



# INFORMAL WORK AND THE RIGHT TO THE CITY

A DOSSIER ON THE VIOLATIONS OF THE RIGHTS OF STREET  
VENDORS AND HOME-BASED IMMIGRANT WORKERS



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# Algumas figuras de ontem



RAUL PEDERNEIRAS. "FIGURES FROM YESTERDAY". 1924

Left to Right from Top Row: Sugar Cane Juice with Music; ice-cream served from model ship; the candy man; milk straight from the cow to your home; open air shoe-shine; circus clown; water from Vintém (famous fountain in a village in Rio de Janeiro); the democratic kiosk (small wooden "bars" where drinks, tobacco and snacks were served and people came together to sing, dance and socialize); the Preta-Mina (descendants of black slaves brought from the old Gold Coast of Africa (now Ghana) who would sell their snacks on the streets); the Flag of the Divine (Holy Spirit), carried on the day of Pentecost; piano carriers; monkey organ; the dancing bear (Today it only exists in politics); the recyclable rubbish collector; carrying pole; "cheap matches!!"; Nagôa versus Guiamú (two rival capoeira groups); the town crier; "Who wants a good turkey!!"



## PRESENTATION

The Centro Gaspar Garcia de Direitos Humanos is an organization that works to strengthen social and popular movements in the city of São Paulo, as well as in the defence of the Urban Reform and of the demandability of the right to the city.

This publication, *Trabalho informal e direito à cidade: dossiê de violações de direitos de trabalhadores ambulantes e domiciliares imigrantes*, was created within the Project of Informal Work and the Right to the City, which began in 2011 with support from the European Union and Christian Aid. The proposal to serve alongside informal workers with low incomes came from the approximation of the Centro Gaspar Garcia to the poor population in the centre of São Paulo who, for the most part, live in precarious housing and depend on the informal economy.

The objective of the Dossier is to increase the visibility of the violations of rights suffered by low income informal workers and, through information and statements, to report on the daily violence and insecurity suffered by these subjects. It also indicates ways for change that recognise the importance of these workers in the context of a city marked by disputes, contradictions and conflicts.

The violations of rights have names and faces. For this reason, this Dossier hopes to give a voice to these workers who appear here as live witnesses of the daily invisibility, precariousness, violence and breach of laws they have to face.

Finally, with no pretention of pointing out each and every aspect of the vast heterogeneity that characterizes informal work, the Dossier intends to contribute to the debate on the living and working conditions of informal workers and on the need for public policies for these people. In this sense it presents to the State authorities and to civil society some of the elements that will help to analyse public action and also social dialogue, in an attempt to bring together the different parties involved in this theme.





MARC FERREZ, MULHERES NO MERCADO, RIO DE JANEIRO, 1885.  
ACERVO INSTITUTO MOREIRA SALLES.





## INTRODUCTION

The publication: *Trabalho informal e direito à cidade - Dossiê de violações de direitos de trabalhadores ambulantes e domiciliares imigrantes* is a result of the work of the Centro Gaspar Garcia de Direitos Humanos, carried out between 2011 and 2012 within the Project “Informal Work and the Right to the City”, with support from the European Union and Christian Aid.

During its 24 years of existence, the Centro Gaspar Garcia has been supporting populations, particularly in the central region of São Paulo, that are in a precarious or vulnerable situation. Today, the organization monitors the inhabitants of precarious housing, people living on the streets, collectors of recyclable materials, indigenous populations living in the city and informal workers.

The key principle of the Centro Gaspar Garcia is the promotion of the autonomy of political subjects encouraging them to increase their knowledge on their reality and advocacy in public policies to overcome the difficulties. In order to do this, the Centre offers legal support and assistance, training through popular education and political articulation from the perspective of collective and democratic struggles.

According to these principles, the process of construction of knowledge on the violations of rights presented in this Dossier was developed, above all, through systematic dialogue with the informal workers, in several areas of work. Prioritizing constant communication with the workers was a tactical choice of the Project and this interaction took over a large part of its activities.

Apart from the close and daily communication with the workers, the Project interacted with another three subjects: with the State, prioritizing the bodies of defence and support for workers; with civil society organizations and popular movements, through dialogue and carrying out activities together; and with specialists (undergraduates or researchers), maintaining constant dialogue.

From the beginning, the Project monitored two categories of informal workers: street vendors and home-based immigrant workers. This took place through the following activities: visits to the precarious homes and work places, monthly collective meetings, training workshops, legal services in the Informal Workers Reference Centre and network articulation. From this daily approximation, a number of elements were brought together which helped to form a restricted and very specific analysis of the context of these two categories of informal workers in the Centre of São Paulo. This analysis is organized in this Dossier.



The legal services offered at the Informal Workers Reference Centre was subdivided into individual spheres, through referrals to specialised public bodies, and collective spheres, with the support for the formalization of a workers organization and in the proposition of a Public Civil Action together with the Public Defender's Office of the State of São Paulo.

The training workshops carried out with the two categories of workers monitored by the Project emphasised popular organization and participation, above all the importance of the construction of representativeness and strategies based on transparent and democratic processes. The articulation network was aimed at strengthening the workers' organization by bringing groups together from different regions of the city as a strategy for the advocacy of public policies. In these actions other subjects were also present – specialists, state bodies and individuals – who composed the articulation.



ARQUIVO CENTRO GASPAR CARCIA, TRAINING SESSION, 2011.

The approximation to the workers during the Project, however, was not straightforward and without obstacles. As may be seen throughout this Dossier, the violations of the workers' rights are multiple and concurring, with criminalizing and segregating acts of the State, combined with the contradictions and disputes within informal labour, creating an atmosphere of mistrust in group work. However, after two years there were some advances in this relationship with the workers, although there are still various challenges to be faced.

The continuous monitoring of the two contexts of informality enabled the Project to observe that the workers did not face a violation here and there in a steady and

isolated manner: the instability of income can jeopardize their access to decent housing, the lack of social dialogue can reduce their access to social security, etc. Following this logic, it can be concluded that there is a close relation between the overlapping of the violations of rights and the processes of socio-territorial segregation in the city of São Paulo. The Dossier, therefore, is intended not only to point out the violations but also to evaluate the system that is behind them.

In this sense, the choice of the title of the Project "Informal Work and the Right to the City" aims to increase the understanding of the right to work, including the dimensions of access to the city and other social rights that are part of the lives of the workers: non-discrimination, access to justice, to adequate housing, etc. This vision is the fruit of the path taken by the Centro Gaspar Garcia in the knowledge and militancy for the right to the city and for human rights.

This Dossier could, therefore, collaborate as a parameter for public policy by demonstrating that informality is not just the opposite of formality. The understanding of the informality expressed in this Dossier is based on a political perspective that there exist relations of subordination and complementarity between the formal and informal. From this perspective, the complexity of the relations between the formal and the informal will demand a greater effort in the dialogue between the different visions of the workers, public authorities, researchers, popular movements and social organizations in order to formulate public policies.

The choice of these two categories of informal workers was not by chance. The consolidated actions of the Centro Gaspar Garcia in the monitoring of the vulnerable population in the Centre of São Paulo made it clear that those attended suffered various difficulties simultaneously in their work and in their homes. The difficulty to obtain access to owning a home, the unhealthiness and high costs of their housing, as well as being expelled from public places, are related to low, seasonal or unprotected income from work.

### **THE CONCEPT OF INFORMALITY: STREET VENDORS AND IMMIGRANT HOME-BASED WORKERS**

There is no consensus on how formal and informal economies are related. Among the various understandings of this relation, this Dossier would like to point out two of them. On the one hand, informality is seen as an exception or as circumstantial. Emerging in countries that have experienced the regime of full employment, this conception of the informal, as a marginal and detached manifestation of the formal economy, subsidized programmes of entering the formal job market. Some examples of these programmes focus on the training of skilled labour, on microcredit, on the formalization of informal autonomous units among other measures. However these programmes have not been enough, since certain value chains are not interested in incorporating the costs of the reproduction of the work force (workers' rights and other social rights).

The value chain represents a series of activities carried out by a particular sector, from the relations with the suppliers, the production cycles and sales and finally the distribution phase.

On the other hand, there is another vision that defends that the existence of a systematic maintenance of informality is a reflection of a pattern of unequal accumulation and concentration of wealth and of land. Present in countries where the idea of full employment did not happen, this vision sees the informal as subordinated and interstitial to the formal. Subordinated because it establishes objective relations with the formal and is normally in unfavourable conditions when it establishes the terms of exchange; interstitial because it occupies spaces within and not outside of the formal economy. In this sense the informal, linked to the formal, is deliberately distanced from employment laws. (Barbosa, 2008)

Based on this conception, informality is maintained in cycles of economic growth and of “inclusion” of workers through consumerism. In Brazil, this contradiction persists in new forms of exploration of workers, both autonomous and subcontracted. Both situations of informality are based on the sustaining of historical patterns of development in the job market and have gained new outlines in the context of contemporary productive restructuring. Each one of these situations of informality occupies the economic spaces in an interstitial manner: one is linked to the productive circuit – the subcontracted – and the other is linked to the circuit of direct and indirect sales, consisting of self-employed or autonomous workers.

This Dossier presents two conditions that represent precarious informality: on the one hand, the street vendor and on the other hand, the worker in the home, the immigrant home-based worker.

Street vendors are autonomous or self-employed workers who are linked to the direct and indirect circuit of sales, carrying out activities that, despite being subordinate to the market, still have a certain level of autonomy. These workers do not have an exclusive relation or link to companies and sell directly to the consumer or peddlers.



JENNIFER REINTERIA. BRÁS, 2011.

For the DIEESE (Inter Trade Union Department for Statistics and Socio-Economical Studies) the informal workers are considered as small economic units, of up to five workers. The criteria for classification of informality is the clear lack of separation between the worker and the owner in the means of production, and in the same way the level of profit is not the key variable of its operation, but the income of the worker.

A special tabulation of the Study on Employment and Unemployment (PED-DIEESE), carried out for this Dossier, documented the existence of 138 thousand street vendors (1.5% of the total number of workers) living in the metropolitan area of São Paulo and working in the capital during the biennial 2010-2011. This tabulation characterizes the street vendor with the following profile: two-thirds are men; 50% are over 40; 69.1% completed primary school and the majority are white, the head of poor households and living in the metropolitan area for some time. There were, until the beginning of 2012, only 5,137 licenses for street vendors, a ridiculous number in relation to the total number of workers.

There is a myth, used a lot in State speeches, that economic growth and the levels of employment and wages are sufficient to include these workers in the formal market. However, their profile is not easy to place in this market.

The home-based workers establish several informal strategies to dribble the seasonality of their income, the risks of their activities and the lack of social protection and they take on one of two conditions: autonomous or subcontracted. The workers monitored by the Project are linked to a production chain, in the clothes and accessories trade.

Autonomous workers are not a new category in Brazilian history, they are a permanent face in the non-waged job market. These workers produce at home and sell directly to the public in galleries near the main popular shopping areas.

The subcontracted are workers on the end of the chain, in a role where they are subordinate to a company, in precarious working conditions with no workers' rights, submitted to an extremely complicated regime of stratification (third and fourth party outsourcing). This type of work in the home is not recent, but is intensely reinforced by the process of productive restructuring of businesses, such as the reduction in labour costs and the transference of risks of the business.

The quantification of home workers, in these two occupational situations (autonomous and subcontracted), however, is an almost impossible task, with the present data bases (IBGE (PNAD) and DIEESE (PED)). There are, however, some data that come close to the reality studied by the Project, who then asked for another calculation by the PED on subcontracted workers in the metropolitan region of São Paulo who were working in the capital in the biennial 2009-2010. According to the DIEESE, subcontracted workers are the contracted waged workers in third party autonomous services who work for a company. It is important to point out that the Judiciary Branch has adopted a different interpretation, defining subcontracting as a violation of labour laws, while outsourcing is a form of contracting provided in the legislation. In this Dossier the understanding of the Judiciary Branch was adopted.



In this sense, even if the tabulation does not show an exact picture of the universe presented here, it can offer a dimension on the universe of subcontracting in the city of São Paulo. According to the DIEESE, there are 554 thousand subcontracted workers (9% of the total of workers, this number could be underestimated) who live in the metropolitan region and work in the city of São Paulo. Most of them (70%) work in the service sector, are men (57%), have been in the city for a long time and are distributed in several different age groups, although the majority are between 30 and 49 and with different levels of schooling, notably 40% having completed secondary school.

Of the two situations of working from home – subcontracted and autonomous – the Project monitored immigrant workers from Latin American countries: Peruvians and Bolivians in the clothing industry. Neither the PED nor the DIEESE and even less so the study “A Imigração Boliviana no Brasil”, (Bolivian Immigration in Brazil) produced in 2012 by the Nucleus of Population Studies (NEPO) of the UNICAMP (State University of Campinas), managed to capture numbers that translated the reality of the city of São Paulo. In 2009, according to NEPO, 41 thousand foreigners requested permanent stay in the country, 17 thousand of them being Bolivians. Of the almost 21 thousand Latin American foreigners in the country (Bolivians, Peruvians and Paraguayans), around 43% are involved in the clothing industry. However, according to this study, organizations that offer services to immigrants estimate that between 35 and 200 thousand Latin Americans work in the clothing trade.

The lack of production and systematization of data on the reality of immigrant home-based workers demonstrates their invisibility to the Public Authorities, which makes their situation even more precarious. This Dossier intends to join forces in the construction of a visibility that does not encourage criminalization and legitimization of the segregating processes. However, there is still a long way to go for the vulnerabilities and precarious conditions of these workers to get publicity and for this to reflect on advances in public policies.

This Dossier is composed of three parts: the first, “The context of socio-territorial segregation of informal workers”, shows the processes of segregation that are behind the violations of rights. The section: “Socio-territorial segregation in the central region of São Paulo as a continuation of the model of a patrimonialistic and excluding city” discusses the historical context of the structural constraints that make it difficult to exercise full rights to the city and to work. As well as this, it presents the specific effects of segregation on two categories of informal workers.

The second part, “Violations of the rights of informal workers”, shows the chasm between the progressive legal mark and international projection of Brazil as a defender and guarantee of rights and the suppression of those rights through excluding and violent acts of the State. The sections: “Violations of the rights of street vendors” and “Violation of the rights of immigrant home workers” discuss the violations in the contexts of each of these two categories.

The last part, “Final Comments”, brings together reflections that could show the way towards subsidising public policy and strategies for the organization and demands of the workers: questioning the present model and showing that another project of the city, more inclusive and democratic, is possible; investigating if the State is capable of carrying out a role that helps move beyond the reparation of these violations; and, finally, discovering the advances in the popular struggles and challenges in the face of the new transformations in the world and the reconfiguration of capitalist interests in the city.



Arquivo Centro Gaspar Garcia. Favela do Moinho,  
2011.



# PARTE I

## THE CONTEXT OF SOCIO- TERRITORIAL SEGREGATION OF INFORMAL WORKERS

### THE SOCIO-TERRITORIAL SEGREGATION IN THE CENTRAL REGION OF SÃO PAULO AS THE CONTINUATION OF A PATRIMONIALISTIC AND EXCLUDING MODEL OF A CITY.

The systematic and multi-faceted violation of rights, which the informal workers have been facing in the city of São Paulo are not detached from the intense process of socio-territorial segregation that affect, simultaneously, other vulnerable groups such as collectors of recyclable material, street dwellers, supposed drug addicts, inhabitants of precarious housing, among others.

If, for decades, some areas of the city, especially in the central region, where there is a consolidated infrastructure, have not been the focus of the housing market, now they are the objects of strategic appropriations by capital. This process has been forcing out segments of the poor from these regions and provoking violations of rights of people in a vulnerable socio-economic situation.

Behind these violations is the imposition of a model of a city promoted by way of an articulation between the State and private economic interests. Particular areas of the capital are privileged, impregnated by a repulsion of the poor (that pollutes, devalues and diminishes the profitability of businesses) and by the defence of private property in detriment of the social function of the city.

The role of the State is decisive in the viability of the processes of segregation, through the use of instruments under its control, such as legislation, planning, the use of the repressive state apparatus and the implementation of public works. In each of these processes, the government anticipates social clean-up actions, articulating the various economic sectors (housing, financial, clothing, accessories, transport etc), and carrying out public works to create a suitable scenario for business.

The actions of the local government have been aggressive, with an ample process of participation and social control with no perspective of guaranteeing the right to the city for the local population that, historically, occupied the consolidated areas. In other words, the actions of the Executive body have not been aimed at guaranteeing all inhabitants of São Paulo an equal, universal and democratic distribution of resources, wealth, services, assets and opportunities that the city offers. The model of city behind the process of a social clean-up, which changes the use and occupation of the soil and introduces a new urban scenario in the centre of São Paulo, is patrimonialistic and exclusive.



Patrimonialism, according to Faoro (2011), is a combination of concentration of land, economic power and political power, which builds a profoundly unequal society. This is shown through the acquisition of the public sphere and through the accumulation of land and buildings for private interests and is sustained, above all, with the contribution from the State. The country has maintained this patrimonialistic pattern not only in the transition from being a predominantly rural country to a majority urban one, but also in the cycles of economic growth. So it is based on this matrix that the Brazilian cities were built and are maintained.

During Brazil's history, the combination of exclusion from land and the difficulty in participating in the formal job market continue to be inseparable. The constitution of a free job market in Brazil and the land policy were not distinct actions in time and in the vision of the State when it instituted the method of acquiring land through buying, substituting possession. This action represented a restriction to the access of land for ex-slaves and recently arrived immigrants, relegating them to a subordinate participation in production and access to property. The large landowners submitted them to super exploitation of labour in exchange for the right to stay on the land, paying them ridiculous salaries.

In Brazil, the process of modernization through a retarded industrialization meant that the structural reforms to reduce social inequality were pushed aside. This option left a permanent historical mark of concentration of wealth and land. In the city, the exploitation of labour and land can be seen in the urbanization with low salaries (Maricato, 2011), that is, the worker's salary, even when formal, is insufficient to access land and adequate housing. As the country has never experienced a regime of full employment, what is left for the formal and informal workers is also an informal access to the city and to housing.

Some recent data are emblematic of the systematic maintaining of inequality in relation to work and to the city. Firstly, informality is still part of the reality of almost half of the workers in the metropolitan regions, reaching 47,9% (Garcia, Maia, 2011). Secondly, 47,5% of Brazilian homes are considered to be inadequate, with no running water, sanitation, rubbish collection, among other aspects, according to figures from the 2010 census of the IBGE.

Despite the cycle of a growing economy registered in the last decade having improved the indices of extreme poverty, not facing these structural causes of social inequality – among them the land and tributary aspects – maintains a considerable portion of the population on the margins of the possession of land or of workers' rights. As well as this, the figures related to growth, sustained in the increase of the GNP and in the number of jobs with a signed work card, are used with the intention of legitimizing actions that expel or criminalize manifestations of informal work.

Data from the IBGE Census 2010 revealed that between 2000 and 2010 the population living in the *favelas* increased 75%, while the total Brazilian population increased only 12,3%.

These data show that the increase in spending capacity does not represent an improvement in the living conditions of the people, nor does it alter their situation of land ownership.

Although the model of patrimonialistic and exclusive urban development is not recent, it has presented a new framework in the city of São Paulo. The processes of segregation, which affect not only informal workers, but also other vulnerable groups, are sustained by legitimate issues of urban development. Among the various issues, what stands out are: new investments in building works, new business opportunities and urban security. However, there is a contradiction, because these measures represent a step backward socially when they invert the order of priority by using public resources with no commitment to reducing inequality.

The implementation of a territorial management of the city, with the use of both public and private resources for the construction of road-works, requalification of areas, construction of stadiums, transport for national integration, among others, prioritizes specific uses in detriment of investments in basic sanitation, housing and public transport. The results of these interventions attend a tiny minority, in detriment of a large majority of people who depend on public policies that offer them access to the city, its functions, services and equipments. On the other hand, these enterprises receive enormous public investments, with the integration of the capital sectors – corporations, construction companies, private and public banks – in the building circuit.

It is worth pointing out that part of the urban projects being carried out in the cities is linked to the goals of Federal Government programmes, such as PAC (Accelerated Growth Plan), focusing on the infrastructure for major works and also to host international mega events such as the World Cup in 2014 and Expo 2020.

Another issue that legitimizes the actions of the local government is the intervention in specific areas of capital interest for the creation of new business opportunities, which alter the use of these spaces and give them new destinations, such as, for example, large cultural equipment, activities linked to information technology and communication, among others. Another example of this process is taking place in the regions of Luz and Brás, where the city hall planned, from 2009, new housing frontiers. Although they have not been installed completely, they already demonstrate an excluding proposal and cause negative impacts on informal workers, such as the ban on selling on the streets and the intensification of criminalization of street vendors, among other affected groups.

To carry out these works and projects, the State has been adopting strategies of restriction of popular participation in the decisions and using military force in urban management to occupy and control the land.

IDERON COSTA /REDE RUA. LUZ,2012.



The militarized management of urban issues, justified by reasons of maintaining public order and fulfilling regulations, in fact covers up a strategy of vigilance, oppression and the breaking of barriers to the advance of capital. In an attempt to justify authoritarian actions carried out against the public, particularly groups in vulnerable situations, the State uses arguments of reparation of the public order, creating conditions that attend to private interests, deviating from its role to guarantee and promote peoples' rights.

With these issues in the centre of the agenda with no actions of compensation or reparation, it becomes clear that there is an option for a political and economic model that corresponds with exclusion and social injustice, which is, therefore, an obstacle to the fulfilment of rights. The result of these public actions for private interests is a socio-spatial configuration marked by conflict and informality.

### THE STATUTE OF THE CITY AND THE COMPLICATIONS OF ITS APPLICATION

With the approval of the Law 10.251 in 2001, the Statute of the City, a new legal and theoretical mark starts to lead the urban interventions, the configuration of land, the destination and use of property, introducing measures and creating instruments with an aim to promote a fair and sustainable city, as well as overcoming the inequalities translated in the division between the formal city and the "illegal" city. (Maricato, 1995).

The City Statute proposes a different urban model with the view to democratize the use, occupation and ownership of land, which would allow for an opportunity of access to land to those groups who do not have the same conditions to fulfil this right. Also, the Statute ratifies the constitutional principles of participation and social control in regulating democratic instruments for managing the city such as advisory boards, public audiences, commissions, popular initiative, plebiscites, referendums, and other forms of identifying public and social interest.

The tools for the realization of urban policies and a democratic management should aim to establish a change development methods in Brazilian cities, in an attempt to overcome the reality of patrimonialism and the exclusion of a large portion of the population, who are prevented from accessing the cities resources. However, these tools were taken over by the market in favour of their own businesses. At the moment of discussion and elaboration of the Statute, the idea was that these tools would repair the imbalance caused by urbanization without planning and excluding, but what has been noted in São Paulo, on the contrary, is that the implementation of some tools, such as urban concessions and urban operations, occurred, above all, in places where there is capital interest, which reveals the use of the State's resources to attend private interests.

In this sense, although the City Statute represents a large normative improvement, it is clear that the fragmented actions in the city of São Paulo do not confront the core of the structuring processes of segregation, especially the concentration of land and the private appropriation of resources. For these principles and guidelines to be fulfilled, it is vital to have an integrated treatment of the conflicts that have been installed, either because of the need for access to land or the struggle for the right to work in public places, guaranteeing, therefore, the repartition of the city as a whole.

In practice what happens is that the issues raised (new tools for construction, new business opportunities and urban security) intensify socio-territorial segregation, through the removal and expelling of groups in



vulnerable situations. Below are the details of how each of these issues was moulded in some of the urban projects underway in the central region of São Paulo.

The works carried out by the State in partnership with the private sector are determinant for the change in urban scenery and present similar characteristics in the projects, such as expropriations, demolitions, removal of entire communities, construction of new roadways, landfills for the railway, among other measures. These are adopted without publishing the administrative actions and with no dialogue with the population, as can be seen, for example, in the demolition in 2011 of two buildings that were destined for people on low income: the Edifício São Vito, with 700 families, and the Mercúrio, with 144 families. This event, together with the demolition of the Diário Popular Viaduct, in the region of the Dom Pedro park, was another mark in the large scale sanitary operations to implant enterprises and tourist infrastructures, moving the poor population out of the central region with no consideration for the right to housing of those affected.

Another project with a great impact is the Operação Urbana Lapa-Brás (Lapa-Brás Urban Operation) which intends to bring together various projects which will alter the region drastically: constructive density by a change in the zoning around the Lapa-Brás railway line; implementation of a system of public spaces through the construction of a tunnel which would bury part of the railway and would articulate the urban fabric fractured by the train; an opening of new roadways and the emission of title loans for public works.

The first two measures – constructive density and construction of a system of public spaces – were clearly taken to increase the value of the land in and around the residential and commercial areas. However, it is through the combination of mechanisms of financing the process and the removal of the street vendors from public spaces that the State significantly removes the barriers to ample reproduction of capital.

These urban projects do not promote mass gentrification, since they are very specific, limited perimeters within the territory, but they are “exceptional perimetres” with a different management and zoning to the area around them. For these isolated urban interventions to take place, the legislation is flexible in order to change the way the land within the perimeter is used and occupied, enabling new activities, densification, new enterprises, etc. The State justifies these changes alleging that they allow for “social mixing” and “diversification of housing conditions”, arguments which are apparently democratic, promoting access to the urban fabric, but in fact the opposite happens.

The simple announcement of the worksites and the tax incentives, as well as the social clean-up actions already installed, affects the expelling of popular groups, as well as the valuation of buildings and the intensification of launching new housing projects. The Observatory of Removals of the Faculty of



ALDERON COSTA /REDE RUA. VIEW FROM THE SAC

VITO BUILDING, 2011.

Architecture and Urbanism of the USP discovered, in August 2012, that the population affected by forced removals were occupying exactly the area receive, or will receive in the next few years, enormous investments in urban infrastructure and new public and private projects in the city of São Paulo.

The urban tools, different to the way they were contemplated in the City Statute, have been implanted in the city of São Paulo, prioritizing private interests and housing speculation, putting aside the social projects that run the risk of becoming unviable because of the super valuation of the land, increasing conflict and social disputes. These urban tools have proven to be instruments of private appropriation through the valuation generated by public investments. However, each one has its own particular mechanisms of segregation.

The project of the Popular Shopping Centre, in the Pátio do Pari, is an example of the way in which the town hall articulates public and private capital for the future visibility of an enterprise which, although apparently “popular”, has all the characteristics of a building-financial project. This involves public land (of the Union); public finance (through the BNDES) for the enterprise, estimated at R\$300 million; a study of the viability of the private company (with a cost of R\$7 million), whose shareholders are the main private and public banks, and the management of the enterprise in the format of Public-Private Partnership (PPP). The project and the process of transition in the area has not been subjected to a consultation with the workers who sell in and around the Feira da Madrugada market, situated in the Pátio do Pari. The thesis of “Public investments and private gain” seems to be the rule here.

Another way of capturing public investments for private agents can be seen in the project of the Operação Urbana Lapa-Brás. The town hall plans on implanting, in the central region, the speculative logic of potential additional construction (constructible area) already used in other urban operations in the southwest region of the city, in order to obtain, with the sale of bonds – the Certificates of Potential Additional Construction (CEPACS) – short term loans for public works. The previous tool for selling potential additional construction, the Onerous Award, proved to be slow and not “profitable” enough for the Public Authorities to use it, so the option for the CEPACS, as a leverageable bond to be speculated in the Stock Exchange. The problem with financing this “extra” land is that the resources can only be applied within the region where there is a focus of interest of the market, feeding back into the valuation of the land and, consequently, expelling the poorer groups.

All these actions aim to take over land used by the low income population and to use it for the construction market and speculators, adopting violent methods of supervision, control and repression to carry out this social clean-up in areas of valuation. The removal and expulsion of vulnerable groups, in this sense, are some of the initial actions to make feasible new frontiers of construction.

In practice, since 2009 the town hall has been carrying out a social clean-up operation in the centre of São Paulo, with concomitant actions of bans, expulsion, criminalization and persecution of vulnerable groups.

## ASPECTS OF SEGREGATION IN TWO CATEGORIES OF INFORMAL WORKERS

In the case of street vendors, since 2006 the town hall has been withdrawing their licenses and have now reached a complete ban, as of May 2012. In Largo da Concórdia alone, situated in Brás, for example, over two thousand vendors were expelled. After the removal of the workers in 2006, the metre squared of land around the Largo increased by 422%, from R\$331,00 to R\$1,728.00, according to a report in the paper “O Estado de São Paulo”, published on the 20<sup>th</sup> November, 2009. Since then, the spaces in galleries near the areas where the vendors were expelled increased their rent and key money, to amounts that are sometimes higher than many wealthy neighbourhoods.

For the home-based workers, to live and work in the same building in the Centre has an ambiguous cost-benefit relation: on the one hand, the proximity to centres of popular commerce offers a greater dynamism in the absorption of the demand and the channelling of the home production, as well as meaning a reduction in time and cost of travelling, on the other hand, the rent costs are very high, jeopardizing a large part of the family income. A large part of the home-based workers who try to remain in the Centre, as in the context monitored by the Project, have little alternative other than to submit themselves to poor housing: favelas, squats and slums, in smaller and smaller places with other families.

The informal home-based workers who sell directly to the public are doubly ripped-off in the price of the land. Apart from the very high price of a metre squared of production-living space, there is also the onus of the rent of the place where their production is sold. This sale generally takes place in galleries near the centres of popular commerce which make up the Shopping Circuit (an area that covers the Pátio do Pari, Brás, 25 de Março, Bom Retiro and Santa Ifigênia), together with street vendors who have had their licenses withdrawn by the town hall.

In summary, for the street vendors, the effects of socio-territorial segregation described above, are shown through the means of banning their activities and expelling them from public places, the cancelling or

LUCIANA ITIKAWA, LADEIRA GENERAL CARNEIRO, 2002.

ARQUIVES OF CENTRO GASPAR GARCIA, LADEIRA GENERAL CARNEIRO, 2012.



manipulation by the State of the channels of social participation and control and the lack of perspective of inclusion in the street vendor trade in urban planning, which would allow for public policies that could guarantee the continuation of this activity.

In relation to the home-based workers, the segregation is clear in the precariousness of their housing, whether it is in the centre or on the outskirts, in the price per metre squared for renting workshops/living spaces which is higher than in wealthy neighbourhoods, in the structuring of a plundering system of illegal subleasing of the selling points near the popular commercial centres, among other issues detailed below in the violations.

MARC FERREZ. BOTTLE SELLERS, 1899. ARQUIVES OF INSTITUTO MOREIRA SALLES.









ARQUIVES CENTRO GASPAR GARCIA. REMOVAL OF STREET VENDOR IN  
JABAQUARA, 2012.



## **VIOLATIONS OF THE RIGHTS OF INFORMAL WORKERS**

“They do it all themselves, they decide and they judge”.

S., street vendor in the Praça na República

After twenty years of the ratification of the International Covenant on Economic, Social and Cultural Rights in Brazil and twenty four years of the Federal Constitution, it was necessary to evaluate the application of the legal system in the national context and the public acts in the perspective of the informal worker in the city of São Paulo.

The legal advances that recognise the fundamental rights and the new rights are a result of the process of articulation of various segments that work towards the re-democratization of the country, with a view to guarantee within the law the responsibility of the State in the promotion of social justice. Nevertheless, as pointed out earlier, structural problems of society are determinants in the non fulfilment of human rights in Brazil, as they form the basis of social inequality.

It can be affirmed that there is a gap between the actions of the State and the legal and theoretically progressive mark of protection and guaranteeing of human, economic, social, cultural and environmental rights (DHESCAS). At the same time that Brazil reaches international projection as a defender and guarantor of these rights, its territory holds all kinds of contradiction in the management of urban conflicts.

Institutional violence and the actions of militias intensify the politics of criminalization of activities and social manifestations, persecuting groups in vulnerable situations such as informal workers, street dwellers, those living in poor housing, recyclable material collectors, among others, as indicated in the previous chapter. The modern São Paulo, filled with services and various options of leisure and consumption on international levels, has an underside that is excluding and predatory, with thousands of people living in inhuman conditions, subject to violations and negations of all sorts of rights. It is precisely to contradict this logic and to give visibility to the violence carried out against the workers that this Dossier is being made public.



ALDERSON COSTA / REDE RUA. SANTA EFIGÊNIA, 2012.

A policy for the affirmation of rights needs to exceed the actions of the State, which has been acting through fragmented policies, with no vision of the overlapping of the violations and also contradictory, on the one hand protecting the worker, and on the other, criminalizing him. The State here is understood as being the three official spheres of power: Executive, Legislative and Judiciary. In several cases, while the Executive body deliberates the expulsion policy, the Legislative body motivates customer based practices and the Judiciary is silent in its evaluation of social conflicts unleashed by the violation of rights and practices of illegal acts.

### THE LEGAL ADVANCES IN THE FEDERAL CONSTITUTION AND THE CITY STATUTE

The Federal Constitution of 1988 was elaborated in a moment of popular anxiety for the re-democratization of the country, with a view to assure liberties and fundamental guarantees after a long period of authoritarian and military regimes. It was a time of effervescence of social, popular and student movements, of actions for the democratization of public institutions such as the Public Ministry and universities, and of social mobilization such as, for example, the campaign “Diretas Já!”. (*Direct Elections Now!*)

The constitutional text represents, in theory, advances for the construction of a Democratic Rule-of-Law, guaranteeing not only economic, social, political, cultural and environmental rights, but also determining the role of the State in the execution of these rights through public policy. In order to guarantee the viability of these actions, there was a concern over the definition of duties, responsibilities and attributions of the State, in a sense that the population was able to accompany, participate and control the process.

Among the achievements set out in the Constitution is the creation of the title of the “Economic and Financial Order”, which reaffirms the social values of employment and of free enterprise. This means that job fulfilment is essential for social life and for ensuring a decent existence, in a way that individuals are able to guarantee at least an existential minimum for themselves and for the community. Apart from this, it ensures the fulfilment of any economic activity – therefore the restriction of any legal form of work goes against the country’s own economic order.



#### Article. 5 of the Federal Constitution:

All are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the Country being assured of the inviolability of the right to life, to liberty, to equality, to security and to property on the following terms:

XIII – the practice of any work, trade or profession is free, observing the professional qualifications which the law shall establish.

Paragraph 1 - . The provisions that define the fundamental rights and guarantees have immediate application.

Paragraph 2 – The rights and guarantees expressed in this Constitution do not exclude others deriving from the regime and from the principles adopted by it, or from the international treaties in which the Federal Republic of Brazil is a party.

Still under the title of the Economic and Financial Order of the Constitution there is a chapter on Urban Policy (articles 182 and 183), that deals with urban development as an attribution of the town. The municipal acts should have as their objective, according to the text, “ordaining the full development of the social functions of the city and ensuring the well-being of its inhabitants.”

Looking at these issues of urban development and work as constituents of the economic order of the country, the Constitution determines that State interventions should be capable of balancing the power relations and socializing economic and social rights such as work, access to land, among others. This way the State has a role in regulating and controlling the different interests involved in society, respecting private interests, but guaranteeing the prevalence of social interest.

Despite the legal advances provided in the Constitution, these were not sufficient to implement the social function of the city and property. Over a century later, segments of the civil society and of the State articulated a proposal of regulation of urban policy, approved in 2001, the City Statute. This legal mark brought mechanisms for the redistribution of wealth and, also, tools which implemented the right to the city through equal access to work, housing, health, education, transport, among others in a cohesive and integrated manner.

Simultaneously to the approval of the City Statute, the World Charter for the Right to the City, approved in 2001 in the World Social Forum in Porto Alegre, became an international legal mark whose fundamentals are discussed and defended from the perspective of the urban inequalities.

#### World Charter for the Right to the City

##### Article XV. The Right to Work:

4. Cities shall promote equal access for women to work by creating day care centres and other means, and of disabled persons by the installation of suitable equipment. To improve work conditions the cities shall establish programs for the improvement of urban housing used by women and vulnerable persons as work places. The cities shall undertake to promote the progressive integration of the informal commerce run by low-income or unemployed persons, avoiding its elimination and providing adequate areas and policies for the workers until such time as it can be incorporated into the formal urban economy.

The right to the access of land and to territory as expressions of social function in the city are configured as diffuse rights that affect the whole society. However, the right to the city is not just about access to urban infrastructures, but also to the right to transform the urban areas into more socially fair cities. The concept of urban justice, on the other hand, means democratizing the use, occupation and possession of land in order to confer equal opportunities of access to urban soil and promote the fair distribution of benefits and results of urban interventions.

The Federal Constitution, the City Statute and the Master Plan, establish that popular participation is fundamental in the construction of public policies and in the definition of priorities in investments of actions for the development of land. In several different environments, the participation of the public in the transformation of their living conditions is a premise that should be respected by the State. These legal provisions are fundamental in the informal work space, as there is still a gap between basic rights and the behaviour of the State.

NICK STORY, MAUÁ OCCUPATION, 2012.



## INFORMAL WORKERS: THE DAILY VIOLATION OF RIGHTS

The right to work is constituted as a human right expressed in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Brazilian Republic and included in the Constitution in 1988. The ICESCR establishes that people have the right to ensure the possibility of guaranteeing their livelihood through freely chosen employment, where the State Parties are responsible for adopting appropriate measures to secure it. With this same objective, the Federal Constitution determines that international pacts, agreements and treaties shall be of a constitutional amendment nature, where the country may be held responsible for the non-fulfilment of the commitment undertaken internationally.

### International Covenant on Economic, Social and Cultural Rights (ICESCR)

#### Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

The existence of the right to work in the Constitution as a social right, however, has not guaranteed the universal access to formal employment and adequate working conditions. Also, this right is also a means for other rights to be fulfilled. So, if full employment has never been a reality in the Brazilian job market, there needs to be some effective measures by the State to guarantee social protection, housing, unemployment benefit, among others.

The International Labour Organization (ILO), with a perspective to confront the perverse transformations that suppress rights in the job market, launched a Decent Work Agenda to insist that the State, the businesses and the organizations take on their responsibility, in the affirmation of fundamental workers' rights. Issues such as the creation of quality jobs for men and women, the extension of social protection, the promotion and strengthening of social dialogue and respect of the principles and fundamental workers' rights, are main points on this Agenda.

These parameters can be found internationally in the Declaration of Fundamental Principles and Rights at Work and were incorporated by Brazil through plans and programmes such as the "National Plan for the Eradication of Child Labour", the "Programme of Institutional Strengthening for Gender and Racial Equality". Although the Universal Declaration of Human Rights, the ICESCR, the Decent Work Agenda,



Alderon Costa /Rede Rua. Brás, 2011.

the Federal Constitution and the Municipal Master Plan of São Paulo establish the right to work as a human right, recognizing its social value, everyday there are witnesses of deliberate actions of persecution and criminalization of informal workers.

“The street vendor is only part of the story. Many small producers depend on him to distribute their goods. There are many street vendors who are also small producers and if they don’t have a place to sell their goods, the whole chain stops. So there are many people who produce as well as selling, and I think this is important, because there is a whole discussion of the town hall to criminalize this work. Many people are simply trying to distribute their goods, which produces the basis of their family work, I think this is an important point to consider.

Carlos Freire, researcher

Some of these excluding actions directed at particular categories of informal workers come from the presumption that they are illegal and should be extinguished. The form in which the State relates to the different segments of society demonstrates that there is a restrictive and repressive tendency towards vulnerable groups, while it is widely permissive with private initiatives, redirecting the principle of public interest and allowing flexibility with the regulations to attend specific economic groups.





LUCIANA ITIKAWA. PRAÇA DA REPÚBLICA, 2002.  
CRAFT FAIR WITH STANDARD STALLS.  
STREET VENDORS WITH NO PLANNING.

A

## VIOLETIONS OF THE RIGHTS OF INFORMAL STREET VENDORS

Itinerant trade is regulated by the Municipal Law 11.039, of 1991, and by the Decree 42.600, of 2002. The proceedings related to the activity, among infractions, fines and supervision, are set using other municipal laws and directives such as the Law 11.111, of 1991, the Law 13.866 of 2004 and the Directive 18 of 2004.

In general terms, these regulations establish that an individual may carry out itinerant trade, autonomously or through a job relation, so long as they carry out a legal activity and are authorized by the town hall. Those who have authorization should carry the Term for the Permission of Use (TPU), receipts of their products and must have paid their charges (public fee charged every three months). There are also quotas for people with physical limitations, the elderly and those who have come from the penal system and also permission for those who are “physically able”.

The legislation presents an emphatic list of infractions that will be “charged with a fine which is determined by the Administration, with the possibility of losing the Permission for Use”. Also provided are the contracting, previously authorized by the town hall, of assistants for workers with physical limitations and the elderly, the institution of Permanent Commissions of Street vendors (CPAs) and provisions regarding equipments, commercial pockets and other issues. The Decree of 2002 reinforces the regulating of itinerant trade, discussing, if only briefly, the place for the participation of workers in decision-making, the CPA, whose attributes and competences are the object of a later directive. In its original proposal, the CPA is a consultative body so that situations of irregularity, legal infractions and the need for readjustments

may be addressed with the participation of the workers, as well as being a place for discussion and the forwarding of proposals elaborated by the town hall or by the workers.

The exercise of the itinerant trade is the object of controversial understandings, some reinforced by the idea that the streets are not spaces for economic activities, others in the generic allegation that the products are “pirate”, fruits of falsification or smuggling. The association with illegality and the stereotype created by the City hall and reinforced by the media, are used to justify the growing persecutions, threats, physical attacks, sudden cancelling of licenses, among other forms, which culminate in the violation of rights.

Two plans at federal government level, elaborated by the Ministry of Justice, also contribute to the criminalization of street vendors: the plan “A City Free of Piracy” and the “Legal Market”. Also, such initiatives are not accompanied with educational measures, of collective negotiation and the search for alternative commercialization of the products.

In the last administration of the City Hall of São Paulo, (2008-2012), the district councils which, among other attributions, manage and supervise the itinerant trade, were granted military support to act in an authoritarian manner, leading to several tough, arbitrary, illegal acts against the workers.

Since 2008 the administration of the district councils is under the command of colonels. Of the thirty one district councils, only M<sup>o</sup>Boi Mirim continues, at the time of publication of this Dossier, with a civil administration. The military operations, with the participation of civil guards, have been ostensive in valued regions or in the process of the taking over of the housing sector, creating strings of social isolation and delimiting areas where poor people cannot enter.

“I have worked in the Lapa since 1982. Although the license was not mine, it was my husband’s. I worked until 2003, then I stopped working, but didn’t give up the fight. Although I am not working, I still fight. I don’t think I will go back to the streets, but I haven’t given up the fight and I want to help people. We have to be united so that this collective (The Forum for Street vendors in the City of São Paulo) continues to be considered in public policies, demanding the rights that exist, that are ours, the workers’ rights that aren’t respected. And preferably this will not only reach the town, but also the president, because it is our right. To demand that the law supports us, because we need a national coordination in order to demand respect among us. So that when another street vendor arrives there is a place for him. Because no-one does this for pleasure, but for necessity, because the streets are not easy. I grew old on the streets, lost half my sight, I suffered a lot, I suffered eight violent attacks, I also took part in the CPI (Parliamentary Investigation Commission) of the mafia of the supervisors. (...). I continue to resist, I will still be fighting at 90!” E., street vendor in Lapa

"I began selling with two thermos flasks of coffee and TUX biscuits. I have been selling on the streets for twenty years, but in fact I have been here for thirty, because I did this before I stopped working as a waitress. I worked one shift and went around with the flask on another shift. I have been here twenty years even without a license. So I just kept going, and kept going, working. I attracted lots of clients with my flask and TUX biscuits. There was a time when I had to travel to help a friend out who was sick, and it was then that the Erundina started with the licenses. That's why I don't have a license, because after that, they didn't have them anymore.

I always preferred to work at night, I always thought: I will work at night because then I don't disturb anyone, neither the traders nor anyone's shop. But now, with the Kassab, things got more complicated, so I thought: I will work early morning. But then you have to face everything and everyone on top of you. Everything that happens today is because there is a street vendor there, it's the street vendor who is at fault. There is a very big difference between working at night and during the day. I stopped studying because I had no choice. If you work at night, you have to sleep during the day, and to sleep during the day there is the problem of noise on the street, from the neighbour, because the neighbour already slept at night, he doesn't care if you didn't sleep, there is no law of silence for you if you work at night.

Now, in relation to my health, these last three governments messed up a little, because I ended up with thrombosis after running around so much. You're standing there and suddenly you have to run off quickly, I lost lots of products on the way. Over the years, we don't realise it, but they are occupational diseases. I ended up with rheumatism. Because of having to run, I fell and damaged my pelvis and my spine, as well as the desperation of "run, they're coming, they'll catch you, they'll catch you". But I am a survivor. I am bringing up the third generation, my granddaughters. And it was through my work as a street vendor that I managed it, even without a license.

I pray to God that the authorities and those who are able and have the knowhow create a law that is more comprehensive and understands that the street vendor is part of the town's development, because even those who have licenses are under pressure. Several colleagues have died, some because of violent attacks, others because they couldn't cope with what I have put up with for the last thirty years and they lost their lives through a heart attack, because they lost their produce. Because it's very hard for someone to choose the profession of a street vendor. No-one chooses this profession to become rich, they choose it to be decent, so as not to do anything wrong. Those who work in this category suffer until now all kinds of violence, even after this operation (Police Operation). Incidentally, I don't know whose idea it was to create the Police Operation to capture workers. How can you create this Operation if there is the statute of children and adolescents? There is the father, or the mother who is the bread-winner like me, I am the head of the household. I have to come home with bread and milk, because my children won't go to school without their breakfast, and when I come home at night the children need to eat, and how can this worker be called a criminal, illegal? So what's the solution? The solution is a law that contemplates everyone!"

V., street vendor at the Praça da República

"I sell savoury snacks and fizzy drinks. I buy it near a distributor, or in the city itself. I work at a fixed stall, one of the few that are left. My life is crazy, before I would just wait for my husband who worked and took care of everything, but then he was ill and took poison, he lost everything in gambling. He can't control anything, so I started to learn, I buy, I use a cheque pre-dated for 2 weeks ahead, or I use a credit card. I pay the electricity bill, the water, telephone, things like that and I get by.

I spend a lot of time standing, I run to go the bathroom. I don't go often, only when I am desperate. Because it is my husband's TPU (Term of Permission for Use) but if he works there, he doesn't even know what is going on, he can't even find the document when the police arrive. So I work more, I buy, I sell, he is there only because of the TPU.

I had a problem last week, where the police asked for the documents and when he gave it back to my husband, who is getting old, he is over 60, he has memory problems, things like that, and he looked at the documents, threw them on the floor and said: 'pack up everything, because I'm going to send someone to come and collect all this'. I was putting stuff away, because, I had just been shopping. Because if I buy the materials, there is no-one to deliver them and put them away, I have to put things where I can fit them. The police arrived just at this time, took a photo of my husband's TPU, I don't know why. Because I think he should have taken a photo of the shopping that was outside, it made me really.... It really shook me up. So I would like us to be recognised as small businesses, because we pay taxes, all up-to-date, we don't sell or deal with anything illegal. So lately I have been a bit down, we end up becoming ill. The danger is having a heart attack, the day that policeman arrives, I don't know what happened to him that made him so violent.

Another day I was putting floor tiles in my stall, so I put everything outside. What other time do I have to do this? So I went to work on the floor and a policeman arrived, shook my hand and joked with me. I said I was tired from putting the tiles down, so one (policeman) made up for what the other had done, but I was still nervous, I thought I would have a heart attack, pain in the chest, pain in the back and a terrible headache.

At my age I don't know what to do anymore. I don't pay National Insurance, so I don't know what would happen if I become ill. My house is leaking, the walls are peeling, the gate is rotten. The last few years with this mayor have been the worst for us, nothing is left, we can't work properly, everything has stopped.

I would like the mayor to let us work, after all we have the TPU, we pay taxes. And let's suppose that my husband can't come (because sometimes he goes a bit nutty and he wants to stay in bed and won't get treatment, he had depression) and I could stay. It's a TPU, I pay for it, so could I stay? That's what I would like."

G., street vendor in Jabaquara





LUCIANA ITIKAWA. THE OLD AND NEW CENTRE, 2002.

## THE RIGHT TO WORK

As mentioned before, the large number of people who work in the itinerant trade in the city of São Paulo (138 thousand, according to figures from PED and DIEESE, 2010-2011) reinforces the social relevance of this activity. The tiny number of people (3,7%) who have the TPU to work on the streets and commercial pockets, reflects the existence of a regime of imposed exception and the absence of an impersonal treatment by the town hall.

The lack of urban and economic planning for the integration of the 138 thousand street vendors in the city leaves most workers vulnerable to institutional violence and the corrupt practices of groups who negotiate illegally the access to space in the city. The permit for use, apart from increasing the intensity of the dispute between workers with and without licences, also intensifies the situation of insecurity and vulnerability of the workers. Administrative Law characterizes this instrument as being of a precarious nature, that is, a discretionary administrative act that could be unilaterally extinguished by the State. Nevertheless, these characteristics do not justify the arbitrariness of the acts, which should be carried out within the principles that regulate administration such as impersonality, morality, legality, publicity, among others.

## Article. 37. Federal Constitution:

The direct or indirect public administration of any of the powers of the Union, the States, the Federal District and the municipalities, as well as their foundations, shall obey the principles of lawfulness, impersonality, morality, publicity, efficiency and also the following:

§ 3º Forms of participation of the user in direct or indirect public administration shall be regulated by law, especially:

I. Complaints relating to the rendering of public services, ensuring the maintenance of public services to the user and a periodic evaluation, external and internal, of the quality of the services.

II. the access of users to administrative registers and information on acts of the government, observed in the provision of article 5, X and XXXIII.

III. the discipline of the representation against the negligent or abusive exercise of an office, position or function in public administration.

Since 2007 the emission of new TPUs is forbidden through the Directive (32/SMSP/2007), an act which has been renewed every year. According to information from the town hall, between 2010 and 2012 1,224 TPUs were taken and 3,913 annulled. As well as this, in 2012, through Decrees, the town hall renewed all the commercial pockets in the city.

The withdrawals, cancelations and extinctions of commercial points carried out by the town hall since 2009 present serious non-compliances to municipal laws, such as, for example the punishing of street vendors for the inadequacy of the place of work, when it is the town hall itself that chooses the spots. There are a number of reports of people who suffer abuse daily until the final warning which is the cancelation of the TPU and the confiscation of all produce with no observation of determinations of the legislation such as an agreed deadline, seizure, among others. In the case of workers without a TPU, the violence and abuse are much worse, involving physical and moral aggression, as well as extortion and threats. The reasons pointed out by the town hall go beyond what is reasonable and legal, revealing the lack of preparation and the discrimination which point out the intension of the town to exterminate the category of street vendors.

The street vendors face, daily, questionable methods from the public agents that submit them to inhuman and torturous conditions. As an example of this, several reports point out the actions of these agents: they take the documents and tear them, they make up situations when they see that the worker is absent from his commercial spot when he goes to the bathroom, or to the doctor for an emergency or an appointment or even, they allege that is not permitted for the workers to use umbrellas or sun shades to protect themselves and, in extreme situations they use threats and physical violence.

The application of the cancellations occurred with no grading or stages of penalties, making it impossible for the workers to defend themselves. Justifications such as “clearance of public roads to allow for the access of vehicles”, “increase in the field of vision” to improve policing and “the need to improve urban cleaning”, were presented repeatedly in all the district councils of São Paulo. However, no plans, studies or analyses were presented to support these decisions, on the contrary, the activity was cancelled even in places historically destined for this activity. At no time was anything mentioned about the public interest in guaranteeing the social right to work.

The consolidation of the Democratic Rule-Of-Law State, supported by the Federal Constitution, imposes a new concept of state action, with a dimension that aims to overcome the repressing and controlling roles of the military and authoritarian governments as it institutes the adversary system and the right to defence as principles. In effect, the process of withdrawing the street vendors from the streets and commercial pockets is conducted with no opportunity for the workers to find defenders, to present their version of the facts and to demonstrate the configuration of their rights, not to mention that many lose their license without being notified beforehand or having been given any fine.

Article 5 of the Federal Constitution:  
(...)

LIV. no one shall be deprived of freedom or of his assets without the due process of law;

LV. litigants, in judicial or administrative processes, as well as defendants in general, are ensured of the adversary system and of full defence, with the means and resources inherent to it.

Considering the principles and the guarantees that rule the Brazilian judicial and administrative processes, we can affirm that the interventions are only affective and fair when they are based on the law and ensure all those involved all means of defence. In this sense, it is understood that the right to defence is a protection for the individual, allowing him to defend himself completely in the formal aspect, with technical assistance, access to the process, information on what he is being accused of, a possibility of producing evidence and of having his resources analysed by a committee or group, among others.

The conflicts brought to the appreciation of the Judicial Branch face diverse opinions, although the majority of the decisions attested the arbitrariness of the town hall in the forced removal of the workers with no alternatives constructed. A large part of the judicial actions judged on this subject used as a base the Writ of Mandamus, a plausible judicial measure for asking for mediation of the Judiciary in authoritarian, unfounded or arbitrary decisions made by the town hall.

JULIANA AVANCI. ACT OF THE FORUM OF STREET VENDORS IN FRONT OF THE JUSTICE COURTS IN SP, 2012





The institutional violence imposed on the workers threatens the survival of thousands of people who depend on the itinerant trade directly or indirectly. In determining the forced removal of the workers with no planned alternatives for the resettling or relocation, the town hall acts directly in the extinction of a category that is legally recognized. This context initiated serious conflicts and made it essential for there to be an intervention from organs that protect the fundamental rights of individuals or groups, as well as those that should look out for the threatened diffused rights, such as the Public Defender's Office and the State Public Ministry.

The intention declared by the town hall to extinguish the street vendor led to the proposal of A Public Civil Action by the Centro Gaspar Garcia and by the State Public Defence Office in June 2012. This action was aimed at obtaining a declaration of invalidity of all the administrative processes in view of the breach of the principles contained in the specific law. Also it demanded the inclusion of the itinerant trade in urban planning, according to the directives in the City Statute and the Municipal Master Plan. So that the requirements of the action are carried out and reduce the damages caused to the workers until the day of the trial, the judge of the 5<sup>th</sup> Public Treasury Court of São Paulo granted an injunction which allows for the return of the street vendors who had their licenses cancelled or revoked in 2012.

"I am an street vendor, I work with Bibles. The Holy Bible, religious material, bought in the Rua Conde Sarzedas, with proper receipts, not just a hand written one, a receipt from the computer. They took my Bibles there in the Avenida do Estado, I showed them the receipt, but they didn't respect that. They told me to go to the town hall in Mooca, another lawsuit began, I went to the bank, paid R\$14, they started another lawsuit, the fine came, I paid this other fine of R\$93, and presented the fine to the chief of police at the police station in Mooca. He said to me: 'it's like this, your merchandise will not be given back to you because you paid a very small fine'. I said: 'hey boss, it was you that sent me the fine, here it is, right here'. I have this fine with me at home, I can show any public authority. So they didn't give me my stuff back, and they said: 'whoever sent this fine, sent you a very small one and you will have to pay another one if you want your merchandise back'". F, street vendor in Brás

"It's not fair, what are we supposed to eat? What are these families going to live on? They are people with disabilities, 60 year olds, with reduced capacity, elderly and mostly illiterate. So they need a solution, no-one is asking for charity. We need our right to work".

V., street vendor in Brás – interview on TVT

Today, almost all the licenses are cancelled or revoked in the city of São Paulo and a minority of workers who are still in public places are working because of a Public Civil Action injunction decision in court. Within this scenario, the workers do not have any guarantee of the continuity of their activity, jeopardizing the fulfilment of even minimum levels of decent work conditions. In the various activities carried out by the Project, such as collective meetings and assistance in the Reference Centre for Informal Workers, the workers report the precariousness of their working conditions such as, for example: exposure to bad weather causes health problems, such as breathing problems, skin problems



and others; the lack of planning in the commercial points generates a risk to their safety, exposing them to accidents; persecution by the police leads to questions related to stress, such as alterations in blood pressure and cardiovascular problems.

Recognizing the activity of the street vendor is more than just choosing a place for them to sell, it also includes the elaboration and consolidation of an adequate and safe working environment, dialogue and constant negotiations and policies of social protection directed at the specific needs of these workers.

“I came from the northeast with great difficulty and arrived in the city contributing. My baggage is the struggle that is heading towards victory, to achieve my rights. I have seen a lot of pain, I have seen many tears, I have seen my colleagues die of heartbreak, this gives me strength, gives me courage. My family especially, because my family is my motive, when I am approached by the supervisors or socially condemned for being illegal, I remember my family who is at home and needs support. I am the supporting trunk of this family and I can’t give up”.

V, street vendor in the Praça da República

Brazil is one of the countries that declared internationally that it is concerned with the principles of the Decent Work Agenda, one of them being the eradication of any form of discrimination in relation to a job or occupation. When the State relates the itinerant trade to piracy and smuggling, attributing the condition of “illegal” to those who don’t have a license to carry out their activity, it causes stereotypes which criminalize the workers and brings about discriminatory behaviour.

It was only after strong opposition and manifestations by the workers and some social movements after the announcement of the ban on itinerant trade in the city, that the city hall began to say that there were some projects of relocation and inclusion in the formal market. However, these alternatives presented did not demonstrate any viability or feasibility. One example presented, disrespectful and humiliating, was the offer of a job as a tourist guide to visually impaired pedestrians.

“I have no other means of survival... I am not retired, as a disabled person I need to survive. My only solution is this, as a street vendor”.

C, itinerant worker in Brás – interview on TVT

Alderon Costa /Rede Rua. Brás, 2011.



Although social protection is one of the mainsprings for the Decent Work Agenda, the national programmes directed towards street vendors are not always compatible with their socio-economic reality. According to what was found through the Reference Centre for Informal Workers, although the street vendors could contribute to Social Security as autonomous, this alternative, as it demands a constant contribution, becomes unfeasible for most of them, as their income is unstable and insufficient.

Recently, the federal government created the Individual Micro-entrepreneur programme (MEI) to increase welfare coverage for the self-employed. The programme, that brings together the formalization of business and social protection, proposes a reduction of the bureaucracy for the maintenance of a legal entity, however, in practice, this model entails other costs which jeopardize access to the programme. Also, some instances and organs understand that the Micro-entrepreneur is a natural person, while others defend that it is a legal entity. This question throws doubt on the compatibility between the National Programme and the Municipal Law that regulates the itinerary trade (Law 11.039/91), since the latter establishes that the activity shall only be carried out by a natural person.

The federal government created, in 2008, the MEI, a programme that promises several benefits, including: welfare coverage, contracting of employees at a lower cost; exemption of fees for the register of the company; absence of bureaucracy; access to bank services, including credit; buying and selling in groups; reduction of taxes; simplified controls; emission of license over the internet; facilities in selling to the government, free services, technical support from SEBRAE in the organization of the business; legal certainty. Nevertheless, the programme presents faults and the access is not easy, requiring experience in business management in order to carry it out.

## THE RIGHT TO THE CITY

“I’m from Tocantins and I have been in São Paulo since 1985, working on the streets in São Miguel Paulista since 1991. I have a great dream, I think we need to improve our organization, we need to improve our equipment, we need improvements in our working conditions. My dream is great, in the future we, together with the Forum (of Street vendors in the City of São Paulo), will build a centre for street vendors. My dream is that in the future we all have our TPU and that all can have their own shop one day, that we get somewhere, and aren’t street vendors for our whole lives. I think everyone here has dreams, and would like to have their own shop, their own place of work, and let others also have their right to work on the streets. The idea is that we leave the streets eventually”.

W, street vendor in São Miguel Paulista

The lack of inclusion of the street vendor in urban planning, integrating the activity to social functions in the city and recognising the importance of its economic dynamics, generates insecurity in the workers,

they have no guarantee of the continuity of their income generation and of the consolidation of the business.

Those who were not included in the preliminary injunction in the Public Civil Action and the workers without a TPU, sell their merchandise whatever way they can, spreading cloths on the path, approaching clients in the streets and trying to work between the shifts of the Military Police in activity in the Police Operation.

The “Operação Delegada” is a covenant between the São Paulo City Hall and the Military Police for the police to carry out supervision of the street vendor – a legal attribution of the Metropolitan Civil Guard (GCM) – during their time off, which gave it the popular name of “Bico Oficial” or “Official moonlighting”. The contract never became public, making it impossible to know its terms. Until 2011, 112 million reals were spent on this Operation, causing discontentment among the Civil Guards that considered this policy to be a scrapping of the GCM.

The itinerary trade integrated into urban planning would offer decentralized job opportunities around the city, contributing to the reduction in the distances between home and work, reducing the time of displacement and encouraging local employment and income generation. Absence of cohesive policies in the destination for spaces for popular commerce demonstrates the contempt of the public authorities towards social development.



LUCIANA ILIKAWA. VIADUTO DO CHÁ, 2002.

In the same way, the lack of urban planning with no objective criteria that reduce regional employment deficits, and that does not respect local and cultural traditions of popular commerce, reproduces the logic that characterizes unequal cities. Both the decision to create commercial points and their extinction have a direct impact on the workers, on those who live in the region, which should obligate the use of tools of popular participation. That is, the allegation that the decisions on the revocation of commercial points and pockets is of exclusive responsibility of the city hall is incompatible with the directives of a democratic management and can set off serious violations of rights.

## City Statute:

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:  
(...)

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

The purpose of the tools of social participation is to guarantee the effectiveness of public policy and its relation to urban development, to public and social interest. Notwithstanding, the interventions for the extinction of commercial pockets took place with absolutely no consultation with the population, which demonstrates the incorrect understanding that listening to the society about its actions is optional for the State, while the law insists on the need for dialogue.

## City Statute:

Article 43. To guarantee the democratic administration of the city, the instruments, among others, that should be employed are:

- 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;

The municipal law and the decree that provides on itinerant trade establish that decisions about cancellations, local interventions or measures that cause an impact on the workers should be discussed in the Permanent Committee for Street vendors (CPA). This committee, made up of representatives of the State, of the workers of the established commerce and of the civil society, instead of being a channel of negotiation to resolve conflicts, was distorted by the City Hall, who authorizes the arbitrary and authoritarian conduct of the district councils, seeing the CPA as a formality to be followed in order to fulfil its own interests.

The weakening of the CPAs was a process that brought together the manipulation of their composition, and the random choice of representatives with no installation of any democratic process, inconstant and irregular convocations to meetings and the delegitimizing of local groups for the representation of the workers. In the end, in the period of mass cancellation and revocation in all district councils, the CPA was called simply to communicate the decisions already made by the administration, preventing any participation by the itinerant workers and demonstrating the deviation from the purpose of that space.

Some representatives of the workers mention that on several occasions they were forbidden to go to meetings of the CPA with no legal justification or prior communication, with the argument



that they had been substituted. As well as this, situations such as the disappearance and falsification of documents and administrative resources are constantly reported to the Reference Centre for the Informal Worker. The statements point out that in some district councils, especially on the outskirts, the CPAs were not constituted and that in district councils such as Sé, Pinheiros and Jabaquara there was a long period with no convocations.

## THE RIGHT TO HOUSING

“[The cancellation of the TPUs by the city hall] took as kind of by surprise. I managed to get a garage in Santo André I live in Jabaquara, I had to pay the transport to go the garage in Santo André. And at this very moment the stalls are being removed because many people couldn’t find a place, because they had no opportunity. I can’t afford to rent a stall because either I pay the rent for the stall or I pay the rent of my house”.

M. street vendor in Jabaquara – interview on TVT

The right to housing is still one of the more persistent demands of the Brazilian society, to which are associated vital conditions of the individual and the determination of the stages of full social development. Considering the precariousness of the housing of a large part of the world population, the UN-Habitat institutes parameters for adequate housing: security of tenure, the provision of services, equipments and sanitation, access to financing for vulnerable groups and adaptation of the constructions in agreement with the local population. These elements should be promoted in all the Member States and their non compliance represents an infraction of international regulations, which could give rise to the accountability of the country.

NICK STORY, MAUÁ OCCUPATION, 2012



With the extinction of itinerant trade and with no source of income to support themselves, the worker takes up other forms of informal work. With housing programmes that are insufficient or mixed up with the interests of housing markets, the population on low income faces difficulties in improving their living conditions, especially those who don't have a stable income.

"I live in a very tight kitchenette. When I finally get possession, because there is a lot of land, I will be more comfortable. I can fix the house I live in and everyone can have a room. Then my son can have his privacy and I have mine.

C., street vendor in Jabaquara

The approximation to the street vendors through the Project made it possible to note that the majority, especially those with no TPU, live in terrible living conditions, they can't afford to pay rent, or access the housing programmes because they have no proof of income and, for this reason, resort to squats and slums. The reality repeats itself: the threat of being kicked out because they can't pay the rent; the imminent reintegration of possession of the occupied building; densely occupied housing, with two or three generations living in one small room; clandestine installations; lack of infrastructure and public services, among others.

Some of the stories told at the Reference Centre for Informal Workers powerfully illustrate the relation between the restriction of the right to work and the precariousness of the housing. The clamp down on police persecution, especially against those who don't have a TPU and suffer daily violent approaches from the police, reduces their income to a minimum for survival, a situation that makes it impossible to pay for adequate housing.

The fight for the fulfilment of the right to housing is directly related to employment and income generation, which ensures the minimum amount for the maintenance of the individual and the family. In this sense, the State cannot be omissive or collaborate in the violations of the right to housing, a right that is guaranteed by the Constitution, and should also adopt all necessary measures to ensure the fulfilment of this right.

According to the Constitutional Amendment 26/2000, incorporated in article 6 of the Constitution, in accordance with commitments and obligations taken on and ratified by Brasil, of which one of the principal ones is the International Covenant for Human, Economic, Social and Cultural Rights (PIDESC): "Article 11: The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions".

What is apparent in the action of the city hall is its persistence in making the life of these Brazilians even worse, leading them to a state of extreme social need, because, once they have no more income, they may soon have nowhere to live and no access to a number of rights such as food and education, among others.

“I am 56 years old, I am elderly and I have a family to support. Is it right that I have to run from the police? That I have to work in the early hours so that I don’t get beaten up?”.

V, street vendor at the Praça da República



NICK STORY. HOME-BASED WORKSHOP. GUARULHOS, 2012.

## VIOLATIONS OF THE RIGHTS OF IMMIGRANT HOME-BASED WORKERS

The group of home-based workers accompanied by the Project consists of immigrants from Bolivia and Peru who have spent different lengths of time in Brazil, although most of them have had a fixed residence here for over five years. Their life stories show that they left their countries with hopes of improving their living and working conditions in the most part attracted by the economic growth and by the position held by Brazil in Latin America.

The reality that the immigrants face is marked by restrictions and violations of their rights, and the hope of welcoming and access to public policies that allows them a peaceful stay is replaced by subhuman treatment. A sense of invisibility is common among the thousands of immigrants who work and contribute towards one of the most relevant economic activities in São Paulo: the manufacturing in the clothing and accessories department.

“I was born in Peru, in a rural town, and came to Brazil to improve my living conditions. I choose Brazil because my sister already lived here. I worked with jewellery, I had difficulty in communicating with clients. I arrived in 2001, I went to work on Rua 25 de Março, where I managed to rent a stall on the street. I worked for a long time there, about seven years, in the small hours, in the market and on the stall, all organized (I rented the TPU). Ever since I arrived I have been working in the market from 4am to 8am. F., self-employed home worker in Brás.



The substantial introduction of immigrant workers in São Paulo made available to the clothing and accessories sector an ample offer of labour, before offered by immigrants of other nationalities, such as Koreans. Today the activity absorbs, in the Metropolitan Area, a considerable number of Latin American immigrants (Paraguayans, Peruvians and Bolivians) who follow the flow of those who arrived earlier. The workers' stories accompanied by the Project reveal that the treatment and invisibility are based on the policies of the Brazilian State.

The Foreigners' Statute (Federal Law 6.815/80) is a legacy from the military regime, impregnated in the nationalist approach, which, in its essence, sees the immigrant as a threat in an attempt to justify its discriminatory behaviour. The law regulates the legal situation of all foreigners in Brazil and its text reveals the assumption that anyone who is not a native of the country, is potentially dangerous. This is contrary to the fundamental rights and guarantees written in the Federal Constitution of 1988.

#### The Universal Declaration of Human Rights

##### Article XIII

1. Everyone has the right to freedom of movement and residence within the borders of each State.
2. Everyone has the right to leave any country, including his own, and to return to his country.

In its text, the Constitution considers the immigrant as equal to the Brazilian in terms of ensured rights on national territory. Although a superficial reading of Article 5 may induce an interpretation that only those who own a residence in the country are under the supervision of the fundamental rights provided in the Brazilian regulations, this understanding is incorrect. According to the decision of the Federal Supreme Court, an individual's inherent rights and dignity cannot be violated even if the immigrant is in a temporary or provisional situation in the country.

All immigrants that are within the limits of Brazilian sovereignty are under its supervision, therefore, should be protected, also by the international treaties and agreements. In this sense, those who live in the country, temporarily or permanently, should be the target of inclusive public policies that guarantee the effectiveness of human, economic, social, cultural and environmental rights.

#### Article 5 of the Constitution

All persons are equal before the law, without any distinction whatsoever, Brazilians and foreigners residing in the country being ensured of inviolability of the right to life, to liberty, to equality, to security and to property...

Nevertheless, the initiatives that deal with the situation of immigrants in the country, such as government programmes and bills, are concerned with establishing restrictions, bans and penalties for the so-called “illegal”, the immigrants who are in some kind of irregular situation. As an example of this, there is a Bill (5.655/2009) on the reform of the Foreigner’s Statute. This Bill proposes to keep the restriction on political, electoral or associative-political rights of immigrants, as well as increasing the minimum length of stay in the country for naturalization from four to ten years, among other provisions. These measures would intensify the non fulfilment of the international parameters that determine respect and cooperation between nations.

Today, the treatment given to the issue is restricted to the aspect of the legality of the entrance in the country, and of the length of time the immigrants spend in country. This approach does not contemplate the adversities they face, as well as not guaranteeing the preservation of human dignity and the right for people to move around. The process of regularization in the country still has obstacles such as its excessive and complicated bureaucracy, as well as the abuse from the public agents.

The repressive and excessively bureaucratic behaviour of the State in relation to immigrant workers, makes it difficult for them to regularize their situation and, consequently, to enter the formal job market. This aspect is shown by the discrepancy between the numbers presented by the Census of the IBGE and the reality identified by entities that accompany the immigrant workers, as outlined in the introduction of this Dossier. This condition is one of the factors that structure the dynamics of the family, of housing and of their work which is based on informality.

The informality of the work of these immigrants triggers a series of violations which, although they are strong and extreme, don’t mean that all workers are in situations similar to slavery. Relating the workshops to the use of forced labour, without considering other dimensions of these people’s lives nor even guaranteeing an adequate development of their economic activities, the State repeats the creation of stereotypes in relation to immigrant home workers. This understanding does not reflect the heterogeneity of the social, political, economic and cultural relations, on the contrary, it induces the criminalization of the workers.

The immigrant home-based workers talk about the inhuman and discriminatory treatment from several different parties: the labour hirers add ethnic prejudice to contempt for manual work, hurling insults and making unfounded criticisms of the work being carried out; the self-employed Brazilian workers, for their part, don’t want to share their space with immigrants, as they allege that the low amounts they charge for their work jeopardizes their business.

#### Convention 111 of the ILO

Article 1 - For the purpose of this Convention the term discrimination includes:

- (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or

The cases of violence and abuses are not reported to the authorities because of the fear of retaliation and the intensification of persecutions against the workers and the family production centres in irregular situations. Some conflicts were assisted by the Reference Centre of the Informal Worker, although they were taken to the competent authorities, they didn’t get any further, both because of the fear of the workers in accessing these spaces, and also because of the lack of interest and refusal of the authorities to register the occurrences.

In order to put into effect the right to access justice, as well as to advance in their democratization, it is essential that there be a structuring and amplification of the legal aid groups for workers. The initial investment in this area impacts directly those who depend on the authorities for their defence or for the enforceability of their rights. The Federal Public Defender's Office, for example, with the competence to act in the Federal Court, in issues such as immigration, worker's and pension rights, remain with a reduced number of defenders, restricting their assistance.



ARQUIVO GASPAR CARCIA. KANTUTA MAIRKET, 2012.

The assisted cases at the Reference Centre show another dimension of the vulnerability of these workers, as well as the discrimination, the precarious working conditions and the difficult access to justice. Issues such as maternity leave and pensions were seen as concrete needs that make the immigrant workers' lives even more precarious.

Article 194. Security involves an integrated group of actions from Public Powers and Society, intending to assure rights related both to health, pensions and social welfare.

The proposal put forward by the Federal Constitution of raising the level of social security with a set of actions of the Public Authorities so that rights and social justice can be accomplished, shows that the objectives of these public policies go beyond the paternalistic character, attributed to the initiatives of the State. Protection or social security is not an end to itself, but a way to access other rights and it is related to the interdependence of human, economic, social, cultural and environmental rights.

However, the actions are still not enough and do not reach the plurality of contexts, which means it is necessary to incorporate, through public policies, the multiple dimensions of social security, seeing it as part of the right to work, to access public services and equipment, in a way that more and more citizens are included.. For this to happen, several mechanisms need to be developed so that all workers can contribute as well as benefit.

One example of the inadequacy of the programme that articulates the formalization of a business with social protection is the Individual Micro-Entrepreneur (MEI) of the Federal Government. The immigrant home-based workers started to apply to this programme, as it was the least bureaucratic way of obtaining a CNPJ (National Register of Legal Entities), which the market demands. The meaning of this contribution as social protection is almost unknown among the workers, even so, the social protection does not extend to all the integrants of the home-based workshops, because the MEI only provides protection for the holder of the CNPJ and an assistant. The reality of the workshops, however, shows that the number of workers is more than two and reveals the incompatibility and the insufficiency of the only programme that seems accessible to them.

“I arrived here and lived in the Mooca neighbourhood, I started working there, but it was a bit complicated, I wasn’t used to working from 7 in the morning until midnight, it was very tiring. Someone comes up with a thought, like, I’m going there because there are goals I want to achieve, but the work is very heavy, so there were times when I wanted to leave here, but I couldn’t take a step back, I stayed for a year, it was a lot of sacrifice, over time I looked for other jobs, but it was still a lot of sacrifice. I stayed for a year and then went back to Bolivia, but at that time I went back to Bolivia and the person I was working for asked me to come back because I worked really well, I got on with the job, so he called me and said: “come back, I’ll send you the money for your ticket”. I thought about it and came back, I worked for a Bolivian the first and second time that I came.. First I was thinking about making some changes, doing things differently, because where I worked was really difficult, like, I arrived at 6 in the morning and they would put the music on to wake everyone up, banging on the door. Once I lived in a bathroom, and on top of a bath, I made my bed in the space, it’s horrible, being treated badly like that and never having anything.

And you see the person you work for moving on but they never fulfil that promise that you’ll get there one day, because it seemed that everything I wanted was disappearing... So then I reassured myself and thought if he managed to do those things then why can’t I, so I decided to leave and I found my wife, I was looking for someone to help me, it was difficult to cope with São Paulo, where should I go? Once I walked around for nearly two weeks to find work and found nothing, I walked around almost the whole of São Paulo to work as a cutter and they said to me: “Do you have experience?”, no, “Do you have a license?”, no, “Do you have any documents?”, no. So I found my wife and we talked about moving, because where she worked she earned R\$0,08 per garment. So you have to cut 2 thousand garments to earn... not even ten centavos a garment... in ten garments that’s R\$0.80 centavos, in 100 it’s R\$ 8,00 reais and in 1,000 it’s R\$ 80,00 reais.

I think that when a foreigner goes somewhere, at first you think he is going to paradise, right, but when you arrive in the place, it’s not like that, because no-one tells you about how hard it is to live abroad, they only say it is good, cool, but there are no alternatives. Here there is no alternative other than sewing, unfortunately there is no alternative to go to a different job... the organs of the Labour Ministry always want things to happen legally, but it’s impossible to work within the legal framework, because where you find your job, they already pay you a price, how can that be divided? You have to pay taxes, eat, pay employees, you can’t divide that if they only pay a few cents, I mean let’s say in the case of a Korean they pay R\$1,50, R\$3,00. Me, for example, they pay R\$2,00. How can you split that? You can’t pay the next rent. So I think that this Labour Ministry should regulate the price of these garments because we need to support ourselves, we have to pay taxes, that would work. But many people pay because they have to, because every day you need to eat, need to pay for things, there’s no escape, either you stay in this situation or you leave the country, I think I will go back there because there [Bolivia] is getting much better.

Wow, there have been some radical changes, so much so that very few people want to leave. If you go to the rural areas you see the improvements: sports complexes, fields, schools. Here in Brazil, for example, most of the sons of the Bolivians stay locked up at home and its complicated living like that. Here we have no alternative, we go to the sports court, because you can’t go anywhere else. We don’t... go out much [cinema and theatre], we live a long way out, the only thing we do is play football and a few things at home. I live in my own place, it’s not



legalised, it belongs to a private company and the city hall said they will throw everyone out, but nothing has happened yet. The register has been approved, but until now we don't know when they are going to throw us out, because of the situation of the World Cup, they don't want to any more. We don't know, those who live there say they have been there for more than fifteen, twenty years, and that they always say they will throw us out but never do. There's a group who guides us, they tell us to claim adverse possession, but it ended there, it's difficult to organize things there.

Sometimes the police get us, I have a car and they ask for the documents. There on 25 [Rua 25 de março] they took merchandise from my wife twice, it's never normal, they come, you have to run, no-one is a good guy. They say 'leave that there and go', they take your things, it's always by force like that, because no-one wants to grab the merchandise. It's always like that, once you have lost, they take your merchandise and that's it. We want to get it back, and there is always a lot, even though we don't sell any pirate products and even if you sell something that is perfectly ok, they always say it's this, it's that and end up asking for documents that you don't have, so it's better to let it go."

M, autonomous home-based worker in Guarulhos

## THE RIGHT TO WORK

### SUBCONTRACTS

The subcontracting of immigrant workers in the clothing and accessories trade accumulates degrading conditions that directly violate the labour laws, such as exhausting working hours, the absence of a fixed salary and benefits, the lack of paid weekly rest, holidays, among other rights inherent in the labour contract governed by the Consolidation of Labour Laws (CLL). This illegal practice, in general, is covered up using arguments about outsourcing.

Outsourcing is permitted in contracted labour which means passing on a particular service to another civil entity. However, so that it isn't considered as subcontracting, that is, exploiting labour through illegal measures, outsourcing only allows support activities for this kind of contract. Support activities that are directly related to the main purpose name of the company, are not considered as outsourcing, but as subcontracting. In this sense, in a clothing retail chain, it is possible to outsource the cleaning and security sectors, for example, but not the work of the sewers to make the garments. According to the rules of the Right to Work, whoever outsources should monitor the work and demand that they fulfil the basic obligations. If they don't they may have to answer for the problems and violations of workers' rights in a subsidiary or solidary form. In the subsidiary form, the company that outsourced answers for the obligations when all other possible means of holding the outsourced company responsible have been eliminated. In the solidary form, the responsibilities are shared between the outsourcing and outsourced companies.

A CLL applies to the legal relation between employer and employee, provided that it has set requirements, such as subordination, habituation, cost, individuality and that the employee is a natural person. The work relation demands the fulfilment of the obligations for both parties establishing a tacit or written voluntary agreement.

In Brazil, the tendency towards legal flexibility and the decentralization of productive activities is clear in the methods used that are aimed at transferring or reducing the obligations inherent to the work relation. The outsourcing of labour was incorporated into the legal system providing for this modality of contracting, whose objective is the concentration of the companies' human and financial resources according to the purpose for which they were constituted. In this sense, companies do not need to spend their energy with maintenance or security services or others, if these are not their main activities.

This material is regulated by the Federal Laws 6,019, of 1974 and 7,102 of 1983, and by the Precedents 256 and 331 of the Superior Labour Court (TST). The Precedent 331 differentiates between subcontracting and outsourcing, considering the former as an illegal contracting of workers through an intermediary company, and the latter, an independent contract, permitted for supporting activities. A large number of companies use this legal permission to try to break the rules and reduce the costs of contracting, transferring the onus inherent in the economic activity to the workers.

**TST Precedent nº 331 – Revision of the Precedent nº 256 – Service Contract - Legality**

- I. The contracting of workers by an intermediary company is illegal, forming a direct link with the service contractor, except in the case of temporary work (Law 6,019, of 03.01.1974).
- II. The irregular contracting of workers, by an intermediary company, does not create permanent employment status with direct, indirect or foundational Public administration bodies (art. 37.II. of the CP/1988) (Revision of the Precedent nº 256 – TST)
- III. Permanent employment status is not formed with the contractor for security services (Law nº 7,102, of 20.06.1983), conservation and cleaning, as well as specialized services linked to the support activity of the contractor, so long as there is no individuality or direct subordination.
- IV. The default of the employer's obligations, implies a subsidiary responsibility of the service contractor, both towards those responsibilities as well as towards the organs of direct administration, of government bodies, public foundations, public companies and societies of mixed economy, so long as they were part of the procedural relation and are mentioned in the enforcement order (article 71 of Law nº 8,666 of 21.06.1993). (Altered by the Res. 96/2000. DJ 18.09.2000)

Despite the unquestionable characteristics provided in the legal system, the precariousness of the working conditions imposed on those who are involved in the clothing and accessories industry does not seem obvious from the point of view of some public authorities, especially the legal entities. Many cases involving home-based workers and intermediary companies brought to court interpreted this relation as being a mere service contract between two legal entities, removing this discussion from the Labour Courts and attributing the mediation of conflicts to the State Court. When faced with the relation between company and home-based workers reduced to an individual, contractual and commercial relation, as if those involved were on the same economic and social level, the State takes on an ommissive stance to the perverse and illegal actions carried out by the companies.

The controversy in the interpretations of subcontracting and outsourcing has gained national proportions with the involvement of large clothing brands in the subcontracting of immigrant workers through intermediary companies, a common practice in the attempt to fake outsourcing. However, the reported cases reveal a universe of violations of rights that go beyond the infraction of the CLT, including conditions so precarious that they can be associated to slave labour.

The National Plan for the Eradication of Slave Labour, created in Brazil in 2002, is associated to an agenda of fighting against work similar to slavery and was formulated based on the Declaration on Fundamental Principles and Rights at Work of the ILO in 1995. In the beginning this programme was created to eradicate the practice of recruiting people to work in rural areas on farms with monoculture activities or agriculture and in subhuman conditions: working under threat, with no adequate place to sleep, no food, no pay, among others.

The Term Slave-Like Labour is defined, based on the Presidential Decree in 1966 and the Conventions n.º 29/1930 and nº 105/1957 ratified by the Brazilian Government, in the following situations:

- Forced labour because of debts: the debtor (the worker) is obliged to sell his labour in exchange for services offered by the contractor. The debt is induced (through the falsification of accounts, exorbitant charges, etc.)
- Actual forced labour: a condition in which the worker is obliged to sell his labour for free. Retention or non-payment of salary.
- The Practice of Child Labour with or without payment, with the intent to exploit child or adolescent labour.
- Confinement in the place of work under false imprisonment;
- Retention of identity cards, of personal belongings or of money;
- Physical violence, moral harassment, financial punishments, lack of food, housing or other needs, punishment by even more precarious working conditions, the reporting to public authorities of the irregular conditions of citizenship.

This plan institutes lines of action of the State such as mobile inspection, cooperation with the Police, participation in the Federal Public Ministry and the Public Ministry of Labour, as well as educational activities for those affected and punitive initiatives for those who are caught using the labour of workers in slave-like conditions. Shortly afterwards, based on the Directive 540 of 2004, the Register of Employers, known as the “dirty list”, or blacklist, was introduced, where there is information and names of the employers found with slave labour in their businesses or properties.

In 2005, civil society organizations elaborated the National Pact for the Eradication of Slave Labour, an initiative to stimulate the participation of companies to guarantee the rights of workers.

The companies that adhered to the Pact undertake to refrain from maintaining commercial and economic relations with those that are on the “blacklist” for having used slave labour in their productive chains.

Apart from this, with the extension of the policy of eradication of slave-like labour in the states, some spaces of articulation between diverse social parties began to be formed. This way, public authorities started to investigate incoherencies presented between the main function of the company and the number of employees dedicated to the supporting activity. Consolidated companies of the clothing industry have a much lower number of employees than the presented economic volume, which is why organs such as the Labour and Employment Ministry (MTE), Public Ministry of Labour (MT) and the Federal Public Defender’s Office (DPU) have become more alert to the rates of infractions and frauds.

The complaints against companies from the clothing and accessories sector that exploit immigrant labour caused the theme to reach the urban areas too. Until then, the conditions faced by home-based workers were unknown by the population and by a large part of the State. In the compensatory measures for the rights of these workers promoted by these organs, however, the companies at the beginning of the chain, those responsible for the exploitation of labour, were not punished in the labour courts.

These actions have negative effects on the lives of the workers. Although the need for measures to eradicate slave-labour is unquestionable, it is essential that the actions are articulated and cohesive and that their main objective is to ensure a decent life for the affected workers.

The companies that have already been fined by the Labour and Employment Ministry and by the Public Labour Ministry are monitored and take on commitments, such as paying a higher amount for the sewing of the garments. However, the precarious conditions of exhausting working days continue, as well as unsigned labour, working with no fixed salary or social protection, holidays, thirteenth salary, among others. Not to mention that the structure that sustains these violations remains intact, since these organs don’t question the predominant regime of subcontracting.

Although subcontracting is the denial of already guaranteed rights, its occurrence does not, invariably, lead to the indicators of slave-labour. However it is possible to affirm that, in the context of the lives of immigrant home-based workers, this reality is much worse, leading to suppressions and violations that are so extreme that they go beyond the violations of the right to work. Some of the workers assisted in the Reference Centre for the Informal Worker reported that there are health problems related to sewing, for example: allergic rhinitis because of breathing in the dust from the cloth; tuberculosis because of the unhealthy conditions of the workshop; problems of violence against women and moral harassment, possibly as a result of the density of multifamily conditions and the exhausting work load.

The actions of the Public Authorities, restricted to the proposal of combating slave labour, without the creation of alternatives compatible with the plurality of the issues involved in the realization of home-based work, often result in legitimate actions, although they end up reverting the onus to the workers. As well as the criminalization of this condition that leads to xenophobic reactions, there is a lack of support for the workshops after the reparatory actions. The State, acting on the eradication of slave-labour by closing the workshops, ends up making it impossible for the worker to remain in the economic chain.



Although some workers receive severance payments, they are not contracted by the company, nor are they presented with any alternatives for entering the labour market. Among the immigrant workers monitored by the Project, some reported that they continue to work in even worse conditions of subcontracting then before the fines.

Subcontracted work of immigrant home-based workers in workshops presents all the characteristics of a work relationship: regularity, because the sewing is carried out continuously for the company; subordination, the conditions of production are imposed by the hirer; it is onerous, payment is made according to productivity and not number of hours worked. In an attempt to free themselves from employers' obligations that accompany the work relationship, the companies expressly violate the CLT and ignore social rights provided in article 7 of the Constitutions that apply to the employed workers.

#### Article 7 of the Federal Constitution

The following are rights of urban and rural workers, among others that aim to improve their social conditions:

I. employment protected against arbitrary dismissal or against dismissal without just cause, in accordance with a supplementary law which shall establish severance-pay, among other rights; (...)

IV. nationally unified minimum wage, established by law, capable of satisfying their basic living needs and those of their families with housing, food, education, health, leisure, clothing, hygiene, transportation and social security, with periodical adjustments to maintain its purchasing power, it being forbidden to use it as an index for any purpose; (...)

VII. guarantee of wages never below the minimum one, for those receiving variable pay;

X. wage protection, as provided by law, with felonious withholding of wages being a crime; (...)

XII. family allowance for their dependents for the low income worker according to the law;

XIII. normal working hours not exceeding eight hours per day and forty-four hours per week, with the option of compensating working hours and reducing the length of the workday through an agreement or a collective bargaining covenant ;

XIV. a workday of six hours for work carried out in continuous shifts unless otherwise established by collective bargaining;

XV. paid weekly leave, preferably on Sundays; (...)

XXII. reduction of employment related risks by means of health, hygiene and safety rules; (...)

XXXIII. prohibition of night, dangerous or unhealthy work for minors under eighteen years of age, and of any work for minors under fourteen years of age, except as an apprentice;

XXXIV. equal rights for workers with a permanent employment bond and for sporadic workers.

The reports from the workers assisted at the Reference Centre for Informal Workers helped to understand the logic established by the companies: the relation can be directly with the company or through the intermediary company. The workers receive the cuttings, the trimmings and threads that will be used in the garment, together with a paper model of how the garment should be put together and sewn. The deadline for completion is fixed along with the amount to be paid for each garment sewn. In some cases, there are two or three intermediary companies in order to separate the links of this chain and to avoid employers' responsibilities.

The relation begins with orders and the amount paid per garment is unilaterally set by the company. This generates seasonality in the workers' income, indicating precariousness and instability at work. Also, the amount paid for the ordered garment is far too low for the support and guarantee of rights for the workers involved in the production, as well as being discrepant in relation to the price sold in the shop.

This way, instability becomes the rule within the productive chain, since the workers have no guarantee of a minimum salary, unemployment benefit, or other benefits and support from social security programmes, protection against firing or arbitrary behavior, submitting them to terrible living and working conditions.

The Pact Against Precarious Work and for Decent Employment and Work in São Paulo – The Clothing Production Chain:

4. Irregular outsourcing is that which goes against the exact terms of the Precedent 331, of the TST, as well as the fundamental workers' rights and the principles of decent work announced in the International Labour Organization and is, presently, one of the greatest focuses and sources of the increase in work accidents, of precariousness, of stress in the social environment, of personal and family insecurity, of the disloyal competition between companies, of concentration of wealth, of tax evasion and of judicial litigation, bringing enormous damages to the workers, to public funds and to the whole of society;

Since the supervision began to take place more frequently, the companies intensified their demand for the National Register of Civil Entities (CNPJ) as a way of avoiding the employers' responsibilities that may come from fines from public authorities. This alteration, however, does not have positive effects in the lives of the workers, on the contrary, it forms a disloyal competition, dropping the agreed amounts paid for the sewing to an insignificant level, not to mention that the contracts continue with absolutely no written proof. The register of the CNPJ is used by the companies caught subcontracting labour with the argument that there is no legal relation with the workers but it is a contract of services rendered with the owner of the workshop.

As shall be seen below, the structure of a sewing workshop does not have well defined roles to the point that it is possible to affirm that the person who rents the house or has a CNPJ is the owner of the multi-family business, since it is the intermediary companies themselves who make these workshops possible. The subcontracting transfers to the workers all responsibilities, economic risks and infrastructure costs, such as water, rent, electricity, food, among others. To guarantee minimum subsistence and ensure the possibility of remaining in activity, the costs are shared among those who live and work in these places. .

The difficulties faced by the immigrant workers show that there need is a need for political and diplomatic treatment of the issue, recognizing that there is inequality in the conditions. In order to do this, it is fundamental to bring back the role of the State: on the one hand, supervising and holding the companies responsible and, on the other hand, guaranteeing the rights of the workers and supporting them.

“I came [to Brazil] with the father of my children. I left [Bolivia] just to get to know the country. Everyone came here and I wanted to as well, I wanted to know what it was like to live here. I came directly to São Paulo, we arrived with just a phone number, there wasn’t anything else. We started working in Santana. At the time we earned 50 reais a month. Then some people said there were better places, so we went to Interlagos, in a company of Bolivians and Brazilians. They moved to Bom Retiro, so then I became a cleaner and a cook I didn’t earn much, 100 reais for a lot of work. Then my husband decided it was better for me to work at the sewing machine, so I started working on the machine. But I went to the other side, with a Korean in the Pári neighbourhood. With the Korean it was better, I started sewing and I earned more. In the first year I went back to Bolivia, I wanted to bring my brothers and sisters, but as I had my husband I couldn’t bring them anymore. So I carried on my life as a seamstress. I carried on working for other Koreans. But I only had enough for food with this Korean, I didn’t know what a minimum salary was. It was just enough for the house and food. I worked, left to give birth to my daughter, and then went back. Then I started to earn a minimum salary until my daughter was a year old, then my husband found a job.

We bought sewing machines, a Korean sold everything and said he was going to close the workshop, so whoever wanted to could buy the sewing machines. There were four of us: me, my husband, my brother and my brother-in-law. We put our money together and bought the sewing machines, I didn’t know it would be so hard to find a house, there was so much bureaucracy. We couldn’t rent, we had no documents, we had no guarantor and no money, so there was that other Brazilian, who had worked with us, and he said we could go there and he would rent his place to us. For three months it was the same, just enough for food and the house, the machines were ours, we were there for three months helping him, then he rent the house to us and we managed to open our own workshop... I could work well, I would sit at the machine and work like everyone else, I woke up at 7, slept at 11 at night or midnight, not just me, there were others working there.

But, when he died [husband], the firm said they would keep sending work and everything, that I would continue working. I worked, more than anyone else, I worked out how many pieces each person made in a month, and took them to the company. They worked out how much it would be and gave me the money. They told me how much I had to pay to each worker. It was the company who added it all up, I didn’t know how to. Then when he finished the accounts, I noticed he would say that he paid this cutting and that cutting, he talked like that. When he finished counting, this was in 2006, one day he did some calculations and said I owed him 5 thousand reais. The firm said that: that I owed 5 thousand reais, I thought I was going to earn something, that I would have some money. Then when they said I owed 5 thousand reais I cried, I didn’t know what to do.

This house here, on the Avenida Rudge, was where the supervisors came. We made shirts, dresses, blazers, everything was made for Z. [the company]. And... first of all from the window I saw the auditor and a lawyer. Then they said: “Surveyor for Z. [the company]”. I thought they were really from Z. [the company], because he [the representative from the intermediary company A.] said that they might show up. Because the surveyor could come and see if the workshops were adequate to work for Z. [the

company] or for A. [the intermediary]. So, I opened the door, naturally. I said good afternoon, and presented myself as V. He already knew my name and everything, he had receipts and everything. He came in (...). Behind him I saw there was the Federal Police, then Thaíde appeared, the reporter, so I got really scared. I started to think the worst, I must be in real trouble.... Everyone was working. So they all came in. They saw the worst parts, and they closed off the workshop. They covered the sockets. They took photos. They saw the bathroom downstairs, where there were sweet wrappers, and showed how dirty it was. There were two people from the Federal Police. There was also someone from the Sewers Union, and a reporter from Spain too. He was Spanish, but from the BBC, he was chubby. There were also some Argentines who had written on their t-shirts "No slave labour". So there were Argentines, Spanish, and Japanese too, from the Labour and employment Ministry... Now, when the supervisors came in, what hurt me most is that, if they know how the law works, both A [the intermediary] and Z. [the company] know that too. Now I have an idea of how it works. They could have told me at the time. We rented the house for nothing. They could have said something. Because I took our money and spent it all on the house. No, he promised we would continue working, that we would carry on working for Z. [the company], even the Spaniard, who came from Z. [the company], when he came to the house, he said he wouldn't leave us... He [representative from the intermediary] said we would carry on working.

The owner of [the company] came to the house. He looked for us. He asked what happened. That was the first meeting we had with them, in the intermediary company they said we should not worry because they would solve things. Then they asked how long I would last on the money I had. I said that the maximum would be 2 months with 9 thousand. But these two months have already passed. They asked what we would do now. They wanted to take us to work in Barueri, but the salary wouldn't compensate. So I said I wanted to work in sewing. I just wanted to work in the workshop.

As the auditor said, it should be an example of a workshop, it should be organized. We had a CNPJ and everything. The right thing to do would be to send us work, I would register [the employees] and we could earn a little more so I could pay the employees rights. But he said he couldn't do that. He [the representative of the intermediary] on the first day said that he would send us work and would ask another intermediary company to send work too. So then I cheered up. So we thought we hadn't waited two months for nothing, we thought things would get better. But then he disappeared... I looked after my children, I went to the doctors. So then I renovated the workshop so they would open it up again. We paid for everything. Now it is two months later, 7 thousand in debt already... If they don't give me the hope of getting this money from Z. [company]... I told them, I am not asking for money, I am not asking for anything. Send me work to do, that's all. By law I learned that what we do here is called slave labour. We all submit ourselves to this because we earn very little from the companies. So, with the amount of money we earn we can't produce enough in just eight hours work. How will I survive? We are forced to work more so that we earn more.

Whatever happens, I am not going back [to Bolivia]. I have my children here with me, I know I would lose them there. My mother has no economic structure. So, if I were to go there, I would have to ... there, as his family has more money, automatically they would keep the children. That's why I can't go back".

V., subcontracted home worker in Bom Retiro.



## AUTONOMOUS WORKERS

Autonomous immigrant workers face similar difficulties to the issues pointed out in relation to the street vendors and subcontracted workers. The Project noted, through the reports and assistance, that those who are looking for ways of selling their own product had already been submitted to subcontracting when they first arrived in the country.



ARQUIVO CENTRO GASPAR GARCIA, CENTRE, 2012

While they are in the subcontract regime, even with very reduced incomes, the workers try to find ways of buying sewing machines so they can create their own space for production and selling. Once they have bought the machines, another multi-family nucleus of work begins and they look for places to sell their own production, as a strategy to earn higher incomes.

The process of consolidation of the workshops of those who want to carry out an autonomous activity is not homogenous, sometimes the two kinds of work mix or overlap: the continuity of subcontracted sewing and autonomous production and selling. The autonomous activity that stands out most among the workers monitored by the Project is the production and sale of clothes and bags.

During a visit to O.'s workshop, she tells us that she produces and sells her merchandise in a small shopping centre. However, the rent became very expensive, which meant she and her family went back to producing for third parties. On the day of the visit, we observed that they were sewing dresses and shorts for a Brazilian intermediary company, that pays R\$3 for each piece sewn. She remembered that at the end of one year they sewed for a Korean who, when he came to pick up the pieces, said that they were badly sewn, and refused to pay for them. He didn't pay, but he took the clothes and the O. family spent the New Year with no money.

In the beginning, the workshops for autonomous production have two or three people, generally relatives, for the cutting and sewing of the garments. It is clear that the division of the work in this modality faces a lot of challenges, especially in the organization and structuring of the business, however, what grabs one's attention is the efforts made to achieve their own space to sell in popular shopping areas. The option to produce clothes and bags means that the search for a place to sell autonomously is focused on regions such as Brás, 25 de Março, Bom Retiro and others. However, for the very fact that these are strong shopping areas there is fierce and perverse competition which submits these workers to constant abuse when they try to stay in this place. The lack of knowledge about the laws of the country and the need to produce written contracts creates problems for the immigrant home workers who try to rent a place in the commercial zone.

The actions of the Public Authorities in repressing the itinerant work generated a new context in the popular shopping areas: warehouses of old factories, parking lots and shops have become

places for popular markets and are shared by street vendors taken off the streets and autonomous home-based workers. The ban on commerce in public places enhances the realization of this activity in private houses through the leasing and subleasing by owners and speculators. These, aware of the difficulty for workers to rent a place, sublet “boxes”, individualized stalls in markets, for extortionate prices and with no contract.

These regions of popular commerce, known for their notable economic dynamics, are characteristically disputed over by various social groups and, consequently, valued, benefitting the housing sector. For this reason, the practice of key money, although illegal, is generalized in the areas mentioned, from the large buildings that harbor the large wholesale and retail chains, to the small stalls rented out to informal workers. The autonomous home-based workers accompanied by the project reported that the costs for the payment of the price of land for housing/workshops and of the boxes in the shopping centres takes up almost all their income.

This reality is far from being a reasonable solution for the immigrant workers to prosper as autonomous workers and break the logic of exploitation due to the high prices of rent of the living/working spaces. This scenario holds even more complex issues in the dynamics of selling in the shopping centres in the popular shopping areas: extortions, threats, corruptions, risks in the workplace, among others.

If, on the one hand, the informal workers present themselves as more and more vulnerable and unable to cope with the imposed laws of the market, on the other hand, the State suffocates their activities, removing itself from its role in promoting public policies of support and initiatives in generating jobs and income.

The federal, state and municipal programmes for autonomous initiatives are insufficient and unable to contemplate the complexities and heterogeneities of the activities that take place and their demands. Presently the model of the programmes shows concern for the formalization of the activity, the access to microcredit and the collection of taxes. On the contrary to what the principles of the economic order announces, on the valuing of human labour and the recognition of the social value of work, the State does not perceive the transforming and emancipating potential of autonomous initiatives.

During the sessions at the Project the immigrant home-based workers reported difficulties in the access to information and services that contribute to the creation of work cooperatives. Although there are federal programmes for micro and small entrepreneurs, there is no emphasis on support or technical assistance for economic development through cooperatives and self managed experiences, above all, directed towards the specific complexities of immigrant home-based work.

## THE RIGHT TO THE CITY AND THE RIGHT TO HOUSING

The construction of an image of home-based work as an infraction of labour laws and a violation of human dignity reinforced the creation of stereotypes of the workers rather than the accountability of the chains. This means that these workers live more and more cut off. The idea that the city is a set

of relations that bring together work, housing, leisure, health, education, culture, among others, does not show up in the reports of the immigrant home-based workers. This aspect reveals that the absence or precarious experience with regard to these rights does not include the plural dimension of the right to the city and, therefore, of full citizenship.

The use of places in the city for leisure is restricted to the few areas where there is a concentration of immigrants of Latin origin. The reports indicate that the places the families go to are the football fields and the markets that have cultural elements and local food, such as the Market on Rua Coimbra and the Kantuta Market, in the region of Brás and Páris. They justify that low incomes, discrimination, fear of violence and the dynamics of home-based work are the reasons presented for this.

The violations of the right to housing of the immigrant home-based workers are similar to those affecting the street vendors presented above, however, the particularities of multi-family housing, the discriminatory reality faced by the immigrants and the exercise of working from home are some of the aggravating circumstances of this scenario.

The high prices of the buildings are a determinant for the continuation of home-based work, since the dismembering of the living and working space would imply costs that these workers could not afford. In the sessions that took place in the Reference Centre for Informal Workers, a large number revealed their intention to separate their work from their living space and pointed out the price of rent as an obstacle for this. It is this abusive process that leads to debts and expulsion, as well as having to travel to the outskirts of the city to find cheaper housing. It can be affirmed that the lack of access to public policies that democratize the access to housing and the documentation demands for rent and purchase of properties are the main factors that lead to the immigrant workers being charged amounts that are above the market.

CENTRO GASPAR GARCIA ARQUIVES, VILA PRUDENTE, 2012.







CENTRO GASPAR GARCIA ARCHIVES. THE CRY OF THE EXCLUDED, 2012.





## FINAL COMMENTS

The violations of human rights described in this Dossier point out the need for society to discuss further the debate on informal work and the conditions to which the workers and their families are submitted. Although Brazil is recognized internationally as a country that has as a premise the guarantee and respect for human rights, as well as standing out because of its economic growth in the last decade, in practice, the social and economic rights are not a reality for a large portion of the population.

A reduction of the contradictions and social conflicts demands the adoption of permanent policies, based on the construction of a model of economic and social development capable of guaranteeing the fulfilment of human rights. The daily violations faced by the informal workers has a direct relation to the concentration of land and wealth as well as with the imposition of a model of a city that prioritizes private and individual interests in detriment to human dignity and the common good.

The transformation of the reality of informal workers in a vulnerable socio-economic situation requires policies that attend to the peculiarities and the heterogeneity that characterize this universe. To overcome the violence and restrictions of rights demands changes in the treatment given to the workers by the State, who criminalizes the popular practices involved in the search for a means of survival.

The life stories of the informal workers reveal difficulties and precariousness that go beyond the right to work, reaching areas of education, housing, health, family life, among other aspects. This overlapping of violations in different forms reinforces the interdependent character of human rights and makes it clear that the State and society need to face the issues that structure the different informalities. Nevertheless these efforts should be in the opposite direction to what has been happening until now in the city of São Paulo, where the State sees informal work as an issue that should be extinct without presenting any concrete and inclusive alternatives.

The actions to contain the increase of informal work, for the transformation of urban space and for social and economic development are only valid and effective if they are elaborated in a participative way, based on popular demands. Although the participation and control of the population with regard to actions of the State have been achieved according to several marks of national and international legislation, their fulfilment faces obstacles such as subordination of the open spaces for dialogue to private and individual interests and the restriction of the powers of decision and proposition.

The breaking down of the open spaces for dialogue, of participation and social control is clear in the merely formal character attributed to the commissions and counsels, instituted with an aim to give legal force to the actions of the State.

The struggle for channels of participation and social control cannot be separated from the participative process. Occupying a space is not an end in itself. Participation and social control over the State has a political meaning of social transformation, that is, pursuing the fair distribution of benefits and onus in the processes of urbanization and economic growth.

A project for the city that intends to be democratic for the informal workers means meeting their priorities. The Federal Constitution and the City Statute regulated these spaces of participation and control by the population in discussions on actions that affected their lives through counsels, public hearings, among others. The realization of works, projects and events, for example, should be carried out in a participative manner so that their effects do not prolong even further the processes of segregation of the informal workers.

In relation to the planning of the city, the State should prioritize the more vulnerable citizens in the elaboration of new projects and opportunities or in the offer of resources. A city project that includes informal workers depends on the integration of the activities they carry out in urban planning. In order to guarantee the right to exercise their activity in an adequate and decent way, the planning needs to contemplate the connection with the various economic activities in the city, the articulation with urban equipments and infrastructure and the access to land.

The access of informal workers to land demands the adaption and regulation of instruments of urban justice provided in the City Statute, considering the right to work as one of the fundamental functions of the city and recognizing its social value. However, the guarantee of a space for production and sale for the informal workers is not sufficient, since, apart from having to face the overvaluation of urban land, they may suffer other forms of exclusion. This excluding process can be seen, for example, in the directing of the workers towards areas with no infrastructure or that are on the outskirts of the city, or to places with no links to the economic dynamics they depend on in order to carry out their activities.

In this sense, the State should offer support and elaborate programmes that encourage forms of articulation and cooperation between informal workers not only across the value chains, but also in the adoption of measures that promote popular initiatives of work and income generation.

In short, the challenge of state action is in the combination of the elaboration of specific public policies, social participation and the integration of urban planning that have as their core the realization of the rights of informal workers. Throughout this Dossier, although informality of work is structured in the cross-cutting issues mentioned above, it is possible to identify specific challenges to the two categories of informal workers accompanied by the Project.

The challenges of public policies for the immigrant home-based workers are related to the absence of programmes that attend to the peculiarities of the work at home. The debate on how this kind of work should be carried out is just beginning. Home-based work is ambiguous because it is legitimate, as it is the only source of income of many families, but it hides a perverse reality of the suppression of rights, whether through the exploitation of labour by companies that break labour laws, or through the lack of access to social protection for workers. Also, it can't be very desirable when it is imposed or when it is the only

alternative to earn a living and when it represents the perpetuation or intensification of precarious informality. For this reason, instead of extinguishing this form of work, the State should elaborate, in a participative manner, a policy that contemplates the guarantee of the rights of these workers, the supervision of the companies that use this labour, health and safety in the workplace, among other aspects.

As for the street vendors, the challenges are related to the lack of actions that enable and organize the realization of the itinerant trade, considering the activity beyond individual work opportunities. For this to happen, the activity needs to be recognized as a social right to be incorporated in public policies of realization of the social function of the city that enable access to the commercial pockets, public places and popular markets. The challenge of the State continues to be to balance, through urban planning and popular participation, the guarantee of the right to work in public places, an asset for the common use of the population, without jeopardizing the right for everyone to circulation, universal accessibility, leisure, and others.

With the omission of the State, the organization of the informal workers represents a fundamental strategy in the demand for the right to work and the right to the city. However, because of the contradictions both internal and external to informality there are many obstacles for this organization to happen. This weakens the possibility of advocacy in public policies and worsens the situation of invisibility imposed on these workers.

Also, throughout this Dossier, it was observed that the administration of State activities and the restructuring of the productive chain made an impact on the organization of the workers: for the street vendors, the regime of exception of the limitation of licenses imposed by the City Hall on the workers, set off a division of this category between the legal and illegal; for the immigrant home-based workers, the fragmentation and isolation in small workshops makes it difficult to constitute a collective identity.

Within this context, the Project instituted, as a focal point of relevant action, the support and empowerment of the workers' organization and the promotion of a network of articulation between these workers and with other parties of the civil society and the State.

In relation to the street vendors, the principles of the process of support for the organization were the problem of the fragmentation of this category, looking for converging issues for the collective incidence in public policies. The priority of this process is the network of articulation, based on the integration of groups from different regions of the city. This network of workers formed in 2011, the Forum of Street vendors in the City of São Paulo, was fundamental in the popular pressure to sensitise the Judiciary Branch in the decisions of the Public Civil Action 2012.

In relation to the immigrant home-based workers, the support process enabled the formalization, in 2012, of an association of Latin American immigrant workers in the clothing trade who sell and produce autonomously in the central region : the Association of Latin American Immigrants (AILA). Among the challenges presented to this workers' organization are: the fragmentation of production in various domestic workshops distant from each other, which isolates them; the autonomous sale of the home productions, with no form of collectiveness. Despite the constitution of AILA, this group of workers has still not liberated themselves from the condition of separate micro-entrepreneurs.

The experience of the Centro Gaspar Garcia made it possible to conceive the articulation both of the street vendors and of the immigrant home-based workers beyond the organization of these workers, towards dialogue with other popular sectors. Some political agendas and activities organized by the informal workers, and accompanied by the Project, took place together with social movements in the central region of São Paulo and enabled them to demonstrate that the socio-territorial segregation does not affect each social group separately.

In this sense, it is important that the struggle of the informal workers is considered within the platform of the Urban Reform, articulated with other movements affected by the processes of segregation. Also, these should consider the spectrum of exploitation of capital over work which affects other informal workers in various categories.



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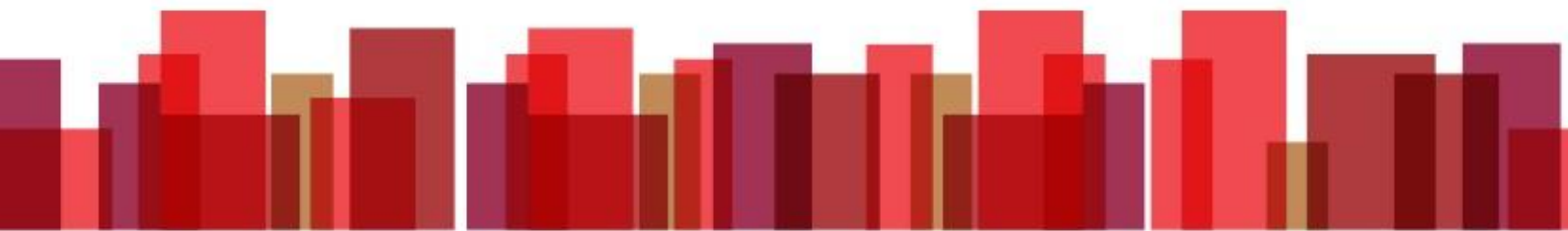
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