Implementing Progressive Planning in Brazil:
Understanding the Gap between Rhetoric and Practice

by

Abigail Friendly

A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy

Department of Geography and Planning
University of Toronto

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2014

Abstract

This dissertation explores the juxtaposition between an innovative national policy underpinned by concepts of the right to the city and social justice, and the implementation of that law at the local level, with variable results. Approved in 2001 following the growth of the urban reform movements and a new ‘citizens’ Constitution in 1988, the Statute of the City explicitly recognized the ‘right to the city,’ understood as the right to participate in urban life. In the Brazilian context, this means a combination of the ‘social function of property and of the city’ (the regulation of urban development as a public issue rather than a private one) and the democratic management of cities. The Statute regulates the 1988 Constitution’s chapter on urban policy, mandates institutionalized participation in planning processes including citizen councils, large-scale forums and public hearings, and aims to promote social justice by alleviating the array of complex problems faced by Brazilian cities. Using a combination of semi-structured interviews, document analysis and observation, I focus on one case of the politics of implementing the progressive policy tools of the Statute of the City: the city of Niterói, Rio de Janeiro State.

In my research, four intertwining themes explore how power relations and civil society
organization influence the capacity to implement more participatory and socially just planning. While a gap exists between the rhetoric of the Statute and local practice, my findings suggest that the changes made as a result of the new planning directives of the Statute need to be seen as a long-term process. Indeed, the Statute is extraordinary in the Brazilian context, given high levels of poverty and socio-spatial inequality, violence and the aftermath of twenty years of dictatorship.
Acknowledgements

I would like to thank my advisors, Amrita Daniere and Paul Hess, for the tremendous support they have provided during the course of my PhD. They have helped me to become a better researcher and encouraged me throughout the process from course work to final dissertation. I would also like to thank my other committee members, Sarah Wakefield and to Richard Stren for always being generous with his time and networks, and for his exceptional guidance during the process. To my colleagues at the University of Toronto, especially the Latin American seminar group for the support and valuable comments on my chapters and papers during the process.

Your feedback, collaboration and constant support during the writing process was critical.

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In addition, I would also like to thank the Social Sciences Humanities Research Council (SSHRC) for the generous financial support during my PhD and the International Development Research Centre (IDRC) for financial support during my field work in Brazil. Without the support of these organizations, this work would not have been possible.

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accompanying me to several conferences. Finally, to Gustavo, who supported me in innumerable ways throughout the long PhD research process, both practically, helping with portuguese nuances and obscure aspects of Niterói’s past, but always encouraging me to be positive in my work.
# Table of contents

List of Tables .......................................................................................................................... viii
List of Figures .......................................................................................................................... ix
List of Appendices ................................................................................................................... x
Glossary .................................................................................................................................. xi
Prologue ................................................................................................................................. xiv

Chapter 1: Brazilian Urban Policy and the Statute of the City ........................................... 1
  The Statute of the City: Between discourse and practice ......................................................... 1
  Research objectives and questions .......................................................................................... 3
  A relational framework: Participation, civil society, power and social justice ....................... 4
  The right to the city ............................................................................................................... 7
  The research context: Urbanization and the ‘urban tragedy’ in Brazil ..................................... 11
  Two dimensions of the Statute
    A conceptual dimension ....................................................................................................... 15
    Processes for democratic management ................................................................................ 20
  The case study: Niterói – cidade sorriso (the smile city) ....................................................... 21
  Relevance of the research ....................................................................................................... 25
  Structure of the dissertation .................................................................................................... 27

Chapter 2: Methodology ......................................................................................................... 29
  Introduction and conceptual methodology ............................................................................. 29
  Case study selection criteria ................................................................................................. 29
  Data collection methods ....................................................................................................... 32
  Data analysis .......................................................................................................................... 39
  Ethics, rigour and positionality .............................................................................................. 40

Chapter 3: The New Planning Model in Brazil ...................................................................... 45
  Introduction ............................................................................................................................ 45
  The Brazilian national planning context
    Antecedents: Urban Policies before the Constitution ......................................................... 46
    The 1988 Constitution ......................................................................................................... 47
    The enactment of the Statute of the City ............................................................................. 50
    Decentralization in the Brazilian planning context ............................................................. 53
  The history of urban planning in Niterói
    The local planning system: Niterói in the early 1990s ...................................................... 57
    The 1992 master plan .......................................................................................................... 62
    The regional urban plans .................................................................................................... 69
    The 2004 master plan ......................................................................................................... 75
  Conclusion ............................................................................................................................... 77

Chapter 4: Implementing Participatory Planning in Brazil ................................................... 79
  Introduction ............................................................................................................................ 79
  Participation in urban development and planning ................................................................... 80
  Avritzer’s Theory of Participatory Institutions ...................................................................... 84
  The role of participation in the Statute of the City ................................................................. 87
  Participation and urban development in Niterói
    Participation in master planning .......................................................................................... 89
    Urban development councils as cases of participatory planning ......................................... 94
    The second urban development council: COMPUR .......................................................... 95
    Participation in the regional urban plans (PURs) ................................................................ 99
## List of Tables

1.1 Total population, percent urban, and number of municipalities in Brazil .......................... 11

2.1 GDP for Rio de Janeiro State, top five cities ........................................................................... 31
2.2 Key expert interviews conducted for this research ................................................................. 34
2.3 Informants interviewed for field work in Niterói, Rio and Santo André by sector ............ 35
2.4 Observational research roles ................................................................................................ 37
2.5 Meetings attended for field work in 2010 and 2011 ............................................................. 38

3.1 Elements of the FNRU’s proposals in Pompeu de Sousa’s Bill .............................................. 51
3.2 Municipal revenue in Brazil .................................................................................................. 56
3.3 Per capita budget revenues for Niterói in relation to smaller cities in Rio State, 2009 .......................................................... 57
3.4 Number of *favelas* and *favela* population in Niterói, 1970s and 1980s ................. 61
3.5 Perceived problems in Niterói, 1991 .................................................................................. 64
3.6 Areas covered by Niterói’s 1992 master plan .................................................................. 66

7.1 Urban values of social justice ............................................................................................... 177
7.2 Annual collection from *solo criado* ..................................................................................... 183
7.3 Urban values of social justice in Niterói ................................................................................ 202
List of Figures

1.1 The relational framework linking participation, civil society, power and social justice ........................................................................................................... 7
1.2 Inequality and socio-spatial segregation in São Paulo, shown visually between favela Paraisópolis and the wealthy neighbourhood of Morumbi ............................. 14
1.3 The dimensions of the Statute of the City ................................................................................................................................. 15
1.4 Niterói in relation to the State of Rio de Janeiro ......................................................................................................................... 22
1.5 Niterói’s five administrative planning regions .......................................................................................................................... 24

3.1 Timeline of planning landmarks in Brazil ........................................................................................................................................ 53
3.2 Timeline of mayors of Niterói and their parties ............................................................................................................................. 60
3.3 View from Niterói’s municipality overlooking Favela do Estado, centre of Niterói .............................................................. 61
3.4 Niterói’s municipal logo ................................................................................................................................................................. 63
3.5 Chronology of legislation relating to the master plan in Niterói ..................................................................................................... 67

4.1 Participatory institutions ................................................................................................................................................................. 86
4.2 Participation in the master planning process and the management of the master plan in Brazil ........................................................................ 88
4.3 Participation and functioning of the urban development process in Niterói .................................................................................. 89
4.4 Advertisement for a community meeting for the participatory master plan, 1991 ................................................................. 91
4.5 The composition of COMPUR by sector ........................................................................................................................................ 96

5.1 Timeline of urban reform in Brazil ........................................................................................................................................ 123
5.2 Spectrum of mediating roles of civil society .................................................................................................................................... 125
5.3 Civil society in Niterói and major dates in Brazil .......................................................................................................................... 130
5.4 Development and defense of rights, by sub-category, 1996 - 2010 ............................................................................................. 131
5.5 Brazil and Niterói FASFIL 2010, number per 100,000 population ............................................................................................... 132
5.6 Niterói’s city council was occupied on August 8, 2013 ............................................................................................................ 142
5.7 Protesters promise to re-occupy city council ................................................................................................................................... 142

6.1 Timeline of the mayors of Niterói since 1989 .................................................................................................................................. 150
6.2 Sign for “Niterói doesn’t have a mayor” at a rally of Acorda Niterói ............................................................................................ 152
6.3 Sign protesting “No to high rises in the Oceânica region” ........................................................................................................ 163
6.4 “The city is not a business – Occupy Niterói” .............................................................................................................................. 164
6.5 After the rains in April 2010 ....................................................................................................................................................... 166
6.6 Poster for a meeting questioning Bairro Modelo: “Bairro Modelo in Sapê, Why and For Whom?” ............................................................ 166

7.1 “Mourning for Niterói” ................................................................................................................................................................. 182
7.2 Using solo criado .............................................................................................................................................................................. 183
7.3 Icaraí beach in 1959 and 1996 ................................................................................................................................................... 187
7.4 Example of a project concluded with money from FUHAB for water runoff in the neighbourhood of Grota da Surucucu ................. 190
7.5 Demarcated AEIS in Niterói ....................................................................................................................................................... 192
List of Appendices

Appendix 1: Interview guide .............................................................................................................. 230
Appendix 2: Informed consent form ................................................................................................. 231
Appendix 3: Interviews conducted for this research ........................................................................ 232
Appendix 4: Excerpt from the Statute of the City .......................................................................... 235
## Glossary

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ADEMI</td>
<td>Association of Business Executives in Niterói’s Real Estate Market (Associação dos Dirigentes de Empresas do Mercado Imobiliário)</td>
</tr>
<tr>
<td>AEIS</td>
<td>Special areas of social interest (áreas de especial interesse social)</td>
</tr>
<tr>
<td>ANSUR</td>
<td>National Network for Urban Land (Articulação Nacional do Solo Urbano)</td>
</tr>
<tr>
<td>BNH</td>
<td>National Housing Bank (Banco Nacional da Habitação)</td>
</tr>
<tr>
<td>CCOB</td>
<td>Community Council of the Orla da Baía (Conselho Comunitário da Orla da Baía)</td>
</tr>
<tr>
<td>CCRON</td>
<td>Community Council of the Oceânica Region (Conselho Comunitário da Região Oceânica)</td>
</tr>
<tr>
<td>CDCMAM</td>
<td>Commission for Consumer Protection, Environment and Minorities (Comissão de Defesa do Consumidor, Meio Ambiente e Minorias)</td>
</tr>
<tr>
<td>CPDU</td>
<td>Urban Planning and Development Coordination (Coordenadoria de Planejamento e Desenvolvimento Urbano)</td>
</tr>
<tr>
<td>CDRU</td>
<td>Concession of real right to use (concessão de direito real de uso)</td>
</tr>
<tr>
<td>CDUI</td>
<td>Urban and Interior Development Commission (Comissão de Desenvolvimento Urbano e Interior)</td>
</tr>
<tr>
<td>CEB</td>
<td>Ecclesiastical Base Communities (Comunidades Eclesiais de Base)</td>
</tr>
<tr>
<td>CMP</td>
<td>Peoples’ Movements Central (Central dos Movimentos Populares)</td>
</tr>
<tr>
<td>CMUMA</td>
<td>Municipal Council of Urbanism and the Environment (Conselho Municipal de Urbanismo e Meio Ambiente)</td>
</tr>
<tr>
<td>COMPERJ</td>
<td>Petrochemical Complex of Rio de Janeiro (Complexo Petroquímico do Rio de Janeiro)</td>
</tr>
<tr>
<td>COMPUR</td>
<td>Municipal Council of Urban Policy, Niterói (Conselho Municipal de Política Urbana)</td>
</tr>
<tr>
<td>CONLESTE</td>
<td>Intermunicipal Development Consortium of East Fluminense (Consórcio Intermunicipal de Desenvolvimento do Leste Fluminense)</td>
</tr>
<tr>
<td>CPT</td>
<td>Pastoral Land Commission (Comissão Pastoral da Terra)</td>
</tr>
<tr>
<td>CUEM</td>
<td>concession of special use for housing purposes (concessão de uso especial para fins de moradia)</td>
</tr>
<tr>
<td>EIV</td>
<td>Neighbourhood impact study (estudo de impacto de vizinhança)</td>
</tr>
<tr>
<td>EMUSA</td>
<td>Municipal Housing, Urbanization and Sanitation Company (Empresa Municipal de Moradia, Urbanização e Saneamento)</td>
</tr>
<tr>
<td>EPG</td>
<td>Empowered Participatory Governance</td>
</tr>
<tr>
<td>FAFERJ</td>
<td>Association of Favelas of the State of Rio de Janeiro (Federação das Associações de Moradores de Favelas do Estado do Rio de Janeiro)</td>
</tr>
<tr>
<td>FAMERJ</td>
<td>Federation of Neighbourhood Associations of the State of Rio de Janeiro (Federação das Associações de Moradores do Estado do Rio de Janeiro)</td>
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<tr>
<td>FAMNIT</td>
<td>Federation of Associations of Residents of Niterói (Federação das Associações de Moradores de Niterói)</td>
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<td>Acronym</td>
<td>Full Name</td>
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<tr>
<td>FASE</td>
<td>Federation of Organizations for Social and Educational Assistance</td>
</tr>
<tr>
<td>FENAE</td>
<td>National Federation of Caixa Econômica Federal’s Staff Associations</td>
</tr>
<tr>
<td>FIRJAN</td>
<td>Federation of Industries of the State of Rio de Janeiro</td>
</tr>
<tr>
<td>FISENGE</td>
<td>Interstate Federation of Engineers’ Unions</td>
</tr>
<tr>
<td>FNA</td>
<td>National Federation of Architects</td>
</tr>
<tr>
<td>FNE</td>
<td>National Federation of Engineers</td>
</tr>
<tr>
<td>FNRA</td>
<td>National Forum for Urban Reform</td>
</tr>
<tr>
<td>FPM</td>
<td>Municipal Revenue Sharing-Fund</td>
</tr>
<tr>
<td>FUHAB</td>
<td>Fund for Social Housing</td>
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<tr>
<td>GPU</td>
<td>Working Group on Urban Policy</td>
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<tr>
<td>IAB</td>
<td>Institute of Architects of Brazil</td>
</tr>
<tr>
<td>IBAM</td>
<td>Brazilian Institute of Municipal Administration</td>
</tr>
<tr>
<td>IBGE</td>
<td>Brazilian Institute of Geography and Statistics</td>
</tr>
<tr>
<td>ICMS</td>
<td>Tax on Goods and Services</td>
</tr>
<tr>
<td>INESC</td>
<td>Institute for Socioeconomic Studies</td>
</tr>
<tr>
<td>IOFouro</td>
<td>Tax on Financial Operations on Gold</td>
</tr>
<tr>
<td>IPI</td>
<td>Industrialized Products Tax</td>
</tr>
<tr>
<td>IPPUR</td>
<td>Institute for Research and Urban and Regional Planning</td>
</tr>
<tr>
<td>IPTU</td>
<td>Property Transfer Tax</td>
</tr>
<tr>
<td>IPVA</td>
<td>Tax on Automotive Vehicles</td>
</tr>
<tr>
<td>IR</td>
<td>Income Tax</td>
</tr>
<tr>
<td>ISS</td>
<td>Services Tax</td>
</tr>
<tr>
<td>ITBI</td>
<td>Property Transfer Tax</td>
</tr>
<tr>
<td>ITR</td>
<td>Rural Land Tax</td>
</tr>
<tr>
<td>MAC</td>
<td>Museum of Contemporary Art</td>
</tr>
<tr>
<td>MDB</td>
<td>Brazilian Democratic Movement</td>
</tr>
<tr>
<td>MDF</td>
<td>Movement for the Defence of Favela Dwellers</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Name</td>
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<tr>
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<tr>
<td>MNLM</td>
<td>National Movement in the Fight for Housing (Movimento Nacional de Luta por Moradia)</td>
</tr>
<tr>
<td>MNRU</td>
<td>National Movement for Urban Reform (Movimento Nacional de Reforma Urbana)</td>
</tr>
<tr>
<td>NITTRANS</td>
<td>Niterói Transport and Transit (Niterói Transporte e Trânsito)</td>
</tr>
<tr>
<td>NURF</td>
<td>Land regularization nucleus (núcleo de regularização fundiária)</td>
</tr>
<tr>
<td>OAB/RJ</td>
<td>Bar Association of Brazil, Rio de Janeiro (Ordem dos Advogados do Brasil, Rio de Janeiro)</td>
</tr>
<tr>
<td>OODC</td>
<td>Award with costs of the right to build (autorga onerosa do direito de construir)</td>
</tr>
<tr>
<td>OUC</td>
<td>Consortiated urban operation (operação urbana consorciada)</td>
</tr>
<tr>
<td>PC do B</td>
<td>Brazilian Communist Party (Partido Comunista do Brasil)</td>
</tr>
<tr>
<td>PDT</td>
<td>Democratic Labour Party (Partido Democrático Trabalhista)</td>
</tr>
<tr>
<td>PDS</td>
<td>Social Democratic Party (Partido Democrático Social)</td>
</tr>
<tr>
<td>PEUC</td>
<td>Compulsory parcelling, building or use (parcelamento, edificação ou utilização compulsórios)</td>
</tr>
<tr>
<td>PMDB</td>
<td>Brazilian Democratic Movement Party (Partido do Movimento Democrático Brasileiro)</td>
</tr>
<tr>
<td>PSOL</td>
<td>Socialism and Freedom Party (Partido Socialismo e Liberdade)</td>
</tr>
<tr>
<td>PT</td>
<td>Workers’ Party (Partido dos Trabalhadores)</td>
</tr>
<tr>
<td>PUR</td>
<td>regional urban plan (plano urbanístico regional)</td>
</tr>
<tr>
<td>SAB</td>
<td>Societies of Friends of the Neighbourhood (Sociedades de Amigos do Bairro)</td>
</tr>
<tr>
<td>SFH</td>
<td>Federal Housing System (Sistema Federal de Habitação)</td>
</tr>
<tr>
<td>TDC</td>
<td>Transfer of the right to build (transferência do direito de construir)</td>
</tr>
<tr>
<td>UNAMPPPI</td>
<td>Union of Residents’ Associations of Pendotiba, Piratininga and Itaipu (União da Associações de Moradores de Pendotiba, Piratininga e Itaipu)</td>
</tr>
<tr>
<td>UN-Habitat/</td>
<td>UN-Habitat Regional Office for Latin America and the Caribbean</td>
</tr>
<tr>
<td>Rolac</td>
<td></td>
</tr>
<tr>
<td>UNMP</td>
<td>National Union for Affordable Housing ( União Nacional por Moradia Popular)</td>
</tr>
<tr>
<td>UFF</td>
<td>Fluminense Federal University (Universidade Federal Fluminense)</td>
</tr>
<tr>
<td>UFRJ</td>
<td>Federal University of Rio de Janeiro (Universidade Federal do Rio de Janeiro)</td>
</tr>
</tbody>
</table>
Prologue

In April 2010, torrential rain fell in Niterói, Brazil, a city of a half million people across the bay from Rio de Janeiro. Hundreds of people died, homes were destroyed, severe damage was caused to roads, city infrastructure, the environment and 15,000 people became homeless. Most importantly, the disaster caused destruction in several of Niterói’s favelas including Morro do Bumba, in the east of Niterói. The destruction in Morro do Bumba was particularly severe as it was built on a deactivated garbage dump; it was the effect of the rain on gases that had already accumulated that caused Morro do Bumba to collapse.

Even worse, the problems in Morro do Bumba had been known in Niterói for some time. In 2006, the local government asked the Fluminense Federal University to study and document the situation in the favela neighbourhood. Identifying areas that were vulnerable to landslides, the report showed “garbage, land, garbage, land and houses on top” (Personal Interview [P.I.], 12/4/11). Similarly, the residents’ associations had warned the politicians of the risks in their communities. Indeed, Niterói’s secretary of housing noted that “it was solidified thirty years ago. Over there, memory forgets that was a garbage dump one day. It’s got gas (entrapped), and you forget about it” (P.I., 20/12/10).

A national law – the Statute of the City – has been in force for ten years to improve urban development in Brazilian cities through citizen participation and planning based on social justice. The Statute could have prevented the results of these disasters from becoming so severe. However, in spite of the Statute’s possibilities, the significant local changes in Brazilian municipalities that could prevent the widespread devastation that regularly occurs as a result of natural disasters have yet to be made.

Much of the discussion in the Brazilian media surrounding the 2010 floods and landslides focused on early warning systems that did not function. What has been discussed only rarely, however, are the poor planning models in place to regulate land use in Brazilian cities, although the lack of planning was cited in the media both before the tragedy and after (Anonymous, 2011; Lemos, 2010).

Ironically, starting in the early 1990s, Niterói used a participatory process for approving master plans with the intention of promoting social justice and the right to the city. Although this process was considered among the best in the State, it has not translated into implementation.

These tragedies present a stark reminder of what can happen in an era of extreme and unpredictable climate events when planning of the location and infrastructural foundations of urban settlements is not done properly. While the immediate cause of the floods in Niterói were the annual rainstorms, Niterói’s recurring tragedies (similar to those that occurred in the mountain region north of Rio de Janeiro a year later) are a result of poor management of urban land and poor urban planning and control in the growth of cities. Despite the Statute’s ten-year lifespan, such tragedies continue to occur in Brazilian cities including Niterói.

Beginning with the 2010 disaster that occurred in Niterói, this research explores the story of the Statute of the City’s implementation in Niterói, the politics of applying urban development tools and the gap between theory and practice.
Chapter 1: Brazilian Urban Policy and the Statute of the City

1. The Statute of the City: Between discourse and practice

Although Brazil is notorious for its spatially segregated cities and high levels of inequality, a number of urban policy initiatives have evolved since the 1990s that provide insights into improving the life quality of city dwellers. Following twenty years of dictatorship, Brazilian social movements gained force, culminating in a robust urban reform movement during the 1970s and 1980s. This process of re-democratization lead up to the promulgation of a new ‘citizens’ Constitution in 1988, which included, for the first time, a specific chapter on urban policy.

In this context, one Brazilian policy has garnered international attention. The urban reform movements persevered during the 1990s and on July 10, 2001, the Statute of the City was enacted (see Appendix 4). The Statute explicitly recognized the ‘right to the city’: the right to participate in urban life (Lefebvre, 1968). In the Brazilian context, this means a combination of the ‘social function of property and of the city’ and the democratic management of cities. The social function of property is the regulation of urban development as a public issue rather than a private one; it is interpreted as a mandate to guarantee the well-being of city residents and the democratic access to goods and services produced in cities (Bassul, 2005; Fernandes, 2011). The Statute regulates the 1988 Constitution’s chapter on urban policy, mandating participation in planning processes such as citizen councils, public hearings and large-scale forums (Fernandes, 2011; Santos Junior & Montandon, 2011). It also aims to promote social justice by alleviating the array of complex problems faced by Brazilian cities, including informal development and socio-spatial segregation (Maricato, 2008; Perlman, 2010). In theory, the Statute’s approval and the local urban reform process have turned Brazil into an urban planning experiment with new strategies of interaction for governments, communities and the private sector.
The Statute introduced two changes to the Brazilian planning landscape. First, it requires participation throughout the entire planning process – from the master plan to day-to-day planning. It obliges cities with more than 20,000 residents carry out their master plans through participation at all stages.¹ Master plans, considered to be the basic instrument of urban development, bring together various policies involved in municipal planning. Participation is a criterion for master plans to be considered valid and legally binding. Following the master planning stage, participation is mandated during the master plan’s management, or the planning of the city’s urban development through urban development councils, conferences, public hearings, debates, popular initiatives and participatory budgets. Such participation is not only a question of consulting civil society regarding proposals put forward by the local government (known as the prefeitura), but also about guaranteeing effective consultative and deliberative fora during the entire urban planning process (A. M. F. B. Barros, et al., 2010).²

The second change made by the Statute was that it broadened the legal and political role of municipalities through urban planning guidelines. The Statute provides a range of legal, urban and fiscal instruments that may be used by cities within the context of their master plans to regulate urban land and property markets based on the principle of the social function of property, seeking to deter land speculation and to establish the separation between the right to property and the potential for construction on vacant land. The Statute creates “mechanisms to redress some of the most evident patterns of illegality, inequality, and degradation in the production of urban space” (Holston, 2008: 292). Framed as a series of innovative instruments – or a toolbox – it allows municipalities to realize the concept of the social function: the regulation of urban development as a public issue rather than as an individual or state interest. By

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¹ According to Rolnik (2011), 1,683 cities fit this criteria.
² I use the portuguese prefeitura to refer to the administrative entity of city hall, containing the executive and the mayor’s office.
mandating participation and transferring control of municipal affairs to cities, the Statute seeks social justice – part of the Statute’s framework.

The Statute is considered to be innovative among policymakers, international observers, academics, planners and activists from the standpoint of its legal and urban advances (S. N. d. Carvalho, 2001; Fernandes, 2007a; J. d. S. C. Filho, 2009; Pindell, 2006; M. L. d. Souza, 2006a). It has been called an “inspiring example” of action by national governments (Fernandes, 2007a: 212) and “remarkable in the history of urban legislation, policy, and planning not only in Brazil but worldwide” (Holston, 2008: 292). Its formal incorporation of the right to the city into national law, deriving from the concept of French sociologist Henri Lefebvre (1968, 1996) on the right to the city as a right to participate in the production of urban space, is unprecedented.

In this research, I use a case study of the city of Niterói in Rio State to explore the politics of implementing the progressive planning instruments of the Statute. I consider whether the Statute is – as it appears on paper – an inspiring example applying the right to the city.

1.1. Research objectives and questions

The Statute creates possibilities for more just urban policy and planning at the local level and for interesting experiences of participatory planning practice. Shortly after the Statute’s approval, the Instituto Pólis (2004: 14-15) noted that, “It is impossible to underestimate the impact the new law can have on Brazil’s legal and urban order, once its possibilities are fully understood and its provisions effectively put into practice.” In adopting the Statute, Brazil has undertaken a unique experiment that may have profound implications for planning in other places.

Considering that the Statute is an innovative legal and urban achievement, little research has examined whether these possibilities have been turned into outcomes, with some exceptions (Costa, 2011; Gonçalves, 2011; Santos Junior, et al., 2008). The lack of analysis of the
Statute’s application allows for considerable scope for original research. For this reason, an analysis of the implementation of the Statute at a local level is both timely and useful. Drawing lessons from planning practice in Brazil, the research includes several research questions:

- To what extent are the participatory requirements in Brazil’s Statute of the City allowing citizens to become involved in planning processes?
- What are the implications resulting from these new channels for citizen participation?
- How have citizens benefited from these changes?
- In the cities where the Statute has been implemented, have the changes implemented through the Statute of the City been transformative leading to more socially just cities?
- What are the outcomes of such changes for overcoming social injustice?
- Whose interests are at the forefront, and whose interests prevail?

The relationship between participation, civil society, power and social justice help to understand planning processes in urban Brazil guided by the Statute; these interactions illustrate both the effects of this policy and the attempt to create local change. Thus, I ask the following overall question: How do power relations and civil society organization influence the capacity to implement more participatory and socially just planning? In addition, what keeps practice from reflecting rhetoric? The final question has a bearing on the larger implications raised by this research and the interrelations between the four themes of the research.

1.2. A relational framework: Participation, civil society, power and social justice

This research links participation, civil society, power and social justice in the Brazilian context where participatory institutions have been widely discussed (Abers, 2000; Wampler, 2007) and where power relations in favour of those at the top of the power structure often result through corrupt politics at various scales (Irazábal, 2005; Power & Taylor, 2011). To understand these linkages, I begin with Avritzer’s (2009) work exploring the variation in outcomes of participatory institutions, showing that the emergence of participatory institutions depends on two factors: civil society organization and political society. Noting that “we need a theory of the relationships among civil society, political society, and institutional design,” Avritzer (2009: 1), demonstrates
that differences in the organization of civil society in varying contexts and the political society in which it is implemented can make a difference to the success of participatory institutions.

Building on Avritzer’s (2009) work, I incorporate further aspects to understand the politics of applying the progressive policy tools of the Statute based on a relational approach to reveal:

Spaces in the interstices of society and state and expose[s] the centrality of relationships across those divides in shaping practices on both sides ... [This account] relies on and dialogues with normative political theory while it is also informed by sociologically realistic accounts of inequality and power (Baiocchi, et al., 2011: 20).

This relational approach (Diani, 2007; Emirbayer, 1997; Healey, 2006a; Heller & Evans, 2011; Somers, 1997) “disaggregates social categories and reconfigures them into institutional and relational clusters in which people, power, and organizations are positioned and connected. A relational setting is a patterned matrix of institutional relationships among cultural, economic, social and political practices” (Somers, 1993: 595). Like Avritzer’s (2009) work on participatory institutions (see section 4.1), this relational account bridges the divide between institutional and actor-oriented theories (Gaventa, 2007). A key element of this type of relational approach examines how networks, institutions and practices interact within a broader social context (Baiocchi, et al., 2011). A relational lens means that “patterns of contestation are shaped by shifting political relationships between the nation and the city” (Heller & Evans, 2011: 306).3

Starting from Avritzer’s (2009) work, I incorporate two factors to understand the politics of applying the progressive planning instruments of the Statute. First, I use the idea of social justice to conceptualize new policy implementation based on the social function of property. Little work has considered participatory institutions in conjunction with the results that accrue from participatory processes. By considering social justice and policy results, I include results and the process of participation. Although Avritzer’s (2009) work explaining varying outcomes goes

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3 See section 6.1.1 for more detail of this relational approach.
beyond much of the recent work on participatory institutions in Brazil, it has not considered the results of participatory processes. Various research considers sectoral councils (R. M. d. Castro, et al., 2011; Costa, 2011; Cotta, et al., 2010; Cymbalista, 2000; Pereira, 2000) and master plans (Bueno & Cymbalista, 2007; Cymbalista & Santoro, 2009; Santos Junior & Montandon, 2011) separately rather than the entire process, the results and specific tools used. Given Niterói’s role in this process since the early 1990s, there is considerable scope to explore the results that may accrue through participatory planning and the outcomes for social justice planning.

I also extend Avritzer’s (2009) concept of political society to include the role of politics and power relations. As Baiocchi et al (2011: 21) note, “a relational treatment of the public sphere demands that we carefully contextualize it, and in particular that we recognize the ways in which it is constituted and constantly constrained by power relations.” While much work in Brazil has considered the role of politics and political parties in the context of the Workers’ Party (PT) (Abers, 1996; Baiocchi, 2005, 2003b; Keck, 1992), less work has examined power relations.

The dynamics among these factors and actors is shown in Figure 1.1. Although I refer to this framework linking participation, civil society, power and social justice in later chapters, I return to this idea in more detail in the conclusion. Linking participatory institutions with socially just outcomes, this figure incorporates the actors involved in the sphere of urban politics including members of the private sector, city council, professional associations, civil society, political parties and local government, and public prosecutors known as the public ministry [ministério público], among others. The arrows pointing in multiple directions indicate the complex power relations among these actors.

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4 The public ministry (ministério público) refers to Brazil's collective body of public prosecutors, an important legal institution separate from the three branches of government, charged with 'defending society and the law.' In Niterói, it focuses on urbanism and the environment, reflecting the juxtaposition of these two issues for the city (W. M. Filho & Nogueira, 2007).
1.3. The right to the city

In Brazil, the right to the city was incorporated by Brazilian urban reform movements into both the Constitution and the Statute. This account of the theory of the right to the city begins with the work of Henri Lefebvre (1968), which is a starting point and intellectual inspiration for the right to the city movement as well as much of the current work on the right to the city. While the idea of the right to the city was originally formulated by Lefebvre in the 1960s, the popularity of the concept reflected the growing unrest of the time, establishing the foundational ideas to seek justice, democracy and citizenship rights. Still, the more utopian conception of the right to the city as conceived by Lefebvre – as a revolution in the sphere of everyday life – is somewhat different from the concept’s use by the social movements, including those in Brazil.

Because urban space is central to the idea of the right to the city, Lefebvre’s notion of space is a necessary starting point. The city Lefebvre refers to is holistic, calling attention to the physical context, to social relations, and it is socially produced through everyday life and political struggle (Lefebvre, 1991; Purcell, 2008). Lefebvre challenged the ‘conceived space’ of
professionals within the ‘perceived space’ of everyday life as a location of resistance and struggle. As opposed to conceived space,

The right to the city, complemented by the right to difference and the right to information, should modify, concretize and make more practical the rights of the citizen as an urban dweller (citadin) and user of multiple services. It would affirm, on the one hand, the right of users to make known their ideas on the space and time of their activities in the urban area (Lefebvre, 1996: 34, reprinted from Lefebvre, 1991).

Lefebvre argued that the city is an oeuvre, or a work, a place where different people with different ideas participate in the struggle over what their city will look like. Cities are public places of social interaction among people who are inevitably different (Mitchell, 2003). This public quality requires heterogeneity; the physical space of the city ensures heterogeneity and difference. For such exchanges to take place, the right to inhabit the city requires a struggle over the city’s shape. Lefebvre conceived of the city not only as a place of both simultaneity and encounter but also as a place of rights that were given content through struggle (Soja, 2010). In this way, Lefebvre combined the right to the city with the right to difference, and the right to be different as a means of challenging the controlling forces of homogenization, fragmentation and uneven development imposed by the state, the market and the bureaucracy.

Since the late 1960s when the concept of the right to the city was formulated by Lefebvre (1968), this idea has inspired theoretical discussion and socio-political action although it was not until the 1990s that the idea of the right to the city re-emerged among English audiences.5 This re-emergence has inspired rallying cries for the right to the city among both academics and activists in a global right to the city movement (Schmid, 2012). For Purcell (2002), the popularity of the right to the city among both groups is a call for a radical restructuring of social, political, and economic relations, both in the city and beyond. While the right to the city movement is

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inspired by Lefebvre, the claims made by these movements are for inclusion in the city as it exists currently, not for a transformation of the existing city (Mayer, 2012). For the movement, the right to the city is — overall — a right to participate in the decisions that produce urban space and the ability of urban dwellers to participate in decisions concerning the city with the aim of a more inclusive city (Purcell, 2008). This right signifies the central role of citizens in decisions contributing to the production of urban space.

The right to the city reframes the place of decision-making away from the state and towards urban inhabitants. Lefebvre himself took the analysis further to autogestion, which is the basis for the expression of the right to control the urbanization process (Lefebvre, 2009 [1966]; M. L. d. Souza, 2009). Autogestion literally means self-management, but Brenner and Elden (2009: 16) refer to it as “a radically decentralized, participatory institutional framework that not only permits social struggles and contradictions, but actively encourages and provokes them.” It is an inherently conflictual process though which struggle takes place and decentralized, direct democracy could be realized.

The right to the city also represents access to the resources of the city for all segments of the population (Schmid, 2012). Viewing the right to the city from the perspective of social justice means a demand for a just distribution of urban resources. This entails participating in the processes producing urban space, but also accessing and using the advantages of city life, meaning the right to access the types of things one needs in order to live a dignified life (Purcell, 2008; Soja, 2010). In short, it is a right based on social justice, “a right to redistribution, not for all humans, but for those deprived of it and in need of it” (Mayer, 2012: 71).

Thus, the right to the city is a right to the appropriation of urban space, including the right of inhabitants to physically access, occupy and use urban space (Lefebvre, 1996). The right to
appropriation means the right to a city meeting the needs of its inhabitants and the production of spaces that support a dignified life. Lefebvre refers to the right to inhabit and the right to housing as aspects of the right to appropriation, arguing that “the right to the city manifests itself as a superior form of rights: right to freedom, to individualization in socialization, to habitat and to inhabit. The right to the oeuvre, to participation and appropriation (clearly distinct from property), are implied in the right to the city” (Lefebvre, 1996: 173-174).

Lefebvre’s notion of the right to the city as a transformatory process and a struggle is surely utopian. Fernandes (2007a) notes that Lefebvre’s idea of the right to the city was a “political-philosophical platform,” but it did not explore what a radical politics would look like in practice. While recognizing that the right to the city would make a radical politics possible, most of the right to the city literature fails to acknowledge that it is an undetermined outcome that may result in greater urban democracy rather than an assumption that the rights are always carried out in practice (Purcell, 2002). Likewise, Marcuse (2009a) recognizes that the right to the city is a constant struggle that can never be guaranteed. These ideas are reflected in the disconnect that has emerged between the theory and practice of the right to the city in Brazil.

While the concept of the right to to the city has revolutionary origins, it is important to examine this idea critically. As Purcell (2002) points out, the promise of the right to the city as an alternative solution for cities must be seen in tandem with “important and unanswerable questions about what social and spatial outcomes the right to the city would have” within this new type of urban politics. Despite the progressiveness of the right to the city, the strategy is not a panacea and may, in fact, produce unintended results.
1.4. The research context: Urbanization and the ‘urban tragedy’ in Brazil

In the 1970s, the term ‘Belinda’ was coined in Brazil to refer to the small population living the life of those in industrialized countries (Belgium), while the rest of the population lives in misery (India) (Bacha, 1974). Thus, Brazil provides both concrete lessons and a challenging context to view urban development and planning. One of the striking aspects of Brazil’s current urban makeup is the rapid urbanization process of the past half century, which far surpassed urbanization in developed countries in terms of speed. From 30 percent in 1940, Brazil’s urban population increased to 44.7 percent in 1960. By 2000, 81.2 percent of Brazilians lived in cities, climbing to 84.3 percent in 2010 (IBGE, 2010a). In absolute numbers, these changes are even more impressive: in 1940, 18.8 million inhabitants resided in cities; by 2000, that number had climbed to 138 million; in 2010 it was more than 160 million (IBGE, 2000, 2010a; Maricato, 2008). Table 1.1 shows Brazil’s increasing urban population and municipalities between 1960 and 2010. The available data indicate the scale and complex nature of this process (Brito, 2006; Deák & Schiffer, 2004; Valladares, 1988). This urbanization process led to ‘metropolitanization,’ or dense population concentrated around some Brazilian cities (Brito, 2006; Fernandes, 1995).

Rapid urbanization was fueled by industrial growth in the late 20th century and an exodus from rural to urban areas, leading to a transformation in Brazil’s socio-economic shape. A report as far back as the 1970s linked urbanization and industrialization: “The rise of industry in Brazil after 1920 could not fail to encourage and reflect sweeping changes in the urban social structure

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<tbody>
<tr>
<td>Total population</td>
<td>70,992,343</td>
<td>94,508,583</td>
<td>121,150,573</td>
<td>146,917,459</td>
<td>169,590,693</td>
<td>190,755,799</td>
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<tr>
<td>Percent urban (%)</td>
<td>44.7</td>
<td>55.9</td>
<td>67.6</td>
<td>75.4</td>
<td>81.2</td>
<td>84.3</td>
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<td>Number of municipalities</td>
<td>2,766</td>
<td>3,952</td>
<td>3,991</td>
<td>4,491</td>
<td>5,507</td>
<td>5,565</td>
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Table 1.1: Total population, percent urban, and number of municipalities in Brazil (IBGE, 2010a)
and to affect the balance of political power between urban and rural areas... Industrialization was both a cause and effect of rapid urban growth” (Gardner, 1972: 3). Driven by capital intensive modernization and migration toward cities in Southeast Brazil, this process created unequal or ‘swelled urbanization’ (M. Santos, 1980), resulting in lower life quality in cities, the growth of favelas and environmental degradation.6 Thus, “industrial growth has been sustained at the expense of the maintenance and reproduction of social poverty” (Fernandes, 1995: 7).

In the late 1960s and 1970s, Janice Perlman’s work in Rio’s favelas, or slums, contradicted prevailing stereotypes regarding social, economic and political marginality:

The common belief is that in postwar years of rapid urbanization, the city has been invaded by hordes of rural peasants. These migrants are seen as arriving lonely and rootless from the countryside, unprepared and unable to adapt fully to urban life, and perpetually anxious to return to their villages. In defense, they isolate themselves in parochial ruralistic enclaves rather than take advantage of the wider city context... The rural-born migrants are seen as clinging to maladaptive rural values, or taking on the equally self-defeating trains of the ‘culture of poverty’... Such people are accused of being parasites or leeches on the urban infrastructure and on its limited resources. Most important to many analysts, squatters and migrants pose the threat of a ‘seething, frustrated mass’ apt to fall easy prey to the appeals of radical rhetoric (Perlman, 1976: 1-2).

Perlman was responding to the prevailing view that the socially disadvantaged were marginal because of a culture of poverty rendering them unable to respond to the advantages of urban living (Lewis, 1961). Perlman (1976), placing the blame for poverty on the structural apparatus of the state and society, showed that favela dwellers were marginalized from the social system.

This Brazilian ‘urban tragedy’ is based on colonial history going back five centuries and a history of asymmetry (Maricato, 2008). Part of this inequality is also a result of the exclusion of many Brazilians from property, which originates with the interaction of centuries-old policies and practices of land use, law and the development of illegal urban peripheries lacking infrastructure and services (Holston, 2008). Speculative land markets, clientelism and elitist

6 I use the portuguese word ‘favela’ here referring to informal settlements, dating from the early 1900s in Brazil.
urban planning practices have also contributed to this situation (Fernandes, 2007a). In addition, the absence of affordable housing has generated a need for the auto-construction of housing, which has been called the social production of habitat (Mathivet & Pulgar, 2010).

For Holston (2008), accelerated urbanization has lead to an ‘insurgent citizenship.’ While new forms of citizenship have developed, new forms of exclusion have challenged these gains. The location of this insurgent citizenship can be found within the urbanization process of Brazilian cities in the peripheries of cities, as the working classes relocated to Brazil’s industrializing cities: “In the development of the autoconstructed peripheries, the very same sites of differentiation – political rights, access to land, illegality, servility – fuelled the irruption of an insurgent citizenship that destabilizes the differentiated” (Holston, 2008: 9).

Brazil’s high levels of poverty and inequality have been a marked feature of urban life over the last thirty years alongside drug-related violence, unemployment and stigma (Arias, 2006; F. H. F. Ferreira & Barros, 1999; Gutberlet & Hunter, 2008; Perlman, 1976) although a recent study shows that poverty levels dropped to 15.2 percent in 2009, down from 34.9 percent in 1991 (Neri, 2011a). According to UN-Habitat (2005), almost 30 percent of Brazil’s urban population live in informal settlements, or 45 million throughout Brazil. By contrast, the 2010 national census shows that six percent of Brazil’s total population lives in favelas (IBGE, 2010a).7 Although the census data for favelas seems low considering the size and number of Brazil’s favelas often cited, the disparity highlights the challenges in measuring and conceptualizing favelas and the different methodologies used.

What distinguishes favelas from other low-income settlements is illegal status in land use,

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7 For the Brazilian statistics agency, favelas are known as ‘subnormal agglomerations,’ which have the following characteristics: (1) Illegal occupation of land, or construction on land owned by others; and 2) Possessing at least one of the following characteristics: urbanization outside of existing standards reflected by narrow passageways and irregular alignment, lots not regulated by public bodies or with precarious essential public services (Instituto Brasileiro de Geografia e Estatística, 2011).
although this distinction has eroded considerably (Perlman, 2010; Ventura, 1994). Rolnik (2001), however, refers to ‘risky urbanization’ in Brazilian cities. Caused by insecure land title ownership and marked by precarious urban infrastructure, the poor locate in the ‘precarious periphery’: the most fragile, dangerous and hard to urbanize environmentally. Distinct spaces establish socio-spatial segregation between rich and poor, shown in Figure 1.2. Cities are thus fragmented; there is a clear-cut, social and spatial divide between legal and illegal, formal and informal, regular and irregular spaces in the city, exemplified by differences between *favelas* and condominiums in large Brazilian cities (Lima, 2001; Maricato, 2008). Social space in Brazil is segregated by establishing inclusion and exclusion mechanisms operating through the land market, including access to services and infrastructure (Fernandes & Valença, 2001).

Urbanization in Brazil has spawned a host of problems, presenting planners with what has been called “one of the greatest challenges of our times” (Perlman, 1976: 7). The realization of these problems, and the socio-economic, urban, environmental and political implications that go along with such issues, require creative solutions; the Statute may be one means of doing so. The Brazilian context seems to be particularly relevant for applying Lefebvre’s ideals as it would,
in theory, challenge uneven development and increasing urban fragmentation. Yet what is extraordinary about the Brazilian attempt to apply the right to the city is that it was accomplished following the end of twenty years of dictatorship alongside a fragile urban order. Therefore, the context of the Statute is unusual, making for an exceptional planning case.

1.5. Two dimensions of the Statute

Regulating two Articles on urban policy in Brazil’s Constitution, the Statute provides legal support to Brazilian cities confronting urban, social and environmental challenges. A groundbreaking legal and urban framework, the Statute’s content reflects the goal of promoting the right to the city. It is a holistic law including a range of tools for cities to use to combat social inequality and promote the right to housing. The Statute comprises two main dimensions, shown in Figure 1.3, which are intended to promote the right to the city: 1) the concept of social function and the tools to realize these ideals; and 2) processes for democratic management.

1.5.1. A conceptual dimension

The Statute’s conceptual dimension, like the Constitution, recognizes that the overall goal of urban policy in Brazil is “to give order to the full development of the social functions of the city and of urban property” (Article 2). This mandate guarantees the well-being of city residents and
the democratic access to goods and services produced in cities (Bassul, 2005; J. d. S. C. Filho, 2009). Rather than allowing privately held land to be used for speculation as has the been the case in Brazilian cities, the regulation of urban development assumes that land use should fulfill its social role. In this way, “governments affirm the need to use land for the common good” rather than to benefit property owners as is the case in property rights regimes based on land markets (Macedo, 2008: 261). The concept of social function, together with the idea of democratic management, is the primary means to promote the right to the city. Indeed,

The new claims of the Statute of the City directly draw on Lefebvre’s concept of counterbalancing the right to property with the right of inhabitants to fully benefit from urban life and its multiple opportunities and services. It injects a strongly collective, social and public understanding of urban space as a counterbalance to the privatized view of neoliberals (Purcell, 2008: 97).

The social function recognizes the idea of social justice to promote a just and equitable society as a goal of urban policy (Caldeira & Holston, 2005). In the context of the Statute, social justice entails fair distribution of the costs and benefits of urban development and one of the outcomes to fulfill the social function (E. Rodrigues & Barbosa, 2010). According to the Statute, “Urban property fulfills its social function when it meets the basic requirements for ordering the city set forth in the master plan, assuring that the needs of the citizens are satisfied with regards to quality of life, social justice and the development of economic activities” (Article 39).

Cities are required to follow guidelines in the elaboration of urban policy. Among the most important, urban policy must “guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, to work and leisure for current and future generations”; use planning “to avoid and correct the distortions of urban growth and its negative effects on the environment”; apply “democratic administration by means of participation of the population ... in the execution and
monitoring of urban development projects, plans and programs”; and provide a “fair distribution of the benefits and burdens resulting from the urbanization process” (Article 2). These broad statements constitute the conceptual approach of the Statute. Practically, developing the social function means “implementing a series of actions and programs that target the evolution of the various sectors which make up a community ... all the subsystems that serve to meet individual and collective demands” (J. d. S. C. Filho, 2009: 14).

The fact that this conceptual mandate is defined substantively with instruments and tools is a huge achievement in the area of urbanism and law. To promote the social function, the Statute includes a range of urban tools that seek to deter land speculation and promote the potential for construction on vacant land. The Statute thus creates “mechanisms to redress some of the most evident patterns of illegality, inequality, and degradation in the production of urban space” (Holston, 2008: 292). Framed as a series of instruments, or a toolbox, these allow municipalities to apply the social function of property.⁹ I briefly explore some of these tools, before turning to the Statute’s second dimension.

To deal with vacant urban land and real estate speculation, a tool titled compulsory parcelling, building or use (parcelamento, edificação ou utilização compulsórios, PEUC) requires owners to use their underutilized land. The retention of vacant land within cities with the expectation of future price increases results in fewer urban spaces available for housing and economic activities, especially for vulnerable group (A. M. F. B. Barros, et al., 2010). PEUC employs the social function of land by increasing access to urban land. The IPTU progressivo tool allows cities to raise property taxes progressively for properties whose owners fail to obey PEUC to avoid speculation on urban land prices. PEUC and IPTU progressivo provide taxation for cities

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⁹ The Statute includes a multitude of urban tools. Because of space constrains, I discuss several tools relevant in Niterói.
over time and allow the expropriation of unused buildings awaiting market appreciation.

Solo criado allows governments to charge property owners if they build at higher densities than a coefficient defined in the master plan, exercising the social function of property. This enables governments to grant “additional development rights to one parcel of land in exchange for other parcels of land or urban improvements that are of social interest to the community” and requires developers to compensate the prefeitura in exchange for infrastructure costs (Macedo, 2008: 266). Buildings constructed on land measuring greater than the coefficient in the master plan is considered ‘created land’ or solo criado. Solo criado allows the prefeitura to generate revenue, which it is required to use for social interest works. It is premised on a separation between the right to property, granted in every capitalist society, and the right to build, which can be both regulated but also sold by the state (Caldeira & Holston, 2005; Macedo, 2008). Solo criado is based on the rationale that privileged property owners living in expensive high rises (as many of the Brazilian middle- and upper-classes live) should contribute to paying for the costs of infrastructure in affluent, high density districts (M. L. d. Souza, 2001).

Modelled on a French version called plafond légal de densité (legal density ceiling, solo criado (also called outorga oneroso do direito de construir, OODC in Brazil) is similar to transfer of development rights (TDR) in the United States (Macedo, 2008). In Brazil, it was developed in the 1970s to separate property and development rights. Developers in Brazil have the freedom to do what they want in an environment of clientelistic relations in which “the application of law is unpredictable when dominant interests are at stake” (Maricato, 2009: 199). These historically entrenched private interests, combined with the context of urban poverty, make solo criado a

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10 For more information on changes to development rights in Brazil, specifically the application of solo criado, see chapter 7.
11 This coefficient, known as the land use coefficient, is similar to floor to area ratio (FAR) in the United States (Sandroni, 2011).
12 Solo criado is translated as ‘created land’ and outorga onerosa do direito de construir as ‘sale of building rights.’
remarkable tool. In theory, its foundation in law forces municipalities to take on private interests, representing a potentially huge accomplishment given the historical process in Brazil.

A fourth tool of the Statute formalizes the occupied land of the urban poor through the use of special areas of social interest (áreas de especial interesse social, AEIS), where community efforts identify special conditions for informal settlements. Since the 1970s, provisions in some municipalities for treating some types of land subdivisions differently than others aimed to deal with growing numbers of favelas (Fernandes, 2000). Such provisions are used as a zoning category within master plans, allowing for special urban parameters for informal settlements (Macedo, 2008). For example, AEIS might allow for areas with informal settlements to benefit from infrastructure, services and social housing for residents to live close to urban centres or prevent forced evictions to peripheral areas (Ministério das Cidades, 2009). In a context where the poor have often been pushed to the fringes of cities, this tool is an exceptional achievement.

Finally, legal instruments to regularize informal settlements are included in the Statute. Usucapião urbano (adverse possession of urban property) allows residents of urban lots less than 250 square metres to obtain a title if they can prove five years of continuous residence without legitimate opposition (Macedo, 2008; Pindell, 2006). Used since the 1980s and 1990s in several Brazilian cities, the Statute extends the rights already in the Constitution of special usucapião to promote the right to acquisition of urban property, which is particularly relevant regarding regularization of favelas as it applies (in theory) to more than half of existing favelas (Fernandes, 1995, 2000, 2002a). The Statute goes further to recognize the collective utilization of such instruments (Article 10). As separating favelas into individual lots is often difficult, submitting claims under regular usucapião is nearly impossible. By contrast, collective usucapião recognizes group ownership of residents living in informal settlements by demarcating entire
occupied areas (A. M. F. B. Barros, et al., 2010). While regularizing informal settlements would allow for inclusion in the opportunities offered by the formal sector, the intention is to facilitate the right to housing and to the services typically offered in urban areas (Purcell, 2008). See Appendix 4 for an excerpt of the Statute including the Articles referring to the urban tools.

1.5.2. Processes for democratic management

The second dimension of the Statute – processes for the democratic management – permeate the entire Statute. As Caldeira and Holston note (2005: 406), “it is evident that the Statute imagines a society of citizens who are active, organized and well-informed about their interests and their government’s actions.” Based on the need for municipalities to incorporate planning, legislation, fiscal policy and to democratize decision-making processes, cities with more than 20,000 residents are required to prepare master plans with full resident participation to “legitimize a new, socially oriented urban-legal order” (Instituto Pólis, 2004: 31). The idea is that participation will help to achieve other goals such as securing the right to the social use of urban land and regularizing informal settlements. This would ensure that clientelist political systems, traditionally problematic in Brazil (Abers, 1998, 2000; Avritzer, 2002; Gay, 1998, 2006; Hagopian, 1996), are transformed and that marginalized populations are included in formal processes.

Following participation in the master planning process, several mechanisms ensure effective participation in urban planning and management: urban development councils; public hearings; conferences about urban subjects; popular initiatives for proposed laws and plans, programs and urban development projects; environmental and neighbourhood impact studies; and participatory budget processes. Article 45 of the Statute provides a bold statement of the principle of popular participation:

The administrative entities of metropolitan regions and urban conglomerations must include the significant participation of the population and of associations that represent
various segments of the community, in order to guarantee the direct control of their activities and the complete exercise of citizenship.

While the use of participatory fora such as councils is exceptional, this is a country where people seem to participate all the time, including mandatory voting in elections. For example, at the local level, councils take place for many sectoral areas, including health, education and the environment, putting tremendous pressure on people to play a role in urban life.

1.6. The case study: Niterói – *cidade sorriso* (the smile city)

Niterói, the case study for this research, is an unusual case in the application of the Statute. The Statute’s ideals – including participatory master planning to achieve social justice – were applied in Niterói as early as the 1990s. Although the Statute was officially approved in 2001, the policies adopted in Niterói in the 1990s reflect its influence on the planning ideals of the time.13

Until 1975, Niterói was the capital of what was formerly Guanabara State when the city of Rio was a separate federal district. As a former state capital, Niterói enjoys a privileged position within Rio de Janeiro State. Niterói sits across Guanabara Bay from the city of Rio (see Figure 1.4) to which its development and evolution since its establishment in the 16th century has been inherently connected (M. N. S. d. Azevedo, 2005). Historically, Niterói has been overshadowed and competitively disadvantaged by its influential neighbour Rio which has at the same time been a source of sustenance and reinvigoration. Niterói is known deprecatingly as ‘*cidade sorriso*’ (the smile city) because, the joke goes, the best quality of Niterói is the view of Rio.

Niterói has a population of 487,562 and its entire area is considered to be urban, covering just 133.9 km² (IBGE, 2010a).14 The city’s physical terrain is varied, including hills that complicate

13 I chose the city of Niterói as the case for the following reasons: it has adopted instruments of the Statute of the City; the financial capacity of the city would allow it, in theory, to apply the planning tools of the Statute; it is a mid-sized city, allowing for a more manageable size for study. See chapter 2 for more details on the case study selection criteria.

14 In Brazil, urban-rural distinctions require more a nuanced approach. The Brazilian Institute of Geography and Statistics (IBGE) considers Niterói to be entirely urban, yet there are rural qualities to Niterói, as in other Brazilian cities (Tavares, 2003: 37).
land use. Niterói’s primary economic activities include commerce and services, with the third highest GDP per capita in the region after Rio de Janeiro and Duque de Caxias (IBGE, 2010a, 2010b; Prefeitura Municipal de Niterói, 2006; UN-Habitat, 2009). In 2006, Niterói was rated the second most developed city in Rio State – based on employment and income, education and health – according to FIRJAN (2009), the state federation of industries. Since the 1980s, Niterói has ranked third in Brazil’s national human development index and first in Rio State (PNUD, 2000). Finally, a recent report shows that Niterói is the city in Brazil with the highest percentage of economic elites (Neri, 2011b). These numbers are reflected by sentiments of many interviewees. A political aide to Marcelo Freixo, a progressive Rio State deputy, notes that:
Niterói, in the last two decades, built a self-image of a city with quality of life, a middle-class city. But we are faced with the reality that over 30% of the population is in peripheral areas. In these past governments since the re-democratization of Brazil, like Jorge Roberto Silveira’s, there has been an attempt to build this city project. This has meant channeling of public resources for the beautification of the prime areas of the city ... We have been running into several situations that do not really allow Niterói to be what’s been advertised (P.I., 12/5/11).15

Despite the optimistic figures, Niterói suffers from similar issues as other Brazilian cities: socio-spatial segregation, environmental problems, violence and informal development. While Niterói is often considered a middle class city, it has undergone recent changes “as in other major urban centres in Brazil” including “the intensification of slums, increased violence and the progressive occupation of the slums by drug trafficking” (Bienenstein, 2001: 155).

Several sources illustrate these problems. A report by Niterói’s prefeitura shows problems common to large cities in Brazil: “gentrification and densification of core infrastructure, slum areas close to these, and growing peripheralization” (Prefeitura Municipal de Niterói, 2006: 14). There has been a recent increase in favelas since a 1991 report listed 70 favelas in areas occupied by low-income populations (Instituto Brasileiro de Administração Municipal, 1991). The most recent national census counts 14.3 percent of Niterói’s population as living in favelas (IBGE, 2010a). A consortium of municipalities adjoining Niterói calculates that in 2008, 15 percent of Niterói’s area was occupied by favelas and 15 percent of households were located in favelas, among the highest concentration in the region (UN-Habitat, 2009).

In the 1970s and 1980s, migration from other regions of Rio State and other states to Niterói occurred, specifically to Pendotiba region (see Figure 1.5). This intense migratory flow was caused by a high supply of jobs in the construction of the Rio-Niterói bridge in 1974, the construction of Rio’s subway and the fishing industry in Niterói (S. H. d. Silva, 2011). Urban

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15 Jorge Roberto Silveira of the Democratic Labour Party (Partido Democrático Trabalhista, PDT) has been mayor of Niterói several times since 1989. See sections 3.2 and 6.2.1 for more detail.
Peripheralization to all parts of the city took place through migration from the north of Rio State and Brazil’s northeast (Miranda, 2004). In the 1970s, Niterói began to attract high income populations. This intensified in the 1980s with the densification of Icaraí neighbourhood (Praias da Baía region), with luxury real estate, mansions and private clubs in contrast to the *favelas* developing in other parts of the city, resulting in an intensification of land conflict (Bienenstein, 2001; Miranda, 2004). Residential expansion to the Oceânica region in the 1970s and 1980s – largely uninhabited until then – was lead by developers, attracting high- and low-income residents (Biasotto, 1995; Salandía, 2001). Niterói thus gentrified, “attracting people with greater purchasing power and ‘expelling’ those with less purchasing power” to favela areas disdained by the market (Salandía, 2001: 110). Overall, the same processes that transformed
Brazil into an urban place induced the growth of Niterói.

Administratively, Niterói is divided into five planning regions (see Figure 1.5). Praias da Baía region includes the city centre, which experienced a loss of jobs in the 1970s, and the wealthiest neighbourhoods including Icaraí, the subject of real estate interest. The Oceânica region is a highly valued region for the real estate sector. Expansion to the Oceânica region occurred in the 1970s and 1980s as wealthy residents sought new land markets; as a result of such growth, the region has poor infrastructure including water and sanitation. Pendotiba, Leste and Norte regions have a concentration of favelas. In Pendotiba there are several environmental protection areas and, despite few planning guidelines, it plays a key role for its proximity to a new petroleum complex being built in the neighbouring city of Itaboraí. In Norte region, despite having planning guidelines, low resident participation in this process has meant little success in opposing development in the region. In Leste region, in addition to many favelas, there is also a prevalent natural environment, but it has few inhabitants and is of little importance to the city.

1.7. Relevance of the research

Through a process of urban reform, “Brazil became an interesting urban planning and management laboratory” involving new processes and relationships between the public, the community, the private and the voluntary sectors (Fernandes, 2007b: 181). This seemingly robust model is situated within the sphere of other progressive urban strategies in Latin America. The Statute is studied as an inspiring example of how a national government can make the right to the city a reality at the local level. This research is relevant for several reasons.

First, the Statute captures a new planning model, diverging from its modernist heritage in which the state played a key role in balancing social and economic influences (Maricato, 1997). From the 1940s to the 1980s, modernist planning was intended to create an urban development
model to overcome Brazil’s backwardness and bring Brazil into modernity, yet such strategies often resulted in urban inequality (M. L. d. Souza, 2001). Del Rio (2009) calls current Brazilian urbanism postmodern because it integrates social values and different visions, it is more participatory and responsive to community needs and it seeks to produce socially just cities.

Indeed, the Statute defines the social function of property through substantive guidelines and is framed from the perspective of the poor; it requires participation in planning and is conceived as a series of tools allowing cities to carry out the social function of property (Holston, 2008).

Second, the Statute incorporates the right to the city as a collective right (Lefebvre, 1996). In Brazil, the right to the city discourse involves imagining a route to ensure a more just city (Instituto Pólis, 2004; Maricato, 2009). This entails combating segregation, territorial exclusion and unequal cities, in addition to social injustice. The Statute and its adoption arose with the urban reform movements advocating the right to the city prior to the 1988 Constitution in the popular amendment for urban reform (Fernandes, 1995). This popular amendment was based on a “new social ethic” that politicized this discussion, formulating a discourse and a political platform for urban social movements around access to the city as a right of all inhabitants (Nelson Saule Júnior, 2008: 55). By redefining the concept of land ownership, establishing the social function of property and requiring participation in planning, the Statute embraces the right to the city in Brazilian law (Fernandes, 2007a; Pindell, 2006). It is one of the few times that the right to the city has been adopted explicitly and at such a large scale in national law.

Finally, the Statute is an example of a national policy that is applied locally to respond to urban problems across Brazil (Maricato & Santos Junior, 2007). Very few countries have national urban policies, with some exceptions (L. v. d. Berg, et al., 2007). In the 1988 Constitution, fiscal decentralization transferred funds to states and municipalities and powers for providing public
policy (Arretche, 2000). While the Statute is a legal reference that cities can use to promote just policies, many cities have not done so because of a lack of financial resources, illustrating the uneven distribution of financial resources of Brazilian cities (F. Rezende & Garson, 2006).

One objective of this research is to reflect on how Brazil’s experience with the Statute is applicable for planning lessons beyond Brazil. Several authors focus on policy “transfer as a global-relational, social and spatial process which interconnects and constitutes cities” and the networks of agents and institutions (McCann & Ward, 2010: 177). This mobilities approach considers that policies, as socio-spatial processes, may change as they travel (McCann & Ward, 2011; Peck & Theodore, 2001). This transfer of planning ideas often “involve[s] complex processes of translation, interpretation and adaptation,” reflecting the problems of adapting to other contexts (Healey & Upton, 2010: 5; Ward, 2000). Planning ideas may not cross borders; such ideas are “unlikely to mean the same thing when they have been translated into a different cultural setting, political system, and policy context,” (Friedmann, 2010; Sorensen, 2010: 133).

1.8. Structure of the dissertation

This research considers how power relations and civil society organization influence the capacity to implement more participatory and socially just planning. I examine the implementation of an innovative law through the attempt in Niterói to put the concept of the right to the city into practice. The ideals behind the Statute are remarkable in a country marked by broad inequality, socio-spatial segregation and metropolitanization. Chapter 2 describes the methodology, followed by an overview of the context of both Brazil’s national level and local developments in Niterói in chapter 3, setting the stage for the chapters to follow.

Chapter 4 explores the theory and practice of participatory planning in Brazil with a focus on Avritzer’s theory of participatory institutions (2002, 2009), followed by a discussion of these
institutions in Niterói. I examine the extent to which participation allows citizen involvement in planning and the implications resulting from participatory channels. In connection to participatory institutions, chapter 5 considers the role of civil society in approving the Statute. Exploring a perception of a declining civil society in Niterói, I make the case for the political context in understanding the nuances and changes of civil society in recent years (Tarrow, 1994).

Chapter 6 considers the interplay between power, politics and planning in Niterói and the role that power relations play in applying the Statute. Focusing on the literature on the urban growth machine (Molotch, 1976), I examine the problematic manipulation by powerful interests that may impede the Statute’s application. Thus, whose interests are in the forefront and whose interests prevail? Following on the role of power, chapter 7 explores the theory and practice of social justice in Niterói, where I focus on the experience of applying one urban development tool: solo criado. I consider whether these changes have been transformative leading to more socially just cities as well as the outcomes of such changes for overcoming social injustice.

Chapter 8 summarizes the most important conclusions, the policy contributions of the research and provides some ideas for future research.
Chapter 2: Methodology

2. Introduction and conceptual methodology

This research examines how power relations and civil society organization affect the capacity to implement more participatory and social justice planning. I consider the Statute through an interdisciplinary lens, combining literature from urban planning and political science, a unique approach to reflect on this critical urban law. While some research on the Statute has been conducted separately from urban planning (Goulart, 2008; A. M. Rodrigues, 2004) and political science (Avritzer, 2009), no research to date has fused these approaches. While a huge body of research in Brazil studies the Statute, work from urban planning does not focus on applying the Statute’s tools (Goulart, 2008; A. M. Rodrigues, 2004), with some exceptions (Santos Junior & Montandon, 2011). The questions guiding my research, as discussed in chapter 1, call attention to the interdisciplinary nature of this research in understanding this important landmark law and the practical applications in Niterói.

2.1. Case study selection criteria

This research uses one case study to provide an in-depth example of experiences taking place in Brazilian cities following the adoption of the Statute of the City. I chose the city of Niterói for the following reasons. First, the case study has adopted some of the Statute’s instruments (Goulart, 2008). This follows Yin’s (2002) criterion that the case demonstrates an exemplary outcome. Similarly, Patton (2002) suggests that the study site should yield the most information and have a significant impact on the development of knowledge. Based on this rationale, I made the assumption that a logical location for the research would include cities recognized as having made achievements in the area of urban management, planning and participation. While other cities were considered as options for the case study, only cases that have made some progress in
implementing participatory master plans and Statute provisions were considered.

Niterói has been implementing planning policy and participation since the 1990s (Biasotto, et al., 2008; M. A. J. Carvalho, et al., 2009; Salandía, 2004, 2006). After the 1988 Constitution, in 1992, Niterói was among the few municipalities to comply with the Constitutional directive of crafting a participatory master plan. Following weakened political institutions resulting from Niterói’s lost status as a capital, in the late 1980s and early 1990s, urban management was identified as a way to enable local development (Biasotto, et al., 2008). The 2001 approval of the Statute provoked a revision of Niterói’s urban legislation; in 2004 a new master plan was finalized. Niterói has also applied participatory planning practices including an urban development council called COMPUR (Municipal Council of Urban Policy, Conselho Municipal de Política Urbana) and is the only municipality in Rio State to have implemented a participatory budget (Da Silva, 2011; Hagino, 2007; Neves, 2008). Finally, Niterói has used some urban tools with the goal of promoting a more just distribution of the benefits of urbanization.

The second criterion is the financial capacity of the city. The financial capacity is important in this context because cities with more financial resources (primarily as a result of the tax system) have more administrative capacities to implement the Statute’s directives. Souza (2004) has shown that financial capacity is an important determinant of capacity in terms of implementation. Similarly, a national survey evaluating participatory budgeting concluded that the financial situation of the municipality was one important factor in their success (FNPP, 2002). Because Brazilian municipalities are heterogeneous in terms of municipal finances, it is useful to consider the financial capacity (F. Rezende & Garson, 2006; C. Souza, 2002).

Following this logic, Niterói has a robust financial capacity, ranking fourth in Rio State for per capita GDP (see Table 2.1) (IBGE, 2010a). Niterói’s primary economic activities include the
naval industry, commerce and services, yet the lion’s share of GDP come from services (IBGE, 2010a; Prefeitura Municipal de Niterói, 2006). While a breakdown of Niterói’s taxes and transfers is unnecessary here, it receives large transfers from the federal and state governments and considerable income from taxes.\(^\text{16}\)

The final criteria is the size of the case study. Small and medium-sized cities (up to 1 million residents, and 1 to 3 million, respectively) were considered for this research because a city’s size and its administration plays a role in the feasibility of the research. As a doctoral student with a limited time and budget, practical considerations were significant. Niterói’s population of 487,562 (IBGE, 2010a) made it a manageable size for my research.

This focus on one case study, however, deserves some attention. An analysis of one policy area may be limited as it does not allow for generalization. One way to overcome this limitation is to compare two or more sub-national units (Diez, 2006), although even two case studies would not provide clarity on the widespread changes brought by the Statute across Brazil. While two secondary case studies were conducted in Santo André and Rio de Janeiro, these were helpful for comparison of progress in the Statute’s implementation but an analysis of interviews was not useful for this project. These cases will be used for additional projects in the future.

\(^\text{16}\) For information on specific transfers to Brazilian municipalities, see [http://br.transparencia.gov.br/](http://br.transparencia.gov.br/).

<table>
<thead>
<tr>
<th>City</th>
<th>Total GDP US $ (1,000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rio de Janeiro</td>
<td>85,269,702</td>
</tr>
<tr>
<td>Duque de Caxias</td>
<td>17,776,203</td>
</tr>
<tr>
<td>Campos dos Goytacazes</td>
<td>16,045,896</td>
</tr>
<tr>
<td><strong>Niterói</strong></td>
<td><strong>5,086,175</strong></td>
</tr>
<tr>
<td>Nova Iguaçu</td>
<td>4,605,640</td>
</tr>
</tbody>
</table>

Table 2.1: GDP for Rio State, top five cities (IBGE, 2010b)
2.2. Data collection methods

This research draws on several qualitative sources of data including semi-structured interviews, a review of policy documents and observation. I conducted qualitative methods because of the exploratory nature of the research questions (Cresswell, 2009). Overall, I spent eight months between October 2010 and June 2011 gathering data, establishing participant contacts and conducting interviews in Niterói. Two visits prior to the start of my field work (fall 2009 and summer 2010) also helped to establish good contacts and understand the case study. Indeed, much of my effort and time was spent making contacts and securing interviews. While I could have hired research assistants to help me in this task, doing this on my own provides a certain amount of credibility that cannot be gained through other means.

Interviews formed the primary data collection method for this research. Open-ended, semi-structured in-depth interviews helped to gain a broad understanding of the issues, benefits and challenges of implementing the Statute. In-depth interviews can generate a lot of information quickly, covering a range of issues and allowing the researcher to deal with unanticipated themes that may arise by filling in knowledge gaps (Dunn, 2000; Valentine, 2001). As my research questions were broad, these interviews were useful to cover the breadth needed to understand the Statute’s context. In addition, interviews can shed light on differing opinions. This was useful in my case study as there are broad opinions regarding the success or failure of the Statute’s implementation. Finally, semi-structured interviews allow flexibility in the way issues are addressed by the informant (Dunn, 2000). This flexibility was useful as I often adapted my questions to the context of each interviewee. In the Niterói case stretching over several years, some interviewees were involved in policy councils while others were involved in conferences, directly affecting which questions were asked. A scoping question was asked at the
Beginning of the interview to establish which aspects should be considered during the interview.

I used nonrandom snowball sampling and gatekeeper techniques to select ‘information-rich cases’ whose study illuminated the questions under study (Patton, 2002). In purposeful sampling, participants are intentionally selected as those with experience of the concept being explored. It includes recruiting participants by contacting participants through others; the snowball increases as new information-rich cases are accumulated (Patton, 2002; Valentine, 1993). From the beginning, snowball sampling allowed me to develop a network of initial participants and identify additional respondents. I began establishing contact with my participants through email and telephone to gather a network of researchers, professionals and organizations working on issues related to the Statute, planning and participation in Brazil. After initial contacts were made by email, contact was also done by telephone. I also used the meetings I attended, especially the urban development council, to develop further contacts.

From the beginning of my research, it was clear which actors I would need to interview. Especially for the case study interviews, I needed to interview the key actors rather than purely random snowball sampling. Drawing on the network of contacts developed through snowball sampling, I used civil society, local government and key experts as gatekeepers to gain access to additional contacts. Access to gatekeepers was essential in establishing good contacts and in gaining trust. Gatekeepers facilitate opportunities to interact with others in the research site and can be invaluable to facilitate both access to and increased acceptance among research subjects (L. M. Campbell, et al., 2006; A. Kearns & Paddison, 2000; Mandel, 2003).

Interviews took place in offices, private residences and public places. To conduct my interviews, I used an interview guide (shown in Appendix 1), which is highly flexible, allowing questions to be modified in situ to match the interview tone. I combined note-taking and
recording during the interviews (Dunn, 2000). While all interviews were recorded, I took notes of specific issues. This allowed me to follow-up on specific information without worrying that I would forget to do so in the time it took to transcribe the interviews. A total of 99 interviews were conducted in Brazil from late 2010 to mid-2011. In Niterói, 58 interviews were conducted with 50 participants. I also interviewed experts from academia, members of national civil society organizations, international authorities and planners as key experts with a bird’s-eye view of planning in Brazil engaged in an international community of scholars (see Table 2.2). I conducted 18 key expert interviews in Rio, São Paulo and Brasília. See Appendix 3 for a list of interviews.

At the beginning of my field work I began compiling a list divided into categories by case study and key experts. When a contact was suggested to me, I added it to my list. Although I did not interview all these contacts, keeping the full list was useful to remember which contacts I had already met, spoken to on the phone, interviewed and who referred me to each contact. Overall, I interviewed a diverse set of informants from various sectors (shown in Table 2.3).

As the research focuses on a national policy applied at the local level, an analysis of government policy documents provides the foundation to understand the Statute’s implementation locally and how it is framed federally. Beginning with a review to identify existing documents, this method focuses on key documents from relevant municipal and federal governments since 2001. Municipal policy documents included city master plans, regional plans, 

<table>
<thead>
<tr>
<th>Key experts</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Government</td>
<td>3</td>
</tr>
<tr>
<td>Legislative power</td>
<td>1</td>
</tr>
<tr>
<td>Social movements &amp; civil society</td>
<td>3</td>
</tr>
<tr>
<td>Academia/researchers</td>
<td>11</td>
</tr>
<tr>
<td><strong>Total key expert interviews conducted</strong></td>
<td><strong>18</strong></td>
</tr>
</tbody>
</table>

Table 2.2: Key expert interviews conducted for this research
reports and minutes of municipal councils and conferences. Federal policy documents came primarily from the Ministry of Cities and included capacity-building documents, program documents and explanatory documents from other national, grassroots organizations. Although document analysis is often not discussed as a qualitative research methodology, even “methodologically misunderstood” (Wesley, 2010: 1), a range of documents and records provide researchers with information about many things which cannot be observed or which occurred before the research began; these involve an analysis of primary and sometimes even secondary documents (Menon, 2005; Patton, 2002).

The process of collecting archival material in Niterói’s *prefeitura* was a long, drawn-out process and often meant going back repeatedly and sifting through boxes of documents. Gaining trust from municipal officials helped me to identify useful documents as I was able to rely on someone with know-how and considerable time in the *prefeitura*.

I also collected newspaper articles based on the rationale that as the case started in the 1990s, print media could be used to capture this history. In Brazil, where the media has historically been biased towards monopolies in mass communication, a challenge arises

<table>
<thead>
<tr>
<th>sector</th>
<th>Niterói</th>
<th>Rio</th>
<th>Santo André</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local government(a)</td>
<td>16</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Business</td>
<td>3</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Social movements &amp; civil society</td>
<td>16</td>
<td>5</td>
<td>2</td>
</tr>
<tr>
<td>Academic and professional associations</td>
<td>6</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>City councillors(b)</td>
<td>4</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total interviews conducted</strong></td>
<td><strong>58</strong></td>
<td><strong>10</strong></td>
<td><strong>13</strong></td>
</tr>
</tbody>
</table>
regarding the use of media in academic works (F. A. Azevedo, 2006). Therefore, I used a systematic method to collect newspaper articles. First, I consulted the planning department’s archives containing extensive newspaper articles on planning experiences in Niterói. Second, I consulted the web sites of the two major newspapers dealing with Niterói (O Fluminense and O Globo) using common key words to compile these articles.

Drawing on the standards outlined by Wesley (forthcoming), qualitative document analysis should satisfy several methodological requirements. First, in doing document analysis, practitioners should preserve the authenticity of the research by offering an accurate reading of a set of documents, aiming at a faithful interpretation of the meanings in the documents (Krippendorff, 2004). Second, document analysis should be broader than the case under study, also referred to as transferability or generalizability in that the findings are relevant to contexts outside the case study (Baxter & Eyles, 1997; Bryman, 2008). Finally, document analysis should remain impartial by maintaining the objectivity of the analysis (Wesley, forthcoming).

The data collection methods also included observation at meetings and forums related to the case study. Observational methods used in the social sciences involve the systematic, detailed observation of behaviour and talk, including watching and recording what people do and say (Mays & Pope, 1995). I used both reactive observation, based on the assumption that the people under study are aware of being observed and are amenable to interacting with the researcher, and focused observation, which looks only at the information that is pertinent to the issues at hand. Reactive observation is distinguished from participant observation, based on a relationship between the researcher and the community and requiring considerable immersion of the researcher in the host community (Angrosino, 2005). Still, there is some confusion as to how much participation observation actually entails. While some consider that “observation
involves participating” (R. Kearns, 2005: 197), it is often a matter of degree (Patton, 2002), corresponding to Gold’s (1958) typology of research roles shown in Table 2.4.

My approach to observation also used a method of studying political settings, or gatherings of people in specific places to discuss issues common to the locality (such as town council meetings and associational meetings) (Barker, 1999b). Based on speech and action in these locales, this approach examines how political settings are formed and changed, and how discussion and action in them are regulated. Through observation I attended specific community gatherings, including forums and meetings. Barker (1999a: 29) notes that, “To do research on political settings is to scan the world of human activity for meetings and offices and other political settings and to consider their characteristics and properties and relationships.”

Observation has the benefit of gaining a level of detail that may not be possible from other methods. One of the purposes of observation is contextual, allowing for “an in-depth interpretation of a particular time and place through direct experience” (R. Kearns, 2000: 105). It also encourages the continual reassessment of research questions and facilitates the development of new questions as insights arise (Dewalt & Dewalt, 2002). Researchers employing observational techniques therefore describe, interpret and analyze, and continuously revise and revisit their research (Watson & Till, 2010). Finally, observation provides complementary evidence that may be used combined with other methods.

During my field work, I attended meetings of Niterói’s Municipal Council of Urban

<table>
<thead>
<tr>
<th>Complete participant</th>
<th>Covert observation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Participant as observer</td>
<td>Overt observation – mutual observation of the research</td>
</tr>
<tr>
<td>Observer as participant</td>
<td>A one shot interview with no enduring relationship based on lengthy observation</td>
</tr>
<tr>
<td>Complete observer</td>
<td>Experimental design, no participation</td>
</tr>
</tbody>
</table>

Table 2.4: Observational research roles (Gold, 1958)
Development (Conselho Municipal de Política Urbana, COMPUR). I also attended public hearings and other forums on local issues. Nationally, I attended the National Council of Cities (Conselho Nacional das Cidades) in Brasilia. My attendance at these meetings is summarized in Table 2.5.

At these meetings, I talked to community leaders, civil society members and government officials and staff, among others. The process of attending meetings and getting to know the community was invaluable during my field work. I first attended COMPUR in November 2010, and immediately began to use the meetings to get to know the research participants. Because COMPUR includes a core group of elected participants, attending regularly was critical to understand the issues under discussion. At these meetings, I took note of who was present and involved, how the meetings were organized and the content of the meetings. I recorded my observations as field notes and I continually reviewed my notes to consider whether new questions should be included (Dewalt & Dewalt, 2002). This method relies on the researcher recording exactly what happens, including reactions to what has been observed (Mays & Pope, 1995). As Kearns (2005: 203) notes, field notes become “invaluable sources of data” and “represent the process of transforming observed interaction into written communication.”

One limitation of observation is that it relies on someone else to organize the meetings. As a result, it took time to get information on the schedule of COMPUR meetings. It took even longer to find information about public hearings; for that reason, I attended rather few of these

<table>
<thead>
<tr>
<th>Type of meeting</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>Councils</td>
<td>11 meetings of COMPUR, Niterói</td>
</tr>
<tr>
<td></td>
<td>2 meetings of COMPUR Rio, Rio de Janeiro</td>
</tr>
<tr>
<td></td>
<td>1 three-day meeting of the National Council of Cities, Brasilia</td>
</tr>
<tr>
<td>Public hearings</td>
<td>3 meetings in Niterói</td>
</tr>
<tr>
<td>Other community forums</td>
<td>Debate at the Bar Association of Brazil-Niterói (OAB), Niterói, April 13, 2011</td>
</tr>
<tr>
<td></td>
<td>Forum on ‘chuvas’ (rains) led by CCRON, Niterói, April 14, 2011</td>
</tr>
<tr>
<td></td>
<td>Conselho popular, Rio, April 5, 2011</td>
</tr>
</tbody>
</table>

Table 2.5: Meetings attended for field work in 2010 and 2011
meetings. Although I asked my research participants about when public hearings would take place, despite my best efforts, it took several months to even attend one public hearing. Although public hearings occurred during my time in Niterói, I had a lot of difficulty getting access to information in advance of these meetings.

2.3. Data analysis

Following the translation of the data and notes from interviews, participant observation and the document review, this research uses grounded theory as the method of analysis. Grounded theory involves the collection, coding and categorization of qualitative data to enable themes to emerge through constant comparison. The purpose of grounded theory is to build theories from data about the social world so that the analysis is grounded in people’s everyday experiences. This method involves multiple stages of data collection, coding and analysis, reflecting on emergent themes, collecting more data and comparing the emergent insights (Corbin & Strauss, 2008; Cresswell, 2009). While grounded theory is based on research participants’ views, it incorporates a combination of human agency and social structures: the subjective experiences of everyday life, which are influenced by historical, geographical and structural contexts (LaDonna & Cope, 2006). Grounded theory is also concerned with enabling rigourous qualitative research; the goal is “a simultaneous commitment by the researcher to creativity and a systematic approach, which uses appropriate techniques as needed” (LaDonna & Cope, 2006: 2025).

I coded my data from the policy review, transcripts from the interviews and notes from the participant observation. Coding of data is used for data reduction and “helps to reduce data by putting them into smaller ‘packages’” (Cope, 2005: 225). It is also used for organization and the creation of a “finding aid” by arranging the data by key terms or ideas. Finally, coding is used for analysis. Following the grounded theory method, I allowed for codes to develop during the
analysis phase rather than establishing codes in advance, allowing for new ideas that were the result of different stages to become part of the research process (Cope, 2005).

For the analysis and coding of documents, I draw on the method used by Wesley (2011). In the first stage, called open coding, an overview of primary source documents sets out general themes. In the second stage, or axial-coding, the researcher reviews all documents and tags passages that belong within the themes identified in the first stage. The final stage of analysis, selective-coding, involves combing through the documents in search of mis-coded passages.

2.4. Ethics, rigour and positionality
While the notion that the researcher can be purely objective in qualitative research has changed considerably, many writers propose “locating their knowledge ... through contextuality, partiality and positionality” by writing themselves into their own research (L. Berg & Mansvelt, 2000: 168). This implies that researchers have ideologies, backgrounds, histories, class, race and gender and that this inevitably impacts the research process. As Valentine (2001: 46-47) notes, it is “important to reflect on your own identity and how this will influence or shape the interactions you might have with those with whom you want to work.” As Mullings (1999) observes, unstructured interviews have rarely been problematized but are highly affected by issues of power, positionality and subjectivity. This view emphasizes the fact that knowledge is socially constructed and embedded in unequal power relations. Power may therefore be made evident by exploring positionality in the research process (Sanghera & Thapar-Björkert, 2008). Awareness of this positionality is particularly important in the context of transnational research conducted in countries other than those of researchers’ origins (Miraftab, 2004).

Therefore, in my own research it is important to be aware of my positionality in terms of my relationships with my research participants (Sanghera & Thapar-Björkert, 2008). Although I
am from Toronto, I have lived and worked in Rio several times, I speak Portuguese and have a Brazilian partner and extended family and friends and go to Brazil almost every year. As a result, I am neither an insider nor an outsider. In some cases I was considered one or the other, or neither, as Mullings (1999) suggests. While my positionality is dynamic, the participants’ positionalities may be equally dynamic (Mullings, 1999). Depending on the context, I may blend in as a Brazilian and at other times I may be considered a foreigner or somewhere in between. From the beginning, I was honest about my positionality to establish trust and cooperation between my research participants and myself. Although my research participants were often curious as to why I speak Portuguese, I did not hide my personal connection to Brazil. While I worried that personal information might not be appropriate in a research setting, in the end this was not a problem and reassured participants that I had a tangible connection to Brazil.

The intricacy of power relations in interviews means that gender, age, ethnicity and other outward appearances can affect how respondents react in the interview (Pile, 1991). As a North American middle-class educated white female married to a middle-class Brazilian, my positionality requires critical examination. Indeed, my positionality may have affected my access to the interviewees. While no participant refused an interview with me, getting politicians or other bureaucrats to take me seriously – as a woman in a male-dominated field – sometimes made getting interviews difficult. However, because I had attended COMPUR meetings for several months, even high-level bureaucrats who may not have granted an interview to an outsider with little contact with the prefeitura did agree to an interview.

On the other hand, despite being a doctoral student, my Canadian university connection enabled access to some research participants that, under other circumstances, may not have been possible. For example, research participants from the residents’ associations in Niterói
called me “professor” (professora) or “doctor” (doutora) even though I had never referred to myself in this way. In Brazil, those in powerful positions – regardless of whether they are a doctor – are often referred to as doutor(a). Indeed, my being called professora or doutora had nothing to do with the person thinking I was actually a professor, but rather with the fact that I was in a powerful position. My position as a North American white female thus shaped my relationship with some of my research participants. Despite this relationship, I believe my access to data including documents and research contacts was not influenced significantly.

In addition, the interview site provides a material site for the enactment of power relations; “participants who are given a choice about where they are interviewed may feel more empowered in their interaction with the researcher” (Elwood & Martin, 2000: 656). While I conducted interviews in both public and private places, the decision of where to meet was always dependent on the participant’s request.

‘Insider’ and ‘outsider’ issues are also relevant when conducting observational methods, which are often said to enable the researcher to participate firsthand in the activities of the research setting, yet are countered by warnings that the researcher may become too much of a participant. For Kearns (2000), because observation can be a power-laden process, it is important to be aware of the ways that others’ behaviour may be modified by our presence. While attending meetings in Niterói, I came to know the COMPUR participants well yet I ensured that I only observed the meetings and did not engage as a participant. Indeed, several COMPUR members came to treat me as a friend rather than a researcher; therefore, maintaining a distance without offending these participants was sometimes difficult.

Because my participants may have had personal or professional reasons for not participating in the research, I included a way for them to decline involvement in the research.
Valentine (2001) suggests that allowing participants to opt in rather than assuming they will participate is an effective method. I guaranteed confidentiality and anonymity by not identifying the participants in the final text or in interview transcripts if they were not comfortable with this and by using a code to conceal their identities (Israel, 2004). Participants were also informed of their right to withdraw from the research at several points during the interview including in the informed consent form at the beginning of the interview (shown in Appendix 2) and in the oral explanation of the interview process. In the informed consent form, participants indicated their willingness to participate in the project and stated whether they had been informed of the purpose of the project and the use of the information. Participants also consented to the audio-recording of the interview, provided their consent to using their name in the research and any resultant publications and indicated whether they wanted a summary of the findings.

Kearns (2000) observes that when participants are involved, there is an ethical imperative to maintain contact while Sanghera and Thapar-Björkert (2008) note that respondents requested that research findings should be made accessible. Given this advice, I have maintained contact with my participants throughout the research process. For this reason, I spent time in Niterói getting to know the community. I will also be providing a short version in Portuguese to distribute to my participants when the final results are completed as many expressed an interest in my research findings. Finally, I have agreed to give a short presentation of my findings to interested parties after defending my dissertation.

I ensured rigour in my research through several evaluation criteria: credibility, transferability, dependability and confirmability (Baxter & Eyles, 1997; Lincoln & Guba, 1985). First, I ensured credibility through method triangulation or using multiple qualitative methods. Triangulation is often used to demonstrate confirmability and completeness, based on similar
findings (Baxter & Eyles, 1997; Tobin & Begley, 2004). I also ensured prolonged engagement by spending sufficient time in Niterói (eight months) to build trust among respondents. Second, a significant aspect of my research is the transferability of research findings to contexts outside the case study, one of the goals of my research (Baxter & Eyles, 1997). Third, dependability, or ensuring that the research is clearly documented, is satisfied through an audit trail including the documentation of data and the final end product (Tobin & Begley, 2004). I documented the research process during my time in the field. This was important for the observational component of the research, where recording field notes is a critical source of data collection (Eng, et al., 2005). This also included keeping track of issues that emerged but were not recorded in the interview transcript. Finally, confirmability refers to “objectivity ... focus[ing] solely on the accountability of the inquirer” (Baxter & Eyles, 1997: 517). I kept detailed notes on findings and potential problems that arose. I believe that these combined measures have allowed me to ensure rigorous analysis during the research process.
Chapter 3: The New Planning Model in Brazil

3. Introduction

This chapter discusses the new planning model in Brazil following the reforms associated with the Statute, setting the stage for the following chapters. The details described in this chapter address the research questions and help in understanding the case study to follow. I first discuss the precursors to the urban policies in the Constitution, the approval of the 1988 Constitution, the Statute of the City and the role of decentralization. I then examine the new planning model in Niterói, focusing on the events that have shaped this model starting as early as the 1990s.

3.1. The Brazilian national planning context

In Brazil, the planning context is framed by a civil law tradition that prioritizes individual over collective rights and constrains state intervention in promoting land use, as well as technocratic planning based on elitist urban legal provisions (Fernandes, 2007a). Thus, exclusionary urban development, “combining property speculation, widespread vacant urban land, environmental degradation, widespread gated communities, and above all the proliferation of precarious informal settlements” has been encouraged (Fernandes, 2007a: 210). Indeed, land policy in Brazil has been enacted nationally as part of Brazil’s Constitutions. While the social function of property has been recognized in Brazilian Constitutions since the 1930s, formal land tenure has been difficult to achieve in Brazil, especially for low income populations.\(^\text{17}\)

Among interviewees, there was an assumption that planning in Brazil has never been part of the culture, as prominent urbanist Raquel Rolnik explained: “But that is not in our culture, to plan for things not to happen. So that is one thing, this change, I think it is a change over many years, but there has to be a lot of commitment for it to happen... Only that behind this problem

\(^{17}\) All Brazilian Constitutions since 1934 (1937, 1946, 1967/1969, 1988) have included the concept of social property.
there is a logic of production of cities, so then the problem gets much bigger” (P.I., 9/12/10).

Another assumption was that the model of urban expansion that has characterized Brazil is based on an absence of planning, leading to imbalance and chaos. Thus, Rolnik notes that, “there is no planning in Brazil ... Planning is a thing placed in a fictional world, a piece of inked paper that is not followed” (P.I., 29/11/10). However, other experts argue that Brazil has been historically characterized by modernist and centralized planning rather than an absence of planning. This tendency has been in part responsible for generating the problematic logic of Brazilian cities. This part of the chapter gives an overview of Brazil’s planning system, accounting for the changes that have occurred as a result of the Constitution and the Statute of the City.

3.1.1. Antecedents: Urban Policies before the Constitution

Between the 1930s and the 1964 military coup d’etat in Brazil, public policies dealing with the urban question were few and of little significance; indeed, they were fragmentary and sectoral policies (Bolaffi, 1992; Fernandes, 1995). This period of “urban laissez faire” meant that large numbers of residents settled in urban areas without public policies to deal with the outcomes, accelerating the peripheral pattern of urban expansion (Kowarick & Bonduki, 1994: 121). The lack of a national urban policy was evident during the 1950s and early 1960s, as migration to cities without basic infrastructure increased. Growing social inequalities brought about by this pattern of intense urban growth created several forms of social conflict across the country calling for a variety of solutions. In 1963, during the ‘Base Reforms’ period of social mobilization, the issue of urban development was raised as a way to solve the country’s housing problems.

While some urban policy legislation developed in the early 1960s, following the military coup d’etat in 1964, most of these proposals did not materialize and the issue of urban reform

18 In Brazil, the coup d’etat began on April 1, 1964, resulting in the overthrow of democratically-elected President João Goulart by the military. It lasted until Tancredo Neves was indirectly elected President in 1985.
disappeared during twenty years of authoritarianism before returning to the political agenda in the 1980s (Avritzer, 2007). Urban policy during the military dictatorship of the 1960s was led by an ideological focus on modernization, full economic growth, wealth distribution and social integration, yet the government faced a complex urban environment and serious housing crisis. Brazilian urban policy between 1964 and the early 1980s was essentially conceived as housing policy and urban issues were reduced to a dimension of the housing deficit (Monte-Môr, 2007).

Between 1964 and 1970, state intervention in urban areas increased through the National Housing Bank (Banco Nacional da Habitação, BNH) to promote the acquisition of low-income housing. The BNH arose during a time that the Brazilian military knew they had to offer a series of unpopular measures to deal with inflation, therefore offering home ownership, an aspiration of Brazilian populations, in the hopes of political support (Bolaffi, 1992; Monte-Môr, 2007). Ultimately, the BNH failed to respond to problems of access to resources by the excluded urban poor. Indeed, the distance between the BHN’s discourse and practice grew, leading to further unplanned and expanding urban peripheries (Bolaffi, 1992; Fernandes, 1995).

In the 1970s, spatial planning became an objective of national development and the government began to use National Development Plans (Plano Nacional de Desenvolvimento, PNDs). For the first time, in the second PND in the mid-1970s, national planning incorporated regional and urban policy as one of its tools and urban development became a strategic means of equally distributing resources to reduce disparities. The 1988 Constitution was the first to take major steps to establish the ground rules for the provision of urban policy nationally.

3.1.2. The 1988 Constitution

In the early 1980s, an urban reform movement began based on criticisms of the unsuccessful technocratic and authoritarian planning model that had prevailed in Brazil up to that point
(Ribeiro & Santos Junior, 2001). In 1982, the umbrella group known as the National Movement for Urban Reform (Movimento Nacional de Reforma Urbana, MNRU) was formed to develop a proposal for urban reform during the National Constituent Assembly (1986-1988), a congressional assembly charged with crafting a new democratic constitution for the country. The Constituent Assembly gathered millions of signatures supporting popular draft provisions in support of urban reform in a process that included various social movements participating in the MNRU. With a focus on the importance of the social function of property and the right to the city in the development of urban planning policy, the social movements in the MNRU were ultimately successful in including some of the MNRU’s goals in the new ‘citizens’ Constitution.

Following the Constituent Assembly and the process of political opening, the new Constitution was promulgated on October 5, 1988. For the first time, the Constitution included two chapters on urban policy calling for instruments guaranteeing the right to the city, the defense of the social function of the city and property and the democratization of urban management. The social function of property and of the city expresses the regulation of urban development as a public issue rather than being reduced to individual or state interests. The Constitution delegates authority to municipalities to enact laws governing the use and development of urban space. Two specific articles – 182 and 183 – attempt to transform urban policy in Brazil into an instrument for social justice with considerable scope and innovation.

Although reference to the social function of property was made as early as the 1934 Constitution, Article 182 of the 1988 Constitution was the first instance that any detail was provided as to how the social function could be achieved (Fernandes, 1995; Pindell, 2006). It states that the objective of urban policies is “to organize the full development of the social
functions of the city and to guarantee the well-being of its inhabitants.” To achieve this goal and to fulfill the social function, it requires cities with more than 20,000 inhabitants to develop a master plan as the basic tool of urban development. Beyond this general statement, the Constitution did not specifically define what constitutes a master plan, leaving this level of precision to the Statute. While some Brazilian cities have had master plans since the 1970s, the innovation introduced by the National Constituent Assembly was the link between a master plan and the other devices approved by the Constitution in its urban chapter.

Article 183 establishes *usucapião urbano* (adverse possession of urban property) to resolve the dilemma of illegal residence for precarious housing, allowing residents of urban lots less than 250 square metres to obtain original ownership title if they can prove continuous residence for five years without legitimate opposition. The right to adverse possession of urban property is important to *favela* regularization, applying in theory to more than half of all existing *favelas* (Fernandes, 1993).

Several devices for direct participation in urban planning processes were also included in the Constitution, recognizing that in order to be effective, urban questions require democratization of decision-making processes (Fernandes, 1995, 2007a; Grazia, 2003). Thus, “a new social right was also created – the right to urban planning”; citizens would be considered as political agents in a realm where the right to the city could be claimed (Fernandes, 1995: 65).

Despite the importance of Articles 182 and 183 in the 1988 Constitution, several shortcomings were recognized at the time. First, the articles only allowed a limited degree of participation in decision-making processes regarding urban questions. Second, the social function of property was incorporated into Article 182 of the Constitution but such principles were subordinate to the requirement of elaborating a master plan; the full application of the
urban articles in the Constitution was dependent on further, more detailed, legislation. For example, Article 183 (the right to adverse possession of urban property) did not provide enough detail to carry out its application. Following approval of the Constitution there was a thirteen year battle culminating in the enactment of the Statute in 2001. This would come to regulate the two articles on urban policy (Bassul, 2005; S. N. d. Carvalho, 2006; Fernandes, 1995).

3.1.3. The enactment of the Statute of the City

The Statute resulted from negotiation among the urban reform, environmental and social movements, the real estate sector, the municipalities, the states and the federal government institutions dealing with housing and the environment. Following thirteen years of debate over its content, the Statute was enacted on July 10, 2001. Between the 1988 Constitution and the Statute’s approval in 2001, the national congress debated the legislation required to define the concept of the social function more precisely. Chapter 5 explains how, during the 1990s, social movements acting within the National Movement for Urban Reform (MNRU) (later, the National Forum for Urban Reform, FNRU) came to act nationally in support of the universalization of the right to the city (Avritzer, 2009; Bassul, 2005). During the 1990s, several municipalities experimented with the principles expressed in the Constitution such as participatory budgeting.

The bill that eventually became known as the Statute of the City was Bill 181 of June 28, 1989, proposed by Senator Pompeu de Sousa. For Pompeu de Sousa, the

... aim [of this bill] was to restrict ‘undue and artificial property appreciation which made it difficult for poorer people to access land for housing purposes and forced the local public authorities to intervene in areas where rising prices were often the result of public investments effectively paid for by all but benefiting only a few’ (Bassul, 2010: 80).20

Following the bill’s approval, the Chamber of Deputies studied it for eleven years (Bassul,

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20 This account of the Statute’s approval is taken from work by José Roberto Bassul (2002, 2005, 2010) and Grazia de Grazia (2003). Bassul was the congressional aide to Senator Pompeu de Sousa during the 1990s and, along with Pompeu de Sousa, one of the authors of the original bill. Grazia de Grazia was the advisor on citizenship, public policies and urban issues for the NGO FASE (also part of the FNRU) during the most important moments of the Statute’s rise (Bassul, 2005).
The bill incorporated several elements of the reform movement’s proposals, shown in Table 3.1. After its approval, the political struggles between the conservative sectors and the urban reform movements grew stronger (Grazia, 2003). The urban business sectors opposed the social function of property and the proposal for collective usucapião. Similarly, the civil construction industry and the real estate sector objected to the acquisition of urban property and a conservative faction of the Catholic Church lobbied forcefully for the bill’s removal (Grazia, 2003). Despite viewing the bill from different viewpoints, these sectors were “unanimous in their rejection of the Statute of the City” (Bassul, 2010: 81).

Although the conservative sectors attempted to remove the participatory elements from the bill, the social movements were ultimately successful in incorporating some of their agenda into the bill, including the right to the city (Avritzer, 2009). After such an arduous struggle, the later iteration of the movement, the FNRU, was determined to see the Statute through to its approval in Congress. Yet the FNRU was dissatisfied with the thin version of democratic urban administration in the Pompeu de Sousa Bill. Although all the FNRU priorities listed in Table 3.1 were incorporated, items 2 through 4 were included in a more diluted form than the FNRU had envisioned (Avritzer, 2009). The MNRU had proposed several tools for democratic urban management including popular legislative initiatives, a popular veto of changes in urban law and a right to information and control (A. A. Silva, 1990). Thus, the Pompeu de Sousa Bill fell short of

| ➊ The collective right of urban dwellers to the city (Article 6) |
| ➋ State coordination of the occupation of urban law (Article 5) |
| ➌ The social function of private property (Article 7) |
| ➍ Progressive taxation of urban property (Article 16) |
| ➋ The condition that cities with more than 20,000 residents elaborate a master plan (Article 38) |

Table 3.1: Elements of the FNRU’s proposals in Pompeu de Sousa’s Bill (Avritzer, 2009; Fernandes, 1995)
the proposals made by the FNRU/MNRU, introducing a more restrictive version of participation. Despite the bill’s dilution, the conservative sectors targeted several local administrative prerogatives, including *IPTU Progressivo*, the social function of property and the right to preemption (Bassul, 2010; Grazia, 2003). For the FNRU, the main issue became making the bill satisfactory in terms of civil society participation and democratic management.

For some years, the bill remained dormant in the Brazilian Congress. In 1996, a more pragmatic, less conceptual approach was taken through a report “focusing on the provision of legal instruments for the municipal authorities to use in their future efforts in urbanization, house construction, etc” (Bassul, 2010: 83). Avritzer (2009: 147) notes, however, that this “conservative report” eliminated “all participatory elements of the bill.” While the business sectors continued to lobby for amendments to the bill, the FNRU had retreated on some of its proposals, hoping that some of the lost elements could be regained (Grazia, 2003). The bill passed to the Urban and Interior Development Commission, presided over by Deputy Inácio Arruda of the Brazilian Communist Party (*Partido Comunista do Brasil*, PC do B) who began public meetings and the first Cities Conference in 1999 (Bassul, 2010; Grazia, 2003). Indeed, many of the breakthroughs allowing the FNRU to incorporate their agendas into the bill took place in this committee (Avritzer, 2009). These included:

1) The right to the city as a conception for the elaboration of urban law, which had been proposed by the FNRU and rejected; and
2) Local administration preemption prerogatives, which would allow the administration to hold land in areas in which it anticipates expansion.

After the FNRU’s demands were included, the final stages continued while the issue of participation was contested. Such issues included how to make the master plan obligatory and whether the federal government could make local participation mandatory (Avritzer, 2009). The bill was amended to require public hearings in elaborating master plans and was unanimously
approved (Bassul, 2010). Many of the Statute’s tools had already been used in practice by municipalities prior to final ratification, and the results of these experiments were considered encouraging by the private sector. The Statute was approved by President Fernando Henrique Cardoso, becoming law on July 10, 2001. In 2003, President Lula of the Workers’ Party was elected. Figure 3.1 shows a timeline of planning landmarks in Brazil discussed in this chapter.

3.1.4. Decentralization in the Brazilian planning context

Brazil is a decentralized federation with a presidential system. Unlike most federations in which municipalities are merely a creation of the sub-national level, municipalities in Brazil are part of the federation, which includes three autonomous tiers: the central government, the states (26 state governments and one federal district, Brasília) and the municipalities. Governmental responsibilities are shared at the federal, state and municipal levels. In addition, city hall and city council are separate entities; local government – which is autonomous – is composed of an executive power (the mayor) and a legislative power (city council, or câmara municipal), which legislates local public policies and oversees executive actions. While the executive and legislative bodies are elected by the population every four years, municipalities have the constitutional

![Timeline of planning landmarks in Brazil](image)

Figure 3.1: Timeline of planning landmarks in Brazil

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21 There are 5,565 municipalities in Brazil (IBGE, 2010a), of which 1,586 were created between 1980 and 2000 (C. Souza, 2001a).
power to approve laws, collect taxes and receive funds from state and federal governments.

Brazilian municipalities have often enjoyed financial and political autonomy, especially during democratic regimes. Under the colonial state, local autonomy was reinforced through coronelismo, Brazil’s unique form of clientelism in which local bosses exercised control over voting behaviour in local elections. Local autonomy was strengthened through the 1934 Constitution by granting municipalities the right to levy their own taxes, administer their own affairs, organize services and elect officeholders. While this autonomy was eliminated under the 1930-1945 dictatorship, federalism returned to Brazil after WWII and was even loosely extended during the dictatorship of the 1960s, although the formal recognition of democratic federations concealed a highly centralized and authoritarian political order (Fernandes, 1995).

The decentralization process, strengthened in the 1988 Constitution, was critical in Brazil’s transition to democracy. Brazil’s system of decentralization is relevant for the application of the Statute. With the end of military rule in the mid-1980’s, the ‘federative crisis’ required a redefinition of rights and obligations between levels of government. Following the return to democracy and a new Constitution in 1988, local governments were empowered in the federal system, with significant devolved power including institutional, fiscal and administrative devolved structures. Decentralization received widespread support, with local governments regarded as the main locus for the exercise of the restored democracy (C. Souza, 1997, 2002).

The 1988 Constitution established several transformations in the balance of power between the federal and municipal governments. First, local governments were given political autonomy from the national level; municipalities were assigned the power to “legislate upon matters of local interest,” to “institute and collect taxes within their jurisdiction,” to provide services and were designated as autonomous units of the federal system. Cities were allowed
greater discretion regarding land legislation, especially those promoting the social function and focusing on urban poverty. Second, both local and state governments were given greater fiscal autonomy from the federal government through resource transfers toward sub-national governments (C. Souza, 1997). While local government revenues have always been guaranteed in Brazil’s Constitutions, the 1988 Constitution made dramatic changes to the resources available to municipalities, increasing local governments’ share of public revenue from 10.8 percent of the total federal budget in 1988 to 16.1 percent in 2003 (F. Rezende & Garson, 2006). This increase in the resources available to municipal governments means that municipalities can – in theory – improve service delivery, especially for the urban poor (Abers, 2001).

In addition, a share of municipal revenue in Brazil is accrued from city taxes. The 1988 Constitution gave municipalities the right to levy an Urban Land and Property Tax (IPTU) on urban real estate and the Services Tax (ISS) and Property Transfer Tax (ITBI) became more profitable by reducing exemptions for federal and state entities (Abers, 2000). Core cities rely primarily on taxes such as ISS. The Constitution also allows for greater non-discretionary transfers from the state and federal governments to the municipal level, aiming to address the issue of fiscal balance in a country marked by regional inequalities. The primary source of non-discretionary transfers to cities is the Municipal Revenue Sharing-Fund (FPM). Federal transfers to the municipalities represent the main revenue source for small and medium-sized municipalities and those sheltering the poorest urban inhabitants. Finally, a state transfer requires a percentage of the Tax on Goods and Services (ICMS) to be transferred to cities within the state, representing the primary source of revenue for economically well-off municipalities (Shah, 1990). Table 3.2 shows the composition of municipal revenue in Brazil.

The constraints on how municipalities could spend were mostly lifted by the Constitution
Local tax revenue

<table>
<thead>
<tr>
<th>Revenue from transfers</th>
<th>Constitutional transfers (federal)</th>
<th>Constitutional transfers (state)</th>
<th>Legal transfers</th>
<th>Voluntary transfers</th>
<th>Other revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Municipal Revenue Sharing-Fund (FPM)</td>
<td>25% of the Property Transfer Tax (ICMS)</td>
<td>Resources from the Unified Health System (SUS)</td>
<td>Agreements from the federal government, the states, municipalities &amp; other public institutions</td>
<td>Revenues from contributions, heritage, agriculture, industrial, service, transfers from private institutions</td>
</tr>
<tr>
<td></td>
<td>50% of Rural Land Tax (ITR)</td>
<td>50% of the Tax on Financial Operations on Gold (IOF-Ouro)</td>
<td>Resources from the Fund for the Development of Basic Education &amp; Enhancement of Professionals (FUNDEB)</td>
<td></td>
<td>Income from active debt, penalties &amp; interest, and compensation and refunds</td>
</tr>
<tr>
<td></td>
<td>Proceeds from IPI-Exportation (IPI-Exportação)</td>
<td></td>
<td>National Social Assistance Fund (FNAS)</td>
<td></td>
<td>Other current income and capital revenues (loans, sale of assets, loan repayments, transfers of private capital and other capital revenue)</td>
</tr>
<tr>
<td></td>
<td>Proceeds from Financial Compensation for Mineral Extraction (CFEM)</td>
<td></td>
<td>National Fund for the Development of Education (FNDE) Education Allowance</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Proceeds from Special Fund for Oil (FEP)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Proceeds from compensation for the exemption of ICMS on primary and semi-manufactured exports</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 3.2: Municipal revenue in Brazil (Instituto Pólis, 2010)

(Abers, 2000). Local governments were given responsibility for a range of services that were ‘municipalized’ to highlight local provision. Such devolution has, however, led to mixed outcomes because of ambiguities regarding governmental responsibilities, such as urban development, which may fall within all government jurisdictions (J. R. R. Afonso & Araújo, 2006).

As well, despite a larger share of the pie for municipalities, with accelerated urbanization the resources have been inadequate to meet urban development needs. This has resulted, in part, from the variety of sources of federal transfers (F. Rezende & Garson, 2006). Even with mechanisms to offset regional disparities, Brazilian municipalities exhibit uneven social and economic development along regional divides (F. Rezende & Garson, 2006; C. Souza, 2002). For Baiocchi et al (2001), this heterogeneity results from inflation and curbed public investments, which has resulted in efforts to encourage fiscal recentralization, and the vagueness of institutional reforms. In addition, the tax sharing formula results in inequality in per capita
budgets in metropolitan regions, leading to high per capita budgets for municipalities with a strong manufacturing sector and a small population, while municipalities with large populations and fragile economies are severely under-financed (F. Rezende & Garson, 2006). Table 3.3 shows Niterói’s finances in contrast to that of several other cities.

Regardless of gloomy views regarding Brazilian decentralization, the functional and authoritative size of local government increased (Baiocchi, et al., 2011). Municipal government is increasingly relevant as a realm for service delivery and development while the overall quality of service provision has improved, according to some sources (Atkinson & Haran, 2004). The differences in municipal capacity within Brazil is significant in the context of the Statute’s implementation. While master plans are required for all municipalities over 20,000 people, not all cities have the capacity to develop them, a result of vast financial differences, administrative disparities and gaps in cities’ industrialization. Though the Statute delegates a “type of ‘tool box’ for local urban policy” to each municipality through the master plan, this may not be enough to bring about the types of changes envisioned in the Statute of the City (Instituto Pólis, 2004: 34).

3.2. The history of urban planning in Niterói

Although this research starts in Niterói in the 1990s, a broad picture of what came before is useful, including specific moments in the city’s history. Therefore, this section considers Niterói’s planning history before the 1990s. Since the early 19th century, Niterói has benefited from

<table>
<thead>
<tr>
<th>City</th>
<th>Per capita budget revenue (US$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duque de Caxias, RJ</td>
<td>63</td>
</tr>
<tr>
<td>Itaboraí, RJ</td>
<td>450</td>
</tr>
<tr>
<td>Laje do Muriaé, RJ</td>
<td>547</td>
</tr>
<tr>
<td>Niterói, RJ</td>
<td>786</td>
</tr>
</tbody>
</table>

Table 3.3: Per capita budget revenues for Niterói in relation to other cities in Rio State, 2009 (IBGE, 2010a)
planned action by governments, shaping public space and leading to Niterói’s expansion as an urban place. Botelho (2006) notes a constant parallel in Niterói’s history between political and economic ambitions and the urban plans carried out in Niterói. Beginning in the 1800s, a series of plans were intended to formalize the planning of what was then a rather sparse occupation of the city (M. N. S. d. Azevedo, 1997, 2005; V. F. Rezende & Azevedo, 2010; Salandía, 2001).

Starting in 1937, modernization brought large urban investments to Niterói. In the 1940s and 1950s, while the city expanded towards the Oceânica region, private initiative became the main protagonist of urban expansion through a reduced state role together with a more decisive private sector role (V. F. Rezende & Azevedo, 2010). The expansion into the Oceânica region was “the main vector of city growth” through intense subdivision of agricultural land into urban lots; these settlements exceeded the existing demand exponentially (Machado, 2011: 39). A large supply of lots with insufficient infrastructure resulted; combined with a weak government, large investments were required to correct the situation (V. F. Rezende & Azevedo, 2010).

In the 1950s and 1960s, land use in Niterói became focused on ‘verticalization,’ following the model prevalent in the wealthy south zone of Rio. Discussions of urban planning intensified in Niterói during the 1960s (which had grown to 240,000 residents by 1960) through action by professional groups of architects and engineers, which fought for the establishment of an urban planning commission to oversee the city’s expansion (V. F. Rezende & Azevedo, 2010).

In the 1970s, urban expansion towards the the Oceânica region accelerated with the construction of the Rio-Niterói bridge while the city consolidated as a ‘metropolis.’ With the bridge’s completion, public investments into Niterói increased to allow for urban expansion and growing infrastructure resulting from the growing property market (Luz, 2009). With the rising price of land in Niterói, low-income workers in Niterói moved to neighbouring municipalities
(Maricá, Itaboraí, São Gonçalo) while the Praias da Baía and Oceânica regions of Niterói attracted middle and upper-classes in search of an expanding real estate market. This process has been explained as an outcome of governments capitulating to real estate interests (Luz, 2009; Salandía, 2001). While the tools governing property development in Niterói were outside local government, land use laws were ineffective tools to transform the city (V. F. Rezende & Azevedo, 2010). The growth of the city’s south zones (Oceânica and Praias da Baía regions) accelerated the exodus from Niterói’s centre, which experienced a loss of commerce and jobs (Botelho, 2006). This process aided socio-spatial exclusion in Niterói; the impact was especially dramatic as a result of historical factors, and changes in administration and infrastructure.

Niterói lost its status as the capital of Guanabara State in 1975. Referred to as ‘fusão’ – the fusion of Rio de Janeiro with the State of Guanabara – it prompted a debate about development alternatives for Niterói. After fusão, the appointed Mayor Ronaldo Fabrício created the Urban Planning and Development Coordination (CPDU) to bring together a planning system and master plan for Niterói, recognizing the need for a technical body within the prefeitura and the importance of participation in planning; it “pointed as the way to go, the institutionalization of participation through municipal councils” (Prefeitura Municipal de Niterói, 1976; Salandía, 2001: 93). However, the plan – the object of pressure by the real estate sector – was not approved by city council and was discarded in 1977 when Mayor Wellington Moreira Franco took office. As a result, the new mayor took other measures (V. F. Rezende & Azevedo, 2010).

Following the failed master plan, the Cura Project was established to finance investments in infrastructure and urban development and define priority actions for the city centre, public transportation and favelas (Secretaria de Urbanismo, 2006). Although the Cura project was intended as a funding stream for the execution of public works, it was characterized instead as a
period of cursory urban planning for the city (P. M. Q. Barros, 2007; V. F. Rezende & Azevedo, 2010). Consistent with other Brazilian cities during the 1970s, few practical results ensued from these plans (Salandía, 2006). Thus, in Niterói’s history, while many plans proliferated, they were never fully realized. As a result, Niterói’s urban conditions failed to provide for the new migrants arriving to the city, let alone those already living in poor conditions (Aquino, 2009; Secretaria Municipal de Ciência e Tecnologia, 1999). See Figure 3.2 for a list of Niterói’s mayors.

In the 1980s, the negative effects of inadequate subdivisions began to show more overtly. While private sector expansion stabilized by the 1980s, in parallel, favelas grew alongside spatial segregation. Noting this irregular spatial distribution, Mizubuti (1986: 55) contrasts “middle-class neighbourhoods with dense infrastructure” with areas with “a very low index of urban infrastructure ... Niterói is characterized by a framework of strong spatial segregation, a reflection of social stratification that has deepened in recent decades.”

For former Mayor João

![Figure 3.2: Timeline of mayors of Niterói and their parties](image)

1 MDB is centrist party and the predecessor to the Brazilian Democratic Movement Party (Partido do Movimento Democrático Brasileiro, PMDB); 2 PDS is a party on the right; functioned between 1980 and 1993, but is now extinct; 3 PDT is a populist democratic socialist party; 4 PT is a left-wing party.
Sampaio, “Niterói didn’t have this function of favelas” before the 1980s (P.I., 18/1/11). Table 3.4 shows the rise of favelas in Niterói in the 1970s. Figure 3.3 shows favelas in Niterói today.

Significant changes by the late 1980s resulted in a deterioration of the social and urban life of the city stemming from lost political primacy after fusão and urban sprawl from the Rio-Niterói bridge (Oliveira & Soares, 2009). Thus, the period immediately preceding the decision to begin a participatory master plan in the 1990s was characterized by “the precarious picture of apparent semi-abandonment” of Niterói (M. C. A. Carvalho, 2001: 11). In 1989, Jorge Roberto Silveira of the Democratic Labour Party (Partido Democrático Trabalhista, PDT) was elected mayor. PDT was considered an opposition party of the time.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of favelas</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>1971</td>
<td>44</td>
<td>6,196</td>
</tr>
<tr>
<td>1975</td>
<td>50</td>
<td>26,890</td>
</tr>
<tr>
<td>1977</td>
<td>55</td>
<td>132,087</td>
</tr>
</tbody>
</table>

Table 3.4: Number of favelas and favela population in Niterói, 1970s and 1980s (Mizubuti, 1986). Data for 1971 and 1975 from Fundação Leão XIII.

Figure 3.3: View from Niterói’s prefeitura overlooking Favela do Estado, centre of Niterói
3.2.1. The local planning system: Niterói in the early 1990s

*If no man is an island, the same applies to cities. Niterói, of course, offers its residents the highest level of quality of life of the State of Rio de Janeiro (and one of the best in Brazil, certainly) but it is not exempt from the ills that affect other Brazilian municipalities. Mainly by the factor of being inserted into a macro-region bringing together more than 12 million people and, despite recent improvements, it still faces serious urban problems.*

– Mayor Jorge Roberto Silveira (Silveira, 2012).

Although the Statute was not adopted until 2001, the time period for this research begins in the early 1990s because many of the ideas of the Statute were applied before its passage and adoption in various Brazilian cities (Avritzer, 2009; Wampler, 2007). According to a former planner in the municipality, “If you want to discuss the issue of effective participation of civil society in the organization of planning in the city of Niterói, you have to go back to the 1990s. What we lived after that was more a reflection of that period” (P.I., 16/11/10).

The late 1980s and early 1990s was a key period in the recent history of Niterói, a moment which intensified local political discourse seeking to strengthen the leadership of the city in the eastern metropolitan region. In this context, political actors gained force, identifying “urban management as a strategic space to enable ‘new’ vectors of local development” (Biasotto, et al., 2008: 3). It was also at this time, at the beginning of Mayor Silveira’s first mandate, that Niterói’s secretariat of urbanism was created, driven by the “ideological matrix assumed by the new administration” (Salandía, 2001: 109). When Silveira took office in 1989, he appointed João Sampaio as the secretary of urbanism.\(^{22}\)

The construction of the Museum of Contemporary Art (*Museu de Arte Contemporânea, MAC*) by architect Oscar Niemeyer in 1996 can be seen as one of the results of the process of social reconstruction of Niterói’s identity (Luz, 2009). Silveira’s government sought to recuperate the declining centre of Niterói with a new symbol and political motto (M. N. S. d. Azevedo &

\[^{22}\] In Brazil and many other Latin American countries, the secretary (secretária) of urbanism, like other secretaries, is appointed by the mayor. The secretary of urbanism oversees the secretariat of urbanism, equivalent to the planning department.
Gonçalves, 2010). Following the declining image of the city beginning with fusão, MAC helped to reshape Niterói’s identity, becoming “a symbol for the government and a paradigmatic expression of building a new identity,” putting Niterói on the map via tourism and architecture (Oliveira & Soares, 2009: 3). Figure 3.4 shows the use of the MAC as part of the prefeitura’s identity. Following the MAC’s inauguration, several other buildings including a popular theatre and a new ferry terminal were built as part of the Caminho Niemeyer. For the prefeitura, the objective was to create an architectural complex and cultural centre in a highly valued area of the city. In chapter 6, I discuss the Caminho Niemeyer as one element of an elite city project, led by the ‘political machine’ of power and politics.

A ‘popular forum’ for discussion of Niterói’s master plan coalesced in 1989, an initiative of civil society organizations. While the situation in Niterói in the late 1980s was relatively bleak, the prefeitura had no clear picture of the problems facing Niterói, as João Sampaio noted: “We had almost no data... no map of the city” (P.I., 18/3/11). Lead by Sampaio as secretary of urbanism, “a reading of the city” (P.I., 20/12/10) – a major series of reports based on community consultation – was carried out in partnership with the Brazilian Institute of Municipal Administration (Instituto Brasileiro de Administração Municipal, IBAM).

Entitled Niterói in the 21st Century: 1st Module of the Master Plan, the goal was to communicate information to stakeholders to enable better understanding of the city so the master plan could take shape (Instituto Brasileiro de Administração Municipal, 1991). The 1991 report lists 70 favelas in Niterói, concentrated primarily in the city centre and in the Norte region. Distributed extensively to interested parties, the report summarizes the perceived

![Prefeitura de Niterói](www.niteroi.rj.gov.br)
problems in Niterói based on community consultation (see Table 3.5). The eleven problems are listed in order of the percentage of interviewees in the study who perceived each issue to be a problem in Niterói. Sanitation is listed first, followed by transportation, transit and the road system. Housing and planning are listed in fourth place. Sanitation was especially problematic in the Oceânica region at this time. Regarding housing, several problems stood out at the time: the lack of a housing policy, land conflicts and confusion over land titles. With regard to planning, the report notes a lack of planning and administrative structure in the *prefeitura*. Several problems in the Oceânica region are also mentioned: “without sanitation, with a choked road system, precarious transport and lagoons plagued by squatting and land speculation” while the area is lauded as “having enormous potential for tourism and as the ‘new Niterói’ which should house the city’s expansion” (Instituto Brasileiro de Administração Municipal, 1991: 78). Finally, the report notes the importance of participation in the master planning process to ensure the

<table>
<thead>
<tr>
<th>Theme</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Sanitation (including precariousness of water mains, storm water runoff)</td>
<td>17.02%</td>
</tr>
<tr>
<td>2 Transportation (bus, ferries)</td>
<td>12.76%</td>
</tr>
<tr>
<td>3 Transit and road system</td>
<td>11.7%</td>
</tr>
<tr>
<td>4 Housing (including questions of land titling and related questions of the real estate sector)</td>
<td>9.57%</td>
</tr>
<tr>
<td>5 Planning and administration of the city</td>
<td>9.57%</td>
</tr>
<tr>
<td>6 Health (general conditions)</td>
<td>8.51%</td>
</tr>
<tr>
<td>7 Work (working conditions and specific problems to each category)</td>
<td>8.51%</td>
</tr>
<tr>
<td>8 Education (general conditions)</td>
<td>6.38%</td>
</tr>
<tr>
<td>9 Security (violence, homeless children)</td>
<td>5.31%</td>
</tr>
<tr>
<td>10 Leisure (public events, space for events)</td>
<td>4.25%</td>
</tr>
<tr>
<td>11 Electric power</td>
<td>3.19%</td>
</tr>
</tbody>
</table>

Table 3.5: Perceived problems in Niterói, 1991 (Instituto Brasileiro de Administração Municipal, 1991)
democratization of urban management and expanded citizenship.\textsuperscript{23} This early ‘reading’ of the city paints a picture of a city in need of governance reforms and services upgrading, and a municipal administration prepared to facilitate such reforms and to include participation.

\textbf{3.2.2. The 1992 master plan}

Following completion of the IBAM report, a decision was made by the \textit{prefeitura}, which at that time did not have a structured secretariat of urbanism, to produce the master plan internally. João Sampaio noted that, “there was no culture of urban planning, there were no experienced people who did this for over 20 years” (P.I., 18/3/11). The \textit{prefeitura} hired several young recent graduates to fill the gaps that were lacking.\textsuperscript{24} This team of young bureaucrats was a first influential factor in consolidating a planning vision for Niterói. As noted by one of the early planners in the secretariat of urbanism, “It was a team that had a public spirit, a willingness to work, and these urbanism and environmental changes happened” (P.I., 11/1/11).

Even more influential than the young planners driving the process, João Sampaio’s vision at this time was key in producing an innovative master plan. The master plan “was conceived under the aegis of a progressive ideology that was intended to introduce innovations in planning and management of the city” (Biasotto, et al., 2008: 3). A former professor of architecture, João Sampaio was more than an administrative mayor, bringing new planning ideas to Niterói. While Jorge Roberto Silveira was the mayor when the master plan was approved, he did not have the same planning vision as Sampaio. Many of the major changes that occurred in Niterói resulted from Sampaio’s vision, as one municipal planner noted: “the master plan was basically the ideas of João Sampaio” (P.I., 11/1/11). Within this vision, Sampaio “brought the whole process of

\textsuperscript{23} These issues are illustrative of the problems perceived as important at the time, yet the report lists only 21 interviews and 94 problems; respondents were allowed to list more than 1 theme. While the data lacks rigour, no other data exists from this time.

\textsuperscript{24} Many of these bureaucrats were interviewed for this research. All have now left Niterói’s secretariat of urbanism.
planning to the government and demonstrated the need of the master plan even before the Statute of the City, demonstrating the necessity of urban legislation and the need for urban plans [PURs],” as a member of the Institute of Architects of Brazil (IAB) noted (P.I., 3/12/10).

Because the attempt to approve a master plan in 1977 plan had failed, until 1992 there was no way in Niterói to regulate private property and development rights, making the 1992 plan more impressive. Niterói’s 1992 master plan covers governance of the planning system and spatial development, including five areas: environmental zoning; sectoral guidelines; urban policy; land use; system and process of planning; and other provisions, shown in Table 3.6. The master plan divided the city into five regions (see Figure 1.5), requiring regional urban plans (planos urbanísticos regionais, PUR) for each. The master plan delegated responsibilities to the PURs, established an urban development council and outlined several tools, based on social justice as a building block. Figure 3.5 shows Niterói’s complementary urban legislation.

Among interviewees for this research, there was a consensus that the 1992 master plan was innovative and significant. Niterói was an early-adopter of the urban norms conceived of in the 1988 Constitution, later translated into the Statute of the City in 2001. Prepared between 1989 and 1992, Niterói’s master plan was adopted almost a decade before the Statute became law. Indeed, interviewees suggested there was a significant link between the Constitution’s approval and the 1992 master plan in Niterói. As a former planner noted, “Niterói is a city in the forefront. The master plan was conceived here 10 years before the requirement” of the Statute

<table>
<thead>
<tr>
<th>Urban policy</th>
<th>Environmental zoning</th>
<th>Sectoral guidelines</th>
<th>Land use</th>
<th>System &amp; process of planning</th>
</tr>
</thead>
<tbody>
<tr>
<td>Objectives of the master plan; social function of property; instruments of urban development</td>
<td>Macrozoning; AEIS</td>
<td>Economic development; housing; the environment; cultural heritage; transport &amp; the road system; public services; urban &amp; community facilities; municipal real estate assets</td>
<td>Land subdivision; land use</td>
<td>System &amp; process of planning; details for each of the 5 regions of the city</td>
</tr>
</tbody>
</table>

Table 3.6: Areas covered by Niterói’s 1992 master plan
In Niterói in the early 1990s, the necessity of urban legislation was apparent, according to João Sampaio: “We felt it was time to have urban legislation, because the city was very sparse, very clustered and very old. So it was time to do something more updated, including new guidelines that were already there, the Constitution itself” (P.I., 18/3/11). Thus, not only was Niterói an early adopter, but “Niterói was ahead of the majority of [Brazilian] municipalities,” many of which waited until well after 2001 to begin the process of crafting participatory master plans (P.I., 21/12/11).25

The master plan reflected a focus on social justice, the means to apply the social function of property. Reflecting on this commitment to social justice, several interviewees highlighted how strong this message was at the time. For one former planner, “the structure and message” brought by adopting social justice is powerful; another noted that, “in 1992, these were strong words, and very important flags of our party,” PDT (P.I., 16/11/10; 14/1/11).

In Niterói’s master plan, the social function of the city “means the right of every citizen to have access to housing, public transport, basic sanitation ... health, education, security” (Secretaria Municipal de Urbanismo e Meio Ambiente, 1992: 1). The social function of

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property – or private property rights that are subordinate to collective interests – would be applied by using the urban tools available in the master plan. Indeed, the consensus that the 1992 master plan was innovative extends to the master plan’s content, which adopted several tools including *IPTU progressivo* and *operações interligadas* (similar to *solo criado*) to enforce the social function, as well as an urban development council for participation in the planning process.\(^{26}\) The objectives of the master include defending access to land, a participatory planning system and a focus on the environment. The 1992 master plan and the participatory planning process in Niterói followed the logic of the recently approved Constitution.

Finally, one main feature of Niterói’s 1992 master plan was making the planning system tangible through organization of a planning system as well as a base for the preparation of a variety of land use laws (M. A. J. Carvalho, et al., 2009). Niterói’s urban policy was to be managed through a municipal planning system, “an ongoing process of thinking and planning the city with all its dynamism” (Secretaria Municipal de Urbanismo e Meio Ambiente, 1996), including several areas of legislation to control land use. The restructuring of Niterói’s planning system eliminated the pre-existing patchwork with little planning logic (Salandía, 2001).

Despite these innovative elements, this story should be viewed in the context of the challenges facing Niterói’s planning system. The urban tools were included in the master plan, yet because there was no federal law to regulate these laws (such as the Statute) they could not be implemented; thus, the majority were not applied. While struggles over the Statute’s content took place nationally, at the local level, municipalities like Niterói made commitments to social justice by including such tools in their master plans, to be put into practice at a future date. What this effectively meant, according to interviewees, is that these planning tools could not be

\(^{26}\) For a more thorough discussion of the participatory elements in the 1992 master plan, see chapter 4.
implemented during the 1990s prior to the Statute’s approval. As a municipal planner noted, “Our master plan had all these instruments. But as they were not regulated and there was no Statute of the City, they were not applied” (P.I., 14/1/11). Another former planner reiterated that in Niterói, while “the master plan absorbed much of what was in the Constitution,” the urban tools were not implemented as there was a gap until the Statute was approved in 2001: “We had a gap where we did not implement these instruments, but they had already been thought out in the master plan. I think the 1992 master plan of Niterói was very innovative. The difficulty is to turn this innovation into reality” (P.I., 16/11/10).

While Niterói was considered innovative during the 1990s, such qualities did not prevail after the 1990s. Indeed, despite these advances, Niterói’s master plan instituted a planning system that took more than a decade to be partially constructed. Despite the master plan’s vision of social justice, it functions only through the use of PURs and other complementary laws.

3.2.3. The regional urban plans

The 1992 master plan divided the city into five administrative planning regions (see Figure 1.5). For each region, the master plan established the obligation of preparing a regional urban plan (PUR), the new benchmark for planning in Niterói. The function of Niterói’s PUR – a mini master plan – is to establish urban parameters for land use for each of the city’s five regions while respecting the master plan’s guidelines, through broad participation. In this model, the master plan orients urban policy while the PURs focus on specific planning rules and the master plan’s operation. The PURs include general guidelines, sectoral policies, environmental zoning,

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27 The practice of dividing cities into administrative planning regions is common in Brazil. Rio currently has 5 administrative regions; São Paulo has 31 with sub-municipal governments attending to each region. The PUR is based on a similar experience in Rio (where the plans are called urban restructuring projects (PEUs). The process in Niterói is more ample than in Rio.
specifics on the use and occupation of land, and the application of urban policy instruments in the region, contributing to a finer detailing of guidelines set out in the master plan.

Interviewees noted that the PUR model provides various benefits. Because cities are dynamic, the PUR allows for a current solution. PURs are reviewed after five years, whereas master plans are revised every ten years. The prefeitura thus justified the strategy of using PURs to control land use based on Niterói’s diverse situations (Biasotto, et al., 2008). According to the secretary of urbanism, “You have to adapt to the reality of today, which is not the reality of years ago, particularly so because the city is dynamic” (P.I., 23/3/11). By delegating to the city’s sub-regions, the process is more agile than with a master plan, which is more difficult to change.

Niterói began to delineate its PURs in the mid-1990s. The first PUR to be finalized was the PUR of the Praias da Baía region in 1995. For Biasotto et al (2008), the most significant changes made to the PUR of Praias da Baía between 2002 and 2008 relate to increased construction potential, enabling development in certain parts of the city. Yet the real estate sector was relatively inactive during this time and, according to a former planner, did not apply pressure to increase the maximum building height, known as the gabarito; the approved PUR “reduced the possibility of densification,” as well as a limit on the gabarito (P.I., 20/12/10).²⁸ Part of what was at issue, then, were existing development rules which would be changed by the new PUR.

Following the PUR’s approval in Praias da Baía, one experience illuminated a challenge of the PUR model. By the late 1990s, Niterói’s real estate sector had become ‘effervescent,’ resulting in increased pressure to change Praia da Baía’s PUR through the law of operações interligadas, an urban tool in the 1992 master plan. In 1999, the law applying operações interligadas was approved, allowing for a 50 percent increase in the gabarito provided the

²⁸ The maximum building height is known in Brazil as the gabarito, a controversial issue in the city as a result of increased pressure due to its proximity to Rio and an active real estate sector.
interested party paid financial compensation, to be used for social purposes. This allowed the *prefeitura* to collect compensatory funds from developers while attending to the demands of the real estate sector. Yet “as there was no Statute, there were not many rules about this process,” as a former planner noted (P.I., 20/12/10). While the law of *operações interligadas* altered the PUR of Praias da Baía significantly, this occurred without the guidance of an urban development council. Indeed, the urban development council that was to oversee urban policy in Niterói (Municipal Council of Urbanism and the Environment, CMUMA) dissolved in 1998, a year before the approval of *operações interligadas.*

Therefore, PURs can be modified by any regular law, without public discussion, opening the possibility of greater problems if the climate is ripe and developers have their way. This theme is discussed in more detail in chapter 6.

While the first PUR in the Oceãnia region was elaborated in 1996, it was not actually approved. Following the PUR in Praias da Baía, Mayor João Sampaio prepared the PUR, leaving it ready for approval. As Sampaio’s mandate was ending, the PUR was left for Jorge Roberto Silveira to send to approve in city council. For the former planning director, 1996 was an election year and Mayor Silveira simply “decided not to have planning anymore” (P.I., 6/1/11). Taking this explanation further to the role of the private sector, according to Paulo Eduardo Gomes, a former city councillor of the Socialism and Freedom Party (*Partido Socialismo e Liberdade*, PSOL), “[Silveira] forgot about it since the Oceãnia region was a free-for-all to the tune of the interests of the region’s developers” (P.I., 2/5/11).

At the end of the 1990s, following the experience of *operações interligadas*, the result was a discontinuity of the process started in 1992. Initially, five PURs had been planned to detail the master plan, yet between 1993 and 2001, only one of these was approved. In the late 1990s,

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29 The role of CMUMA is discussed in more detail in section 4.3.2 and *operações interligadas* in section 7.3.1.
according to Salandía (2006: 11), “we noticed a change in the direction of municipal planning policy, which resulted in the discontinuation of the process.” The elaboration of two PURs was suspended, the urban development council CMUMA dissolved and growth rates were flexibilized through *operações interligadas* in areas of the city of greatest interest to the property market.

In 2001, Mayor Silveira created the Working Group on Urban Policy (*Grupo de Trabalho da Política Urbana*, GPU) to review the PUR for Praias da Baía, adequate the master plan to the Statute of the City and elaborate a PUR for the Oceânica region (*Grupo de Trabalho da Política Urbana, 2002*). In 2002, along with the revision of the PUR in Praias da Baía, the Oceânica region finally approved its first PUR.

Although public hearings, regional meetings and thematic workshops were conducted for both PURs, according to Biasotto et al (2008) and interviewees in Niterói, the executive was in a hurry to finalize the two PURs addressing the city’s most valued regions. Both PURs approved in 2002 were plagued by exceptional controversy, as evidenced in secondary reports, newspapers and reports by interviewees. For one member of the Federation of Associations of Residents of Niterói (FAMNIT), “it seemed like we were at war” (P.I., 25/1/11). Similarly, a municipal planner calls the PUR “a freaking huge fight” (P.I., 14/1/11). The controversy of the PURs’ approval left a strong impression of outrage on the actors and institutions involved. Despite this controversy, the PURs of the Oceânica region and Praias da Baía were approved in 2002 behind closed doors, without a revised master plan adequated to the Statute of the City (the new master plan was enacted only in 2004). One explanation for this inverted approval process is that while the PURs and the master plan began concurrently, the PURs advanced more quickly because of

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30 The use of the word ‘adequation’ is taken from the Niterói case, where it refers to the adaptation of the 2004 master plan to the new directives of the Statute. Adequation is used as it is a more accurate translation of the portuguese word ‘*adequação*.’

31 Section 4.3.3 provides more detail of the controversy surrounding these two PURs.
increased pressure to approve issues related to the PURs. In the PUR of the Oceânica region, “a pact that met all segments” needs was achieved (P.I., 11/1/11). Although unhappy with the outcome, developers in the Oceânica region accepted the addition of solo criado (the tool that grants development rights in exchange for social interest works) in the region’s PUR.

Following the 2002 controversy, in 2005, the PUR of the Norte region was also approved and the prefeitura tried to perfect the participatory process based on earlier experiences. Yet according to interviewees, what was done in the PUR of the Norte region “was absurd. They just raised the gabarito ... it was clear that that was a demand of property speculation” (P.I., 30/3/11). Therefore, these processes resulted in different outcomes for each region of the city.

In 2013, more than fifteen years after the first PUR was established in 1995, only three of Niterói’s five regions have PURs. Although the prefeitura originally intended to draw up all PURs concurrently (Biasotto, et al., 2008; M. A. J. Carvalho, et al., 2009), PURs were developed first for the regions of Niterói where the more affluent populations live and where the centre of the city is located. The two regions with a greater concentration of precarious settlements and favelas (Pendotiba and Leste regions) still do not have PURs. For a former planner in the municipality, “our biggest gaffe was not having prepared all of the urban plans” (P.I., 16/11/10).” The current secretary of urbanism, Christina Monnerat, admits this, noting that the prefeitura’s rationale for the PURs is based on adapting to a dynamic city: “We still have to do the PUR of the Leste region and Pendotiba. This is something we have to do because the city is dynamic and we have to adapt” (P.I., 23/3/11). However, this is clearly an empty promise, considering these region’s lack of importance to the prefeitura and the long delay in taking on this work. According to one

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32 When I mention secretaries in the prefeitura (who are appointed and tied to political mandates), this refers to the secretaries in until 2012. During my field work (2010-2011), Jorge Roberto Silveira was the mayor. Rodrigo Neves (PT) became mayor in 2013. When I refer to Niterói’s current mayor, I am referring to Jorge Roberto Silveira as he was in power during my field work.
NGO leader, these PURs were not completed because of the conflict between city council and the population following the experience in 2002. Although the secretariat of urbanism carried out a technical study of Pendotiba region, it “never had the political commitment to implement the plan” (P.I., 30/5/11) and was the subject of pressure by the real estate sector.

Combined with the prevalence of favelas in both regions, the absence of PURs is problematic given the role that the complex environment plays in both regions, according to a member the Community Council of the Oceânica Region (CCRON), a civil society organization: “What gives us a little bit of concern is that in Pendotiba region there is no legislation for the region and Pendotiba is an area where nature is very abundant. It would take the creation of a PUR” through the “participation of the Pendotiba community to establish what they want there” (P.I., 29/3/11). Although the Leste region is of little importance to the city, according to interviewees, Pendotiba’s role is key: “The region is quite large and until this day it has no PUR... And nobody talks about doing a PUR” (P.I., 14/1/11). In addition, five million social housing units are being built through a state-federal partnership program called Bairro Modelo in the neighbourhood of Sapê in Pendotiba region. Bairro Modelo has been criticized as an outdated housing provision model of the type used in the 1960s geared for purely poor populations, although the prefeitura claims that Bairro Modelo will also include lower-to middle income populations.33 Given these changes in Pendotiba, for a former planner, the absence of a PUR is evident, permitting Pendotiba region to be open to a planning system without guidelines: “they are allowing things in Pendotiba that could only be done if there was a PUR” (P.I., 30/5/11). Leste region has few inhabitants, making a case for the establishment of a PUR difficult.

After years without these PURs, there are some doubts about whether the current mayor

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33 See section 6.3 for more on Bairro Modelo.
will finalize them. There was little discussion of these PURs from interviewees, aside from criticism of the PURs lack of completion. According to one CCRON member, “no one really talks” about Pendotiba and Leste regions (P.I., 27/4/11). The effects of the Petrochemical Complex of Rio de Janeiro (Complexo Petroquímico do Rio de Janeiro, COMPERJ), a petrochemical complex that will be built in the neighbouring city of Itaboraí means that it is necessary to establish parameters in Pendotiba, which is close to this complex. The results will likely mean increased pressure on Pendotiba as new housing is built for the workers at COMPERJ. However, Silveira “will not touch it because it is very controversial,” according to the former planning director (P.I., 6/1/11). Whatever the reason for not completing these PURs, the prefeitura is negotiating the third PUR for Praias da Baía, revealing its interest in certain parts of the city over others. The prefeitura’s lack of focus on issues of the poor is evident in other examples in Niterói, which I discuss in subsequent chapters.

3.2.4. The 2004 master plan

Following the Statute’s approval, in February 2004 Niterói passed a new master plan, replacing the existing 1992 law with the objective of enforcing the social function of property (Salandía, 2004). Niterói’s new master plan was considered an adequation to the Statute rather than a renewal of the existing law to make the master plan compatible with the Statute. The new master plan did not make significant changes to the 1992 version, which referred to PURs to define the primary urban parameters. While urban tools were already in the 1992 master plan, the new version strengthened the implementation of the Statute’s norms. For interviewees, the new master plan allowed for the democratic management of urban land through specific tools, a key part of the Statute. A former municipal planner noted that, “we imagined that with this

34 During my field work in Niterói (2010-2011), the PUR in Praias da Baía began revision a the third time. During this period the PUR’s revision was not completed, an obvious delay given that PURs should be revised every five years.
revision we could really put those instruments into practice” (P.I., 30/5/11).

As Salandia (2004: 2) notes, “the law basically changed the chapter that dealt with urban management instruments, whose use, although planned since 1992, was not effective (according to municipal authorities) for fear that its use could be legally challenged, as had happened in some municipalities.” In addition to the inclusion of some of the Statute’s instruments (most importantly, solo criado), the new master plan also established the Fund for Social Housing (Fundo de Habitação de Interesse Social, FUHAB) and a corresponding management council, discussed in more detail in chapter 7. The new master plan focused on three areas: the incorporation of instruments of land value capture (such as solo criado); the implementation of a housing policy of social interest; and the reactivation of the urban development council, COMPUR, during the first municipal conference (Biasotto, et al., 2008).

In the eyes of many interviewees, the 1992 master plan remains in force; when asked about the master plan, many recalled the 1992 process. An engineer and member of COMPUR noted that the new master plan was pro forma, changing some names of the tools and rules, but that these adjustments were “tiny, it made a re-synchronization.” He added that, “Solo criado became outorga onerosa, the rules of the Statute changed... So it was not a controversial change” (P.I., 3/12/10). The understanding at the time, according to a former municipal planner, is that the master plan had absorbed much of the Statute’s norms, despite the fact that it was from 1992, so “it was not a thing that was given as much importance as in other municipalities where the master plan was participatory because of the Statute of the City” (P.I., 16/11/10).

According to interviewees, the master plan should have been approved prior to the two PURs in 2002. Referring to the approval of the 2004 master plan, ex-city councillor (PSOL) and vocal critic of city politics Paulo Eduardo Gomes called the process “a bulldozer,” noting that,
“what should be voted before establishing a conceptual framework of regional urban plans came after” because the market has no interest in discussing urban tools (P.I., 2/5/11). The master plan should have come before legislation that enables tools such as solo criado to be applied – such as the PUR. Indeed, the master plan was obscured by the controversy of the PUR.

The negotiation of PURs and the master plan was a simultaneous process. When the Statute took force, the prefeitura had created the GPU, a working group to negotiate the PURs and the master plan. The prefeitura carried out public hearings for both the PURs and the master plan in parallel. The PURs and the master plan were sent to city council at the same time, yet the discussion of the PURs advanced more rapidly because of increased pressure for the PURs to be approved, which was not the case with the master plan. Another reason for the new master plan’s quick approval, according to a former planner was that, following the Statute’s approval, operações interligadas was found to be unconstitutional and was ultimately revoked. This “forced the master plan to be done quickly, because the legislation had to be revised” (P.I., 20/12/10). In 2003, the first municipal conference approved the creation of an urban development council, COMPUR. In December 2003, following the municipal conference, all the delegates to the conferences “came together and proposed an amendment to city council to revise the master plan” (P.I., 20/12/10). The master planning process in Niterói took place over some years, including the formation of COMPUR and the municipal conferences.

3.3. Conclusion
In this chapter, I have given an overview of the planning changes that took place in Brazil nationally, and at the municipal level in Niterói up to the present time. The purpose of this chapter is to set the stage for the chapters to follow and to outline the specifics of the national and local processes which are needed to understand the planning context and the
implementation of the Statute of the City in the Niterói case. The first part of this chapter focused on the national planning context and the changes that have taken place in the planning sphere, especially the Constitution and the Statute of the City. The second part of this chapter examined the planning experience in Niterói – including the master planning process and the PURs – starting in the early 1990s.

The planning context in Brazil has made great strides from the model of modernism discussed in the beginning of the chapter, to one more in line with the ideals of the Statute. Indeed, this “new model of planning is an explicit expression of the democratization process that has been transforming Brazilian society and its ways of conceiving of citizenship since the 1970s,” which I discuss in chapter 4 (Caldeira & Holston, 2005: 394). There have been significant changes in Brazil in terms of the role of planning, the production of urban space, the role of the state since the new Constitution and the results have significantly changed the planning model in Brazil. Moving on from an overview of the Brazilian planning model, the next chapters deal with whether the participatory requirements in the Statute have allowed citizens to become more involved in the planning system; to what extent these planning changes have led to greater social justice in Brazilian cities; and with the question of whose interests are at stake. Overall, these chapters consider how power relations and civil society organization influence the capacity to implement more participatory and socially just planning.
Chapter 4: Implementing Participatory Planning in Brazil

4. Introduction

This chapter examines the theory and practice of participatory planning in Niterói. A lot of attention in Brazil has focused on participatory budgets as an instance of urban innovation; for this reason I preface this discussion with some general details about participatory budgets.

During the 1990s, several Brazilian cities experimented with progressive local planning derived from the urban reform movement and “Brazil became a laboratory of sorts for new strategies of local governance and direct democracy” (Fernandes, 2007a: 212). Participatory budgets involve citizens in decisions over government spending allocations and which programs will be applied, providing possibilities to democratize local administrations and break with the clientelistic power structures characteristic of Latin American regimes in the 1960s and 1970s (Abers, 1998, 2000; C. Souza, 2001b). While a plethora of research on participatory budgets emerged in the 1990s, it rarely mentioned the urban reform project and the Statute as building blocks.35 Porto Alegre’s participatory budget, starting in 1989, is the most celebrated example. In the 1970s and 1980s, various cities (Piracicaba in São Paulo State, Lages in Santa Catarina, and Vilha Velha in Espírito Santo) began holding neighbourhood public hearings during the preparation of their budgets, even without adopting the name ‘participatory budget’ (Andrade, 1997; Baiocchi, 2001; Bossois, 1987; M. H. Castro, 1988; Fedozzi, 2001; Ferri, 2009).36

I explore two questions in this chapter to understand the practice of the Statute’s participatory tools. First, to what extent are the participatory requirements in Brazil’s Statute of

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36 In considering the importance of participatory budgets, it is worth noting that most participatory budgets involve a very small percentage of city budgets. As a result, participatory budgets may not affect service provision.
the City allowing citizens to become involved in planning processes? Second, what are the implications resulting from these new channels for citizen participation? In linking participation, civil society, power and social justice, I consider how power relations and civil society organization impact the capacity to implement participatory and socially just planning.

The first section of the chapter deals with theories of participation. I discuss participation in urban settings from urban planning and political science using the concept of ‘participatory institutions’ to understand the participatory reforms implemented in Niterói (Avritzer, 2002, 2009). This idea combines two schools of thought – citizen participation and the role of strong institutions – both of which are applicable in Brazil where an institutional framework for participation has taken a leading role. The remainder of the chapter deals with the experience of participation in Niterói, with Healey’s (2003: 110) proviso that “process matters.” Despite the clear problems with the practice of participation in Niterói, “participation takes place within specially designed institutions... an outcome of institutions designed to promote participation” (Avritzer, 2009: 4). Overall, I argue that Brazil’s participatory institutions are meaningful and a model from which other locales could learn.

4.1. Participation in urban development and planning

The idea of citizen participation is a little like eating spinach: no one is against it in principle because it is good for you. Participation of the governed in their government is, in theory, the cornerstone of democracy – a revered idea that is vigorously applauded by virtually everyone (Arnstein, 1969: 216).

This section considers participation in urban development and planning, drawing on planning and democratic theory. Arnstein’s (1969) metaphor of the ladder of citizen participation established the varying degrees to which participation could lead to influence – from manipulation to citizen control – and the resulting degrees of participation within planning. This analysis epitomized a central debate: the extent to which participation in planning is tokenistic
or lacking the necessary level of delegated authority for meaningful participation. Despite the metaphor’s simplicity, it provides a powerful reminder that participation does not always translate into influence over decisions (Sharp & Connelly, 2001). Thus, considerable work examines the tension between planning as a state project and the role of citizens (Lane, 2003).

While participation in planning extends back to the early 20th century, it did not gain momentum as a mainstream policy approach until the 1960s (Williams, 1976). In the 1960s and 1970s’ “participation era” (Grant, 1994: 12), planners challenged traditional top-down planning methods, producing immense research (Aleshire, 1970; Arnstein, 1969; Davidoff, 1965; Fagence, 1977; Sewell & Coppock, 1977). Despite the popularity of participation in planning, it is theoretically ambiguous, allowing it to be used for anything from tokenism to devolution of power (H. Campbell & Marshall, 2000; Day, 1997). For Day (1997: 423), participation is an “essentially contested concept,” referring to concepts permanently in dispute. While the literature on participation in planning is beset by definitional problems and ambiguity (H. Campbell & Marshall, 2000; Innes & Booher, 2004), a discussion of the meaning of participation in planning within communicative theory and radical planning is useful for this research.37

Beginning in the late 1980s with the observation that planning is an interactive practice based on reasoning formed through inter-subjective communication, communicative theory suggests that all views will be heard and that citizens have an equal chance to participate in decision-making (Healey, 2006a; Hibbard & Lurie, 2000). Communicative planning was initially explored by Forester (1980) on critical planning and informed by Habermas’ concept of communicative action and pragmatism (Healey, 2009; Huxley & Yiftachel, 2000). For Forester

37 While I focus on communicative theory and radical planning, other theories also discuss participation. For advocacy planners acting as advocates for various groups, participation was an underlying objective (Davidoff, 1965); for equity planners participation meant redirecting power to working class residents (Krumholz, 1982) although its scope was limited in both theories (Lane, 2005). In transactive planning, depending on face-to-face dialogue with planners in a process that is validated through action, participation was a goal “to be attained rather than methods to be used” (Friedmann, 1973; Lane, 2005: 293).
(1989), planning means listening to the words of others and observing their non-verbal behaviour; planners ‘shape attention’ through communicative action, or ‘speech acts,’ such as argument and voice, and ‘inclusionary argumentation,’ whereby participants come together to transform policy discourses. The communicative project, sometimes called “a communicative turn” (Healey, 1996: 217), contends that effective participatory methods require collaboration, dialogue and interaction to build shared knowledge for collaborative action (Innes & Booher, 2004). Communicative theory assumes that through collaboration, all stakeholders are heard and respected and provides a means of both mediating the interests of powerful groups and supporting the interests of less powerful groups. According to Healey (2006a: 5),

> The communicative approach both offers a way forward in the design of governance processes for a shared-power world, and takes as a normative position an ethical commitment to enabling all stakeholders to have a voice. It offers a way of mobilising for change through collective efforts in transforming ways of thinking. It thus presents a way forward in realising the practical meaning of participatory democracy in pluralist societies.

Part of the strength of communicative theory is its recognition of both the influence of structural challenges, the agency “through which sufficient consensus building and mutual learning can occur,” and the synergy between the two (Beard, 2002; Healey, 2006a: 200). A key theme for scholars of communicative theory involves the relationship between knowledge and power, the potential for oppression central to instrumental rationality and searching for more emancipatory ways of knowing (Sandercock, 1998). As a participatory approach, communicative theory is important for two reasons: 1) inter-subjective communication requires types of participation that provide forums or arenas for dialogue, argument and discourse; 2) it is concerned with expanding the range of actors within planning (Healey, 1992; Hillier, 1993). Challenges about the outcomes of communicative planning have been raised, including its utopian nature, the reality of entrenched dissent rather than mutual understanding, structural
inequalities not addressed through participation and real decisions that occur behind closed doors (Abram, 2000; Sharp & Connelly, 2002).

Starting from a powerful critique of the modernist planning paradigm, radical planning is concerned with social transformation to remedy unjust power relations and emancipate people from social oppression from outside formal, institutionalized planning processes (Friedmann, 1987), speaking to a range of inequalities including those in developing countries. Planners, “a mediator of radical practice,” help the community to find practical solutions, understand institutional constraints and provide the ‘intelligence’ necessary to develop successful strategies (Beard, 2002; 2003: 17). While radical planners believe that social change results from the exercise of power by those previously excluded, “participation is the vehicle through which that power asserts itself” (Fainstein, 2000: 467). As a bottom-up process to empower the marginalized, participation is at the root of radical planning although the radical planning literature provides little analysis of this question.38

While the planning literature has sometimes been vague about participation, democratic theory has informed discussions in planning. Although this connection is often not made, planning and democratic theory evolved in tandem (Bäcklund & Mäntysalo, 2010; Grant, 1994; Holden, 1998; Moote, et al., 1997). Underlying a discussion of what type of participation is desired in the planning context is a notion that such choices are politico-philosophical analyses regarding the purpose, nature and value of democracy in relation to land use (Thomas, 1996). Thus, different participatory approaches gravitate towards different aspects of the philosophical discussion on democracy including deliberation, participation and empowerment (Ataöv, 2007). In particular, two models – deliberative and participatory democracy – require attention.

38 Radical planning is considered as a whole here yet three areas of thought can be distinguished: marxism (Harvey, 1978), postmodernism (Sandercock, 1998) and political economy (Fainstein, 2000).
Deliberative democracy is a family of views in which the deliberation of equal citizens is at the core of decision-making (Bohman, 1998). By improving the quality of democracy through deliberation, argumentation and persuasion, it relies on face-to-face interaction and processes by which differing views are brought together in search of consensus (Bohman, 1998; Habermas, 1988). Thus, the “democratic process is primarily a discussion of problems, conflicts, and claims of need or interest” (Young, 2000: 22-23).

With roots in the 1960s and 1970s (Macpherson, 1977; Pateman, 1970) to counter democratic-elitism and neo-liberalism (Hayek, 1960; Held, 2006; Schumpeter, 1950), participatory democracy envisions citizen involvement in decision-making in social institutions. One of its functions is education and the human results accruing from participation, leading to an active citizenry and a space for civic learning (Bachrach & Botwinick, 1992). The key is to develop the capacity to exercise control over decisions affecting peoples’ lives. Participation is part of the goal: the creation of a society where individuals can develop to their full potential through ‘empowerment’ and “the construction of active social subjects” who can define their own rights (Dagnino, 1994: 108).

4.1.1. Avritzer’s Theory of Participatory Institutions

Rather than assuming an autonomous civil society acting alone, examining participation from a focus on citizens and institutions means focusing “on both a more active and engaged civil society which can express the demands of the citizenry, and a more responsive and effective state which can deliver needed public services” (Gaventa, 2004: 27). While a profusion of planning and democratic theories have informed the debate on participation as discussed above, in the Brazilian context a theory of participatory institutions is necessary to understand the country’s particular model of institutionalized participation in state-led forums with
considerable participation of civil society (Cornwall & Coelho, 2007b). Indeed, a middle ground between the civil society school (Alvarez et al., 1998) and the institution-led school (Fung & Wright, 2003) contributes to an understanding of the politics of implementing the progressive policy tools of the Statute. By considering the relationship between actors and institutional structures, Avritzer’s (2002, 2009, 2012) work on participatory institutions provides an understanding of these relationships and is an important contribution to the literature on urban policy and policymaking in Brazil.

In his early work on these issues, Avritzer (2002: 52) proposes an intermediary democratic design to address deliberation, noting that “only by giving public processes of communication and deliberation an institutional dimension can we transform [deliberative democracy] ... into a truly democratic and deliberative theory.” This approach is based on going beyond a “laudatory approach to participation” to identify which democratic innovations contribute to the improvement of public policies and how to accomplish this aim (Avritzer, 2012: 115). The concept of participatory institutions bridges a divide between institutional and civil society theories (Avritzer, 2002; Wampler & Avritzer, 2004), helping to underline the institutions that produce good outcomes and “to identify the conditions necessary for the emergence and success of participatory institutions” (Avritzer, 2009: 1).

In an update to his earlier work, Avritzer (2009) calls these arrangements participatory institutions, shown in Figure 4.1. These institutions have the following characteristics. First, participatory institutions operate through a hybrid model including participation and representation; while state actors control policy processes, a larger participatory body also maintains sovereignty over the process. Indeed, “participation cannot be understood as the

39 Avritzer’s earlier work used the idea of ‘participatory publics’ to understand strong civil society organization and a strong participatory consensus within political society (Avritzer, 2002, 2012).
Participatory institutions

Figure 4.1: Participatory institutions (based on Avritzer, 2009)

opposite of representation but must be seen as a crucial complement to it” (Peruzzotti & Selee, 2009: 3). Second, they include the transformation of voluntary qualities of civil society into forms of permanent political organization. Third, they involve the interaction between political parties and state actors demanding participation, which play key roles in participatory processes. Finally, institutional design, an element that allows for innovation and horizontal political relations, is relevant to their effectiveness; “the fine tuning” of participatory designs is essential in the success of these institutions (Avritzer, 2009: 11).

According to experts (Avritzer, 2009; Baiocchi, 2003a; Wampler & Avritzer, 2004), context is important in determining the conditions of success for participatory institutions. For Goldfrank (2007), although vigorous research documents the contextual factors for the success of participatory institutions, a framework integrating actors, conditions and design is lacking.40 To fill this void, Avritzer (2009) makes the case that the growth of participatory institutions may result in different outcomes depending on the context and connects “civil and political society into one integrated framework to show that the relevant analytical element is how civil and political society interact” (2009: 165). Therefore, as an alternative to the democratic theories described above (which Avritzer (2009) argues have overlooked participatory institutions), he presents a theory of participatory institutions to account for the relationship between civil society, political society and institutional design. As a result, accounting for the relationships

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40 A few explanations for the success of participatory institutions in Brazil include the administrative decentralization of local governments (Abers, 2007; C. Souza, 2001b), the presence of leftist parties (Baiocchi, 2003b; Heller, 2001), and the commitment by local government to the participatory project (Wampler, 2008).
between civil society, political society and institutional design makes the theory of participatory institutions useful as a starting point for thinking about how power relations and civil society organization influence the capacity to implement more participatory and socially just planning.

Part of Avritzer’s (2012) point is that participatory experiments in Latin America require a new understanding of democratic theory, which has largely missed the scope and important change in democratic practice across Latin America. Indeed, Lavalle et al (2005: 953) point to the specific situation in Brazil:

The novelty of the new participatory institutions in Brazil is that they bring citizens directly into executive branch policy making, in such policy areas as health, education, housing, or more broadly in municipal budgeting. We are thus not talking about participation in the elected local territorial governments that one finds in much of the world.

As a result, Avritzer’s (2009) work on participatory institutions speaks to the specific Brazilian context, making it a valuable lens to understand the politics of implementing the progressive policy tools as outlined by the Statute of the City.

4.2. The role of participation in the Statute of the City

In Brazil’s system of urban development, master plans are considered to be the basic instrument of urban development. Participatory master plans are required for cities larger than 20,000, as well as for other cities such as tourist centres and members of metropolitan regions. While there are few guidelines about how participation works in master planning, often city-wide public hearings or neighbourhood-based public hearings are carried out to consult the community about its interests prior to the approval of the master plan.

Following the master planning process, participation in the management of the master plans involves engagement through national, state and municipal councils and conferences as arenas for the interaction between government and society (Instituto Pólis, 2004; C. Nascimento, et al., 2008). Councils are obligatory at municipal, state and federal levels and are
linked to the transfer of federal funding for state and local governments. Councils at all three levels have proliferated since the 1990s as institutional channels for participation, and occur for thematic areas such as urban development, the environment and health. Linked to specific social policies, councils are deliberative with joint assembly between government and society. Participation through urban development councils is integral in the management of urban planning (C. Nascimento, et al., 2008; Santos Junior, et al., 2004; Tógora & Chaia, 2002).

At the local level, it is in the municipal councils and conferences that the majority of the Statute’s implementation occurs, although public hearings are additional fora for policy-making. Since the Statute’s approval in 2001, there has been an intensification of new spaces of participation, setting the basis for building a new participatory model based on conferences and councils in the institutionalization of sectoral policies. The process for participation in master planning and in the master plan’s management is summarized in Figure 4.2.

At the national level, the National Council of Cities (Conselho Nacional das Cidades), established in 2004, is a deliberative body that proposes guidelines for implementing national urban development policies and provides guidelines for the Statute’s application. The National Council of Cities is considered an “important sociopolitical forum” and has “conferred a unique

![Figure 4.2: Participation in the master planning process and the management of the master plan in Brazil](image-url)
degree of sociopolitical legitimacy on the decision-making process” (Fernandes, 2007b: 185).

In addition, conferences – large scale institutional fora for decision-making on public policies – are also used as fora for the interaction of society on urban issues at the national, state and municipal levels in conjunction with the deadlines outlined by the Ministry of Cities (C. Nascimento, et al., 2008). The national component of these urban development conferences is the National Cities Conference (Conferência Nacional das Cidades). It is composed of 86 members (half from civil society), including representatives of federal, state and municipal governments, social movements, business entities, unions and workers, professional bodies, academics, researchers and NGOs (C. Nascimento, et al., 2008). Members are elected for a two-year term, thus widely ensuring citizen participation in the council’s deliberations. The Ministry of Cities is legally required to follow and respect its deliberations.

4.3. Participation and urban development in Niterói

Participation in Niterói occurs through several inter-related channels. The participatory system includes two stages: first, the master planning process, and second, the management of the master plan through several participatory fora. Figure 4.3 shows a schematic of the participatory channels in Niterói. In the next sections, I explain these fora for participatory planning in Niterói

![Figure 4.3: Participation and functioning of the urban development process in Niterói](image-url)
to understand (i) whether the participatory requirements have allowed citizens to become involved in planning processes; and (ii) what are the implications are resulting from these channels for citizen participation. In understanding the Statute’s application of participatory arenas in Niterói, I draw on Avritzer’s theory of participatory institutions. Combining an active civil society with strong institutions, the contention is that an institutionalized framework for the operationalization of participatory planning is one ingredient that may provide a robust framework for participation in Brazilian cities.

4.3.1. Participation in master planning

The two years leading to the approval of Niterói’s master plan were spent consulting the community and collecting data. Indeed, in 1989, a Popular Forum emerged to support the process, an initiative of civil society organizations. This forum “opted for the newly institutionalized model,” which ensured participation through meetings, widespread dissemination of the process and the inclusion of proposals of organized civil society (Salandía, 2001: 110). At this time, the idea of participation was that it would have both visibility and popular support. The groups involved in the process would be co-authors of proposals, monitoring their own futures. The information needed to design the master plan had already been collected for the IBAM report in 1991, *Niterói in the 21st Century: 1st Module of the Master Plan*, which highlighted the importance of participation in master planning, as the report noted: “While requiring a master plan for certain cities, the Federal Constitution guarantees popular participation in its making” (Instituto Brasileiro de Administração Municipal, 1991: 3).

Participation was essential to the vision extolled in the 1992 master plan. Referring to the period of Mayor João Sampaio and to these gains of participation, one former bureaucrat noted that, “The biggest gain, as I understand it, was in this period of the 1990s” (P.I., 16/11/10). The
master plan resulted from an understanding that it “was a Constitutional requirement” to have a participatory master plan (P.I., 18/1/11). Similarly, a recent report connected the Constitutional requirement of participation in the master plan: “Since the 1990s, Niterói has built urban and environmental legislation updated and in line with the legal precepts established by the Federal Constitution and more recently by the Statute of the City” (Prefeitura Municipal de Niterói, 2006: 13). Figure 4.4 shows an announcement for the participatory master plan.

During the master plan’s preparation, participation occurred through public hearings and thematic seminars and were announced locally to the community, such as a car with a loudspeaker. Such meetings were carried out “within the community, in all of the neighbourhoods,” with ample participation to “discuss and raise issues” (P.I., 21/12/10; 18/3/11). At the meetings, the IBAM report was presented alongside a questionnaire asking about city problems and hopes for the master plan. The questionnaire was used to compile information from across the city on various topics including land use, urban infrastructure and transportation. For a civil society member, the questionnaires “included the participation of everyone … the community was asked what it wanted for the city” (P.I., 30/3/11). The public hearings were registered and recorded, according to municipal executive representatives and the prefeitura’s archival documents (M. A. J. Carvalho, et al., 2009).
Salandía (2001) notes that the master plan incorporated 80 percent of the proposals collected through such meetings. Despite this tally, interviewees noted that residents at this time had little understanding of urban planning. Proposals were often specific demands such as fixing a hole in a particular road rather than broad planning proposals. A long-time participant in planning issues, currently the secretary of transportation, noted that, “People didn’t understand very much what is a master plan, so the demands that were made had nothing to do with the master plan... They were always demands for public services” (P.I., 14/1/11). As a result of this knowledge gap, the need for capacity-building exercises was recognized, according to former Mayor João Sampaio: “You have to explain to people for them to know what the planning process is, what is involved and who are the players (P.I., 18/3/11).

In the 1990s, despite little understanding of what participation entailed, there was a lot of discussion among a fairly mobilized population. Interviewees from government, academia and civil society pointed to a positive participatory master planning process. A former planner noted that, “it was perhaps more organized in the beginning ... we had meetings in all locales, so there was effective participation in the preparation of the master plan of the community” (P.I., 11/1/11). In addition, several civil society members often critical of the government noted that the master plan involved ‘real’ participation: “In 1992 there was real participation, the master plan was excellent for the city... everyone could participate” (P.I., 30/3/11). Others noted that participation was based on an open model, meaning that the venue was open to all and the process was legitimized by the population. Thus, the 1992 plan was considered to be legitimate and important, and was embraced by the prefeitura in the years following its approval.

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41 Sometimes participation is referred to as ‘fake’ participation, defined as the process that “occurs when governments seek the democratic legitimacy but not the accountability that comes with public participation” (Snider, 2010: 90).
Still, others noted that participation at this time was weak. A recent report notes that, while the process was consultative, there is little information about the collective construction of the process and “in many aspects, the quality of the participation can and should be improved” (M. A. J. Carvalho, et al., 2009: 110). One criticism was that the prefeitura applied participation because of the obligation to do so, but the form that participation took was poor. Referring to this weak participation in 1992, an academic notes that the master plan,

>Was done without participation, at least not adequate participation ... Actually, when the master plan happened in the 1990s, Niterói always had militant segments, so these segments occupied these meetings, but the issue-based groups are more or less the same groups which are here today ... Even then, it was participation in meetings to try to add one or another initiative and not properly a democratic meeting in a broad way (P.I., 8/11/10).

This suggests that, contrary to Avrizer’s theory of participatory publics, civil society was largely left out of a process that was led by the government. While the process was open, it was not transformed through an engaged citizenry into alternative practices at the local level.

### 4.3.1.1. Weak participation: The 2004 master plan

As I discussed in chapter 3, the 2004 master plan was an adequation of the 1992 master plan to the Statute of the City. However, participation in this master plan was weak compared to other fora for the direct participation of citizens. Despite the controversy of the two PURs approved at the same time, the approval process for the revised master plan involved weak participation. Interviewees made few comments about the process and most agreed that participation was not treated as a priority by the prefeitura. A report shortly after this experience shows that the public hearings required for the master plan’s approval were based on bureaucratic formalities, leading to the assumption that the prefeitura did not fulfill its obligation to discuss city issues with the community (A. C. C. Teixeira, et al., 2005). Instead, proposals for the master plan were discussed in restricted, technical forums, with the objective of incorporating minimum
conditions to adopt the new tools in the Statute. According to another report and reiterated by interviewees, “the process of revising the plan should have been extended, allowing greater scope and inclusion of a greater number of people in the debate” (Biasotto, et al., 2008: 9).

Indeed, a civil society member noted that nothing was discussed during the process: “They simply held a public hearing, but they didn’t explain anything, it caught everyone by surprise” (P.I., 30/3/11). Others noted that while there was participation in the new master plan, it was obscured by the controversy of the PURs done at the same time. However, while participation clearly took place in this case, it failed to satisfy Avrizer’s (2009) ideal of participatory institutions: that a participatory body maintains sovereignty over the process. Therefore, the process during the 2004 master plan exemplifies a weak participatory process.

4.3.2. Urban development councils as cases of participatory planning

The 1992 master plan installed a precursor to the urban development council prescribed by the Statute: the Municipal Council of Urbanism and the Environment (conselho municipal de urbanismo e meio ambiente, CMUMA). Created in 1993, CMUMA was a consultative body responsible for planning, execution and monitoring of policies (Secretaria Municipal de Urbanismo e Meio Ambiente, 1992).42 Composed of 13 members (half from civil society and local government, plus the secretary of urbanism), CMUMA jointly discussed and voted on issues before bills were sent to city council for approval. One former city planner noted that CMUMA’s experience was positive “because of all the laws that were passed ... all the discussion passed by CMUMA, as well as the regional urban plans” (P.I., 20/12/10). While CMUMA functioned during the approval of several laws and the first PUR in Praias da Baía, its existence was considered indispensable to give credibility to the participation of civil society in the

42 Information on CMUMA mostly came from interviews; documents about CMUMA in the prefeitura’s archives were sparse.
planning process (Salandía, 2001). CMUMA was active in its four years of operation and “had periodic meetings,” according to several interviewees (Biasotto, et al., 2008; P.I., 18/2/11).

Following the end of João Sampaio’s term, CMUMA was deactivated in 1998 after Jorge Roberto Silveira was elected mayor. CMUMA’s termination coincided with discussions of the controversial tool *operações interligadas* in Praias da Baía. The lack of an arena for civil society participation was problematic given the challenges revealed by this tool, which altered the parameters that had been established in Praia da Baía’s PUR in 1995. Following CMUMA’s deactivation, other laws were approved without community consultation. Moreover, the results of CMUMA’s deliberations were meagre. One architect and council participant noted that, “I do not consider it an ample process, it was a restricted process” yet “there were people who had a vision, pointing it in a favourable direction, but I would not say it was a participatory council ... or that it was democratic” (P.I., 3/12/10). CMUMA’s absence after 1998 was strongly felt, as some interviewees noted: Without CMUMA, how can the instruments in the master plan work?

Even without tangible outcomes, CMUMA prioritized participation in master planning and social justice; this point is remarkable in and of itself. CMUMA led to new forms of civil society pressure and democratic planning processes (Biasotto, et al., 2008). Rather than a conquest of civil society, however, CMUMA was a commitment of the *prefeitura*, indicating “significant advances within the perspective of the beginning of defining a new urban development policy for the municipality. Its participation defined a new methodology in the elaboration of the new urban and environmental legislation for the municipality” (Salandía, 1995: 6).

**4.3.2.1. The second urban development council: COMPUR**

Niterói’s first municipal conference approved the creation of a new council, the municipal council of urban policy (*conselho municipal de política urbana*, COMPUR). A deliberative and
proportional organ, COMPUR brings together government and civil society to propose and assess urban development in the city. COMPUR’s councillors are elected during the municipal conference; half are managers and producers of urban space (government, city council and businesses), while the other half are movements, unions, professional or academic entities and NGOs, representing two different visions of the city (see Figure 4.5). Currently, COMPUR is an active component of Niterói’s participatory process.

COMPUR’s monthly meetings are open to anyone to participate, yet rarely, even for a controversial subject, do non-councillors take part. Because COMPUR is open, a former planner calls it “a democratic space,” although debates tend to be conflictual, as a municipal staff-person noted: “I was horrified, the fight, the discussion, people climbing on tables, chairs, telling others to shut up, everybody fighting” (P.I., 13/1/11; 24/2/11). While it is considered a proportional entity, in practice COMPUR’s composition is more favorable to the government, according to interviewees. Indeed, interviewees noted that the government often acts to deplete meetings so that quorum cannot be reached, resulting in delayed discussions. For one NGO member and frequent opposer of the government, “in theory we have a majority, but the problem is that the municipal executive and city council, they have the majority” (P.I. 3/12/10).

COMPUR is considered ‘deliberative in its attributes,’ meaning that draft bills have to pass through it before going to city council. However, COMPUR does not have “the last word”

![Figure 4.5: The composition of COMPUR by sector](image)
because legislative power is vested in city council; in practice, COMPUR plays a consultative role (P.I. 20/12/10). Thus, its deliberative nature has raised criticisms. Civil society objects to the fact that COMPUR “has no veto power. It may signal that it doesn’t agree, but it can’t veto... After it leaves COMPUR, it goes to city council” (P.I., 21/12/10). By contrast, city staff and the private sector maintain that a deliberative council would create difficulties: “Having a deliberative council in an area like this means paralyzing the administration because you’re only going to meet after ages ... How are you going to deal with the day-to-day?” (P.I., 6/1/11).

While the decisions made within COMPUR are carried out through debate among councillors, in practice, the power of its decision-making institutions results in little legitimacy. Indeed, the biggest challenge is to ensure that decisions made in COMPUR are effective (Hagino, 2007). The challenges associated with these weak decision-making institutions contradict Avrizter’s (2002) criteria of face-to-face deliberation as an element of participatory publics.

COMPUR is perceived by some to legitimize the government’s actions rather than crafting policies. For example, a CCRON member noted that, “We become pawns for them to legitimize. They know they need the council to receive funds, so they do it in a way that they don’t get harmed” (P.I., 27/4/11). Similarly, a bureaucrat argued that COMPUR is not a sphere of citizen empowerment “because [it] become[s] a space to endorse government policies” (P.I., 21/3/11). This backing of government policies is reiterated by the current secretary of urbanism: “I understand [COMPUR] as just a chore ... something that we have to give to the council because it has a certain representativity and for it being a broadcaster of what is happening” (P.I., 23/3/11). With little power, COMPUR is perceived as an instrument of the organized sectors rather an emancipatory entity (Hagino, 2007). A residents’ association member notes that civil society has no active voice, reflecting the hopelessness of the government’s role in COMPUR:
We see a lot of what the administration wants to do, then we see we’re nothing for the government. They will decide it, they find a way to approve what they want and we never get to include anything of ours. So I see COMPUR today is just for us to acknowledge what they are doing, but we have no active voice to do something. Afterwards, the government has its defence to say ‘no, we held the meeting and people were there to hear,’ but people were there and we had no decision power (P.I., 25/1/11).

One striking episode is illustrative of the difficulties between the government and COMPUR. In April 2010, heavy rain fell in Niterói, causing devastation in Morro do Bumba, a *favela* in the east of the city built on a deactivated garbage dump. The large rainfall and build up of gases caused Morro do Bumba to collapse. Yet between November 2009 and August 2010, a time when the city most needed to deal with housing and homelessness, COMPUR was not functioning: “everything stopped when the rains occurred, the city stopped” (P.I., 17/12/10). A professor at UFF explained that during this tragedy, “COMPUR was set aside. In a time the city most needs the council to function ... The executive power saw this as a threat and simply did not call for any meeting” (P.I., 8/11/10). COMPUR’s councillors met independently of an official convocation, taking the issue to the public prosecutors (public ministry), which notified the *prefeitura* that it had to convene COMPUR. COMPUR reunited in August 2010; its focus on the tragedy quickly moved to less pressing issues such as revising Praias da Baía’s PUR, reducing the opportunities for questions of the tragedy (P.I., 21/12/10). Overall, these events called attention to the fact that COMPUR rarely deals with justice issues and low income populations in Niterói.

While much is discussed during COMPUR’s meetings, little is implemented as a result. Frequently, proposals made in COMPUR are not carried out in city council. For example, one interviewee noted that COMPUR discussed a bill for Minha Casa Minha Vida, a national policy; when the bill went to city council it was altered based on city councils’ imperative.⁴³ In addition, despite amendments passed in COMPUR for the revitalization of Niterói’s centre in 2006, a US

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⁴³ Minha Casa Minha Vida is a national housing policy introduced by the Ministry of Cities in 2009 with the plan to build 2 million new social housing units throughout Brazil.
consultant was hired to prepare the plan without COMPUR’s participation (Hagino, 2007). Even a developers’ association member recalled that COMPUR discussed the revitalization of the centre, yet “nothing was put into practice” (P.I., 21/12/10). While COMPUR’s powers are legally established, city council often ignores it and acts alone. Indeed, while COMPUR allows civil society to exert pressure on the prefeitura, the prefeitura uses COMPUR to justify its actions to society. As a result, COMPUR does not have autonomous control over public power. A big challenge, therefore, is to ensure the effectiveness of such democratic institutions, rather than to legitimize specific interests of certain actors (Thibes, 2008).

Despite the challenges, COMPUR is part of the participatory planning system, as Niterói’s public prosecutor notes: COMPUR “is a legitimate body, specialized and important, it is another stage of transparency” (P.I., 11/4/11). Brazil’s experience with democracy is recent, even more so for participatory democracy, often challenging the autonomy of councils. For one former planner in Niterói, COMPUR’s viability depends on two factors: the first is the prefeitura’s commitment to participation; the second is the degree of mobilization of civil society, which I discuss in chapter 5. However, civil society on its own cannot force the government to concede to opening spaces for participation. Thus, the participatory institutions required by law at a national level as discussed by Avritzer (2002, 2009) remain even more important in this context.

4.3.3. Participation in the regional urban plans (PURs)

Participation in the approval of PURs are a key component of Niterói’s planning system. In the early 1990s, the idea was that with the participation of more people, the process would be more intense, while broad involvement would allow for discussion of issues going beyond overly specific issues, as one former planner noted (P.I., 30/5/11). The participatory process of the PURs involved meetings in each neighbourhood, as a former planner described: “There was a lot
of participation; you first took the diagnosis, then returned with the proposals and the reading that was made from this participation. Then later there was a third batch in which we tried to approve the legislation with the population” (P.I., 13/1/11).

However, other interviewees noted that Niterói’s PURs are only participatory in theory, pointing to ineffective participation in the PURs. Indeed, the PURs have not been reviewed on time and no one is pressing the prefeitura for this to happen, according to a residents’ association member: “If participation were effective there would be follow-up demands being made” (P.I., 21/12/10). Another challenge is that PURs can be altered easily, nullifying the effects of collectively deciding on such legislation. A civil society leader noted that, “The urban plan can be changed by regular law without any discussion ... The law has to serve all, not a specific businessperson” (P.I., 30/3/11). While the master plan is virtually unchanged since 1992, the PURs have been altered and manipulated, both by the executive and the legislature (Biasotto, et al., 2008). One of Niterói’s public prosecutors noted the disparity over the role of the PUR: “If you ask the government, especially those who participated in the process ... they will say it was great, but if you ask the social movements and institutions such as the lawyers’ bar ... [they will say] it was not, it created and still creates several problems” (P.I., 11/4/11).

Participation was intense in the Oceânica region in 2002. Residents in the Oceânica region participated strongly in the PUR as a result of a fragile, highly valued region. The Oceânica region, a suburban community of Niterói, developed steadily in the 1980s. With many services lacking such as water and sanitation, residents had much more to demand of the prefeitura and a reason to participate, especially in the PURs. Participation was strongest when city services were lacking or when participants felt they had to defend what they had, as a former municipal planner noted: “What we saw in the process ... is that you have very intense participation in two
extreme situations: when people have nothing, or when they have a lot. When they have a lot, they want to defend what they consider a privileged situation and when they have nothing, they want their rights” (P.I., 20/12/10). An academic noted that in the Oceânica region’s PUR,

You had the participation of the middle class, but more so of the informal settlements. You had a quite large participation of people from the underprivileged community, because their situation was very fragile and because the area is valued ... Here in the Centro, it is already consolidated, it is already part of the landscape. There [in the Oceânica region] it is not and there is where the occupation continued, because it is where there is free area (P.I., 12/4/11).

Despite the contention over this PUR, it established basic rules to protect informal settlements through the demarcation of special areas of social interest (AEIS), one of the Statute’s tools.

Indeed, the interests of residents of the Oceânica prevailed rather than the developers; the outcomes in terms of densification fell short of what the developers had wanted.

By contrast, participation was weaker in Praias da Baía and Norte regions. While the revision of the PUR of Praias da Baía was intense, the participation of residents was weaker than in the Oceânica region despite being the highest valued part of the city. As a result, developers took a great interest and influenced the PUR (P.I., 6/1/11). In the 2005 PUR in the Norte region, a less-valued area of the city with more favelas, the prefeitura used new methods to improve the participatory process, building leaders’ capacity to achieve more in-depth discussions. Even so, participation was minimal. An academic noted that participation was lower in the Norte region: “In public hearings for the PUR in the Norte region, there was no representation at all ... because almost no one went” (P.I., 12/4/11). Indeed, “although it was not a perfectly ideal participatory process, it formed a transparent debate” in a much less controversial region with less interest from developers, according to a former planner (P.I., 13/1/11).

While the discussions of the PURs were disputed, “the controversy itself is a participatory process” (P.I., 13/1/11). The episode of the two PURs passed in 2002 (Praias da Baía and
Oceânica regions) were both plagued by controversy. Former councillor Paul Eduardo Gomes explained that, city council “shoved down the city’s throat both [PURs] … the process was like a steamroller” (quoted in Teixeira, et al., 2005: 20). Although public hearings took place, the pressure on the prefeitura to complete the PURs before the master plan’s revision culminated in fierce debates. On the first day of voting, amendments were not read aloud, generating protests from the audience. The following day, city council was closed by police, preventing the population from following the vote: “City council closed its doors, called the police, held a closed-door session” (P.I., 3/12/10). The two PURs were approved the same day behind closed doors. The final hearings for these PURs in city council “suggest a process of political bargaining between the legislature and the local real estate agents” (Biasotto, et al., 2008: 15-16). I discuss this in more detail in chapter 6 on the role of the private sector in producing planning outcomes.

While the government insisted the process was democratic, the meeting minutes failed to show that civil society had not agreed. Civil society criticized the lack of transparency, legitimacy and participation in the process as well as the content of the PURs without a new master plan adequated to the Statute. Moreover, the low participation of city councillors “compromised the process of public discussion,” leading to accusations rather than clarifying doubts about the PURs (A. C. C. Teixeira, et al., 2005: 18). Finally, according to a FAMNIT member, the business sector did not participate, wanting privileged venues instead. Indeed, since this time, “the city has struggled for society to participate in the discussion process of urban planning” (P.I., 11/4/11). The controversial approval of the PURs in 2002 thus left its mark on Niterói.

4.3.4. The role of urban development conferences

Niterói’s master plan establishes municipal urban development conferences as one of several instruments to guarantee democratic management. Since the Statute’s approval, five municipal
conferences have taken place in Niterói (in 2003, 2005, 2007, 2009 and 2013). The goals of Niterói’s municipal conferences include: evaluating the effectiveness of proposals from past conferences; setting objectives for achieving urban policy; proposing new discussion topics; and forwarding such proposals to the state and federal conferences. For Filho (2005: 7), the goal of the municipal conference is “to strengthen the common ground of a policy that will be developed step-by-step through the combined force of society.” Many of the participatory achievements in Niterói, in fact, can be attributed to the first municipal conferences in 2003 and 2005 (M. R. M. d. Santos & Oliveira, 2009). For a former municipal planner, the conference method “was a catalyst process of this participative logic” (P.I., 13/1/11). The most obvious achievement was the renewal of COMPUR, following the first municipal conference in 2003.

Niterói’s third municipal conference in 2007 yielded few results. While its proposals were not applied, interest in participation began to decline (Hagino, 2007). Indeed, for one residents’ association member, “It was participation just to participate. Just to say it’s there” (P.I., 12/4/11). For civil society members, the low credibility in the process weakened Niterói’s municipal conferences. While proposals were made at each conference for improved infrastructure, without advancements, subsequent conferences began to be repetitive.

Even worse than in 2007, for many interviewees, the fourth conference in 2009 “was a shame” (P.I., 12/4/11). The environment during conference was adversarial; all proposals made by various sectors were rejected, both by civil society and the government. The mayor had ordered all staff to attend the conference; members of city council and executive went to the conference and voted in a block against all proposals. While the private sector had participated timidly in past conferences, in this conference they formed a block with government and

44 During each cycle, urban development conferences at all three levels (municipal, state and federal) take place. Discussions at the municipal level are forwarded to a higher level, forming an integrated system.
participated strongly: “This was obviously in defence of these interests around town” (P.I., 3/12/10). In the end, the conference was interrupted “dictatorially” (P.I., 15/3/11). A former planner noted that, the government:

> Didn’t play the game of participation ... They understood the rules and made a team play... The government blocked and virtually closed the doors to all propositions from the other side. So, in the end, the government itself lost, the administration lost, the city as a whole lost out. And there were good proposals that could have been launched (P.I., 13/1/11).

In the end, as a residents’ association member recounted, the government “suspended the conference. They created a ruckus and said, ‘let’s return next week,’” coercing the residents’ association members into voting their way. In the end, “We had 20 votes and they had 80” (P.I., 12/4/11). Civil society members, especially those tied to the government are often afraid to vote against the government because of such co-optation, a process based on inclusion in order to control community members (Abers, 2000). For another residents’ association member, the conference displayed “the use of the [community] movement to approve [proposals]. When one raised his arm, everyone voted with him and nothing was approved” (P.I., 12/4/10). While conferences occur every two years, implementing anything in this timeline is difficult. And despite “broadly democratic participation and highly democratic resolutions ... the city has not applied practically anything” (P.I., 8/11/10).

### 4.3.5. Public hearings

An additional venue for participation included in the Statute, public hearings are used to pass legislation such as PURs and specific bills. Such hearings can be convoked by associations, citizens and city councillors; few have rules except that they are open to the participation of all residents, associations and NGOs. While public hearings were an important participatory mechanism for many interviewees, there are few results from such meetings because of their

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45 See section 5.1 for a broader discussion of co-optation.
lack of credibility, leading to low turnout. Thus, a civil society member recounted how work by
civil society on neighbourhood impact studies (*estudo de impacto de vizinhança*, EIV) resulted in
broken promises and deception during the public hearings: “We had several meetings ... We sat
down, elaborated proposals, said what we agreed with, what we didn’t. Then the councillor who
was presiding wanted to make a deal to change the design ... Everything we had studied ... was
simply forgotten” and city council applied an altogether different proposal (P.I., 27/4/11).

One challenge of public hearings is that they are not deliberative. For civil society
members, discussions in public hearings are *pro forma* or done for the record, even if only a few
people attend. The fact that a public hearing even takes place is what matters, as an NGO leader
makes clear: “City council convenes a public hearing and if two people go, but the session took
place, they say they did the public hearing” (P.I., 3/12/10). Public hearings are also often poorly
divulged. In some cases, civil society and even city councillors are often not informed, or the
public hearing is set for the day after a long weekend at nine in the morning. An excerpt from a
letter from a civil society organization is indicative of these criticisms. It lists the issues that
typically occur during public hearings (such as hurrying discussions, not presenting final
proposals, poor divulgence of meetings at difficult times, low attendance of city councillors) and
sets out an ideal form of participation in public hearings (quoted in Herculano, 2006: 153-154):

*The purpose of the Public Hearing, as it is in ‘Statute of the City’ is the participation of the
population and Representative Organizations in the democratic management of the
municipality. Unfortunately and disastrously, Public Hearings convened by the Executive and
the Legislature come with the sole purpose of using the Entities to comply with and
legitimize the Statute of the City and avoid a Civil Action for administrative misconduct...*

*We want to use our right to participate effectively even if our politicians are not used to this.
And, they will have to live with popular participation in all matters of the City because we
have the right to exercise our citizenship...*

*An alternative view is that participants have the right to listen but this lack of decision-
making power is just. A long-time staff-person of the *prefeitura*, currently the secretary of*
transportation, argued that the public hearing is an important tool for transparency, but not a decision-making tool: “As the [portuguese] name suggests [literally, public audience], it is just an audience ... to make people aware of what is being done” (P.I., 14/1/11). Finally, Sathler (2005: 58) points out that in public hearings, “the citizen is guaranteed the right to be heard and may thus influence decision-making at the administrative level,” pointing to the difference between the right to listen and the spill-over that may lead to power in decision-making arenas.

4.4. Conclusion: The importance of participatory institutions

Despite challenges described in this chapter, the practice of participation is exceptional based on the changes in Brazilian urban policy and planning since the end of the dictatorship. The Statute is a remarkable achievement of urban policy and an example of incorporating the right to the city into practice. In Niterói, several achievements have resulted from the practice of participatory planning. The early participatory vision used in the 1992 master plan underlined the prefeitura's commitment to participation through João Sampaio's vision. After the master plan’s approval, although CMUMA did not lead to many tangible outcomes, it was a commitment of the municipal administration and the fact that it was prioritized at the time is remarkable in and of itself. In addition, in some of the negotiation processes of the PURs, participation was intense, leading to beneficial outcomes, such as the case of the Oceânica region. Finally, urban development conferences in Niterói have led to several important outcomes, most importantly the initiation of COMPUR in 2004 and have been broadly democratic, creating a rich climate of debate and discussion about the social fabric of urban life.

While the democratization of policy to guarantee citizen participation is fragile in Brazil, many cities have experimented with innovative participatory processes (M. R. M. d. Santos, 2011; M. L. d. Souza, 2006a). Observing the practical shortcomings of participation, Cornwall
and Coelho (2007a: 21) note that some cause for optimism is warranted because in such cases:

Their very ordinariness tells other stories: of incremental change, of a growing sense of entitlement to participate, of slow but real shifts in political agency. They reveal glimpses of how opening up previously inaccessible decision-making processes to public engagement can stimulate the creation of new political subjects as well as new subjectivities.

Even more relevant, however, are the implications resulting from these channels of citizen participation. Indeed, the real relevance of Brazil’s participatory reforms and the application of participation through the Statute is the formation of institutional arrangements that prioritize participation at the local level, reinforced through Avritzer’s (2009) theory of participatory institutions. The virtue of Brazil’s participatory model – and indeed one of the rationales of studying a Brazilian case study such as this one – is that strong institutions are absolutely critical in guaranteeing the possibility of a system that not only guarantees people’s rights to the city but also their participation in the planning system.

Reiterating Avritzer’s idea of a blend between institutions and a strong civil society to produce good outcomes, Cornwall and Coelho (2007a) justify a combination of institutional design principles and participation from below. Indeed, institutionalists argue that the key to strengthening participatory processes lies in better institutional designs (Fung & Wright, 2003), while social movement theorists suggest that social mobilization leads to a just distribution of resources (Alvarez, et al., 1998). Thus, “when well-crafted institutional spaces for participation come together with champions for change on the inside, and well-organized, mobilized social groups on the outside, positive changes for previously excluded groups may be seen” (Gaventa, 2007: xvi). This suggests that while institutions are vital, they are not the only ingredient.

This chapter has focused on the process within Niterói’s participatory institutions to understand the implications resulting from these participatory processes; the next examines the role of civil society to reflect on how civil society organization influences the capacity to
implement more participatory and socially just planning processes. My argument that participatory institutions are a necessary ingredient should not lead to the conclusion that participation is not without its faults. Such problems include the fact that institutional arrangements may reproduce social relationships that marginalize certain groups and inequalities of knowledge and power (Cornwall & Coelho, 2007a; Martin & Lemon, 2001).

However, although problems exist in implementing such participatory reforms, a more nuanced approach is needed to contextualize these outcomes. Indeed, there is a gap between the rhetoric and practice regarding the outcomes of participatory processes of the Statute. In the words of one of the organizers, “the outcome of all the ‘participatory effervescence’ has been disappointing” (Perlman, 2010: 312). Still, these challenges are not unique to Brazil; other practitioners and academics have called into question the validity of participatory planning processes (Brownhill & Carpenter, 2007; Cooke & Kothari, 2001; Innes & Booher, 2004). While participation occurs in Brazil, sometimes it is what Souza (2006a: 221) has called “pseudo-participation.” This is the case in Niterói, where participation takes places regularly, yet it is a middling practice of participation with both positive and negative outcomes. This dilemma is reiterated by Avritzer’s (2009) warning that while institutions supporting participation are necessary, fine tuning such designs allows for the realization of these institutions’ full potential.

Indeed, one problem is that the Statute is vague in almost all the passages mentioning participation (M. L. d. Souza, 2006a). Despite directly mentioning participation at various points throughout the Statute, many passages are unclear as to how participation should be carried out in local administrations. As Avritzer (2009) notes, the Pompeu de Souza Bill, which eventually became the Statute of the City, introduced a more restrictive formulation of participation than the urban reform movements had originally envisioned. While many of the
urban reform movements’ demands regarding participation were included in the Statute, other demands were not, resulting in a limited formulation of participation.

I use Avtizer’s theory of participatory institutions as a starting point to underline the importance of institutions in producing successful outcomes based on four characteristics. First, participatory institutions operate through a hybrid model including both representation and participation. In the case of COMPUR and the urban development conferences in Niterói, while the prefeitura maintains authority over the decision-making process, some authority is transferred to the participatory body. However, the extent to which this authority is actually transferred may be circumvented by corruption, co-optation or other political factors.

Second, participatory institutions include the transformation of voluntary qualities of civil society into forms of permanent political organization. For example, in the case of COMPUR, there is a selection of representatives of civil society actors with specific mandates during the urban development conferences. In these cases, “civil society practices become institutionalized as permanent forms of interaction with the state” (Avritzer, 2009: 9).

Third, participatory institutions involve the interaction between political parties and grassroots actors demanding participation. In Niterói, the relationship between civil society actors and political parties has not made the participatory claims real because the predominant political parties have maintained an elitist vision of governance. In other experiences in Brazil, by contrast, the Workers’ Party connected “ideas of participation present in its grassroots with civil society actors’ claims for participation” (Avritzer, 2009: 10). This has not been the case in Niterói where the leading political parties have tended to dominate civil society instead.

Finally, institutional design is relevant, understood as an element that allows for innovation and horizontal political relations including the fine tuning of participatory designs. In
Niterói, for example, the attempt to tweak the participatory process in the PUR in the Norte region illustrates this characteristic of fine-tuning of participatory design.

In the Niterói case, using Avritzer’s (2009) theory of participatory institutions points to a way of understanding participatory planning practices, thus valorizing the institutions of participation. Returning to my research questions, the participatory requirements in Brazil’s Statute are allowing citizens to become involved in planning processes, yet key obstacles need to be overcome to more fully involve the population in the planning system. These obstacles include problems of deliberation in forums such as COMPUR and public hearings, and weak deliberation in various arenas such that commitments do no follow through. This leads to low credibility in the process; despite the negotiation of the PURs, any regular law may change what has already been decided within a broadly democratic channel.

A range of experts, especially those working in Latin America, have noted the role of context in understanding the conditions of success for participatory institutions (Avritzer, 2009; Baiocchi, 2003a; Goldfrank, 2007; Wampler, 2004). Indeed, Avritzer (2009, 2012) makes a succinct case for the relevance of context in decision-making and participation, pointing to a theory of participatory institutions conceptualizing interactions between civil society, political society and institutional design. Using this work as a starting point, the next chapters consider the relationship between civil society organization and power relations within participatory institutions that have the intention of promoting a socially just urban order. Therefore, this account in Niterói of the politics of applying the progressive urban development tools found in the Statute considers how power relations and civil society organization influence the capacity to implement more participatory and socially just planning, and the juxtaposition between theory and planning practice.
Chapter 5: The Changing Landscape of Civil Society in Niterói

5. Introduction

While much has been written about the Statute’s importance (Fernandes, 2011; Santos Junior & Montandon, 2011), one of the most interesting aspects is the role played by the social movements in approving the Constitution in 1988, and later, the Statute of the City in 2001. These movements, later called the urban reform movement, began in earnest in the 1970s, sustaining attention in the academic community (Avritzer, 2007, 2010; Gay, 1994; Mainwaring, 1987; Wampler & Avritzer, 2004).46

This chapter considers the perplexing fact that civil society grew in Brazil during the 1970s and 1980s, yet according to observers in Niterói, seemed to decline following the approval of the Constitution and the Statute. Indeed, I found that an unexpected development was the perception of a declining role of civil society in Niterói. Civil society is a necessary component of a participatory democratic system; without a robust civil society, it will more difficult for the norms of the Statute to take effect in Brazilian cities. Indeed, in implementing the Statute, a gap has emerged between the de jure Statute and the on-the-ground practice. As noted by a prominent urbanist and academic in Niterói, “If you have clientelism in the base of negotiation and the political process, if you have a concentration of land as we have in this country, then you have to break free of these things, so you can apply the Statute of the City” (P.I., 12/4/11). Shortly after the approval of the Statute, the Instituto Pólis (2004: 34) noted that, “the nature and direction of the intervention and use of the instruments established by the Statute will therefore depend on the political process and the broad engagement (or not) of civil society.”

46 There has been a lot written about social movements in Brazil regarding their role in participatory budgeting, where a small portion of the city budget is decided through the broad participation of society (Abers, 2000; Baiocchi, 2005).
To consider the role of civil society relating to power, participation and social justice, I reflect on how civil society organization influences the capacity to implement participatory and socially just planning processes. As civil society plays a decisive role in promoting democracy and implementing the urban reform movements’ proposals, this chapter seeks to understand what is driving this perceived decline in Niterói, given that others have noted a decline of civil society in Brazil more generally (Encarnación, 2003; Pickvance, 1999). I consider the national context of civil society in Brazil starting in the 1950s and the role of social movements in the approval of the Constitution and the Statute. Next, I explore a perception of declining civil society in Niterói. I unpack what is driving this perception of decline, making the case for a more nuanced conception of the alterations within civil society resulting from a changing political context.

5.1. Civil society, Latin America and the state

The civil society literature makes a strong case for patterns of association in improving the quality of democracy and contributing to the construction of democratic ways of governing (Fung, 2003; Pateman, 1970). While civil society creates important changes, its role should not be tokenistic but should exert real influence (Arnstein, 1969). For Pearce (1997: 58), civil society theory “is about willed action, agency, creativity and resistance.” However, most accounts of civil society note its elusive nature. For Edwards (2009: 7), “what is important about the civil society debate is not that one school of thought is proved correct and others exposed as false, but the extent to which different frameworks can generate insights that lead to more effective action.” Because of this extensive discussion, I aim to set out the main ideas of the civil society concept, followed by an exploration of some key points that are useful to understand its use in Brazil.

While civil society has been used extensively in planning literature (Goonewardena & Rankin, 2004; M. L. d. Souza, 2006b: 327), it has its origins in classical political theory. Until the
late 18th century, civil society was used synonymously with the state or political society in contrast with the ‘uncivil’ condition of humanity (Kumar, 1993). Exemplified as a social contract by thinkers of the Scottish Enlightenment, there was no distinction between civil society and the state. It was only with Hegel that the idea of civil society became one involving the relation between the state and society as distinct spheres. For Hegel, civil society represented the sphere between the family and the state, the realm of differentiation where free individuals pursued their self-interest (Cohen & Arrato, 1992; Hegel, 1991). Gramsci (1995), however, is credited for placing civil society in its own category, understood as a sphere of free associational activity outside the market, the state and the family: “the formula most commonly found in Gramsci is the State = political society plus civil society. Political society is the arena of coercion and domination; civil society is that of consent and direction” (Kumar, 1993: 382).

Though used by de Tocqueville and some followers of Gramsci including Althusser and Bobbio (Althusser, 1971, 1977; Bobbio, 1988; Tocqueville, 1945 [1835]), the term civil society largely vanished from the political lexicon in the early 20th century. It reemerged during the late 1980s, used by Eastern Europe dissidents to theorize the struggle against authoritarian regimes, creating a sphere separate from the official all-encompassing communist party state (Kumar, 1993). Its use among the dissidents was an effort to develop a third way to move away from reforming the communist system from above and revolting from below, emphasizing society against the state and the self-organization of society (Foley & Edwards, 1998).

In Latin America, civil society's revival occurred in the mid-1970s as resistance against oppressive states; with the return to democratic rule, the idea of civil society helped to reinforce the prospects and sustainability of the transition to democracy. Used by the social movements

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47 In the US, the de Tocqueville tradition of bonds of solidarity held together through networks of voluntary associations was taken up by Putnam (2000), who stressed a rich associational life in building trust, social capital and solidarity.
and later elaborated by academics (Avritzer, 1994, 1997; O’Donnell & Schmitter, 1986; Oxhorn, 1995; Weffort, 1984), civil society was conceived of as social movements and associations able to independently organize from the state and the market. The context, however, of high levels of inequality combined with societies failing to deal with such problems, in addition to cultural heterogeneity, informal markets and a liberal democracy “that is characterised by an enormous distance between political elites and institutions” frames the concept of civil society in Latin America (Dagnino, 2010: 24). For Pearce (1997), the concept of civil society encourages questions about the difference that a diverse associational life makes in the development of a rights-based state in Latin America.

Foley and Edwards (1998: 8) note that “proponents of civil society in Latin America often translate ‘society against the state’ into visions of a unitary society against the state and above the ‘dirtiness’ of politics.” Yet as Foweraker (2001) points out, social movements have developed with close interactions with the state. The idea of state-society synergies underlines how states encourage strong associations while such associations may also promote strong state programs (Abers, 2000; Evans, 1997; Ostrom, 1996). Such synergies help to understand the interactive relationships between the state and civil society, going beyond state-centred and society-centred work (McCarney, 2003). Although civil society as a sphere separate from the market and the state has long been recognized, there is a need to acknowledge that the lines between these realms often blur as actors interact in complex ways (Donaghy, 2013; Tendler, 1997).

In studies of Brazil, patrimonialism, or the private appropriation of state resources by public servants, politicians and the private sector, has been used broadly in contrast to an ideal separation between the state and the market (Faoro, 1975; Schwartzman, 1973). Indeed, much

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48 While my purpose here is not to exhaustively explore the meaning of civil society in Latin America, several others have provided a thorough analysis (Avritzer, 1997; Dagnino, 2010; Feinberg, et al., 2006; Pearce, 1997).
work has documented the role of the state in co-opting civil society groups, producing contradictory results. For example, one contradiction of participation in the policy process is co-optation in which inclusion to control community members occurs (Abers, 2000; Wallerstein, et al., 2011). This process has often been referred to as state corporatism, in which political power is used to co-opt the public (Schwartzman, 1975; Vianna, 1976). Foweraker (2001: 845) distinguishes clientelism, a dominant characteristic of Latin American political systems, from corporatism, although “corporatist institutions in Latin America are often imbued with and strengthened by patterns of clientelism.”

Corporatism and patrimonialism may converge through patron-client relationships, nepotism and unfair advantages for certain sectors (Sorj, 2000). I follow Maricato (2009) who defines patrimonialism (or clientelism) with the following characteristics: 1) personal relationships and exchange of political favours which are central to local governments; 2) the public sphere is considered as private and personal; and 3) a direct relationship between patrimonial property, political and economic power. Indeed, clientelism – a political system based on exchange of favours (*troca de favores*) between elected officials and their supporters – occurs in Brazil at many scales including the local (Diniz, 1982; Hagopian, 1996). In Brazil’s context of complex state-society relations, residents’ associations and local governments have engaged in patronage politics through deals made in exchange for access to public services or neighbourhood improvements (Auyero, 2000; Gay, 1994, 1999). Such interactions thus frame the study of civil society in Brazil.

5.2. **The context of civil society in Brazil: The rise of associations**

In Brazil, political culture has been dominated by dependence and clientelism, organized around a hierarchical vision of society (Baiocchi, et al., 2011). Clientelism, or *troca de favores*, has been
prevalent in Brazilian politics nationally and locally. In the long dictatorship of Getúlio Vargas (1930-1945), populism was used to ensure political support for the regime through “an official apparatus” to control the workers’ movements and discourage the free expression of popular demands (Kowarick & Bonduki, 1994: 128). While Vargas was the first Brazilian president to value the workers’ participation in national politics through state-sanctioned unions, social movements “were little more than political instruments” and far from democratic (Duquette, 2005: 40; Wolfe, 1994). During these years, social movements were confined to the labour and agrarian movements, with occasional mobilization by the students and teachers (Avritzer, 2007).

Neighbourhood associations began as early as the 1950s in Brazil. Known as Societies of Friends of the Neighbourhood (Sociedades de Amigos do Bairro, SABs), they gained relevance as vehicles of political support for populist governments, mobilizing support for clientelist politicians (Abers, 2000; Jacobi, 1982). Since the 1940s, SABs have played a leading role in mobilizing political support for clientelist politicians in Brazilian urban areas (Kowarick & Bonduki, 1994). Such neighbourhood-based associations appeared on the peripheries of cities, often with the support of the progressive branch of the Brazilian Catholic Church, demanding sanitation, transportation, housing and in building an understanding of exploitation, injustice and capitalism as it was playing out in Brazil (Caldeira, 1984; Fernandes, 1995).

During the dictatorship (1964-1985), community mobilization was kept alive through networks of Ecclesiastical Base Communities (CEBs), an important ecclesiastical innovation in Latin America (Mainwaring, 1984). The Catholic Church established CEBs in the 1960s to work with the popular sectors, disseminating ideals of equality and citizenship, and helping

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49 Clientelism has its origins in anthropology and sociology, where it refers to the hierarchical social relations that have been prevalent in rural peasant societies. In the 1970s, clientelism was used by political scientists to understand “who gets what,” understood as exchanges of private goods between actors of unequal power – the patron-client model (Schmidt, et al., 1977).
neighbourhoods to organize. CEBs were extended into *favela* communities through pastoral activities such as the *Pastoral de Favelas* (supporting *favelas* dwellers) and *Pastoral da Terra* (supporting land struggles). Progressive pastoral agents developed close ties with the poor, providing a space for the discussion of issues concerning informal settlements, community organizing and the development of leaders (Huchzermeyer, 2004; Mainwaring, 1986). The pastorals assisted social movements by offering legal advice to leaders, providing lawyers’ services and rooms for meetings and offering a complementary role to the CEBs, which provided ideological rather than technical support (Mariz, 1994). Through CEBs and pastoral activities, the Church challenged issues of social rights on issues of land and housing and the legal position of *favelas* (M. R. Afonso & Azevedo, 1987; Mainwaring, 1986).

During rapid expansion on the peripheries of cities, many groups spontaneously emerged with the support of the Catholic Church, professional groups, organizations and popular movements to focus on *favelas*, poor neighbourhoods and living conditions in Brazilian cities (Gay, 1990; E. Rodrigues & Barbosa, 2010). Various segments of the political left in Brazil also played an important leadership role in these movements. Focusing on labour and capital conflicts, factory and neighbourhood organizing and literacy, by the 1970s the left helped to develop the leadership capacities of these movements (Huchzermeyer, 2004; Mainwaring, 1987). Growing in number and visibility between 1961 and 1964, a central inspiration of these movements was an urban and collective experience of marginalization and abandonment (Caldeira & Holston, 2005). Yet because of this exclusion, these groups “developed particularly rich repertoires of organization and even contention, which were quickly activated when there were openings in the political opportunity structure” (Baiocchi, et al., 2011: 36). This ended

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50 *Base* can be translated as grassroots while *basismo* refers to a belief in the capacity of the base to resolve their own problems without the assistance of the intellectuals, political parties or other outside support (Mainwaring, 1984).
abruptly in 1964 with the military dictatorship; most collective action was repressed, leaders were imprisoned and the activism in neighbourhood associations declined (Boschi, 1987).

Transition to democratic rule began in the mid-1970s with *distensão* (the reduction of tensions); repression gradually eased, including devolved political power to civil society (Cava, 1989). The role of the Church was replaced by unions, political parties, neighbourhood associations and progressive professional groups. The first major moment of massive mobilization was in 1978 with a strike initiated by steel workers in the São Paulo metropolitan area, followed by a decade of protest. One result of this mobilization was the creation of the Workers’ Party (*Partido dos Trabalhadores*, PT) in 1980, combining efforts of urban and rural workers, intellectuals and the middle-classes.

The main turning point, however, was the outburst of popular political participation in negotiating Brazil’s future as “neighbourhood associations ... became sites for local contestation and innovation” (Baiocchi, et al., 2011: 42). In the mid-1970s, growing mobilization denounced the illegitimate character of the military governments. Directed against the institutionalized politico-economic order sustained by the military rulers, these movements suggested a partial erosion of the military’s domination and ability to control civil society (Mainwaring, 1987). These neighbourhood associations “formed an associational network – albeit a loose one – of collective organizations that threatened to undermine the vertical ties that had always formed the basis of the clientelist relationship between civil society and the political sphere” (Gay, 1990: 650). Through federations of neighbourhood associations, these groups established different vehicles of popular representation and mobilized locally, focusing on demand-making while connecting to the national networks that emerged at this time (Gay, 1990).

Popular mobilization through organized social movements began in earnest in the 1980s,
yet entirely unlike anything that Brazil had experienced before (Duquette, 2005; Gay, 1990). Social movements were recognized as new forces in the political scene; while they grew stronger, they gained a new political dimension as the state came to be viewed as the addressee of their claims (Abers, 2000; Baiocchi, et al., 2011; Mainwaring, 1989). Social movements have contributed to the redefinition of the relations between the state and society in Brazil. Indeed, social movements in Brazil “have acted principally as groups exerting pressure on the state, to obtain responses to their demands” (Jacobi, 1989: 150).

These movements also engendered a new politics of citizenship based on the “right to have rights” (Dagnino, 2005: 153). The push for democracy by the social movements around a form of ‘new’ citizenship solidified around claims or full citizenship, evolving into a dynamic and broad-based discourse framed in the language of social justice and liberal rights-based claims against the rights infringements that occurred during the dictatorship (Dagnino, 1994, 2003). Organized around specific and spatially determined claims and demands, Brazilian social movements have been concerned with the provision of public goods and services, calling for the improved quality of everyday urban life and promoting changes to public policies.

_Favela_ associations became significant agents of urban politics before the 1970s, demanding land regularization as a condition of the full integration of _favela_ dwellers into urban society. The organization and political mobilization of _favela_ dwellers had increased steadily, following decades in which their rights went unrecognized (Fernandes, 1999; Huchzermeyer, 2004). By the 1980s, a _favela_ movement coalesced into a widespread national movement (E. Rodrigues & Barbosa, 2010). These movements, including the neighbourhood-based ones and issue-based movements eventually “scaled up” (Baiocchi, et al., 2011: 43) and created “an incipient degree of popular unity and a precarious identification of interests by the diverse social
segments which had been equally excluded by the dominant forces” (Fernandes, 1995: 38).

In the democratic transition, the urban social movements have been credited for transforming urban space perceptions and including citizenship in the consolidation agenda, “not only in forcing the authoritarian regime’s abertura, or political opening, but also in shaping the actual terms of the transition” (Baiocchi, et al., 2011: 42). In 1984, the military government allowed a civilian president to assume office in March 1985, bringing twenty-one years of military rule to an end.51 The urban reform movement, however, was already taking hold.

5.2.1. The urban reform movement

Only in the 1970s did Brazil’s ‘urban question’ begin to be considered broadly, brought on by social inequalities in urban areas and growing stress on urban infrastructure. In 1963, during growing social mobilization calling for the ‘Base Reforms’ (Reformas de Base) that characterized the João Goulart government (1961-1964), urban development was raised as a way to solve the country’s housing problems (Bassul, 2010; Fernandes, 1995). In the 1960s, seminars took place in academic circles around the idea of urban reform, questioning Brazilian urbanization from a Marxist perspective, using concepts of segregation, exclusion, inequality and re-thematizing the question of housing (Menicucci & Brasil, 2010; Monte-Mór, 2007). Recognizing that the planning of urban development was a fundamental task of government, these urban reform proposals focused on centralized planning and strong governmental intervention to ensure access to land and housing for low income populations. Ironically, these early proposals for urban reform were used by the subsequent military regime in their housing policy (Maricato, 1996).

Within a wider movement promoting Base Reforms, progressive Brazilian architects and the Institute of Architects of Brazil (Instituto de Arquitetos do Brasil, IAB) held a seminar on

51 The first state governors were elected in 1982 and the first election for president was in 1989. Elections were held in 1985, the first time since 1966.
housing and urban reform at the Quitandinha Hotel in Petrópolis in Rio de Janeiro State, known as the ‘Quitandinha Seminar.’ A proposal emerged from this conference outlining the history of popular struggle for housing and calling for greater social justice in cities (Bassul, 2002). Though these claims took twenty years to take effect, the result was encouraging as there was “a focus on urban planning grounded in good urban technique, not to mention participatory processes that incorporated the demands and views of different segments of the urban population in the formulation and the implementation of policies” (Bassul, 2005: 37).

In the early 1980s, a national movement for urban reform was “born of criticism of the unsuccessful technocratic/authoritarian planning model” that had prevailed up to that point (Ribeiro & Santos Junior, 2001: 61). Through the Pastoral Land Commission (Comissão Pastoral da Terra, CPT) of the mid-1970s, a land-related initiative of the Catholic Church that advised the urban social movements, the National Network for Urban Land (Articulação Nacional do Solo Urbano, ANSUR) was established in the early 1980s. This brought together the urban movements’ demands, contributing to a unified urban reform movement (Maricato, 1994).

The National Movement for Urban Reform (Movimento Nacional de Reforma Urbana, MNRU) was formed in 1982 by popular movements, neighbourhood associations, NGOs, trade unions and professional organizations with the aim of developing a proposal for urban reform during the National Constituent Assembly (1986-1988), a congressional assembly charged with crafting a new democratic constitution for the country. For the MNRU, urban reform meant structural reforms with a spatial dimension, a focus on reforming the institutions regulating urban space to achieve social justice, combining alternative land policy, community upgrading and participatory planning (M. L. d. Souza, 2005). The key objective was to institute new norms of urban policy based on the following principles (Ribeiro & Santos Junior, 2001):
Democratic city management to expand citizenship and enhance efficiency of urban policies;
- Delegating urban policies to municipalities and adopting mechanisms for direct participation of citizens in city governance to alter intergovernmental and government-citizen relations;
- The public regulation of land use through urban policy tools to guarantee the social function of land and the fair distribution of the costs and benefits of urbanization;
- Prioritization of urban investments fulfilling the collective needs of consumers subjected to extreme social inequality.

In the Constituent Assembly, the MNRU gathered over 12 million signatures supporting popular draft provisions for urban reform in the upcoming constitution (Avritzer, 2007).

Formulated, discussed and signed by various organizations participating in the MNRU, the Popular Amendment on urban policy was eventually submitted to the Constituent Assembly in 1987. Its text recognized the following principles: the autonomy of municipal government; the democratic management of cities; the social right to housing; the right to the regularization of consolidated informal settlements; the social function of urban property; and the need to combat land and property speculation in urban areas. The MNRU fought to include instruments for the social function of property and the right to the city in urban planning policy.

Even with the MNRU’s strength, the content of their proposals ultimately became diluted, resulting in just two articles referring to urban policy in the 1988 Constitution: Article 182 on the social function of property and 183 on usucapião urbano (M. L. d. Souza, 2006a). Despite limited gains in some of the Constitutional provisions, the MNRU accepted the final result: “The Urban Reform Movement then decided to make the most of the situation and subvert the approved provision by consciously investing in the formulation of municipal master plans throughout the country that were both inclusive and participatory” (Fernandes, 2011: 181). Following the approval of the Constitution in 1988, the MNRU organized the first National Forum for Urban Reform (Fórum Nacional de Reforma Urbana, FNRU). The FNRU was guided by three principles:

- The right to the city and citizenship: a new logic to universalize access to urban services, just urban living conditions and the participation of urban dwellers;
- Democratic city management: to plan, produce and govern cities through participation; and
The social function of the city and of property: a common interest regarding individual property rights, implying a socially just and environmentally balanced urban space.

Between the establishment of the 1988 Constitution and the Statute’s enactment in 2001, the national Congress debated the enabling legislation required to define the concept of social function more precisely and the mechanisms for its implementation. The Statute resulted from an intense negotiation process among the urban reform, social and environmental movements, the real estate sector, municipalities, states and federal government institutions dealing with housing and the environment. After the bill’s approval, the political struggles grew stronger between the conservative sectors and the urban reform movements over the participatory elements in the bill (Bassul, 2005; Grazia, 1993). The movements were able to incorporate some of their agenda into the bill, including the right to the city as a conception of urban law (Avritzer, 2009). Following thirteen years of discussion, the Statute was enacted on July 10, 2001. Figure 5.1 shows the events involving the urban reform movement and the approval of the Statute.

5.3. The rise of associationalism in Niterói

Between the 1940s and 1960s, hundreds of neighbourhood associations were established in the Rio metropolitan area. In Niterói, only two of these associations survived the military coup of 1964 (Mizubuti, 1986; S. d. Nascimento, 2006). Neighbourhood associations became stronger in
the late 1970s and early 1980s with migration to Niterói, specifically to Pendotiba region (see Figure 1.5). The rise – and rebirth – of popular social movements guided by demands in Niterói started in 1978 at the time of Mayor Moreira Franco of the Brazilian Democratic Movement (Movimento Democrático Brasileiro, MDB), the only viable opposition party of the time (see Figure 3.2 for a timeline of Niterói’s mayors) (Mizubuti, 1986). The movements beginning in the 1970s in Niterói were guided by demands focused on achieving basic rights (Mizubuti, 1986; S. H. d. Silva, 2011). As former mayor João Sampaio noted, “many of the questions were specific issues of demand, the so-called collective consumption goods” (P.I., 18/3/11).

The description of associations in Niterói guided by demands fits within an approach based on ‘mediation,’ referring to “conduits along which demands and claims travel in ways that invariably transform the demands” (Baiocchi, et al., 2011: 32). Mediation shapes the collective identities of civil society actors, involving a transmission between actors and sites, and civil society and the state. Mediation involves communication between several disconnected groups, involving the conciliation of group identities; it often takes the form of clientelism to guarantee access to scarce goods or services in exchange for votes or political allegiance (Baiocchi, et al., 2011; Mische, 2008). Second, mediation may also be carried out by collectives of associations, or umbrella organizations. Conceived as alternatives to clientelist forms of mediation, these organizations “were spaces of negotiation that articulated joint platforms that were then presented to the authorities” such “that particular demands come to be related to each other” (Baiocchi, et al., 2011: 32). These two forms of mediation vary in the extent to which they enhance democracy, conceived as a spectrum between two opposing points and those in

52 The MDB later became the Brazilian Democratic Movement Party (Partido do Movimento Democrático Brasileiro, PMDB). While the MDB was considered an opposition party of the time, it had close ties to the military and was dominated by clientelist politicians tied to Chagas Freitas (Diniz, 1982; Hagopian, 1996).
between (shown in Figure 5.2). While clientelism establishes inequalities between actors, mediation through democratic associations promotes horizontal relationships, equivalence of demands and a sense of publicness. Between these two extremes, mediation exists on the part of individual social movement activists, or single organizations (Baiocchi, et al., 2011).

In Niterói, the movements of the 1970s and 1980s developed with some level of organization, most frequently with commissions which preceded the formalization of residents’ associations (Mizubuti, 1986). Following the establishment of a residents’ commission in Pendotiba, in 1977, the Union of Residents’ Associations of Pendotiba, Piratininga and Itaipu (União da Associações de Moradores de Pendotiba, Piratininga e Itaipu, UNAMPPI) emerged with demands for the territorial organization of the Oceânica region, due to increased migration and land conflicts occurring in the region (Bienenstein, 2001; S. H. d. Silva, 2011). In 1979, evictions in the Oceânica region “marked the start of the movement, which was able to mobilize, coordinate and organize the squatters living in the affected favela” (Bienenstein, 2001: 247). This movement gained strength as new associations joined UNAMPPI; these land struggles ensued, promoting the creation of the Federation of Associations of Residents of Niterói (Federação das Associações de Moradores de Niterói, FAMNIT) in 1982. Both UNAMPPI and FAMNIT fit into the category of associations of associations described by Baiocchi et al (2011).

The ‘renaissance’ of these movements in the late 1970s is attributed to several factors. First, a long period of silence imposed on the popular movements by an authoritarian regime that had demobilized them in the 1970s. Second, the election of Moreira Franco in 1976 of the

![Figure 5.2: Spectrum of mediating roles of civil society (based on Baiocchi et al., 2011)](image-url)
MDB opened a space for the participation of the ‘popular’ classes through municipal health programs. This questioning of everyday issues politicized the organized movements, surely “one of the key levers of a substantial part of the associationalism that animated the inhabitants of Niterói in the late 1970s” (Mizubuti, 1986: 271).  

Third, the electoral victory of the MDB in the mid-1970s raised public awareness. Fourth, the growing participation of representative civil society entities and a small fraction of the Catholic Church stimulated community organizations. Fifth, the degradation of the life quality of the majority of the population including the middle classes as a result of rising inflation and low salaries. Finally, a common aspiration for restored citizenship, starting with the movement for direct voting (Mizubuti, 1986).

In the 1980s, while the struggle continued to be localized, the movements gained a long-term vision, aiming to define housing and urban land policies at the national and state levels. FAMNIT took up the flag of a struggle for land and shelter, uniting the associations facing issues related to land ownership in Niterói (Bienenstein, 2001; S. d. Nascimento, 2006).  

According to one interviewee, the movement defending the right to land in Niterói “was an example for Brazil” (P.I.,12/4/11). The 1980s was a period of mobilization of Niterói’s residents’ associations, who continued to fight for improved living conditions (S. H. d. Silva, 2011). One of FAMNIT’s goals was to “struggle permanently with municipal, state and federal governments in defense of the interests and necessities of the population of Niterói to achieve health, education, sanitation, housing, security and the conditions of life in general” (Mizubuti, 1986: 254). This objective positioned FAMNIT as an ”interlocutor of demand struggles“ and a mediator (Baiocchi, et al., 2011; Mizubuti, 1986: 255). The struggle focused on land tenure and shelter upgrades,

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53 Despite Moreira Franco’s key role in this opening, he was a centrist pro-business politician, but was not especially democratic, especially from the perspective of security policy and human rights as governor of Rio State. His term ended in the early 1990s with high rejection rates (M. d. M. Ferreira, 2006; Soares & Sento-Sé, 2000).

54 In 2011, FAMNIT had about 130 affiliated residents’ associations, as noted by Silva (2011) and other interviewees.
supporting residents’ associations at three levels of government and pushing the municipal
government on land issues. Nationally, FAMNIT participated in the MNRU (Bienenstein, 2001).55

Compared to contemporary movements, the strength of civil society during the 1980s was
noted by many interviewees: “When the dictatorship was ending, in the late 1970s and early
1980s, [civil society] began to have a larger expression” (P.I., 18/3/11). Civil society mobilization
in Niterói also experienced highs and lows (Mizubuti, 1986). One interviewee referred to the
movements’ “comings and goings” that shifted with each government (P.I., 12/4/11). In
Mizubuti’s (1986) analysis in Niterói’s peripheral neighbourhoods, the residents experienced
internal conflicts, almost always reflecting political partisanship based on the Democratic Labour
Party (PDT), Workers’ Party (PT) and the Brazilian Communist Party (PC do B). During FAMNIT’s
formation, there was a constant presence of political party militants to rally activists for the
parties’ ranks (S. d. Nascimento, 2006). However, FAMNIT was never able to translate the
associations’ demands into policy change, although the means of participating were more
restricted during the 1980s without the legal clout of the Constitution and the Statute.

5.3.1. The rise of new civil society groups in Niterói

Since the late-1990s, the critical mass of Niterói’s civil society has resided with several additional
groups: the Community Council of the Orla da Baía (Conselho Comunitário da Orla da Baía,
CCOB) and the Community Council of the Oceânica Region (Conselho Comunitário da Região
Oceânica, CCRON). There was also an attempt to found a similar organization in Pendotiba,
although this did not take hold.

CCRON came together in 1989 as a result of a perceived lack of services in the newly

55 FAMNIT is a member of the Federation of Residents’ Associations of the State of Rio de Janeiro (FAMERJ), the federation of
middle-class residents’ association. Niterói’s residents’ associations are not part of the Federation of Favelas of the State of Rio
de Janeiro (FAFERJ), perhaps because of prejudice of favelas in Niterói.
expanding Oceânica region. One of CCRON’s directors noted that the problems started in Cafubá, a sub-region of Oceânica, through a focus on the lack of land titling and piped water: “We found that the Oceânica region, not just Cafubá, depended on many services to be done, principally basic sanitation. So the neighbourhood associations came together and created CCRON ... It was necessary to have a larger group of people to have bargaining power and claims with the government” (P.I. 29/3/11). Because the Oceânica region was developed in the 1970s, it lacked infrastructure including paved streets, sanitation and piped water. As a result, parts of Oceânica’s population have been active in demanding infrastructure for the region.

CCRON represents 76 residents’ associations, as well as condominiums and clubs from the Oceânica region, with the purpose of improving the region’s life quality. CCRON is highly organized, with elections for the directors, assemblies and special elected delegates focusing on specific issues. Yet according to a member of an affiliated residents’ association, “they don’t know the reality ... of where they live” (P.I., 25/1/11). An informant notes that this discord is natural because the interests of the middle- and upper-classes and the poor population are contradictory. Nevertheless, CCRON is active in Niterói’s local politics, especially in the Oceânica region, with participation based on many years of work and engagement. CCRON focuses on the preservation of the environment in the region. Regarding CCRON's approach to involvement, the organization is technical, including professionals such as engineers and architects. According to one of CCRON’s directors, “we try to do things as technically as possible, and with this we manage a greater intimacy with the state” (P.I., 27/4/11). However, CCRON operates according to the “idea of classical citizenship”; it is a middle-class group and is “very correct and very active, but within a given [professional] profile” (P.I., 8/11/10). The ample dialogue between CCRON and the municipality provides many opportunities for discussion and deliberation.
Finally, CCRON is a non-partisan organization, with no affiliations to any parties.

A second community council, CCOB was founded by community leaders in 2001 to legitimize discussions of the new master plan and PUR (Menezes, 2011). According to a former planner, CCOB emerged when the government “closed” and the population came together (P.I., 13/1/11). CCOB’s objective is to “congregate civil associations” and to “defend the homogeneous and common interests of its affiliates” within the Praias da Baía region (Conselho Communitário da Orla da Baia, Undated). Among interviewees and from interactions with CCOB members, it is clear that CCOB is a radical and highly critical, left-wing, conflictual organization; because it is so radical, it has not been able to form governmental alliances. CCOB often takes issues to the public ministry instead of discussing with the prefeitura. The directors consider CCOB to be a nonpartisan organization, like CCRON. Indeed, another reason for CCOB’s creation was to oppose FAMNIT, which it sees as being allied with the government. CCOB represents the entire Praias da Baía region, although the directors note that this is ‘complicated’ and some interviewees expressed doubt about CCOB’s representativeness as it covers such a large area.

While CCRON’s approach is technical, some interviewees noted that CCOB’s tactic is ‘going to the streets’ although it often lacks concrete proposals. By contrast, CCRON takes a more elitist approach. Both groups work to differing levels with FAMNIT. Although CCRON has a more friendly relationship with FAMNIT than CCOB, they do not work collaboratively. CCRON and CCOB are dominated by the middle classes. Finally, because they have different ideologies, they clash over how to respond to issues, such as planning visions for particular neighbourhoods in Niterói (M. A. J. Carvalho, et al., 2009). Figure 5.3 shows civil society in Niterói over time.
5.3.2. Evidence for a declining civil society in Niterói?

Among interviewees in Niterói, there was a perception of a declining civil society. Moura (1993) and Mizubuti (1986) refer to the discredit and decay of Niterói’s associations in the late 1980s with a retraction of participation.\(^{56}\) According to a city bureaucrat, civil society in Niterói declined, becoming more passive as compared its strength during the 1980s: “The community movement has lost a lot of strength. It was much stronger in the 1980s ... it had more strength, was much more representative, much more active” (P.I., 14/11). Many interviewees noted the difference between civil society’s strength during the 1980s and today, pointing to a lack of autonomy and representation among civil society in Niterói. Thus, a former planner noted that civil society “is still very much tied to the space that the local government opens for it ... [but] society alone cannot press the government to the point of occupying this space ... This shows a lack of autonomy of society to occupy its space for participation” (P.I., 20/12/10).

\(^{56}\) For Moura (1993), the years between 1978 and 1983 involved amplification and consolidation of the associative movement in Niterói while the period between 1983 and 1986 was a period of continuity.
The perception of a declining civil society in Niterói is supported by evidence from FASFIL (Pesquisa das Fundações Privadas e Associações sem fins Lucrativos) on private foundations and non-profit associations for 1996, 2002, 2005 and 2010. The FASFIL survey lists ten categories of organizations. I focus on development and defense of rights, which includes residents’ associations. This data shows an increase in organizations between 1996 and 2005 and a small decline in 2010, which I show for the development and defense of rights category (Figure 5.4). In the 1990s, data by Johns Hopkins’ Center for Civil Society Studies found 219,000 nonprofit organizations in Brazil (Landim, 1993b), slightly higher than FASFIL’s data for 1996.

I follow Donaghy (2013) who evaluates civil society density based on the FASFIL survey. Using FASFIL data for Niterói in 2010, the number of organizations per 100,000 population is higher nationally than in Niterói for development and defense of rights (Figure 5.5). This data is limited by the fact that it does not include data for residents’ associations and is only available

![Figure 5.4: Development and defense of rights, by sub-category, 1996 - 2010 (IBGE, 2004, 2008, 2012).](image)

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57 See www.ibge.gov.br/home/estatistica/economia/fasfil/2010/ for more information. FASFIL is carried out by the Brazilian Institute of Geography and Statistics (IBGE).

58 Development and defense of rights includes “activities of political organizations and other related, unspecified activities” such as residents associations and community centers, among others (Johns Hopkins Center for Civil Society Studies, 2010: 8).


60 This data is from the Secretariat of the Federal Revenue (Secretaria da Receita Federal) for private organizations exempted from income tax in 1991 (Koga, 2012). For more information on subsequent stages of this project, see Landim et al (1999).
for 2010. Yet quantitative evidence of organizations in this category (such as residents’ associations) is remarkable given that associations in Brazil are often informal, not registered and hard to quantify (Koga, 2012; Landim, 1993a). Indeed, Baiocchi (2002: 50) points to the challenge of “estimating the number of functioning voluntary associations” over time and the difficulty of establishing the magnitude of changes. Despite limitations, this data supports the narrative of a decline of some parts of civil society, such as residents’ associations in Niterói.

5.3.3. A changing landscape of civil society

Encarnación (2006) argues that in Latin America, the return to democracy led to a retraction of civil society. For some observers, the decline of civil society in democratizing countries appeared to be an irreversible part of democratization, which was hit by major international and national changes (Canel, 1992; Hipsher, 1996; Pickvance, 1999). As Lavalle and Bueno (2011: 416) note, “after the celebratory diagnosis of a new civil society revival in the 1990s, ... scholars became either more cautious, skeptical, or overtly critical.” Symptomatic of this stance, a political aide to

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61 While there are few quantitative studies of associations, Santos (1992) refers to the growing numbers and scope of residents’ associations between 1920 and 1986 in São Paulo and 1946 and 1987 in Rio, based on municipal registries of associations in notary publics (cartórios) (Baiocchi, 2002).

62 Until the FASFIL data was developed, there was little official statistical data available on associations in Brazil (Landim, 1993a). Although not an official source of data, Baiocchi (2002) used a listing from an umbrella organization of Porto Alegre’s residents’ associations, additional city hall sources and several surveys to measure associations in Porto Alegre.
Marcelo Freixo, a progressive state deputy, noted that: “In Brazil, we observe a situation in which social movements and trade unions no longer have the same level of toughness and independence that they had in relation to other governments” (P.I., 12/5/11). In Porto Alegre, Baiocchi (2002) shows a decline in land invasions and protests at city hall, a less confrontational movement and less mediation between association presidents and government bureaucrats.

Indeed, the perception of social movement decline in the 1990s occurred in other parts of Brazil. Hochstetler (2000) recounts how the grassroots mobilizations of the 1970s and 1980s collapsed after the campaign for diretas ja (direct elections of the civilian president in 1985). While this was “the crowning moment of oppositional protests” it was also “their last year” (R. C. L. Cardoso, 1990: 169). From that point on, more traditional political actors regained control while social movements faced “new dilemmas and internal conflicts” (Mainwaring, 1989: 169).

Various reasons have been suggested for this decline. One is a range of economic problems including unemployment, inflation and capital from international funding partners (Encarnación, 2006; Foweraker, 2001). In this era of reduced investment in social programs, a declining labour market and the economic policies adopted during the 1980s and 1990s by the federal government, “people started to adopt individualistic behaviour, trying to keep afloat in the maelstrom that draws all to the common pit of misery” (Bienenstein, 2001: 328-329). Others suggest that following the return to democracy, there is no authoritarian state to energize oppositional movements. Landim (1993a) notes the polarization between civil society and the state decreased following democratization and the increasing diversity among associations. Another explanation is that social movements lost steam following the return to democracy while others sought out more permanent forms of institutionalization (Alvarez, 1993).

63 In 2012, Marcelo Freixo of the Socialism and Freedom Party (Partido Socialismo e Liberdade, PSOL) and an important advocate for human rights in Rio, ran for mayor of Rio, losing to Eduardo Paes of PSDB.
Several factors contributed to the perceived changes within Niterói’s associations. First, in the 1990s, interviewees and the media (Figueiredo, 2009) reported lower participation in residents’ associations as a result of the co-optation of leaders in political positions, some linked to PT, but mainly to the PDT, which had exerted an influence in politics and the voluntary sector in Niterói and Rio State since the late 1980s (Baiocchi, 2002).\footnote{PDT was founded in the late 1970s by Leonel Brizola, following the political opening of the military dictatorship. A centre-left party, PDT has a labour base with ties to residents’ associations and unions in Rio State, a PDT stronghold (Baiocchi, 2002).} Referring to FAMNIT’s co-optation, a municipal bureaucrat noted that, “all the community leaders, in one form or another have become employees or assumed other positions in the municipality or with councillors; they all became canvassers of some political groups” (P.I., 14/1/11). According to sociologist Renato Figueiredo, “With the passage of time and the appointment of several leaders by the parties, came decay” (Figueiredo, 2009). For observers in Niterói, FAMNIT exhibits co-optation by state and local governments and the politicization of its leaders. With the co-optation of leaders and the politicization of Niterói’s associations, civil society lost its political autonomy, depending instead on resources and favours (S. H. d. Silva, 2011). Indeed, clientelistic ties to traditional party machines added to the demobilization of grassroots movements (Foweraker, 2001).

Many interviewees blamed PDT for co-opting the residents’ associations, yet its use in Niterói was initiated during an earlier PMDB municipal government (then MDB). For one interviewee, the associations were created “to control those neighbourhoods” (P.I., 8/11/10). According to Marcelo Freixo’s political aide, clientelism is at the heart of Brazilian politics and:

> The *favelas* end up getting inserted into these traditional relations of Brazilian politics ... In Rio de Janeiro State there is a tradition relating to this co-optation politics that we can see in the government of Jorge Roberto Silveira, who is from PDT and Leonel Brizola... The *favela* started to be seen more as having power, political power (P.I., 12/5/11).

When the PDT government assumed power in 1989, it created a secretariat of community...
issues and brought residents’ associations in to be co-managers in the Family Doctor Program (Médico de Familia), a neighbourhood-based health care model developed in Niterói in the early 1990s (Mascarenhas & Almeida, 2002). This co-management role “revived the political role of these associations” but failed to result in their regained strength (Oliveira & Mizubuti, 2009: 75).

Indeed, under Silveira, there have been close interactions with residents’ associations.

According to interviewees, clientelism occurs via the Family Doctor Program: leaders often fear retaliation for voting against the government. Nascimento (2006) shows that clientelism often occurs when association presidents seek benefits for their friends and family, contributing to the discredit of the residents’ associations. According to a former planner, many FAMNIT members “do not want to speak against [the government] because they have an interest and have family employed” in the prefeitura (P.I., 6/1/11). This interest refers to the Family Doctor Program and to the fact that many FAMNIT members, or their families, have positions in the prefeitura. As a FAMNIT member noted, “they end up voting with the government because it’s an imposition of the government on them and they respond in this way. There’s no freedom for a collective interest to exist … It’s the fear of government retaliation” (P.I., 12/4/11). For Rolnik (2011: 252), patronage practices also “penetrate and structure power relations in civil society.”

Second, when civil society’s demands are achieved to some extent, the need for an active and independent civil society is reduced. In reference to demands for land tenure, one interviewee noted that, “it was an achievement. But this achievement, in a way, demobilized people, because the gains are already won, so this is no longer a problem. So I don’t have to mobilize more to ensure that I will have possession of the land … Land tenure, land ownership, this is no longer a demand of the population” (P.I., 14/1/11). Similarly, another interviewee noted that civil society in Niterói was strong in the past, however, “when it made achievements
the movement fizzled out, it was a demand-making movement” (P.I., 18/1/11).

Relatedly, through the democratization of institutions at a national level, the state began to both centralize and guarantee full rights. While formerly there was a risk of losing possession of land, the 1988 Constitution guaranteed access to land. However, in this process, social movements stopped being the generators of these rights, while the state began to take on this role in proposing the rights previously claimed by the social movements, uniting disparate demands in a single language of rights, as Foweraker (2001: 849-850) notes:

The state restored the universal promise of individual rights, as the question of citizenship moved to the constitutional sphere, and so answered the rights demands of many of the grassroots movements. Without recourse to the language of rights, their objectives lost focus, and their political energy began to dissipate.

In Niterói, civil society is still structured around making demands, yet based on public services rather than land tenure; surviving in the city thus became the focus (Foweraker, 2001). Overall, demands for housing and land (ie. rights-based demands) mobilized civil society in Niterói: “what really mobilized the establishment of residents’ associations was land possession. This is no longer an issue” (P.I., 14/1/11). These social movements “need to incorporate in their agenda rights which are not fully realized, but which are historically defended in Brazil” (P.I., 21/3/11).

Third, although demands for rights were achieved legally (at the national level), another factor in the demobilization of civil society in Niterói was a frustration that the prefeitura had not responded to specific demands made by civil society after many years. While demands for public services mobilized civil society in Niterói, the municipality’s failure to deliver such services caused frustration and a retraction of civil society. Thus, “the failure to obtain some kind of material response has nearly always [in Latin America] led to demobilization” (Foweraker, 1995: 78). As noted by an engineer involved in the city’s governance for many years: “I think there was also a demobilization, to the extent that there was frustration ... Insofar as they mobilized and
demanded, and the municipality did not respond, there was a frustration, it generated a lot of frustration” (P.I., 14/1/11). Thus, for some interviewees, the de-articulation of Niterói’s civil society was a result, in part, of the *prefeitura*’s lack of action.

Finally, according to several sources, there were not enough leaders to sustain civil society’s autonomy. According to Bienenstein (2001), fewer leaders in the land tenure movement meant it was unable to occupy the many fronts available for participation after the 1988 Constitution. There were few leaders who knew the nuances of planning, could conduct large assemblies and discuss issues publicly. Similarly, Nascimento (2006) points to fewer leaders of associations in the early 1990s and less renewal of the movement.

The discussion of social movement decline, however, is considerably more nuanced than this reading suggests. While these changes may “create the conclusion of some observers that social movements have declined in Brazil” (Hochstetler, 2000: 170) since the return to democracy, this type of perception in Niterói results from changes within civil society rather than an overall decline.

**5.3.4. Civil society and the political context**

For Hochstetler (2000), the most negative conclusions about Brazilian social movements have been by observers of the urban popular movements; the perceived decline is related to the past hopes foreseen for these movements. Rather than a decline, the movements adapted and changed. The perceived lost prominence is not the result of civil society weakness, however, but of changes within civil society (Foweraker, 2001; Lavalle and Bueno, 2011). As “the grassroots movements become less rooted in the people they grew up to serve,” there is a shift resulting in more organization (such as NGOs), institutionalization, decreasing autonomy and less mobilization (Foweraker, 2001: 864). The organizations discussed in section 5.3.1 (CCRON and
CCOB) are clear examples of this type of institutionalization and organization.

In addition, Lavalle and Bueno (2011) show that neighbourhood associations in the post-democratic period are less significant or more peripheral; new civil society actors have taken a more central role, indicating changes within civil society. Civil society has modernized through new actors, including NGOs, coordinating bodies and fora along with traditional actors such as neighbourhood associations, committees, community associations and service nonprofits. According to the authors, there has been a functional diversification of civil society allowing for new actors’ roles, including shaping policy priorities. The development of specialization “brings about different and complementary repertoires of strategies and skills purposely developed for influencing policy and politics” (Lavalle & Bueno, 2011: 417). The authors show that the perceived lost importance of social movements in Brazil is related to ‘restricted protagonism’: popular organizations acquired stable positions within a more diversified civil society, no longer embedded in an authoritarian state, with new methods of influencing the state.

Similarly, Hochstetler (2000) argues that after the mid-1980s there was a change in social movement organizing in Brazil; these movements launched a new cycle of movement protest, reflecting a changed political context:

Individual social movement organizations are notoriously ephemeral and specific issues also move on and off the political agenda. The fate of one or several movements can be falsely attributed to the social movement sector as a whole, and in the case of Brazil, observers of urban popular movements have tended to reach very negative conclusions about the social movements there (Hochstetler, 2000: 163).

Some social movements in Brazil have indeed declined, while others have been more enduring. Based on the idea of a cycle of protest (Tarrow, 1994), this argument assumes a dynamic of rise and fall in which mobilization recedes. Through these cycles, new movements emerge through new political openings, creating new strategies of contention. Despite the changes, traditional
social movements persevere with less visibility: “they are always there for an observer who knows where to look for them and are as active as ever, with smaller demonstrations, numerous gatherings, and clear positions on the issues of the day” (Friedman & Hochstetler, 2002: 31).

Rather than a decline, in Niterói civil society adapted based on the political context. As Krantz (2003: 231) notes, “the political context influences the degree of institutional reform, which results in particular governance structures, which then have particular effects on civil society, which in turn act back upon the political context and the governance reform process.” Following Baiocchi et al’s (2011: 136) relational approach connecting people, power and organizations, this points to the “malleability of civil society over a relatively short time span.” I also build on the political opportunity approach, whereby movements respond to external opportunities and resources to sustain social action (Edelman, 2001; Meyer, 2004; Tarrow, 1994). Giugni (1998) acknowledges the need to account for the political context in which movements operate and the role of the broader political context in facilitating the mobilization and outcomes of the movement. Connecting the emergence and decline of protest cycles with political, institutional and cultural changes, this approach describes a real configuration of laws, institutions and policies (Foweraker, 1995; Tarrow, 1989).

A tendency towards clientelism and co-optation within FAMNIT was informed by the political context, leading to the perception of civil society’s reduced prominence in Niterói’s political life. As laws codify the claims made by the movements (such as land tenure), civil society no longer makes those demands, which ultimately become institutionalized (Baiocchi, et al., 2011). As a result, the political context affects civil society actions, mobilization and interactions with the state, producing a changed landscape of civil society action in Niterói and ultimately influencing the capacity to implement more participatory and socially just planning as
envisioned by the Statute. As Lavalle et al (2005: 952) note:

> It is the nexus between civil and political society that is the most important for understanding participation. To understand the dynamics of participation, including why ties to political actors and institutional design shape participation, requires that we rethink the boundaries between direct and representative forms of democracy.

Fitting within other work underlining the importance of political society in the participation of civil society (Avritzer, 2009), this work calls attention to the nuances that may occur through the political environment. While civil society operates within a political context that affects its mobilization, power relations and a range of actors operating within urban politics and also influence the capacity to implement participatory and socially just planning processes, which I discuss in subsequent chapters. The next chapters will further reflect on these interlinked relationships of power between the actors involved in the politics of planning and the results that accrue for social justice in planning.

### 5.4. Conclusion

This chapter has described the decisive role of the social movements in urban reform, including both the approval of the Constitution and the Statute. The proposals made by the urban reform movements in Brazil calling for alternative approaches to deal with urbanization challenges are situated within parallel movements elsewhere, especially in Latin America (Castells, 1983; Eckstein, 2001). These movements emerged in the late 1970s and 1980s surrounding democratization efforts in authoritarian contexts. Indeed, the Brazilian movements have broad implications for planning. The role of civil society in the struggle for the right to the city is educational for planning theory and practice, demonstrating that grassroots movements may produce policy change with the potential to affect the social fabric of urban life. While the role of a strong civil society in policy change has been acknowledged, the Niterói case shows that one ingredient in realizing the right to the city is a vibrant civil society.
Without these actors, the Statute’s norms of participation are more difficult to apply. Referring to Niterói, Bienenstein (2010: 14) notes that the urban reform project depends on local actors: “There is the need for a powerful movement stemming from civil society in a way to redefine the role, aims and size of the state.” Similarly, for an advisor to a state parliamentarian, “A lack of autonomy of social movements against the government is the major existing crisis which must be overcome so that the struggle for social rights in Brazil continue taking a more active meaning. It is the only way these achievements actually happen” (P.I., 12/5/11). Thus, if civil society is weakened, co-opted and dependent on the government for the space it uses, as is perceived in Niterói, changes to planning and social justice are far more difficult.

This chapter explored a perception of a declining civil society in Niterói. Referring to the context of Brazil, Maricato (2009: 207) notes that civil society is “simultaneously fragmented and divided, treating parts as the whole and ignoring concerns for the future of society. Such movements have abandoned the search for alternative social change.” Following work on political opportunities and relational views of civil society and the state (Baiocchi, et al., 2011; Meyer, 2004; Tarrow, 1994), I show that civil society changed and adapted based on the political context. Therefore, the perception of a declining civil society in Niterói is more nuanced than interviewees in Niterói suggested. This calls attention to the changes that occur between civil society and its environment and the relationships with actors within the realm of urban politics, which I turn to next in chapter 6. This finding illustrates how civil society organization influences the capacity to implement participatory and more socially just planning processes.

Reiterating Mizubuti’s (1986) point about the highs and lows of the movement, a professor and advisor to FAMNIT on land tenure issues used the analogy of waves to describe the mobilization and de-mobilization of civil society: “just as with any movement, it does not hold
for long, there are waves. And because of this I think that soon there will be a reversal” (P.I., 12/4/11). Indeed, in June 2013, demonstrations in São Paulo against a rise in bus fares spread across Brazil and to other issues including various public services and the World Cup. In Niterói, protests surrounded a parliamentary inquiry into the city’s transportation system and appeals to end the concession for the company responsible for the Rio-Niterói ferry (see Figures 5.8 and 5.9). Reflecting on this increased collective action among civil society, Raquel Rolnik noted that, “since the Constituent Assembly, the right to the city for all was on the agenda. The people demanded it in the streets, but this rupture has not happened. Now it is possible that it will happen” (Sprejer, 2013). Such renewed action in Brazil represents the possibility of positive change, underlining the importance of civil society action at the local level, not only in producing outcomes with regard to planning through the Statute, but also in other public policy areas.

Despite the lessons gained from the story of Brazil’s urban reform movement, the political context plays an important role, even producing a perception of a declining civil society. The story of the decline of civil society, then, is more nuanced than other accounts, such as those in Niterói, have suggested. The political context thus affects civil society actions, mobilization and interactions with the state, producing a changed landscape of civil society action in Niterói.

Figure 5.6: Niterói’s city council was occupied on August 8, 2013 (G1/Luis Bulcão)
Figure 5.7: Protesters promise to re-occupy city council (Fagner Angelino/Futura Press/Estadão Conteúdo)
Chapter 6: Power, Politics and the Practice of Planning

6. Introduction

This chapter considers the interplay between power, politics and the practice of planning in Niterói in the implementation of the Statute of the City. While the Statute is often upheld as a best practice, results from my field work in Niterói reveal that power and politics play a remarkable role in the Statute’s local application. While the role of power and politics was not an issue that I considered as significant prior to starting field work (beyond the fact that power should be considered in discussions of participation), it emerged as a notable issue through my field work. As I spent more time in Niterói, I began to see that both the political system broadly and developers manipulate urban policy such that planning outcomes fail to promote the理想istic goals of the Statute. Taking the Statute at face value, the presumption is that planning policy will promote the right to the city and social justice. Yet powerful interests impede the effective application of the Statute. This problem raises the following questions: whose interests are in the forefront, and whose interests prevail? In addition, I consider the role of power in relation to participation, civil society and social justice to reflect on how power relations influence the implementation of participatory and socially just planning processes.

A professor at UFF notes that, “Often the policy ends up in the powers that be who are the executive, legislative and judiciary ... There is a concentration of political power in these spheres and a concentration of political power in the market” (P.I., 21/3/11). According to another professor, “My owning property means I have power. Those who own land, will they give it away if not obliged? And those in power? Who elected them? What are the ties that exist? It is clear ... this situation will not change, you will always depend on pocket change or an allowance from powerful people” (P.I., 12/4/11). Thus, “the powers – positive as well as negative – of
private developers and/or the state are intertwined in the communicative encounters involving planners” (Huxley & Yiftachel, 2000: 334).

Power plays a role in participation, often bypassing participatory fora such as COMPUR, municipal urban development conferences and public hearings. Indeed, the same professor adds that, “Who has the power need not participate in these things. Access to decisions is made by other paths. Even direct access to those who call the shots” (P.I., 12/4/11). When asked why the participatory processes do not lead to better results, a member of IAB replied that, “there is very strong manipulation. Those in power hold these powers much more easily” (P.I., 3/12/10). Although participation requires just solutions to benefit the entire city, more powerful interests often prevail, resulting in skewed outcomes that favour private developers, local government interests and other powerful forces.

In Niterói, I unpack the power dynamics that take part in decision-making processes. I focus on the literature on the urban growth machine highlighting the elite interests at play in urban land development, which moulds policy and local economic development, facilitated by an institutionalized pro-development ideology (Molotch, 1976). In addition, I use a relational approach (Healey, 2006b) to clarify the interplay between power, politics and the practice of planning in Niterói. Moving on to the case study, the second part of the chapter focuses on the role of politics – including the mayor’s role, the political machine and the practice of co-optation and clientelism – as examples of powerful forces in Niterói. The third part of the chapter examines the role of the private sector in influencing Niterói’s political agenda.

6.1. Power and planning

In an overview article, Friedmann (1998: 246) notes that, “Perhaps the biggest problem we face in theorizing planning is our ambivalence about power.” He observes that when planners have
written about power, it has been about enabling the powerless to have a voice. For Forester (1989: 28), despite having little influence over power structures, planners can influence the conditions that allow citizens to participate, highlighting the constraints of social structures and the power of interest groups shaping information within which planning outcomes are decided. Thus, it has been widely recognized that power is central in understanding participation in planning (Cooke & Kothari, 2001; Forester, 1989):

Citizen participation is a categorical term for citizen power. It is the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future. It is the strategy by which the have-nots join in determining how information is shared, goals and policies are set, tax resources are allocated, programs are operated, and benefits like contracts and patronage are parceled out. In short, it is the means by which they can induce significant social reform which enables them to share in the benefits of the affluent society (Arnstein, 1969: 216).

While the relationship between power and participation is critical, challenges have been raised. These include: who influences the outcomes; whether institutional actors are willing to cede power; and those who are excluded from processes that may disempower certain groups (Brownhill & Carpenter, 2007; Fung & Wright, 2003; Nelson, et al., 2008; Yiftachel, 1998).

6.1.1. Power: The urban growth machine and a relational approach

To understand power in Niterói, a distinction “between power that is used to coerce, constrain and control the actions of others and that which is enabling people to do the things they would like to do individually and collectively” is useful (Friedmann, 1998: 252). My discussion of power in Niterói begins by focusing on power as a coercive force, or the ‘dark side of planning theory’ (Flyvbjerg, 1996; Yiftachel, 1998). The role of power in planning has often been explained using Flyvberg’s (1998) work showing how power enables and constrains rationality. Flyvbjerg (1998) is concerned with exposing the ‘real’ relations of power in the outcomes of local planning processes. Following Foucault, Flyvbjerg and Richardson (2002) focus on how
power relates to rationality and knowledge, arguing that the relationship between rationality and power is asymmetrical; power is thus prone to dominate rationality.

Similarly, Yiftachel (1995) explores a ‘dark side of modernism’ in his studies of how planning is used to control minorities, women and peripheral groups. In contrast to progressive planning ideals, there is a corresponding dark side. Yiftachel (1998) examines the links to state mechanisms of social control and oppression. Planning as control highlights that, rather than being used for reform, it may be a structure used to oppress subordinate groups. Thus, planning can enable elite domination and control over space, power, wealth and identity. For Yiftachel (1998: 403), “the regressive consequences of planning often occur because of the frameworks of power that manipulate and reshape policy outcomes.” In Niterói, the intention to promote social justice was present from the start, yet powerful forces controlled the outcomes. This contrasts with Yiftachel’s (1998) argument that social control drives outcomes. While powerful forces in Niterói manipulate planning for specific outcomes, the system was not devised to exert control. Clearly, the role of power in Niterói needs to be explained through other means.

Another entry point to unpack the role of power in Niterói is Molotch’s (1976) idea of the urban growth machine. Reflecting on the social and environmental harm produced by American capitalism and urbanization, Molotch argues that growth serves elite interests and is the central political and economic concern of local pro-growth coalitions. Thus, coalitions of elites propel urban politics as they strive to expand the local economy and accumulate wealth. Growth, resulting from the usurpation of political control by land-based elites, is the reason for their coherence as a power bloc (Logan, 1976). The growth machine is a powerful, pro-development network of business interests and local politicians favouring urban growth at the expense of residents and vulnerable citizens, overpowering weaker forces attempting to influence the
development process and promoting social inequality as a byproduct of growth machine activities. This approach highlights the “day-to-day activities of those at top of the local power structure whose priorities set the limits within which decisions affecting land use, the public budget, and urban social life come to be made” (Molotch, 1976: 309).

Molotch’s explanation about the political economy of place recognizes location as socially produced, prioritizing human agency and institutions at the local level (Harvey, 1973; Logan & Molotch, 1987). Markets are social phenomena governed by inequalities of wealth, ownership and power. For Jonas and Wilson (1999b: 11), Molotch’s work, along with that of Stone (1989) on urban regimes, alters debates on community power, recognizing that “urban politics can no longer be analyzed in isolation from the larger political and economic forces that shape the development, restructuring and redevelopment of urban places and spaces.”

The place entrepreneurs involved in this machine – such as developers, realtors, banks and the media – profit from their control of land and from the proceeds of economic growth (Logan & Molotch, 1987). Such entrepreneurs form pro-growth coalitions with government and economic interests focusing on infrastructure and urban development in areas of profit to their interests, promoting an ideology of growth as a public good. Local governments thus come together with urban elites when particular issues are at stake. Discourses and ideologies, through the media and public events, are also key to the growth machine, which “toils to generate solidarity among growth-receptive interests” (Jonas & Wilson, 1999a: 6).65

Although the urban growth machine refers to the US context, the conditions of growth machine politics in other contexts have also been highlighted (Kulcsar & Domokos, 2005; Lin, 2002; Thornley & Newman, 1996). Therefore, this approach may apply to non-US contexts with

65 One challenge of the urban growth machine approach is the absence of a role for civil society in influencing the urban agenda.
strong real estate interests, local government autonomy and where land is treated as a commodity (Jonas & Wilson, 1999b; Logan & Molotch, 1987), which is the case in Niterói.

This approach provides a useful starting point, focusing attention on the actors driving change in cities and the power differentials that arise surrounding land, markets and growth, to consider how power relations influence the implementation of participatory and socially just planning processes. I also use a relational approach, which brings together clusters connecting people, power and organizations (Somers, 1993). In planning, relational thinking sees the city as heterogeneous time-space experiences to capture the complexity of social relations (Graham & Healey, 1999). Indeed, for Harvey (1996: 284), a “relational theory of spatio-temporality indicates how different processes can define completely different spatio-temporalities, and so set up radically different identifications of entities, places, relations.”

Healey’s (2003, 2006a, 2006b) relational approach draws on Giddens (1984), who situates the work of participants in governance processes within structuration processes, “directing attention to how power relations are manifest and ‘structured in’ (‘embedded’) to daily life discourses and practices” (Healey, 2003: 112). Based on the idea that all planning activity involves interaction and governance processes, this relational approach emphasizes the profusion of webs of relations with diverse morphologies in which identities are developed and material resources and opportunities are accessed (Healey, 2006a, 2006b). In a reflection on this work, Healey (2003: 106) notes that this work provided “a window on the social embeddedness of power relations” as well as “intellectual resources with which to develop a critical evaluation framework for assessing the qualities of interactive processes.” Healey (2003) thus recognizes the many social worlds, rationalities and practices within urban contexts, the complexity of the power relations resulting in diffused power contexts, and the quality of relational interactions.
Finally, Yeung (2005) “illuminates the nature of relationality and the multiple ways through which power works itself out in ‘relational geometries’, defined as the spatial configurations of heterogeneous power relations,” pointing out how a relational approach can help to unpack complex power relations, social relations and interactions, such as those in Niterói.

6.2. The role of the political context

_I understood that [the application of the Statute] was absolutely possible, but also that it did not become a reality because of political will, political constraints, partisan politicians._

– Municipal bureaucrat (P.I. 21/3/11)

This section explores the role of the political context in the implementation of the Statute of the City in Niterói. For João Sampaio, former Niterói mayor and secretary of urbanism, power is integral in this story. He asks: “Who calls the shots in the city? It’s more or less the same gang that is in Congress” (P.I., 18/3/11), meaning that politicians in the city are powerful actors. This section explores the power of the mayor, top city staff and politicians, which plays an important role in the implementation of planning policy in Niterói.

Over the past twenty years, the Democratic Labour Party (Partido Democrático Trabalhista, PDT), a populist democratic socialist party, has been the predominant political party in power in Niterói. The Workers’ Party (Partido dos Trabalhadores, PT), a further left-wing party, is the main opposition party in Niterói. See Figure 6.1 for a timeline of Niterói’s mayors since 1989. For a more comprehensive timeline of Niterói’s party system, see Figure 3.2.

6.2.1. The role of the mayor

In Niterói, my findings suggest that the mayor can play a powerful role in influencing the city’s urban policies. In a volume on participatory innovation in Latin America, Peruzzotti and Selee (2009: 10) note that across the cases, “the reasons for implementation had little to do with ideology ... politicians pursued participatory innovation out of short-term strategic
considerations.” Indeed, some work in Brazil has shown that the outcomes of participatory institutions are related to the level of support by mayors, who must be willing to delegate authority to citizens (Wampler, 2004, 2007). While this work considers the important role of the mayor for successful participatory budgets, it does not consider what happens when mayors use their power to influence the city’s agenda. In Niterói, João Sampaio (1993-1997) as mayor had an urban vision, bringing planning ideals and a period of renewal to the city. During Mayor Jorge Roberto Silveira’s three consecutive terms, however, although there were improvements to the city, according to interviewees, Silveira never had an urban planning vision.

During Silveira’s first mandate, the focus was on the ‘construction’ of Niterói, recuperating growth and rescuing it from its status as an abandoned ex-capital.66 Yet according to a political aide to Marcelo Freixo, a progressive state deputy, the attempt to build this city project directed public resources to the beautification of prime areas of Niterói such as the Caminho Niemeyer, an architectural complex built by well-known architect Oscar Niemeyer, instead of to much-needed infrastructure: “This project has meant a tragedy for society, because many resources for social rights, affordable housing, more organized planning of the city, have been drained for this and for gentrification projects. This has meant an uneven growth of Niterói” (P.I., 12/5/11).

In the early 1990s, Silveira’s mandate (1989-1993) included a new master plan focusing on

social justice. These accomplishments can be attributed to Sampaio rather than Silveira, however, according to a former planner in Niterói: “Even when things were applied, in Jorge [Roberto Silveira]’s government, the secretary [of urbanism] was João Sampaio” (P.I., 30/5/11). Despite Silveira’s accomplishments for Niterói in the 1990s, his popularity has declined considerably. The former planning director calls him “a great strategist of politics” and his attitude “elitist,” resulting in a lack of policy focus for the poor population (P.I., 6/1/11).

According to one professor, he exercises discretionary power over the territory: “I remember right after he won the election in 2008, a billboard appeared in the city, written more or less like this: Niterói, city of Jorge Roberto Silveira. The billboard meant exactly that, the city is Jorge’s. It belongs to the emperor Jorge Roberto Silveira” (P.I., 8/11/10). Thus, different urban visions play a role in influencing urban policy in Niterói and help to illuminate the mayor’s power.

Several examples illustrate the power of Niterói’s mayor and the problems this raises for planning. In April 2010, heavy rains and landslides destroyed Morro do Bumba, a favela in the east of the city built on a deactivated garbage dump. The effect of the rain and the prior build up of gases caused Morro do Bumba to collapse. Several interviewees hold Mayor Silveira criminally responsible for these tragedies. Although some called the tragedy natural or even the fault of those living in at-risk conditions, the community and residents’ associations had warned the prefeitura of the risks, and the Federal Fluminense University had presented studies identifying areas that were vulnerable to landslides in Niterói. According to one interviewee, “The prefeitura knew of these problems and did not take the necessary measures to prevent these problems” (P.I., 12/5/11). The tragedy in Morro do Bumba shows that the mayor did not represent the interests of the poor population. A former municipal planner makes this point: “What is the city? Is it only the middle class? And how is the other side? Where is the city of
Niterói headed?” (P.I., 16/11/10). During the tragedy, the mayor was not in Niterói but in Miami where he often spends time. He is thus considered “a ghost mayor” (P.I., 8/11/10) and Niterói is a leaderless city, with a lack of structural proposals for the city. Figure 6.2 calls attention to the fact that “Niterói doesn’t have a mayor.” Ironically, although the government at the time gave little support to those living in at-risk areas, as a result of the tragedy it benefitted from significant funding through Minha Casa Minha Vida to build new housing in Niterói.

A second example of the power of Niterói’s mayor is the creation of a special remunerated ‘consultative council’ in 2009, “a private council of the mayor” made up of 20 or 30 of Silveira’s supporters (P.I., 30/3/11). There was little transparency regarding this council and no minutes were recorded. A recent newspaper article noted, “For the opposition, creating files and hence jobs, favours the maintenance of political power of the executive in the city” (Anonymous, 2012). During the tragedy of Morro do Bumba in 2010, the scandal surrounding this council was so great that a legal case was filed against the council, asking that the money paid to the councillors be returned and that it be “forced to end this political racket” (P.I., 8/11/10).

A third illustration of the mayor’s power results from the workings of participatory fora in Niterói. Interviewees noted that the mayor’s support is key to allowing the democratic process to be carried out. One FAMNIT member noted that within COMPUR, the government follows

![Figure 6.2: Sign for “Niterói doesn’t have a mayor” at a rally of Acorda Niterói (www.desabafosniteroienses.com.br)](image)
what the mayor wants rather than what is requested by or best for civil society. When asked about policy changes that resulted from such participatory fora, one bureaucrat noted that policy change was impeded by the mayor: “Everything inside COMPUR or any other meeting must pass by him, he is the biggest boss. Nothing was created without his approval... He will digest, will trim it and will send the secretary back with another perspective” (P.I., 24/2/11). Indeed, the mayor does not follow the rules regarding such participatory arenas. The mayor’s role in FUHAB’s council (which manages funds from solo criado, discussed in chapter 7) is even more pronounced than in COMPUR. According to a bureaucrat, if FUHAB’s council decides to do work in a particular community and the mayor does not agree, the mayor’s decision prevails.

Participatory fora such as COMPUR are designed to deter power arrangements from taking over planning processes. In fact, Flyvbjerg (2002: 364) proposed “the use of planning councils in the decision-making process ... as devices that acknowledge and account for the working of power and for the passionate engagement of stakeholders who care deeply about the issues at hand.” However, the composition of such councils and decisions about stakeholders are political acts, according to Flyvbjerg (2002). As the problems with COMPUR discussed here and in chapter 4 show, the presence of a planning council is not enough to dissuade powerful forces from playing a significant role in planning policy. Such forces constrain the rational, democratic decisions of participatory entities such as COMPUR (Flyvbjerg, 1998).

The relationship between the mayor and various appointed and elected officials also reveals the powerful role of the mayor. For example, the (appointed) secretaries within the prefeitura are often on a tight leash vis-à-vis the mayor. According to interviewees, the secretariat of urbanism cannot delegate anything or make decisions without the mayor’s approval. Thus, one academic noted that, the secretary of urbanism “doesn’t control anything.
It’s the mayor. If [the secretary] does something that the mayor doesn’t like, she’s out. So she’ll do what the mayor says” (P.I., 12/4/11). A similar relationship occurs between the mayor and city councillors: the mayor controls them by buying them out. For example, a CCOB member asserted that, “City council is bought out, the executive is elected by businesses lobbies” (P.I., 30/3/11). Similarly, a CCRON member noted that a general problem of the Brazilian political system is that prefeituras dominate city councils; laws are only passed if the executive approves.

One explanation for the Statute’s poor implementation is a lack of political will. Indeed, “an oft-cited culprit when government does not take action is a lack of political will” (Post, et al., 2010: 654). Several interviewees argued that despite the excellent legislation in Brazil including the Statute, such policies will not advance without political will by governments, which must accept and support participatory fora such as the councils. In the Niterói case, however, political interest has been more relevant than political will.\(^67\) For example, the revision of Niterói’s PURs have been overdue for several years; some interviewees maintained that the PURs have not been revised on time because the government has no interest in doing so. For a former planner in the municipality, “What is lacking is not political will, political will is in excess ... I think it’s a very purposeful point of those who have an interest” (P.I., 30/5/11).

6.2.2. The political machine

Many interviewees referred to the idea of a ‘political machine’ that functions as an element of power in Niterói. Commenting on the political machine that clearly operates in Niterói, one academic interviewee defined it as: “A mafia, a group that has appropriated what is public, which is the executive power itself, and exercises a model of tyranny, even if it’s a tyranny of the

\(^67\) Political will involves: 1) a sufficient set of decision makers; 2) with a common understanding of a particular problem on the formal agenda; 3) which is committed to supporting a policy; and 4) with a commonly perceived, potentially effective solution (Post, et al., 2010). By contrast, political interest refers to government’s interest in carrying out a given policy or program.
majority ... You can establish a group in power, and it is hard to remove because they dominate the machine of representation” (P.I., 8/11/10). In the last twenty years, the same political group has been in power. According to one CCOB member, Jorge Roberto Silveira has been mayor of Niterói three times and many of his appointees are those with whom he has made a deal. As another interviewee explained, the “bottom line is it’s the same team that’s been in government in Niterói for approximately 25 years” (P.I., 21/1/11). The same city councillors continue to be elected and the majority of these, according to several interviewees, are co-opted by the executive power. Indeed, the opposition to the mayor in city council is to limited to Renatinho of PSOL. For this reason, an NGO leader observed that, “Niterói has captive electorates” who vote in the same members of the political machine (P.I., 16/3/11). This dominating political machine has been questioned by the public ministry on several occasions.

While it is easy to point to a vague concept of a ‘political machine,’ more telling for understanding its effects is to identify its members. One former city councillor and member of the government’s opposition termed Mayor Silveira the “gang leader” and noted that the “operators” financing Silveira’s campaigns include executive secretary Hamilton Pitanga and secretary of works and public services José Mocarzel. To underscore the power of the political machine, he cites their monetary gains:

None of them could explain the assets accumulated these years with the salary they receive ... The assets they have are not the result of work. There’s no way. That’s because they are thieves and corrupt ... In the first term of Jorge Roberto Silveira in Niterói, his first salary was equivalent to a State Representative. So if he makes nine thousand [reais], he could not even buy one of the paintings of Antonio Parreiras. He has several paintings of his and each of these paintings is worth a lot more than he claims to have made in a whole term. He ran government of favours (P.I., 2/5/11).

Similarly, one academic interviewee noted that while there are many good projects in the

68 Known as Renatinho, his real name is Gezivaldo Riberio de Freitas. In previous administrations, Paulo Eduardo Gomes (PSOL) was the most outspoken opponent of the mayor.
city, these “come to benefit one group ... they are linked to the enrichment of th[at] group” (P.I., 8/11/10). According to this interviewee, the ex-mayor is the owner of the restaurant at the Museum of Contemporary Art (MAC) while the garbage company is linked to both the mayor and the secretary of works and public services. These examples illustrate how members of the political machine create profitable companies which sell services to the prefeitura itself.

In addition, the political machine often acts to determine the guidelines for the city’s urban politics. For example, the construction of the Caminho Niemeyer – an architectural complex built by well-known architect Oscar Niemeyer discussed in section 3.2.1 – can be seen as a representation of this political machine, according to one academic interviewee,

It is a work that lends a visual aspect to ... a government of centralism ... [In] this reading of the work of Niemeyer as the appearance of a government that centralizes decisions in Niterói is extremely consistent, adequate. Not that it is the intention of Niemeyer to do that, but that is certainly the intention of those in power, to make use of Niemeyer’s work for these ends ... Niterói is the city of the MAC, of the Caminho Niemeyer, city of pharaonic works, in a sense, while the environmental policy that would be the strong element of quality of life is overlooked by the municipality (P.I., 8/11/10).

Several interviewees noted that the political machine blocks efforts at full participation and interferes with the positive results of participation. Indeed, an NGO leader noted that,

“What hinders participatory management is the very political class of the city, which is a group comprising land grabbers, notaries, land owners,” while civil society is too weak to counter this so as to allow Niterói to become a city that prioritizes life quality, social inclusion and full citizenship (P.I., 16/3/11). Indeed, it has been in Silveira’s most recent term that the political machine has gained more clout, with a substantial impact on participatory planning.

Although laws are discussed in COMPUR, when it comes to voting in city council there is often a different result from that decided by COMPUR, as a former planner described: “the government did not send it [to city council], the governors did something else” (P.I., 13/1/11).
While it is hard to know the reality of what happened in this situation, the perception is that powerful interests altered the outcome to fit their own interests. Thus, one FAMNIT member believes that “COMPUR is being used as an instrument to ratify the government’s actions” (P.I., 21/12/10). Similar results were found in a study of seven cities in Rio State, where the government was found to manipulate the policy councils (A. M. B. Barros, 2011).

After issues are approved in COMPUR, they usually go to public hearings and to city council to be approved. However, if laws are not in the interest of the executive they are not approved. As a CCRON member pointed out, the power lies with “the interest of the executive,” (P.I., 15/3/11). For one professor, “it’s a conduction of democratic engineering and [the prefeitura] struggles against those groups who try to resist this municipal tyranny” (P.I., 8/11/10). While public hearings often occur, even for those within the prefeitura such as the secretary of housing, “the mayor has a majority, that’s the political game ... they do whatever they want” although if there are public demonstrations they might think twice (P.I., 20/12/10).

### 6.2.3. Co-optation and clientelism

In Brazil, clientelism – a political system based on an exchange of favours between elected officials and their supporters – is one result of such power relationships. Clientelism has been a key element of Brazilian politics at the national (Ames, 2001; Avritzer, 2002; Hagopian, 1996) and local levels, often with a focus on vote-buying and the urban poor (Banck, 1986; Gay, 1990).

According to Sales (1994), political culture in Brazil has always been marked by the concession of privileges from the powerful to the powerless. In the 19th century, local politics was dominated by patron-client relationships through a system of troca de favores under coronelismo, Brazil’s unique form of clientelism in which local bosses (coroneles) exercised control over voting behaviour in local elections (Abers, 2000; Posner, 2003). As a result, “the
asymmetries of power and personalized dependencies that are the hallmark of traditional clientelism were deeply encoded in Brazil’s social structure and culture” (Baiocchi, et al., 2011: 41). While voluntary forms of civil society increased during the 1970s and 1980s, clientelism also increased. Neighbourhood associations have played a central role in mobilizing support for clientelist politicians in poor neighbourhoods in Brazil, whereby clientelism involves negotiation between leaders of associations and local politicians (Abers, 2000).

While clientelism perseveres, “reclientelism” adapted to new conditions since the return to electoral democracy (Avritzer, 2002: 117). Indeed, in the urban sphere, Rolnik (2011: 252) points to a system “based on a hierarchy of connections and favors that include government jobs, access to resources and supply of goods and services.” The persistence of clientelism in Brazil’s political structure results in part from social, economic and political inequalities that fostered the emergence of patronage politics, yet without a dramatic shift in the distribution of economic and political power in Brazil, clientelism will continue to play a role (Gay, 1990).

This discussion of clientelism is connected to the account in chapter 5 of civil society members in Niterói that are co-opted by the government. For example, community leaders may receive a post, known as a cargo, within the local government in exchange for voting a particular way. This occurred during some municipal conferences, as I discussed in chapter 4. Indeed, parts of civil society have been co-opted by Mayor Jorge Roberto Silveira and (earlier) Mayor Leonel Brizola’s government (both PDT). Even the Workers’ Party (PT) has been part of this story in Niterói. As an aide to Marcelo Freixo explained, clientelism is “logic[al] for achieving services to the extent that one has a close political proximity with whoever is in power ... The traditional way that politics seeks to deal with this group of people is from this politics of favours.” He adds that in the early 20th century in Rio State, favelas became part of traditional Brazilian politics and
“the favela began to be seen as the power of political strength” (P.I., 12/5/11).

Another example of co-optation is vote buying during elections. For one political aide, this includes using communities for parties’ paid campaigns, also called voto de cabresto or leash votes. Such relationships also occur at city council, as an architect explains: “This local political structure makes this commitment evidently in exchange for personal benefits” (P.I., 3/12/10). Even though Niterói’s prefeitura has failed to invest in improvements for the population, the mayor has had a sure majority in city council. Thus, for one social worker, politics fuels a basic problem: “It is convenient for politics that they [civil society] are pitiful victims, because it is easier to sell basic things to an ignorant population” (P.I., 6/4/11).

Maricato (2009: 207) notes the “the premodern forces” of clientelistic politics that “affect the implementation of participation in governmental spaces.” The persistence of clientelism has contributed to the low success in applying the Statute, which relies on fair decision-making processes (M. L. d. Souza, 2006a). Clientelism interferes with participation and public debate during the law-making process, intended to be part of Brazil’s planning system (Avritzer, 2002). Thus, “as long as corruption dominates decisions … that space will be filled by some alternate power system for resolving disputes and maintaining order” (Perlman, 2010: 311).

According to interviewees, the prefeitura often functions through clientelism rather than by the rules. In the case of housing, one academic observed that, “It is not a priority as public policy because the basis of the relationship and the political process is [based] on clientelism. If you have very clearly defined actions, with criteria and participation, you have no currency to exchange for patronage. So it’s not in their interest” (P.I., 12/4/11). As Rolnik (2011: 252) notes, “More than a supposed ‘political desire’ to follow a master plan, local governments clearly lack incentives to do so, since … decision-making processes on investments and the future of the city
are, under the current Brazilian federative model and political system, based on a different logic.” Indeed, other preconditions in Niterói would allow socially just policies to be applied. For example, the urban development tools are available to be used and the prefeitura has the technical capacity, including a federal university within its territory. Yet such assets are not used. For an academic deeply involved with housing issues in Niterói: “It is not a lack of [financial] resources and not a lack of instruments. It is a lack of political decision” (P.I., 12/4/11).

6.3. The role of the private sector

The role of the private sector also warrants attention from the perspective of power, politics and the practice of planning. Niterói has an expanding real estate sector. In 2010, 51 new large real estate projects were launched in the city – 13.7 percent more than in 2009 and 64.7 percent more than in 2006 (Marinho, 2010). The propagation of high quality of life, per capita income and a more affordable housing market than Rio’s have attracted consumer interest to Niterói. Indeed, Niterói’s quality of life has been excessively used in political discourse in the city and appropriated by developers as “a territorial strategy articulated to ensure the hegemony of a particular local political group” (M. C. A. Carvalho, 2001: 12).

There is a perception, however, that Niterói has grown to benefit Niterói’s real estate market rather than in support of the working population. According to a CCOB member, many people are “corrupted by the power of real estate speculation which is property capital; this is who rules Niterói’s politics” (P.I., 21/1/11). Similarly, for a FAMNIT member, “Rights are guaranteed to those who dominate the city economically” (P.I., 2/5/11) and for Paulo Eduardo Gomes, “Politicians look at the city as a place to conduct good business” (PI, 2/5/11).69

Several interviewees view the prefeitura as having an ‘intimate’ relationship with

69 Here, I focus on the real estate industry as the issues related to high rise development are particularly relevant in the context of the Statute and in the case of Niterói. In addition, the mass transit companies are also important actors.
developers, or being “weakened by the power of real estate capital” (P.I., 21/1/11). For one interviewee, this relationship results in public policies oriented to real estate interests, even more apparent in the case of Silveira’s government (P.I., 12/5/11). Thus, there is a substantial power differential between the private sector and the population. According to Carvalho et al (2009: 110), this divide greatly impacts the implementation of the Statute:

Especially in cities with scenic resources and great interest of developers, as is the case of Niterói, the difference between the lobbying power of the real estate segments and the popular movements on the administration is too large, leading to an asymmetry in the implementation of the instruments. Those that regulate and which are interesting to the real estate market are rapidly deployed, while those of interest to the poorest take much longer to be implemented. One cause for this is a tradition of close relations between the agents linked to real estate sector and parts of the administrative structure. Even when it sides in favour of the most vulnerable segments [of society], the administration has difficulties in making a political confrontation in the application of innovative instruments in urban policy, such as IPTU progressivo, without the support of social pressure.

In sum, these power differentials result in asymmetrical decision-making roles between the private sector and the population.

Private interests thus take part in the application of the urban development tools and within decision-making forums and play a role in turning the theory of the Statute into practice. The perception among the interviewees was that Statute’s tools (for example, solo criado) were applied to benefit real estate developers rather than to advance the social function of property or social justice. Tools such as IPTU Progressivo may even be prevented from being applied because their use would hurt private interests in the city. A representative of the Association of Business Executives in Niterói’s Real Estate Market (Associação dos Dirigentes de Empresas do Mercado Imobiliário ADEMI), the developers’ association, pointed out that, “You have to have a commercial interest for things to happen, because if not it stays on paper” (P.I., 18/4/11).

To illustrate this point, a former planning director recounted two examples where “planning sometimes works as the desire of those who have power or economic interests” (P.I.,
6/1/11). In the first, plans for the Caminho Niemeyer were altered by private companies to fit their interests: “many things are done adjusting the law to the interests of the time and sometimes the whole of what is desired for the city is disregarded” (P.I., 6/1/11). The prefeitura set out to do the work on the Caminho Niemeyer, but a private company lobbied the planners for changes, arguing that the plan did not accommodate its interests. The project was eventually completed in an altered form because private interests disagreed with the prefeitura’s plan.

In a second example, Niterói’s master plan set macro guidelines, which was severe for some parts of the city. Large parts of Pendotiba in the east of Niterói were classified as areas of environmental protection, those coveted by developers. For the former planning director, this:

Hindered the civil construction industry. So the construction industry wants it to change so it can influence and leave it to its taste, chopping everything out there in Pendotiba … I said I wouldn’t do it. But there were economic interests to make money for city councillors. Then there was lots of pressure and I said I wouldn’t do it. I almost quit [over this issue] (P.I., 6/1/11).

In this example, developers altered planning parameters to suit their interests in Pendotiba. One argument used to defend occupying land in environmentally fragile areas (often located on hillsides) is protecting areas against the growing threat of ‘favela-ization’ (Biasotto, et al., 2008).

In a third example, a CCOB member described an experience in which the same planning director altered regional planning directives at the behest of a developer, to make exceptions in raising the gabarito (the maximum building height). The altered gabarito facilitated the approval of a development project that previously had not met building parameters. According to this interviewee, the president of city council, Compte Bittencourt, drove this process, while the planning director approved the change. Members of civil society took the issue to the public ministry, instead letting the developer build because the public prosecutor’s wife “earned an appointed position in the prefeitura,” according to the civil society member (P.I., 30/3/11).
Recently, Bittencourt was taken to court for forgery on this issue. The media reported that the crime “was rigged with the blatant intention of benefiting the interests of the real estate market,” increasing the gains from the development by R$30 million [US$14.5 million] than could be gained without altering the *gabarito* (Serrano, 2011). Recounting this incident, the former planning director noted the ‘underground’ dealings that took place in city council:

> When it comes in the underground [way] it happened in city council, they [the developers] used to go there to city council and put what they wanted. So there is also this story, I always say this, all our laws are subject to change at any time as long as there is pressure or knowledge. If there is no one who knows or a movement to put pressure it could be reason to end tomorrow (P.I., 6/1/11).

Figure 6.3 shows a sign protesting high rise development (the slang *espigões* or spikes is used) in the Oceânica region, an expanding suburban area in the south of the city where the discussion over high rise development has been particularly intense. Because of community pressure in that part of the city, the *gabarito* was not increased. These examples point to sentiments expressed by several interviewees: local governments and the public interest are compromised by private interests. The sign in Figure 6.4 (“Niterói is not a business”) calls attention to this sentiment and to the concern shared by residents about this situation. While the *prefeitura* may allow for development because of the funds to be gained, “this local political structure makes this compromise evidently in exchange for personal benefits” (P.I., 3/12/10). As Rolnik notes, “Businesses involved in formal urban production establish privileged connections...
with public agencies, who control the selection of urbanization projects and programs, as well as town planning, guaranteeing markets in certain urban areas for their products and protecting the profitability of their investments” (Rolnik, 2011: 245).

Rather than looking at what is permitted in existing legislation, developers may attempt to change legislation (W. M. Filho & Nogueira, 2007). The prefeitura, however, is weak in contrast to the private sector. For example, PURs can be altered by any law, without discussion. Biasotto et al (2008) find that the most significant changes to the PUR of Praias da Baía between 2002 and 2008 relate to increased construction and creating exceptions to the general rule, yet that such changes are barely noticeable to anyone without an intimate knowledge of the specific issue. Similarly, in the PUR of the Norte region, according to a CCOB member: “They just increased the number of floors ... So of course it was a request from real estate speculation. They are looking for building potential. The law is as the guy pays” (P.I., 30/3/11).

According to interviewees, Niterói’s prefeitura, like those in other Brazilian cities, “is in the hands of real estate speculators ... They are all inside the prefeitura” (P.I., 18/1/11). This view is also expressed in a recent academic report, which found that partnerships between the public and private sectors may override community will to advance real estate capital (A. W. Teixeira, et al., 2011). However, such laws are altered – according to a representative of ADEMI – because
governments do not follow through on their promises. Thus, developers do not make such changes because of gains to be had by changing such laws: “If you have a municipal law, be it good or bad, worst of all is not having the law. So you modify that law, you alter the law, and at least demand from the government the investments that, strictly speaking, it doesn’t do” (P.I., 18/4/11). Indeed, the accusations that city council works for the real estate market go hand-in-hand with altering such laws in city council. According to the Statute, public hearings should be held before laws are altered, yet often this is only done for the record.

Private actors have begun to participate more actively in Niterói’s participatory fora, in contrast to a past smaller role. For an NGO leader, “There was a time business people didn’t come to COMPUR. So these guys are starting to” (P.I., 16/3/11). The private sector was relatively inactive in the 1990s, applying little pressure to increase the gabarito. In 2009, the private sector participated actively in participatory fora. In the fourth municipal conference, private actors formed a block with government “in defence, evidently, of the interests in the city” (P.I., 3/12/10). A developer recounts how this stronger role was gratifying because “we’ve learned the importance of participating in these events” (P.I., 21/12/10).

For a member of IAB, the contradictions in Niterói are rarely evident “because those who have power don’t need to go to COMPUR to defend their ideas, they have a direct channel to the executive” (P.I., 3/12/10). While COMPUR is intended to represent the city's active sectors, this is distorted by powerful forces. A public prosecutor in the public ministry notes that,

Even with a poor debate, [the result] always tends to the economic interests in detriment of the interests of the collectivity. The legitimate economic aspects that create jobs are also important, but we cannot forget that it has to be done with much planning and caution, because sometimes the social and economic impacts will be much worse. And there is always an interpretation in favour of economic and business segments (P.I., 11/4/11).

However, the private sector does not necessarily act or think as one entity. As one developer
complains, “The housing market is always placed as a villain in cities” (P.I., 18/4/11).

Still, it is hard to deny that allegiances between private interests and local governments have come at a serious cost for the city. For a political aide, “with the tragedy of the April rains, there is a crisis of legitimacy of this power structure” (P.I., 12/5/11). Migration has occurred without the prerequisites to deal with the accelerated construction Niterói is witnessing, putting pressure on the hillsides of the city, especially in areas of preservation. Thus, “The prefeitura allied itself with the real estate market, allowed the occupation of hillsides and conservation areas, which culminated with the collapse [in Morro do Bumba], with the death of dozens of people” (P.I., 30/3/11). The advancement of real estate speculation in Niterói is occurring with more frequency, “the growing process of vertical integration, and the disorderly growth of residences, condominiums and favelas compromise the integrity of protected areas” (W. M. Filho & Nogueira, 2007: 5). At the same time, “political opportunists are using [Morro do Bumba] as a flag” (P.I., 16/3/11). Figure 6.5 shows the results after the rains in April 2010.

In response to the homelessness caused by the rains, Rio’s State government is building five million social housing units through a state-federal partnership program called Bairro

Figure 6.5: After the rains in April 2010 (www.desabafosoniteroenses.com.br) (left) and Figure 6.6: Poster for a meeting questioning Bairro Modelo: “Bairro Modelo in Sapê, Why and For Whom?” (www.mandatorenatinhopsol.blogspot.ca) (right)
Modelo in the Sapê neighbourhood in Pendotiba region of Niterói. To build these units, the *prefeitura* has proposed disappropriaing Sapê, removing 1200 *favela* ‘occupiers’ who are in the process of a land tenure claim against a wealthy family which holds the property rights for Sapê.

For an architect involved in this case,

> This is clearly what I call ‘action between friends’ ... It is when you want to favour your friends. So a guy who claims the property, we do not know whether it is true or not. We have doubts about the legitimacy of this property and the rights of the people who are there of course, because they have been there for years ... This is a division of money. They will take, expropriate that there for a fortune and will share it with the alleged owner and the very guys who are in the municipal administration. This is the root of the current municipal government. This is terrifying but true (P.I., 3/12/10).

The criticisms of the Sapê project relate to the fact that the area is distant with little infrastructure, and the transportation problems created for those it relocates. Figure 6.6 shows a poster for a meeting questioning the Bairro Modelo project in Sapê. These issues also relate to the claim that the real estate market only works for Niteróí’s middle and upper-class residents. According to the secretary of housing, many developers in Niteróí will not participate in Minha Casa Minha Vida, the federal funding program for social housing, because they are driven by profit rather than the social purpose of land. Indeed, for the secretary of transportation,

> Who says whether more units or fewer units will be built in a democracy is the market. The real estate market scorns poor areas, and wants to move towards more noble areas, toward the beaches ... It’s hard to slow this movement because this is the natural growth of the city, that economic factors drive this direction (P.I., 14/1/11).

### 6.4. Conclusion

Following work on the urban growth machine (Logan & Molotch, 1987; Molotch, 1976) and taking a relational approach (Healey, 2003, 2006a), I argue that the role of power and politics is significant in terms of its capacity to implement more participatory and just planning along the lines of the goals of the Statute. Molotch’s (1976) case for a coalition of land-based elites highlights how such groups dominate local politics, striving to enhance their own interests:
“Each unit of a community strives, at the expense of the others, to enhance the land-use potential of the parcels with which it is associated” (Molotch, 1976: 311).

While the Statute’s ideals promote social justice and the right to the city, the logic of cities are governed – in part – by powerful interests: the political system and the private sector. These constitute a coalition of elite interests defending a pro-development agenda and exerting power, taking precedence over the Statute’s norms. As Paulo Eduardo Gomes noted, “Cities are dominated by a different approach than what I defend and what those who fought for [Articles] 182, 183 [of the Constitution], the Statute of the City. Unfortunately we are a minority” (P.I., 2/5/11). In reference to the case of Salvador’s application of the Statute, Santana (2011: 127) argues that, “the legal apparatus can privilege the collective interest and incorporate popular demands in their urban policy provisions, but as long as the logic of the city’s economic dominance by privileged groups prevails, these guidelines shall remain on paper.”

Results from my field work show that the application of the instruments of the Statute in Niterói – including participation and urban development tools – has been partial at best. One problems is that, despite an innovative law such as the Statute, few real alterations to the status quo have been made and thus, business as usual remains. Indeed, Maricato (2009: 208) argues that political and economic power are inherent barriers in the fight for a more just city through the Statute, yet local experience plays a significant role in the application of such laws:

Of all the constraints on the struggle for a more Just City that have been discussed, the most important is the resistance to the application of the Statute of the City. The law interferes with interests that form an essential part of the Brazilian society ... Real property has always been connected to political and economic power ... The rule of law is also subject to power relations. While this is true throughout the world, in societies as unequal as Brazil, local circumstances are even more important in the application of laws... Deputy mayors, however, tend to be close to landowners and developers, and local authorities have a tradition of personal and family appropriation of rents from land and real estate. For this reason, the Statute of the City has to date had a larger impact on the discourse of planners and lawyers than on policies of urban inclusion.
Maricato’s point reinforces the central role of local circumstances in which political and private interests take precedence rather than social justice as the Statute envisioned. As noted by prominent jurist and urbanist Edésio Fernandes, rather than assuming that the Statute is culpable for the challenging implementation, the problem lies with Brazilian politics: “I think your conclusion is not that the Statute of the City sucks, it is that Brazilian politics sucks ... And then how to solve it, it is a matter of political education, participation” (P.I., 26/5/11), bringing the discussion back to the necessity of participation and one of the intentions of the Statute.

In a classical take on the Brazilian case, Faoro (1975) exposes the origins of Brazilian patrimonialism in which power has been concentrated in the hands of the few since Brazil's formation.\textsuperscript{70} ‘Patrimonialism’ has been used in Brazil to depict the private appropriation of state resources by politicians, public servants or members of the private sector. According to Sorj (2000), what is unique to the Brazilian version of patrimonialism is its bond to extreme social inequalities and the legal impunity of elites. The description of political and economic power in Niterói is the same as Maricato (2006, 2009) refers to, in which a vicious cycle of concentration of wealth, economic power and political power dominates. Maricato (2006: 211-212) notes that, besides being a condition for the concentration of power, patrimonialism also explains the capturing of the public sphere by private interests. The state generates an overblown bureaucracy whose principal purpose is not regulating impersonal processes and procedures based on law, merit and efficiency (for capital accumulation), but the guarantee of power based on exchange relations.

In this situation, even the application of law – such as the Statute of the City – is unpredictable when dominant interests take the upper hand.

This case points to the ways that power influences the capacity to implement more participatory and socially just planning. Indeed, power relations among various actors (political

\textsuperscript{70} Also see my discussion of patrimonialism in section 5.1.
parties, mayors, the private sector) interfere in the application of participatory planning and in the results for achieving social justice, which I turn to in detail in chapter 7. By analyzing the power relations in Niterói, this work reveals the complex workings of city politics among various actors including local government, the private sector, the judiciary and civil society (which Molotch (1976) refers to as a coalition of land-based elites), the inequalities among the actors and the effects of these imbalances. As Healey (2003: 112) notes, “Normatively ... the issue is to find ways to evaluate the quality of the communicative and collaborative dynamics through which social relations are maintained and changed.”

This chapter has explored several examples where power is concentrated in Niterói’s political and economic spheres. These include mayoral influence over the urban agenda, control of the participatory process, co-optation, clientelism and ‘intimate’ relationships between the private sector and local government. Still, urban development is susceptible to such practices:

On the one hand, a popular base was ensured through selective, individual distribution of benefits; on the other, investments were made in projects and urban regulations. Together they open new fronts for real estate expansion and contribute to ensuring the political survival of government coalitions together with the elite and large businesses, while simultaneously supported by the popular vote. This government model and political system, put into action in the urban-industrial phase of Brazilian urban development and created within its ‘democratic transition’, still prevails, even under the command of a government with worker origins and a high social agenda (Rolnik, 2011: 252).

A relational account in planning highlights the complexity of power relations which are often heterogeneous (Healey, 2006a; Yeung, 2005), resulting in skewed outcomes in favour of the mayor, the political machine more broadly, and developers. These power imbalances take into account that while participatory experiences involve many actors on equal footing in a collective discussion of issues, power relations often shape the outcomes to suit their own interests.

While other work in Brazil focusing on the power of the private sector has been at the theoretical level, especially focusing on the idea of patrimonialism (Cota & Ferreira, 2007;
Maricato, 2006, 2009), some examples exploring local experience stand out. For example, Evans (1979) examines the role of the triple alliance (local capital, multinationals and the state) as essential to dependent capitalist development in Brazil. In Curitiba, Irazábal (2005) explores an elitist power structure where systemic and preemptive power reign through the participation of business interests in coalition formation. In Rio, Smolka (1991) exposes the power of the real estate market through a focus on residential segregation. In the extreme case of Salvador, Reiter (2008, 2009) finds that traditional elites dominate, while the promise of participation is overshadowed by historically included groups defending their access to the public realm.

In addition to reflecting on how power relations intersect with participation and socially just planning, this case provides insight into the details of power relations in the planning context. Unlike much of the literature on the role of power and politics in Brazil, the Niterói case presents a particular approach to the functioning of power and politics in Brazilian urban policy, which is focused on what is actually occurring and the intricacies of such processes – what Flyvbjerg (1998) calls the ‘real’ relations of power – than on theoretical assumptions about the concentration of power. Some writers, such as Maricato (1996, 2006), show that patrimonialism exists in Brazil, but fail to prove it through an analysis of case study material and examples of the workings of power relations. Some work specifically on clientelism (Gay, 1994; Hagopian, 1996) does document specific practices. By taking a focused approach to power, this case presents clear evidence of the challenges – specifically for planning – resulting from such power dynamics. While one could imagine that powerful interests often dominate the agenda, especially in places marked by inequalities and with a history of co-optation, documentation of the workings of these power relationships is necessary for this challenge to be overcome.

One way to redress the paradox of a progressive law used in perverse ways is through the
collective action of civil society. To produce change in urban policy, social pressure from civil society may force decision-makers and developers to advance the right to the city. Coupled with political education and participation as suggested by Fernandes, such actions would go a long way towards challenging the powerful actors that attempt to take the upper hand.

In light of the dilemma whereby power interferes in the application of the Statute’s norms, whose interests are in the forefront, and whose interests prevail? Unfortunately, despite the language of the right to the city and social justice from the urban reform movement, the answer is perhaps obvious. Despite efforts to reinforce the image of a just city in Niterói, planning policy has not placed the interests of the poor at the forefront. At the same time, those with political or economic connections disproportionately get to define the political discourse for the city. As Rolnik (2011: 251) notes, unfortunately,

Urban planning in Brazil continues to be the domain of highly sectorized, centralized bureaucracies that rely on decision-making processes strongly influenced by the interests of the economic and political actors that depend on them to survive. This fact helps us understand some characteristics of urban policies that block the attempts at implementing a reform agenda based on cities planned democratically in the public sphere.

The production of political and economic power is clearly not what the authors of the Statute meant in designing tools for promoting the right to the city and social justice. By contrast, the intention of the 1988 Constitution and the Statute was to produce tools for actors to use within a participatory arena that would involve a multiplicity of actors. Thus, the path to more robust results in urban development may not lie strictly with the system of urban planning and development, but rather with the political system that acts to shape urban planning.
Chapter 7: Towards social justice?

7. Introduction

This chapter explores the idea of social justice followed by a discussion of the practice of social justice in Niterói as an application of the Statute of the City. Because social justice is a nebulus term, one goal is defining it through the research. Although social justice is used in the Statute, what it actually means in this context is rarely defined specifically. The first part of this chapter explores the idea of social justice in detail in the literature and in the context of the Statute. The second part of the chapter explores how social justice has played out in practice in Niterói.

In this chapter, I consider the following questions regarding the results garnered for social justice. In the cities where the Statute has been implemented, have the changes implemented through the Statute of the City been transformative leading to more socially just cities? What are the outcomes of such changes for overcoming social injustice? This research also considers the role of social justice in relation to participation, civil society and power to reflect on how power relations and civil society organization influence the capacity to implement participatory and socially just planning processes. An additional goal is to define social justice in the context of the Statute. To understand practice in Niterói, I emphasize the just city literature, which assigns ‘urban values’ to social justice. This chapter focuses on the application of one tool, solo criado, which is the best example in Niterói of the application of the Statute’s urban instruments. I make the case that, despite the intention to promote social justice in Niterói, the institution of socially just polices does not necessarily translate into socially just outcomes.

7.1. Social justice in the city

In this research, I unpack social justice in the context of urban life. To do so, I briefly explore several approaches to social justice: Freire’s liberatory pedagogy, Rawls’ veil of ignorance,
theories of space and spatiality, the politics of difference and Lefebvre’s right to the city ideal, before moving on to the just city theory, a pragmatic approach to assess social justice.

To understand social justice, a classic starting point is Freire’s liberatory pedagogy based on social transformation and liberation; the goal is humanization, which is “affirmed by the yearning of the oppressed for freedom and justice ... to recover their lost humanity” (Freire, 2000: 43-44). By contrast, in Rawls’ (1971) ‘veil of ignorance,’ social justice is the value everyone would choose without knowing their position in the social hierarchy. The case for distributive justice based on equal rights for basic liberties is extended by a capabilities approach, absolute opportunities to which each person should be entitled (Nussbaum, 2000; Sen, 1999).

In contrast to the Rawlsian idea of distributive justice, a range of work considers justice in relation to space and spatiality, specifically that “principles of justice are time and space specific” (Dikeç, 2009: 73). This includes work on territorial justice, and later, spatial justice. Smith (1994) explains that the structures producing inequality concern questions of distribution, and are thus inherently geographic, taking space, place and territory as fundamental; exposing the geography of injustice is necessary to develop just social structures. At the basis of this contention are a number of assertions, including the improbability that the market can produce social justice, the primacy of egalitarianism, the likelihood that this may provide a universal position on social justice and the significance of social justice to geography (Smith, 1994).

Harvey (1973) points to ‘territorial justice’ and the unequal spatial development produced by capitalism, arguing that justice requires rebuilding the processes producing urban inequality: the asymmetries of economic and political power embedded in capital accumulation. Later on, Harvey (1996: 5) focused on “the just production of just geographical differences,” emphasizing uneven geographical development which constitute “socio-ecological and political-economic
processes” of capitalism and the social construction of principles of social justice (Harvey, 1996).

For Soja (2010), the spatiality of justice is more than a physical context; it rests on a better understanding of justice as a vital component of all societies. Thinking spatially is thus based on two ideas: 1) the possibility that applying an assertive spatial perspective can open up new sources of insight and innovation applications; and 2) the ‘socio-spatial dialectic’: a formative relationship between the social and the spatial dimensions of human life, which helps to understand how social justice is both created and maintained, but also questioned (Soja, 2010).

As first used by Soja (1980: 208), the socio-spatial dialectic represents “a dialectically defined component of the general relations of production, relations which are simultaneously social and spatial.” Soja (2010) calls these combined ideas consequential geographies. Calling attention to the socio-spatial dialectic, the spatiality of justice and injustice affects society and social life while social processes influence the spatiality of injustice and justice promoting “more progressive and participatory forms of democratic politics and social activism” (Soja, 2010: 6).

Similarly, Dikeç (2009) proposes the injustice of spatiality to refer to existing structures and processes that produce injustice through space. To do this, and to critique oppression, Dikeç (2009) focuses on spatiality as a process and the relationship between injustice and spatiality as producing and sustaining each other: “the emphasis is not on space per se, but the processes that produce space and, at the same time, the implications of these produced spaces on the dynamic processes of social, economic, and political relations” (Dikeç, 2009: 79).

Within a ‘politics of difference’ approach identifying relevant differences to distributing the benefits of society, social justice requires recognizing group differences to overcome oppression (Young, 1990). Social justice “institutions ... promote reproduction of and respect for group differences without oppression” (Young, 1990: 47). Realizing social justice requires full
participation in decision-making venues by oppressed groups and is based on the degree to which society supports the institutional conditions to realize the good life (Young, 1990).

Social justice based on Lefebvre’s (1968, 1996) right to the city ideal denotes access to city resources for all, meaning equitable distribution of urban resources and the right to access the things one needs for a dignified life (Purcell, 2008; Schmid, 2012). This denotes a right based on social justice and a right to redistribution for those in need (Mayer, 2012). In Lefebvre’s (1996) conception, this incorporates a right to the appropriation of urban space, including inhabitants’ rights to physically access, occupy and use urban space; the right to inhabit and to housing are thus elements of the right to appropriation.

However, it is from within an approach based on the ‘just city’ that a more pragmatic discussion of progress in achieving social justice in Niterói is possible. This approach concretizes philosophical notions of justice into a model guiding the creation of public space, economic development, housing and social programs within a just city. Soja (2010: 92) notes that, for “applied researchers in urban planning and public policy,” the just city approach moved towards less spatial and less narrowly constrained, Marxist models. For Fainstein (2005b: 121), “the purpose of planning is to create the just city”; it is a reaction to the social and spatial inequality created by the capitalist system. Just city theorists value participation in decision-making by powerless groups combined with “relative material equality as both precondition and outcome of development and a culture of tolerance and commitment to equity” (Fainstein, 2000: 467).

To concretize these ideals, Fainstein (2005a, 2009) lists the values that urbanists agree on to build the just city: democracy, equity, diversity, sustainability and growth (see Table 7.1). The just city theory defines these variables in practical terms rather than the vague language that has been predominant in normative discussions of social justice. For just city theorists, although
there are no universal standards of good and bad, there are criteria for judging better and worse (Smith, 1994). The approach shares “a desire to rearticulate the political and moral connections between inhabitance, social provision and social justice” (Connolly & Steil, 2009: 8). These ideals share a common need to imagine contexts where urban conditions can be positively changed.

One way to understand social justice within planning is the removal of structural obstacles for a just distribution of goods and services (Marcuse, 2009b). Yet planning needs to go beyond the absence of injustice. This would ultimately accept existing structures, laws and institutions as they are and fail to explain what kind of action would remedy injustice. Instead, Fainstein (2009: 34) calls for the “identification of institutions and policies that offer broadly appealing benefits.” These “counter-institutions” deal with existing institutions and policies to challenge the power relationships giving rise to injustice by considering possibilities for action, thus tackling injustice (Marcuse, 2009b: 94). Therefore, planning should make justice a minimum requirement; the maximum requirement is the contribution to general welfare. To assess whether these requirements have been met, one needs to ask whether the criteria are being satisfied (Marcuse, 2009b). Following Marcuse’s suggestion, I use Fainstein’s four values of social justice to assess improvement of social justice in Niterói. This matrix of values provides a concrete way to assess social justice, a concept that is often both vague and theoretical.
7.2. Social justice and the Statute

The notion of social justice for the urban reform movement or FNRU, the originator of many of the Statute’s ideas, means redistribution to democratize opportunities. This is one criteria in Fainstein’s list of urban values in Table 7.1. In the eyes of an academic deeply involved in the FNRU, social justice from the perspective of the urban reform movement signifies a right for everyone and is strongly connected to universal rights. The idea was to create change:

In the sense of universalization. This would mean redistributing income, redistributing resources to ensure that everyone has the right to housing, to ensure that everyone has the right to sanitation, to ensure that everyone has the right to mobility. There is a recognition that urban policies are not just policies that affect urban services, but affect the possibilities of access to income, affect the quality of life ... Urban policies have a structural component in the conditions of social reproduction. So the redistribution of income via urban policies is a key component for social reproduction itself (P.I., 20/8/12).

Indeed, an architect from Niterói pointed out that the intent of social justice was part of modernist thinking at the time of Le Corbusier’s Athens Charter, which has been influential in Brazilian planning practice. For Júnior and Uzzo (2010: 249), social justice was part of the urban reform movement’s platform leading to the right to the city by “criticizing spatial inequality in the dual city” through “an urban project based on the demand for a new city, proposing to eliminate access to privileges in different areas of the city. What formed was a political matter that extended beyond urban issues and delved into the areas of social justice and equality.”

Urban reform is also a social reform comprising a spatial dimension to transform the institutions regulating power relations, the production of urban space and achieve social justice (M. L. d. Souza, 1999). In the sense meant by the urban reform movement, social justice is about creating dignity for all, for one member of FAMNIT in Niterói: “Building a healthy city is not just a city that has a good public health service. It’s a place where everyone can live with dignity” (P.I., 2/5/11). Souza (2003) calls this ‘alternative urban planning’ (in contrast to conventional planning), led by urban reform ideals and new master plans. This:
Is oriented towards social justice ... [It] aims at a city in which residential segregation decreases, where the state and civil society can join forces to fight successfully against land speculation and in which city management becomes increasingly democratic ... Alternative urban planning deals ... with the existing city, and its priority is not to establish ‘projected future,’ but to conceive tools for tackling urban problems in a socially just and really democratic way (M. L. d. Souza, 2003: 194).

In the Statute, social justice is understood as fair distribution of the costs and benefits of urban development and one outcome to fulfill the social function (E. Rodrigues & Barbosa, 2010). Júnior and Uzzo (2010: 252) note that, “It is the socially just use of urban space so that citizens take possession of land, democratizing its spheres of power, production and culture within the parameters of social justice and the creation of environmentally sustainable conditions.” Article 39 of the Statute defines the connection between social function and social justice: “Urban property fulfills its social function when it meets the basic requirements for ordering the city set forth in the Master Plan, assuring that the needs of the citizens are satisfied with regards to quality of life, social justice and the development of economic activities.”

Cities are required to follow comprehensive guidelines to “guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, to work and leisure for current and future generations” (Article 2). Thus, urban development tools are used to tackle urban problems in a socially just way (M. L. d. Souza, 2003). However, this broad conceptual mandate is also defined substantively through urban development tools, a huge achievement in the area of urbanism, law and social justice. These tools have the objective, for an architect in Niterói, “to distribute the bonus of urbanization” and are the means to fulfill the objective of social justice (P.I., 4/5/11). The idea is, for an NGO leader in Niterói, “through urban planning to mitigate the burdens that this population suffers,” through state support (P.I., 16/3/11).
João Sampaio, former planning director in Niterói and later mayor, explained that to promote social justice, “You have to make the thing work” (P.I., 18/3/11). Sampaio means that to make social justice work in practice, the tools of the Statute need to be applied to advance the social function: “For example, you have to collect IPTU progressivo. So you have an area which is prime for densification. There’s a guy that has land that was his grandfather’s ... He puts a fence around it and waits for it to appreciate. No. The person has to put it on the market: either sell, or exchange, do something” (P.I., 18/3/11). At their roots such tools are about the political decisions for sharing property within a community and were designed as far back as the early 1960s during discussions around the idea of urban reform. The Statute includes urban development tools that lead to social justice, amounting to a start in that direction. As a practitioner involved in the development of the Statute in Brasília noted, “If a process really started to use those instruments of the Statute of the City, we would begin to see that they would have to move more towards really achieving more social justice” (P.I., 13/1/11).

7.3. Social justice in Niterói

In chapter 3, I briefly explored the role of social justice in Niterói’s 1992 master plan where social justice and the environment were twin pillars of urban policy. For João Sampaio, the idea of social justice in the master plan was an equitable distribution of the benefits of urbanization:

It was to make the city, that the burden and bonuses of the urbanization process are distributed in an equitable way. Because when you work with instruments such as solo criado, you can take that money and invest there, right? So you are working with social justice, because what doesn’t work is you stay with what already exists, with sewage running down the stairs here and on the side, luxury buildings and such; so the building will pay for that luxury. So the idea was this, it was to use the tools in order for you to promote social justice, in a clear manner (P.I., 18/3/11).

Niterói’s master plan promoted social justice, equity and a concern for the environment as a result of community discussions. A longtime planner and member of PDT, Sampaio’s party,
noted that at the time social justice was a preoccupation and a powerful idea for the party:

“These in 1992 were strong words, and very important flags of our party, of Brizola [founder of PDT]. Brizola in fact, was elected in the name of greater social justice” (P.I., 14/1/11).

In contrast to João Sampaio’s message, recent administrations have not prioritized social justice in the same way. Referring to favela dwellers in Niterói, the current secretary of urbanism noted that decent living conditions are needed, yet unattainable at a practical level. Referring to tools for land tenure regularization, she noted that: “Those people have to have dignified living conditions, but that is impossible to do” (P.I., 23/3/11). It is perhaps ironic given the prefeitura’s stated emphasis on “housing them in a dignified manner, giving a decent housing condition for them” that promoting social justice would be impossible (P.I., 23/3/11).

Among planners and community members there is a perception that Niterói is an exclusive city that has not grown to benefit the working classes. Indeed, for a political aide deeply connected to the issues of the poor in Niterói, “The city in the last two decades has not grown in benefit of the working population ... It has grown in favour of real estate companies and capital that want to invest in Niterói, but not for it to have a quality of life” (P.I., 12/5/11). In connection to the discussion in chapter 6 of private interests at play in Niterói, this reality is even more telling. Indeed, conditions of social injustice – such the population’s exclusion, peripheralization and the lack of affordable housing – are not on the agenda for the most part. Referring to this situation in Niterói, the president of FAMNIT argued that, “Our social justice is still unjust” (P.I., 19/1/11) while a member of IAB maintained that, “the social use of property, it still hasn’t materialized even here in our city” (P.I., 3/12/10).

However, the narrative of social justice in Niterói is complicated, going beyond the fulfillment of one extreme – social justice – or the other – social injustice. Although policy in the
direction of social justice has made little headway in Niterói, some positive changes can be discerned in what the prefeitura has not been able to do based on the construction of an oppositional force. While the rain in April 2010 created a host of problems for the city, it also created a movement supporting the struggle for decent housing and against forced removals, which produced a form of social justice. A former planner noted that in Niterói,

That scenario where a tractor bulldozes a house, razes it down, this is a rare scenario nowadays. After the rains, the prefeitura wanted to demolish all the houses, some of which really were at risk, others less so. But they could not, because the bases rebuilt as an opposing force ... So I guess from that point of view, when you can confront these forces, you produce a type of social justice (P.I., 13/1/11).

Figure 7.1 shows the movement that emerged following the April 2010 rains.

7.3.1. The application of solo criado and operações interligadas

Solo criado, also known as outorga onerosa do direito de construir (OODC) in Brazil, is a tool to encourage urban development by enabling densification in certain areas of the city to exercise the social function of property. This allows developers to “construct more than the original land use legislation allows if they pay for this extra area to the public sector” (Siqueira, 2012: 393).

The idea is to generate development rights for one parcel of land in exchange for social interest works, such as social housing and public space improvement, allowing the public sector to generate revenue by transferring funds from wealthy sectors of the city to the poorest areas.

Solo criado is based on the idea of value capture, or the value added to the land by funding

Figure 7.1: “Mourning for Niterói” (Samuel Tosta)
Public infrastructure that is recovered through a betterment contribution; the investment is recouped based on the improvement and the payment made by the owners of the improved buildings (Sandroni, 2011). Premised on a separation between property and development rights, solo criado allows for the right to build to be both regulated and sold by the state.\(^{71}\)

Also used in France and Italy, Brazil has used solo criado to apply the social function of property to “mitigate the social inequities resulting from the strong link between access to land and purchasing power” (Macedo, 2008: 267). In Brazil, the idea that added value (or property improvement) should be paid for by owners to the public sector emerged in the 1970s as concepts of buildable land, development concessions and the social function of property began to be used in some Brazilian cities (Sandroni, 2011). Figure 7.2 illustrates how solo criado might work. The bottom portion of the building (basic use coefficient), shown with a dotted line of ‘infrastructure capacity,’ is the allowable limit set in the master plan as the maximum building height or gabarito. The upper portion of the building (land use coefficient) is the part that can be increased by a developer by paying the solo criado tax to the prefeitura.

This discussion of solo criado is situated within an international discourse on how the

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\(^{71}\) Several cities began incorporating solo criado into their master plans in the 1970s (Porto Alegre, São Bernardo do Campo and Curitiba). Other cities went beyond mentioning it in their master plans by enacting legislation establishing parameters for its use (Porto Alegre, Florianópolis, Curitiba, São Paulo, Brasília and Natal) (Macedo, 2008).
control of urban development is conducted. Development rights, or rules limiting the size of developments, refer to how urban land is shared. According to Booth, central to this discussion is the relationship between landownership and control of land by governments (Booth, 1996). While different countries approach development rights in distinct ways, the common element is that “zoning plans effectively confer rights on those with title to land, and the permit is no more than a confirmation that the limits of those rights have been respected” (Booth, 2002: 309).

Solo criado’s application in Niterói was built on the experience of another tool called operações interligadas (discussed in chapter 3) included in the 1992 master plan, which finances urban development and has a similar impact to solo criado in generating capital gains by charging financial compensation (M. A. J. Carvalho, et al., 2009). It originated in the mid-1980s in São Paulo where developers could request a zoning revision of a property if they contributed to social housing or reducing favelas through works or funding (Nobre, 1998; Rolnik, 1992). In Niterói, operações interligadas allowed for a 50 percent increase in building height provided in exchange for financial compensation to be used for social purposes. Between 1999 and 2002, 94 operations were approved, generating US$2 million in revenue (Salandía, 2004).

Yet without the Statute, which requires that tools of urban management generating resources must have a ‘fund’ to act as an accounting mechanism, there were few rules regulating the process. Although a fund for the proceeds from operações interligadas existed, the process was not transparent, making it difficult to know where the resources were being used. Thus, “the population didn’t see any benefit from this instrument,” regarding it with suspicion (P.I., 14/1/11). According to interviewees, operações interligadas was carried out with

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72 The experience of operações interligadas in São Paulo was based on “a Canadian municipal practice known informally as ‘selling density’ or “density bonusing’” that “allows developers to appeal local zoning laws in return for pecuniary benefit paid to the municipality” (Hewitt, 2001: 236).
little community participation. It was also difficult to control the maximum value of *operações interligadas*. This meant that heavily occupied areas could be densified, invalidating the zoning limits in areas of interest to developers (M. A. J. Carvalho, et al., 2009). The urbanization pattern that resulted in Niterói – high-rise development in Praias da Baía – prompted strong criticism of *operações interligadas* (Furtado, et al., 2006). Eventually it was deemed unconstitutional and suspended in 2001, following the Statute’s approval.

The experience of *operações interligadas* showed that getting compensation for increased property value was possible. It also helped to realize that the right to build could be an onerous concession, or that the right to build should be compensated. Testing the potential of revenue to finance urban development, it contributed to a finer detailing of *solo criado* (Salandía, 2007). As a result of the experience of *operações interligadas* in Niterói, property developers were interested in regulating *solo criado* to make the acquisition of building potential possible.

While *solo criado* was first included in Niterói’s 1992 master plan, without a specific law for its regulation, only in 2002 with the revision of the PURs of Praias da Baía and Oceânica was it first used. Initially, *solo criado* was not applied out of a fear that its use could be challenged legally, which had happened in São Paulo. The PURs defined a formula to calculate *solo criado*, and the 2004 master plan allowed it to be applied by altering the chapter dealing with tools of urban management.\(^{73}\) The master plan expanded the possibility of using *solo criado*, establishing that the right to build should be compensated. *Solo criado* is applied only in the regions of Niterói that have PURs. One percent of the 2012 budget was projected from *solo criado* in Niterói (US$ 7 million) (Prefeitura de Niterói, 2012). The annual collection from *solo criado*

\(^{73}\) In Niterói, *solo criado* is calculated with the following formula: *solo criado* = \(\frac{(Ca - Cb)^2}{FC} \times VV\), where \(Ca\) = land use coefficient, \(Cb\) = basic use coefficient, \(FC\) = correction factor, \(VV\) = fiscal value of the land. \(FC\) is legally established in each PUR. To translate these terms, I follow Furtado et al (2006). Sandroni (2011) calls \(Ca\) floor to area ratio (FAR) as used in the United States.
criado in Niterói is shown in Table 7.2, with revenues growing steadily from 2004 until 2011.\textsuperscript{74}

As the Statute requires creating a fund to act as an accounting mechanism for instruments generating resources, the 2004 master plan created the fund for urbanization, housing and land tenure regularization (fundo de urbanização, habitação, e regularização fundiária, FUHAB) to deposit resources raised by the application of solo criado. Unlike operações interligadas, the funds resulting from solo criado are overseen by an administrative council of FUHAB. Furtado et al (2006) note that the existence of a fund such as FUHAB leads to greater transparency in the application of such revenues because they are linked to monitoring by councils. In addition, such funds facilitate applying such tools for the social purposes specified in the Statute (including tenure legalization, creation of public spaces, urban community facilities and social housing), preventing their management as part of the general budget. For Salandía (2004), one benefit of regulating this tool is that its calculation is not based on a subjective or analytical calculation because a specific formula is used. Still, some interviewees raised concerns about the transparency of FUHAB funds, describing it as a “black box” (P.I., 27/4/11).

<table>
<thead>
<tr>
<th>Year</th>
<th>Total value (US$)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004 and 2005</td>
<td>859,018</td>
</tr>
<tr>
<td>2006</td>
<td>633,037</td>
</tr>
<tr>
<td>2007</td>
<td>1,306,791</td>
</tr>
<tr>
<td>2008</td>
<td>2,093,532</td>
</tr>
<tr>
<td>2009</td>
<td>2,516,164</td>
</tr>
<tr>
<td>2010</td>
<td>3,784,370</td>
</tr>
<tr>
<td>2011 (until 09/2010)</td>
<td>2,600,332</td>
</tr>
<tr>
<td>Total collected</td>
<td>13,793,244</td>
</tr>
</tbody>
</table>

Table 7.2: Annual collection from solo criado in Niterói (Salandía, 2012)

\textsuperscript{74} Data of funds generated by solo criado were difficult to access from Niterói’s prefeitura. Furtado et al (2006: 3) note that such data are “not available to researchers and in some cases perhaps not even to local planners.” I used data from Salandía (2012).
Niterói is a prime example of *solo criado’s* application in Brazil (Furtado, et al., 2006). For a former planner in Niterói, “What was actually implemented with the Statute of the City? Only *solo criado*” (P.I., 11/1/11). One reason *solo criado* is interesting in this case is that as Niterói sits across the bay from Rio, densification has become contentious in the city. As Rio became more expensive, wealthy residents sought-out Niterói as an accessible bedroom community, while poor residents have been pushed to neighbouring cities such as São Gonçalo. Figure 7.3 shows the changes in Icaraí, the most desirable of Niterói’s neighbourhoods in Praias da Baía region.

In Niterói, the rationale for using *solo criado* is based on revenue generation for social purposes. A report by Niterói’s *prefeitura* indicates that *solo criado* aims for “sustainable occupation by generating funds in exchange for additional building allowances or changes in the type of use for private and public property ... provided they do not harm life quality in the city” (quoted in Salandía, 2004: 6). The idea is that *solo criado* forms a system of differentiated costs to affect real estate trends in favour of municipal planning norms (Furtado, et al., 2006). According to Salandía (2004), *solo criado* seeks equity in the recovery of public investments and

![Figure 7.3: Icaraí beach in 1959 and 1996 (Prefeitura Municipal de Niterói)](image)

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75 In other Brazilian cities such as Porto Alegre and Curitiba, *solo criado* has been used as a source of funds for low-income housing and urban development. The creation of funds similar to FUHAB has allowed the proceeds collected from *solo criado* to be used for regularization of informal settlements, infrastructure improvements and basic sanitation projects, and other initiatives benefitting low-income populations. In some cases, it has intensified the use of urbanized land, created open space, reduced land speculation and generated additional funds to benefit disadvantaged urban populations.
landowners’ profit is proportional to the potential use of their lot. Therefore, the government is reimbursed for part of its investments in the city. This repayment is reoriented to infrastructure in Niterói through FUHAB to minimize historical inequalities in the distribution of infrastructure. Some interviewees noted that solo criado was carried out with the intention to promote social justice. Because it has the potential to redistribute the benefits of urbanization in areas traditionally of interest to developers, solo criado creates opportunities to realize the social function of property. Indeed, for Barros (2007: 56-57), “It is the same principle as the fable of Robin Hood, in which you take from those who have more to supply those who have less, in order to promote social justice ... The major challenges consist of doing social justice through the use of legal and urban tools, but also promoting the change of mentality of a society.”

Tools like solo criado are about political decisions of how to share property within society and seek to put the social function of property into practice. Despite the prefeitura’s intention to promote social justice, comments from interviewees make it difficult to believe that solo criado in Niterói is still about the political meaning behind sharing property. Instead, the tool seems to have become more formulaic. Indeed, when asked about the rationale behind solo criado, most interviewees who were familiar with the tool were able to tell me how the formula worked (see note 59) but not the meaning behind the tool. Although the prefeitura initially employed a political rationale for the tool’s use, this was not an overarching theme during my field work.

Solo criado aims to densify some neighbourhoods over others, increasing costs in dense areas and lowering costs in areas to be revitalized based on an egalitarian perspective. According to the engineer who designed the formula (currently the secretary of transportation), “You can use a tool to reduce the gabarito and lower the occupancy rate, just as you can reinforce solo criado, encumber construction in these prime areas and create incentives for
building in poor areas” (P.I., 14/1/11). The idea is to evenly distribute the bonuses of urbanization, suggesting that the development of private property has a social benefit:

*Solo criado* charges something from the developers when they build and distributes it to the populace that has more difficulty in getting such bonuses ... So this bonus is [re-]distributed by *solo criado*. It is also a control instrument. That is, I can increase it if I do not want [developers] to build, or decrease it... At its heart it is egalitarian (P.I., 4/5/11).

One virtue of *solo criado* is its capacity to repay the government a portion of its investments that have allowed developers to reap immense profits from taking advantage of specific locations in a city. Thus, the value of urban land is based on location, access to infrastructure and potential use rather than physical characteristics: “To be located in areas well served by urban infrastructure, quiet areas, close to commerce and the possibility of verticalization, among others, are all factors that add value to urban land” (Salandía, 2004: 6).

*Solo criado* is controversial “given the legal and operational challenges it presents, as well as its potential for affecting the quality of private property and of the urban environment resulting from the concessions made”; arguments against it include the losses of land value to developers, permitted densities and tenure length (Macedo, 2008: 267). In Niterói, the tool’s application was hotly contested by property developers. *Solo criado* was perceived as being more transparent than *operações interligadas*, allowing it to be approved by the developers. A former planner recounted the developers’ complaints during the PUR’s approval. Eventually, an accord was reached and *solo criado* included in the PUR: “Evidently the developers didn’t want it. They were strongly against it ... And in the end, they ended up accepting” (P.I., 4/5/11).

Challenges of *solo criado*’s effectiveness as an instrument of social justice have been raised. For Barros and Rezende (2005: 8), in Niterói “the instruments of urban reform offered by the Statute of the City were introduced superficially,” while a FAMNIT leader called its application “very precarious” (P.I., 12/4/11). Another criticism is that *solo criado* is applied only
in the regions which have PURs: Praias da Baía and Oceânica regions (both with dynamic real estate markets) and the Norte region. In addition, in Niterói funds from solo criado have been used on slope retention rather than social housing (Furtado, et al., 2006). The former planning director noted that, “we built little social housing, we did more slope retention in underserved areas” (P.I., 6/1/11). For Barros (2007), using FUHAB funds for slope retention means that the execution of Niterói’s housing policies are ineffective. Still, this criticism is based on a perceived lack of funds dedicated to social housing. Yet in the early days of solo criado’s use, there were few resources for social housing; recently resources from Minha Casa Minha Vida are also available.76 Figure 7.4 shows an example of a project concluded with money from FUHAB.

For Barros (2007), depending on how solo criado is applied, it may work as an instrument of economic privilege and can be misused depending on the user. Similarly, solo criado is criticized for giving developers the opportunity to bypass laws rather than being “used with good intentions … The idea of solo criado is understood by mayors as a great trick to pull the rug under the Statute of the City, and the error of the Statute of the City is to have these mechanisms” (P.I., 21/1/11). Finally, the positive gains made by solo criado in favour of planning

![Figure 7.4: Example of a project concluded with money from FUHAB for water runoff in the neighbourhood of Grota da Surucucu (Prefeitura Municipal de Niterói)](image)

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76 Minha Casa Minha Vida is a 2009 federal policy that funds social housing in Brazil. According to the secretary of housing and others, Niterói was creating 4,800 units in 2011 and 2012, also reported in the local media (Sousa, 2012; L. Souza, 2011).
norms are countered by the slowness of the PURs’ approval and the low value of solo criado in some regions, resulting in small gains (Furtado, et al., 2006). Solo criado can only be applied in areas with a PUR; the drawn-out approval process prevents extending the tool to all of Niterói.

In some ways, solo criado is just “an instrument for collection of fees in regions benefited by public investments and natural amenities” (Furtado, et al., 2006: 43), reinforcing the fact that the informal city does not fit within such planning norms. While progress towards social justice has occurred in Brazil, this is difficult through master planning, which does not include favelas:

This process of ours, of Brazilian society, has advanced towards greater social justice. I think the country is going through this process. Now, it is difficult for the master plan to be effective in combating social injustice. Especially a master plan which regulates construction. And the construction of the poor it is not covered in the master plan, the master plan does not regulate favelas, it does not enter in the favela (P.I., 14/1/11).

7.3.2. Other partially applied tools in Niterói

Several other urban development tools were included in the master plan and PURs, yet have not been applied. This section considers the partial application of two tools: special areas of social interest and land tenure regularization. First, both the master plan and PURs demarcate special areas of social interest (áreas de especial interesse social, AEIS), allowing special conditions for informal settlements (see Figure 7.5). In this context, the tool is used “to identify and classify spaces according to their social situation and public interest” (M. L. d. Souza, 2003: 195). These zones allow, in theory, for land regularization and social housing. Beyond establishing these zones for future use, little practical application has occurred in Niterói (Cheade & Filho, 2009). According to prefeitura staff, regularization is in process in three AEIS communities (Capim Melado, Cocada and Vila Ipiranga) and FUHAB funds have been used within AEIS communities.

Second, tenure regularization has been partially applied in Niterói. Between 2002 and

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77 Other types of special interest areas demarcated in the master plan include: environmental (environmental conservation, preservation of the environmental landscape or at-risk areas); economics (for tourism, agriculture, fishing, or economic activities in the public interest); urban (where the government seeks urban transformations in the city or to preserve local peculiarities).
2008, a group in the secretariat of urbanism (núcleo de regularização fundiária, NURF) focused on tenure regularization to grant ownership security while urbanizing related infrastructure. The planner in charge of NURF noted that, “Despite being a short space of time, we managed to grant property titles” for favelas in public areas (P.I., 6/5/11). NURF used a new tool created by the Statute for tenure regularization: concession of special use for housing purposes (concessão de uso especial para fins de moradia, CUEM). A fairly easy administrative process, CUEM recognizes that those living on public land of 250 m² or more for five continuous years have the right to a concession. With this tool, land tenure regularization “ceases to be a prerogative of the government and becomes a right that may be claimed in court ... The person who occupies a public area can go to court and ask for recognition of their possession” (P.I., 6/5/11).

Despite the positive spin on the outcomes for land regularization by planners from NURF, the process was not fully completed and only one community, Argeu-Fazendinha, was granted

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78 CUEM was in the Constitution, known as usucapião urbano. Prior to CUEM, concessão de direito real de uso (CDRU) made it possible to regularize public and private lands but was subject to a prerogative of the government to grant the right or not. The first law to allow regularization was the Civil Code of 1916 which allowed the transfer of ownership rights through usucapião, requiring 20 years of uncontested permanence on the land. It was virtually impossible to apply in practice (Fernandes, 2002b).
titles. For an IAB member, the government “started to take baby steps in the direction of regularization ... [but] the mandate ended and the process absolutely stopped” (P.I., 3/12/10).

Even the finalized process in Argeu-Fazendinha was precarious, for one FAMNIT leader: “The last government gave property titles, concessão de uso. But for now it only gave a photocopy, the original is still in the government. So the final deed is with the government. For me it is not guaranteed in the hands of the people” (P.I., 12/4/11). While regularization on public land can be a relatively uncomplicated administrative process, in private areas, traditional usucapião urbano is used. Guaranteed in the 1988 Constitution, it is a more complicated and drawn-out process that goes through the courts based on a lot of documentation. For usucapião processes within the prefeitura, residents are given the documentation to make a claim, yet the process is long. One bureaucrat admitted that, “Until now I haven’t seen any titles” finalized (P.I., 19/5/11).

After 2008 during Mayor Jorge Roberto Silveira’s administration, the secretariat of urbanism processed claims for land tenure regularization, although it was not the focus. NURF thus became more “diluted,” while previously, “with a bigger staff, the works moved even faster” (P.I., 13/4/11). According to the bureaucrat responsible for regularization in the prefeitura, “We provide the resident with the topography of the lot and all the necessary paperwork for him to take to court to have his title, but we can’t do more than that” (P.I., 19/5/11). While the prefeitura maintains its support for regularization, providing documentation for a resident to enter into a difficult bureaucratic or legal process does not promote access to secure tenure. Indeed, the current secretary of urbanism underlines the lack of support for land tenure regularization by the prefeitura, as she supports relocation programs instead:

Regularization is a very complex thing ... I sometimes think the situation is so critical that I find better to rebuild, relocate those people over there in a more dignified way ... So the vast majority of our regularization is very difficult. Also because the land, the ownership of which is federal, state or municipal property, or private land, or land which is in people’s
estates proceedings, land that is disputed in court proceedings. It’s a very complicated thing to do (P.I., 23/3/11).

While land tenure regularization is complex, by reformulating the tools already in the Constitution, the Statute’s tools provide less complicated ways to deal with the situation.

Still, interviewees noted that the prefeitura has done little to apply the many tools that are at their disposal to apply the concept of social justice. For example, a FAMNIT leader asked, “What did we apply here? Nothing ... It is on paper, but the practice is difficult” (P.I., 12/4/11).

Another member of FAMNIT noted that most governments pay no heed to the Statute:

Governments don’t bother about it. They may even know, but do not want to get more acquainted in these matters to not commit themselves to it. It is much easier for them to let go of this business of Statute of the City and go some other way and so for years we have been trampling on the Statute of the City (P.I., 25/1/11).

The 2004 master plan was vague about these tools, with no general parameters, guidelines or a time for specific laws to be prepared (M. A. J. Carvalho, et al., 2009).

The political clash regarding these tools was intense during the master plan’s approval. For some interviewees, the controversy accounts for its vagueness; the tools have been applied sparingly because of the strong interests of developers. As I showed in chapter 6, such interests preclude the use of some tools because of the potential harm to developers. As an IAB member noted, “IPTU progressivo, this is a taboo here because it hurts very strong private interests” (P.I., 3/12/10).79 According to a former planner, the conditions exist to collect IPTU progressivo, but it has never been applied. Paradoxically, the current secretary of urbanism supports the application of more tools of the Statute, yet with little practice to back this up: “I would like to apply some tools of the Statute of the City, expand the tools of the Statute of the City ... Because they are tools that are available for it. It’s an interesting thing for us to do” (P.I., 23/3/11).

79 IPTU progressivo allows municipalities to progressively raise property taxation for properties whose owners fail to obey deadlines for another tool, PEUC, in order to avoid speculation on the price of urban land.
Given the Statute’s challenging application, there has been little community protest. As a former planner argued, “Why not take [public] land owned by the prefeitura or the state to do social housing? Nobody demands that” (P.I., 20/12/10). Indeed, the problem of low civil society action identified in chapter 5 has contributed to this issue in applying the tools of the Statute.

7.3.3. The gap between theory and practice

In Brazilian academia and in popular circles, some euphoria still surrounds the experience and mandate of the Statute, yet many agree that many “municipalities in the country ignore the instruments created ten years ago by the Statute of the City to regulate land use” (Atunes, 2011). The gap between the de jure Statute and practice is reflected in other planning experiences where rhetoric and reality are exceedingly disparate (Addie, 2008). In Brazil there is a distance between discourse, law and reality. Pereira (2000: 220) notes that,

Brazil has experienced a profound tension between the formal constitutional and legal frameworks of its political regimes and the informal political practices that take place within them ... The Brazilian expression para o inglês ver (‘for the English to see’) captures the ambiguity of law in this context. Legal change in a society in which many laws are merely decorative, para o inglês ver, implies that how new laws will be enforced is especially ambiguous. Brazilian legality thus contains strong elements of fantasy and desire.

The saying ‘para o inglês ver’ means a perfunctory attempt to do something to appease critics. It originates from the 1800s when the Brazilian government formally abolished the slave trade under pressure from Great Britain, yet permitted it to continue in practice:

In other words, formal commitments were not to interfere with actual practice ... Brazilians celebrate their resort to the jeito, the trick or maneuver, and drawing on personal favors and exceptions to deal with laws that are abundant, changeable, complex, and often unequally and arbitrarily applied (Pereira, 2009: 187).

Commenting on the similar case of Salvador in the Brazilian northeast, Reiter (2008: 351) “points to the fact that by passing a law the Brazilian state does not automatically create a social reality.” This is reflected by the common phrase in Brazil, lei que não pega – or laws that don’t
catch on. This problematic is reinforced by Habermas (1988: 30), in that “the de facto validity of legal norms is determined by the degree to which such norms are acted on or implanted, and thus by the extent to which one can actually expect the addresses to accept them.” Holston (2008: 24) reiterates this gap between legal practice and formal law, or a “gap between legislated text and social practice.” While the gap between rhetoric and practice does not discount the fact that the Statute is innovative and groundbreaking, in Brazil there are important barriers to achieve more significant results to promote the right to the city as it is conceived of by the Statute. This section outlines these barriers that emerged from my field work in Niterói.

First, one problem for implementing the Statute’s tools is a lack of monetary and human resources in Brazilian cities. Many municipalities are struggling to apply their master plans:

The majority [of municipalities] do not have an appropriate administrative structure for the practice of urban planning, with regard to technical, human, technological and material, not to mention the low diffusion of the councils of participation and social control aimed at building a culture of participation and implementation of urban development policy (Junior, et al., 2011: 15).

In Brazil, with 5,561 municipalities, there is a stark difference between municipalities with the capacity to implement the technicalities that the Statute of the City entails and those without human and financial resources to implement such policies (A. L. Cardoso, 2006). Many cities, by the very fact of having fewer resources, have less capacity in applying such instruments.

However, this is not the case of Niterói, as an academic specializing in housing and land regularization pointed out: “It is not a lack of resources anymore, nor a lack of instruments” (P.I., 12/4/11). This is clearly not the most important obstacle, especially in the case of Niterói.

Second, the nature of decentralization has been problematic in the context of the Statute, which delegates authority to municipalities and gives ‘real’ authority to cities. Its language gives the impression that cities are required to follow certain directives (master plans, urban tools,
participation), yet cities have power to do so if they choose to. Barros et al (2010: 96) note that:

The Statute establishes no direct correlation between urban readjustments and instruments. Each Municipality chooses, regulates and applies the instruments in accordance with its desired urban development strategy. Different instruments in the Statute of the City do not present, by themselves, a solution for a particular urban problem. Specific urban upgrading will depend on the relevant municipal authorities applying instruments which can be used in an integrated and coordinated manner in a particular territory. Therefore regulation of the instruments must be detailed in the Master Plan and introduced as part of an urban development strategy with a view to ensuring their effective application.

Therefore, the Statute is not legally binding on municipalities. Such tools are at the disposal of the municipalities, which are free to decide whether to apply particular tools, if at all. Each city makes this decision in keeping with its particular social and political circumstances (Del Rio, 2009; Holston, 2008; M. L. d. Souza, 2006a). This situation has resulted in the application of few urban policy tools, as the Niterói case has shown (Junior & Montandon, 2011). While Niterói’s master plan includes guidelines, few are ‘auto-implementable,’ meaning that its directives are left for follow-up legislation for the tools to take effect. For example, solo criado and AEIS were included in Niterói’s master plan, yet follow-up legislation was required for their application. As a municipal official in Niterói noted, the Statute “acts like a pendulum; it depends on the administration to use it or not” (P.I., 21/3/11). Indeed, the variation in municipal outcomes is explained in part by political will by municipalities and mayors. Certainly, politics plays a role.

In Niterói, solo criado is the only tool that is fully applied, although additional tools are partially applied. However, Niterói’s problematic implementation of the Statute’s tools is not an a-typical situation. Thus, Niterói is a middle-tier example. While some cities have applied more of the Statute’s directives, others have fared far worse.80 Some cities do not even know about the Statute, let alone implement the tools. In the Niterói case where planning was carried out

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80 Even Santo André São Paulo State – known as a best practice – has not been able to apply more instruments than in Niterói, a point providing some comparison of how Niterói fares in relation to other Brazilian cities (Denaldi, 2004; C. V. C. d. Souza, 2007).
with the intention of creating social justice, that implementation has not taken off should not be seen as the end of the road. As João Sampaio noted, “In a lot of municipalities, there is no talk of the Statute of the City, where no one even knows what that is” (P.I., 18/3/11). This is clearly not the case in Niterói. Indeed, Salandía (2012: 250) notes that, “In few municipalities was there application of the new tools of the Statute of the City. Only Niterói, and more recently São Gonçalo, regulated the use of solo criado, and very little advanced in terms of an articulated implementation of instruments aiming at giving effectiveness to the objectives of urban policy.”

Third, leading from the findings of chapter 6, the role of powerful interests is a further barrier to the application of urban development tools in Niterói. For one NGO member, there is “no application according to the interests of the social function of property, but there is according to the interests of property speculation” (P.I., 3/12/10). While the Statute is supposed to promote equity and social justice, the entrenched developers’ role in Niterói may prove to be a barrier if it impedes the application of such instruments, which necessarily are not desirable to developers, such as IPTU progressivo. Delineating such tools in the master plan, however, does not ensure their effectiveness. The political context therefore plays a role in whether such tools materialize in practice. As a professor at UFF notes, “It is clear that some issues of the Statute of the City were always present and we felt they should have been fulfilled ... There are tools that can and should go in this direction, but understood as a political mediation, the instrument itself will not guarantee [its application]” (P.I., 21/3/11).

7.4. Conclusion: Towards social justice?

Referring to the case of planning for socio-spatial justice in Bogotá, Fernández’s (2011) critique of implementing Colombian planning policies helps to shed light on the case of Niterói. Fernández (2011: 10-11) recounts a situation in which a mayoral candidate for the city of Bogotá
critiques the application of Colombia’s planning instruments:

In one of the [Lincoln] Institute’s recent lectures a former Colombian congresswoman, recent graduate student of public policy at Harvard University, and current independent candidate for October’s mayoral elections, Gina Parody, talked about the pitfalls of Colombia’s urban legislation. In her presentation, which she very appropriately entitled ‘From Debate to Implementation,’ Parody detailed the bureaucratic complexities that hindered the application of the country’s planning instruments. Because the ‘devil is in the details,’ she said, master plans and urban laws by themselves cannot ensure the production of more just cities. Worse yet, they can be deployed, as has frequently occurred, at cross-purposes with the goals of socio-spatial justice. Hers was a critique of the prevalent planning discourse, from within one of the institutions that had most supported it. For her, it was a matter of not confusing the means with the ends, that is, of not fixating on plans and tools without paying attention to their actual uses and possibilities for action.

Using the phrase the ‘devil is in the details’ captures the fact that instituting urban plans and policies does not guarantee that cities are produced according to a logic based on social justice.

This critique, then, underscores the fact that the outcome of implementing planning policies – such as in Niterói – may not be in line with the intentions of the architects of the policy.

Viewing the results of applying these tools in Niterói, it may be easy to argue that no progress has been made towards achieving social justice in the sense referred to in the Statute of the City. Thus, for Orlando Junior, a sociologist at the Instituto de Pesquisa e Planejamento Urbano e Regional (IPPUR) at the Federal University of Rio de Janeiro (UFRJ), the results in terms of social justice are modest: “I think the impact from the point of view of social justice are, perhaps, quite small” (P.I., 20/8/12). Yet in evaluating the results garnered towards achieving social justice, the outcomes are often hard to discern. Celso Carvalho, the national secretary of urban programs at the Ministry of Cities made this point, both generally and regarding Niterói:

I think it’s a process we can’t yet see the results. In Niterói, favelas continue, the poor continue living badly, a lack of sanitation continues, segregated neighbourhoods continue. In Rio de Janeiro and all cities, we do not notice changes yet ... I think the changes are occurring, especially, like I said, not in rich areas in the sense of democratizing rich areas. But in poor areas some things have happened, works of slum upgrading, land ownership regularization, people have access to title ownership. That has not changed the face of the city, so there are no noticeable results (P.I, 7/12/10).
Not only are results hard to see, but the processes that produce change are often long-term rather than short-term. In that sense this story needs to be viewed as a process at one point along a long road, as a professor at UFF pointed out:

I think there are stages, we are in a process, democracy is a process and we will expand the tools ... [Democracy] is always a process that is established differently in each place, according to the territory, with the profile, the culture, the habits, with customs, with the accumulated history ... Now, we have to continue fighting to expand the democratic forums, expand them qualitatively. Only then there is progress (P.I., 8/11/10).

Similarly, Flyvberg (1998: 5) points out that, “democracy must be fought for each and every day in concrete instances, even long after democracy is first constituted in a society.” In the context of this case study, Flyvberg’s comment shows that the Statute’s approval is only the first step of many. Its adoption on the part of the movements was no small achievement and much more can be expected to result from this experience in future years. There have been significant changes in Brazil in the role of planning, the production of urban space and the role of the state since the new Constitution. The results have significantly changed Brazil’s planning model to one focused on democratic spaces with “the potential to generate urban spaces that are less segregated and that fulfill their ‘social function’” (Caldeira & Holston, 2005: 411).

The results that have been garnered need to be viewed in the context of Brazil’s history of deep inequalities, making these changes even more impressive. For Ermínia Maricato (2010: 22), a key policymaker and academic deeply involved in the Statute’s development, “regardless of the difficulty of implementing the Statute of the City, we believe that it is nevertheless the harbinger of a new and different future.” Returning more specifically to the issue of social justice, such change is clearly a process. For Celso Carvalho at the Ministry of Cities, it may be hard to see such results because they are often long in coming: “We have results, maybe they are even in the long term ... I think we will be able to see this when we can identify which
municipality got to advance by means of a master plan and these instruments, and then see how much progress was made, because they are long-term processes” (P.I, 7/12/10).

At a practical level, solo criado has been applied in Niterói. As the interviews quoted in this chapter attest, the intention of applying solo criado was to promote social justice. Yet has social justice been promoted through the application of solo criado? What results have been garnered for social justice? While the resources that have been displaced from developers to social works have been small in Niterói, even such few resources constitute redistribution in the sense meant by the Brazilian urban reform movement and by Fainstein (2009) in Table 7.1.

In Fainstein’s list of urban values, under distribution of benefits the ‘bad’ value is favouring the well-to do. While full distribution to the worst off has not been guaranteed through solo criado, some results have been garnered as evidenced by the resources employed by FUHAB and the collection of solo criado funds. As Salandía notes (2004: 8), “The collection of solo criado in Niterói represents a first transparent experience of recovery of capital gains, which can restore the credibility of municipal public power in the application of this kind of instrument.” In addition, the use of solo criado funds towards slope retention, while necessary in precarious situations such as those in Niterói, does not represent a powerful experience of redistribution and social justice, but at best a partial application. Still, because the funds provided through solo criado have been modest, the problem lies in the collection of few funds rather than where those funds have been directed. While the other urban values listed in Table 7.1 have not been discussed in this chapter, in terms of item 2, citizen participation, results can be seen through the application of COMPUR and the urban development conferences, discussed in chapter 4.

The other two items in Fainstein’s table of urban values (item 1, public space; item 4, community) have not made much headway through the Statute’s planning directives in Niterói.
Item 1 considers public space; on the positive side, heterogeneity, and on the negative side, lack of access and heterogeneity. Yet in Niterói, urban tools have not managed to create change in regards to this item. For example, land tenure regularization programs, which attempt to advance secure tenure and close the gap between illegal and legal occupation, have been quite unsuccessful in Niterói. During the time that the prefeitura promoted land regularization, just one community gained titles. Since that time, little else has been done and the prefeitura has not focused on further titling programs. The implementation of AEIS, ideally, would also support item 1 by providing housing in central areas of the city. The instruments that impede property speculation, such as IPTU progressivo, would also go a long way to promoting heterogeneity rather than a lack of access. Yet neither of these programs have made much progress in Niterói.

In addition, item 4 considers the value of community, varying between recognition of the other and diversity and homogeneity. However, this item is not included in the Statute’s norms and the related urban tools. Therefore, this value does not produce either positive or negative results in the case of Niterói. Fainstein’s (2009) list of urban values are repeated in Table 7.3 with the addition of the two values that have made some headway in Niterói, items 2 and 3.

Despite the small steps in the direction of social justice, the intent to promote social justice is present in Niterói, although several barriers to the full implementation of the tools of urban development have not allowed the city to reach an ideal situation of social justice. Taking

<table>
<thead>
<tr>
<th>Planning Ideas</th>
<th>Good</th>
<th>Bad</th>
<th>Ambiguous</th>
</tr>
</thead>
<tbody>
<tr>
<td>➊ Public space</td>
<td>Heterogeneity</td>
<td>Lack of access, homogeneity</td>
<td></td>
</tr>
<tr>
<td>➋ Planning</td>
<td>Citizen participation</td>
<td>Rule of experts</td>
<td></td>
</tr>
<tr>
<td>➌ Distribution of benefits</td>
<td>Redistributes to the worst-off</td>
<td>Favours the already well-to-do, Assists the middle class</td>
<td></td>
</tr>
<tr>
<td>➍ Community</td>
<td>Recognition of the other; diversity</td>
<td>Homogeneity</td>
<td></td>
</tr>
</tbody>
</table>

Table 7.3: Urban values of social justice in Niterói (Fainstein, 2009)
this discussion as a whole, the changes implemented as a result of the Statute in Niterói have not fully led to social justice in an ideal form, although some transformations can be discerned. Therefore, the outcomes of such changes for overcoming social injustice are at best partial. At the same time, Brazil is one of the most unequal countries in the world, and more distributive and innovative programs need to make headway in practice if social justice is to be achieved in any meaningful way. As Orlando Junior, a sociologist at IPPUR warns, “We have a gap, a historical inequality that is very difficult to reverse if you do not develop universalistic and redistributive policies effectively” (P.I., 20/8/12). This warning should be taken very seriously at a time when Brazil is clearly moving in the right direction at a policy level, yet at the same time, the practical implications of such progressive policies have not fully taken hold.

At a broader level, Healey’s (2006c) work on governance transformations sheds some light on the question of implementing the Statute, given the challenges discussed in this chapter. Such processes link networks, discourses and practices with cultural assumptions giving legitimacy to actors and processes. Healey (2006c: 305) makes the case that:

To have transformative effects, governance innovations (such as new discourses, new allocatory or regulatory practices, the formation of new arenas or networks) must move from explicit formation episodes to arenas of investment and regulatory practice. To endure, they have to become institutionalized in the routines of governance practices... New concepts have to challenge and shift an array of already routinized governance processes, with their complex mixture of conscious and taken-for-granted modes of practice...

Sustaining and legitimizing both governance processes and specific episodes of governance are cultural assumptions about appropriate agendas and practices of governance held by different social groups in society generally. It is through these assumptions, as recognized by actors themselves and the “media chorus” of critical commentary on their performance, and as evaluated in the formal procedures for challenging governance actions, that those involved in governance are held to account and their legitimacy judged.

For Healey (2006c), governance transformations are sustained through long-term shifts in economic, socio-cultural and political relations, yet such innovations need to become institutionalized to endure. In the Brazilian case, despite implementation challenges and the
distance between theory and practice, a transformation of governance discourses and practices within Brazilian planning based on the social function of property and the right to the city is occurring (Maricato, 2009), pointing to important lessons to be gained from applying the right to the city in Brazilian planning practice.

While the Statute’s tools are difficult to implement, in part the challenge is the local Brazilian context. Indeed, because the instruments of urban development are subordinated to master plans, city councils play a role in decisions surrounding the application of such tools. For Rolnik (2011: 251), planning in Brazil works based on a process of ‘constitutional ambiguity’: “a law that could be implemented or not, depending on the will and capabilities of the local government to implement it within the vast intermediation structure of the political system.” In addition, Maricato (2009) notes that mayors are often tied to developers while local governments have a tradition of clientelistic appropriation of funds. As a result, the application of tools, such as solo criado in Niterói, are closely tied to a context of political and economic power and apparent civil society weakness, as explored in chapters 5 and 6. Recounted through a relational approach, I highlight the complexity of often heterogeneous power relations (Healey, 2006a; Yeung, 2005) that ultimately result in skewed outcomes that favour some interests over others.
Chapter 8: Conclusion

8. *Lei que não pega* (laws that don’t catch on)?

In this research, I explore the juxtaposition between an innovative national policy underpinned by the right to the city and social justice, and the implementation of that law at the local level, where results are far from ideal. This sentiment, conveyed by the saying *para o inglês ver*, is expressed by Santana (2011: 18) in reference to the Statute’s application in Salvador:

> The new legal basis provided by Statute, the result of a set of ideas that prioritize the Brazilian social question, and above all the question of urban division, is difficult to comprehend and apply in cities, highlighting a widening gap between discourse and practice in the field of urban planning, defined here as public action in the urban environment, seeking to minimize the negative effects of urbanization. This means that, although the law exists to protect the public interest, in fact, special interests overlap, subordinating the city, and somehow also the planning process.

When I began this research, discussions with experts conducted prior to starting my field work revealed a general disillusionment with the results garnered by the Statute. Though I was still optimistic about the ideals of the Statute for bringing about social change, I began to see that the reality of the practice ‘on the ground’ was far from what the urban reform movement had intended as it struggled to negotiate a policy that could – in theory – bring the right to the city to all Brazilians. Some experts even told me that ten years was not enough time to evaluate the Statute’s progress. While at the time I disagreed with this outlook, overall, the collective comments of these experts revealed to me the disillusionment with a process that many had spent years of work on – whether academic or activist.

> The sentiment expressed collectively by my informants can be summed up by the common phrase in Brazil, *lei que não pega*, or laws that don’t catch on. In that respect, João Sampaio, former mayor of Niterói noted that,

> The Statute of the City is a pity because it did not work, it does not exist. It seems that in Brazil, a *lei não pega* [laws don’t catch on], and this law has not caught on, I mean, this is
absurd. No one publicizes it, nobody has an interest in it, it has turned into something of academic interest (P.I., 18/3/11).

Reflecting the same perspective, Raquel Rolnik notes that, such “transformations do not occur through a law ... especially considering what is law in Brazil. Law in Brazil is not a thing that has to be enforced, no, law is a reference. It can be enforced or not, all laws are like that” (P.I., 29/11/10). Rolnik’s point about law being a reference and not enforceable is reflected in the case of Niterói, where laws can be altered based on the interest of the day, or that laws are not enforced because other legislation is required, such as in the case of the 1992 master plan. With over 100,000 federal laws in Brazil including everything from mandating the right to the city to regulating whether condominium dwellers can rent or sell their parking spots, this concern with lei que não pega is – overall – relevant in considering social transformations in Brazil.

However, rather than the perspective that the Statute has not ‘caught on’ or that results from the Statute are still to early to evaluate, I have argued that the changes made by the Statute are long-term rather than short-term. Thus, the changes made as a result of the new planning directives of the Statute need to be seen as a long-term process. This is the perspective of jurist and urbanist Edésio Fernandes, who argued that put in a historical context, the process will take much longer than many observers ever imagined:

There is a very great anxiety and expectation of very big changes overnight. But if you put it in an historical context, you’re talking about five hundred years of entrenched political, legal, institutional and cultural arrangements, especially in regard to the question of ownership, private property and real estate. So that puts things in another context. It is a process that will require much longer. You have to have that understanding that the Statute of the City is a framework within which you can try to change. Because of our messianic tradition that the law solves everything, we expected reality would change it automatically. It won’t (P.I., 26/5/11).

In that sense, according to Fernandes, what is problematic is the expectation that one law will change everything overnight. Indeed, the results may be hard to discern, but some are certainly present in the practice of some Brazilian cities. The realization that some experiences (in some
cities, at some times) were positive thus became a reality that I recognized during my field work. Given this long-term vision, “the resistance to [the Statute’s] implementation shows that the fight [for more just cities] has barely started” (Maricato, 2009: 209).

The fact that the Statute is remarkable in the Brazilian context cannot be emphasized enough, given high levels of poverty and socio-spatial inequality, violence and twenty years of dictatorship. Indeed, beyond the Brazilian context there are certainly lessons to be drawn from this research. The fact that the Statute was approved with broad-scale participation on the part of civil society is also a unique part of the story, and one that should not be forgotten. The role of civil society in pushing for the right to the city as a key component of the Statute is both compelling and educational for planning theory and practice, as it shows that bottom-up movements can produce policy change with the potential to affect the social fabric of urban life. The powerful role of the social movements in achieving policy results at the national level illustrates the necessity of collective action in such producing outcomes. Indeed, the story of the Brazilian urban reform movements is notable even for other contexts and “serves as a reference for social movements that have put many of their hopes for achieving the right to housing and the right to the city into the law’s success” (Maricato, 2009: 208).

While such participatory institutions are not necessarily directly transferable to other contexts, this experience serves to illustrate some components which could be useful in other settings. For example, while participatory budgeting experiences have been applied in various contexts despite obvious locational differences, the experience of the Statute – and the challenges that have emerged – may be useful to design participatory institutions beyond Brazil. The remainder of this chapter reflects on ideas for future research and transferability of the case, followed by the themes, contributions and recommendations of this research.
8.1. Thinking beyond the Brazilian context

In chapter 1, I noted that this research has the objective to reflect on how Brazil’s experience with the Statute is applicable for planning lessons beyond Brazil. Without dwelling on specifics, the planning model in Brazil is a framework that could be applied in other locales. Despite contextual variations between countries, the Statute’s principles – based on the right to the city and the social function of property – could be transferred to other contexts with the recognition that policies, as socio-spatial processes, may actually change as they travel (McCann & Ward, 2011; Peck & Theodore, 2001). As one member of CCOB in Niterói noted, the Statute “can serve as a paradigm for discussion,” although “each country has to discover its path” (P.I., 21/1/11).

The question of whether the Statute can be applied beyond Brazil refers more to the framework or set of rules created by the Statute than to the details specific to the Statute’s application.

The challenges, discussed in this research, are much more tied to the Brazilian context, especially the political context. The Statute creates a range of possibilities, which “is to enable you to play the game differently” (P.I., 26/5/11). The question is whether these possibilities are actually being used, and part of the answer to this question is rooted in the political, economic and social context of Brazil. Are social movements pushing to be included in the process? Are local governments working to apply socially just tools of urban development? In that sense, what other locales can learn from the experience of the Statute has more to do with the framework, or set of rules, created by the Statute than with the challenges that have occurred in Brazil, which is not a flaw of the law. Therefore, the challenges in this case refer to the context of Brazil. This research is very much about the challenging urban context in Brazil. Even more so, as I have pointed out throughout the dissertation, the fact that the social movements and professional sectors were able to have a law such as the Statute approved, following twenty
years of dictatorship, is extraordinary. While the Statute is extraordinary in and of itself, the challenging context is what makes the story even more impressive. Therefore, other locales may be able to use the Statute as inspiration for transforming planning practice towards the ideals of the right to the city and social justice.

8.2. Research themes

I was first drawn to study the Statute as a way of examining whether participation in the planning sphere produces social change and overall, more just outcomes. I had already done research on participation in other Brazilian urban settings, and the Statute – a national law applying the right to the city – seemed like an even better way to understand what was really taking place regarding participation in Brazil. I already knew well, from work on a participatory housing budget in Belo Horizonte in 2004, that Brazil was a leader in creating strategies for citizen participation at the local level. In addition, the idea of nationally mandating cities to implement participatory planning seemed an extraordinary effort, especially coming from a Canadian context where, despite a federal system, nationally mandated laws on issues relevant to cities – such as participatory engagement and even housing – seem a long way off.

While I began this research from the premise of the potentially positive role of participation in the planning sphere, to investigate the effects of participation at the local level in Brazil, my research came to include much more than just looking at the participatory sphere. Thus, I realized that to understand the results, I needed ask questions about the outcomes garnered for social justice. In addition, I also found that the impact of participation does not only have to do with the institutions of participation, but also with the emergent role of civil society in this process. While I had studied theories of civil society in the past and understood the connection to participation, the relevance of civil society did not emerge until interviewees
pointed out the challenges in the case of Niterói. Finally, throughout the research, I also found that while participation and a commitment to democratic principles are necessary components, one of the principal challenges is the role of powerful interests in distorting the outcomes which should be necessary components of the planning system in Brazil if the norms of the Statute are to be followed. Like the role of civil society, before starting my field work I did not understand the extent to which this factor would impact the outcomes for implementing the Statute.

Thus, my themes reflect intertwining concerns focusing on participation, civil society, the role of power and social justice. While not necessarily apparent from the beginning, these themes emerged during the time I spent in Niterói and later, during my data analysis, reflecting the evolving nature of this research.

8.2.1. The importance of participatory institutions

The first theme of this research is the importance of an institutionalized structure for public participation. I thus explore the potential emancipatory role of participatory planning in the urban sphere. By emancipatory, I mean the Statute’s requirement that cities are required to do master planning with broad-scale participation at all levels, which should bring about widespread change and social justice. As Raquel Rolnik noted,

The idea of participation ... was that we have an exclusionary urban order because the defining process of this order is exclusionary. So, participation is in the sense of transforming the order by incorporating other agents. That was the hypothesis. And that, as these other agents came in, you’d have a wider range of distribution of benefits and of investments (P.I., 29/11/10).

In chapter 4, I consider participation in the planning sphere and how participatory practice has played out in Niterói. I explore whether the Statute’s participatory requirements are allowing citizens to become involved in planning processes and the implications resulting from these channels for participation. I argue that not only is this embrace of participation innovative,
but the fact that it is buttressed by an institutional system is both meaningful and one from which other locales could learn. While there are challenges in the practice of such participatory fora – such as those discussed in the case of COMPUR in Niterói – without an institutional process for the participation of society in planning decisions, even sincere commitments to participation may never amount to a process allowing for such decisions to be included. Without institutional support, clientelistic practices, co-optation, or distorted power dynamics may well be the result, or more severe in any case. A blend between strong institutions and a robust civil society are essential in producing good outcomes, following Avritzer’s (2002, 2009) work on participatory institutions.

While a nuanced approach is necessary to understand the achievements in the area of participation, a gap exists between the rhetoric of the Statute and the local on-the-ground practice. Middling practices of participation are often the result, as was the case with the institutions of participation in Niterói. Thus, I argue that while the participatory requirements of the Statute are allowing citizens to become more involved in the planning process, key obstacles need to be overcome to more fully involve the population in the planning process, which I discuss in the conclusion to this chapter.

Yet even with all these problems, the practice of participation in the planning system is remarkable in Niterói, given the challenging context of Brazil as well as the changes that have occurred in Brazilian urban policy and planning following the dictatorship. Achievements in Niterói include a broad commitment to participation in the 1990s, intense participation in some fora of participation such as the PURs, and a broadly democratic urban development council. Overall, however, the virtue of studying participation in the Brazilian context is the broad commitment to implementing institutional arrangements focusing on participation at the local
level. Thus, strong institutions are critical in guaranteeing the right to the city in the sense of participation in a planning system for all. I use this work as a starting point to consider the relationship between civil society organization and power relations within participatory institutions that have the intention of promoting a socially just urban order.

### 8.2.2. The role of civil society

The second theme of this research is the role played by a vibrant civil society in implementing the norms of the Statute. Thus, in connection to a strong institutional system, another necessary ingredient is a strong, functioning civil society which can support such institutional processes, a point made by several authors (Avritzer, 2002, 2009; Cornwall & Coelho, 2007a). Chapter 5 begins with a discussion of the important role played by the social movements in the approval of the 1988 Constitution and the 2001 Statute of the City. This narrative of the emergent urban reform movement, which began as early as the 1970s, is often forgotten in discussions of the Statute, although some important contributions have been made (Avritzer, 2007; Bassul, 2002; Grazia, 1993). I give an overview of these movements from their beginnings in the 1950s as a form of populism to their achievements in approving, in 2001, the Statute of the City.

The story of a diminished civil society emerged as a clear theme during my field work, an important aspect of the case study in Niterói. Through an exploration of the specific entities of civil society and the reasons for their decline, I explore the perception among interviewees of an overall decline of civil society. Therefore, the perception among interviewees was that a robust civil society existed at one time, yet became retracted over time for several reasons, which I outline in chapter 5. Based on my field work, I found four reasons for this decline: first, participation in residents’ associations reduced as a result of the co-optation of community leaders; second; many of the demands made by such movements were achieved to some
extent, leading to less of a need for an independent civil society to push for key demands; third, the frustration among civil society groups that their demands had not been met by the government after many years of effort; and finally, the lack of leadership on the part of the movement for land tenure in Niterói led to insufficient leaders to fill the many opportunities for participation following the new Constitution and the Statute of the City.

I conclude by arguing that rather than suffering from a decline, civil society in Niterói changed and adapted based on the political context. This highlights the changes that occur between civil society and its environment, calling attention to how civil society organization influences the capacity to implement more participatory and socially just planning processes. This explanation uses a relational approach, pointing to civil society’s malleability over the short term (Baiocchi, et al., 2011; Healey, 2003). Building on the political opportunity approach, I account for the political context in which movements operate, facilitating both mobilization and movement outcomes (Tarrow, 1994).

**8.2.3. The role of power and powerful interests**

The third theme is the role of power and powerful interests in the urban sphere. Chapter 6 considers, in the context of implementing the Statute, the interplay between power, politics and the practice of planning in Niterói. The argument made in this chapter is linked directly to results found in other chapters showing a partial application of the Statute, both in terms of participatory fora and urban development tools. I show that political actors and developers manipulate urban policy such that the planning outcomes assumed as goals of the Statute – social justice and the right to the city – fail to be promoted more fully. As Maricato (2009) points out, law is also subject to power relations. I show that power and politics act as a barrier to the effective application of urban development tools such as *solo criado*.
Without a full understanding of how urban policy takes place in Brazil, there is an assumption that planning policy will promote two idealistic goals: social justice and the right to the city. However, powerful interests – principally political actors and the private sector – are able to hold back the effective implementation of the norms enshrined by the Statute. With this conundrum in mind, I consider whose interests are in the forefront, and whose interests prevail. Starting from work on the urban growth machine that highlights the elite interests at play in urban land development, I consider the idea of a growth coalition that alters urban policy through an institutionalized pro-development ideology (Molotch, 1976). In addition, I use a relational approach (Healey, 2003, 2006a) to unpack the complex power relations in Niterói.

Drawing on interview data from Niterói, I show that despite recent efforts to establish a socially just urban order based on the right to the city, planning policy has not prioritized the interests of the poor in that city. In this context, the status quo – the political and economic elite – manipulate planning policy in a way that reinforces their interests. For example, rather than passing through democratic decision-making processes, issues that should pass through councils often “pass parallel and pass through where it’s always passed, by a direct link between promotion ... city as a promotion of business, contractors, developers ... and political mediation” (P.I., 29/11/10). This finding presents a focused approach to power dynamics through rich case study material. I show how power influences the capacity to implement more participatory and socially just planning. Power relations among several actors interfere in applying participatory planning and the tools based on the social function of property, highlighting the complexity of power relations which are often heterogenous (Healey, 2006a; Yeung, 2005), resulting in skewed outcomes that favour Niterói’s political and economic powers.
8.2.4. Social justice: The ‘devil is in the details’

The final theme of this research is the contradiction between policies that place social justice at the forefront, and the implementation of those policies which is at best partial. The analogy of the ‘devil is in the details’ helps to clarify the fact that the intention to promote policies that are socially just – while important – is entirely separate from the implementation of such policies. In chapter 7, I consider the literature on social justice to define the term in the literature and in the Statute. For Brazil’s urban reform movements, social justice means redistribution to democratize opportunities with a strong connection to universal rights. In the Statute, social justice means fair distribution of the costs and benefits of urban development, and is one of the outcomes to fulfill the social function (E. Rodrigues & Barbosa, 2010). This is followed by a discussion of the application of social justice in Niterói to understand the results garnered for social justice.

In chapter 7, while I briefly explore social justice in a range of literature (Dikeç, 2009; Freire, 2000; Harvey, 1973; Lefebvre, 1996; Rawls, 1971; Smith, 1994; Soja, 2010; Young, 1990), I focus on ‘just city’ planning to concretize often vague meanings of social justice. Using Fainstein’s (2009) framework listing the values that many urbanists agree on as positives and negatives (Table 7.1), I apply this framework to the case of Niterói. These values include four planning ideas – public space, distribution of benefits and community – including positive and negative values for each. In particular, I focus on the positive value of social justice meaning redistribution of benefits, also a key element for the urban reform movement.

Drawing on an analysis of the application of solo criado in Niterói, I argue that the results are often hard to discern and processes producing social change are often long-term rather than short-term. While I make this point more generally in relation to the Statute, this is more easily seen in the context of the Statute’s urban development tools. For that reason, the results
garnered for social justice are at best partial in Niterói. I discuss three issues which have been challenging for the application of the urban development tools of the Statute: 1) a lack of monetary and human resources by many Brazilian municipalities; 2) the nature of decentralization, which has been problematic in the context of the Statute; and 3) the role of power and powerful interests, which I find is a further barrier for the application of urban development tools. However, social justice was the intention of the prefeitura as early as the 1990s, certainly a point that stands out against the norm in Brazilian planning at the local level.

Solo criado has been applied in Niterói, such as the resources employed by FUHAB and the collection of funds through solo criado. Such changes represent small steps in the direction of redistribution as conceived in Table 6.1 and by the urban reform movement. However, the use of funds collected from solo criado for slope retention does not represent a robust experience of redistribution, but rather a partial application of social justice. Rather than a problem with where the funds are directed, the issue is that the funds collected from solo criado are small.

Still, transformation of governance discourses and practices within Brazilian planning based on the social function of property and the right to the city is occurring (Healey, 2006c; Maricato, 2009), providing lessons from applying the right to the city in Brazilian planning practice. Indeed, despite recognizing the partial application of the urban development tools in Niterói, the implementation of such policy is influenced by other factors. Thus, a planner and bureaucrat at the Ministry of Cities notes that, with the creation of the guidelines of the Statute of the City, an expectation is created that such rules are followed:

From the moment you put this guideline forward, you create a condition to require that they should be implemented. So as you have the Statute of the City, you have a society that can dispute that it should be implemented. So this is another inducing factor, but it requires much articulation, mobilization, much awareness, and all that with strong political support, because otherwise it does not advance (P.I., 9/12/10).
Beyond a discussion of whether such guidelines are followed, the issue becomes one in which other variables (civil society and the political context) play a role. In understanding the Statute’s application, policy implementation does not take place in a vacuum. These four themes are intertwined, representing interconnected factors in applying the Statute of the City in Niterói.

8.3. What keeps practice from reflecting rhetoric?

This research considers how power relations and civil society organization influence the capacity to implement more participatory and socially just planning. Relatedly, I consider the gap between theory, discourse and law, juxtaposed with planning practice where results are far from ideal. Thus, what keeps practice from reflecting rhetoric? In chapter 1, I noted that this question about the distance between theory and practice helps to understand the relationship between the four interlinked themes of this research. Using a relational approach bringing together clusters of people, power and organizations (Healey, 2003; Somers, 1993), I build on Avritzer’s (2009) work showing that the emergence of participatory institutions depends on civil society organization and political society.

The dynamics among participatory institutions and socially just outcomes situates the actors involved in urban politics including the private sector, civil society, city council, political parties, local government, professional associations, and the public ministry, shown in Figure 1.1. The narrative of the challenges of implementing progressive policy tools in Niterói, described throughout the thesis, involves these actors and their relations in a negotiated struggle over the current and future meaning of the city.

This research suggests that the political context impacts civil society actions, mobilization and interactions with the state, ultimately yielding a changed landscape of civil society action in Niterói. Although civil society was perceived to have a reduced prominence in Niterói’s political
life, I show that in fact civil society’s malleability over time is based on political factors (Baiocchi, et al., 2011). Building on the political opportunity approach, the political context influences the governance of civil society organization as movements respond to external influences (Edelman, 2001; Krantz, 2003; Tarrow, 1994). Yet not only does civil society adapt to the political context, but such changes influence the capacity to implement more participatory and socially just planning as envisioned by the Statute. Calling attention to the changes that occur between civil society and its environment, as well as the relationships with actors within the realm of urban politics, this finding highlights the nuances that may occur through the political environment.

In addition, I find that power relations impact the capacity to implement participatory and socially just planning. Indeed, power relations among various actors including political parties, mayors and the private sector, among others, may interfere in the implementation of participatory planning and in the outcomes for achieving social justice. This may occur through mayoral influence over the urban policy, control over the participatory process, co-optation, clientelism and ‘intimate’ ties between developers and local government, as I show in the case of Niterói. By highlighting such power relations, this research exposes the complex workings of urban politics among Niterói’s political and economic powers – a coalition of land-based elites (Molotch, 1976) – the inequalities among them and the consequences of this disparity. Using a relational account points to the complexity of power relations which are often heterogeneous (Healey, 2006a; Yeung, 2005), giving rise to outcomes that favour the city’s political and economic powers. Indeed, for Rolnik (2011), even if legislation were to have more teeth than the current Statute, urban planning in Brazil is the domain of centralized bureaucracies depending on decision-making processes influenced by political and economic interests.

The clear distance between rhetoric and practice in Brazil is highlighted by the complex
relationships between the four themes of this research. Indeed, based on the interlinked relationships between participatory institutions, civil society organization, power relations and the outcomes for social justice, the actors involved in the policy process – played out between a changing civil society combined with a powerful mayor, political machine and developers, among other actors – converge on a well-intentioned participatory planning process to produce less than stellar results. Despite challenges in applying the social function of property in Brazilian cities, the reshaping of governance discourses within Brazilian planning based on the social function of property and the right to the city is occurring (Healey, 2006c; Maricato, 2009), which ultimately provide lessons for applying the right to the city in Brazilian planning practice.

8.4. Ideas for future research

One challenge emerging from this work is moving beyond the discourse of pessimism and negativity regarding the Statute to an analysis of the possibilities for moving forward with the innovative project presented in the Statute. While the Statute itself possesses many faults, one area of exploration is an analysis of specific possibilities for improving on the challenges presented here and identified in cities across Brazil. Thus, what are the possibilities for improving the application of the Statute? This research would consider whether new policies are needed, whether the solution needed has more to do with the context of Brazil, or whether the solution lies in the governance processes managing cities, among other possibilities. The relevance of exploring this area of work lies in the fact that, by assuming pessimism regarding the outcomes of the Statute, much stands to be lost of a process that took many years to build.

A second area of exploration is the impact on the trajectory of socially just planning of the Olympics and the World Cup. While there is much work already on the impact of ‘mega events’ in Brazil, especially the negative changes and social effects (Miagusko, 2012; Sánchez &
Bienenstein, 2009), little work has considered where urban Brazil is heading in reference to the urban reform project created in the 1970s and 1980s. Thus, a comparison of the vision created with the urban reform movement and the new changes occurring as a result of the World Cup and the Olympics would consider the alterations at the heart of planning for Brazilian cities. What contextual factors made the situation more promising in the past, and why has this vision not been translated into current planning discourse in Brazil? Why was Brazil headed in the direction of guaranteeing the right to the city during the period of the urban reform movement, yet currently in the era of mega events such ideals are not the a priority? This work would require consideration of the effects of globalization and international finance, as well as an interdisciplinary take on the role of the mega events in Brazilian urban planning and policy.

A final area of research is the relationship between municipal, state and federal level bodies of governance – such as councils and conferences – examining the policy transfer among these tiers. This type of analysis would contemplate the effect of decision-making processes at the local level, and whether policymaking at the local level is conveyed to the National Council of Cities and the National Cities Conference. This work would focus on the policy dimensions of participatory fora discussed in this research, asking whether such entities make real change at the national level of policy. This research would shed light on the role of local policymaking and the role of the municipality in the Brazilian federation, asking questions about the outcomes of decentralized policy to make real change at the national level.

8.5. Research contributions
The Niterói case offers almost two decades of experience in applying socially just planning, starting a decade before the Statute was formally adopted. Given that Niterói has been applying participatory planning and the tools of social justice since the 1990s, the case gives insight into
what other cities might face in the future. Although Niterói is a major Brazilian city, it has been critically understudied; there is little work on Niterói’s urban context. This research expands the urban politics literature in Brazil beyond the two major cities, Rio and São Paulo (Caldeira, 2000; Lima Junior, 2010; Rolnik, 2001, 2009; Vainer, 2011), the focus of most existing work. Robinson (2006) calls attention to ordinary cities, allowing an exploration of the uniqueness of all urban places rather than focusing on a hierarchical system of cities at the top, such as New York, London and Tokyo. In addition, King’s (1990) recognition that all cities are world cities “forces one to acknowledge the effects of globalization on all cities of the world, thus expanding the field of debate and suggesting further research into the varieties of the urban condition today” (Huyssen, 2008: 11).

Beyond exploring an understudied case, this research provides several specific contributions to planning discourse. This research highlights a narrative of the important role of civil society both in the practice of planning and more specifically, in the Brazilian context of the applying new planning norms. Although much work has documented the role of social movements in the process of urban reform (Avritzer, 2007; Bassul, 2002; Gay, 1994; Mainwaring, 1987), there has been less recent work on civil society movements at the local level, although there are some exceptions (Alvares & Bessa, 2011; Avritzer, 2010).

An additional contribution of this research for planning scholarship lies in linking participation, civil society, power and social justice in a context where participatory institutions have been widely discussed (Abers, 2000; Avritzer, 2009; Baiocchi, et al., 2011; Donaghy, 2013; Nylen, 2003; Wampler, 2007) and where power relations often favour those at the top of the political and economic power structure (Irazábal, 2005; Power & Taylor, 2011). My research thus explores outcomes and results, combining a discussion of the process (such as participatory
master plans) with outcomes (such as solo criado). Indeed, little work has explored whether the possibilities created by the Statute have been turned into outcomes, although there are some exceptions (Costa, 2011; Gonçalves, 2011; Santos Junior, et al., 2008).

Relatedly, although there is a lot of work on political parties and local politics in urban Brazil, especially related to participatory institutions and the Workers’ Party (PT) (Abers, 1996; Avritzer, 2009; Baiocchi, 2005, 2003b; Keck, 1992; Lavalle, et al., 2005; Nylen, 2003), there is less work on the role of the private sector and developers, although there are some exceptions (Donaghy, 2013). There is also less work on the role of power relations in this context. Perhaps this dearth of research on these important actors results from the fact that the private sector does not play a formal role in other participatory institutions, such as participatory budgets. While the role of power within participatory venues are often mentioned (Kothari, 2001), my research focuses on the power relations surrounding planning decisions in the public realm more specifically, which, I argue, is necessary to understand social justice outcomes of participatory processes. In addition, one contribution of my work considers urban planning processes through the lens of politics, as urban planning decisions are also political decisions.

This work builds on research on participatory planning by exploring the councils, conferences and public hearings required by the Statute and used in many Brazilian cities to carry out urban planning. Some work considers specific urban policy councils, especially those focused on urban development, housing and health (Costa, 2011; Cotta, et al., 2010; Cymbalista, 2000; Pereira, 2000; Salandía, 1995). My research, however, explores these venues (councils, conferences, public hearings and participatory master plans) as part of a system, rather than considering the councils separately. For example, work coordinated by IPPUR at UFRJ brings together researchers across Brazil to consider municipal urban development councils (R. M. d.
Castro, et al., 2011), without considering other participatory channels or precursors such as master plans. My research thus contributes to the work on the urban reform instruments by regarding the various participatory venues as a system of urban development (Santos Junior, et al., 2008), the linkages between participatory venues and the many actors involved.81

At a broader level, this research demonstrates that applying the vague concept of the right to the city is possible in practice and that some changes to planning practice are viable in a challenging urban context. Despite several pitfalls in applying the Statute and the right to the city, the Brazil case underlines that the right to the city need not only be a theoretical contribution to urban theory, but also an idea applied in practice. Given the implementation problems described throughout this dissertation, the ideal of the right to the city – whether conceived in the Lefebvrian sense or from the perspective of social movements – is very much in use in Brazil. Perhaps the fact that the right to the city has become part of the lexicon of the Brazilian urban movements underscores its use in practice. In that sense, moving the right to the city beyond theoretical idealism to consider its practical applications is very much possible.

In the ten years since the Statute’s approval, the framework requiring cities to carry out policymaking with full citizen participation is viable as a strategy to help to achieve other goals, including regularizing informal settlements and securing the right to the social use of urban land. The virtue of this model is its institutional framework mandating participation at the local level. While many interesting experiences of participation occur worldwide, without a framework requiring participation, such experiences will be patchwork solutions that will last only as long as a politician or particular political party commits to participation. Despite several challenges in

81 Although there is disagreement about the extent of a system of urban development in Brazil, the 5th national development conference in 2013 approved the implementation of a national system of urban development, integrating various policies and levels of the Brazilian federation.
the application of participatory decision-making, citizens within a profusion of participatory fora in Brazil play a role in policy-making at municipal, state and federal levels. Within a challenging political environment dominated by powerful interests, such action still seems to play a key role, even if the immediate effects are problematic or not entirely evident.

Overall, the application of the Statute in Niterói and in other cities also demonstrates the necessity of thinking beyond status quo planning thinking to alternative strategies that put the needs of the poor at the centre. Alternative strategies embracing socially just planning can become part of the norm, even within a capitalist model. Starting in the 1980s, many Brazilian municipalities experimented with progressive tools of the Statute. While many experiences were problematic, others overcame such challenges, demonstrating positive outcomes that may result from the adoption of socially just planning models. Brazil has been able to establish a range of alternative planning practices embracing a different model of planning, one based on the social function of property, the right to the city and social justice. Not only have Brazilian cities established such practices, but alternative practices such as the social function of property became part of everyday planning practice. During the lead-up to the Statute’s approval, many gains were made in this respect, while some of the requests made by the various sectors were not included in the final text of the Statute. However, even the gains made by these movements and the achievements made thus far in applying these tools are noteworthy. The tools of urban development included in the Statute could, then, be used as a model for establishing alternative forms of planning practice. Just as specific tools of the Statute have drawn on experiences elsewhere, aspects of the Brazilian experience could be applied to other contexts by learning from both the challenges and possibilities of the Statute.

These contributions reinforce the fact that such change in Brazil will be hard to come by
given the context, and indeed, that it is part of a long-term process. While I have pointed to the challenges of implementing the Statute at various points in this dissertation, the implications emerging from this research underline that despite the challenges, the lessons that emerge point to several encouraging moments in this story. In that sense, one needs to separate positive lessons for real policy change that may be used in other locales, both within Brazil and beyond.

8.6. Recommendations: Moving beyond the impasse

Leading from one of the contributions of this research, in order to critically evaluate the practice of progressive planning in Brazil, one recommendation is to add to the scarcity of research on secondary, understudies cities such as Niterói. Such analysis can help to take stock of challenges such as those discussed in this research to evaluate the practice and challenges of typical cities, rather than exceptional cases such as Rio and São Paulo.

In addition, while I underlined the important role of civil society at various scales in Brazil, the sustained role of social pressure from civil society actors is necessary to oblige government and private interests to advance the right to the city in order to bring about real change in urban policy in cities like Niterói. Indeed, Avritzer (2012: 125) points out that “in order for these experiments to become successful they need to be effective in their capacity to involve more people and distribute public good to the poor.” At a practical level, one proposal going forward would be for participatory institutions such as COMPUR to be deliberative rather than consultative, ensuring that civil society’s voice is not overruled in preference to the dominant interests in the city. This would imply that the decisions resolved within such fora among a diversity of actors translate into binding decisions at the policy level. Despite problems regarding deliberative participatory fora, the literature is broadly optimistic based on:

The recognition that these fora genuinely represent a potential space for new actors
to present demands, participate in the agenda-setting process, contribute to the formulation of policies and oversee their management – as well as a space in which state actors come face to face with the demands and the power of the population (Coelho, et al., 2002: 10-11).

Another way way to give more teeth to participatory institutions would be to tie funds to the functioning of councils. Within health policy, there have been cases where federal funds to the municipality were suspended when municipalities failed to comply with health councils’ decisions, such as in São Paulo during Paulo Maluf’s conservative administration (Junqueira, 2002). In such cases, “their design incorporated mandatory sanctions against governments that fail to implement their decisions” (Avritzer, 2012: 118). In addition, at the level of participatory practice, one proposal to go beyond some of the Statute’s implementation challenges is to expand the requirements of the urban development tools, such as requiring a more democratic and transparent process in decisions surrounding the use of funds from solo criado, among other tools. While some interviewees described the current process in Niterói as a ‘black box,’ a more transparent, democratic process would help to amend this challenge.

While I have pointed to the challenging role of politics in Brazil, one way to promote more robust results within urban development does not purely relate to the process of urban planning but also to the political system that shapes urban planning. Going back to the comment of jurist and urbanist Edésio Fernandes in section 6.4, rather than focusing on the specific implementation challenges of the Statute, political education and participation are key to dealing with the political issues inherent to Brazil. Indeed, participatory fora such as urban policy councils are recent developments in Brazil. In the case of Niterói, a former municipal planner noted that COMPUR “needs time for maturity” (P.I., 13/1/11). Therefore, the role of education and learning are important in the success of participatory institutions. Specific proposals for improvements include promoting education among community leaders broadly and planning
education for community members to understand complex planning processes associated with the Statute of the City. Although such experiences of education and training occurred sporadically in Niterói, clearly more education is necessary to improve community involvement within a challenging political environment.

Finally, in order to overcome a range of problems in urban Brazil leading to socially just planning, it is necessary to tackle persistent poverty and inequality, which are marked features of life in urban Brazil. Returning to the warning made in section 7.4 by Orlando Junior, a leading sociologist at IPPUR, without developing universalistic and redistributive policies in Brazil to address its enduring inequality, changes in the urban sphere will be difficult to reverse. In recent years, Brazil has made some headway at a national level, with poverty rates decreasing steadily (P. H. G. F. d. Souza, 2012), pointing to the promise that the gains made by the urban reform movement may move towards real change for all in urban Brazil.

Despite the gap between theory and practice in Brazil, any proposal to transform urban legislation in Brazil – such as involving more democratic principles or improving the transparency of the processes – has to account for the fact that the system of urban development is entrenched within a highly established political context. Yet while resistance to change is like to be fierce, participation and political education may be key to dealing with such challenges. For this reason, accounting for the complex challenges of urban development in Brazil requires a recognition of the ways that power relations and civil society organization influence the capacity to implement more participatory and socially just planning.
Epilogue

Beginning on June 6, 2013, Brazilians in São Paulo took to the streets to protest a rise in bus fares. The demonstrations were sparked by insufficient public services, particularly for transportation and bus fares, but also for the right to the city (Sprejer, 2013; Vainer, 2013). Indeed, “the right to mobility ... is also the right to the city, to collective decision-making, to opportunity, to justice” (Williamson, 2013). While the protests against rising bus fares was both the original and official cause of the protests, it merged with other citizens’ demands on a range of issues including health, education and the World Cup. Indeed, the situation of mobility became entangled with other agendas, as numerous ‘white elephants’ were left behind for the Brazilian population (Maricato, 2013). An accumulation of problems, scandals and issues reported on everyday came to a tipping point with the decision to increase bus fares. Thus, these issues are about what type of city is both lived and desired.

While protests took place across Brazil, the biggest demonstrations were in Rio, which has experienced the full force of misspending in preparation for the World Cup and Olympics alongside the expulsion of city’s low income groups from central areas. In Niterói, protests were centred on a parliamentary inquiry into the city’s transportation system and appeals to end the concession for CCR Barcas, the company responsible for the Rio-Niterói ferry.

As the protests expanded across Brazil, it became a movement against bad politics, not against any particular party but rather against all those in power. Civil society is both organized and aware of its power, which is reflected by the coverage in the Brazilian media of these events.

Indeed, the protests are about democracy. In a recent blog post, Raquel Rolnik (2013) observed that, “the desire to participate also seemed very visible. People want to be consulted, they want their views are taken into account. Representative democracy in Brazil is clearly experiencing a crisis.” In that sense, the act of protest, in the sense of control over space, relates to people’s alienation in decision-making in political spheres and their perception of a lack of public expression. Indeed, the project to apply direct democracy through councils and public hearings, including those for urban policy, have not taken hold. Not only are the protests about democracy, but they are also about entrenched private interests in Brazil, such as the bus companies, and the private interests gaining money at the expense of the majority of the population getting the raw end of the deal of public services.

The protests represent a reminder of forgotten promises, “the resumption of important claims of struggle for basic social rights” and also “a sign that Brazilian society is very happy to have more money to buy more things, but that is not enough” (Rolnik, 2013). As the protests multiplied across Brazil, it seemed to underline a change from more recent complacency. Certainly, these protests were the most significant public action since the demonstrations surrounding the push towards democracy in the 1980s. Yet as Rolnik (2013) points out, the spark that ignited the protests in June 2013 emerged from from years of a new generation of urban movements, working within networks such as those protesting the World Cup. While the demonstrations took the world by surprise, they illustrate a frustration with the gap between theory and practice in Brazil. As in the case of the Statute, promises to improve on corruption, bad governance and the misuse of public spending have not been translated into tangible results. Frustrated by the shortfall in public promises, more than a million Brazilians took to the streets, illustrating that the disparity between theory and practice needs to be corrected before too long.
Appendices

Appendix 1: Interview guide

- What is your area of research/expertise/interest in the field of urban planning?
- Are you familiar with the Statute of the City?
- What is your current role in implementation and policy in the city?
- In what ways are you involved with the Statute of the City?
- During your time working for _____, have you noticed any changes at the level of local planning (if any)?
- What were these changes?
  - Local land use
  - Urban property rights
  - Use of legal instruments
  - Master Plans
- What forms of participation are currently being carried out in _____?
- Was the city implementing participation – of any form – prior to 2001 (when the Statute of the City came into effect)?
- Do you think the participatory requirements that were mandated through the Statute of the City have generated changes at the local level? In what ways?
- What do you see as the benefits as a result of participation in the city?
- Do you think the participatory changes that resulted from the Statute of the City exemplify the concept of the “right to the city”? (Explain the concept of the right to the city).
- In what ways has the implementation of the Statute of the City brought about local changes to combat social inequality?
- In your opinion, how has the role of municipalities changed as a result of the Statute of the City?
- Has the Statute brought about changes in the way urban policy is formulated?
- From your experiences in _____, how may other jurisdictions (perhaps from other countries) implement similar processes?
- What recommendations would you give to a colleague in another jurisdiction trying to implement the same types of things you have done in _____?

Note: This sample interview schedule is intended as a loose guide. Though the questions have been fully noted, they are intended more as a guide to be used during the interview to allow for more flexibility.
Appendix 2: Informed consent form

Dear __________,

My name is Abigail Friendly, and I am a PhD student in the Department of Geography and Planning at the University of Toronto, Canada. I am currently conducting research for a project evaluating the Statute of the City in Brazil. The project is entitled, “Participation in the Statute of the City: Innovating Planning Policy in Brazil.” The purpose of the research is to examine the impact of the Statute in Brazilian municipalities.

Your participation in this research project is greatly appreciated and will help to expand my understanding of urban planning in Brazil. Over a period of several months, I will be conducting interviews with experts, municipal officials and residents in Niterói and several other cities. Lasting approximately an hour and a half, the interviews will be fairly informal and relaxed. While I have put together a set of questions for you to answer during the interview, I want to hear about your thoughts about experiences. Please feel free to introduce issues that you feel are important.

With your permission, the interview will be recorded. This will allow me to accurately record your answers during the interview. However, all information you provide will be treated with confidentiality if you desire, and your name will not appear in any publications that result from the research if you do not consent to this.

The results of the study will be used in my PhD dissertation. If you would like, you will receive a summary of the findings when I complete my research.

If you have any questions concerning this research study, please do not hesitate to contact me at the details provided below, or my advisors, or the Ethics Review Office at the University of Toronto for information about your rights as a participant.

Sincerely,

Abigail Friendly
PhD Candidate, University of Toronto

☐ I agree to participate in this interview. I have been informed of the purpose of this project and use of the information.

☐ I consent to the audio-recording of this session.

☐ I consent to having my name used in this research and any resultant publications.

________________________________________  ________________________________  ________________________________
Participant’s name                  Participant’s signature                  Researcher’s signature

Signed on __________________________ (date and time) in __________________________ (location)

Personal contact:                   Advisor’s contacts:                        Ethics Review Office:
Abigail Friendly                    Dr. Amrita Daniere                        ethics.review@utoronto.ca
abigail.friendly@utoronto.ca        amrita.daniere@utoronto.ca                (416) 946-3273
(416) 319-2325                     (416) 978-3236                               
Dr. Paul Hess
hess@geog.utoronto.ca              (416) 978-4955

230
# Appendix 3: Interviews conducted for this research

<table>
<thead>
<tr>
<th>Niterói</th>
<th>Organization</th>
<th>Date of interview(s)</th>
</tr>
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<tr>
<td><strong>Civil society</strong></td>
<td>Institute of Architects of Brazil (IAB)</td>
<td>3/12/10</td>
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<tr>
<td></td>
<td>Community Council of the Orla da Baia (CCOB)</td>
<td>30/3/11; 24/3/11; 21/1/11</td>
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<td></td>
<td>Community Council of the Oceânica Region (CCRON)</td>
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<td></td>
<td>Federation of Associations of Residents of Niterói (FAMNIT)</td>
<td>17/12/10; 25/1/11; 21/12/10; 12/4/11; 2/5/11; 22/3/11</td>
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<td></td>
<td>Popular Budget Forum of Niterói (Fórum Popular do Orçamento de Niterói)</td>
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<td></td>
<td>Movement for the Defence of the Owners of Property in Federal Lands (Movimento de Defesa dos Proprietários de Imóveis de Terras da União)</td>
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<td></td>
<td>Viva Niterói</td>
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<tr>
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<td></td>
<td>Secretariat of Housing</td>
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<td></td>
<td>Municipal Housing, Urbanization and Sanitation Company (EMUSA)</td>
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<td>Niterói Transport and Transit (NITTRANS)</td>
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<td></td>
<td>Other</td>
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<td></td>
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<td><strong>Public ministry</strong></td>
<td>Formerly</td>
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<tr>
<td><strong>Private sector</strong></td>
<td>Águas de Niterói (Water company)</td>
<td>6/4/11</td>
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<td>Association of Business Executives in Niterói’s Real Estate Market (ADEMI)</td>
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<td><strong>Academia</strong></td>
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<td></td>
<td>Sociology/Law</td>
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**Total interviews in Niterói:** 58

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<tr>
<td><strong>Government</strong></td>
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<td></td>
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<tr>
<td>Advisors to elected officials</td>
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<tr>
<td>Secretary of urbanism</td>
<td>26/1/11</td>
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<tr>
<td><strong>Academia</strong></td>
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<td></td>
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<td>Architecture &amp; Urbanism</td>
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<td><strong>Professional associations</strong></td>
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**Total interviews in Rio de Janeiro: 10**

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<td>Various civil society organizations</td>
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<td>Secretariat of Urbanism</td>
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<td>Secretariat of Budgets and Participatory Planning</td>
<td>20/5/11; 19/5/11; 17/5/11</td>
</tr>
<tr>
<td>Secretary of Housing</td>
<td>17/5/11</td>
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<tr>
<td>City councillors</td>
<td>18/5/11; 17/5/11</td>
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<td><strong>Private sector</strong></td>
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<td>Developers</td>
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**Total interviews in Santo André: 13**

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<td>1/12/10</td>
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<td>Instituto Pólis</td>
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<td>Federation of Organizations for Social and Educational Assistance (FASE)</td>
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<td>Other</td>
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<td><strong>Government</strong></td>
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<tr>
<td>Ministry of Cities</td>
<td>7/12/10; 9/12/10;</td>
</tr>
<tr>
<td>Federal Senate</td>
<td>8/12/10</td>
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<tr>
<td><strong>Academia &amp; institutes</strong></td>
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<tr>
<td>Fundação Getúlio Vargas</td>
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<tr>
<td>University of Brasilia (Universidade de Brasilia)</td>
<td>7/12/10</td>
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<tr>
<td>Development Planning Unit, London</td>
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<td>University of São Paulo (Universidade de São Paulo)</td>
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Total national interviews: 18

Total interviews: 99
Appendix 4: Excerpt from the Statute of the City

Law No 10.257 of July 10, 2001

This law regulates arts. 182 and 183 of the Federal Constitution, it establishes general guidelines for urban policy and other measures.

THE PRESIDENT OF THE REPUBLIC

I proclaim that the National Congress decrees and I sanction the following Law:

CHAPTER I: GENERAL GUIDELINES

Article 1. The provisions of this law will be applied in the execution of urban policy, which is the subject of Arts. 182 and 183 of the Federal Constitution. Sole paragraph - For all effects, this Law known as the City Statute establishes norms of public order and social interest which regulate the use of urban property in favour of the common good, safety and well-being of citizens, as well as environmental equilibrium.

Article 2. The purpose of urban policy is to give order to the full development of the social functions of the city and of urban property, based on the following general guidelines:

I - to guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, employment and leisure, for current and future generations;

II - democratic administration by means of participation by the population and the representative associations of the various sectors of the community in the formulation, execution and monitoring of urban development projects, plans and programs;

III - cooperation between governments, the private sector and other sectors of society in the urbanization process, to satisfy the social interest;

IV - planning of the development of cities, of spatial distribution of the population and of the economic activities of the Municipality and of the territory under its area of influence, in order to avoid and correct distortions caused by urban growth and its negative effects on the environment;

VI - ordering and control of land use, in order to avoid:

a) the improper use of urban real estate;

b) the proximity of incompatible or inconvenient uses;

c) the parcelling of land, construction or excessive or improper use in relation to urban infrastructure;

d) the installation of developments or activities that could become hubs that generate traffic, with no prevision for corresponding infrastructure;

e) the speculative retention of urban real estate, resulting in its under utilization or non-utilization;

f) pollution and environmental degradation;

VII - integration and complementarity between urban and rural activities, taking account of the social economic development of the Municipality and the territory under its area of influence;

VIII - adoption of production and consumption patterns related to goods and services and of standards of urban expansion compatible with the limits of environmental, social and economic sustainability of the Municipality and of the territory under its area of influence;

IX - fair distribution of the costs and benefits resulting from the urbanization process;

X - adaptation of economic, taxation and financial policy instruments and public expenditure to suit the goals of urban development, in order to give priority to investments which generate general well-being and enjoyment of the assets by different social segments;

XI - recovery of government investments that have led to appreciation in the value of urban property;

XII - protection, preservation and recovery of the natural and built environment, and of the cultural, historic, artistic, landscape and archeological heritage;

XIII - public hearings involving municipal governments and members of the population interested in the processes of execution of developments or activities with potentially negative effects on the natural or built environment, the comfort or safety of the population;

XIV - tenure regularization and urbanization of areas occupied by low income populations through the establishment of special urbanization, land use, land occupation and building norms, taking due account of the socio-economic situation of the population and environmental norms;

XV - simplification of the legislation concerning subdivision, land use, occupation and building regulations, in order to permit cost reductions and increase the supply of lots and housing units;
VI - equality of conditions for public and private agents in the promotion of developments and activities related to the urbanization process, serving the social interest.

**Article 3.** It is the responsibility of the Federal Government, in addition to its other attributions related to urban policy:

I - to establish legislation concerning general norms of urban law:

II - to establish legislation concerned with norms for cooperation between the Federal Government, the States, the Federal District and the municipalities with regard to urban policy, bearing in mind the need to balance development with well-being nationwide;

III – to promote, on its own initiative and in conjunction with the States, the Federal District and the municipalities, housing construction schemes and the improvement of housing conditions and basic sanitation;

IV – to institute guidelines for urban development, including housing, basic sanitation and urban transportation;

V – to prepare and execute national and regional plans to order territory and promote economic and social development.

**CHAPTER II: THE TOOLS OF URBAN POLICY**

**SECTION I: The instruments in general**

**Article 4.** For the purposes of this Law, the following among others shall be employed:

I - national, regional and state plans for organizing territory and promoting economic and social development;

II - planning of the Metropolitan Regions, urban and micro-regional conglomerations;

III - municipal planning, especially:

   a) elaborating a master plan;
   b) disciplining parcelling, land use and occupation;
   c) environmental zoning;
   d) multi-annual plan;
   e) budget guidelines and annual budget;
   f) participatory budget management;
   g) sectoral plans, programs and projects;
   h) economic and social development plans;

IV - financial and tax rules, involving:

   a) taxes on built property and urban land – IPTU;
   b) betterment fees;
   c) fiscal and financial incentives and benefits;

V - legal and political rules regarding:

   a) expropriation;
   b) administrative easement;
   c) administrative limitations;
   d) earmarking buildings or urban properties of heritage interest;
   e) establishment of conservation zones;
   f) establishment of special areas of social interest [área especial de interesse social, AEIS];
   g) concession of real right to use [concessão de direito real de uso, CDRU];
   h) concession of special use for housing purposes [concessão de uso especial para fins de moradia, CUEM];
   i) compulsory parcelling, building or utilization [parcelamento, edificação ou utilização compulsórios, PEUC];
   j) special usufruto for urban property;
   l) surface rights [direito de superfície];
   m) right to preemption [direito de preempção];
   n) award with costs of the right to build [outorga onerosa do direito de construir] or change of use [alteração de uso];
   o) transfer of the right to build [transferência do direito de construir, TDC];
   p) consortiated urban operations [operações urbanas consorciadas, OUC];
   q) land tenure regularization [regularização fundiária];
   r) free technical and legal assistance for less favoured communities and social groups;
   s) popular referendum and plebiscite;
   t) demarcation of urban land for the purpose of tenure regularization (included in Law No 11.977 of 2009)
   u) legitimation of possession (included in Law No 11.977 of 2009)

VI - Draft bill on environmental impact study and neighbourhood impact studies.

§ 1º The instruments mentioned in this article are governed by specific legislation, observing that established by this Law.

§ 2º In the cases of social interest housing programs and projects developed by government entities that operate specifically in this area, the concession of the real right to use public properties can be contracted on a collective basis.
§ 3. The instruments foreshadowed in this article which require expenditure of municipal funds shall be subject to social control as a way of guaranteeing the participation of communities, movements and civil society entities.

SECTION II: Of compulsory parcelling, building or compulsory use

Article 5. Specific municipal laws to cover areas included in the Master Plan shall determine the compulsory parcelling, building or use of non-aedificandi, under-utilized or un-utilized urban land and must establish conditions and deadlines for the implementation of the said obligations.

§ 1. Properties are considered to be under-utilized if:
I - utilization is lower than the minimum defined in the Master Plan or its related legislation;
§ 2. The owner shall be notified by the Municipal Administration to comply with the requirement and the notification must be registered in the local property deed office.
§ 3. Notification shall be conducted as follows:
I - by an official of the responsible municipal government agency, to the owner of the property, or, if the owner is a company, to whosoever possesses general administrative or managerial responsibility;
II - by public notice following three unsuccessful attempts to notify the owner in the manner called for in above sub-clause I.

§ 4. The deadlines referred to in the header above cannot be less than: I - one year, from the time of notification, for the project to be registered in the relevant municipal agency; II - two years, from the approval of the project, to allow work on the development to commence.

§ 5. In large-scale developments, in exceptional cases, a specific municipal law (referred to in the header paragraph) can call for the procedure to be concluded in stages and assure that the approved development includes the project as a whole.

Article 6. The transmission of the property, inter vivos or on death, after the date of notification, transfers the obligations for parcelling, construction or use determined under Article 5 of this Law, without any deadlines being interrupted.

SECTION III: Progressive property taxes (IPTU)

Article 7. In the case of noncompliance with the conditions and deadlines established in the form of the header of Article 5 of this Law, or if the steps called for in §§ of Article 5 of this law are not complied with, the Municipality shall proceed to impose built property and urban land taxes (IPTU) that are progressive over time, with the basic aliquot increasing over a period of five consecutive years.

§ 1. The value of the tax aliquot to be applied for each year will be fixed in the specific law referred to in the header of Article 5 of this Law and shall not exceed twice the value charged in the previous year, to a maximum rate of fifteen percent.

§ 2. In the event of the obligation to parcel, build or use the property not being complied with within five years, the Municipality shall charge the IPTU at the maximum rate until the said obligation is met, with the prerogative detailed in Article 8 guaranteed.

§ 3. The concession of exemptions or a tax amnesty with regards to the progressive taxation charge determined by this article is prohibited.

SECTION IV: For expropriation with payment in bonds

Article 8. If the property owner has not complied with the obligation to sub-divide, build or use the property five years after IPTU has been charged, the Municipality can proceed to expropriation of the property, with payment to be made in public debt bonds.

§ 1. The public debt bonds must be previously approved by the Federal Senate and shall be redeemed over a period of up to ten years in annual, equal, and successive installments, with the real value of the compensation assured and at a legal interest rate of six percent (6 per cent) per year.

§ 2. The real value of the indemnity:
I - shall reflect the base value for calculation of the IPTU, discounting the amount included as the result of public works undertaken by the local authorities in the area where the property is located after the notification mentioned in §2 of Article 5 of this Law;
II - expectations of yields, foregone profits and compensatory interest will not be computed. § 3. The bonds mentioned in this article cannot be used to pay taxes.

§ 4. The Municipality will proceed to the suitable use of the property in a maximum of five years calculated from the time the property becomes a public asset.

§ 5. The use of the property can be made effective directly by the local government or by means of conveyance or concession to third parties providing the due bidding procedures are observed.

§ 6. The party acquiring the property under the terms of §5 is subject to the same obligations for parcelling, building or use set forth in Article 5 of this Law.
SECTION V : Special usucapião rights for urban property

Article 9. Someone who has possession of an urban area or building of up to two hundred and fifty square meters, for five years, uninterruptedly and unopposed, who uses it as his or his family’s home, can establish dominion over the property, as long as he is not the owner of any other urban or rural property.

§ 1. The title of dominion will be conferred to the man or woman, or both, whether or not they are married or single.
§ 2. The rights granted in this article will not be recognized to the same possessor more than once.
§ 3. For the purposes of this article, the legitimate heir continues to have full rights to the possession enjoyed by his predecessor providing he was residing in the property at the time that it was left open to succession.

Article 10. In urban areas of over two hundred and fifty square meters occupied by the low income population for housing purposes, for five years, uninterruptedly and without opposition, and where it is not possible to identify the land occupied by each possessor, residents can avail themselves of collective usucapião, providing the possessors do not own any other urban or rural property.

§ 1. The owner can, for the purpose of calculating the timeframe required by this Article, add to his possession that of his predecessor, providing possession is continuous for both.
§ 2. The special collective usucapião of urban real estate shall be decided by the judge who shall pass down a ruling which will serve as a title for registering in the real estate deeds office.
§ 3. In his ruling the judge will award an equal ideal portion of the land to each possessor, regardless of the size of the land that each occupies, except in the case of a written agreement existing among the condominiumal parties establishing differentiated ideal portions.
§ 4. The special condominium thus constituted is indivisible and cannot be terminated except by a favorable determination submitted by at least two thirds of the members of the condominium, in the event of urbanization works being implanted after the condominium has been constituted.
§ 5. The determinations related to the administration of the special condominium shall be based upon a majority vote by the condominium members present, requiring the others to comply with the decision, whether or not they in agreement or were absent from the voting session.

Article 11. While the special urban action for usucapião is pending, any other actions, petitions, or possessions that are proposed relating to the property subject to usucapião will be stayed.

Article 12. Legitimate parties involved in proposing an action to lead to special urban usucapião include:
I - the possessor, in isolation, in group or supervenient;
II - the possessors, in co-possession;
III - an association of community residents acting as a procedural substitute, duly established, with legal standing, providing this association is explicitly authorized by those that it represents.

§ 1. Intervention by the public ministry is obligatory in the event of special urban usucapião.
§ 2. The submitting party shall enjoy the benefits provided by the courts and free legal assistance, including assistance in the real estate deeds office.

Article 13. Special usucapião for urban real estate can be invoked as a matter of defense, with the ruling that recognizes it to be regarded representing a valid title which can be registered in the real estate deeds office.

Article 14. In the legal action of special urban real estate usucapião, the summary action will be considered as a procedural writ.

SECTION VII: Concerning surface rights

Article 21. The urban property owner can concede to another party the right to use of surface of his land for a specified or unspecified time, through a public deed registered in the public deeds office.

§ 1. The surface right includes the right to utilize the land, the sub-soil, or the aerial space related to the land, in the form established in the respective contract, in conformity with urban legislation.
§ 2. The surface rights can be offered free of charge or not.
§ 3. The person receiving the surface rights shall be wholly responsible for defraying the fees and taxes levied on the surface of the property, also accepting responsibility proportional to his effective share of occupation, with the fees and taxes on the area that is the object of the concession of the surface rights, excepting any measure to the contrary expressed in the respective contract.
§ 4. The surface right can be transferred to third parties in accordance with the terms of the respective contract.
§ 5. Upon the death of the person receiving the surface rights, his rights are transferred to his successors.

Article 22. In case of conveyance of the land, or of the surface right, the party receiving the surface rights and the property
Article 23. Surface rights are terminated:
I - by the expiry of the term;
II - by failure to comply with the contractual obligations assumed by the person assuming the surface rights.

Article 24. Upon termination of the surface rights, the property owner will recover full dominion the land, as well as the accessions and improvements in the property regardless of any compensation, unless the parties have stipulated to the contrary in the respective contract.

§ 1 Before final termination of the contract, the surface rights shall be terminated if the person receiving the surface rights uses the land for a purpose that is different from that for which it was conceded.

§ 2. Extinction of the surface rights shall be registered in the real estate deed office.

SECTION IX: Award with costs of the right to build

Article 28. The Master Plan can establish areas in which the right to build can be exercised above the basic floor area coefficient adopted, with a counterpart sum to be handed over by the beneficiary.

§1 For the purposes of this Law, floor area coefficient is the ratio between the built area and the lot size.

§2. The Master Plan can establish a single basic floor area coefficient for the entire urban area or a different coefficient relating to specific areas within the urban zone.

§3. The Master Plan will define the maximum limits of the floor area coefficient, taking account of the proportion between the existing infrastructure and the increased density foreseen in each area.

Article 29. The Master Plan can establish areas in which changes of land use can be permitted, with a counterpart sum to be handed over by the beneficiary.

Article 30. A specific municipal law will establish the conditions to be observed for the award with costs of the right to build and change of use, establishing:
I - the formula for calculating the charge; II - the cases that might be exempt from payment for the award; III - the counterpart sum to be paid by the beneficiary.

Article 31. The funds generated by the award of the right to build and change of use shall be applied for the purposes established in sub-clauses I to IX of Article 26 of this Law.

SECTION X: Of consortiated urban operations

Article 32. A specific municipal law, based on the Master Plan, can limit the area for application of consortiated operations.

§ 1. A consortiated urban operation is the totality of the interventions and measures coordinated by the municipal government, with the participation of owners, residents, permanent users and private investors and aimed at undertaking structural urban readjustments, social improvement and introducing environmental benefits in a given area.

§ 2. Urban consortiated operations can include:
I - the modification of indices and formats related to the parcelling, use and occupation of land, as well as alterations to building norms, always taking into account the environmental impacts generated as a result;
II - the regularization of constructions, repairs or extensions undertaken in contravention of current legislation.

Article 33. The specific law that rules on urban consortiated operations shall include an urban consortiated operation plan and this will contain the following as minimum requirements:
I - the definition of the area to be affected; II - the basic occupation program for the area;
III - a program covering ways and means to attend to the economic and social needs of the population directly affected by the operation;
IV - the purposes of the operation;
V - a prior Neighbourhood Impact Study;
VI – counterpart payment to be required from the owners, permanent users and private investors in order to compensate for their enjoyment of the benefits established in sub-clauses I and II of §2 of Article 32 of this Law;
VII - the form in which the operation will be controlled, with the operation to be obligatorily shared with civil society representatives.

§1. The funds obtained by the municipal government under the terms of sub-clause VI of this article will be exclusively invested in the consortiated urban operation.

§2. Once the specific law indicated in the header is approved, any licenses and authorizations issued by the municipal government in violation of the consortiated urban operation will be declared null and void.
Article 34. The specific law that approves the consortial urban operation can call for the issue by the municipality of an established number of certificates for potential additional construction, which will be alienated at auction or used directly in payment for work required for the operation itself.

§ 1° The certificates for potential additional construction will be freely traded, but convertible to the right to build solely in the area that is the object of the operation.

§ 2° Once the request for the license to build is presented, the certificate for additional potential will be used in payment for the area of construction that exceeds the standards established by the land use and occupation legislation, until the limit fixed by the specific law that approves the urban consortial operation.

SECTION XI: Of the transfer of the right to build

Article 35. Municipal law, based on the master plan, can authorize the owner of urban property, whether public or private, to exercise in another location, or convey, through public deed, the right to build established in the master plan or in related urban legislation, when the said property is considered necessary for purposes of:

I - installation of urban and community equipments;

II - preservation in cases where the property concerned is considered to be of historic, environmental, landscape, social or cultural interest;

III - facilitating programs directed to tenure regularization, urbanization of areas occupied by low-income populations and social interest housing.

§ 1. The same facility can be conceded to a property owner who donates his asset, or part of it, to the local government, for the purposes detailed in sub-clauses I to III of the header.

§ 2. The municipal law referred to in the header shall establish the conditions regarding application of the transfer of the right to build.

SECTION XII: Concerning the neighbourhood impact study

Article 36. Municipal law shall define the private and public developments and activities in urban areas which require the previous preparation of a neighbourhood impact study (NIS) prior to being able to secure the licenses or authorizations to build, expand or operate from the municipal government.

Article 37. The NIS will be executed in such a way as to take into account the positive and negative effects of the development or activity concerning the quality of life of the population residing in the area and its proximities, including the analysis, at least, of the following questions:

I - population density;

II - urban and community equipments;

III - land use and occupation;

IV - real estate appreciation;

V - generation of traffic and demand for public transportation;

VI - ventilation and lighting;

VII - urban landscape and natural and cultural heritage.

Sole paragraph. The documents that comprise the NIS will be publicized and be made available for public consultation by the competent municipal government agency to interested parties.

Article 38. The preparation of the NIS will not be a substitute for the preparation and approval of the prior Environmental Impact Study required by environmental law.

CHAPTER III: THE MASTER PLAN

Article 39. Urban property fulfills its social function when it meets the basic requirements for ordering the city set forth in the Master Plan, assuring that the needs of the citizens are satisfied with regards to quality of life, social justice and the development of economic activities, respecting the guidelines established in Article 2 of this Law.

Article 40. The master plan, approved by municipal law, is the basic instrument of urban development and expansion policy.

§ 1. The master plan is an integral part of the municipal planning process, and the multi-year plan, the budget guidelines and the annual budget shall be required to include the guidelines and priorities established in this Plan.

§ 2. The master plan shall apply to the municipal territory as a whole.

§ 3. The law that institutes the master plan shall be revised at least once every 10 years.

§ 4. In the course of preparation of the master plan and in the monitoring of its implementation, the municipal legislative and executive powers will be required to ensure that:
I - public hearings and debates are organized with participation by the population and associations representing the different segments of the community;

II - publicity concerning the documents and information; III - access to the documents and information by interested parties.

**Article 41.** The master plan is mandatory for:

I – cities with over 20,000 inhabitants;

II – cities located in metropolitan regions and urban conglomerations;

III – cities where the municipal government intends to use the instruments established in §4 of Article 182 of the Federal Constitution;

IV - cities of special tourist interest;

V – cities falling within the area of influence of developments or activities with significant environmental impact in the regional or national domain.

§1. In the case of the developments or activities described in sub-clause V of the header, the technical and financial resources required for the preparation of the master plan will be inserted in the compensatory measures adopted.

§2. In the case of cities with over 500,000 inhabitants, an integrated urban transport plan shall be prepared, compatible with the master plan or contained within it.

**Article 42.** The master plan should contain as a minimum requirement:

I - delimitation of the urban areas where compulsory parcelling, building or use is to be applied, taking due account of the existence of infrastructure and demand for use of this infrastructure in accordance with Article 5 of this Law;

II - measures required by Arts. 25, 28, 29, 32 and 35 of this Law; III - a system of oversight and control.

**CHAPTER IV: DEMOCRATIC ADMINISTRATION OF THE CITY**

**Article 43.** To guarantee the democratic administration of the city the instruments, among others, shall be employed:

I - urban policy councils, at the national, state and municipal levels;

II - debates, hearings and public consultations;

III - conferences on subjects of urban interest, at the national, state and municipal level;

IV - popular initiatives related to bills of law, plans, programs and urban development projects;

**Article 44.** Within the municipal context, participatory budget management as indicated in line f of sub-clause III of Article 4 of this law shall mean conducting debates, hearings and public consultations about the proposals of the multi-annual plan, the budget guidelines law and the annual budget as a mandatory condition prior to their approval by the city chamber.

**Article 45.** The administrative entities of metropolitan regions and urban conglomerations must assure the compulsory and substantive participation of the population and of associations representing different segments of the community in order to guarantee to them direct control of administrative activities as well as assuring the population of complete exercise of citizenship.

**CHAPTER V: GENERAL MEASURES**

**Article 46.** The municipal government can extend to the owner affected by the obligation determined in the header of Article 5 of this Law, the creation of a property consortium as a way to establish financial viability arising from the use of the property.

§1. A property consortium is considered as a way to make viable the implementation of urbanization or building plans by means of a procedure which involves an owner transferring his property to the municipal government and after work has been undertaken receives, as payment, duly built property units or urbanized units.

§ 2. The value of the property units to be delivered to the owner shall correspond to the value of the property before execution of the works in accordance with the provisions set forth in §2 of Article 8 of this Law.

**Article 47.** The taxes on urban property, as well as the fees for public urban services, shall vary, depending on the social interest function involved.

**Article 48.** In the case of social housing programs and projects developed by public organs or entities engaged in with specific activities in this area, the real right to use public property contracts shall:

I - for all legal purposes be considered as a public deed and the requirements of sub-clause II of Article 134 of the Civil Code will not apply;

II - constitute a title of mandatory acceptance as a guarantee for housing finance contracts.

**Article 49.** The States and Municipalities shall have a period of 90 days, from the time this law comes into force, to establish deadlines for issuing guidelines for urban developments, the approval of projects for parcelling and building, the undertaking of inspections and the issuing of the term of verification and conclusion of construction.
Sole paragraph. If the provisions of the header are not complied with, a period of 60 days will be established for undertaking each of the said administrative acts, a requirement which shall remain in force until the States and Municipalities have established them by law in another form.

**Article 50.** The municipalities that need to comply with the requirement called for in sub-clauses I and II of Article 41 of this Law and that do not have a master plan approved at the time this law comes into force, must approve a Plan by 30 June 2008.

**Article 51.** For the effects of this Law, the measures relating to the municipality and the mayor also apply to the Federal District and its Governor.

**Article 52.** For the effects of this Law, the measures relating to the municipality and the mayor also apply to the Federal District and its Governor.

I - (VETOED)

II - within five years there is no compliance with the appropriate use of the property incorporated into the public domain in accordance with the terms of §4 of Article 8 of this Law;

III - areas obtained on the basis of the right to preemption are used in violation of the terms of Article 26 of this Law;

IV - the funds generated by the award of the right to build and change use are disbursed in contravention of the measure set forth in Article 31 of this Law;

V - the funds obtained from consortiated operations are disbursed in contravention of the measure set forth in §1 of Article 33 of this Law;

VI - the mayor impedes or fails to guarantee the requirements set forth in sub-clauses I to III of §4 of Article 40 of this Law;

VII - there is a failure to take the necessary measures to guarantee the observance of the terms of §3 of Articles 40 and 50 of this Law;

VIII - a property is acquired under the right to preemption under the terms of Articles 25 – 27 of this Law at a price that proves to be higher than the going market rate.
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