering initiative of the federal government, and it aims to improve the relations between federal government and municipalities and states so as to modernise and make more dynamic the complex and distorted federal system in Brazil. The Ministry of Cities coordinates the Working Group on land regularisation, and counts on participation of representatives of the National Front of Municipalities, the Municipal Confederation of Municipalities, and the Brazilian Association of Municipalities; the Civil House, the Ministry of Justice, the Ministry of Planning, the General Advocacy of the Union; the Brazilian Institute of Property Registration, the National Association of Notaries and Registrars, etc.

Although the Working Group was originally created to discuss a proposal by the National Front of Mayors restricted to land regularisation of consolidated settlements on *terrenos de marinha* (coastal land) belonging to the Union, the Ministry of Cities was able to widen the scope of the discussion around three main axes:

- the socioenvironmental function of the public patrimony of the Union, including the question of occupied coastal land;
- the activities of property registration offices in the context of regularisation programmes; and
- the need for compatibility between the cadastral bases use by the municipalities and the anachronistic cartographical bases used by the registration offices, especially through the use of systems of geo-referencing.

Several meetings took place since 2003, and, albeit in an incipient way, the Working Group has managed to place the discussion on land regularisation on the agenda of sectors of the federal government to some extent. The Working Group has contributed to organising the themes of the issues to be addressed and legitimised important discussions and proposals, as well as forming some promising partnerships, particularly with the Brazilian Institute of Property Registration and the National Association of Notaries and Registrars, which have long represented conservative interests.

However, it has to be said that, generally speaking, there is still insufficient recognition of the importance of land regularisation by the federal government as a whole. As a result, the National Programme to Support Sustainable Urban Land Regularisation was allocated a mere R\$5 million for 2004 (less than US\$2 million) – while in 2003 a budget was practically non-existing.

Clearly, this is a reflection of a broader problem that is the lack of understanding by the federal government of the importance of the urban question in Brazil. Above all, it is a reflection of the total incapacity by the federal government to appreciate that “the city” lies in the heart of the country’s economy and that investing in cities is an investment

in the national economy. In the context of a clearly demarcated division within the federal government (insurmountable in 2003 and 2004) between economic policies and social policies, the urban policies (land, housing, environmental sanitation, transport and mobility) of the Ministry of Cities were viewed merely as social policies, or at most as infrastructure investments for economic development. Given the rigorous and overly orthodox policy of fiscal adjustment adopted by the federal government since 2003, the social policies have been given second rating, and the budgets of those ministries in the social domain have been seriously affected. In the case of the Ministry of Cities, created in 2003, and therefore not having inherited any significant institutional infrastructure, the initial budget was 'virtual', in the words of the Minister Olivio Dutra. This position also meant that the organs responsible for the economic policy placed enormous limitations on the process of redefining the nature of the patrimony of the Union and its utilisation in programmes for land regularisation.

As a result, the national regularisation programme is still an isolated policy, without interministerial character, inefficient, lacking resources, and without effective capacity for significant intervention in the Brazilian reality.

By not recognising the centrality of the question of social housing and land regularisation in the agenda of political action, the federal government (and the Ministry of Cities) has been questioned and charged daily by various sociopolitical actors – including the national media – owing to its incapacity to confront the growing socioenvironmental conflicts resulting from the process of informal urban development and the lack of adequate alternatives to access serviced urban land for the large majority of the urban population.

The Ministry of Cities will have to double its efforts to promote the recognition by the federal government as a whole of the importance and centrality of the question of land regularisation in consolidated urban areas. This needs to be done in such a form that appropriate political-institutional commitments with support in the form of adequate budgets are given to the regularisation programme with due urgency, especially through an integrated interministerial action, including by means of confronting the growing discussion around the possibility of creating a National Agency for Land Regularisation by Presidential Decree.

4.2 The discussion on land regularisation in the internal context of the Ministry of Cities

Inserting the question of land regularisation into the agenda of federal government in an adequate way is a huge challenge placed on the Ministry of Cities. However, an equally important challenge lies in adequately inserting the same question in the context of the overall agenda of political action of the Ministry of Cities itself, in a way that will overcome the current situation of institutional fragmentation, duplication of programmes, and conceptual conflict.

Linked to a series of historical reasons that lie at the basis of the creation and internal organisation of the Ministry of Cities, the treatment of the question of land regularisation of consolidated informal settlements was divided between two National Secretariats in

the context of the organisational structure of the Ministry. The National Programme to Support Sustainable Urban Land Regularisation was conceived in the National Secretariat for Urban Programmes, but the National Secretariat for Housing inherited the abovementioned Programa Habitar Brasil - HBB, which since 1999 has given financial support to municipal and state programmes for upgrading of favelas, with resources from Inter-American Development Bank and from the budget of the Union.

This institutional fragmentation resulted in not only an undesired programmatic duplication, but it also expresses a serious conceptual conflict, given the fact that the national regularisation programme proposes an integrated approach for the treatment of the question of land regularisation, articulating legalisation, upgrading and integration of areas and communities, rather than only a legalistic or merely physical approach to the question of regularisation.

The organisational structure of the Ministry of Cities in 2003 re-enforced this fragmented treatment of the question, and this was worsened by the fact that while the HBB programme – which has a component of land titling conceived with different criteria than those of the national regularisation programme - counts on considerable financial resources, the regularisation programme was not given sufficient resources, a situation that was not improved significantly in the 2004 budget. By not being equipped and resourced adequately, the regularisation programme has effectively been limited to the dimension of land regularisation in strict legal terms, and has not been able to confront the demands of upgrading informal settlements.

This is a totally inadequate situation, as this dissociation between legal regularisation and physical upgrading is completely artificial. Ironically, as soon as the Ministry of Cities was created in January 2003, it had publicly questioned a proposal to legalise informal settlements in mass, which had been launched nationally by the Ministry of Justice. The Ministry of Cities had argued for the need to treat the question in a broader and more integrated way, and was eventually given the institutional responsibility to formulate and coordinate a national policy to confront the question of informal land development.

In 2003 and 2004, it was not possible to overcome this internal institutional fragmentation in the Ministry of Cities despite attempts at creating an informal internal working group involving both Secretariats. There was a lack of adequate internal management channels between the two National Secretariats and between the two national programmes, and the necessary processes for communication that this order of political and conceptual questions requires were not in place.

This is a discussion that needs to be promoted urgently so that there is a proper institutional, programmatic, financial and conceptual integration in the Ministry's action. In particular, it is necessary to discuss and re-think the bases of the HBB programme: in a country where the universe of informal settlements has been estimated as thousands of cases (including favelas and other forms such as irregular and clandestine land subdivisions) and in which the federal government's capacity for action is very limited, it is highly questionable that a national programme involving enormous financial

investment (calculated in US dollars) only applies to a insignificant number of interventions – less than 100 – and only in favelas. Moreover, the technical criteria that have guided such interventions have also been seriously questioned. It is especially revealing that none of the ongoing HBB projects has reached the stage of full land regularisation.

Another fundamental discussion that was not properly confronted by the Ministry of Cities in 2003 and 2004, but which can no longer be ignored, refers to the need to reconcile the National Programme to Support Sustainable Urban Land Regularisation and the new National Housing Policy which is being formulated by the Housing Secretariat. The National Housing System has gradually been redesigned, so that new social housing projects can be implemented and new lines of credit and financing can be opened to the population earning up to three minimum wages.

One of the objectives of the regularisation programme is to create the conditions for the municipalities to act, widening the access of the lowest income groups to serviced land, and for this purpose, together with a broad concept of regularisation that combines upgrading and legalisation, it is necessary to create new social housing policies and inclusive urban planning directives. Given the extent of the housing problem, the action of the public authorities alone will not be sufficient, and the private sector needs to be involved for the production of serviced plots of land especially by making use of the possibilities – advantages, incentives, and building credits – offered by the 2001 City Statute. In order to be effective, regularisation programmes need to be intimately related to other programmes that aim to produce serviced land for the low income population, as well as to urban policies that give a social function to the millions of vacant properties, private and public, existing in the country.

In the more restricted ambit of the National Secretariat for Urban Programmes, in which the national regularisation programme is located, since 2003 this programme has not been fully articulated with the other existing programmes: National Programme to Support Municipal Master Plans; National Programme to Control and Prevent the Occupation of Risky Areas; National Programme to Support Municipal Urban Management; and the National Programme to Support the Rehabilitation of Inner-city Areas. Regardless of the fact that all such programmes are profoundly interrelated, in 2003 and 2004 there was no adequate incorporation of the objectives of each programme into the terms of reference formulated by the others. Special attention needs to be given by the Secretariat for Urban Programmes to the relation between the regularisation programme and the programme aimed to support municipal master plans, so that the discussion on municipal regularisation programmes is no longer promoted in a sectoral or isolated manner, but instead in the very heart of the municipal processes of formulation and implementation of master plans. In the terms of the 2001 City Statute, all Brazilian municipalities with more than 20,000 inhabitants have to approve their master plans by 2006.

There is an enormous expectation on the part of municipalities and the people living in informal settlements that the National Programme to Support Sustainable Urban Land Regularisation will be effective, especially following the “National Conference of the

Cities” that took place in October 2003, in which the subject of regularisation was one of the dominant ones. However, the future – and the success – of the national regularisation programme will depend on how the current state of affairs is reverted – by overcoming the institutional fragmentation within the Federal Government, within the Ministry of Cities and within the Secretariat for Urban Programmes itself; and by promoting a better distribution of budgetary resources in order to make it possible to solve the problems related to the lack of human resources, equipment, and resources for investment and action.

4.3 Strategies for legal support

4.3.1 A new legal-urban order

One of the most significant actions within the National Programme to Support Sustainable Urban Land Regularisation in 2003 was the promotion of a series of events that aimed at involving legal actors and urban managers in the discussion of the new legal-urban order consolidated by the 2001 City Statute and the 2001 Provisional Measure no. 2.220, in which, among other developments, the collective right to regularisation was recognised. Two specific workshops were promoted in Brasilia and the conceptual basis of the new legal order was presented and discussed in the Seminar “The New Legal-Urban Order”, promoted in Sao Paulo in November 2003 by the Ministry of Cities in partnership with the Brazilian Institute of Property Registration, the Prosecutors for the Government of the State of Sao Paulo, the Sao Paulo Judicial School, and the Lincoln Institute of Land Policy. The Seminar was attended by judges, prosecutors for the government, public attorneys and registrars, as well as by urban planners and managers.

The challenge faced by the Ministry of Cities is to give continuity to such a fundamental process of information dissemination and critical discussion, which is essential to promote an advance of legal doctrine and jurisprudence on Urban Law in Brazil, especially through the promotion of events in all Brazilian states which lead towards the consolidation of the abovementioned partnerships.

Another important front opened in 2003 within the remit of the regularisation programme was the Ministry of Cities’ active participation in the process leading to the revision of Federal Law no. 6.766/1979, which governs the subdivision of urban land nationally, and which is crucial for the promotion of regularisation programmes at local and state levels.

The fact is that, even those municipalities that have already progressed in confronting the process of growing informal land development through regularisation programmes, are facing several orders of legal obstacles deriving from the federal legislation in force – urban laws, Forestry Code, land laws, registration laws, expropriation laws, etc. Creating a solid partnership with the Commission for Urban Development of the Chamber of Deputies in order to broaden the scope for the discussion of a draft land law which aimed at replacing Federal Law no. 6.766, in 2003 the Ministry of Cities proposed that the scope of the new law should refer not only to future land subdivisions, but also to the

regularisation of consolidated informal settlements. This process of legal revision provides a historical opportunity to overcome all the abovementioned legal problems still existing, and the national discussion was fully supported by a very successful cycle of public audiences promoted by the Urban Development Commission and the Ministry of Cities in October and November 2003.

This discussion dominated much of the Secretariat for Urban Programme's agenda in 2004, but it was not possible to come to a consensus involving all the major stakeholders. The challenge faced by the Ministry of Cities is to give continuity to this important process of improvement of the legal order, in order not only to deepen the conceptual discussion, but also to establish the necessary political articulations, within and outside the National Congress, to guarantee the enactment of a "Federal Law on Urban Land Subdivision and Regularisation of Consolidated Informal Settlements in urban Areas". This federal law would then become a long claimed "Law of Territorial responsibility".

4.3.2 *The activities of the registration offices*

Among the main questions discussed in 2003 and 2004 within the context of the legal strategies adopted by the national regularisation programme, the discussion on the activities of the registration offices was of utmost importance. From several parts of the country there were reports indicating that it had been impossible for municipalities and states to register the newly regularised settlements at the local registration offices. This is indeed a major problem in a legal system such as Brazil's, in which it is the registration that constitutes ownership. A specific workshop was promoted in 2003 to discuss this matter, aiming to identify the reasons for the difficulties as well as alternatives for their solution.

Three main problems were detected: the high costs of registration; the erratic procedures adopted by the registration offices; and the nature of frequent practices on the part of these offices, which have long been putting insurmountable obstacles to the development of municipal and state regularisation programmes.

Following this discussion and further political articulation with the entities representing the registrars nationally, significant gains were achieved still in 2003. Regarding the matter of financial costs, the national entities declared publicly that they would not charge for the registration of the first documents referring to the registration of special urban *usucapiao*, concession of the real right to use or the special concession for housing purposes. Some registration offices acted on this decision immediately, but the challenge remains to turn this into a standard national guideline to be followed by all registration offices.

Another significant development concerns the legal and administrative procedures adopted for the registration of the areas and plots resulting from regularisation programmes. Each Brazilian state has different guidelines, and the registration offices have given completely different interpretations to such guidelines, often refusing to register the newly regularised areas and plots. The existing bureaucratic requirements are

enormous, and frequently the public authorities promoting the regularisation are treated by the registration offices as if they were private promoters acting in bad faith. The national entity representing the registrars proposed the creation of a national council to regulate all registration offices, and this council would be in charge of defining uniform and simplified legal and administrative procedures to be followed for the registration of regularisation programmes. That would put an end to all the problems that have been affecting even the most advanced municipal regularisation programmes, such as that of Porto Alegre.

Also regarding the legal and administrative procedures, a more difficult task will be to reconcile the anachronistic databases used by the registration offices with the cadastral databases used by the municipalities, given the fact that there is a wide gap between them. This compatibility can only be provided by the use of GIS, in the same way as has been already determined for the registration of rural areas by Federal Law no. 10.267/2001. The challenge then is to define the criteria to be followed so that this could also happen in urban areas.

Another important factor regarding the actions of the registration offices concerns the nature of some of their practices. On the one hand, there are offices that have refused to get involved in regularisation programmes, creating all sorts of obstacles (sometimes for ideological reasons). On the other hand, most municipal administrations have little understanding of the importance of getting the registration offices involved in all stages of the regularisation programmes. Systematic partnerships need to be formed between the registration offices and the municipal administrations. In fact, it was as a result of one such solid partnership that thousands of titles of the special concession of use for housing purposes were given to residents by the Municipality of Sao Paulo in 2003, properly registered. Registrars and other legal actors have to be permanently involved in this attempt to work out adequate legal solutions to the question of regularisation of consolidated informal settlements.

The challenge faced by the Ministry of Cities in this respect is to give continuity to this discussion and to consolidate the partnership with the national entities representing the registration offices, so that the achievements already made become general rules valid for the whole national territory. This is a discussion that is also directly related to the abovementioned ongoing discussion on the draft of a new federal law, and much still needs to be done by the Ministry of Cities to achieve a consensus with the national entities representing the registrars.

4.3.3 Regularisation and environmental preservation: a false conflict

One of the actions launched in 2003 by the national regularisation programme was the discussion on the growing conflict between public policies that aim to protect the social right to housing, and those that aim to promote environmental preservation, especially because environmental arguments have often been used to put obstacles to municipal and state regularisation programmes. Placing emphasis on the notion of “environmental deficit”, such arguments have not allowed for a broader discussion, certainly more

adequate to the Brazilian reality, which is that of the “socioenvironmental deficit”. With regard to the latter argument, in those situations in which environmental values and housing needs (both constitutional rights) cannot be fully or even partly reconciled, and if the environmental value has to prevail over the housing need, effective alternatives have to be offered to the low-income population living in the areas. Together with the National Council for the Environment, the Ministry of Cities has discussed the terms of a draft resolution that proposed a specific treatment for the regularisation of informal settlements on preservation areas. This is an issue that certainly deserves to be stressed within the context of the abovementioned ongoing process of legal revision, and on there remains a great deal to be done.

4.3.4 *The new instruments*

One of the specific objectives of the regularisation programme is to promote the full recognition, as new forms of real rights, of the institutes of special urban *usucapiao*, concession of the real right to use and special concession of use for housing purposes, especially when used in a collective manner. For this purpose, in 2003 a mobilisation process started aiming to validate such instruments, which requires dissemination of information on existing laws as well as legal assistance for the initiation of legal or administrative proceedings. Important organizations, such as Fundacao Bento Rubiao, in Rio de Janeiro, and the remarkable Project “Poles for the Reproduction of Citizenship” promoted by Minas Gerais Federal University have provided legal assistance to communities, as well as stimulating a broader set of actions in informal settlements involving engineers, architects, social workers, psychologists, students and professionals working with the cinema, videos, music and drama, aiming to promote sociocultural as well as legal-urbanistic inclusion. The fact is, even when they have titles following the completion of regularisation programmes, the residents of informal settlements are still perceived – and see themselves – as favela dwellers and, as such, they are discriminated against by the labour market.

Special attention was given in 2003 and 2004 to the need for the registration offices to proceed with the registration of these new titles, and this is a debate that needs to be expanded. The challenge faced by the Ministry of Cities is to promote the acceptance of such new titles also by the private and public financing agencies, especially by Caixa Economica Federal, so that they are not treated as inferior forms of property title.

It is fundamental to conceive collective legal solutions to the legal problems of informal settlements. In the same way that collective technical solutions have been discussed for problems of water or sanitation provision, collective legal instruments need to be used to resolve collective legal problems.

4.4 *The strategies for financial support*

Three lines of credit were prepared in 2003 by the Ministry of Cities with the team of Caixa Economica Federal for launching in 2004, with resources from the Union’s budget:

- grants for municipalities and states that have not yet initiated regularisation programmes and who need to do a survey of existing irregularities;
- grants for the formulation and implementation of municipal and state regularisation programmes; and
- grants for those states and municipalities that already implemented upgrading programmes, but have not been able to conduct collective actions of special urban *usucapiao*, or the special concession of use for housing purposes. This third stream of credit is especially important and original, as it is open not only to the public sector, but also to third sector organisations (NGOs, foundations, associations) that give sociolegal assistance to informal settlement communities. The approval of this line was a major breakthrough in the history of public policies in Brazil.

In the short term, the impact of these lines of credit will be very limited given the insignificant budget that was given to the national regularisation programme.

At the same time, some discussions were promoted in 2003 and 2004 during a Cities Alliance mission and with World Bank representatives, but the government determined, due to its strict fiscal adjustment policy, that no project could be submitted immediately to obtain new international loans for land regularisation programmes. Contracts should be signed with both the Cities Alliance and the World Bank in 2005.

4.5 Strategies for urbanistic/planning support

Given the need to treat regularisation within the context of the municipal master plans required by the 2001 City Statute, and no longer as isolated or sectoral policies, the national regularisation programme promoted in 2003 the first of a series of teleconferences in partnership with the national entities representing architects, engineers and urban planners. A successful roundtable was promoted to present and discuss the national programme, with participation of professionals from all parts of Brazil.

Moreover, several contacts were established with schools of architecture and engineering in order to encourage the programmes of public architecture and engineering that include free technical assistance for regularisation programmes.

The national regularisation programme was also presented and discussed during the national conference “City Citizen” promoted in December 2003 by the Commission of Urban Development of the Chamber of Deputies. The challenge is to give continuity and to expand this line of support strategies.

4.6 Strategies for administrative-institutional support

Regarding the strategies for administrative and institutional support, in 2003 and 2004 some agreements for technical cooperation for the improvement of regularisation programmes were discussed and/or signed with several municipalities (Recife, São Vicente, Santos, Guarujá, Cubatão, Pedra do Fogo, Alhandra, Caoporã, Pitimbu, Conde,

etc) and states (MT, MA, RJ, AC, RN, PI, MS, etc). However, given the lack of financial resources and adequate human resources, in this first stage such agreements are above all a political opportunity for the Ministry of Cities to celebrate partnerships around the subject of urban land regularisation.

The main challenges on this front are twofold: firstly, the regularisation programme needs to promote the definition of explicit criteria for the celebration of new agreements, other than the mere existence of opportunities and demands, especially in order to implement a national policy for governmental action with a territorial basis. Secondly, it is fundamental that the Ministry of Cities materialises the objectives of the existing agreements, and for this appropriate financial and human resources are crucial.

Another action was the capacity building of many actors involved in regularisation programmes throughout the country, which was done through two important meetings in 2003 aimed to discuss critically aspects related to the subject of regularisation, and involving in total over 500 people: the National Seminar on Urban Land Regularisation and the Meeting of the Latin American Research Network on Regularisation, sponsored by the Lincoln Institute of Land Policy.

4.7 Support to municipalities, states and society

A series of other activities has been promoted by the National Programme to Support Sustainable Urban Land Regularisation since 2003:

- a specific space was created within the Ministry of Cities's site (www.cidades.gov.br) to organise and make available all the materials and information resulting from the regularisation programme's actions, including the formation of an incipient database of experiences, legislation and literature on regularisation;
- a wide email network was created to promote systematic exchange of information, and by the end of 2003 thousands of people and organisations were already participating in it;
- articles discussing the national programme and its objectives were published in newspapers in several states (RN, BA, MG, AL);
- members of the programme's team have participated in tens of meetings in several cities, giving talks and participating in debates, roundtables, seminars and conferences, as well as participating in the 2003 National Conference of the Cities, academic meetings, etc.; and
- hundreds of claims brought to the attention of the Ministry of Cities by individuals and private and public organisations from all over the country have been received and addressed.

Perhaps the most important challenge to be faced by the Ministry of Cities, besides keeping and systematically expanding all the abovementioned actions of dissemination of information and capacity building, will be to overcome the burden of the significant bureaucratic "help desk" of individual claims and needs, which increases on a daily basis.

These are essentially spontaneous and casual claims, but they end up taking up a significant time of the regularisation programme's small team. They should concentrate their time in performing actions that explicitly express the general and specific objectives of the national regularisation programme.

5. Regularisation of informal settlements on land owned by the Union

One of the issues more directly related to the action of the federal government concerns the regularisation of consolidated informal settlements on land owned by the Union. This is a question of utmost importance, especially considering that, although the existing data is very precarious given the lack of an inadequate cadastre of the Union's patrimony, there are many indicators suggesting that the number of people living in informal settlements on land belonging to the Union, particularly on coastal land, is very significant.

In that context, the national regularisation programme promoted a series of discussions and actions in 2003 and 2004, the overall context of which needs to be made explicit.

5.1 Rethinking the notion of the Union's patrimony

The process aiming to build a new social political order in Brazil, particularly in cities, where the vast majority of people live, requires that a broad public sphere not reduced to the State's sphere be built. For this purpose, since the promulgation of the 1988 Constitution, several changes have been promoted in the traditional relations between State and society. In particular, the urban management strategies proposed by the 2001 City Statute require the creation of a new equilibrium between the mechanisms of democratic representation and effective popular participation in the decision-making process of urban questions, which is to be done through direct participation in councils, commissions, participatory budgets, etc. Likewise, the process of making new urban laws requires broader social participation through the popular initiative for drafting laws, public audiences and others social control mechanisms. Moreover, the direct access of organised society to judicial power, especially through the public civil action, is fundamental to recognition of diffuse interests and collective rights, as well as for the maintenance of the urban order.

It is in the complex context, in which there are no ready answers and half-baked ideologies and still unevaluated experiences rule, that traditional notions such as "public service", "public administration" and "public interest" are being re-thought. This is an effort, not always successful, to reconcile the sociopolitical processes and the fiscal and administrative realities existing in the country. It should be stressed that, despite the progressive developments in legislation and jurisprudence, generally speaking the principles of traditional Administrative Law have not been able to provide full support to the new forms of sociopolitical relations, such as public-private partnerships, inter-linked operations and urban negotiations, which have taken place in cities between the State (now decentralised and increasingly more democratised) and society (which has

organised itself in various ways beyond traditional political parties). It is fundamental that this redefinition of the public order be promoted to effectively serve the public, for the public, a true *res publica*, and for this purpose the socially-oriented principles of Urban Law should provide the directives. The appropriate management of the public order requires a combination of economic efficiency, administrative rationality, socioenvironmental justice, and legal security. For this to happen, as well as guaranteeing the transparency of the decision-making processes and the systematic accountability of State action, it is necessary to guarantee new forms of social control and popular participation in decision-making.

A crucial aspect in this process refers to the redefinition, all governmental spheres, of the notion of “public patrimony”, and especially of “public land”. This is a polemic and difficult discussion, but it is a profoundly legitimate one and it needs to be confronted carefully, especially as regards the Union’s public land. This is also the condition to guarantee the materialisation of the declared objectives and commitments of the federal government, namely, promotion of urban reform, social inclusion, recognition of the social right to housing and the materialisation of the constitutional principle of the socioenvironmental function of urban property and of the city.

Throughout centuries, public land in Brazil has undergone a process of intensive privatisation, much of which has happened illegally through diverse processes, such as land invasions, illegal sales, bureaucratic abuse, abuses by the registration offices and other harmful practices, which at least in part have determined the current concentrated land structure of the country. Particularly as regards the Union’s land, for a long time problems of demarcation, identification and documentation have been recorded, as well as many cases of irregular appropriation, corruption and clientelism. Moreover, the management and control systems of the Union’s patrimony have long been known as being bureaucratic, inefficient, erratic, and frequently arbitrary.

Thousands of properties belonging to the Union are currently vacant or under-utilised and a considerable part of the Union’s land has been occupied by consolidated informal settlements. Part of the Union’s properties is governed by ancient and anachronistic legal institutes, such as that of *terrenos de marinha* (coastal land), the purpose of which may still be valid, but which certainly need a broad renovation. The modernisation of legal institutes requires, in some cases, revision of the laws in force, but generally speaking the management and control of the Union’s patrimony need urgently new political institutional practices conceived in the light of a new concept of public order. Also in this context, the principles of traditional Administrative Law are not sufficient to offer adequate solutions.

One of the main challenges faced by the federal government is exactly that of re-thinking the notion of the “Union’s patrimony”: if the Union’s patrimony is to be understood as the federation’s patrimony, such a conceptual change requires not only an understanding of the role played by municipalities in the federal state, but above all of the new forms of articulation between the federal government and society. In particular, it should be

stressed that the socioenvironmental function of urban property also applies to public property.

This is a discussion that requires much reflection and efforts should be made to avoid sweeping solutions such as the immediate abolition of certain legal institutes or the unqualified municipalisation of the Union's land. It is fundamental that a broad debate be promoted nationally so that clear criteria can be defined aiming to treat differently the various situations. In this process, special attention needs to be given to ensure that the changes promoted in the political-institutional practices and whatever legal changes do not result in undue and unnecessary privatisation of the Union's remaining patrimony. The fact is that, more often than not, the accomplishment of the federal government's social commitments, such as the recognition of the social right to housing, can, and should, co-exist with the maintenance of public property.

5.2 The actions of the Ministry of Cities since 2003

The legal-political order in force affecting the Union's patrimony is unequivocal only in so far as one dimension of this broader discussion is concerned, namely, the Union's land where there are consolidated informal settlements occupied by low-income populations, and which fulfil the criteria established by the 1988 Federal Constitution, the 2001 City Statute, and the 2002 Provisional Measure no. 2.220. As for the other situations of informal occupation of public land, the criteria for the Union's discretionary action still remains to be defined, so that the constitutional and governmental objectives can be materialised.

5.2.1 Land regularisation of occupations on coastal land and other areas and properties of the Union

In 2003, the Ministry of Cities organised a special workshop to identify the existing obstacles to the regularisation of informal settlements occupied by low-income populations on coastal land. Given the dominant interpretation of a constitutional provision, in these areas a form of leasehold would still apply and for this reason the legal institute of the special concession of right to use for housing purposes could not be applied.

In the workshop, it became clear that the problem of informal occupation of coastal land is enormous, affecting hundreds of thousands of people all over the country. In this context, it is fundamental to create the conditions for the municipalities to act through the promotion of regularisation programmes. In particular, it became clear that the federal government cannot handle titles directly, as it does not legalise anything: it is the municipalities that approve land subdivisions and give titles, and the most that can be done by the federal government is to transfer the Union's land to the municipalities so that they, in turn, can transfer the land to the occupiers. This whole process has often frustrated expectations of people and organisations that would want the federal government to act directly.

Since then, the Ministry of Cities and the Secretariat for the Union's Patrimony (Ministry of Planning) have established partnerships with several municipalities in order to remove the existing obstacles and thus enable the legal regularisation of informal settlements on coastal land. Such partnerships have materialised through the discussions and/or signature of agreements to concede the leasehold of the occupied areas for free to the municipalities (Rio de Janeiro, Recife, municipalities in the Baixada Santista, Fortealeza, etc.) so that these municipalities can proceed with legalisation of the regularised areas and plots. The condition for that is that the informal settlements should be part of municipal regularisation programmes in which upgrading works have already been completed by the municipalities.

The Ministry of Cities and the Social Security Ministry also began a discussion as to how best to give a socioenvironmental function to thousands of under-utilised properties of the National Social Security Institute, both in the context of regularisation programmes and in programmes to support the rehabilitation of degraded inner-cities. The same kind of discussion was also initiated with the Committee responsible for liquidating the patrimony of the Federal Railway Company, another great owner of vacant or under-utilised properties or of properties already occupied by consolidated informal settlements. Specific demands have also emerged as regards properties belonging to the Post Office, the Brazilian Coffee Institute, Banco do Brasil, among other federal organisations.

In all such cases, the great challenge confronting the Ministry of Cities, was and still is, that of promoting the definition and approval of a national policy based on clear criteria, so that similar situations can be addressed in similar manners, thus overcoming the current arbitrary practices and promoting better conditions for the adequate accomplishment of the agreements signed by the Union with the states and municipalities. This is the condition for a socioenvironmental function to be given to the Union's property. The current treatment that has been given to the concrete requests by municipalities has certainly been important to provide elements for up-scaling of this policy, but only a clearly defined and articulated national policy can guarantee the full legal security of these new practices. The approval of a national policy is also fundamental so that the existing tensions can be overcome as regards the question of the Union's patrimony vis-à-vis other federal organs, notably the Ministry of Planning and the Ministry of Finance. These ministries have put serious obstacles to the regularisation of both occupied and under-utilised public properties, as they have historically viewed such properties merely as sources of potential sources of revenue.

In this context, aiming to overcome institutional tensions and different approaches and thus formulate a national policy on the matter of the utilisation of the Union's patrimony, the Civil House of the Presidency, created in 2003 a broad interministerial Working Group. This group has since come to a political decision by affirming the importance of recognising the social right to housing and the socioenvironmental function of the Union's patrimony. However, this interministerial decision has not yet been formally formulated into an act by the federal government, either by decree or a bill of law, and the challenge remains. It is also necessary to define clearer criteria for the utilisation of the Union's patrimony.

In any event, significant developments have already occurred, especially when there is a concertation of interests among ministries and other stakeholders, as for example, the situation of the properties belonging to the Federal Railway Company, for which a national policy has been gradually developed.

5.2.2 The polemic of the Federal District

As a result of the many controversies around the political activities of the then Secretary of the Union's Patrimony, who was promising to legalise the informal settlements on the Union's land in the Federal District, albeit illegally - another Working Group was created in 2003 by the Presidency's Civil House. Coordinated by the Ministry of Cities, this Working Group has to formulate a specific proposal for the regularisation of informal settlements in the Federal District. The problem of illegal occupation of the Union's land in the Federal District is longstanding and complex, and it does not only involve low-income groups.

The Working Group includes participation by the Secretariat for the Union's Patrimony, the Brazilian Institute for the Environment, representatives from the Ministry of Planning and from the Union's Advocate and the Civil House. Three themes have dominated the discussions in the working group: the institutional tensions regarding the legal-institutional competence to determine how best to utilise the Union's patrimony; how to promote the necessary integration among all the federal laws in force (Union's patrimony, land subdivision, City Statute, environmental laws, expropriation, etc.) in order to legalise the areas and the individual plots of land; and legal-political definitions as to how the legalised plots should be transferred on to the occupiers and other interested parties, especially in the majority of existing cases, in which the areas have not been occupied by low-income groups. There is a major controversy to be addressed regarding the legal and/or political convenience of dispensing with competitive public tender processes in order to directly sell the plots to the occupiers. The Working Group's final report proposed that an agreement should be concluded between the federal government and the government of the Federal District, and that, at the same time, discussions should be promoted with the Federal District's Prosecutors for the Government. Such discussions commenced in 2003, but no final agreement has been achieved due to both party politics and resistance on the part of the Prosecutors for the Government to accept the direct sale of the occupied plots without a public auction.

The challenge faced by the Ministry of Cities is to create and sustain an integrated process that leads towards changing the longstanding institutional practices regarding the Union's patrimony, in general and particularly in the context of the Federal District, based on general criteria valid for all the national territory, transparent and subject to systematic accountability mechanisms.

6. Conclusion

The formulation by the Ministry of Cities of a national policy and the creation of the National Programme to Support Sustainable Urban Land Regularisation to express this policy was without doubt a great pioneering advancement in political action by the federal government, which deserves respect and encouragement. An important social and intergovernmental mobilisation was stimulated through the national policy in 2003, aiming to legitimise the conceptual design of the regularisation programme and its strategies and to promote the construction of the sociopolitical and legal-institutional basis for its materialisation.

However, the reality is that the national policy still is mere a declaration of intentions and as a result the National Programme of Support for Sustainable Urban Land Regularisation is still an isolated and inefficient action, and above all without a significant impact on the Brazilian reality.

The existing obstacles that need to be confronted by the Ministries of Cities and by the federal governments as a whole are many, enormous and of varied order, that is, conceptual, political, institutional and financial. These obstacles have to be overcome in order for the national policy to be materialised, and in order for the objectives and measures of the regularisation programme to be attained.

Perhaps the main challenge is to overcome the various orders of existing fragmentation, by promoting a profound integration: within the regularisation programme itself; within the National Secretariat for Urban Programmes, within the Ministry of Cities; and among ministries. For this purpose, it is necessary that the question of land regularisation be recognised urgently as central to the agenda of action of the federal government, in order to realise the declared constitutional principles and governmental commitments. It needs to be given recognition not only in an institutional articulation, but also considered in the distribution of budgetary resources.

The search for this recognition involves broad internal discussion in the Ministry of Cities and the improvement of interministerial relations, together with overcoming the division existing in 2003 and 2004 between the economic and social policies. It also depends on further pressure from the municipalities and states towards better terms of intergovernmental relations, with a view to correcting the historic distortions and to modernise the federal system; on the articulation of the legislative power at all levels, with a view to maturing the institutions and mechanisms of representative democracy; and above all on the revival of social mobilisation, in the sense of deepening the participative based of the democratic order. In this context, the fundamental arenas for setting in motion and advancing the discussion about the national policy and national regularisation programme are the Committee for Federative Articulation set up by the Civil House of the Presidency of the Republic; the Commission for Urban Development of the Chamber of Deputies; and above all the National Council of the Cities, which was established in April 2004.

The promotion of sustainable land regularisation in consolidated urban areas is certainly one of the main challenges placed not only on the federal government, other governmental levels and entities of political representation, but above all on the Brazilian society, for the promotion of urban reform and social inclusion, so that Brazilian cities can become more just and sustainable.

7 Notes

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1 For a critical overview of Brazil's current urban realities, see Fernandes & Valenca (2001).

2 For an assessment of the overall legal-institutional context and the evolution of public policies and regularisation programmes in Brazil, see Fernandes (1993; 1995; 2000a; 2000b; 2002a; 2002b; 2003) and Fernandes & Rolnik (1998).

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