

III LATIN AMERICAN AND CARIBBEAN FORUM ON HOUSING AND HABITAT

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Housing Laboratories (LAVs)

Conceptual Note

Housing Lab. Developing Integrated National Policies and Frameworks for Inclusive Land, Housing and Habitat Governance

Wednesday, June 13, 11 am-3:30 pm

Embajador I Room

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Objective

To discuss national, comprehensive urban management tools, contributing to the implementation of inclusive actions which prioritize effective land governance and the critical role of housing and the habitat in nation-wide interventions. The focus shall be on regional examples, such as the cases of Mexico, El Salvador, Argentina and, more recently, Paraguay, to better understand the participatory processes developed and the objectives outlined for the implementation of national policies and frameworks in line with global development agendas, the Sustainable Development Goals (SDGs) and the New Urban Agenda (NUA).

Key words

National legal frameworks, national housing policies, national territory organization policies.

Description

Issues

For more than forty years, the Habitat Conferences – Habitat I (1976), II (1996) and III (2016) – have recognized, among the most pressing issues of our cities, the persistence of slums, and the lack of access to land and housing. At the same time, there have been advances in recognizing the need to create participatory tools for inclusive and sustainable urban planning and development, to fulfill the right to housing and the right to the city. In this framework, since the mid 1990s, some countries in the region have advanced in the construction of a regulatory structure supported by laws, policies, programs and governance models to guide urban development and actions to provide housing for low-income population segments and/or those who live in slum areas. National Urban Policies claim special relevance in the framework of debates of the New Urban Agenda (NUA). The NUA explicitly promotes the adoption of housing policies that include and foster the integration of holistic policy frameworks at all levels. National urban policies are thus understood as a means to achieve and secure the sustainable development agenda post-2030 (See Table 1).

Table 1

Contents and features of the legal frameworks contemplated by the NUA
they relate directly to the recognition of the right to the city
they must contribute to the recognition of the urban poor and vulnerable social groups in the territory, as well as adopt measures to reduce social inequalities and promote equality
they shall regulate, provide the tools for and guide urban planning at the local scale, according to the provisions set forth by NUA
they shall consider the protection and preservation of environmental and cultural resources; • they may include rules for building and construction
they guide public investments in the territory
they include participatory processes and democratic management
they are directly related to metropolitan governance
they shall consider the topics of municipal finances and the management of land valuation
they may occur at the national, subnational and local levels

Source: Todtmann Montandon (2017)

One of the first countries to develop national legal frameworks was Colombia. The kick-off of the process was National Law 388, enacted in 1997. The Colombian land and territory organization legislation provided a constitutional and legal framework that laid the foundation “for intervention on the land market, and [it armed] municipal governments with tools to access new funding sources for urbanization by mobilizing added-value captures, and to support social housing, environmental or mobility policies, among others” (Maldonado, 2008:43). The enactment of this law followed a case-law production process, promoted mainly by the Constitutional Court, that complemented the 1997 initiative.

In this direction, we add Brazil's experience with the approval of the Federal Urban Policy Law – the City Statute – in 2001, which synthesizes a long-range process initiated with the development of the 1988 Constitution. The City Statute recognizes the right to sustainable cities as a guideline for urban policy in Brazil. In the year 2003, in order to give effect to this diffuse right, the Ministry of Cities was created (Bruno, 2016). To fulfill this mission, the Ministry focused on four main areas: mobility and transportation, housing, land regularization and basic sanitation; and collaborated in other inter-ministerial areas, such as disaster prevention and accessibility (Ibid). The Ministry guided its interventions around five pillars of action: “1) the publication of national regulatory frameworks, 2) fostering planning at local level, 3) training of operating agents, 4) social participation and control, and 5) the transfer of federal funds for investments to be made at the local level” (Bruno, 2016: 54).

As regards the construction of national regulatory frameworks, the main objectives were to create guiding principles and legal instruments for each of the policies; to organize competencies; to define principles; and to structure investment programs with funds from the Federal Government. As for planning at local level, the aim was to “provide instruments for the agents, especially municipalities, to recognize, systematize and prioritize their demands”. Capacity-building and training actions sought to reduce “technical and institutional gaps”. In addition, social participation and control were intended in all actions, and the Council of the Cities (ConCidades) was created. The fifth and final pillar was the transfer of federal resources to “directly support relevant players in the implementation of services and projects” (Bruno, 2016: 54-66). It is worth noting that, in the Ministry of Cities, the National Housing Secretariat (SNH) was in charge of the sector's legal and institutional restructuring, and of reviewing housing initiatives and the increase of investments in this sector (SNH, 2010). In this context, in 2004, the National Housing Policy was approved and, in 2005, the National Social Housing System was created, setting forth the coordination of all three spheres of government, through municipal, state and federal housing plans, and the creation of a housing fund. Based on these foundations,

there came very ambitious programs: the Growth Acceleration Program (*Programa de Aceleração do Crecimento* – PAC) (2007) - through which large-scale neighborhood upgrading projects were implemented - and the MCMV Program (*Minha Casa Minha Vida*) (2009).

Table 2

National urban development and territory organization laws in Latin America

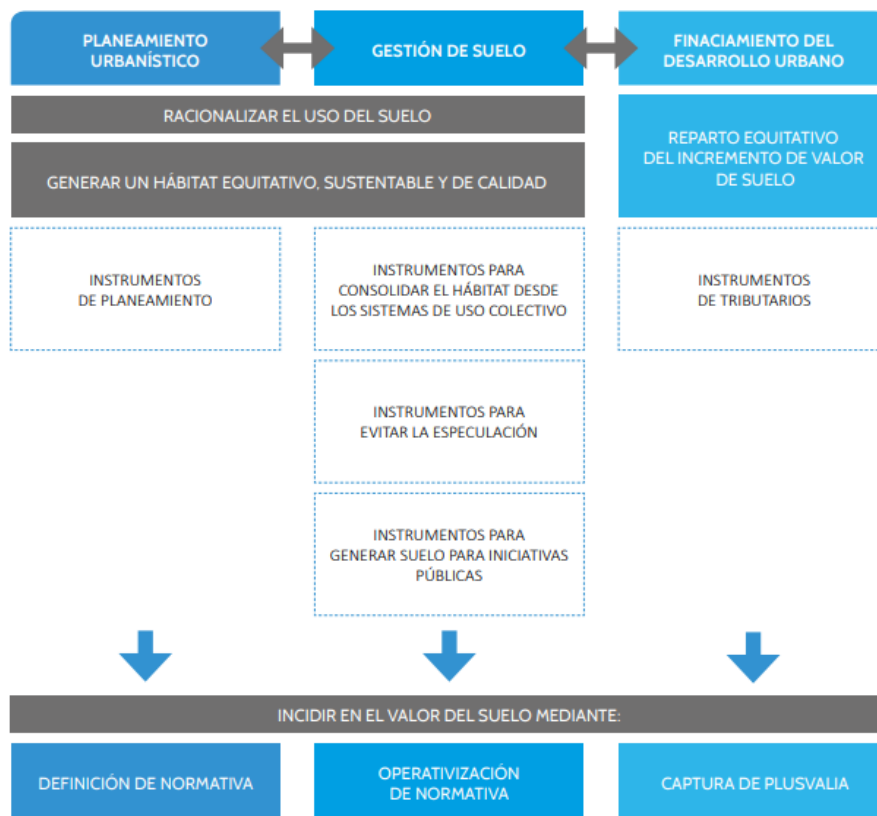
Country	Title	Year
COLOMBIA	Territory Development	1997
BRAZIL	City Statute	2001
HONDURAS	Territory Organization	2003
PANAMA	Territory organization for urban development	2006
URUGUAY	Territory organization and sustainable development	2008
PERU	Territory conditioning and urban development	2011
EL SALVADOR	Territory organization and development	2011
ECUADOR	Organic law for territory organization and Land Use and Management	2016
MEXICO	Human settlements, territory organization and urban development	2016

Source: Developed based on Montandon (2017)

Other more recent experiences followed Colombia and Brazil (see Table 2). In Mexico, within the framework of the review process of housing policies and the legal introduction of the right to the city, in 2013, the Secretariat of Agricultural, Territory and Urban Development (SEDATU) was created, representing a “turning point in territory management policy in Mexico, raising aspects

related to territory management to the level of a State Secretariat, and integrating both rural and urban areas” (IMCO, 2014). In this context, more recently, the law on human settlements, territory organization and urban development was enacted (2016). In Chile, new urban policies were introduced, materializing a paradigm shift: from housing production to the construction of neighborhoods (2014). In Ecuador (2016), the Organic Law for Territory Organization and Land Use and Management - LOOTUS - was approved. This law "intends to articulate the competencies of territory organization and land use and management at the different levels of government, to link them and promote equitable and balanced development of the territory; to enable the right to the city, to safe and healthy habitat, to proper, decent housing; fulfilling the social and environmental function of property, in order to drive an inclusive, integrating urban development, for Good Living” (Hernández, 2017:13) (see Chart 1).

Chart 1: Components of the 2016 Organic Law for Territory Organization, Land Use and Management, of Ecuador



Urban Planning	Land Management	Urban Development Funding
To Rationalize Land Use		Equitable Distribution of the Increase in Land Value
To generate an equitable, sustainable, high quality habitat		
Planning Instruments	Instruments to consolidate the habitat based on systems of collective use	Tax Instruments
	Instruments to prevent speculation	
	Instruments to generate land for public initiatives	
Impacting on land value based on:		
Definition of regulation	Operationalization of the regulation	Capture of value-added

Source: Scholz and Morales (2017)

In addition to national territory organization frameworks, there are the national housing policies: the National Housing and Habitat Policy (PNVH) in El Salvador (2015) and, more recently, the National Housing and Habitat Policy of Paraguay (PNVH), which is currently under development.

These important regulatory advances and institutions entail a series of challenges.

1. **The relationship between government levels and the distribution of competencies to adopt decisions on sectoral policies.** This is a particularly relevant aspect in the implementation of national frameworks whenever the relationship between government levels "depends on factors such as the type of State (unitary, federal, supranational), the number of sub-national units in the State, the degree of centralism or presidentialism, the hierarchy of its officials, the interaction among its officials, the presence of clientelism practices or not, among others" (Zapata Cortés, 2013). On this, and regarding the implementation of national frameworks, the conflict between different government levels is related to competition for resources and the lack of definition of a stable resource

distribution system - an issue that becomes increasingly more complex when the private sector also intervenes in this competition. In addition, the assignment of roles and competencies to different levels of government is a major component of the conflict, as municipalities are usually the ones with competency over territory organization, but not necessarily the ones which participate in the definition of national policies and/or which define the allocation of resources for this sector.

2. **The existence of regulatory frameworks and/or public initiatives that clash.** National frameworks should form the basis and the framework to guide sectoral public action at the sub-national level (regional, state and/or local). However, the possibility that such guidelines effectively fulfill their role depends on multiple factors: political disputes between political parties with different political ideologies may cause a clash between initiatives; regulatory discrepancies coming from different jurisdiction levels - for example, rules that locally acknowledge rights that are not nationally recognized, or vice-versa, etc.
3. **The construction of public and private institutional capacity and adaptation to a strong change in the rules of the game.** Sub-national governments have not necessarily developed the capacities to implement the guidelines set forth by the central government. The development of institutional capacities to implement national plans becomes a central element whenever these capacities need to be in place to effectively articulate resources from the central government for the development of territory organization plans at the local level.
4. **Linkage between land policies and social housing policies.** This point is especially critical whenever housing projects designed and under large-scale development become a central component of national frameworks. Just as an example, in Brazil, "the volume of investment in the two core programs of the housing policy is unprecedented in the country's history. While the MCMV program leveraged investments of around R\$ 300 billion considering both funding and subsidy (the average subsidy is 30%), the PAC Upgrading of Precarious Settlements promoted investments of approximately R\$ 36 billion for historically segregated sectors, excluded from the urban development model in place, solely dedicated to the city's formal sectors. Thus, one may say that the principles of the City Statute governed a significant portion of housing investments in Brazil, and effectively enabled the housing policy with its focus on the upgrading and regularization of precarious settlements" (Rossbach y Magalhães, 2016: 92).

5. **Limitations of housing production and of the funding model – which combined savings, subsidies and credit** (Rodríguez y Sugranyes, 2011). The most important limitations are:
- a. Private players have been the main agents. On one side, the sector was connected to the construction industry, that is, construction companies and those related to construction input production (raw materials and other low-processing products such as cement, iron, sand, etc.). On the other side were the owners of urban or developable land, whose buildings, with the programs' launch, were in high demand, leading to an eminently speculative rationale, even in locations far from the city center.
 - b. Financing has been almost exclusively dedicated to fund the supply and direct production by construction companies, allocating only a minimal portion to social movements, cooperatives or social organizations in general. In most cases, these housing construction initiatives have restricted the development of alternative solutions that exist to secure access to land and housing; and have stimulated – either directly or indirectly - the development of a speculative land and housing market.
 - c. In addition, it was argued that the public power failed to handle projects whose execution fell on the hands of developers. Therefore, projects were not defined as part of a state or municipal urban development strategy, nor were the local structures strengthened for management or land use control. (Higuchi Hirao, Guerreiro, Fiori Arantes and Barbosa de Oliveira, 2013).
 - d. Moreover, actions implemented did not include a repertoire of interventions on vacant property - housing units which, in their majority, have access to full urban infrastructure.

Key questions

1. Do countries need to have a national urban policy in place? What are the benefits? What are the difficulties?
2. How to combine fragmented housing programs under a national framework in the context of the New Urban Agenda?
3. What types of national frameworks are needed to drive sustainable housing policies?
4. What are the national frameworks that enable the production and upgrading of social housing in good locations in the city, recovering its social function?

5. How to achieve political consensus to have a sustainable implementation of national frameworks in general and, in particular, of the housing policies associated with such frameworks?
6. How to achieve better linkage between the public and private sectors to obtain an inclusive land, housing and habitat governance?
7. How to strengthen the capabilities to implement national plans at the sub-national level?
8. What are the lessons learned from countries like Colombia and Brazil?

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