

**THE SECOND UNITED NATIONS CONFERENCE ON HUMAN SETTLEMENTS: FROM PREPARATIONS TO CHANGES IN BRAZILIAN LEGISLATION - PART II**Josué Mastrodi<sup>1</sup>Beatriz Duarte Correa de Brito<sup>2</sup>**ABSTRACT**

The objective of this article is to analyze the Brazilian federal legislation on the right to housing, published between 1996 and 2016, to verify if there was influence of the Declaration of Istanbul, final document of the Second United Nations Conference on Human Settlements (Habitat II). After a presentation on the current Brazilian housing deficit and the analysis of the Habitat II and its final document (Part I), a survey on Internet portal the federal government was held ("Planalto" website) using the terms 'home' and 'housing'. Among the norms filtered by the research, 34 norms reflect principles and goals of Habitat II, but only the City Statute makes direct reference to the Conference.

**Keywords:** Right to Housing – Right to The City– Conferences UN / Habitat – My House My Life Program. Sustainability.

**INTRODUCTION**

Brazil became a predominantly urban country in the mid-1960s, however, in the 20 years that separated the first two UN-Habitat Conferences (1976-1996), the country underwent an intense urbanization process, increasing from 60.8% to 77.6% the population living in urban areas (UN, 2014). Allied to these processes, the discussion on housing gained increasing prominence in the international community, with Habitat II being one of the main UN Conferences in the 1990s.

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And this highlight had some reflections on Brazilian legislation, such as the publication of one of the main urban organization norms in the world – the City Statute – and the creation of a housing program that became a model for neighboring countries – the Minha Casa Minha Vida Program.

The first part of this article, previously published, presented the importance of the housing issue and analyzed the Second United Nations Conference on Human Settlements, held in 1996, in Istanbul, Turkey, in particular its final document: The Istanbul Declaration.

In this second part, we will analyze the Brazilian federal norms (provisional measures, decrees, laws, complementary laws, constitutional amendments) related to the housing issue, in order to assess whether Habitat II directly or indirectly influenced the Brazilian legal system.

To do so, a search was carried out on the federal government's internet portal (*Planalto* website), using the terms<sup>3</sup> "dwelling" and "housing"<sup>4</sup>. After a brief analysis, the norms that have these terms, but do not address this issue, were excluded.<sup>5</sup> Other legal texts only deal with administrative and bureaucratic issues<sup>6</sup>, without any impact on the right to housing, therefore, they will not be analyzed throughout the

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<sup>3</sup> The term "house" was not used, as all norms that contained the term "Casa Civil" were filtered, thus losing the search filter.

<sup>4</sup> Despite the difference in concepts between dwelling and housing, in this work, the terms were used as synonyms.

<sup>5</sup> Legislative Decree n. 42, of May 20, 1998, provides for the construction of a building to expand the facilities of the Brazilian embassy in Luanda, capital of Angola (BRASIL, 1998a).

The Decree of August 27, 2004, which deals with the sustainable development of the Municipality of Alcântara in Maranhão (BRASIL, 2004c).

Law no. 12.415, of June 9, 2011, which amended the Estatuto da Criança e do Adolescente (Statute of Children and Adolescents) to determine that provisional alimony must be provisionally fixed in favor of the child or adolescent whose aggressor is removed from common housing by court order (BRASIL, 2011b).

<sup>6</sup> Decree no. 2450, of December 30, 1997, which extended the validity of the registration in Remaining Payments of the Programas de Habitação, de Saneamento e de Infraestrutura (Housing, Sanitation and Infrastructure Programs) (BRASIL, 1997b).

Law no. 9,649 of May 27, 1998, preceded by a series of provisional measures (1,549, 1,642, 1,651), deals with the organization of the Presidency of the Republic and its Ministries. Dealing with strictly administrative issues, such as the extinction of the positions of Secretary of Housing Secretariats; of Sanitation; and Human Promotion (BRASIL, 1998b).

Decree no. 2,921, of December 30, 1998, which extended the validity of the registration in Remaining Payments of the Housing, Sanitation and Infrastructure Programs (BRASIL, 1998c).

Provisional Measure n. 2.158, of August 24, 2001, which dealt with the non-integration of housing assistance to the beneficiary's remuneration, in order not to deduct income tax (BRASIL, 2001c).

Provisional Measure n. 2181, of August 24, 2001, which, preceded by MPV n. 1655/98, MPV no. 1682/98, MPV no. 1755/98, MPV no. 1.868/99, MPV no. 1,885/99 and MPV n. 2,103/00, provides for financial transactions between the National Treasury and other entities (BRASIL, 2001d).

Law no. 10,885, of June 17, 2004, originated in MPV n. 175/04, which deals with the legal relationship between borrower and financing institution and between borrower and insurer under the FCVS (BRASIL, 2004b).

Decree no. 5,345 of January 18, 2005, which deals with PSH contract bureaucratic issues (BRASIL, 2005a).

Decree no. 5,892, of September 12, 2006, which deals with loans and financing under the SFH (BRASIL, 2006d).

Decree no. 5,955 of November 7, 2006, which provides for the structure of some Ministries (BRASIL, 2006g).

Law no. 11,434, of December 28, 2006, conversion of MPV n. 321/2006, deals with contracts entered within the scope of the SFH (BRASIL, 200h).

Law no. 11,578, of November 26, 2007, resulting from the conversion of MPV n. 387/07, which defined that the operationalization of the PSH in 2007 and 2008 would be the responsibility of the Executive Branch (BRASIL, 2007h).

text. Thus, 41 rules remained, including ordinary laws, complementary laws, provisional measures and decrees, to be studied below, in chronological order.

### **1. Law no. 9,300/96**

Published in the Official Gazette of August 30, 1996, Law n. 9,300 amended Law n. 5,889, of June 8, 1973, which regulates rural work, to determine that the dwelling of rural workers, provided by their employer, is not part of their salary, as long as it is expressed in a contract (BRASIL, 1996a). The 1973 Law already allowed the discount of up to 20% of the rural worker's salary for the occupation of housing provided by the employer, and the 1996 Law only regulates this issue, without any direct influence on the right to housing, therefore not being reflection of Habitat II.

### **2. Law no. 9,514/97**

Published in the Official Gazette of November 21, 1997, the law established the Real Estate Financing System (SFI - Sistema de Financiamento Imobiliário), which had the purpose of financing real estate in general, and established some rules on such financing (BRASIL, 1997a). This System would facilitate the acquisition of a home, therefore, it is a norm aimed at promoting the right to property, and not the right to housing. And, despite the Istanbul Declaration providing for financing to guarantee adequate housing for all, the financing must not be abusive, under penalty of going against the

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Decree no. 6,820, of April 13, 2009, which provides for the composition and powers of the Committee for Participation in the Popular Housing Guarantee Fund – (CPFHab - Comitê de Participação no Fundo Garantidor da Habitação Popular) and on the form of payment of quotas in the Popular Housing Guarantee Fund – (FGHab - Fundo Garantidor da Habitação Popular) (BRASIL, 2009a).

Law no. 12,024, of August 27, 2009, which deals with the payment of taxes by PMCMV partner construction companies (BRASIL, 2009c).

Provisional Measure n. 478, of December 29, 2009, which provides for the extinction of the SFH's Housing Insurance Policy (BRASIL, 2009e).

Decree no. 7,161, of April 29, 2010, which authorized the redemption of shares of the Popular Housing Guarantee Fund (FGHab), from the Investment Guarantee Fund (FGI - Fundo Garantidor de Investimentos) and the Operations Guarantee Fund (FGO - Fundo Garantidor de Operações), in shares issued by Centrais Elétricas Brasileiras SA (ELETROBRÁS) (BRASIL, 2010a).

Decree no. 7366, of November 25, 2010, which allowed the payment of shares of the FGHab (BRASIL, 2010c).

Decree no. 7367, of November 25, 2010, which provided for the form of qualification and co-qualification to REIDI (BRASIL, 2010d).

Law no. 12,409, of May 25, 2011, which deals with Home Insurance. SFH (BRASIL, 2011a).

Law no. 12,712, of August 30, 2012, which dealt with the granting of guarantees by the Brazilian Agency for Management of Guarantee Funds and Guarantees SA – (ABGF - Agência Brasileira Gestora de Fundos Garantidores e Garantias S.A.) against risks in housing credit operations (BRASIL, 2012).

Law no. 13,000, of June 18, 2014, which made the CEF's subpoena mandatory in the processes that are being processed in the State Courts that have as their object the extinct SFH Housing Insurance public policy (BRASIL, 2014).

Law no. 13,137, of June 19, 2015, which deals with the unified monthly payment by housing construction companies (BRASIL, 2015b).

beneficiary's economic sustainability. This law, however, does not limit this interest rate. Thus, the law does not meet Habitat II.

### 3. Law no. 9,785/99

Published in the Official Gazette of February 1, 1999, Law n. 9,785/99 amended the Decree-Law that regulates expropriation for public utility, as well as the Public Records Law and the Urban Land Parceling Law (Lei de Registros Públicos e a Lei de Parcelamento do Solo Urbano - BRASIL, 1999a).

In relation to Decree-Law n. 3365/41, which regulates expropriation for public utility, the law amended its article 5, i, to replace the expression "loteamento de terreno edificado ou não" for "parcelamento do solo, com ou sem edificação"<sup>7</sup> (BRASIL, 1999a), being a strictly orthographic change, to adjust the legal terms, which did not directly influence the right to housing. The Law also included §3 in Article 5 of the Decree-Law, which states that: " Ao imóvel desapropriado para implantação de parcelamento popular, destinado às classes de menor renda, não se dará outra utilização nem haverá retrocessão"<sup>8</sup> (BRASIL, 1999a).

This device reflects the social sustainability proposed by Habitat II, through the fight against poverty and the promotion of adequate housing for all. By privileging the lower income classes, the provision seeks an equality of conditions between the social strata and reflects the principles of the Istanbul Declaration and, mainly, of the Vancouver Declaration, which expresses the need for priority attention to the poorest.

Law n. 6.015/73, which deals with Public Records, was amended to determine the registration of: "imissão provisória na posse, e respectiva cessão e promessa de cessão, quando concedido à União, Estados, Distrito Federal, Municípios ou suas entidades delegadas, para a execução de parcelamento popular, com finalidade urbana, destinado às classes de menor renda"<sup>9</sup> (BRASIL, 1999a). Although the provision deals with popular subdivisions aimed at lower-income classes, the content is strictly bureaucratic and does not reflect the principles of Habitat II.

Law no. 6766/79, which deals with the subdivision of urban land, in turn, underwent several changes. First, the new law determined the mandatory installation of basic infrastructure (such as basic sanitation, electricity and access roads) so that the subdivision of land is authorized (BRASIL, 1999a). And, despite the fact that the explanatory statement of the Law does not refer to the UN Conference, this

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<sup>7</sup> 'Allotment of land built or not' for 'land parceling, with or without edification'. (Free translation)

<sup>8</sup> The property expropriated for the implementation of popular subdivisions, intended for lower income classes, shall not be given another use nor shall be regressed. (Free translation)

<sup>9</sup> Provisional imposition in possession, and respective assignment and assignment promise, when granted to the Union, States, Federal District, Municipalities or their delegated entities, for the execution of popular subdivisions, with urban purposes, aimed at lower-income classes. (Free translation)

provision is in line with item 4 of the Istanbul Declaration, which states that, in order to improve the quality of life in human settlements, it is necessary to guarantee the basic infrastructure.

The Law also included, as a requirement for subdivisions, the proportionality between public facilities and population density (BRASIL, 1999a), which is in line with item 4 of the Istanbul Declaration, which considers excessive population concentration unsustainable.

This Law also established that: "são considerados de interesse público os parcelamentos vinculados a planos ou programas habitacionais de iniciativa das Prefeituras Municipais e do Distrito Federal, ou entidades autorizadas por lei, em especial as regularizações de parcelamentos e de assentamentos"<sup>10</sup> (BRASIL, 1999a).

Other changes introduced by Law n. 9,785/99 to Law n. 6766/79 deal with bureaucratic issues and do not reflect Habitat II principles.

#### **4. Law no. 9,934/99**

Published in the Official Gazette of December 21, 1999, Law n. 9,934/99 determined a 20% (twenty percent) reduction in notary expenses with notarial acts, registration and embarrasments of residential properties resulting from government programs aimed at the construction of affordable housing for low-income population, provided that the property has up to sixty-nine square meters of built-up area, on land of up to two hundred and fifty square meters and has been built using a joint effort and guided self-construction system (BRASIL, 1999b).

Law 6.015/73, which regulates public records, already provided (as of Law 6.941/81) for the reduction of notary fees by 50% (fifty percent) for the first real estate acquisition, for residential purposes, financed by SFH, as well as other percentages of reductions for properties financed by COHABs, the discount varying according to the size of the property (BRASIL, 1981a). And Law n. 9,934/99 complemented this article, extending the discounts to constructions in a joint effort system and guided self-constructions (BRASIL, 1999b).

By reducing notary's costs, the law facilitates the acquisition of their own home by low-income people and the purpose of this law is not the right to property, but the right to housing, as it privileges the low-income population who build houses through the system of joint effort and sustained self-construction. In this way, the law meets the Istanbul Declaration and, more specifically, the Vancouver Declaration.

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<sup>10</sup> Are considered of public interest the subdivisions linked to housing plans or programs initiated by the Municipal Governments and the Federal District, or entities authorized by law, in particular the regularization of subdivisions and settlements. (Free translation) Pursuant to Article 3<sup>o</sup>, which included Article 53-A of Law 6.766/79.

### 5. Decree no. 3.298/99

Decree 3,298, of December 20, 1999, established the National Policy for the Integration of Persons with Disabilities, which determines that it is the responsibility of the Public Authorities to “assegurar à pessoa portadora de deficiência o pleno exercício de seus direitos básicos”<sup>11</sup>(BRASIL, 1999c), including housing. In other words, it determines the inclusion of people with disabilities, respecting their peculiarities. The decree, therefore, is in line with the final document of Habitat II, which determines in its item 7 the total accessibility for people with disabilities.

### 6. Constitutional Amendment n. 26/00

Most important amendment to the Constitution related to the right to housing, EC n. 26, of February 14, 2000, included in the list of social rights, provided for in article 6 of the Federal Constitution, the right to housing. And the classification of housing as a social right is extremely important for its promotion, since it is the State's duty to guarantee social rights, known as second-dimensional rights or beneficial rights, including allocating public resources to the promotion of these rights, which would guarantee a material equality (MASTRODI; SILVA, 2012). And during the voting of PEC 601, which preceded EC n. 26, Deputy Inácio Arruda highlighted this:

... [que a] Constituição acolha a moradia como direito social. Alguns consideram pouco, porque já há citações à moradia em vários trechos da Constituição. Mas isso não bastava. Era preciso estar claro na Constituição que moradia é um direito social, pois só assim o movimento efetivamente social do País pode cobrar à altura, dos Governos Federal, Estadual e Municipal, que garantam recursos, no Orçamento Geral da União e nos orçamentos estaduais e municipais, para oferecer moradia à parcela da população sem renda ou de baixa renda, em nosso País, segmento em que se registra metade do déficit habitacional brasileiro. Cerca de 5 milhões de moradias, no Brasil, não foram e não são atendidas por nenhum programa social ou de Governo<sup>12</sup> (ARRUDA, 2000).

Proposed in 1998, that is, two years after Habitat II, the authors of the PEC were based precisely on the UN Conference, which highlighted the human character of the right to housing, with Brazil being one of those responsible for defending this classification:

A questão do direito à moradia tem sido objeto de aceso e polarizado debate social tanto em nível nacional como internacional. Fóruns, entidades de classe, entidades governamentais e não-governamentais têm-se reunido nesses dois últimos anos com vistas ao maior encontro de todos os tempos sobre o tema: a Conferência

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<sup>11</sup> Ensure the person with a disability the full exercise of their basic rights. (Free translation) Pursuant to article 2 of Decree 3.298/99.

<sup>12</sup> ... [that the] Constitution embraces housing as a social right. Some consider it little, because there are already references to housing in various parts of the Constitution. But that was not enough. It was necessary to be clear in the Constitution that housing is a social right, because only in this way can the effective social movement in the Country be able to demand that, from the Federal, State and Municipal Governments, guaranteeing resources, in the General Budget of the Union and in the state and municipal budgets, to provide housing for the no-income or low-income population in our country, a segment in which half of the Brazilian housing deficit is registered. About 5 million homes in Brazil have not been and are not served by any social or government program. (Free translation)

Habitat II, convocada pela Organização das Nações Unidas (ONU) e realizada no período de 03 a 14 de junho deste ano.

Para esse evento, o Brasil foi indicado relator da parte da Agenda do Habitat (carta de intenções da Conferência) que trata do "direito à moradia". Coube-lhe, assim, a difícil tarefa de justificar, frente a países como Japão, Estados Unidos e Coreia (que se posicionam contra a inclusão desse termo na Agenda), a urgente necessidade de se reconhecer a moradia como um direito social<sup>13</sup> (CÂMARA DOS DEPUTADOS, 1998, p. 10).

In the Justification to the PEC, Senator Mauro Miranda, author of the proposal, also warned about the critical housing situation of millions of Brazilians and the need to recognize housing as a right:

As atuais condições de moradia de milhões de brasileiros chegam a ser deprimentes e configuram verdadeira "chaga social" para grande parte das metrópoles do País. Faz-se, portanto, urgente que se dê início a um processo de reconhecimento da moradia como a célula básica, a partir da qual se desenvolvem os demais direitos do cidadão, já reconhecidos por nossa Carta Magna: a saúde, o trabalho, a segurança, o lazer, entre outros. Sem a moradia o indivíduo perde a identidade indispensável ao desenvolvimento de suas atividades, enquanto ente social e produtivo se empobrece e se marginaliza. Com ele se empobrece, invariavelmente, a Nação<sup>14</sup> (CÂMARA DOS DEPUTADOS, 1998, p. 10).

Deputy Inocêncio Oliveira noted that Brazil was the seventeenth nation to include housing in its Magna Carta as a social right and that this would be an intention to be fulfilled, enabling the Government to "traçar uma política habitacional para o nosso País, dirigida sobretudo aos segmentos mais pobres, mais humildes e mais necessitados, a fim de que possamos construir uma sociedade mais justa, mais fraterna, mais humana e mais desenvolvida<sup>15</sup>" (DIÁRIO DA CÂMARA DOS DEPUTADOS, 2000, p. 04016).

Deputy Ricardo Izar, then coordinator of the Parliamentary Front for Housing and Urban Development (Frente Parlamentar da Habitação e Desenvolvimento Urbano), recalled that the EC by itself would not be enough to solve the problem of the Brazilian housing deficit, but that it would be the first

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<sup>13</sup> The question of the right to housing has been the subject of a lively and polarized social debate both nationally and internationally. Forums, professional associations, governmental and non-governmental entities have been meeting in the last two years with a view to the greatest meeting ever on the subject: the Habitat II Conference, convened by the United Nations (UN) and held at the period from the 3rd to the 14th of June this year. For this event, Brazil was appointed rapporteur for the part of the Habitat Agenda (the Conference's letter of intent) which deals with the "right to housing". Thus, it was responsible for the difficult task of justifying, in the face of countries such as Japan, the United States and Korea (which are against the inclusion of this term in the Agenda), the urgent need to recognize housing as a social right. (Free translation)

<sup>14</sup> The current housing conditions of millions of Brazilians are depressing and constitute a true "social wound" for most of the country's metropolises. It is therefore urgent to start a process of recognition of housing as the basic cell, from which the other rights of the citizen are developed, already recognized by our Magna Carta: health, work, safety, leisure, among others. Without housing, the individual loses the essential identity for the development of their activities, while a social and productive entity becomes impoverished and marginalized. With it, the Nation is invariably impoverished. (Free translation)

<sup>15</sup> Draw a housing policy for our country, directed above all to the poorest, humblest and neediest segments, so that we can build a fairer, more fraternal, more humane and more developed society. (Free translation)

step to start one so urgent and awaited housing policy (DIÁRIO DA CÂMARA DOS DEPUTADOS, 2000, p. 04016).

And Congresswoman Telma de Souza referred again to Habitat II, noting that the Chamber of Deputies sent a Committee of Deputies to Istanbul to participate in the UN Conference, demonstrating the Parliament's desire to include the right to housing in our Constitution (DIÁRIO DA CÂMARA DOS DEPUTADOS, 2000, p. 04016).

This provision, therefore, not only fully complies with the Istanbul Declaration, it is based on<sup>16</sup> the UN/Habitat Conference.

## 7. Constitutional Amendment n. 31/00

Another important EC related to the right to housing was published in 2000, EC n. 31, of February 14, 2000, which created the Fund for Combating and Eradicating Poverty (Fundo de Combate e Erradicação da Pobreza).

Consisting of portions of the Provisional Contribution on Movement or Transmission of Values and Credits and Rights of a Financial Nature (CPMF - Contribuição Provisória sobre Movimentação ou Transmissão de Valores e de Créditos e Direitos de Natureza Financeira); the Tax on Industrialized Products (IPI - Imposto sobre Produtos Industrializados); from the wealth tax<sup>17</sup>; of budget allocations; donations, of any nature, from individuals or legal entities in the country or abroad, the Fund's objective was: "Viabilizar a todos os brasileiros o acesso a níveis dignos de subsistência, cujos recursos serão aplicados em ações suplementares de nutrição, habitação, educação, saúde, reforço de renda familiar e

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<sup>16</sup> "The question of the right to housing has been the subject of a lively and polarized social debate, both nationally and internationally. Forums, professional associations, governmental and non-governmental entities have been meeting in the last two years with a view to the biggest meeting of all times on the theme: the Habitat II Conference, convened by the United Nations (UN) and held from the 3rd to the 14th of June this year.

For this event, Brazil was appointed rapporteur for the part of the Habitat Agenda (the Conference's letter of intent) which deals with the "right to housing". Thus, he was responsible for the difficult task of justifying, in the face of countries like Japan, the United States and Korea (which took a stand against the inclusion of this term in the Agenda), the urgent need to recognize housing as a social right.

The active Brazilian participation in such an important event, of a global character., puts us in a delicate position, especially when there is, in the midst of an eminently critical situation in Brazilian urban areas, a gap in the Federal Constitution itself, which does not recognize housing as a real right, such as health, leisure, work etc. Even more delicate is the situation in Brazil when, aware of the Conference, the "homeless" across the country, already well organized, threaten to "pop up land occupations" on the periphery of large cities - as read in the most renowned newspapers in the country.

The current housing conditions of millions of Brazilians are depressing and constitute a true "social wound" for most of the country's metropolises. It is therefore urgent to start a process of recognition of housing as the basic cell, from which the other rights of the Citizen are developed, already recognized by our Magna Carta: health, work, safety, leisure, among others. Without housing, the individual loses the essential identity for the development of their activities, as a social and productive entity, becomes impoverished and marginalized. With it, the Nation is invariably impoverished." (CANEDO, 1998, p. 29023).

<sup>17</sup> Despite being provided for in the Federal Constitution (art. 153, VII), the tax on large fortunes has not been regulated to date.



outros programas de relevante interesse social voltados para melhoria da qualidade de vida<sup>18</sup> (BRASIL, 2000b).

In line with the provisions of the final document of Habitat II, the provision established a Fund to raise resources aimed at promoting social rights and, consequently, improving the quality of life of citizens. And, as provided for in the Istanbul Declaration:

To improve the quality of life within human settlements, we must combat the deterioration of conditions that in most cases, particularly in developing countries, have reached crisis proportions. To this end, we must address comprehensively, inter alia, unsustainable consumption and production patterns, particularly in industrialized countries; unsustainable population changes, including changes in structure and distribution, giving priority consideration to the tendency towards excessive population concentration; homelessness; increasing poverty; unemployment; social exclusion; family instability; inadequate resources; lack of basic infrastructure and services; lack of adequate planning; growing insecurity and violence; environmental degradation; and increased vulnerability to disasters. (UN, 1996).

Thus, the more resources allocated to social programs in health, education and housing, the greater the chances of facing social illnesses and promoting social well-being.

#### **8. Law no. 10,150/00**

Published in the Official Gazette of December 22, 2000, the law was preceded by 54 provisional measures. Its trajectory began in 1996, with the edition of MPV n. 1,520, on September 24 of that year, which determined that:

As dívidas do Fundo de Compensação de Variações Salariais - FCVS, junto às instituições financiadoras, relativas a saldos devedores remanescentes da liquidação de contratos de financiamento habitacional, firmados com mutuários finais do Sistema Financeiro da Habitação - SFH, poderão ser objeto de novação, a ser celebrada entre cada credor e a União, nos termos desta Medida Provisória<sup>19</sup> (BRASIL, 1996b, p. 04015).

Reissued 14 times, MPV n. 1520-15, of December 4, 1997, was revoked and reissued by MPV n. 1,635-16, of December 12, 1997, which brought minor changes regarding the FCVS and was reissued 6 times, until MPV n. 1.635-22, of June 10, 1998, was revoked and reissued by MPV n. 1,696-23, of June 30, 1998. The changes were minimal, but the reprints were several and MPV n. 1696-28 was reissued on

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<sup>18</sup> To make possible for all Brazilians access to decent levels of subsistence, whose resources will be applied in supplementary actions of nutrition, housing, education, health, family income reinforcement and other programs of relevant social interest aimed at improving the quality of life. (Free translation)

<sup>19</sup> Debts of the Salary Variation Compensation Fund (FCVS – Fundo de Compensação de Variações Salariais), with financing institutions, related to outstanding balances from the settlement of housing financing contracts, signed with final borrowers of the Housing Finance System (SFH – Sistema Financeiro da Habitação), may be object of novation, to be celebrated between each creditor and the Federal Government, pursuant to this Provisional Measure. (Free translation)

December 14, 1998 by MPV n. 1.768-29. Following the same pattern of few changes and many reprints, MPV n. 1768-35 was revoked and reissued on June 29, 1999 by MPV n. 1.877-36 and MPV n. 1.877-41 was revoked and reissued by MPV n. 1,981-42, of December 10, 1999. Finally, MPV n. 1,981-54, of November 23, 2000, became Law 10,150/00.

This law allows that "as dívidas do FCVS, junto às instituições financiadoras, relativas a saldos devedores remanescentes da liquidação de contratos de financiamento habitacional, firmados com mutuários finais do SFH, poderão ser objeto de novação, a ser celebrada entre cada credor e a União"<sup>20</sup> (BRASIL, 2000c).

By allowing debt novation, the law facilitates the fulfillment of the obligation by the FCVS, without threatening the contracts between the Fund and the beneficiaries of the SFH. Therefore, the law indirectly guarantees the right to housing, but it does not directly reflect principles of the Istanbul Declaration.

### 9. Law no. 10,188/01

Published in the Official Gazette of February 14, 2001, Law 10.188/01 was preceded by 25 MPVs, starting with MPV n. 1,823/99 and passing through MPVs n. 1,864/99 and n. 1,944/99, until MPV n. 2.135-24 was converted into Law 10,188, on February 12, 2001.

The law created the Residential Lease Program (PAR - Programa de Arrendamento Residencial), which consisted of a residential lease, with a purchase option, aimed exclusively at the low-income population. For this purpose, a Fund would be created by CEF, with remaining balances from the Social Development Support Fund (FAS - Fundo de Apoio ao Desenvolvimento Social), Social Investment Fund (FINSOCIAL - Fundo de Investimento Social), Technological Diffusion Program for Low-Cost Housing Construction (PROTECH - Programa de Difusão Tecnológica para Construção de Habitação de Baixo Custo), Fund for Social Development (FDS - Fundo de Desenvolvimento Social), in addition to credits obtained from the FGTS (BRASIL, 2001a).

Through this Program, CEF builds<sup>21</sup> housing units, which are leased to the low-income population (BRASIL, 2001a). As the purchase of the property by the beneficiary is not mandatory at the end of the contract (CAIXA, 2017), when renting the property, the beneficiary does not contract a debt, but rather obtains a suitable place to live. With this, the housing deficit is reduced, thus promoting the right to housing for the lower classes of the population. The Law, therefore, is in line with the Istanbul Declaration and, more specifically, the Vancouver Declaration, which prioritizes meeting the needs of the poorest population.

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<sup>20</sup> FCVS debts, with financing institutions, related to outstanding balances from the settlement of housing financing contracts, signed with final borrowers of the SFH, may be object of novation, to be celebrated between each creditor and the Federal Government. (Free translation)

<sup>21</sup> CEF buys the land and a construction company is responsible for building the properties.

## 10. Law no. 10,257/01

Published in the Official Gazette of July 11, 2001, Law 10,257/01, the City Statute, regulated articles 182 and 183 of the FC (Federal Constitution), establishing “normas de ordem pública e interesse social que regulam o uso da propriedade urbana em prol do bem coletivo, da segurança e do bem-estar dos cidadãos, bem como do equilíbrio ambiental<sup>22</sup>” (BRASIL, 2001b).

As Bassul (2011) points out, there was a great deal of discussion in Parliament regarding matters of relevant social interest, before the unanimous approval of the City Statute, which was sanctioned by the then President of the Republic, Fernando Henrique Cardoso, with some vetoes:

Oriundos de vários partidos, dezesseis projetos foram formulados. Com maior ou menor abrangência (apenas cinco abordaram a questão como lei de caráter geral), as propostas tinham razoável campo de convergência e denotavam a importância social que a temática urbana passou a ensejar.

Entre os dezesseis projetos apresentados, ganhou evidência o Projeto de Lei do Senado nº 181, de 1989, autodenominado “Estatuto da Cidade”, de autoria do senador Pompeu de Souza, falecido em 1991. Após doze anos de tramitação — que de um lado frustraram muitas expectativas, mas de outro aprimoraram o projeto —, a proposta foi aprovada por unanimidade<sup>23</sup> (BASSUL, 2011, p. 11).

The most important Brazilian norm on urban planning, the City Statute served as an example for several countries, by establishing as an urban policy objective “o pleno desenvolvimento das funções sociais da cidade e da propriedade urbana, mediante as seguintes diretrizes gerais<sup>24</sup>”:

I – garantia do **direito a cidades sustentáveis**, entendido como o direito à **terra urbana, à moradia, ao saneamento ambiental, à infraestrutura urbana, ao transporte e aos serviços públicos, ao trabalho e ao lazer, para as presentes e futuras gerações**;

II – **gestão democrática por meio da participação da população** e de associações representativas dos vários segmentos da comunidade na formulação, execução e acompanhamento de planos, programas e projetos de desenvolvimento urbano;

III – cooperação entre os governos, a iniciativa privada e os demais setores da sociedade no processo de urbanização, em atendimento ao interesse social;

IV – **planejamento do desenvolvimento das cidades, da distribuição espacial da população e das atividades econômicas do Município** e do território sob sua área de influência, de modo a evitar e corrigir as distorções do crescimento urbano e seus efeitos negativos sobre o meio ambiente;

V – **oferta de equipamentos urbanos e comunitários, transporte e serviços públicos adequados aos interesses e necessidades da população e às características locais**;

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<sup>22</sup> Norms of public order and social interest that regulate the use of urban property in favor of the collective good, security and well-being of citizens, as well as environmental balance. (Free translation)

<sup>23</sup> Coming from various parties, sixteen projects were formulated. With greater or lesser scope (only five addressed the issue as a general law), the proposals had a reasonable field of convergence and denoted the social importance that the urban theme began to entail. Among the sixteen bills presented, Senate Bill No. 181, of 1989, self-named “Estatuto da Cidade”, by senator Pompeu de Souza, who died in 1991, gained evidence. After twelve years of tramitation - which on the one hand frustrated many expectations, but from another improved the project - the proposal was unanimously approved. (Free translation)

<sup>24</sup> The full development of the social functions of the city and urban property, through the following general guidelines (Free translation)

VI – **ordenação e controle do uso do solo**, de forma a evitar: a) a utilização inadequada dos imóveis urbanos; b) a proximidade de usos incompatíveis ou inconvenientes; c) o parcelamento do solo, a edificação ou o uso excessivos ou inadequados em relação à infraestrutura urbana; d) a instalação de empreendimentos ou atividades que possam funcionar como polos geradores de tráfego, sem a previsão da infraestrutura correspondente; e) a retenção especulativa de imóvel urbano, que resulte na sua subutilização ou não utilização; f) a deterioração das áreas urbanizadas; g) a poluição e a degradação ambiental;

VII – **integração e complementaridade entre as atividades urbanas e rurais**, tendo em vista o desenvolvimento socioeconômico do Município e do território sob sua área de influência;

VIII – **adoção de padrões** de produção e consumo de bens e serviços e de expansão urbana **compatíveis com os limites da sustentabilidade ambiental, social e econômica** do Município e do território sob sua área de influência;

IX – **justa distribuição dos benefícios e ônus** decorrentes do processo de urbanização;

[...]

XII – **proteção, preservação e recuperação do meio ambiente natural e construído, do patrimônio cultural, histórico, artístico, paisagístico e arqueológico**;

XIII – **audiência do Poder Público municipal e da população** interessada nos processos de implantação de empreendimentos ou atividades com efeitos potencialmente negativos sobre o meio ambiente natural ou construído, o conforto ou a segurança da população;

XIV – **regularização fundiária e urbanização de áreas ocupadas** por população de baixa renda mediante o estabelecimento de **normas especiais de urbanização**, uso e ocupação do solo e edificação, consideradas a situação socioeconômica da população e as normas ambientais;

XV – simplificação da legislação de parcelamento, uso e ocupação do solo e das normas edilícias, com vistas a permitir a **redução dos custos e o aumento da oferta dos lotes e unidades habitacionais**<sup>25</sup>. (BRASIL, 2001b). – own highlights

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<sup>25</sup> I – guarantee of the **right to sustainable cities**, understood as the right to **urban land, housing, environmental sanitation, urban infrastructure, transport and public services, work and leisure, for present and future generations**; II – **democratic management through the participation of the population** and associations representing the various segments of the community in the formulation, execution and monitoring of urban development plans, programs and projects; III – cooperation between governments, the private sector and other sectors of society in the urbanization process, in compliance with the social interest; IV – **planning for the development of cities, the spatial distribution of the population and the economic activities of the Municipality** and the territory under its area of influence, in order to avoid and correct distortions in urban growth and its negative effects on the environment; V – **offer of urban and community facilities, transport and public services suited to the interests and needs of the population and local characteristics**; VI – **ordering and control of land use**, in order to avoid: a) the inappropriate use of urban properties; b) the proximity of incompatible or inconvenient uses; c) the subdivision of land, building or excessive or inadequate use in relation to urban infrastructure; d) the installation of undertakings or activities that can function as traffic generating poles, without the provision of the corresponding infrastructure; e) the speculative retention of urban property, which results in its underuse or non-use; f) the deterioration of urbanized areas; g) pollution and environmental degradation; VII – **integration and complementarity between urban and rural activities**, bearing in mind the socioeconomic development of the Municipality and the territory under its area of influence; VIII – **adoption of production and consumption standards** for goods and services and urban expansion **compatible with the limits of environmental, social and economic sustainability** of the Municipality and the territory under its area of influence; IX – **fair distribution of benefits and burdens** arising from the urbanization process; [...] XII – **protection, preservation and restoration of the natural and built environment, cultural, historical, artistic, scenic and archaeological heritage**; XIII – **hearing of the municipal government and the population** interested in the processes of implementation of projects or activities with potentially negative effects on the natural or built environment, on the comfort or safety of the population; XIV –

Aiming to promote social and environmental justice, in addition to inaugurating a new urban order, the City Statute almost completely reflected the provisions of the Istanbul Declaration, dealing with “buscar a sustentabilidade das cidades brasileiras, que precisam crescer economicamente sem deixar de preservar o meio ambiente nem tratar de forma injusta seus habitantes<sup>26</sup>” (SANTIN, PEDRINI, COMIRAN, 2017, p. 566).

It is important to emphasize that, among the urban policy instruments introduced by this Law, the Master Plan stands out, “o instrumento básico da política de desenvolvimento e expansão urbana<sup>27</sup>” (BRASIL, 2001b) of the Municipalities. In other words, it is the Law that establishes the guidelines to be followed by administrators for the development of cities, ensuring “o planejamento da atuação do Poder Público, possibilitando a gestão ordenada das cidades e aliando a atuação do Poder Público e a participação da sociedade civil no direcionamento das ações estatais e na consecução do bem-estar dos indivíduos<sup>28</sup>” (REIS and VENÂNCIO, 2016, p.1207).

The Master Plan is mandatory<sup>29</sup> for cities: i) with more than twenty thousand inhabitants; ii) members of metropolitan regions and urban agglomerations; iii) where the municipal government intends to use the instruments provided for in § 4 of art. 182 of the Federal Constitution<sup>30</sup>; iv) members of areas of special tourist interest; v) within the area of influence of undertakings or activities with significant environmental impact on a regional or national level; vi)<sup>31</sup> included in the national register of Municipalities with areas susceptible to the occurrence of landslides of great impact, sudden floods or related geological or hydrological processes (BRASIL, 2001b).

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**land title regularization and urbanization of areas occupied** by low-income population through the establishment of **special rules for urbanization**, use and occupation of land and construction, considering the socioeconomic situation of the population and environmental regulations; XV – simplification of legislation on subdivision, use and occupation of land and building regulations, with a view to **reducing costs and increasing the supply of lots and housing units**. (Free translation)

<sup>26</sup> Seeking the sustainability of Brazilian cities, which need to grow economically while preserving the environment and treating its inhabitants fairly. (Free translation)

<sup>27</sup> The basic instrument of urban development and expansion policy. (Free translation)

<sup>28</sup> The planning of the actions of the Public Authorities, enabling the orderly management of cities and combining the actions of Public Authorities and the participation of civil society in directing state actions and in achieving the well-being of individuals. (Free translation)

<sup>29</sup> Pursuant to article 41 of the City Statute.

<sup>30</sup> Art. 182. The urban development policy, carried out by the municipal government, in accordance with general guidelines established by law, has the objective of ordering the full development of the city's social functions and guaranteeing the well-being of its inhabitants. § 4 It is possible for the municipal government, through a specific law for the area included in the master plan, to require, under federal law, the owner of unbuilt, underutilized or unused urban land, to promote its adequate use, under penalty, successively, of: I - subdivision or compulsory building; II - progressive urban property and territorial property tax over time; III - expropriation with payment through public debt securities previously issued by the Federal Senate, with a redemption period of up to ten years, in annual, equal and successive installments, assured the real value of the indemnity and legal interest (Free translation) (BRASIL, 1988e).

<sup>31</sup>Included by Law n. 12,608 of April 10, 2012.

It is important to emphasize that, by express legal provision, the Mayor will incur administrative improbity if he/she fails to take the necessary measures to ensure that the law establishing the Master Plan is reviewed at least every ten years<sup>32</sup>, as well as if it does not allow popular participation in the elaboration of the Plan<sup>33</sup>, as the City Statute introduced participatory democratic management, guaranteeing citizens the right to participate in the urban planning of their city (BRASIL, 2001b). And, as Mencio highlights (2006, p. 29), “a participação popular é um princípio dotado de força normativa, que vincula o processo de planejamento municipal, em especial, o Plano Diretor<sup>34</sup>”.

Specifically on the right to housing, Law 10,257/01 entrusted the Union, alone or together with other federated entity(ies), with the duty to institute programs for the construction of houses and the improvement of housing conditions<sup>35</sup>, made it possible to collectively contract the concession of real right to use public real estate in cases of social interest housing programs and projects<sup>36</sup>, strengthened the requirements for property acquisition through adverse possession<sup>37</sup> and introduced collective adverse possession for low-income population<sup>38</sup>, in addition to guaranteeing the right of preemption for the Public Power to execute social interest housing programs and projects<sup>39</sup> (BRASIL, 2001b).

Law 10.257/01, therefore, is fully in line with the Istanbul Declaration, however, Moreira and Castro (2020, p. 533) point out that “há falhas no que se refere à aplicação eficaz desses mecanismos viabilizados pelo documento (Estatuto da Cidade)<sup>40</sup>”.

### 11. Provisional Measure n. 2,197/01

Published in the Official Gazette of August 27, 2001, Provisional Measure n. 2.197/01 deals with financing contracts under the SFH. Started in 1998 with MPV n. 1,671, the measure was reissued 44 times under numbers 1,691//98, 1.762/98, 1,876/99, 1,951/99 and 2,075/00.

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<sup>32</sup> Pursuant to article 52, VII, of the City Statute.

<sup>33</sup> Pursuant to article 52, VI, of the City Statute.

<sup>34</sup> Popular participation is a principle endowed with normative force, which binds the municipal planning process, in particular, the Master Plan. (Free translation) Barroso (2020, p. 649) teaches that “Principles have minimal meaning and reach, an essential core, in which they are equal to the rules. From a certain point onwards, however, one enters a space of indeterminacy, in which the demarcation of its content will be subject to the interpreter's ideological or philosophical conception. This characteristic of the principles, in fact, is what allows the rule to adapt, over time, to different realities, in addition to allowing the realization of the majority's will, inherent to the democratic regime. There is, therefore, a minimal sense, opposed to any group that comes to exercise power, and also a space whose content will be filled by democratic deliberation.”.

<sup>35</sup> Pursuant to article 3, III, of the City Statute.

<sup>36</sup> Pursuant to article 4, § 2, of the City Statute.

<sup>37</sup> Pursuant to article 9 of the City Statute.

<sup>38</sup> Pursuant to article 10 of the City Statute.

<sup>39</sup> Pursuant to article 26, II, of the City Statute.

<sup>40</sup> There are flaws in terms of the effective application of these mechanisms made possible by the document (City Statute). (Free translation)

In addition to allowing financing contracts to be readjusted by plans other than those provided for in Law n. 8692/93, the MPV instituted other measures to facilitate the fulfillment of the financing contract by the beneficiaries, such as limiting the interest rate on financing and reducing the value of installments according to the beneficiary's family income (BRASIL, 2001e).

Despite being a beneficial norm for SFH beneficiaries, as these measures facilitate full compliance with obligations, the norm does not reflect the principles of the Istanbul Declaration.

#### **12. Provisional Measure n. 2,212/01**

Published in the Official Gazette of August 31, 2001, Provisional Measure n. 2,212/01 created the Social Interest Housing Subsidy Program (PSH – Programa de Subsídio à Habitação de Interesse Social), which had the objective of “tornar acessível a moradia para os segmentos populacionais de renda familiar alcançados pelos programas de financiamentos habitacionais de interesse social<sup>41</sup>” (BRASIL, 2001f). By allocating resources to social interest housing programs, the rule seeks to promote the right to housing, thus reflecting the principles of the Istanbul Declaration.

#### **13. Provisional Measure n. 2,218/01**

Published in the Official Gazette of September 5, 2001, Provisional Measure n. 2.218/01 provides for the remuneration of military personnel in the Federal District, guaranteeing them, among other benefits, housing assistance, a "direito pecuniário mensal devido ao militar, na ativa e na inatividade, para auxiliar nas despesas com habitação para si e seus dependentes<sup>42</sup>” (BRASIL, 2001g).

This aid granted to the military strengthens the class financially so that they seek to guarantee their right to housing, therefore, it reflects one of the goals of Habitat II.

#### **14. Decree no. 4,156/02<sup>43</sup>**

Published in the Official Gazette of March 12, 2002, Decree n. 4,156/02 regulated the PSH, establishing the salary range of beneficiaries and the total value of the property and financing (BRASIL, 2002a). The Decree is in line with Habitat II, as it seeks a fair distribution of resources, among the federative units, to face the housing deficit.

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<sup>41</sup> Making housing accessible to the population segments of family income reached by social interest housing financing programs. (Free translation)

<sup>42</sup> Monthly pecuniary right due to the military, active and inactive, to assist with housing expenses for themselves and their dependents. (Free translation)

<sup>43</sup> Revoked by Decree n. 5,247 of October 19, 2004.

**15. Decree no. 4.229/02<sup>44</sup>**

Published in the Official Gazette of May 14, 2002, Decree n. 4.229/02 remodeled the National Human Rights Program (PNDH – Programa Nacional de Direitos Humanos), outlining new objectives and passing the responsibility for execution to the State Secretariat for Human Rights of the Ministry of Justice (BRASIL, 2002b). Although the Decree does not mention dwelling/housing, it deals with human rights, which encompass civil, political, social, cultural and economic rights, therefore, it deals with the right to housing.

The PNDH outlines a guide for the promotion of human rights and the reduction of inequalities, firstly identifying the problems, to later spread concepts (population awareness) and implement actions (BRASIL, 2002b). Although the Decree does not establish the actions, the norm reflects principles expressed in the final document of Habitat II, which goes beyond the right to housing, as it seeks to promote social rights as a whole.

**16. Decree no. 4.494/02<sup>45</sup>**

Published in the Official Gazette of December 4, 2002, Decree n. 4.494/02 regulated the IOF, maintaining the exemption provided for in Decree-Law n. 2,407/88, relating to credit operations for "fins habitacionais, inclusive a destinada à infraestrutura e saneamento básico relativos a programas ou projetos que tenham a mesma finalidade<sup>46</sup>" (BRASIL, 2002c) and reducing to zero the mandatory insurance rate linked to financing under the SFH.

These provisions facilitated both the construction of new homes and the implementation of basic housing infrastructure, thus valuing the population's quality of life, one of the pillars of Habitat II.

**17. Decree no. 4,675/03**

Published in the Official Gazette of April 17, 2003, Decree n. 4,675/03 regulated the National Program for Access to Food (Programa Nacional de Acesso à Alimentação), known as the Food Card, whose main objective was to guarantee access to food to those in need. The fight against food shortages was accompanied by educational and structural actions, including the construction or renovation of housing<sup>47</sup> and infrastructure works<sup>48</sup> (BRASIL, 2003a).

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<sup>44</sup>Revoked by Decree n. 7,037, of December 21, 2009.

<sup>45</sup>Revoked by Decree n. 6,306 of December 14, 2007.

<sup>46</sup> Housing purposes, including those for infrastructure and basic sanitation related to programs or projects that have the same purpose. (Free translation)

<sup>47</sup>Pursuant to article 7, II, f, of Decree n. 4,675/03.

<sup>48</sup>Pursuant to article 7, II, d and e, of Decree n. 4,675/03.



The Decree, therefore, sought to promote several social rights, such as health, food, education and housing, in line with the provisions of the Vancouver Declaration, regarding the improvement of the quality of life of human beings.

#### **18. Law no. 10,741/03**

Published in the Official Gazette of October 3, 2003, Law n. 10.741/03 instituted the Estatuto do Idoso (Elderly Statute), which dedicated an entire chapter to the housing issue. In addition to emphasizing that housing is a right of the elderly (BRASIL, 2003b), it established some guidelines to be followed to meet their needs. Although the Istanbul Declaration does not mention the elderly, it emphasizes the need for equality between people and accessibility for all to urban facilities, which the Elderly Statute proposes.

#### **19. Law no. 10,840/04**

Published in the Official Gazette of February 12, 2004, Law n. 10,840/04, originated in MPV n. 133/03, created the Special Program for Popular Housing (PEHP - Programa Especial de Habitação Popular), which aimed to provide adequate housing for the population with income of up to 3 minimum wages (BRASIL, 2004a). The Program aimed not only at aiding the acquisition of housing units, but also for their production, with assistance in the acquisition of urbanized lots and construction material, in addition to allowing the allocation of resources for the adaptation of housing, through urbanization of settlements and urban requalification<sup>49</sup> (BRASIL, 2004a).

The Law also guaranteed popular participation in the control of the Program's resources.<sup>50</sup> and allowed municipalities to exempt housing units resulting from the PEHP from the payment of the onerous grant of the right to build<sup>51</sup> (BRASIL, 2004a).

The Law, therefore, created a Program to promote the right to adequate housing for the low-income population, concerned not only with housing itself, but also with its surroundings, as proposed by Habitat II.

#### **20. Law no. 10,998/04**

Published in the Official Gazette of December 16, 2004, Law 10,998/04, originated in MPV n. 200, of 20 July 2004, amended the PSH, extending the program's financing operations to SFH financial agents and defining concepts such as financing and installment payments (BRASIL, 2004d). Like the rule that

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<sup>49</sup>Pursuant to article 1, § 1, of Law n. 10840/04.

<sup>50</sup>Pursuant to article 7 of Law n. 10840/04.

<sup>51</sup>Pursuant to article 8 of Law n. 10840/04.

instituted the PSH, this law is in line with Habitat II, by allocating resources to housing programs of social interest, thus combating the housing deficit.

### **21. Law no. 11,124/05**

Published in the Official Gazette of June 17, 2005, Law n. 11.124/05 created the National Social Interest Housing System (SNHIS – Sistema Nacional de Habitação de Interesse Social), which centralized all government programs and projects aimed at social interest housing, with a view to enabling the access to urbanized land and decent and sustainable housing for the low income population (BRASIL, 2005b). Among the principles<sup>52</sup> from the SNHIS, decent housing, social inclusion stand out; democratization, transparency of decision-making procedures and the social function of urban property (BRASIL, 2005b), which are also present in the Istanbul Declaration.

Also in line with Habitat II are some guidelines<sup>53</sup>, as economic, financial and social sustainability of programs and projects", establishment of quota mechanisms for the elderly, the disabled and families headed by women among the group identified as the one with the lowest income and incentive to research, incorporation of technological development and alternative forms of housing production (BRASIL, 2005b).

The Law also created the National Fund for Social Interest Housing (FNHIS – Fundo Nacional de Habitação de Interesse Social) to centralize SNHIS resources that could be applied in the construction, acquisition or renovation of houses, as well as the implementation of adequate infrastructure (BRASIL, 2005b).

Finally, the law clarified that the benefits offered by SHNIS would not be restricted to the granting of resources, but could be a reduction or exemption from taxes or any other benefit that would reduce the costs of housing and the surrounding infrastructure (BRASIL, 2005b).

Law no. 11,124/05, therefore, meets the provisions of the final document of Habitat II.

### **22. Law no. 11,308/06<sup>54</sup>**

Published in the Official Gazette of May 24, 2006, Law n. 11,308/06 opened an extraordinary credit, in favor of the Ministry of Cities, for application in housing projects of social interest, urbanization and land tenure regularization (BRASIL, 2006a). By increasing the resources to be allocated to these projects, the Law collaborates with their promotion, thus meeting the Istanbul Declaration.

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<sup>52</sup>Pursuant to article 4, I, of Law n. 11.124/05.

<sup>53</sup>Pursuant to article 4, II, of Law n. 11.124/05.

<sup>54</sup>Conversion of MPV n. 279, of February 7, 2006.

**23. Decree no. 5,796/06**

Published in the Official Gazette of June 7, 2006, Decree nº 5,796, regulates Law n. 11,124/05, which created the SNHIS and the FNHIS. Regarding the origin and application of FNHIS resources, the Decree faithfully maintained the provisions of the originative law. The Decree only defined the composition of the FNHIS Management Council, guaranteeing popular participation, and increased the attributions of CEF, the Fund's operating agent (BRASIL, 2006b).

**24. Law no. 11,324/06**

Published in the Official Gazette of July 20, 2006, Law n. 11,324/06, result of the conversion of MPV n. 284, of March 6, 2006, amended, among others, Law n. 5,859/72, making the discount by the domestic employer of food, clothing, hygiene or housing of the employee prohibited, unless the residence is in a different place from the residence where the services are provided (BRASIL, 2006c).

This norm, however, does not have a direct impact on the right to housing, nor does it reflect the principles of Habitat II.

**25. Law no. 11,355/06**

Published in the Official Gazette of October 20, 2006, Law n. 11,355/06, resulting from the conversion of MPV n. 301/06, among other provisions, dealt with the granting of housing assistance to public servants who work in a municipality other than their domicile (BRASIL, 2006e). This aid, however, does not seek to reduce the housing deficit, but only to gratify civil servants who work in another municipality. The law, therefore, in no way reflects the Istanbul Declaration.

**26. Decree of October 25, 2006**

The Decree created an Interministerial Working Group (GTI) “com a finalidade de elaborar estudos e apresentar propostas de políticas públicas para a inclusão social da população em situação de rua<sup>55</sup>” (BRASIL, 2006f).

Although the group was created for a limited time, it was an important initiative, as the rate of homeless people in Brazil is high, which clearly demonstrates the country's housing deficit. And carrying out studies to implement public policies aimed at this population means fighting the housing deficit, promoting housing for those who do not have it.

The decree reflects one of the main pillars of Habitat II: inclusion.

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<sup>55</sup> With the purpose of preparing studies and presenting proposals for public policies for the social inclusion of the homeless population. (Free translation)

**27. Decree no. 6,025/07**

Published in the Official Gazette of January 22, 2007, Decree n. 6,025/07 created the Growth Acceleration Program (PAC – Programa de Aceleração do Crescimento), a strategic plan for investments in social, urban, logistics and energy infrastructure in Brazil (PAC, 2017):

Representa um novo modelo de planejamento, gestão e execução do investimento público. Articula projetos de infraestrutura públicos e privados e medidas institucionais para aumentar o ritmo de crescimento da economia. Modernizar a infraestrutura, melhorar o ambiente de negócios, estimular o crédito e o financiamento, aperfeiçoar a gestão pública e elevar a qualidade de vida da população são alguns dos objetivos do PAC. É também um instrumento de inclusão social e de redução das desigualdades regionais. Suas ações e obras geram empregos que garantem renda e consumo para milhares de trabalhadores e suas famílias<sup>56</sup> (BRASIL, 2015).

The PAC, therefore, was a Program created in line with Habitat II, as it provided for investments in infrastructure to improve human settlements, in addition to seeking to reduce social inequalities.

**28. Law no. 11,481/07**

Published in the Official Gazette of May 31, 2007, Law n. 11.481/07 was the result of the conversion of MPV n. 335/06, which was preceded by MPV n. 292/06, and changed several provisions of other norms.

First, it amended Law n. 9,636/98, to authorize the Public Power to regularize human settlements, including entering into agreements with private partnerships, in addition to allowing the regularization of human settlements occupied by low-income populations, without the need for individualization of possession. The law also exempted occupants of informal settlements located in areas of special social interest from proving the effective use of the property (BRASIL, 2007b).

In relation to land regularization of social interest, the Law defined that if the area has this destination in advance, the registration of the occupation will be prohibited, as well as if the occupation compromises the "integridade das áreas de uso comum do povo, de segurança nacional ou de preservação ambiental<sup>57</sup>" (BRASIL, 2007b). In addition, it exempted from bidding the transfer of real

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<sup>56</sup> It represents a new model for planning, managing and executing public investment. It articulates public and private infrastructure projects and institutional measures to increase the pace of economic growth. Modernizing infrastructure, improving the business environment, stimulating credit and financing, improving public management and raising the population's quality of life are some of the objectives of the PAC. It is also an instrument for social inclusion and for reducing regional inequalities. Its actions and works generate jobs that guarantee income and consumption for thousands of workers and their families. (Free translation)

<sup>57</sup> Integrity of areas of common use by the people, of national security or of environmental preservation. (Free translation)

estate from the Federal Government, allowed the free transfer of leasehold rights and authorized the donation of real estate owned by the Federal Government for this purpose (BRASIL, 2007b).

The Law also facilitated the sale of the full domain of federal real estate for social projects for housing purposes and authorized the concession of special use of federal areas for housing purposes (BRASIL, 2007b).

The Law amended Decree-Law n. 9,760, of September 5, 1946, to establish the demarcation of land for land regularization of social interest, intended for families with monthly income of up to 5 minimum wages; Decree-Law n. 1,876, of July 15, 1981, to exempt public companies, mixed capital companies and public funds from the payment of *laudêmio* (a tax) in the transfers of property belonging to the Federal Government and intended for the realization of housing programs or land regularization of interest Social; the Civil Code, to determine that the concession of special use for housing purposes is a real right; and the Public Registry Law, to facilitate the registration and registration of properties arising from land tenure regularization (BRASIL, 2007b).

This Law reflects several principles of the Istanbul Declaration, especially with regard to the low-income population (one of the focuses of Habitat II), which represents the majority of the housing deficit. The new rules instituted by it aim to facilitate land tenure regularization and the implementation of social interest housing programs, thus promoting the right to housing for the economically less favored population. The Law also highlights one of the pillars of Habitat II: sustainability (environmental, economic and social).

### **29. Law no. 11,485/07**

Published in the Official Gazette of June 14, 2007, Law n. 11,485/07, result of the conversion of MPV n. 347/07, authorized the Union to grant a credit to CEF, thus expanding investments in popular sanitation and social housing, thus combating the housing deficit and promoting the improvement of human settlements, through the implementation of basic sanitation (BRASIL, 2007c), two goals of the Istanbul Declaration.

### **30. Law no. 11,490/07**

Published in the Official Gazette of June 21, 2007, Law n. 11,490/07, resulting from the Conversion of MPV n. 341/2006, established the maximum limit for the value of housing assistance granted to public servants who work in a municipality other than their domicile (BRASIL, 2007d). As well as Law n. 11,355/06, which instituted this aid, this norm does not seek to reduce the housing deficit, but only to gratify civil servants who work in another municipality. The norm, therefore, in no way reflects the Istanbul Declaration.

**31. Decree no. 6,194/07**

Published in the Official Gazette of July 4, 2007, Decree n. 6.194/07 regulates the Special Regime of Incentives for Infrastructure Development (REIDI – Regime Especial de Incentivos para o Desenvolvimento da Infraestrutura), which exempts from PIS/PASEP and COFINS Contributions the private legal entity that acquires machinery and objects for the implementation of infrastructure works in the following sectors:

- I – transportes, abrangendo rodovias, ferrovias, hidrovias, trens urbanos e portos organizados;
- II – energia, abrangendo a geração e a transmissão de energia elétrica de origem hidráulica, eólica, nuclear, solar e térmica;
- III – saneamento básico, abrangendo abastecimento de água potável e esgotamento sanitário;
- IV – irrigação<sup>58</sup> (BRAZIL, 2007e).

By facilitating the purchase of these equipment, the Decree encourages the carrying out of infrastructure works, such as basic sanitation and transport, in addition to rural irrigation. And improving urban and rural infrastructure is one of the pillars of Habitat II.

**32. Decree no. 6,215/07<sup>59</sup>**

Published in the Official Gazette of September 28, 2007, Decree n. 6,215/07 establishes the Commitment to the Inclusion of People with Disabilities. Among the guidelines to be followed, both by public authorities and by individuals, are expanding access to orthotics and prostheses and the accessibility of housing, schools, transport and infrastructure (BRASIL, 2007f).

Accessibility and inclusion of people with disabilities are principles of the Istanbul Declaration, and the standard is in line with it.

**33. Decree no. 6,276/07**

Published in the Official Gazette of November 29, 2007, Decree n. 6,276/07 listed the urbanization, social housing, basic sanitation, housing and human settlement improvement Programs, among others, which would benefit from the PAC, making the financial transfer to the federal entity responsible for the Program mandatory (BRASIL, 2007h).

This Decree materialized the PAC, which, as highlighted above, is in line with Habitat II.

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<sup>58</sup> I – transport, including highways, railways, waterways, urban trains and organized ports; II – energy, encompassing the generation and transmission of electric energy from hydraulic, wind, nuclear, solar and thermal sources; III – basic sanitation, including drinking water supply and sanitary sewage; IV – irrigation. (Free translation)

<sup>59</sup> Revoked by Decree n. 7612 of November 17, 2011.

**34. Decree no. 6,306/07**

Published in the Official Gazette of December 17, 2007, Decree n. 6,306/07 regulated the IOF, maintaining the exemption provided for in Decree-Law n. 2,407/88, relating to credit operations for "fins habitacionais, inclusive a destinada à infraestrutura e saneamento básico relativos a programas ou projetos que tenham a mesma finalidade"<sup>60</sup> (BRASIL, 2007i) and reducing to zero the mandatory insurance rate linked to financing under the SFH.

These provisions facilitated both the construction of new homes and the implementation of basic housing infrastructure, thus valuing the population's quality of life, one of the pillars of Habitat II.

**35. Decree no. 6,450/08**

As well as Decree n. 6.276/07, materialized the PAC by listing the urbanization, social housing, basic sanitation, housing and human settlement improvement programs, among others, which would benefit from the PAC, making the financial transfer to the federal entity responsible for the Program mandatory (BRASIL, 2008a). And, like the aforementioned Decree, it is in line with Habitat II.

**36. Law no. 11,888/08**

Published in the Official Gazette of December 26, 2008, Law n. 11,888/08 guaranteed families with income of up to 3 minimum wages the right to free public technical assistance for the design and construction of social housing for their own home (BRASIL, 2008b).

In addition to expressly promoting the right to housing<sup>61</sup>, the Law aimed to adapt the housing and its surroundings, as well as to avoid the occupation of areas of risk and environmental interest<sup>62</sup> (BRASIL, 2008b). The Law, therefore, brings three pillars of Habitat II: facilitating the transfer of technologies and knowledge, promoting adequate housing for all, and environmental protection.

**37. Law no. 11,977/09**

Published in the Official Gazette of July 8, 2009, Law n. 11,977/09, originated in MPV n. 459/09, created the Minha Casa Minha Vida Program (PMCMV), the main Brazilian housing policy in force, which began by uniting the National Urban Housing Program (PNHU – Programa Nacional de Habitação Urbana) and the National Rural Housing Program (PNHR – Programa Nacional de Habitação Rural) and today

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<sup>60</sup> Housing purposes, including those for infrastructure and basic sanitation related to programs or projects that have the same purpose. (Free translation)

<sup>61</sup> Pursuant to article 2, § 2, of Law 11,888/08.

<sup>62</sup> Pursuant to article 2, § 2, III, of Law 11,888/08.

creates incentive mechanisms for the production and acquisition of new housing units by the low-income population, as well as for requalification<sup>63</sup> of real estate (BRASIL, 2009b).

Com investimentos na ordem de R\$ 34 bilhões (sendo R\$ 25,5 bilhões do Orçamento Geral da União, R\$ 7,5 bilhões do FGTS e R\$ 1 bilhão do BNDES), o Programa prevê a construção de um milhão de moradias no prazo de dois anos, além da promessa de geração de emprego, renda e sustentação econômica para um país temeroso da crise<sup>64</sup> (ROMAGNOLI, 2012, p. 86).

To this end, the Federal Government may: a) grant an economic subsidy to the beneficiary; b) participate in the Residential Lease Fund (FAR – Fundo de Arrendamento Residencial), through payment of quotas and transfer of resources to the FDS; c) carry out a public offering of resources destined to the economic subsidy to the individual beneficiary; d) participate in the FGHab; e) grant economic subsidy through BNDES (BRASIL, 2009b).

Monteiro and Veras (2015, p. 1184) detail the origin of the resources:

A CEF é o agente operacional e financeiro do PMCMV que é gerido pelo Ministério das Cidades, utilizando recursos do Fundo de Desenvolvimento Social (FDS), Fundo de Garantia por Tempo de Serviço (FGTS), Fundo de Arrendamento Residencial (FAR), do Banco Nacional de Desenvolvimento Econômico e Social (BNDES) e do Fundo Garantidor da Habitação Popular (FGHab). Ele foi incluído no Programa de Aceleração do Crescimento 2 (PAC 2), em 2010, situado como um de seus eixos<sup>65</sup>.

Considering that the housing deficit is high and resources are limited, the law established the Program's priorities<sup>66</sup> of service:

III - prioridade de atendimento às famílias residentes em áreas de risco, insalubres, que tenham sido desabrigadas ou que perderam a moradia em razão de enchente, alagamento, transbordamento ou em decorrência de qualquer desastre natural do gênero;  
IV - prioridade de atendimento às famílias com mulheres responsáveis pela unidade familiar; e

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<sup>63</sup> Pursuant to art. 1, § 1, IV, of Law n. 11,977/09, is "acquisition of real estate combined with the execution of works and services aimed at the recovery and occupation for housing purposes, permitted the execution of works and necessary services for the modification of use" (Free translation) (BRASIL, 2009b).

<sup>64</sup> With investments in the order of R\$ 34 billion (R\$ 25.5 billion from the General Budget of the Union, R\$ 7.5 billion from the FGTS and R\$ 1 billion from the BNDES), the Program foresees the construction of one million houses within two years, in addition to the promise of generating employment, income and economic support for a country fearful of the crisis. (Free translation)

<sup>65</sup> CEF is the operational and financial agent of the PMCMV, which is managed by the Ministry of Cities, using resources from the Social Development Fund (FDS – Fundo de Desenvolvimento Social), Severance Indemnity Fund (FGTS – Fundo de Garantia por Tempo de Serviço), Residential Lease Fund (FAR - Fundo de Arrendamento Residencial), of the Bank National Economic and Social Development (BNDES - Banco Nacional de Desenvolvimento Econômico e Social) and the Popular Housing Guarantee Fund (FGHab – Fundo Garantidor da Habitação Popular). It was included in the Growth Acceleration Program 2 (PAC 2), in 2010, located as one of its axes. (Free translation)

<sup>66</sup> Although the Law pre-defined priority criteria, it allowed States, Municipalities and the Federal District (DF) to establish other criteria for selecting beneficiaries, provided that they were previously approved by the housing councils, pursuant to article 3, § 4, of Law n. 11.977/09.



V - prioridade de atendimento às famílias de que façam parte pessoas com deficiência<sup>67</sup> (BRASIL, 2009b).

It was also defined that the Federal Government would divide the beneficiaries into groups, according to income, to better serve them, varying the percentages of interest and economic subsidy according to the monthly family income. Currently, beneficiaries are classified into 4 ranges (CAIXA, 2017):

- Range 1: families with monthly income of up to R\$1,800;
- Range 1.5: families with monthly income of up to R\$ 2,600;
- Range 2: families with monthly income of up to R\$4,000;
- Range 3: families with monthly income of up to R\$ 9,000;

The Government also defined the limits for property values, according to the Municipality, as shown in the table below:

TABLE 1:PMCMV property value limits

NOVOS TETOS DO VALOR DOS IMÓVEIS				
Recorte territorial	DF, RJ e SP	Região Sul, ES e MG	Região Centro-Oeste, exceto DF	Regiões Norte e Nordeste
Capitais estaduais classificadas pelo IBGE como metrópoles	R\$ 240 mil	R\$ 215 mil	R\$ 190 mil	R\$ 190 mil
Demais capitais estaduais e municípios com população maior ou igual a 250 mil habitantes classificados pelo IBGE como capitais regionais; municípios com população maior ou igual a 100 mil habitantes integrantes das regiões metropolitanas das capitais estaduais, de Campinas, da Baixada Santista e das regiões integradas de desenvolvimento das capitais	R\$ 230 mil	R\$ 190 mil	R\$ 180 mil	R\$ 180 mil
Municípios com população maior ou igual a 100 mil habitantes; municípios com população menor que 100 mil habitantes integrantes das regiões metropolitanas das capitais estaduais, de Campinas, da Baixada Santista e das regiões integradas de desenvolvimento das capitais; municípios com menos de 250 mil habitantes classificados pelo IBGE como capitais regionais	R\$ 180 mil	R\$ 170 mil	R\$ 165 mil	R\$ 160 mil
Municípios com população maior ou igual a 50 mil e menor que 100 mil habitantes	R\$ 145 mil	R\$ 140 mil	R\$ 135 mil	R\$ 130 mil
Municípios com população com entre 20 mil e 50 mil habitantes	R\$ 110 mil	R\$ 105 mil	R\$ 105 mil	R\$ 100 mil
Demais municípios	R\$ 95 mil	R\$ 95 mil	R\$ 95 mil	R\$ 95 mil

Source: CAIXA, 2017. Caption: Headings from left-right (Territorial cut/DF, RJ and SP/South region, ES and MG/ Mid-West region except DF/ North and Northeast regions); Lines from top-bottom (From the state capitals classified by the IBGE as metropolises having the grater property values to other capitals and municipalities according to its populations described by the thousands decreasingly); Property values expressed in thousands in Brazilian reais.

According to Romagnoli, the Program stands out on the national scene, as “desde o BNH não havia o comprometimento do governo com a oferta de moradias que fizesse frente à realidade do déficit do país<sup>68</sup>” (2012, p. 89).

<sup>67</sup> III - priority of assistance to families residing in risky, unhealthy areas, who have been made homeless or who have lost their homes due to flooding, inundation, overflowing or as a result of any such natural disaster; IV - priority of assistance to families with women responsible for the family unit; and V - priority of assistance to families that include people with disabilities. (Free translation)

<sup>68</sup> Since the BNH there has been no government commitment to the offer of housing that would face the reality of the country's deficit. (Free translation)

As Monteiro and Veras (2015) explain well, the main objective of the PMCMV is not the sale and purchase of finished properties, but financing for the construction of new properties, as in addition to aiming to reduce the housing deficit, the Program was implemented as a way to overcome the economic crisis then in force in the country, seeking to heat up the economy and generate jobs with civil construction. However, the law provides for the possibility of requalifying urban properties, which, for the authors, would be a better option, since empty properties usually already have the necessary urban infrastructure, generating less expense for the Government.

Considering that the families that are allocated to the PMCMV projects suffer great impacts on their lives, either because of the new style of occupation or because of the new place of residence (often far from the living space), the law determined that "os Estados, Municípios e Distrito Federal que aderirem ao PMCMV e a Caixa Econômica Federal serão responsáveis pela execução do trabalho técnico e social pós-ocupação dos empreendimentos implantados"<sup>69</sup> (BRASIL, 2009b). This provision is in line with the Istanbul Declaration, as it concerns itself with the quality of life of the human beings who will occupy the projects.

In relation to urban real estate, the Law<sup>70</sup> determined that all PMCMV projects should be within the urban grid or in an expansion area, in accordance with the Municipal Master Plan, in addition to offering basic infrastructure, such as basic sanitation, lighting and access roads, as well as nearby public equipment (already installed or commitment of the Public Power to install it) related to education, health, leisure and public transport (BRASIL, 2009b).

Other requirements established by the Law were the environmental adequacy of the project, sustainable construction conditions and the use of new construction technologies (BRASIL, 2009b), thus meeting the environmental sustainability proposed by the Istanbul Declaration.

In relation to the social sustainability of the projects, the Law determined that in all of the Program's undertakings conditions of accessibility to all public areas and common use be ensured, in addition to adaptable units for use by people with disabilities, people with reduced mobility and the elderly (BRASIL, 2009b).

In relation to financing contracts, the Law determined as one of the principles the economic-financial balance of these contracts, which would be carried out by the member entities of the SFH, thus ensuring the economic sustainability of the projects, in line with Habitat II. Also seeking the economic sustainability of the Program's beneficiaries, the reduction of costs and notary fees related to PMCMV undertakings was established (BRASIL, 2009b).

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<sup>69</sup> The States, Municipalities and the Federal District that adhere to the PMCMV and Caixa Econômica Federal will be responsible for carrying out the post-occupation technical and social work of the implemented projects. (Free translation)

<sup>70</sup> Included by Law n. 12,424, of June 16, 2011.

In relation to the rural properties of the PNHR, it was established that the resources of the Program would be for the production and renovation of properties for family farmers and rural workers, as well as for technical assistance (BRASIL, 2009b).

An extremely relevant point of the PMCMV is the protection of family housing, provided for in Section VII of Law n. 11.977/09. According to its article 35, "os contratos e registros efetivados no âmbito do PMCMV serão formalizados, preferencialmente, em nome da mulher"<sup>71</sup> (BRASIL, 2009b), who will also have the title to the property in case of separation, divorce or dissolution of the common-law marriage. And, although it seems that the law seeks the protection or empowerment of women, the sole paragraph makes it clear that the protection is the family, as in cases of exclusive custody of the father "o título da propriedade do imóvel será registrado em seu nome ou a ele transferido"<sup>72</sup>(BRASIL, 2009b). And this special protection for children and young people is one of the pillars of Habitat II.

### 38. Decree no. 7,053/09

Published in the Official Gazette of December 24, 2009, Decree n. 7,053/09 instituted the National Policy for the Homeless Population, resulting from the GTI created by the Decree of October 25, 2006. According to the Decree, the following are considered homeless people:

O grupo populacional heterogêneo que possui em comum a pobreza extrema, os vínculos familiares interrompidos ou fragilizados e a inexistência de moradia convencional regular, e que utiliza os logradouros públicos e as áreas degradadas como espaço de moradia e de sustento, de forma temporária ou permanente, bem como as unidades de acolhimento para pernoite temporário ou como moradia provisória<sup>73</sup> (BRASIL, 2009d).

Among the guidelines of the Policy are the promotion of civil, political, economic, social (such as housing), cultural and environmental rights; and popular participation (BRASIL, 2009d), two pillars of Habitat II. And, also in line with the Vancouver Declaration, are the principles of this policy, such as respect for human dignity and the differences between people.

The Program had the objective of guaranteeing this population's access to basic rights, such as education, health, housing and work, training professionals to assist these people, in addition to setting

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<sup>71</sup> Contracts and registrations effected under the PMCMV will be formalized, preferably, in the name of the woman. (Free translation)

<sup>72</sup> The title to the property will be registered in his name or transferred to him. (Free translation) Included by Law No. 12,693, of July 24, 2012.

<sup>73</sup> The heterogeneous population group that has in common extreme poverty, interrupted or weakened family ties and the inexistence of regular conventional housing, and that uses public spaces and degraded areas as a space for housing and livelihood, temporarily or permanently, as well as shelter units for temporary overnight stays or temporary housing. (Free translation)

up centers for the defense of human rights and creating communication channels to receive complaints of violence against the homeless population (BRASIL, 2009d).

The Law, therefore, sought to promote the rights of the homeless population, to guarantee the inclusion of these people in society, one of the goals of the final document of Habitat II.

#### **39. Law no. 12,249/10**

Published in the Official Gazette of June 14, 2010, Law n. 12,249/10 brought several changes to the PMCMV law, among which the granting of economic subsidy to facilitate the acquisition or production of residential property and the granting of resources from the FG Hab for "I – produção ou aquisição de imóveis novos em áreas urbanas; II – requalificação de imóveis já existentes em áreas consolidadas no âmbito do PNHU; e III – produção de moradia no âmbito do PNHR<sup>74</sup>" (BRASIL, 2010b).

By facilitating the acquisition of real estate through economic subsidy and allocation of Fund resources, the law sought to reduce the housing deficit, one of the goals of Habitat II.

#### **40. Decree no. 7,612/11**

Published in the Official Gazette of November 18, 2011, Decree n. 7,612/11 instituted the National Plan for the Rights of Persons with Disabilities, called the Living Without Limits Plan (Plano Viver sem Limite), which aimed to guarantee accessibility to public and private places, especially housing, and inclusion of people with disabilities in education, society and the labor market (BRASIL, 2011c). In addition to seeking to promote the rights of these people, the Law sought to include them in society through government policies, programs and actions, as provided for in the Vancouver Declaration.

#### **41. Law no. 13,089/15**

Published in the Official Gazette of January 12, 2015, Law n. 13,089/15 instituted the Metropolis Statute (Estatuto da Metrópole), which "estabelece diretrizes gerais para o planejamento, a gestão e a execução das funções públicas de interesse comum em regiões metropolitanas<sup>75</sup> e em aglomerações urbanas<sup>76</sup>" (BRASIL, 2015a).

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<sup>74</sup> I - production or acquisition of new properties in urban areas; II – requalification of existing properties in consolidated areas under the PNHU; and III – housing production under the PNHR. (Free translation)

<sup>75</sup> Pursuant to Article 2<sup>nd</sup>, I, of Law n. 13,089/15: "urban agglomeration that configures a metropolis (urban space with territorial continuity that, due to its population and political and socioeconomic relevance, has national influence or over a region that configures at least the area of influence of a capital) according to the criteria adopted by the Brazilian Institute of Geography and Statistics – IBGE". (Free translation)

<sup>76</sup> Establishes general guidelines for the planning, management and execution of public functions of common interest in metropolitan regions and in urban agglomerations. (Free translation) Pursuant to Article 2<sup>nd</sup>, I, of Law n. 13,089/15: "urban territorial unit constituted by the grouping of 2 or more neighboring Municipalities, characterized

Although the FC establishes the autonomy of the municipalities<sup>77</sup>, some issues go beyond municipal limits, without, however, being considered of state interest, as in the cases of solid waste, water resources, urban mobility (mainly due to commuting), work and housing. Thus, it is not up to the states to deal with the issue, but to the municipalities, which, given the impossibility of invading the sphere of other municipalities, cannot solve the problems.

Therefore, the Metropolis Statute was promulgated, which regulates both the institution of Metropolitan Regions, as well as interfederative governance and instruments for integrated urban development (BRASIL, 2015a).

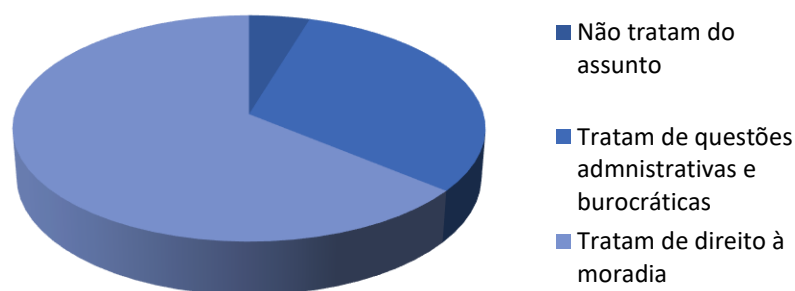
Although the law does not specifically address housing, it does address issues related to human settlements, such as land use and occupation, and is ideologically in line with the Istanbul Declaration, which seeks a global treatment of issues related to human settlements.

## FINAL CONSIDERATIONS

As highlighted in part I of this article, the Istanbul Declaration addressed the right to housing under the tripod of sustainability: environmental, social and economic.

After Habitat II, 64 norms were issued in Brazil containing the terms 'dwelling' and/or 'housing'. Of these, 3 contain the terms, but do not deal with the right to housing, and 20 deal with administrative and bureaucratic issues, with no impact on the right to housing, as shown in Graph 1.

**Graphic 1.** Brazilian federal legislation between 1996 and 2016



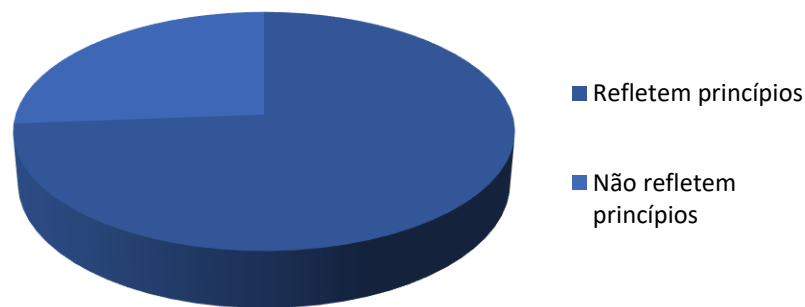
Caption from top to bottom: Do not deal with the subject/Deal with administrative and bureaucratic issues/Deal with the right to housing

by functional complementarity and integration of geographic, environmental, political and socioeconomic dynamics". (Free translation)

<sup>77</sup> Pursuant to Article 18 of the Federal Constitution.

Among the 41 norms that deal with the right to housing, 34 reflect the guidelines of the Istanbul Declaration (as shown in Graph 2), although without express reference in the explanatory statement. The impact of Habitat II on Brazilian legislation was more evident, with the inclusion of housing in the list of social rights provided for in the federal Constitution, with the creation of the City Statute, which in its explanatory statement made direct reference to the Conference, and with the creation of the Minha Casa, Minha Vida Program, which is the Brazilian housing policy with the greatest impact, but still insufficient, in promoting the right to housing.

**Graph 2.** The reflection of the Istanbul Declaration on Brazilian federal legislation between 1996 and 2016



Caption from top to bottom: Reflect principles/Do not reflect principles

Habitat II, therefore, had direct and indirect impacts on Brazilian federal legislation, particularly in the drafting of the City Statute, which establishes general rules on urban planning. The sustainability of human settlements, as proposed by Habitat II, is not yet the reality in Brazil, even from a positive point of view. However, legislation on the subject is developing and has excellent international parameters to assist in this development.

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INSS - FCINSS; o auxílio-moradia para os servidores de Estados e Municípios para a União, a extinção e criação de cargos em comissão; e dá outras providências. Diário Oficial da União, Brasília, DF, 20 out. 2006 (e).

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\_\_\_\_. **Lei n. 11.490**, de 20 de junho de 2007. Altera as Leis n. 9.657, de 3 de junho de 1998, 10.480, de 2 de julho de 2002, 11.314, de 3 de julho de 2006, 11.344, de 8 de setembro de 2006, 11.355, 11.356, 11.357 e 11.358, de 19 de outubro de 2006, 8.025, de 12 de abril de 1990, e 8.112, de 11 de dezembro de 1990, 11.457, de 16 de março de 2007, e dá outras providências. Diário Oficial da União, Brasília, DF, 21 jun. 2007 (d).

\_\_\_\_. **Decreto n. 6.194**, de 22 de agosto de 2007. Aprova a Estrutura Regimental e o Quadro Demonstrativo dos Cargos em Comissão e das Funções Gratificadas do Ministério da Previdência Social e dá outras providências. Diário Oficial da União, Brasília, DF, 23 ago. 2007 (e).

\_\_\_\_. **Decreto n. 6.215**, de 26 de setembro de 2007. Estabelece o Compromisso pela Inclusão das Pessoas com Deficiência, com vistas à implementação de ações de inclusão das pessoas com deficiência, por parte da União Federal, em regime de cooperação com Municípios, Estados e Distrito Federal, institui o Comitê Gestor de Políticas de Inclusão das Pessoas com Deficiência - CGPD, e dá outras providências. Diário Oficial da União, Brasília, DF, 28 set. 2007 (f).

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\_\_\_\_. **Decreto n. 6.276**, de 28 de novembro de 2007. Discrimina ações do Programa de Aceleração do crescimento - PAC a serem executadas por meio de transferência obrigatória. Diário Oficial da União, Brasília, DF, 29 nov. 2007 (h).

\_\_\_\_. **Decreto n. 6.306**, de 14 de dezembro de 2007. Regulamenta o Imposto sobre Operações de Crédito, Câmbio e Seguro, ou relativas a Títulos ou Valores Mobiliários - IOF. Diário Oficial da União, Brasília, DF, 17 dez. 2007 (i).

\_\_\_\_. **Decreto n. 6.450**, de 8 de maio de 2008. Discrimina ações do Programa de Aceleração do crescimento - PAC a serem executadas por meio de transferência obrigatória. Diário Oficial da União, Brasília, DF, 09 mai. 2008 (a).

\_\_\_\_. **Lei n. 11.888**, de 24 de dezembro de 2008. Assegura às famílias de baixa renda assistência técnica pública e gratuita para o projeto e a construção de habitação de interesse social e altera a Lei no 11.124, de 16 de junho de 2005. Diário Oficial da União, Brasília, DF, 26 dez. 2008 (b).

\_\_\_\_. **Decreto n. 6.820**, de 13 de abril de 2009. Institui a Política Nacional para a População em Situação de Rua e seu Comitê Intersetorial de Acompanhamento e Monitoramento, e dá outras providências. Diário Oficial da União, Brasília, DF, 13 abr. 2009 (a).

\_\_\_\_. **Lei n. 11.977**, de 7 de julho de 2009. Dispõe sobre o Programa Minha Casa, Minha Vida – PMCMV e a regularização fundiária de assentamentos localizados em áreas urbanas; altera o Decreto-Lei n. 3.365, de 21 de junho de 1941, as Leis n. 4.380, de 21 de agosto de 1964, 6.015, de 31 de dezembro de 1973, 8.036, de 11 de maio de 1990, e 10.257, de 10 de julho de 2001, e a Medida Provisória no 2.197-43, de 24 de agosto de 2001; e dá outras providências. Diário Oficial da União, Brasília, DF, 08 jul. 2009 (b).

\_\_\_\_. **Lei n. 12.024**, de 27 de agosto de 2009. Dá nova redação aos arts. 4o, 5o e 8o da Lei no 10.931, de 2 de agosto de 2004, que tratam de patrimônio de afetação de incorporações imobiliárias; dispõe sobre o tratamento tributário a ser dado às receitas mensais auferidas pelas empresas construtoras nos contratos de construção de moradias firmados dentro do Programa Minha Casa, Minha Vida - PMCMV, atribui à Agência Nacional de Telecomunicações - ANATEL as atribuições de apurar, constituir, fiscalizar e arrecadar a Contribuição para o Fomento da Radiodifusão Pública; altera as Leis nos 11.196, de 21 de novembro de 2005, 11.652, de 7 de abril de 2008, 10.833, de 29 de dezembro de 2003, 9.826, de 23 de agosto de 1999, 6.099, de 12 de setembro de 1974, 11.079, de 30 de dezembro de 2004, 8.668, de 25 de junho de 1993, 8.745, de 9 de dezembro de 1993, 10.865, de 30 de abril de 2004, 8.989, de 24 de fevereiro de 1995, e 11.941, de 27 de maio de 2009; e dá outras providências. Diário Oficial da União, Brasília, DF, 28 ago. 2009 (c).

\_\_\_\_. **Decreto n. 7.053**, de 23 de dezembro de 2009. Institui a Política Nacional para a População em Situação de Rua e seu Comitê Intersetorial de Acompanhamento e Monitoramento, e dá outras providências. Diário Oficial da União, Brasília, DF, 24 dez. 2009 (d).

\_\_\_\_. **Medida Provisória n. 478**, de 29 de dezembro de 2009. Dispõe sobre a extinção da Apólice do Seguro Habitacional do Sistema Financeiro da Habitação - SH/SFH, altera a legislação tributária relativamente às regras de preços de transferência, e dá outras providências. Diário Oficial da União, Brasília, DF, 29 dez. 2009 (e).

\_\_\_\_. **Decreto n. 7.161**, de 29 de abril de 2010. Autoriza a permuta de ações entre a União e entidades da administração federal indireta e dá outras providências. Diário Oficial da União, Brasília, DF, 30 abr. 2010 (a).

\_\_\_\_. **Lei n. 12.249**, de 11 de junho de 2010. Institui o Regime Especial de Incentivos para o Desenvolvimento de Infraestrutura da Indústria Petrolífera nas Regiões Norte, Nordeste e Centro-Oeste - REPENEC; [...] ajusta o Programa Minha Casa Minha Vida - PMCMV; [...] e dá outras providências. Diário Oficial da União, Brasília, DF, 14 jun. 2010 (b).

\_\_\_\_. **Decreto n. 7.366**, de 25 de novembro de 2010. Autoriza a integralização de cotas do Fundo Garantidor da Habitação Popular - FGHab. Diário Oficial da União, Brasília, DF, 26 nov. 2010 (c).

\_\_\_\_. **Decreto n. 7.367**, de 25 de novembro de 2010. Altera o Decreto no 6.144, de 3 de julho de 2007, que regulamenta a forma de habilitação e co-habilitação ao Regime Especial de Incentivos para o Desenvolvimento da Infra-Estrutura - REIDI, instituído pelos arts. 1o a 5o da Lei no 11.488, de 15 de junho de 2007. Diário Oficial da União, Brasília, DF, 26 nov. 2010 (d).

\_\_\_\_. **Lei n. 12.409**, de 25 de maio de 2011. Conversão da Medida Provisória n. 513, de 2010. Autoriza o Fundo de Compensação de Variações Salariais - FCVS, a assumir, na forma disciplinada em ato do Conselho Curador do Fundo de Compensação de Variações Salariais - CCFCVS, direitos e obrigações do Seguro Habitacional do Sistema Financeiro da Habitação - SH/SFH; oferecer cobertura direta a contratos de financiamento habitacional averbados na Apólice do SH/SFH; autoriza o Departamento Nacional de Infraestrutura de Transporte - DNIT a utilizar recursos federais em apoio à transferência definitiva do domínio da malha rodoviária federal para os Estados; altera o Anexo do Plano Nacional de Viação aprovado pela Lei n. 5.917, de 10 de setembro de 1973, e as Leis nos 12.249, de 11 de junho de 2010, 11.887, de 24 de dezembro de 2008, 11.079, de 30 de dezembro de 2004, e 11.314, de 3 de julho de 2006; revoga a Medida Provisória no 523, de 20 de janeiro de 2011; e dá outras providências. Diário Oficial da União, Brasília, DF, 26. Maio 2011 (a).

\_\_\_\_. **Lei n. 12.415**, de 09 de junho de 2011. Acrescenta parágrafo único ao art. 130 da Lei no 8.069, de 13 de julho de 1990 (Estatuto da Criança e do Adolescente), para determinar que alimentos provisórios sejam fixados cautelarmente em favor da criança ou adolescente cujo agressor seja afastado da moradia comum por determinação judicial. Diário Oficial da União, Brasília, DF, 10 jun. 2011 (b).

\_\_\_\_. **Decreto n. 7.612**, de 17 de novembro de 2011. Institui o Plano Nacional dos Direitos da Pessoa com Deficiência - Plano Viver sem Limite. Diário Oficial da União, Brasília, DF, 18 nov. 2011 (c).

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