

FAVELA'S REMOVAL¹

REMOÇÃO DE FAVELAS

Ricardo Cesar Pereira Lira²**Abstract**

The text to be followed text was given in a lecture at the City Law Forum of School of Magistracy of the State of Rio de Janeiro, which is why there are no bibliographical references. The author initially talks about the historical beacons that guided Brazilian urbanization from the second half of the twentieth century and were reflected in the then capital of the Republic, impacting until the current days. Be noteworthy structural, socioeconomic problems, accentuated by the rapid industrialization and the lack of planning, which led to the increasing slackening of the low-income population, particularly, in the city of Rio de Janeiro. The author argues that, the self-construction synthesizing the favela, is configured in the urban scenario as a solution to the lack of respect for the right to adequate housing, but unfolds in serious consequences for the harmony of the urban social fabric. Among other examples, the author illustrates the perverse process of spatial segregation, leading to the removal and "gentrification" pertinent to estate speculative dynamics. All invoke numerous social wounds that correspond to him. He defends, as possible solutions to manage the urban housing problem, the conjugation of two paths: one of political order, being configured in a kind of social pact; another, to use the relevant legal instruments. Thus, it addresses the national legal system, such as the Statute of Cities, a diploma that dialogues with the constitutional premises that give it inspiration, having a range of institutes that can mitigate this problem, but which still lack the pertinent effectiveness. He also ventures into land regularization, where gains prominence the My House My Life program, object of Law nº. 11.977, dated June 7, 2009, highlighted for low-income settlements located in urban areas. This program dispenses with the intervention of the Judiciary, optimizing the procedure. These are broadly the approach of this text.

Keywords: Right to Adequate Housing; Land Regularization; Removal; Gentrification.

Resumo

O texto a seguir foi proferido em palestra no Fórum de Direito da Cidade da Escola de Magistratura do Rio de Janeiro, razão pela qual não constam referências bibliográficas. O autor, inicialmente, disserta acerca das balizas históricas que nortearam a urbanização brasileira a partir da segunda metade do século XX e se refletiram na então capital da República, impactando até os dias atuais. Destacam-se problemas de cunho estrutural, socioeconômicos, acentuados pela rápida industrialização e pela falta de planejamento, que conduziram à crescente favelização da população de baixa renda, em particular, na cidade do Rio de Janeiro. O autor defende que, a autoconstrução sintetizando a favela, configura-se no cenário urbano como uma solução para a ausência de respeito ao direito à moradia adequada, mas se desdobra em graves consequências para a harmonia do tecido social urbano. Dentre outros exemplos, o

¹ This text results from a lecture by the professor Ricardo Pereira Lira at Permanent Council of Urban Right in the Judge's School of Rio de Janeiro's States (EMERJ), in October 3, 2016, therefore there are no references. There were present appellate judge Marcos Alcino de Azevedo Torres, as president, and the lawyers Frederico Price Grechi and José Ricardo Pereira Lira.

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autor ilustra o perverso processo de segregação espacial, ensejando a remoção e a “gentrificação” pertinente à dinâmica especulativa imobiliária. Todos invocam inúmeras chagas sociais que lhe são correspondentes. Defende, como possíveis soluções para gerir o problema habitacional urbano, a conjugação de dois caminhos: um de ordem política, configurando-se em uma espécie de pacto social; outro, valer-se do instrumental jurídico pertinente. Destarte, caminha pelo ordenamento jurídico nacional, a exemplo do Estatuto das Cidades, diploma que dialoga com as premissas constitucionais que lhe dão inspiração, dispondo de uma gama de institutos passíveis de mitigar o referido problema, mas que ainda carecem da pertinente efetividade. Outrossim, incursiona pela questão da regularização fundiária, donde ganha relevo o programa Minha Casa Minha Vida, objeto da Lei nº 11.977, de 07 de junho de 2009, para assentamentos de população de baixa renda localizados em área urbana. Tal programa prescinde da intervenção do Poder Judiciário, otimizando o procedimento. Estas são, em linhas gerais, a abordagem do presente texto.

Palavras-chave: Direito à Moradia; Regularização Fundiária; Remoção; Gentrificação.

THE HISTORICAL ARGUMENT

The subject is instinctively related to the population growth in urban areas and in metropolis.

Such subject, as I have been affirming in numerous works, must be fundamentally due to the following circumstances:

1. the disorderly way as it turned out the slavery abolishing in 1888. The slave emancipation was simply formal, without any assistance that had provided the free people the minimum condition of a worthy life. Some slaves had been remained abandoned in the countryside, many others had been left to urban areas, occupying themselves without the slightest rationality;
2. the second reason is in what was
3. in the combat against the Nazism, the North America president of the United States, Franklin Delano Roosevelt, had requested a meeting with our president. This meeting had happened in the city of Natal. The North American leader had wished he had the Brazilian government permission to build air bases in Brazilian North and Northeast, in which American military planes could be landed and right after taking up flights to Dakar, in North Africa, where an intense combat had taken place between the troops led by the English general officer Louis Mountbatten and the German general Erwin Rommel, popularly known as the “Desert Fox”. The North American planes did not have flying autonomy to directly reach Dakar.

At this time, the United States of North America had prohibited manufacturing steel in Brazil, so that we had to import all the steel we needed. The military and economic hegemony of the great power had allowed the imposition of such restrictions.

The president Getúlio Vargas, a very clever and smart politician, had answered positively Roosevelt's conceit, affirming that he would agree to the construction and operation of the US bases in our territory, under the following conditions:

4. that the United States of America gave the necessary resources for the implantation of metallurgical mills in our country; and
5. transfer all their technology regarding to.

Thus, it was made and the National Steel Company had born. It was also implanted the *Vale do Rio Doce* Company for the exploitation of ore. In this way, a decisive step toward industrialization in our country had occurred.

In the 50's of last century, the industrialization had significantly increased with the goal plans of the president Juscelino Kubitschek concerned to the automotive industry.

As the urban planner says, to all industrialization it is necessary an urbanization.

At the same way, the industrialization naturally motivated a population growth in urban centers in a gradient increase of 3% of people. And these circumstances determined an increasing urbanization.

There were also migrations to the northeast-southeast direction with a completely disordered occupation in urban centers. Posteriorly, such migrations had taken place to different directions.

The migrant populations, composed by low-income people, basically set up in the cities' periphery. In the city of Rio de Janeiro, the migrants had installed themselves not only in the periphery, but also in the urban perimeter and on the peak and slope of hills, due to its specific topography.

Finally, it should be pointed out as the cause of this population density in cities and metropolitan regions the lack of a consistent public policy in the search for the permanence of man in rural areas, that is, the lack of an agrarian reform. Therefore, the disordered occupation in urban centers was explained. Likewise, the lack of public willingness to carry out an urban reform. Even today the agrarian and urban reform are not reach.

COROLLARS

This populational growth in cities, with the disordered irrational and unjust occupation in urban land brings highly damaging consequences. Such occupation is characterized by residential segregation, the social exclusion, the housing deficit, the deficiency in the quality of public services, the predatory use of natural environment, the lack of transport devices responsible by the lack of urban mobility with the consequent stress. It is also characterized by the delegitimization of public authority fostering a widespread feeling of impunity, including the wealthy classes. As evidence, an episode had occurred some time ago in Brasília, when young people of upper middle class, including the son of a magistrate, set fire to a Pataxó Indian who had been sleeping on a park bench. Later, set fire to housekeeper, thinking she was a prostitute, as if such behavior was justified. Even more recently, on Avenida Paulista, the most important street of the São Paulo's financial downtown, three teenagers had violently attacked a homosexual man causing serious body injuries. What is the most worrying frame? a police officer let himself being corrupted by trafficker and militiaman. It is surprising that traffickers and militiamen try to be participants in political life infiltrating in caucus and electing themselves as city councilors and representatives.

What is the solution to face such problems? First of all, the collective conscious about the necessity to set right. The real desire, the strong collective consciousness about the need to eliminate these problems. Everybody's awareness of the indispensability of the social normative system's effectiveness seeking for the disappearance of these dysfunctions. It is still enforced the strong political volition of those who have the power to change the predominant status. Secondly, the availability of the necessary juridical instruments for that. These instruments exist by now.

In the Federal Constitution of 1988, 22 article, XX subsection, disciplines the Federal competence "to establish guidelines for the urban development, including housing, basic sanitation and urban transportation".

The same Constitution, in the VII heading, attending the Economic and Financial Order about the "Urban Policy" epigraph, 182/183 articles, for the first time in Brazilian constitutional history, disciplines the urban order, contemplates the city, determining the pillars of their social functions made the city universal rights explicit concerning the democratic management of urban interests and the social function of urban property.

It is important to highlight that juridical instruments already existed in the infra-constitutional plan seeking for urban order and the importance of the instrument made by the 7 article, 271 decree-law, February 28, 1967, namely the Real Right Use Concession. This instrument is defined,

7 article - It is constituted the concession of public and private land use, paid or free, for a determinate or indeterminate time, as a resolute right, for specific purposes of urbanization, industrialization, edification, land cultivation, or other use of social interest.

Note that by the application of this institute, the concessionaire does not obtain the property, but only the possession.

The federal guidelines for urbanism and the instruments for implementing them, promised by the 1988 Constitution had a very long formulation in the National Congress. They ended up being edited by the Federal Law number 10257, July 10, 2001, complemented by the provisional measure number 2220, September 4, 2001, the first of consubstantiate the so called CITY STATUTE, and the second creating the real right concession for housing purposes, in which originally consisted in the articles from the 15 to 20 of the city statute and were vetoed by the president Fernando Henrique Cardoso, who subsequently some months later, reduced the so called provisional measure.

It is aligned some of the measures announced in the second article in the City Statute, without relevant judgment of the others.

- a. "to guarantee the right of sustainable cities, understood as the right of urban land, housing, environment sanitation, urban infrastructure, transportation and public services, work, leisure, for the present and future generations";
- b. "democratic management through population participation and representative associations of several segments of community in the formulation, implementation and follow-up plans, programs and the development of urban projects";
- c. "the proposal of urban and community facilities, transportation and public services suitable to the population's interest and necessities and 'the local characteristics'";
- d. "combat the speculative retention of urban property that results in its sub utilization and not in its utilization";
- e. "a fair distribution of benefits and onus resulting from the urbanization process";
- f. "land regularization and urbanization of occupied areas by low-income population meantime the establishment of special rules of urbanization, use and occupancy of land and edification, considering the population's economic situation and environmental rules".

The general guidelines established by the City's Statute can be observed in metropolitan areas based on the 7 article of the Metropole Statute (Federal Law number 13089, January 12, 2015).

The constant instruments of the City's Statute are: master plan, dividing into installments, building or compulsory use, the singular or collective adverse possession of the urban realty, the concession of special use for housing, the surface right, the preemptive right, the onerous grant of the right to build, the consortium of urban operations, the transfer of the right to build, the neighborhood impact study and the democratic management of the city.

The enunciation of each instruments concept is not possible, due to its brevity. It can be found in other works of this text's author or on the web site www.institutas.com.br by Ricardo Pereira Lira.

THE EARTH IS THE KNOT

The irregular settlement on the urban land causes a social exclusion in the cities and metropolis creating what is called residential segregation and what urban planners, sociologists and anthropologists call gentrification.

Gentrification is a phenomenon that affects an area or a neighborhood for the modification in the composition of the place, like new commercial locations or new buildings, valuating the region and affecting the local low-income population. These consequences are criticized by some urbanism and urban planning scholars, because of their conservative character and because they believe it happens without social compromise. Other scholars, like the sociologist Richard Sennett from Harvard University, consider demagogic the character of these critics. They say that urban problems are not solved benevolently considering the poorest part of population and, in their opinion, it is just solved with alternatives which reactive and recover the local economy.

The notion about gentrification is closely related to the issue of the favelas' removal. Some architects consider the favelas a problem, but indeed, it is a solution. Thought precariously, it is a way of ensuring the right to housing for the low-income population.

The policy on the removal of favelas prevailed in the 1960's of the last century creates a highly negative and socially disastrous reality. This idea happens due to the removal of the Catacumba's favela, a slum eradicated for the installation of sophisticated buildings at the place

for wealthy people housing. This favela was located around the Rodrigo de Freitas' lake in Rio de Janeiro, one of the most expensive places to live per square metre in the city.

Authorities ordered the families to leave the place and set fire on it. These people were split: women and their daughters went to a distant place, called Antares and Santa Cruz. The head of the couple, who used to be factory workers, stayed on the job site in Ipanema and Leblon. And consequently, this movement affected the budget of poor families. For the financial recover of the group, girls about the age of ten, eleven, twelve had to prostitute themselves!

It was a real distressing fact of gentrification. The arbitrary homelessness of the low-income population for the benefit of fortunate people who have settled in luxury buildings at the place. It is always the savage capitalism sacrificing the poorest!

Later a noble policy prevailed dominated by the city's social function, feeling of solidarity, seeking the urbanization of the favelas and recognizing the need for adequate housing for everyone.

This guidance has been implemented in the Federal Constitution of 1988, contemplating a special chapter above "The Urban Policy", it establishes that the urban development policy is carried out by the municipal public power in accordance with general guidelines in law. Its objective is ordering the full development of the city's social function and guarantee the welfare of the townspeople.

The constitutional amendment number 26, of February 14, 2000, housing was added a social right as a fundamental element of assistance to the homeless. These general guidelines, have been low with the city's statute (Federal Law number 10257 of July, 10, 2001), as mentioned before, highlighting, among others, the one which determinates "the land regularization and the urbanization of areas occupied by low-income population, through the establishment of special urbanization norms, the use and occupation of land and building, must consider the sub-economic situation of population and the environmental standards.

The organic law in the city of Rio de Janeiro from April 5, 1990, in its 429 article, states that the urban development policy will respect several principles, these include the urbanization, the land regularization and titling in favela areas and low income, without the removal of residents, unless when the occupied area's physical condition is life-threatening and this case the following rules shall be followed:

1. technical report of the public agency;
2. participation of the interested community and representative entities in the analysis and resolution of problems;

3. settlement in places around housing or work areas, if necessary relocation of people.

In 2009, the Federal Government conceive the program *Minha Casa, Minha Vida* (Brazilian terminology) aimed by the law number 11.977, in July, 2009, as well as provisions on land regularization of low-income settlement located in urban areas in a lessening way of the jurisdiction, therefore, without any intervention of the judiciary branch.

This legal instrument, in the 50 article provides that land regularization consists of a set of legal, urban, environmental and social measures aiming the regularization of urban settlements and the securitization of its occupants in order to guarantee the social right to housing, the full development of social functions of urban property and the right of an environment ecologically balanced.

The 58 article cares specifically about the land regularization of social interest, stating that this project must consider the characteristic of its occupation and the occupied area to define the urban and environmental parameters, besides identifying batch, roadways and intended areas to the public use.

The initiative may be of the public power in general and it will provide a city planning demarcation with in-law characteristics. Then it will be sent to the real state registration which will search for the possible owner of the area to be regularized.

If any judicial impugnation does not occur by an identified owner the demarcation will be documented. There will be an instalment plan and after its register, the Public Power will grant the title of the tenure legitimization to registered occupants, constituting the duly registered ownership legitimization, the right to direct tenure for housing purposes in favor of the respective grantor.

The 65 article in the mentioned law affirms that “without previous ownership rights judgment, the holder of possession title, after five years of contract, can request the real state registration officer the conversion of this title into a property registry, bearing in mind its acquisition by adverse possession, in the terms of the 183 article in the constitution.

The Federal Law number 11 977 of 2009, was changed by the Provisional Measure number 514 of 2010, but the drawing about ownership legitimacy converted into property has not undergone any modification.

Perhaps it was the case to simplify the solution brought by the program *Minha Casa, Minha Vida* with three short modifications in the 65 article, which would be the following:

1. reduce the deadline of the legitimized ownership transformation on property for two years making this conversion faster;

2. to make effective this conversion into property regardless of granted applications becoming this a real possessing by the mere period expiring in the Public Persecution;
3. delete the reference in the adverse possession institute, that only gives opportunity to conservative minds offer the law enforcement barriers to the titling of occupied areas by low-income population. Nothing prevents that after the end of the term, which would be two years, the legitimized ownership becomes property.

FINAL CONSIDERATIONS

It is undeniable the importance of a solution carried in the Law 11.977 of 2009 which seeks to give concrete and social effectiveness to the 6 article of the Federal Constitution of 1988, in conformity with the Constitutional Amendment number 26 of February 14, 2000, that consecrates housing as a fundamental social right. It always considers fundamental principle about the dignity of human beings as well.

Equally relevant, the procedure of non-litigation culture provided in the Law number 11.977 of 2009, makes the solution about housing problems of poor people free from the delays and implications necessarily complex when untie the question is submitted to the Judiciary Power.

It is important to mention that when the issue is about housing, it is considered an adequate one. Housing right integrates the right to an adequate living standard. It is not merely a question about a ceiling and four walls, but also the right that every person must have access to a home and a peaceful community, dignity and physical and mental health.

An adequate housing should include security of tenure, availability of the necessary services, infrastructure and public equipment, affordable cost, habitability, non-discrimination of vulnerable groups, adequate location and cultural suitability.

What is finally important is that all the legal documents mentioned above have social effectiveness. That way, it will be achieved a free republican democratic fair and supportive society eradicating the poverty and eliminating the social inequality, promoting the common good without racial, origin, gender, color and age prejudice.

All in name of the human being dignity as it is imposed in the principles and postulated constitutional rights.

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