



## Analysis of the socio-environmental impact of abandoned property

### *Análisis del impacto socio-ambiental de los inmuebles abandonados*

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**Abstract:** The study about absentee ownership, specifically about its impacts caused, as well the probable causes about this phenomenon represent a direct relation with human rights, especially those who protect the phenomenon of social inequality which will be the object of this scientific article. Thus, aimed to analyze a possible origin of the absentee ownership in context of human development with the nomadic lifestyle, characterized by the absence of fixed dwelling and a constant process of migration to another regions. Thereat and using the contemporary context as parameter, it was studied on legal texts aiming establish the nomenclatures adopted, as well to understand their insertion in the social environment, specifically in São Paulo and Rio de Janeiro using as a focus the right to housing as fundamental and inherent in the condition of the human person. Therefore, used as a methodology the bibliographical, documental and legislative reviews about the topic, concomitant with the empirical method that served to analyze the situation of the properties. In this way, observed along with the data released by the 2010 Census, over 200 thousand in the number of abandoned properties in relation to the Brazilian housing deficit. Therefore, some initial theses served as a parameter to guide the study on the owner's inertia, ranging from waiting for the property to appreciate to the migration of a portion of the population to neighboring regions, as they cannot afford the high cost of the central region of the city, which can justify the object-problem of the work.

**Keywords:** *Right to housing; Social function; Property.*

**Resumen:** El estudio sobre los inmuebles abandonados, específicamente en lo que se refiere a los impactos provocados, así como las probables causas de este fenómeno representan una relación directa con los derechos humanos, especialmente los que protegen el fenómeno de la desigualdad social, que será el tema de este artículo científico. De esta manera, se buscó analizar un posible origen del abandono de los bienes inmuebles, en el contexto del desarrollo humano con el estilo de vida nómada, caracterizado por la ausencia de una vivienda fija y la constante migración a nuevas regiones/lugares. Con base en ello y tomando como parámetro el contexto contemporáneo, se realizó un estudio sobre los diplomas legales con el fin de establecer las nomenclaturas adoptadas, así como entender su inserción en el medio social, específicamente en São Paulo y Río de Janeiro, utilizando como foco el derecho a la vivienda como fundamental e inherente a la condición humana. Así, se utilizó como metodología la revisión bibliográfica, documental y legislativa sobre el tema, concomitante con el método empírico que sirvió para analizar la situación de los inmuebles. Con eso, se observó junto a los datos divulgados por el Censo 2010, la superación en 200 mil del número de inmuebles abandonados en relación al déficit habitacional brasileño. Por lo tanto, algunas tesis iniciales sirvieron de parámetro para dirigir el estudio sobre la inercia de los propietarios que van desde la espera de la valoración de la propiedad hasta la migración de parte de la población a las regiones vecinas, porque no pueden pagar el alto costo de la región central de la ciudad, lo que puede justificar el problema-objeto del trabajo.

**Palabras clave:** *Derecho a la vivienda; Función social; Propiedad.*

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## **INTRODUCTION**

The issue of abandoned buildings is closely linked to contemporary social problems; however, according to the literature studied, it has been noticed that a similar situation occurred in past periods. Nomadic people were known as such for their main characteristic, based on the fact that they had no fixed abode, periodically moving to new places as the means necessary for their subsistence declined. Soon, this historical event that developed over the centuries gave foundation to the socio-legal thesis entitled "abandoned property" (SOUZA, 2018).

The Romans, in turn, understood property as an unlimited and absolute right, that is, the owner could perform anything he saw fit on his property, even if there was the mere expectation of harming the rights of others (SOUZA, 2018). Attitudes like this include the marginalization of care with the property, leaving it without meeting a social function, which makes evident a violation of constitutional principles, in view of the current legal system (CARNEIRO, SILVA, 2020).

In this historical context brought by the Romans, triggered a social change that was developed by the French jurist Leon Duguit in the treatment on the legal thesis of the social function of property, in the twentieth century. His understanding arose from the understanding of Law as a constant result, that is, that it adapts itself according to the needs of society. The same theoretical defense is also found in the ideals of the Industrial Revolution, which emphasizes the need for the property not to remain inert, but to be constantly active socially, since it is not an absolute right without exceptions (JELINEK, 2006).

In the aspect of the social function of property, it is worth analyzing the terms "freedom" and "property", since they have had their definitions changed since the owner of the property has a social duty to enjoy his property rights only if he provides a social destination to the property owned. However, if this does not occur, the State will have legitimacy to intervene in the private sphere of the individual property owner (JELINEK, 2006).

Regarding the socio-legal processes reported, the problem of idle properties that are of no use to society has been around for generations, and is not, therefore, a problem that has arisen in the present day.

Therefore, a priori, the importance of studying the legal institutes related to the theme is emphasized, in view of the fact that this concept encompasses 3 (three) subcategories: unused real estate, underutilized real estate and undeveloped real estate, according to article 182, §4º of the Federal Constitution of 1988, defined as an introductory and necessary point for the advancement of the research development. From this, it is possible to understand the relevance of these institutes proving to be notorious within the Brazilian and world territory.

Based on this context, this research seeks to understand the socio-environmental impact of the presence of abandoned properties on society, having as its main objective to create theses and seek a relationship with the existence of the problem-object, starting from studies of a scientific initiation project.

## **THEORETICAL FOUNDATION**

### **The constitutional right to housing and the legislative classification of abandoned properties**

#### *The right to housing*

The number of uninhabited houses exceeds the country's housing deficit, according to the 2010 Census, with 6.07 million homes without a social function, exceeding by 200,000 the number of adequate homes that should have been built that year to eliminate the housing deficit: 5.8<sup>1</sup> million.

In the current context, the Federal Constitution of 1988, known as the "Citizen Constitution" because of its advances directed mainly at defending the dignity of the human person, also enshrined a democratic state of law with a wide range of fundamental rights that make up an extensive list of rights, including social rights (SARLET, 2010).

However, the first legal device to address the issue was present in the UN Universal Declaration of Human Rights, in 1948, dealing with social and cultural rights, especially the defense of the right to housing. This right intrinsic to the condition of man, as a species, would also serve as a means to provide a dignified life in meeting their basic needs (SARLET, 2010). After this initiative, the other international diplomas followed in the same vein, seeking to reaffirm the fundamental rights already acquired previously, but ensuring the expansion of this list to the extent that society evolved and required changes in the socio-legal sphere.

Based on that and in view of the Constitution in force in its original wording, specifically in what concerns the caput of art. 6, it did not expressly provide for the right to housing as one of the social rights, which was only changed in the implementation of the EC no. 26, of 2000, since the recognition of this right was already present in other diplomas with which Brazil was a signatory, such as the International Covenant on Social, Economic, and Cultural Rights, of 1966. As such, it required the State to act in the effective implementation of these matters to which it is subject due to the treaties with which it is affiliated, which justified the change in the wording in the year in question (SARLET, 2010; JELINEK, 2006).

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<sup>1</sup> Available at: <<http://www.brasil.gov.br/governo/2010/12/numero-de-casas-vazias-supera-deficit-habitacional-do-pais-indica-censo-2010>> Accessed June 28, 2020.

However, it is fundamental that a terminological distinction be made between the terms "right to housing" and "right to property", which can easily generate misunderstanding. In this sense, the right to housing, as developed above, basically reflects the need to provide the individual with a place to serve as shelter. However, according to SARLET (2010), it is an autonomous right with the purpose of protecting and meeting, minimally, the requirements of human dignity, always in a decent and unrestricted way.

The right to property, in turn, can be seen as a subspecies of the right to housing, however, there are restrictions that are applied to property, since it must meet a social function, otherwise it becomes apparent a violation of constitutional principles, justifying the legitimacy of the State to intervene, based on the legal powers that are intended, a fact that does not occur with the right to housing (JELINEK, 2006; CARNEIRO; SILVA, 2020).

### **The sub-species of abandoned property in Brazil**

Brazil brings in its City Statute, Law No. 10.257/01, especially its Article 5, the following wording:

Article 5°. A specific municipal law for an area included in the master plan may determine the compulsory parcelling, building or utilization of unbuilt, underutilized or unused urban land, and must establish the conditions and deadlines for implementing this obligation. (BRAZIL, 2001).

Based on this, the Brazilian legislator chose to bring the existing species of real estate and develop them in its statute with due treatment, which does justice to the need to understand what each of these species requires as a requirement. The institute of abandoned real estate, also called unused real estate, is thus defined due to the lack of fulfillment of a social function, be it residential or non-residential; public or private; but which is inserted in the urban realm, specifically. The reasons for its permanent inertia can be numerous, such as waiting for demolition, a new tenant or other grounds that prevent its use (COSTA; SANTORO, 2019).

Regarding the underutilized properties, they are so established due to their social insertion to enable a destination, whether partial or total, but that presents a usefulness. In this category, it is usually possible to visualize a process of precariousness, degradation or idleness of the property, notwithstanding that when it is reparable it may meet its social function in its entirety (CLEMENTE, 2012). Finally, the unbuilt properties are those in which there is no construction in order to have a purpose to be served, even if it is partial or temporary. Usually, these properties are considered vacant lots and usually suffer from the presence of garbage accumulation, which can contribute to the spread of diseases. Moreover, there is the fact of development of undergrowth in the regions intrinsic to the property or in their locations, which,

along with the garbage abandoned by the population, can lead to the appearance of rodents, reptiles or arthropods that can harm the health of residents and also passersby (COSTA; SANTORO, 2019).

### **The phenomenon of abandoned properties in Brazilian legislation**

The phenomenon of abandoned properties is foreseen in Brazilian legislation. With this in view, the presence of the institute of real estate/properties was observed, terms that were used for the study and identification of the legislative treatment in the main national diplomas.

Initially, it was sought to conduct the research in the 1988 Constitution, since it has the basic regulation, according to Hans Kelsen's pyramid, which regards to dispose this diploma as the necessary support, according to which the entire legal system finds support, and therefore, that which seeks to contradict its material content, should be declared without effect, therefore, unconstitutional (LENZA, 2020). Thus, considering that the 1988 Constitution represented the transition from an antidemocratic period, which counted on the application of the 1967 Constitution and the EC. 01/69, to a democratic period, where it sought to cover the most important issues that concern the national society. In this sense, it gave birth to an analytical constitution, which brought in its articles the development of numerous subjects, among them, the right to property, which, despite everything, is not considered absolute. From this ideal was born the defense of the fulfillment of a social function that all property inserted in society must meet, in order to reduce the rates of property negligence (LENZA, 2020).

Therefore, according to the historical context of the current Constitution, one can notice the existence of some clauses that deal explicitly with the theme, namely Article 5, clause XXII, which states that the right to property is "guaranteed", reinforcing it as a fundamental and inherent right of all individuals.

However, although the right to property is fundamental, this does not mean that the owner is entitled to do whatever he wants with his property, such as leaving it at the mercy of the landowner. If the owner insists in not providing the due destination required by law, it opens the margin for application of the sanctions inserted in art. 182, §4, clauses I to III, of the 1988 Constitution:

Art. 182. §4º The municipal government may, by means of a specific law for an area included in the master plan, require, under the terms of the federal law, that the owner of the urban soil that is not built on, underutilized or unused promote its adequate utilization, under successive penalties of: I - compulsory parcelling or building; II - tax on urban land and territorial property progressive over time; III - expropriation with payment through public debt securities of an issue previously approved by the Federal Senate, with a redemption term of up to ten years, in annual, equal and successive installments, assured the

real value of the compensation and legal interest."  
(BRAZIL, 1988).

The City Statute will develop the fundamental norms of municipal organization, which are essential to the organization of "public order and social interest that regulate the use of urban property for the collective good, safety and well-being of citizens, as well as environmental equilibrium" (BRASIL, 2001). This law stipulates in detail the consequences for property owners who do not pay the taxes on their existing properties, and also how the government can encourage the promotion of the destination of properties so that they fulfill their social function, which corresponds to the common good of the population.

In addition, it will provide for ways to acquire urban property that is not in use, as long as the conditions set forth in the law are met, among them usucapiao and informal urban nuclei. Having said this, a search was also made for the articles that deal with the theme, with their respective comments.

Article 5°. A specific municipal law for an area included in the master plan may determine the compulsory parcelling, building or utilization of unbuilt, underutilized or unused urban land, and must establish the conditions and deadlines for implementing this obligation. (our emphasis). (...) § 2 The owner will be notified by the municipal Executive Branch to comply with the obligation, and the notification must be registered in the real estate registry office. § The notification will be made: I - by an official of the competent agency of the municipal Public Power, to the owner of the property or, in case the latter is a legal entity, to the person who has general management or administration powers; (BRASIL, 2001).

Article 5° of the aforementioned law sets forth the applicable consequences for abandoned real estate that is not being built, underutilized or not being used, and also mentions the manner by which the owner will become aware of what has occurred, which must be recorded in the real estate registry office, thus being a formal requirement that must be met, by means of an official who is competent to serve notice. And the Civil Code, Law n. 10,406/2002, finally, also seeks to reinforce in its article 1,228, §1°, the fact that the right to property is not absolute, since it must be exercised in accordance with the economic and social purposes and preserve, as established by special law, the flora, fauna, natural beauty, the ecological balance and the historical and artistic heritage, as well as prevent pollution of the air and water (BRASIL, 2002).

### **The abandonment of real estate in Brazilian cities: São Paulo and Rio de Janeiro**

As previously discussed, abandoned real estate is present in both large and small cities. However, this perspective also works internally in these places, since it is known the existence of a central region and

a marginalized and peripheral region, in all existing cities, however, some with greater evidence and others more succinct (MORI, 2018).

In Brazil, the most prominent cities show this problem in a more notorious way, by virtue of their visibility and national importance, because they are, in large majority, global cities, which are: São Paulo, which plays a role of great influence in the development of Brazilian society; and Rio de Janeiro, which also enables great political, economic and social development along with São Paulo, to influence the other regions (MORI, 2018). In São Paulo, there are many abandoned properties in the central region. The reason for this is that in the 1970s, with the advent of the Zoning Law of 1972, non-central neighborhoods were given a more attractive status, which was not limited only to the real estate market sector, since the big businessmen were leaving the avenue regions and, soon after, banks and shopping malls followed the same flow, thus leaving a deficit in the central region that will be worked on later (MORI, 2018).

Thus, even after so many decades, the consequences are present in the life of the inhabitants of São Paulo, since, according to the BBC report, with the opinion of a professor of the School of Architecture of USP: "The center of São Paulo is in worse conditions than all large cities in Latin America". And, in fact, the buildings that were once symbols of prosperity, today represent a difficult scenario, as they comprise broken glass panes and faded facades as can be seen in figure 1 below (MORI, 2018).

**FIGURE 1:** Downtown São Paulo with buildings abandoned and graffitied by the population.

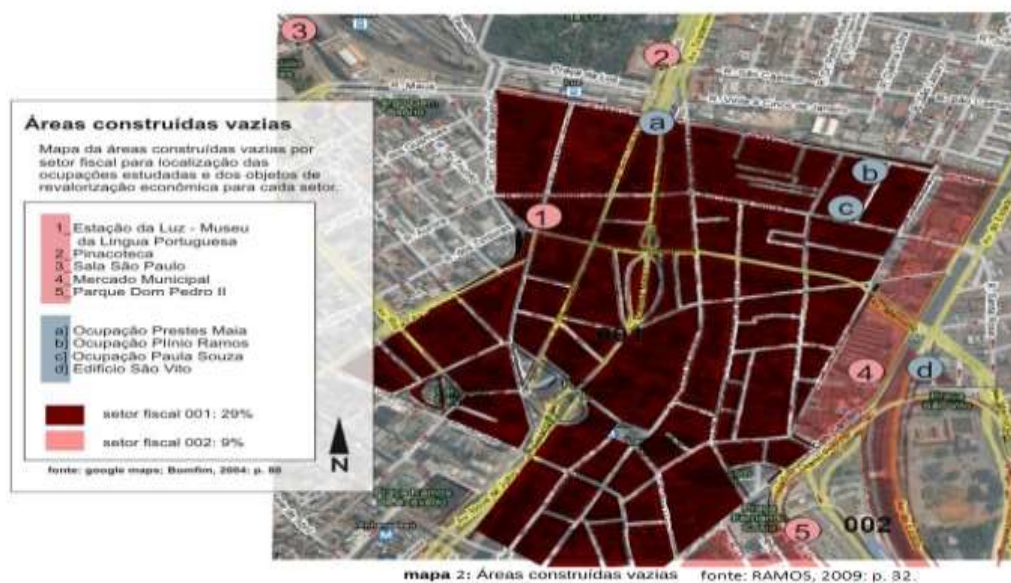


**SOURCE:** Maycon Amoroso / BBC Brazil. MORI, 2018, online report.



In the area of Administração Regional da Sé, specifically, there are about 40,000 abandoned buildings, and the vast majority of these buildings are made up of old noble buildings of the city, empty or underutilized offices (RAMOS, 2009). Therefore, as can be seen in Figure 2 below, there is a large urban void in this location in the city of São Paulo, which corresponds to 29% of the empty built-up areas.

**FIGURE 2:** Area of the Sé Regional Administration with 40,000 abandoned buildings - SP.



**SOURCE:** RAMOS (2009).

The author Diana Helene Ramos, responsible for Figure 2, states that the abandonment of these properties cannot be justified only by legal/bureaucratic issues, since even with so many legal instruments provided in the Federal Constitution, the City Statute and the Strategic Master Plan of São Paulo, it was not possible to solve this problem completely, or even because of deterioration, since most of these properties remain unoccupied for periods longer than one year, and still need small reforms for reuse (NEUHOLD, 2009).

One of the reasons why they remain in this condition, can be explained by the fact that their owners seek that the area receives an appreciation and, consequently, the properties reach high real estate values. However, this situation will only occur if the area, which has 75% of its use for services and commerce and 25% for residential use, receives investment from the State and, thus, companies and property owners return to their buildings and/or assign a social function to them (RAMOS, 2009).

In Rio de Janeiro, the problem of abandoned real estate is nothing new (Figure 3), especially when it comes to the city center. For this reason, in November 2016, teams from the Instituto Rio Patrimônio



da Humanidade (IRPH), with support from the Instituto Pereira Passos (IPP) and the Attorney General's Office of the Municipality (PGM) that make up the project Centro para Todos and that counts on the partnership of the City Hall of Rio de Janeiro, went out into the streets in search of an accounting of the number of abandoned properties, having an expectation of finding, approximately, 4,700 properties.

The disadvantage of the existence of these properties, which are subjected to social environment and directly involved with society, is that they are a nuisance and can be used as a shelter for thieves and also for drug users, according to a survey conducted by the International Front for the Homeless (Fist) in Rio de Janeiro. It also adds that when there are so many abandoned properties in a certain region, visual pollution is made possible and, consequently, their devaluation (CRECI-RJ, 2016).

Fist's lawyer also states that "Together, all these abandoned properties could solve Rio's housing deficit, which today affects more than 140,000 families. In fact, if the city would use these properties that are at the mercy of the city and allocate them to the construction of social housing, or even hospitals and schools for society, there could be a reduction of so many problems that are caused, including the safety of citizens, given that by including thieves and drug users in their facilities, the inhabitants who live or transit there will be subject to be exposed by the risks brought with these people (LOBIANCO, 2014).

**FIGURE 3:** Central areas that are abandoned in Rio de Janeiro.



**SOURCE:** ALEXANDRE CASSIANO/O Globo<sup>2</sup> - online report.

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<sup>2</sup> GOIS, Alcemio. The multiplication of abandoned buildings in downtown Rio. *Jornal O Globo*, Rio de Janeiro - RJ, 15 Nov. 2020. Available at: < <https://blogs.oglobo.globo.com/ancelmo/post/multiplicacao-dos-imoveis-abandonados-no-centro-do-rio.html>> Accessed on 14 Nov. 2020.

Therefore, it can be seen that in Brazil, specifically with regard to the satellite cities, i.e., those that are independent from other urban centers, therefore, of renowned visibility both nationally and internationally, survive with the consequences of a system with social hang-ups that will only be resolved with changes. In view of this, the impact that this change of circumstances entails requires a new flow to be followed, because society changes its habits, therefore, it is necessary to follow the path that the elements show to be the way. Therefore, finding in past centuries a static attitude of the State facing the issue of abandoned properties, it is required that, due to changes that accompanied civilization throughout this period, the laws, customs and principles follow the same social bias to avoid incongruence and, consequently, conflict between the formal sources and the social body (VEBLEN, 1996).

## **METHODOLOGY**

The methodology adopted for the development of this work, began with inductive approach methods, considering that this sense makes possible "[...] conclusions that are only probable." (GIL, 2008, p. 11) due to the study of the theme and its direct consequences on the environment, as is the case of abandoned properties and their impacts. Therefore, such use is important considering that the analysis in question used the application of methods such as bibliographic, journalistic and legislative survey, centered on works of national authors and national diplomas to work about the problem developed. In this vein, the research showed some problems and consequences due to the presence of these abandoned properties, which resulted in the need to categorize them and, along with the comparative method, which is dedicated to the study of similarities and differences, in order to try to develop explanations, it was possible to obtain evidence of the possibility of extending this adversity to other environments that were in the same situation, in other words, abandoned properties causing problems to society.

Based on this, and, again, through the comparative method, it was decided to use the reality of two Brazilian states, São Paulo and Rio de Janeiro, in order to understand how these internationally recognized places can deal with the problem, through information obtained with the factual reality, concomitant to the findings through the bibliographic research previously conducted, achieving a conjunction between theory and practice, essential for the effective development of research.

## **RESULTS AND DISCUSSIONS**

With the execution of the activities developed along with the methods employed for the development of the article, it was possible to prove theses that had been observed in the middle of the bibliographical study. Initially, the idea for its progress was based on the importance of real estate that is inserted in society to fulfill a social function, i.e., not to be inert and not to make possible any retribution to

the residents and passersby, since if this were proven to be the case, it would be legitimate for the State to intervene to designate measures in this regard.

In this sense, it was also necessary to understand what the limits of the right to housing are, since the State could intervene in the private sphere of the individual if a social function was not being assigned? And the answer to the question is based on the need to meet one of the human needs, which is to have a place to serve as shelter, and seen by SARLET (2010), as an autonomous right whose purpose is to protect and meet the requirements of human dignity in a decent and unrestricted way. However, by having a property that is not serving this purpose, it is licit for the State, and therefore the exception, to assign a social function to it, since Brazilian law already has regulations for such situations in their infra-constitutional diplomas.

Finally, in the capitals in question, São Paulo and Rio de Janeiro, proved that despite the existence of legal provisions to promote the regulation of this problem, abandoned properties are still present in the daily life of Brazilians, which requires a more effective action to promote destinations for the population.

## **CONCLUSIONS**

Given the above, it is clear that the problem of abandoned real estate in the national context is duly regulated in the main legislation in effect, however, its inapplication in concrete cases in order to reduce the impact caused by abandonment still remains premature.

As it was developed, Brazil had more than 6 million abandoned properties and a population of approximately 5.8 million people who were living in situations that were inadequate to meet the requirement of a dignified life, as well as the rights that are inherent to them and developed in international treaties that deal with human rights, ratified by Brazil and implemented in its legal diplomas.

The right that should be guaranteed to this entire portion of the population, as expressly provided in Article 6 of the Federal Constitution, which recognizes it as a social right since the EC. 26 of 2000, shows that the reality experienced by these inhabitants, is in dissonance with the constitutional matter (SARLET, 2010; JELINEK, 2006).

When analyzing the structure of the satellite cities, São Paulo and Rio de Janeiro, it is understood an effective application of the concepts of "action" and "consequence", since the historical context of both cities, make evident particular aspects that led them to the current situation of existence of properties unsuitable for residential use in some central areas and the impact that this causes on the population and passersby, as in cases of enabling convenient environments for the presence of thieves and drug users, who can offer risks to the inhabitants, as previously exposed (RAMOS, 2009; MORI, 2018).

However, the continuous presence of these abandoned properties in the contemporary context that covers the legislative treatment, requires a possible explanation, based on the inertia of the property owner, when it does not assign a social function to this, which is related to the benefits that can acquire, if the location is valued economically, so that, Other justifications include the fact that the property belongs to a deceased person whose estate has not yet been inventoried, and the fact that the population has moved to neighboring regions, instead of the central areas, as a direct consequence of the vacancy and the increase in the cost of living in these regions. Thus, it represents one of the possible hypotheses for the permanence of abandoned properties in society.

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