

Understanding and implementing the *right to the city*. Building just, democratic and sustainable cities

The key challenge for developing policies, planning and urban development is to promote social justice and inclusion in the cities.

The lessons in this training manual include experiences and initiatives that are being analyzed in an international study organized by Habitat International Coalition, the Forum Nacional de Reforma Urbana (Brazil) and Instituto Polis (Brazil), with the goal of bringing the right to the city into practice.

What is the *right to the city*?

I. Concept

The right to the city was first written about by Henry Lefebvre¹ during the 1960s. Since then networks, civil society organizations, multilateral organizations and United Nations agencies have returned to the concept to generate different initiatives together, with a highlight being the creation and dissemination of the **World Charter for the Right to the City**. This document defines *the right to the city* as the equitable use of cities according to the principles of **sustainability, democracy, equity and social justice**. It is a **collective right of the inhabitants of the cities**, especially for vulnerable and disadvantaged groups, who gain legitimacy of action and organization based on their use and customs with the objective of achieving, in practice, the right to free self-determination and an adequate level of life.

The right to the city is interdependent on all human rights that are internationally recognized and conceived in an integral manner and include all of the civil, political, economic, social, cultural and environmental rights that are regulated in the international human right treaties. This assumes the guarantee of the right to work in equitable and satisfactory conditions, to create and affiliate with labor unions; social security; public health; potable water; electricity; public transportation and other social services; food; adequate clothing and housing; quality public education and culture; information; political participation; living in peace with access to justice; and the right to organize, meet and protest. It also includes respect for minorities and ethnic, racial, sexual and cultural pluralism with respect for migrants and gender equity.

Cities and their surrounding areas are territories to exercise and fulfill collective rights as a form of guaranteeing the distribution and use of the resources, wealth, services goods and opportunities that exist in

¹ LEFEBVRE, HENRY. *Le Droit à la ville*. Paris: Anthropos (2^e ed.) Paris: Ed. du Seuil, Collection *Points*. 1968.

the cities in a universal, just, democratic and sustainable manner. For this reason *the right to the city* also includes the right to development, to a clean environment, to enjoy the preservation of natural resources and to participate in urban planning and management and in the city's historical and cultural legacy.

II. Principles and tools

There are three principles that guide the the concept of *the right to the city* that are included in the **World Charter for the Right to the City**:

- 1. Plain(clear, active) exercise of citizenship:** realization of all of the human rights and fundamental freedoms assuring the collective dignity and well being of all people, in conditions of equality, equity and justice, as well as full respect for the social production of habitat.
- 2. Democratic Management:** The city is a collective construction with multiple actors and processes. It is necessary to guarantee the right to participation through direct and representative forms in the creation, definition and oversight of public policy implementation in the cities, prioritizing the strengthening, transparency, efficiency and autonomy of local public administrations and peoples' organizations. .
- 3. The social function of urban property and the city:** Common interests for socially just and environmentally balanced use of urban space must be prioritized over the individual right to property. All citizens have the right to participate in urban property within democratic parameters of social justice and environmentally sustainable conditions. Socially just and equitable use should be promoted while forming and implementing urban policies.

To protect the right to the city and make it effective principles, rules and instruments must be included to recognize and institutionalize the rights for all people who live in the cities. First, government, especially local government, must be designated with the power to apply instruments that achieve urban property's social function, and to promote public policies destined towards this goal. Secondly, public policies must be promoted to make this right effective, along with the other connected and interrelated rights needed to guarantee *the right to the city*.

The right to the city describes the defense of building an urban ethic on social justice and citizenship. It affirms urban rights and requires precepts, instruments and procedures to enable the transformations that are needed so that the city can exercise its social function. .

The city should not oppress and exclude. *The right to the city* needs to guide urban policies with solidarity and citizenship towards the construction of an inclusive, shared, dignified, equitable, just, and peaceful city.

III. Legal precedents to the World Charter for the Right to the City

- Article 34 and 45f of the OAS Charter ;
- General observation n° 4, 7 and 15 of the UN Committee on Economic, Social and Cultural Rights
- European Charter for the Safeguard of Human Rights in the City (Saint Denis, 2000);
- Statute of the City (Brazil, 2001);
- Charte Montréalaise des Droits et Responsabilités (Montreal, 2004);
- Some articles of the Autonomous City of Buenos Aires' Constitution (Argentina, 1996);
- Art. 65 of the Constitution of Portugal (1976);
- Art. 47 of the Constitution of Spain (1978);
- Art. 182 and 183 of the Constitution of Brazil (1988);
- Action plan of the XVII Ibero-American Summit of the heads of state and governments, Declaration XVII, point 29 (2007);
- Art. 31 and 376 of the Constitution of Ecuador (2008).

How to implement the *right to the city*

Public policy instruments to advance *the right to the city*

The right to the city should be incorporated in the different activities and policies that the government develops, directly and indirectly.

The following aspects should be especially worked on to guarantee that the *right to the city* becomes a reality:

Legal norms: The principles of *the right to the city* should be used to build a legal and institutional framework that promotes social and territorial inclusion in the city. This framework should prioritize the social function of urban land over real estate speculation.

Instances of institutional participation: the right to direct, equitable and deliberative participation in the political process as well as in government norms and programs is essential to guarantee the city's social function. In order for this to happen, mechanisms of social control, moments of direct and deliberative citizen participation and democratic management tools should be institutionalized. This can be done through creating councils and committees and holding meetings and public hearings, among other things.

Planning tools: It is necessary to legalize and regulate the spaces that are established for protecting housing and the commons. Likewise, budget for implementing the urban planning policies and programs needed to consolidate the *right to the city* has to be guaranteed.

It is fundamentally important to raise consciousness, persuading public officials and the population on the need to incorporate and guarantee the *right to the city* within public policies.

There is no special formula for implementing the right to the city. Each social, cultural and political context should be looked at to find specific mechanisms that will consolidate *the right to the city*.

The public powers have to coordinate the use of specific tools for territorial intervention in order to achieve the goals of *the right to the city* and urban reform, and this can be a struggle.

Some of the tools that are used in Latin America

Participation	<p>Participatory budgeting: is a democratic participation tool that connects the people to the authorities, enabling citizens to influence and make decisions related to public budgets, with the goal of establishing investment priorities in their region. Originally starting in Brazil, it is now used throughout Latin America. One notable experience with participatory budgeting is the case of Porto Alegre, in Brazil.</p>
	<p>Neighborhood impact evaluation: is implemented mainly to control environmental impacts of large projects through participation of the population in the affected area. However, this evaluation tool could be used for urban projects to measure their effects on communities, not only on environmental terms, but from the standpoint of social and economic effects, issues of mobility and displacement of low income populations, etc.</p>

PLANNING	<p>Master Plan, Territorial Organization Plan, Participatory Plan, Urban Mobility Plans, Urban Development Plans, etc.</p> <p>Many cities have instruments for planning urban territory, especially in relation to land use. This planning process has to be participatory in order to guarantee inclusion not only in the current, existing city but in the planned city.</p> <p>Most importantly, planning should guarantee that the projections for land use and construction projects prioritize low income populations.</p>
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TAX	<p>Property Tax: Property taxes exist nearly everywhere. In order that they become an adequate tool to achieve the right to the city, they should sanction uses that are not socially just such as buildings and lots that are underutilized or vacant through charging a higher, tax that progressively increases with time, based on up to date lists of land values and use.</p>
	<p>Contributions from construction projects, improvements and inversions: Public works tend to increase land values, transferring public income to the owners in the form of real estate valuation. Since this income is public, the government should charge a percentage of the increase in value of private property, applying it to other public works. In this manner, the contributions of those who have benefited from increased wealth improves the means of financing public works.</p>
	<p>Participation in surplus value : is a tributary requirement for property owners who benefit from increased land values due to urban interventions that changed land use or increased its approval..</p>

Compulsory	<p>Order for construction, urbanization and priority land use: Enables the government to establish a time limit for landlords to adhere to the social function of property. One tool is fundamental for this instrument: proportional tax yield for the municipal government based on inventory of empty land and buildings in the city.</p>
	<p>Expropriation of land paid for in public debt bonds: Along with the previous instrument the municipal government can acquire the property, independently of the wishes of the owner, if the deadline passes for the property to meet social use requirements. This can be done with the tool of expropriation, with a settlement paid in public debt bonds in the value corresponding to the appraisal of the empty land or building. .</p>

LAND PROVISION AND RECOGNITION OF SOCIAL HOUSING	<p>ZEIS (Special social interest zones) and Cultural Zones: These instruments are applied mainly in Brazil, where the government can designate certain land areas for social housing for low income populations through defining boundaries for these areas in the city plan. They can be applied in free zones (empty lots and land in areas of expansion) or in areas that are already occupied. This instrument is used to guarantee land reserves for social housing and to guarantee that the low income population can stay in informal areas that have already been inhabited. These instruments can also be used to guarantee that determined ethnic groups such as maroon communities (former villages founded by escaped slaves) and indigenous groups can remain in specific areas of the city.</p>
	<p>Concession of special use for social housing purposes: When the occupied areas are on public land it is very difficult to guarantee legal tenure to the inhabitants through granting of deeds. However, the State can implement processes in which it freely concedes this land to the occupants to guarantee their security, for the purpose of social housing.</p>
	<p>Land regularization, designates the different processes that are implemented in city zones that rise up outside of the formal planning process. It includes the legalization of land titles in favor of the occupants to guarantee legal security of tenancy and urban recognition of existing buildings as well as their incorporation in official plans. In addition, it can include processes of urban improvement and economic and physical inclusion in the city, road building, provision of public services, etc.</p>

Advances towards the implementation of the right to the city

Preliminary analysis of some Latin American Experiences

Statute of the City, Brazil – Law n. 10.257/01

Planning	In first place, the law uses spatial criteria to determine the reach of action of each type of planning. Section 1 refers to the competency of the Union and the States to create “national, regional and state plans for territorial organization and economic and social development.” The second section deals with the State’s obligation to establish “planning for metropolitan regions, urban conglomerations and micro regions.”
TAX AND FINANCE ORGANIZATIONS	a. tax on buildings and urban territory (IPTU); b. contribution of the majority; c. incentives and fiscal and financial benefits
LEGAL AND POLITICAL INSTRUMENTS	a) expropriation; b) administrative servitude; c) administrative limitations; d) preservation of buildings and urban real estate; e) creation of conservation units; f) creation of special social interest zones; g) concession of usage rights; h) concession of special use for housing purposes; i) mandatory parceling, building and usage; j) special usucapion of urban property (<i>i.e.</i> squatter’s rights); l) surface rights; m) right of precedence; n) onerous concession of the right to build and modification of use; o) transference of the right to build; p) urban consortium operations; q) land tenure regularizations; r) free technical and legal assistance for disadvantaged communities and social groups; s) popular referendum; t) urban demarcation for regularization of land tenure; u) legitimization of ownership .
EIS	The Environmental Impact Study orients the municipal governments’ decision over license concession for projects that will have a significant effect on the urban space. The EIS is a tool for democratic management, since it is formulated for all of society to be heard and participate in decisions. Furthermore, all documents and environmental impact studies have to be made available to any interested party.
DEMOCRATIC MANAGEMENT	I – democratic, council systems for urban policy at the municipal, state and national levels; II – debates, hearings and public consultation; III – conferences on subjects of urban interest at national, state and municipal levels;

	IV – peoples' initiatives for laws, plans, programs and urban development projects.
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Colombia – Constitution of 1991 and Law 388, 1997

Ecological and Social Function → “Guarantees that private property and other rights acquired through civil law cannot be reverted through posterior laws. When a law is applied **for reasons of public use or social interest that results in a conflict of individual rights that needs to be reconciled, private interests should cede to public and social interests. Property is a social function that implies obligations.** Therefore, it has an inherent **ecological function.** Colombian Constitution of 1991, art.58..

Principal of territorial planning and regulation → Law 388 of 1997 describes three planning systems: i. **The plans for territorial ordinance**, for towns with over 100,000 inhabitants; ii. **Basic territorial Use Plans**, for towns with between 30,000 and 100,000 inhabitants; and iii. **Territorial usage schemes**, for towns with less than 30.000 inhabitants.

Democratic participation→ *“citizens’ participation can develop through **the right to petition**, the celebration of **public hearings, exercising the action of carrying out, creation, discussion and execution of the territorial plans and in the the processes of granting, modification, suspension and revocation of urban licenses, according to the conditions established in that law and its regulations”** Law 388, of 1997, art. 4°.*

São Paulo, Brasil

Municipal Law N. 15.234, of 2010

The Statute of the City stipulates a tool for mandatory subdivision, building and usage. The objective of this instrument is give municipal governments the power to induce usage of underused or vacant lots that are not built on that are important for city development. The statute determines that the cities create specific legislation for the areas designated for applying this tool in their master plans.

In São Paulo, the law that regulates this tool is 15.234, of 2010. The law regulates the use of vacant lots in social interest zones ((ZEIS 2 and ZEIS 3) and on the perimeter of the urban center.

The law stipulates that in case of non-compliance with the conditions and deadlines established for subdivision, building and mandatory use, the predial urban territory tax (IPTU) will be applied according to an increasing rate increasing over a period of 5 years to 15 with no exceptions or amnesty allowed.

When the 5 year period of progressive IPTU tax has passed, without compliance with the obligations stipulated for the compulsory subdivision, building and usage standards the municipality can expropriate the property, paying a settlement in public debt bonds.

Exclusive Bus Corridors

The São Paulo Mayor's Office presented a bill for the creation of exclusive bus lanes and the widening of 34 avenues and 25 streets with the goal of implementing 228km of additional bus corridors to the city's urban mobility plan.

The City plans to interconnect bicycle, road, rail and subway corridors. The structuring of the bus corridors is a prerequisite for the organizational changes in the city that are predicted in the next Master Plan, which will also represent an economic intervention in the public space.

The bill was approved in the first vote of the City Council on. A second vote will be needed to turn it into a law, but the date hasn't been set yet.

Participatory Councils

The participatory council, created by Municipal Decree nº 54.156 of 2013, has an eminently public character. It is an autonomous civil society organization recognized by the municipal public power as an instance of people's representation in each region of the city. It's role is to exercise the right to social control by monitoring of public spending and actions as well as representing the needs of diverse areas of the municipality.

The councils have between 19 and 51 members per neighborhood, in accordance with the population size, with the average having 10,000 inhabitants, in all 32 districts of São Paulo. A total of 1,113 councilors were elected. The mandates last for 2 years.

There is also a council for immigrants. 20 councilors were elected to represent the foreigners who live in 19 districts in São Paulo.

Urbanization Plans and Zeis Management Councils

In the Strategic Master Plan of 2002, the urban land use policies were consolidated with the demarcation of ZEIS and the implementation of regularization programs such as the current programs²: favela urbanization; regularization of public areas; and urbanization and subdivision in private areas.

As soon as ZEIS areas are designated the procedure is to establish an urbanization plan for the area, with the goal of promoting adequate development in the territory. The Urbanization Plan establishes specific conditions and parameters for the physical recuperation and regularization of the land that is occupied in an irregular manner, as well as solutions for disaster risk areas occupied by housing.

A further objective of the Urbanization Plan is to promote participation of the residents in the involved areas in all of the processes from planning to execution. Participation primarily takes place in the management councils, which includes members of government, residents and owners of property in the ZEIS areas.

In this manner, the management councils work for the democratic management of the urban space, especially for the low-income population.

Bogotá – Land use plan (2012-2016)

² <http://www.prefeitura.sp.gov.br/cidade/secretarias/habitacao/programas/index.php?p=141>

<p>Axis</p>	<p>1. A city that reduces segregation and discrimination: the human being in the center of the development process;</p> <p>2. A territory that confronts climate change and orders itself around the issue of water;</p> <p>3. Bogotá defending and strengthening the public interest;</p>
<p>MEC HANI SMSS</p>	<p>→ Qualification and localization of land plots and mandatory percentages for prioritizing public interest housing construction – any new land should earmark at least 20% for social housing. The municipalities should increase this minimum amount in their territorial plans or set it in urban renewal strategies. According to art. 66 of the Plan: “priority interest housing will be located throughout the city and the following mandatory percentages are established for it: 1. During the first year from when the regulations enter in effect, the district administration is required to dedicate 20% of the usable land in any project to building priority use housing.. 2. Starting from the second year the mandate is for 30% of the usable land. Inclusive City.</p> <p>→ Social, economic and environmental plan every 4 years, embedded in the government’s plan. In this way, the social, economic and environmental planning is linked to municipal investment programming.</p>
<p>COMP ACT CITY MOD DEL</p>	<p>“Stimulate re-densification processes (understood as the increase in population living in a specific area) enabling greater heights and square meters of construction in the city’s central areas and in zones with a higher presence of economic activities that rely on good conditions of accessibility and promote better use of these areas, for localizing a larger quantity of the population there.”</p> <p>“Search for urban equilibrium, namely, where there is more population there should be more parks and recreational equipment. . Thus, the areas that can be re-densified should undergo a process of re-urbanization (public service provision, parks, equipment and roads) in accordance with the needs of the new population. And for this, all of the urban projects should comply with the urban regulations and public interest housing prioritization requirements (housing costing a maximum of 70 times the minimum wage)”;</p> <p>“Promote the construction of public interest housing (Viviendas de Interés Prioritario or VIP in Spanish) in adequate locations with the objective of facilitating access of low income citizens to centers of employment and urban services”³.</p>

Conversation questions

- I. What are the existing debates around the theme of *the right to the city* and the international, national and local letters and documents related to the theme?
- II. What are the possibilities and limitations for action developed by non-governmental organizations, social movements, networks and civil society organizations, identifying the processes that they encounter in development of the theories that have been generated in relation to *the right to the city*?
- III. Based on the local experiences of participants, what is the relationship between finance and planning in the urban territory? How can these elements become more cohesive?
- IV. What are the tools and instruments that can be used to guarantee direct citizen participation at the local and national levels?; What are the challenges to successful peoples' participation?
- V. What are the low-income housing policies that have been used in your country or city? What has worked? What were and are the challenges?
- VI. What mechanisms are essential for regularization of occupied areas, especially for low income populations, aimed to guarantee the right to adequate housing and, consequently, *the right to the city*?

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