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OUTLAW CITIES: LAND REGULARIZATION AS A MEANS OF BELATED IMPLEMENTATION OF FUNDAMENTAL RIGHTS

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Abstract: The aim of this paper is to reflect on the effectiveness of urban land regularization in realizing the fundamental rights to housing and property. Within the current scenario of perpetuation of urban irregularity through the phenomena of slumification and urbanization of poverty, added to the extremely high housing deficit, REURB emerges as an alternative for a more reflective management adapted to a more complex society and a more uncertain future. Several positive consequences of REURB are presented, such as the generation of economic value, belonging and access to citizenship. With specific regard to the Rights to Housing and Property, the study aims to analyze how REURB can induce the realization of these rights, even if belatedly, by analyzing their relationship and the possible existence of conflict and complementarity.

Keywords: Land regularization, Right to housing, Right to property.

INTRODUCTION

This is a study on urban land regularization - REURB, a procedure provided for in Law 13.465/2017, as an instrument for the delayed realization of fundamental rights. The core of the study is the investigation into the materialization of fundamental rights, especially the rights to property (along with its social function) and housing through the land regularization process.

Historically, and despite some initiatives by public authorities in recent decades, the housing deficit in Brazil has always been very high. Several factors have contributed and continue to contribute to the housing problem, such as the highly exclusionary way in which property has been generated in Brazil over the centuries, combined with structural poverty and the social exclusion of the less well-off; the omission of public authorities on issues related to urban planning and the production/

1. Cf. FERNANDES, Edésio. The new urban legal order in Brazil. In: FERNANDES, Edésio, ALFONSIN, Betânia (coords); *et al.* Direito Urbanístico: estudos brasileiros e internacionais. Belo Horizonte: Del Rey, 2006, p.4.

subsidy of housing for the low-income population, which only became a major issue on public agendas after the 1988 Constitution, and especially after the advent of the Cities Statute in 2001; the rural exodus combined with the unbridled and disorganized growth of cities and, above all, real estate speculation.

The overvalued economic interest in real estate has generated a series of land use regulations, embodied in the use, occupation, subdivision and construction of land, which encourage developments with higher added value to the detriment of popular housing developments. Also to be considered is the gentrification also resulting from real estate speculation, which generates a process of urban transformation culminating in the “expulsion” of low-income populations, historically more vulnerable, less protected and exposed to the aforementioned phenomena, from certain areas.

All of the above factors have exacerbated phenomena such as the peripheralization and favelization of the low-income population which, excluded from the formal housing system, has generated irregular urban nuclei, made up of a series of forms of occupation, such as invasions, clandestine allotments/settlements, irregular subdivisions, etc.

The “urbanization of poverty” phenomenon¹ derived from the high rate of urbanization combined with increased social vulnerability consolidates repeated processes of housing exclusion and spatial segregation, validating the Brazilian land system, marked by the concentration of income (and property), political patronage and irregular real estate speculation.

In the meantime, the process of urban land regularization - REURB - has emerged as an instrument that aims to mitigate this problem. It consists of a set of legal, urban planning, environmental and social measures

aimed at regularizing irregular urban areas and titling their occupants, with the aim of guaranteeing the social right to housing, the full development of the social functions of urban property and the right to an ecologically balanced environment. In a broader sense, it aims to incorporate these originally informal urban centers into the formal legal-territorial order, and thus guarantee the fundamental rights to full ownership and decent housing, albeit belatedly, given that these rights should be guaranteed from the start of the housing process, with proper planning.

DEVELOPMENT

URBAN REALITY, URBAN PLANNING LAW AND THE NEED FOR TRANSFORMATION: NEO-URBANISM AND THE CONTEMPORARY, PLURAL CITY

The question of the formation of cities as they are today, the phenomenon of urbanization and the process of consolidating the rights to the city and to housing is very complex and cannot be analysed in isolation from the process of social struggles. In this sense, David Harvey brings important reflections that must be incorporated in order to think about the city in a broad, fair and equitable way:

Claiming the right to the city in the sense I propose here is equivalent to claiming some kind of shaping power over the processes of urbanization, over the way our cities are made and remade, and it presupposes doing so in a radical and fundamental way. Ever since they came into existence, cities have arisen from the geographical and social concentration of a surplus of production. Urbanization has therefore always been some kind of class phenomenon, since surpluses are extracted from somewhere or someone, while control over the use of this accumulated profit usually remains in the hands of a few. (HARVEY, 2014. Pag 30.)

In this sense, the relevance of the role of Urban Law in the process of creating cities and urbanization is undeniable, especially those related to urban planning and management processes. Jose Afonso da Silva puts it this way:

Urban planning law is a product of the social transformations that have taken place in recent times. Its formation, which is still in the process of being affirmed, stems from the new function of law, which consists of offering normative instruments to the public authorities so that they can, with respect for the principle of legality, act in the social environment and in the private domain, to order reality in the interests of the community. (SILVA, 2010, p.36).

The doctrinal understanding of the issue of housing and the consolidation of urban planning in Brazil, translated into the framework of plans and legislation aimed at urban management in Brazil, is broad. The problem is not the lack of planning, but rather its ineffectiveness. Ermínia Maricato contributes to the discussion in her vast bibliography on urbanization in Brazil:

It cannot be repeated enough that it is not for lack of urban plans or legislation that Brazilian cities are growing in a predatory way. An abundant regulatory apparatus regulates the production of urban space in Brazil - strict zoning laws, demanding land parceling legislation, detailed building codes are formulated by corporations that disregard the illegal condition in which a large part of the Brazilian urban population lives in relation to housing and land occupation, demonstrating that social exclusion goes through the logic of discriminatory application of the law. The ineffectiveness of this legislation is, in fact, only apparent, as it constitutes a fundamental instrument for the arbitrary exercise of power, as well as favoring small corporate interests (MARICATO, 2013, p. 147).

The recognition of the fallibility of Brazilian urban planning, despite the wide range of

legislation in this regard, makes us turn our attention to the issue of the irreversibility of long-established informal urban centers, which demand a new way of conferring and legitimizing (originally unprotected) housing rights, which is different from the logic of traditional civil and real estate law, based on the notions of obligation and responsibility, so that the fundamental rights linked to housing are, even if later, fully guaranteed and enjoyed.

In this way, urban land regularization - REURB, a procedure currently provided for in law 13.465/2017, is an instrument that emerges as efficient for the realization, even if belated, of these fundamental rights.

The socio-economic reality and policies of access to urban land have historically been relegated in favor of impractical and ineffective urban planning guided by speculative real estate capital. The question is: despite the existence of various plans and legislation, these instruments exclude the majority of the population, who live in terrible housing conditions, beyond the reach of urban and building regulations and public services and facilities. Socio-spatial exclusion produces an environment of extreme marginalization, which completely denies the less fortunate their fundamental rights to property, housing and the city. Without support, peripheral neighborhoods become fertile areas for the reproduction of the ills that plague the city.

In Brazil, such as crime, drug addiction and unemployment, creating a scenario of total lack of prospects. In conclusion, as Nalini (2014, p. 6) rightly states, the informality of suburban housing compromises people's dignity. They have no way of enjoying their right to the city and, therefore, are not even effective citizens.

Given this scenario, a new way of planning the city is needed. In this sense, Neo-urbanism² brings important considerations about the need for more reflective management adapted to a more complex society and a more uncertain future, in which perpetuity is overcome as an inseparable attribute of the urban domain linked to a new urban trend aimed at producing social well-being and quality of life for the inhabitants of Brazilian cities³. In other words, the evolution of urbanist thinking is based on producing fair, safe, healthy, accessible, resilient, intelligent and sustainable cities and forms of housing that guarantee quality of life for all.

As a result of the state's historical failure to favor economic interests and hold itself hostage to the real estate lobby, REURB, unlike a common land parceling process, comes to resolve the past, what is already consolidated, the settlements that have formed as a result of the culture of irregularity and spatial segregation that culminates in the violation of rights. This is why we speak here of the delayed realization of rights, since we understand that the state should provide these rights from the very beginning the start of the housing process.

At an international level, REURB is inter-linked with UN HABITAT's Sustainable Development Goals (SDGs), which are part of the so-called "Agenda 2030"⁴. This is a global pact signed during the United Nations Summit in 2015 by the 193 member countries. The agenda is made up of 17 goals, broken down into 169 targets, with a focus on overcoming the main development challenges facing Brazil and the world. This work is particularly linked to SDG 11 - Sustainable cities and communities, which has the following objectives

2. Cf. BONIZZATO, Luigi. Propriedade urbana privada e direitos sociais. 2ed. Curitiba, Juruá. 2015. p.92.

3. Cf. BONIZZATO, Luigi. Propriedade urbana privada e direitos sociais. 2ed. Curitiba, Juruá. 2015. p.146.

4. United Nations. Transformando o nosso mundo: a agenda 2030 para o desenvolvimento sustentável. Resolution A/RES/70/1 [internet]. New York: UN; 2015. [Accessed 2023 Aug 12]. Available from: <https://nacoesunidas.org/wp-content/uploads/2015/10/agenda2030-pt-br.pdf>

The goal is to make cities and human settlements inclusive, safe, resilient and sustainable, and is divided into 10 targets. Among them, 11.1 and 11.3 stand out, which include, respectively, ensuring access for all to safe, adequate and affordable housing, basic services, slum upgrading, increasing inclusive and sustainable urbanization and capacities for planning and managing participatory, integrated and sustainable human settlements in all countries by 2030. Housing policy is a central issue for our society and cuts across different public policies, and through the goals suggested by the SDGs, it is possible to find convergence between housing, health, gender equality and education policies, among others.

In this context, the global trend in urban planning is the transformation of thinking with a view to generating tangible benefits for people's lives. The search for more resilient, inclusive, healthy and safe cities, always stimulating actions that favor the development of public policies aimed at the survival and health of Brazilian cities, which guarantee the urban infrastructure necessary for everyone's life, harmonious coexistence and adaptability. In this sense, Land Regularization is a tool that, when combined with efficient urban planning, can bring about major changes in people's lives.

LEGISLATIVE HISTORY AND LAW

13.465/2017

Returning to the Brazilian legislature, the importance of the 1988 Constitution is undeniable (BRASIL, 1988), given that, for the first time in Brazilian history, urban policy was elevated to constitutional status. Already enshrined as an individual right and a principle of the economic order, the right to property, specifically in articles 182 and 183, has its social function recognized, making it a duty. In addition, the constituent legislator

5. BRASIL, Law 10.257/2001. Estatuto da Cidade. President of the Republic on July 10, 2001. Available at L10257 (planalto.gov.br). accessed on: August 12, 2024.

also guaranteed compliance with the social function of the city. This means that the right to property, which used to be almost absolute, has given way to a right to property that is inseparable from its social function and which must also be in line with the exercise of the right to the city, thus guaranteeing the right to housing in its broadest sense.

The City Statute⁵ is a major legislative development in this scenario, and in turn has designated various urban planning and management instruments with a view to complying with the urban policy established by the Federal Constitution, with the Municipal Master Plan as its flagship. Among the legal-urban instruments available to public managers under the City Statute is Urban Land Regularization.

In 2009, Law No. 11.977 was enacted, establishing the Minha Casa, Minha Vida - PM-CMV (My House, My Life) Program, which for the first time regulated the urban land regularization process at the federal level. In December 2016, Law 11.977/09 was partially repealed by Provisional Measure 759/2016, which later became Law 13.465/2017. Considered a milestone in the use and popularization of this legal instrument, Law 13.465/2017 has a proposal to reduce bureaucracy, based on the principles of speed and efficiency and with a focus on property regularization.

Based on this range of legislation, the state will have to use the legal system in order to correct situations of imbalance, using the most appropriate techniques possible and basing its actions on eradicating poverty and reducing social inequalities. Undoubtedly, the participation of society, as the recipient of state actions, in decision-making regarding urban planning is fundamental to achieving this goal.

In this regard, given the state's inertia in preventing housing irregularities and the

consolidation of informal urban centers over time, which makes it difficult, inopportune and not very convenient to reverse the *status quo* of irregular settlements through classic measures such as demolition, removal or resettlement, the promotion of public policies such as Urban Land Regularization becomes opportune and necessary.

It is currently one of the most important guidelines of urban policy in Brazil. Its aim is to promote the right to housing and property, regularizing and legalizing the ownership, land, environmental and urban situation of informal urban centers, allowing the incorporation of the area into the formal legal system; due control and supervision of the correct use of property and the exercise of its social function; access to public facilities and services, allowing the correct protection of the ecologically balanced environment, among others.

It can therefore be said that this policy is unquestionably a standard of contemporary housing policy, not only in Brazil, but also internationally.

REURB AS AN INSTRUMENT FOR THE BELATED IMPLEMENTATION OF THE FUNDAMENTAL RIGHTS TO HOUSING AND PROPERTY

Considering all the limitations of housing production in Brazil, urban land regularization is a possible way of democratizing access to land, spatial integration and social inclusion.

The doctrine presents various beneficial consequences of the land regularization process, especially socio-economic ones. Peruvian economist Hernando de Soto, in his most celebrated work, *The Mystery of Capital* (DE SOTO, 2001), presents his plan to combat underdevelopment and makes an original contribution to this debate by stating that such measures will only be successful if they are able to recognize the informal arrangements that, according to him, dominate a lar-

ge part of the economies of underdeveloped countries. De Soto's point (2001, p. 16) is that poor countries are poor because they cannot see their own wealth, since, according to the author's estimates, 80% of their population lives on the margins of the formal economy and, consequently, far from official statistics. His whole exercise is therefore aimed at demonstrating that the fight against underdevelopment must necessarily involve a change in the way these countries deal institutionally with their poorest populations. In this sense, the lack of registration and legal formalization of real estate is a central problem, since in this condition it cannot be used as collateral in credit and business development operations; it is subject to restrictions on obtaining licenses from public bodies for the construction of buildings and improvements; it cannot be formally sold, among other limitations. The legal uncertainty that surrounds goods in this situation erodes their value, making them undervalued, a circumstance that empties the assets of the occupants of such goods - usually poor people - helping to maintain the already dramatic situation of misery and marginalization in which they live.

In this way, research into the viability of the Urban Land Regularization (REURB) instrument is essential as an efficient way of realizing fundamental rights, especially the rights to housing, to the city and to property, and consequently the principle of human dignity.

In this respect, and based on the line of interpretation that emerges from the premises set out above, the conclusion is that REURB acts as a guiding instrument for these rights, since once ownership has been regularized, housing now enjoys legal certainty, giving (i) residents the chance to invest in the quality of their housing, (ii) access to public services that were previously unavailable, (iii) access to credit; (iv) access to basic infrastructure and, above all, (v) the right to fully enjoy the inhabited environment.

Furthermore, legal security combined with a sense of belonging is a factor in social change. Without the imminent need for personal defense of possession, some studies show that areas with regularized property have lower rates of crime, domestic violence and child labor, as well as greater economic development through the promotion of small businesses, which form the basis of the Brazilian economy. Not least, this section of the population has access to formal property ownership, mostly for the first time, and is included in the legal system as part of the owners of capital.

However, it is necessary to reinforce that this process is accompanied by measures that take into account the social, urban and environmental dimensions so that they can be effectively integrated into the city and fully exercise their citizenship. Otherwise, the land regularization of informal settlements would simply be a vector for the institutionalization of illegality by the state. According to Fernandes:

[...] the fulfillment of the much-claimed social right to housing cannot be reduced to the recognition of property rights. In fact, the legalization of informal activities, particularly through the recognition of individual freehold titles, does not automatically lead to socio-spatial integration. On the contrary, if they are not formulated within the scope of socio-economic policies (FERNANDES, 2000, p. 65). Land regularization programs can have other undesirable effects, bringing new financial burdens for occupants, having little significant impact on reducing urban poverty and, even more importantly, directly reinforcing the set of economic and political forces that have traditionally caused social exclusion and spatial segregation.

In fact, article 5, paragraph 2 of the Federal Constitution establishes that the rights and guarantees provided for in the constitution do not exclude others arising from the regime and principles adopted and also from international

treaties to which Brazil is a party. Considering that the dignity of the human person is one of the foundations of the Federative Republic of Brazil (article 1, inc. III) and the fight against poverty, marginalization and social inequalities are its objectives (article 3, inc. III), we can say that, at least minimally, it is possible to extract some content and meaning from the right to housing, or even to know what it is not. All it takes is a cursory glance at some of the irregular occupations in our country. The interpretation of the meaning of the right to housing therefore implies an understanding linked to the dignity of the human person and the Federal Constitution as a whole.

In addition, the United Nations Committee on Economic, Social and Cultural Rights issued General Comment No. 4, establishing that housing that meets the following criteria is adequate:

1. **Legal security of tenure** - there must be mechanisms to guarantee legal protection against forced evictions, expropriation, displacement and any other kind of threat.
2. **Availability of services and infrastructure** - access to drinking water, electricity, basic sanitation, waste treatment, transportation and public lighting must be ensured.
3. **Affordable Housing** - measures should be adopted to ensure proportionality between housing costs and people's income. They should create subsidies and financing for low-income social groups, as well as protecting tenants from abusive rent increases.
4. **Habitability** - the dwelling must have adequate health conditions.
5. **Accessibility** - public housing policies must take into account vulnerable groups, such as the disabled, impoverished social groups, victims of natural disasters or urban violence and armed conflicts.

6. **Location** - adequate housing means housing that is well located, i.e. in places that allow access to employment options, efficient public transport, health services, schools, culture and leisure.

7. **Cultural** appropriateness - there must be respect for the social production of habitat, cultural diversity, housing patterns derived from the uses and customs of communities and social groups. (General Comment 4 of the Committee on Economic, Social and Cultural Rights, sixth session, 1991, which comments on Article 11 § 1 of the ICESCR).

In this sense, we can say that the right to housing must be combined with the right to decent housing, since there is no way of conceiving, in a Democratic State of Law, a right that does not represent the exercise of a dignified life.

This necessarily implies that the right to housing includes a series of other factors linked to it, such as minimum infrastructure.

RIGHT TO PROPERTY AND RIGHT TO HOUSING: IS THERE A CONFLICT?

This discussion is based on the fact that, although they are close, the right to property and the right to housing are independent and distinct. It can therefore be seen that, despite the possibility that the two rights, constitutionally provided for as fundamental, could establish a relationship of individuality, such a relationship no longer fits today. An interconnected relationship is necessary and essential.

Housing is absolutely necessary for establishing a life of dignity; and although the reciprocal is not true of the right to property, the latter plays a key role these days in terms of protection, legitimization and legal certainty. Therefore, the REURB procedure, which ends with titling, i.e. the transfer of property, does not leave the realization of broader rights, such as full and dignified housing, in the background; on the contrary, it protects it.

Raquel Rolnik, in her work *Guerra dos Lugares* (War of Places), provides important reflections on the subject and how the right to property is understood in neoliberal thinking, as well as its intrinsic connection with the notion of housing and citizenship:

Since freedom is thus a function of property, a government responsible for the freedom of its citizens must guarantee property as one of its main obligations. On the other hand, an attack on the form of ownership of land could cast considerable doubt on the other, that of the means of production, from which capital derives its own power and legitimacy. For this reason, the preservation and promotion of private property performs an ideological function, legitimizing all forms of private property. Hence its mimesis with the full condition of citizenship. Thus, for liberal thinking, property, rights and citizenship are intertwined. This underpins both policies to promote private ownership of housing and programs to reform land systems and title informal settlements (ROLNIK, 2019, p.197).

CONCLUSION

In conclusion, the criterion for analyzing the hypothesis put forward above lies precisely in adopting a model in which the idea of justice can be related to the processes of human development and the prevalence of human dignity, together with an examination of the Brazilian reality as a way of visualizing the contexts and, in fact, having some possibility of social and institutional application in the context in which it is inserted, managing to go beyond the vision of what should be. The degree of uncertainty and the natural impossibility of a perfect solution require an effort to think about possible solutions in order to get the most out of the legal instruments we have at our disposal, so that they can implement human dignity more broadly.

REURB comes into this as a way of ordering the “rational” exploitation of land in the country, bearing in mind that the primary purpose of land regularization, beyond the economic issue, should be the proper allocation of land, in order to promote its occupation and rational exploitation, making the constitutional right to housing a reality, without dispensing with the legal obligation to care for the environment and the social as-

pect involved. In addition, its aim is to allow Brazilian citizens to enjoy the benefits of real estate within legal regularity, simplifying and reducing bureaucracy in procedures, most of which were provided for in legal provisions enacted before the 1988 Constitution, which were inefficient and insufficient to meet the current aspirations of Brazilian society in the search for better living conditions.

REFERENCES

- ACSERALD, Henri. **Discursos da sustentabilidade**. Revista Brasileira de Estudos Urbanos e Regionais, nº 01, p. 79-90, mai. 1999.
- ARANTES, Otilia; VAINER, Carlos; MARICATO, Ermínia (Org.). **A cidade do pensamento único: desmanchando consensos**. 1Ed. Petrópolis: Vozes, 2000.
- BRASIL. **Constituição da República Federativa do Brasil de 1988**. Brasília, DF: Senado Federal, 1988. Disponível em: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Acesso em: 20 de julho de 2024.
- BRASIL, Lei 10.257/2001. **Estatuto da Cidade**. Presidente da República em 10 de julho de 2001. Disponível em L10257 (planalto.gov.br). acesso em: 12 de agosto de 2024.
- BRASIL, Lei 11.977/2009. **Dispõe sobre o Programa Minha Casa, Minha Vida – PMCMV e a regularização fundiária de assentamentos localizados em áreas urbanas**. Presidente da República em 07 de julho de 2009. Disponível em L11977 (planalto.gov.br). Acesso em: 12 de agosto de 2024.
- BRASIL, Lei 13.465/2017. **Dispõe sobre a regularização fundiária rural e urbana**. Presidente da República em 11 de julho de 2017. Disponível em L13465 (planalto.gov.br). Acesso em: 12 de agosto de 2024.
- DE SOTO, Hernando. **O Mistério do Capital**. 1Ed. São Paulo: Editora Record. 2001.
- FERNANDES, Edésio. **Direito urbanístico e política urbana no Brasil**. 1Ed. Belo Horizonte: Del Rey. 2000.
- GAIO, Daniel. **A interpretação do direito de propriedade em face da proteção constitucional do meio ambiente urbano**. 1Ed. Rio de Janeiro: Renovar, 2015.
- GIL, A.C. **Métodos e Técnicas de Pesquisa Social**. 5ª ed. São Paulo. Ed. Atlas, 1999.
- GRINOVER, Ada Pellegrini et al. **Direitos fundamentais das pessoas em situação de rua**. 2Ed. Belo Horizonte: D’Placido, 2016.
- GUSTIN, Miracy B. S. **Das necessidades humanas aos direitos: ensaio de sociologia e filosofia do direito**. 2ª ed. Belo Horizonte: Del Rey, 2010.
- HARVEY, David. **Cidades rebeldes: do direito à cidade à revolução urbana**. 5Ed. São Paulo: Martins Fontes, 2014.
- MARICATO, Ermínia. **As ideias fora do lugar e o lugar fora das ideias. A cidade do pensamento único: desmanchando consensos**. 1Ed. Petrópolis: Vozes, 2013.
- NALINI, José Renato; LEV Y, W. **Regularização Fundiária**. 2 ed. Rio de Janeiro: Gen - Editora Forense, 2014.
- ORGANIZAÇÃO DAS NAÇÕES UNIDAS. **Transformando o nosso mundo: a agenda 2030 para o desenvolvimento sustentável**. Resolução A/RES/70/1 [internet]. Nova Iorque: UN; 2015. [acesso em 2024 ago 12]. Disponível em: <https://nacoesunidas.org/wp-content/uploads/2015/10/agenda2030-pt-br.pdf>
- ROLNIK, Raquel. **Guerra dos lugares: a colonização da terra e da moradia na era das finanças**. 2. Ed. São Paulo: Boitempo, 2019.