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## MINHA CASA MINHA VIDA PROGRAM, PRIORITIZATION OF WELL BEING ASPECT AND THE AGENCY ASPECT: EXPANSION OF CAPABILITIES VIA ACCESS TO ADEQUATE HOUSING

by **Oksandro OSDIVAL GONÇALVES**, Postdoctorate, Titular Professor at Pontifícia Universidade Católica do Paraná, Brazil and **Luis Gustavo MUSSOLINI DESIDERIO**, Master degree student in Economic and Socio-environmental Law at Pontifícia Universidade Católica do Paraná, Brazil.

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**R**eleased in 2009<sup>1</sup>, Minha Casa Minha Vida Program (PMCMV<sup>2</sup>) is today the main tool used by the government to establish public housing policy<sup>3</sup>. It is also the program that reached the most expressive results about housing unities production<sup>4</sup>, comparatively to the former programs used by Brazilian government<sup>5</sup>.

Despite the numbers reached, the program is not free of criticism. Among them, it is showed the economic orientation of the program – not the social aspect – which the main product is represented by the delivery of housing unities, to prioritize the interests of the real estate market instead of centralizing its actions to the effective answers of the population with low spending power, making their social insertion by the access to an adequate housing, urbanized and integrated to the city<sup>6</sup>.

The following of their goals, in the way of control of quantity results, which are linked to the number of housing unities contracted and delivered is equally criticized, because it is defended that this control should be made of a qualitative analysis of the

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<sup>1</sup> The Minha Casa Minha Vida - PMCMV Program was launched with Provisional Measure nº 459 of March 25, 2009, converted into Law nº 11977 of July 7, 2009. (Brazil)

<sup>2</sup> Herein mentioned only by the acronym PMCMV.

<sup>3</sup> In this sense, the official website of the program emphasizes that the PMCMV is the largest initiative of access to home ownership created in Brazil, having different ways of attending to the families that need housing. Brasil, *Programa Minha Casa Minha Vida*. Available at:

<http://www.minhacasaminhavid.gov.br/habitacao-cidades/programa-minha-casa-minha-vida-pmcmv>. Accessed on October 14, 2017 [portuguese].

<sup>4</sup> Data provided by the Ministry of Cities report that the number of hiring corresponding to approximately 4.2 million housing unities, of which 2.5 million have already been delivered to the beneficiaries of the programs. Brasil, Ministério das Cidades. *Relatório de Gestão 2015*. Report available at:

[https://www.cidades.gov.br/images/stories/acessoainformacao/relatoriodegestao/2015/snh\\_2015.pdf](https://www.cidades.gov.br/images/stories/acessoainformacao/relatoriodegestao/2015/snh_2015.pdf). Accessed on October 11, 2017 [portuguese].

<sup>5</sup> Throughout the lifetime of the BNH (22 years), the number of housing unities financed by the BNH was approximately 4.3 million, which the PMCMV is close to achieving in 6 (six) years of program.

<sup>6</sup> The national housing policy, published in November 2004, indicates that its main goal is “to promote the conditions of access to decent housing, urbanized and integrated to the city, to all segments of the population, and especially to the population of low income”.



production and the population attended, respecting the different regional, social and economic realities<sup>7</sup>.

In addition to the remarks above, this article examines the priority that is given by the program to the attending of well being aspect of its beneficiaries – in the condition of giving them as final product the access to a housing unity, letting this way, to promote the capabilities and the *agency aspect* of the population which product would be the immediate delivery of an adequate housing, the main goal of the program – at least what should be.

The aspects analysed – well being aspect and agency aspect – are taken from concepts developed by Amartya Sen<sup>8</sup>, with the intention of evaluating if the treatment given to the facing of housing deficit by PMCMV must be corrected to promote the development of capabilities of beneficiaries from this program, contributing this way to the process of expansion of freedom to its public – understood as the means and the end of the development process.

To achieve this objective, a brief exposition on the trajectory of housing policies should be made till PMCMV, followed by the exposition of the housing deficit and the differences between the right to property and the right to adequate housing and the focus given by the PMCMV in production of housing unities. In the final topic, the concepts of well being aspect and agency aspect will be exposed and the interaction of the expansion of the capabilities via access to adequate housing.

The method used at this article is the deductive. From the general interpretation and systematic of the disposition of specific rules, going through the analysis of the official data from the program available by the Ministry of Cities besides the study of scientific works about the theme, to show the finishing at the end of the work.

## **§ 1 – RIGHT TO ADEQUATE HOUSING AS A FUNDAMENTAL RIGHT: BRIEF HISTORY OF THE NATIONAL POLICIES OF HOUSING TO PMCMV**

The history of housing policies in Brazil has its origins before the recognition of right to adequate housing as participant in the constitutional list of social fundamental rights, which happened at 2001, after more than one decade of the promulgation of Federative Republic of Brazil Constitution.

Even before, for connecting in a right way with the basic needs to a life with dignity – as expressed in Universal Declaration of Human Rights<sup>9</sup> and in International Covenant on Economic,

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<sup>7</sup> C. KRAUSE [et al.], *Minha Casa Minha Vida, nosso crescimento: onde fica a política habitacional?*, Rio de Janeiro, Ipea, 2013, p. 46 [portuguese].

<sup>8</sup> A. SEN, “Moral information in Well-being, agency and freedom: the Dewey lectures”, 1984, *The Journal of Philosophy*, vol. 82, n° 4, pp. 169-221, abr. 1985.

<sup>9</sup> The Universal Declaration of Human Rights establishes in its Article XXV 1. Everyone has the right to a standard of living adequate for the health and well-being of himself and

Social and Cultural Rights<sup>10</sup> – the understanding is that the constitutional order already declared a fundamental right to adequate housing<sup>11</sup>.

In Brazil, the historical facts indicate that the problems related to lack of houses had its start with the end of slavery – and the expelling of the slaves from the fields – at the end of 19<sup>th</sup> century, which got worse with the great flux of immigrants who arrived to work in the fields and industry, causing a lack of houses to the recently arrived population in the cities<sup>12</sup>.

At that time, different positions were assumed by the government, since credit to private companies in exchange of construction of houses, passing through lands edification to high society and collective houses to poor population – allowing them to live close to factories – without an existence of a directed public policy to housing sector<sup>13</sup>.

Only in the 30s a state concern was verified through Retirement Institutes (IAPs), with restrict attending to their members and in 1946 the first national housing policy took place with the creation of Popular Housing Foundation<sup>14</sup>. However, the model was not effective, as it was restricted to some states of the federation and had a low production of housing unities<sup>15</sup>.

The posterior mark was the creation of the National Housing Bank (BNH<sup>16</sup>), which model was characterized by the restructuration of different tools about intervention of State in the housing sector<sup>17</sup>. Despite obtaining expressive results in that period, it did not show long term sustainability, nor to face the demands of classes with low spending power that ended up being excluded from housing policy and showing inequities and worsening the concentration of income in the country<sup>18</sup>.

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of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. United Nations. *Universal Declaration Human Rights*. Available at: <http://www.un.org/en/universal-declaration-human-rights/>. Accessed on October 12, 2017.

<sup>10</sup> The International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and in force from 3 January 1976. The right to adequate housing is mentioned on Art. 11.1.

<sup>11</sup> I. W. SARLET, “A eficácia dos direitos fundamentais: uma teoria geral dos direitos fundamentais na perspectiva constitucional”, 11. ed. rev. atual, Livraria do Advogado Editora, Porto Alegre, 2012, p. 289 [portuguese].

<sup>12</sup> E. MARICATO, W. LOCONTE (org.), *Habitação e Cidade*, Atual, São Paulo, 1997, p. 17 [portuguese].

<sup>13</sup> L. C. de Q., RIBEIRO, R. M. PECHMAN, *O que é questão da moradia*, Editora Brasiliense, São Paulo, 1983, p. 45 [portuguese].

<sup>14</sup> Pursuant to Decree-Law n° 9777 of September 6, 1946. (Brazil)

<sup>15</sup> N. BONDUKI, *Origens da habitação social no Brasil: arquitetura moderna, lei do inquilinato e difusão da casa própria*, 4. ed. Estação Liberdade, São Paulo, 2004, p. 155 [portuguese].

<sup>16</sup> As provided by Law n° 4380 of August 21, 1964 (Brazil).

<sup>17</sup> Among them being the creation of the Housing Finance System, under the terms of art. 8 of Law n° 4380 of August 21, 1964.

<sup>18</sup> S. de AZEVEDO, L. A. G. ANDRADE, *Habitação e Poder: Da Fundação da Casa Popular ao Banco Nacional Habitação*, Zahar Editores, Rio de Janeiro, 1982, p. 108 [portuguese].

With the extinction of BNH in 1986 it started a new phase, marked by transferences of responsibility among organs created by the government. It was a period not so effective to social housing sector, because programs and actions in the area were linked to different ministries and administrative structures of government<sup>19</sup> and then not existing properly a policy that guided the actions of the organs.

In 1988, with the promulgation of Federative Republic of Brazil Constitution (CRFB<sup>20</sup>), the Union, States, Federal District and Municipalities assumed the competence to promote the implementation of housing programs, the improvement of housing conditions<sup>21</sup> but not assuring the right to adequate housing to be included in the list of fundamental rights even though other references to this right were impregnated at CRFB<sup>22</sup>.

Other sector marks and legislatives to the public housing policy were checked after the promulgation of CRFB. Among them, there were the divulgation of a new National Housing Policy (PNH, 1996), as well as the advent of institution Laws of Real State Financial System<sup>23</sup>, of Residential Lease Program<sup>24</sup> and the City Statute<sup>25</sup>, which did not show capability by themselves to face the problems in the sector<sup>26</sup>.

In 2003 there was the creation of Ministry of Cities (MIC<sup>27</sup>) as the new mark of reference in the national policy of housing<sup>28</sup>, followed by the publication of the current Public Housing Policy (PNH<sup>29</sup>) and National Housing Plan (PlanHab<sup>30</sup>), which are technical studies elaborated with the participation of some different actors and sectors of society to face the problem. It also was promulgated a set of laws and decrees that were put over the regimen of property affection of state incorporation<sup>31</sup>, besides the creation in 2005 of

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<sup>19</sup> The trajectory is described in the brief report brought in the National Housing Policy. Brasil, Ministério das Cidades. *Política Nacional de Habitação*. Available at: <http://www.cidades.gov.br/images/stories/ArquivosSNH/ArquivosPDF/4PolíticaNacionalHabitacao.pdf>. Accessed on October 14, 2017 [portuguese].

<sup>20</sup> Herein mentioned only by the acronym CRFB. (Brazil).

<sup>21</sup> Art. 23, IX, CRFB. (Brazil)

<sup>22</sup> Article 7, IV of the CRFB already dealt with the basic needs of housing when defining the right to the minimum wage (Brazil).

<sup>23</sup> Law nº 9514 of November 20, 1997 (Brazil).

<sup>24</sup> Law nº 10188, of February 12, 2001 (Brazil).

<sup>25</sup> Law nº 10257 of July 10, 2001. (Brazil)

<sup>26</sup> N. BONDUKI, “Política habitacional e inclusão social no Brasil: revisão histórica e novas perspectivas no governo Lula”, *Revista Eletrônica de Arquitetura e Urbanismo*, nº 1, São Paulo, 2008, pp. 70-104 [portuguese].

<sup>27</sup> Herein treated only by the acronym MIC.

<sup>28</sup> The Ministry of Cities was created by means of Provisional Measure nº 103 of January 1, 2003, later converted into Law nº 10,683 of May 28, 2003, currently repealed by Provisional Measure nº 782 of May 31, 2017. Among the issues and areas of competence of the MIC, the following stand out: urban development policy; housing sector policy; promotion and articulation of housing actions and programs; subsidy policy for popular housing; and planning, regulation, standardization and management of the application of resources in housing policies.

<sup>29</sup> Herein mentioned only by the acronym PNH.

<sup>30</sup> Herein treated only by the acronym PlanHab.

<sup>31</sup> Law nº 10391 of August 2, 2004. (Brazil)



the National System of Housing of Social Interest (SNHIS<sup>32</sup>) that represents the result of institutional design of a new housing policy<sup>33</sup>.

In 2009 there was the launch of Minha Casa Minha Vida Program (PMCMV<sup>34</sup>) that since then is the main program of national housing in execution recognized by MIC.<sup>35</sup> In the origin PMCMV is an economic program result of conversation between ministries of the Civil House and the Ministry of Finance with real estate and construction sectors answering the crisis of subprime that had impacted the world economy<sup>36</sup>.

Right in the caput of its 1<sup>st</sup> article the institution law of PMCMV establishes that its object is creating mechanisms to the production and acquisition of new housing unities or requalification of urban estates or redoing of rural housing. Since then what is common was a vocation turned to encourage production and acquisition of new unities than the proper requalification of rural or urban estates, leading to conclusion that it is a “policy turned more to the attending of private market interest than social interest turned to public policy”<sup>37</sup>.

The model started with PMCMV is highly marked by fomentation, in a manner that the intervention of the State occurs through the concession of subventions to the beneficiaries of the program to purchase estates, besides the availability of credit and resources connected to constructors willing to execute housing enterprises that are adequate to all of the technical rules of the program or even directing the way in which the execution of the program will take place. Indeed, this last point is subject to harsh criticism<sup>38</sup>.

The available data in Annual Evaluation Report of the Multi-Year Plan 2016-2019<sup>39</sup>, produced by the Ministry of Planning, Development and Management, indicates that PMCMV will continue to be the main tool of policy of national housing, integrating 2049 Dignified Housing Program, which were predicted budget resources and extra resources of R\$147 billion in

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<sup>32</sup> Law nº 11124, of June 16, 2005. (Brazil)

<sup>33</sup> C. KRAUSE [et al.], *Minha Casa Minha Vida, nosso crescimento: onde fica a política habitacional?*, Ipea, Rio de Janeiro, 2013, p. 6 [portuguese].

<sup>34</sup> Law nº 11977, of July 7, 2009 (Brazil).

<sup>35</sup> Brasil, *Programa Minha Casa Minha Vida*. Available at: <http://www.minhacasaminhavida.gov.br/habitacao-cidades/programa-minha-casa-minha-vida-pmcmv>. Accessed on October 14, 2017 [portuguese].

<sup>36</sup> C. S. AMORE, L. Z. SHIMBO, M. B. C. RUFINO (org.), *Minha casa... e a cidade? avaliação do programa minha casa minha vida em seis estados brasileiros*, 1. ed., Letra Capital, Rio de Janeiro, 2015, p. 15 [portuguese].

<sup>37</sup> D. KLINTOWITZ, “Como as políticas habitacionais se inserem nos contextos de reforma do Estado? A experiência recente do Brasil”, *Revista Pensamento & Realidade*, Ano XIV – vol. 26, nº 3, São Paulo, 2011, pp. 113-114 [portuguese].

<sup>38</sup> A. C. de ABREU, “Crise do capital e orçamento público da habitação social no Brasil”, *Revista de Políticas Públicas, São Luís*, vol. 20, nº 1, jan./jun. 2016, p. 301 [portuguese].

<sup>39</sup> Annual Evaluation Report of the Multi-Year Plan 2016-2019. Brasil, Ministério das Cidades. *Relatório de Gestão 2016-2019*. Available at: <http://www.cidades.gov.br/auditoria/211-lei-de-acesso-a-informacao/relatorio-de-gestao/3686-relatorio-de-of-ppa>. Accessed on December 18, 2017 [portuguese].

2016. The fact is that PMCMV today is a reality that produces effects in the economic and social dynamics of the country. Thus, the historical trajectory of housing policies indicates advances but challenges still resist since the deficit is still representative and requires the efforts to face the problem. So, that is the time to evaluate results and correct the direction to attend the noble aim established by National Policy on Social Housing, which product should not be only the denominated product: housing unity but an adequate housing that contributes to the capabilities promotion of users of the program, and so helps with national development, ending poverty, reducing social and regional inequity, attending this way to the fundamental goals of the Federal Republic of Brazil.

## **§ 2 – HOUSING DEFICIT: DIFFERENCES BETWEEN RIGHT TO ADEQUATE HOUSING AND PROPERTY RIGHT AND THE FOCUS GIVEN BY PMCMV TO PRODUCTION OF HOUSING UNITIES**

Unlike the actual way of policy of public housing that has different programs aiming supply the access to housing, the housing deficit is still expressive<sup>40</sup> – around 6, 2 million houses<sup>41</sup> – and is still reaching harder the families with low resources<sup>42</sup>, so the improvement of mechanisms to face the problem is a constant challenge.

Recognizing the right to adequate housing in the constitutional list of fundamental social rights (art. 6º, CRFB) the problem gets to constitutional line and shows law pretension subjective to the owners besides working as conduction line of public activity to the attending of law assets in the constitution, assuming, in addition of the subjective view, an objective dimension<sup>43</sup>.

As a consequence, the right to housing is not only protected against external invasions (negative right) but reclaims positive actions and services by the State (positive right) directed to the implementation of that right, rights to factual services, which are divided in rights to factual positive actions and normative positive actions<sup>44</sup>.

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<sup>40</sup> On page 237 of the Annual Report for the Evaluation of the 2016-2019 Pluri-annual Plan, one can verify the indication of an increase in the housing deficit and the need to produce new housing unities. *Ibid.*

<sup>41</sup> It is used as a basis for the indication of the number of households, the report Deficit Habitacional no Brasil 2015, preliminary results, made available by the João Pinheiro Foundation. Fundação João Pinheiro, *Déficit habitacional no Brasil 2015: resultados preliminares*, Diretoria de Estatística e Informações, Belo Horizonte, FJP, 2017. Available at:

<http://www.fjp.mg.gov.br/index.php/docman/cei/723-estatisticas-informacoes-3-deficit-habitacional-16-08-2017versao-site/file>. Accessed on October 14, 2017 [portuguese].

<sup>42</sup> Fundação João Pinheiro, Centro de Estatística e Informações, *Déficit habitacional no Brasil 2013-201*, Belo Horizonte, 2016, p. 82 [portuguese].

<sup>43</sup> D. W. HACHEM, “A dupla titularidade (individual e transindividual) dos direitos fundamentais econômicos, sociais, culturais e ambientais”, *Revista dos Direitos Fundamentais & Democracia*, vol. 14, nº 14.1, Curitiba, ago./dez. 2013, p. 639 [portuguese].

<sup>44</sup> R. ALEXY. *Teoria dos Direitos Fundamentais*, Tradução de Virgílio Afonso da Silva, 2<sup>nd</sup> edition, Malheiros Editores, São Paulo, 2015, pp. 202-203 [portuguese].

Effectively and in harmony with the Supreme Court decision<sup>45</sup>, governors may “not diverge from the constitutional order, being bound by the law, which represents a limitation in political and administrative discretion”, so the public policy turned to housing sector is treated – under rule criteria – as a State policy and not only as government policy, which turned it stronger than before<sup>46</sup>.

Relevant to the theme is the difference that must be taken into account between the right to adequate housing and the property right. It is not difficult to see a real confusion of treatment, a correlation, seen as not divisible between those rights, as to realize the right to adequate housing was necessary making the property right, which is not confirmed.

Such a relational mistake is reflected not only on the population, but also in the Public Power when formulating public policies of access to housing “use to condition them about trying to change the population in owners”<sup>47</sup>, showing the inadequacy of the approach.

In fact, the right to adequate housing does not assure the property right. Adequate housing may be supplied without the guarantee of property and property may be had without the right to adequate housing. Adequate housing is a wide concept that transcends its own idea of property or housing unity<sup>48</sup>.

As established by the UN Committee on Economic, Social and Cultural Rights (CESCR), on General Comment n° 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), implies: (i) legal security of tenure; (ii) availability of service, materials, facilities and infrastructure; (iii) affordability; (iv) habitability; (v) accessibility; (vi) location; and (vii) cultural adequacy<sup>49</sup>.

Although property may serve as housing or housing may serve to the acquisition of property, access to adequate housing is a fundamental right with service of protection and a proper object, which is related to human dignity, then the right to housing may not lack minimum quality parameters to implement the protection to social, economic and cultural rights<sup>50</sup>.

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<sup>45</sup> In this sense, we use an excerpt from the judgment of the Federal Supreme Court, in the opinion of Min. Celso de Mello, in judging ARE 639.337 AgR / SP, which dealt with the fundamental rights established by the Federal Constitution and public policies, in kindergarten and pre-schools.

<sup>46</sup> M. P. D. BUCCI, *Políticas Públicas: reflexões sobre o conceito jurídico*. Editora Saraiva, 2006, p. 11 [portuguese].

<sup>47</sup> K. KOZICKI, F. BESSA, T. A. MOREIRA, G. G. ALMEIDA (org.), *Espaços e suas ocupações: debates sobre a moradia e a propriedade no Brasil contemporâneo*. 1<sup>st</sup> edition, Campinas, Russel, 2010, p. 40 [portuguese].

<sup>48</sup> In this sense: “[...] right to housing consist in the wide access to rights about human condition that cities in which they are inserted, which are: transportation, leisure, education, culture, health, security, among others “*Ibidem*, p. 42.

<sup>49</sup> UN Committee On Economic, Social And Cultural Rights (CESCR), *General Comment n° 4: The Right to Adequate Housing*. Available at: <http://www.refworld.org/docid/47a7079a1.html>. Accessed on April 15, 2018.

<sup>50</sup> I. W. SARLET, *A eficácia dos direitos fundamentais: uma teoria geral dos direitos fundamentais na perspectiva constitucional*, 11. ed. rev. Atual, Livraria do Advogado Editora, Porto Alegre, 2012, p. 289 [portuguese].

Despite the right to adequate housing being an autonomous right, the priority treatment given by PMCMV is the production of housing unities in series, as a commodity, and the biggest part is on the real estate market to commerce, attending much more to a demand of economical access to real estate (property right) than aligned to aspects of social inclusion, that turned to the attending of fundamental right of adequate housing, that is: the mass production overlaps with combating the housing deficit<sup>51</sup>.

In this sense, an article published by the Institute of Applied Economic Research showed that, as previously mentioned, the social perspective was not the major goal of the program, instead, the economic view guided and justified the use of PMCMV as a way to generate demands to constructors was the real propeller spring that diverted the focus of the housing deficit:

Actually, PMCMV represented, politically: i) the changing of priorities before established to housing policy by the Ministry of Cities under supervision of Olivio Dutra and his assessors involved with PlanHab; ii) and the imposition of new priorities to the area, determined by necessity of an answer to economic crisis and the main role assumed by the Civil House in the supervision of government policies in the pressure of enterprises. Priorities are now better contemplated with the change in the command of ministry. In other words, PMCMV made the configuration of housing policy as an economic policy and not as a social one, so that the necessity to activate the market is higher now than the objective of reduction of housing deficit to workers with low income [...]<sup>52</sup>.

Therefore, the goals published by the program have as main factor of evaluation the production of housing unities (contract and delivery) and do not take into consideration other tools of legitimate to adequate housing right, not even the effective attending of acceptance wider in the social right that seeks protection to attend the population of low income and make possible the development of capacities of the attended public.

The focus that is given on the production of housing unities rather than adequate housing ends up being justified by the economic orientation of the program, which prioritizes a profit making by the actors involved in the production of the unities (builders, banks), instead of focusing on the social aspect of the population served. In this sense: “Residents of PMCMV housing estates may even own a home, but do not hold the elements that make up the right to adequate housing. This model was based on treating a social right in a commodified way, as a product, subordinating it to the interests of agents of the real estate market, which in a nutshell can be understood as profit. The way in which the system was

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<sup>51</sup> V. de S. MOREIRA [et al.], “Crise do capital e orçamento público da habitação social no Brasil” in *Revista Políticas Públicas & Cidades*, vol. 2, nº 1, jan./abr. 2015, p. 82 [portuguese].

<sup>52</sup> M. R. LOUREIRO [et al.], *Democracia, Arenas Decisórias e Políticas Públicas: o Programa Minha Casa Minha Vida*, Ipea, Rio de Janeiro, 2013, p. 18 [portuguese].

structured (according to the dictates of capitalism) hinders the idealization and even the realization of a housing policy aimed only at someone who is the subject of the right to the right to housing, you have to carry a document of compulsory or real right that gives you ‘that’<sup>53</sup>.

This pointing gets worse at the moment that it shows that line (quantity production) brings up series of problems with the stopping of works, leaving or even the delivery of isolated enterprises without access to basic infrastructure, neither public services and economic utilities, besides the lack of actions that supply the social control of the program<sup>54</sup>.

Evaluating the success of a program that faces the deficit of housing from quantity of produced housing unities is an incomplete and inadequate exam turned exclusively to an analysis of *well being aspect* understood as the opportunity of access to property right and not necessarily to the right to adequate housing, which is not necessarily associated with it.

The importance of producing new housing unities is not denied, neither are the processes verified in the last few years concerning public policies to social housing. What is affirmed, on the other hand, is that the volume of production of house unities cannot be the main criterion to the evaluation of the success of PMCMV – beyond the importance of this aspect is the analysis of attending of population in a social perspective, in a way that the capabilities of their beneficiaries are expanded.

### § 3 – WELL BEING ASPECT AND THE AGENCY ASPECT: EXPANSION OF THE CAPABILITIES VIA ACCESS TO DIGNIFIED HOUSING

After exposing the structures cases of PMCMV, as well as the difference between right to adequate housing and property right, now it is evaluated the *well being aspect* and the *agency aspect*, concepts which are here used as in the work published by Amartya Sen, in which he explores a moral approach that sees people and from these two different perspectives, each one with its own relevance to the evaluation of state of things and actions<sup>55</sup>.

Using the simplification of the concepts used by Sen – that risk was by this one claimed, it is affirmed that *well being aspect* is important

<sup>53</sup> J. MASTRODI, S. M. L. S. ZACCARA, “O que é o objeto ‘moradia’ do programa minha casa minha vida?”, *Revista de Direito da cidade*, vol.8, nº 03, p. 868 [portuguese].

<sup>54</sup> News recurrently advertised in newspapers and news sites account for unfinished works and projects executed without access to the sewage network, in addition to the very exclusion that is generated through the PMCMV when producing deposits of buildings that do not care about the promotion of citizenship. Estadão. *General projects of my house without sewage network*. Available at: <http://economia.estadao.com.br/news/general-projects-of-my-house-without-sewage-network-635989>. Accessed on December 18, 2017. CARTA CAPITAL, *Minha Casa, Minha vida gera exclusão diz arquiteto*. Available at: <https://www.cartacapital.com.br/sociedade/minha-casa-minha-vida-gera-exclusao-diz-arquiteto-7104.html>. Accessed on December 18, 2017 [portuguese].

<sup>55</sup> A. SEN, “Well-being, agency and freedom: the Dewey lectures, 1984. Moral information”, *The Journal of Philosophy*, vol. 82, nº 4, 1985, p. 169.



to evaluate the advantage of a person as the *agency aspect* is important to evaluate what a person can achieve in consonance with their conception of the good<sup>56</sup>.

That does not mean that one aspect is totally independent from the other as the author recognizes: “To recognize the distinction between the agency aspect and the well being aspect of a person does not require us to take the view that person success as an agent must be independent, or completely separable from, his success in terms of well being [...]. There is really no sound basis for demanding that the agency aspect and the well being aspect of a person should be independent from each other, and it is, even possible that every change in one will affect the other as well”<sup>57</sup>.

From the concepts showed above there are the ideas of *well being freedom* and *agency freedom*. The first one is about the freedom of the agent to reach a personal fulfilling as the second is wider and considers what a person is free to do and reach on the search of any goal and value that he or she considers important<sup>58</sup>.

The ideas and concepts try to demonstrate that the group of well being freedom and agency freedom are and integrate what the author calls capabilities. The expansion of the group of capabilities of people will take the process of freedom development, that one seen in a double perspective: as a tool and as a way to the process of development, and as the end of the very process of development<sup>59</sup>.

People’s capabilities may be expanded by public policies as well as by the substantial and instrumental freedoms, distinct, but interrelated<sup>60</sup>, or, the expansion of capabilities will make it wider the access to generate freedom (economical opportunity, political freedom, social facility, transparency and protection) and so it will contribute to the promotion of substantial freedom.

However, it happens that it is not always that human beings are recognized as agents, beneficiaries of the development and progress, making space to confusion of ends and means in the planning and elaboration of public policies<sup>61</sup>, where there is critic that is turned to the conduction of PMCMV about importance to the production and delivery of housing unities, which attending is turned to *well being aspect* of beneficiaries in the sense of having access to the real estate, in some circumstances with no condition of living, public services or minimum infrastructure of sanitation. The criticism is justified as PMCMV should equally focus on the development of capabilities and the agency aspect to this public<sup>62</sup>, to promote them, from access to adequate housing, some

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<sup>56</sup> *Ibidem*, p. 206.

<sup>57</sup> A. SEN, *On ethics and economics*, Blackwell, Oxford, 1987, p. 43.

<sup>58</sup> A. SEN, “Well-being, agency and freedom: the Dewey lectures, 1984. Moral information”, *The Journal of Philosophy*, vol. 82, n° 4, 1985, p. 169.

<sup>59</sup> A. SEN, *Development as freedom*, Knoph, New York, 2000, p. 10.

<sup>60</sup> *Ibid.*

<sup>61</sup> A. SEN, “Development as capability expansion”, in S. FUKUDA-PARR et al (eds.), *Readings in human development*, Oxford University Press, New York 2003, p. 41.

<sup>62</sup> A. SEN, *Development as freedom*, Knoph, New York, 2000, pp. 189-192.

autonomy and also freedom of choice, values that aim to expand the freedoms of that population and consequently the development of the nation<sup>63</sup>.

It should be emphasized that the concept of development from the capability approach highlights an important role that the government must play for the benefits of its people by ensuring a set of conditions that they are able to live a life that is truly worthwhile<sup>64</sup>.

Therefore, besides assuring the constitutional elements of an adequate housing, PMCMV must focus not on the satisfaction of desire, but on human capabilities, on social attendance of the families attended by the program to promote their development and social insertion and so create opportunities to access economic facilities and public services, making them not only passive agents of their lives but active agents of social transformation that is searched with the implementation of a policy turned to the attending of less favored people in the population, realizing the social opportunities to development of individuals : “With adequate social opportunities, individuals can effectively shape their own destiny and help each other. They need not be seen primarily as passive recipients of the benefits of cunning development programs”<sup>65</sup>.

In the meantime, this is not the focus of PMCMV that does not observe the need of articulation between different levels of government to the attending of different realities, local and regional. Instead, the program offers a product that is not adapted to special needs of the population; thus, it does not bring up the proposition of effective promotion of capabilities of its beneficiaries<sup>66</sup>.

The distance of PMCMV of what is expected as an effective housing policy, as projected by PlanHab, the prior document to the very PMCMV and that should guide it, was claimed in a study of IPEA: “Taking PlanHab as reference, it may be seen that MCMV is far from what was the housing policy, the knowledge of different realities to face better the housing deficit. In a country with continent size, with deep regional differences, social, economic and a huge cultural diversity, MCMV is expressed as a Fordist company in the mass production, which image is little houses with no end. The only way of execution, product patronization, interests and arrangement of companies thinking about the proposition of

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<sup>63</sup> F. D’AMICO, “O Programa Minha Casa, Minha Vida e a Caixa Econômica Federal”, in J. C. COSTA [et al.], *O desenvolvimento econômico brasileiro e a Caixa: trabalhos premiados*, Centro Internacional Celso Furtado de Políticas para o Desenvolvimento, Caixa Econômica Federal, Rio de Janeiro, 2011, p. 37 [portuguese].

<sup>64</sup> M. C. NUSSBAUM, “Constitutions and Capabilities: ‘Perception’ Against Lofty Formalism”, *121 Harvard Law Review* 4, nov. 2007, p. 11.

<sup>65</sup> A. SEN, *Development as freedom*, Knoph, New York, 2000, p. 11.

<sup>66</sup> M. C. NUSSBAUM, *Women and Human Development: the capabilities approach*, Cambridge University Press, New York, 2000, pp. 70-86.

enterprises, not considering the kinds of cities that would receive the investments and the most intense housing needs [...]”<sup>67</sup>.

To remember that it is not denied the importance of *well being aspect* is to analysis, evaluation and to face the social inequity process<sup>68</sup>. At the same time, the production of housing unities in this public policy must be followed of instruments that supply access to adequate housing for its beneficiaries, making it possible the development of capabilities of population, making them not only beneficiaries of a public policy but agents of their own transformation as Sen (2003) recognizes: “Capability reflects a person’s freedom to choose between different ways of living. The underlying motivation the focusing on freedom-is well captured by Marx’s claim that what we need is “replacing the domination of circumstances and chance over individuals by the domination of individuals over chance and circumstances”<sup>69</sup>.

The cycle of public policies and consequently its programs brings a phase of evaluation and monitoring that allows correcting its destinations. Now, the challenge is the integration of PMCMV in a national policy of social housing linked to an adequate project of funds ruling and supplying of adequate housing, that is the product of conversation and articulation between different facts that must interact to face the problem (Government, state, federal and cities, associations and civil society entities, etc.).

The product of this arrangement must go further than just a housing unity, supplying effectively adequate housing, with decent conditions of housing, access to sanitation, transport and social inclusion that allows to offer its beneficiaries social facilities and economical, like access to public safety, education, health, sports, leisure and culture, integrating them and assuring truly access to an adequate housing, which is urbanized and integrated to the city.

## CONCLUSION

The historical evolution of public policies of social housing in Brazil, demonstrates that the last few years were marked by relevant progress, because in this period some important laws were promulgated to the sector of social housing, besides the creation of the Ministry of Cities and elaboration of a new National Housing Policy as well as anew National Housing Plan.

Among all the recent programs launched by the government, PMCMV is the one with the biggest impact for obtaining expressive numbers referring to the production of housing unities, being this main criterion of evaluation used by the government to claim and brag about the success in reaching and attending the goals of the program.

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<sup>67</sup> C. KRAUSE [et al.], *Minha Casa Minha Vida, nosso crescimento: onde fica a política habitacional?*, Ipea, Rio de Janeiro, 2013, pp. 46-47 [portuguese].

<sup>68</sup> A. SEN, “Development as capability expansion”, in S. FUKUDA-PARR. et al (eds.), *Readings in human development*, Oxford University Press, New York 2003, p. 72. Ibidem, p. 44.

However, the instrument that should have been designed primarily to attack a social problem ended up being transfigured to meet objectives of a real estate market whose focus ends up being housing unities production and profit making. The social aspect, although used as the driving force behind the program, is not really its main focus, so there is no concern with the beneficiaries, but especially with the profitability of the enterprises.

The beneficiaries end up accessing the property of a housing unit, but do not have effective access to an adequate housing, the main value that should guide the actions taken by the PMCMV. The right to adequate housing that is not to be confused with the right to property, claims the access to wider housing conditions, not only the quality of estate but security in the possession of land, access to infrastructure of sanitation, water, electricity, urban equipment and public services that promote the capabilities of the population integrating them to the city.

Therefore, besides of an evaluation focused on the quantity aspect of the production reached by PMCMV, one must aggregate an evaluation from a quality criterion of production and the attended population, in a social perspective.

Beyond the *well being aspect*, which is tried to be solved delivering the housing unity product, it must search the improvement of the capabilities of the beneficiaries, aspect that will allow them the development of their *agency aspect*, and promote the social inclusion and access to public services and economical facilities, collaborating, so, the process of development of population and nation.

This way, the housing unities produced in PMCMV must be transformed into adequate housing, having its own value but also an instrumental value. In other words, its value lies on what it represents and supplies to the families: the access to instrumental freedom and substantial freedom.

From that the facing of housing deficit is being completely attended, with social inclusion and economical of low income parts of population.

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