



## Earthquakes, Constitutions, Urban Planning and Social Change: Lessons and Controversies from Mexico

Lorena ZÃairate, HIC President

Struggles for spatial justice, human rights, and democracy are interconnected and have a long history in Mexico City. As the previous official slogan claimed, this is a "City in Movement". So let's get inspired and keep going.

For better or worse, 2017 was a historic year for both Mexico and Mexico City. This can be summed up in two numbers: 100 and 32. The first number celebrates the one hundredth anniversary of Mexico's Constitution, approved on 5 February 1917, and renowned as the first Constitution in the world to incorporate social rights. The second number, 32, marks the remembrance of the deadly earthquake that killed more than 30,000 people and devastated Mexico City on 19 September 1985. Two very different anniversaries, of course. One, but distant and hardly provoking any popular emotion; the other one random and unforeseen, but still very present in the memories of at least three generations.

Mexico is a country fiercely proud of its history and traditions. Mexico City's current Mayor (or, more precisely, its "Jefe de Gobierno" Head of Government), Miguel Ãngel Mancera, enacted and officially presented the first local Constitution on the same day the country commemorated the first century of the national one (although, legally, it goes into effect on 15 September 2018). Later in the year, by a tragic coincidence that challenged all probability statistics, exactly on the same day and just a few hours after the annual "mega-simulacro" (city-wide earthquake drill) had ended, another tragic tremor shook several central and southern states, leaving more than three hundred victims and thousands of buildings affected.

At first glance, it is certainly not evident how these two very different events are related one to another. Yet another anniversary might provide a clue for making a connection, because 2017 also memorializes two decades of the first-ever elected mayor in Mexico City, a milestone that opened the pathway for a significant transformation of the political life in the city and the country. Both the popular imagination and the academic analysis coincide in placing the spontaneous, massive, and outstanding social mobilization that followed the 1985 disaster as one of the key ingredients in the push towards a more democratic state with stronger civic participation.

### Progressive movements, the Right to the City, and a new Constitution

Since then, progressive initiatives from social movements and civil society organizations have become the norm in this megacity, and policy changes are being implemented covering a broad range of issues, from housing and neighbourhood betterment programs, relevant improvements in urban mobility and sustainability, childcare and economic support for single mothers, students, and the elderly, to sexual and reproductive rights, Indigenous peoples' and LGBTQ rights, to mention just a few.

The "Mexico Charter for the Right to the City (2010)" is certainly a crucial part of that legacy, as it is now the "Mexico City Constitution (2017)", the first one in the world to incorporate the right to the city at the local level. It is understood as a collective right that implies the "full and equitable use and usufruct of the city, based on principles of social justice, democracy, participation, equality, sustainability, as well as the respect for cultural diversity and the respect for nature and the environment". The right to the city should guarantee "the full exercise of human rights, the social function of the city and its democratic management, assuring territorial justice, social inclusion and equitable distribution of public goods with citizen participation" (Art. 12).

Besides this definition, the groundbreaking Constitution took several other principles and elements from the Mexico City Charter, a document drafted inside a collective process that included local grassroots organizations, NGOs, activists, academics, and professionals, as well as international civil society networks and the local government and that also had international repercussion in relevant documents, such as the "Global Charter Agenda for Human Rights in the City (2011)" and the "New Urban Agenda (2016)", both of which explicitly recognized the right to the city.

Promoted as a Charter of Rights, the new Mexico City Constitution includes a long and detailed catalogue of internationally and nationally recognized human rights (civil, political, social, economic, and cultural rights), as



well as more "original" ones. Among them, it is worth mentioning:

- The right to public space, as collective and participatory commons that serve political, social, educational, cultural, and recreational functions (Art.13.D);

- The right to mobility, regarding access to an integrated multimodal and sustainable public transportation system, the protection of pedestrians and the prioritization of the non-motorized options (Art. 13.E);

- The right to free time, as a fundamental element for well-being, allowing inhabitants to enjoy rest, leisure, social, and recreational activities, as well as look after their personal care (Art. 13.F).

Most probably taking inspiration from the National Constitutions of Ecuador (2008) and Bolivia (2009), the Mexico City Constitution also incorporates the notion of nature as a collective entity with its own rights and instructs the subsequent elaboration of an *ad hoc* regulatory law (Art.13.A). The recognition of the right to a healthy environment and the right to the natural and cultural heritage for the present and future generations, as well as the rights of Indigenous people and *campesinos*, are all included in the text, while the capital of the country is recognized as a multilingual, multiethnic, multicultural, and welcoming dynamic territory.

The new Constitution also creates several new and complex institutions for the city, including an Integral Human Rights System and a Democratic and Prospective Planning System (that should be linked to each other and incorporate substantive citizen participation), a local Congress, an Economic, Social and Environmental Council and the possibility to determine Municipalities (Alcaldías) within its territory.

To get the text ready on time, the process of elaboration was relatively short and, at least for some, a bit rushed. The federal political reform a necessary step to allow the elaboration of the Mexico City Constitution was approved by the Senate at the very end of 2015, after intense debate considering the details of the capital city's new legal status, its attributions and the related institutional arrangements at federal, local and somehow metropolitan level.

In February 2016, the Mexico City Mayor appointed a Drafting Committee and an external Advisory Group, both integrated by a wide range of local leaders and experts on human rights, culture, urbanism, and environmental fields. By September 2016, the Constitutional Assembly was installed, and the Mayor officially delivered his draft to the deputies to work on, with the last day of January 2017 as their deadline. Finally, the first-ever Mexico City Constitution was formally enacted on 5 February 2017, marking the one hundredth anniversary of the National Constitution.

#### Who should pay? Who should benefit? Social contract and urban planning

As expected for any discussion of a new social contract, the process had to first overcome some challenges and heated debates on sensitive topics. Many of them were finally included, such as the medicinal use of cannabis, the option of assisted suicide for the terminally ill, living wills, abortion, recalling of elected officials (*revocación de mandato*), or the strengthening of direct and participatory democracy mechanisms.

Over the past two decades, the iconic Paseo de la Reforma has been a hot corridor of transnational and national real estate private investments in Mexico City valued in the multimillions.

But some relevant rights were left out. One of those, several observers noted, was the issue of land-value capture (known generically as *captación de plusvalías* in Spanish), considered by many experts and activists as a fundamental instrument for the advance of urban reform and the right to the city principles. An initial formulation was included as part of the Article 21 of Mexico City's Draft Constitution, stating that "the increments on the land value as a result of the urbanization process will be considered part of the public wealth of the city. The law will regulate its use for restoring the ecosystems and the degraded areas of the city".

This was not an original proposition. Similar instruments, under various names, are being used in several countries around the world and even in other Mexican provinces/states. Technically known as a density bonus, or up-zoning in return for community benefits formulas (known in Spanish as *transferencia de potencialidad, contribución por mejora, derecho de edificación*, etc.), these types of planning tools have been implemented for decades in Brazil, Canada, Colombia, the USA, France, the UK and in cities in many other countries.

While I'm not an urbanist or an academic in this field nor a lawyer, by the way in my simple words the



explanation is as follows: in exchange for the authorization of new real estate projects, private investors and constructors must make monetary or in-kind contributions to the city for financing infrastructure, social housing, and other crucial needs for some specific neighbourhoods (ideally the most disadvantaged ones) or the city/metropolitan area as a whole.

It took some weeks until the beginning of December 2016 but the proposal provoked an intense and charged public debate. In just a few days, all major national media (including print, radio, and TV) covered the issue with several dozen news articles and interviews. As a result, by the end of the month, all mention of the topic was totally removed from the proposal, and no reference to it was made in the final Constitution. Additionally, any reference to the term that was already part of the new local Housing Law, approved on those same days, was immediately removed to avoid further debate and controversy.

Does it sound like a coincidence? Of course it wasn't. But what ignited the fire in the first place? And why did it take only a few days to impact the draft of the Constitution in such a definitive way?

The answers to these questions are, as contradictory as it sounds, both alarming and hopeful. Three elements make the case for it: 1) sincere concern from ordinary citizens regarding unclear and potentially unjust norms that are believed will affect one's personal interests and assets; 2) deliberate manipulation from some major mass media outlets searching for polarizing subjects, ideological indoctrination (presented, of course, as "common sense" and "in the general interest") and easy popularity gains (with the business/economic benefits related to it, of course); and last but not least, 3) political calculation from the opposition sector to discredit and attack the current administration of Mexico City.

Regarding reflections and lessons learned, an in-depth, detailed review is of value.

Social mobilizations and public debates on sensitive topics

The first element of note was an online petition, initiated by a citizen indignant with the possibility of having the potential increases in the price of his property taken away by the government, as an additional and "anti-constitutional" and "hidden" property tax. Using a clearly provocative title ("Goodbye to Private Property in Mexico City") and hashtag (#NoSeRobenMiPlusvalía, something that roughly translates into English as "Don't Steal My Land-Value Increase") the petition, started on 5 December and directly addressing the Mayor and other authorities involved in the constitutional process, sparked intense mobilization on social media and achieved tens of thousands of signatures in less than forty eight hours. On its last update (13 December), the author claimed as a collective achievement the removal of all references to land-value capture both in the local Constitution and the local Housing Law (for more details see <https://www.change.org/p/manceramiguemx-elimina-el-articulo-165-166-y-167-del-codigo-fiscal-de-la-ciudad-de-mexico-para-las-personas-fisicas-y-el-ciudadano-comun>).

Lorena Zaira is President of Habitat International Coalition. She has participated in the elaboration of the World Charter and the Mexico City Charter for the Right to the City.

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