

URBAN LAND REGULARIZATION: REFLECTIONS ON ITS POTENTIAL AS AN URBAN AND HUMAN DEVELOPMENT POLICY

REGULARIZAÇÃO FUNDIÁRIA URBANA: REFLEXÕES SOBRE SUA POTENCIALIDADE ENQUANTO POLÍTICA DE DESENVOLVIMENTO URBANO E HUMANO

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Abstract

Based on the conceptual debate of the “development” category, this paper aims to analyze how sustainable urban land regularization (REURB) can qualify as an urban and human development policy. This is because the Brazilian urban scenario is strongly impacted by inequality of access and lack of infrastructure for less socioeconomically favored sectors, which directly impacts people’s way of life, their possibilities of choices, and access to rights. Thus, since REURB is an alternative to reduce social inequalities via the democratization

Resumo

A partir do debate conceitual da categoria “desenvolvimento”, este trabalho propõe-se a analisar como a regularização fundiária urbana (REURB) sustentável pode se qualificar como uma política de desenvolvimento urbano e humano. Isso porque o cenário urbano brasileiro é fortemente impactado pela desigualdade de acesso e pela carência de infraestrutura nos setores menos favorecidos socioeconomicamente, o que afeta diretamente a própria forma de vida das pessoas, suas possibilidades de escolha e o acesso a direitos. Assim, sendo a REURB uma alternativa à redução



of access to urban land and protection of the right to decent housing, it is worth asking: How does REURB qualify as a development policy? To propose reflections in this regard, the paper adopted a bibliographic review with a qualitative approach as its methodology, in addition to normative analysis considering Law 13.465/2017 as its main framework. The preliminary conclusions suggest that REURB qualifies as an urban and human development policy as long as it is planned and implemented considering the multiple characteristics of the intervention area and its occupants, in addition to having popular participation as a methodological premise.

Keywords: development; right to housing; sustainable urban land regularization.

das desigualdades sociais por meio da democratização do acesso à terra urbana e da tutela do direito à moradia digna, surge o questionamento: como a REURB se qualifica como uma política de desenvolvimento? Para propor reflexões sobre essa questão, o trabalho adotou como metodologia a revisão bibliográfica com abordagem qualitativa, além da análise normativa, tendo na Lei n. 13.465/2017 seu principal marco. As conclusões preliminares indicam que a REURB se qualifica como uma política de desenvolvimento urbano e humano desde que seja planejada e implementada considerando as múltiplas características da área de intervenção e de seus ocupantes, além de ter como pressuposto metodológico a participação popular.

Palavras-chave: desenvolvimento; direito à moradia; regularização fundiária urbana sustentável.

Introduction

The Brazilian urban land scenario, organized under the logic of individual and absolute private property and according to a conservative and hierarchical urban planning, has produced an unequivocal picture of territorial exclusion and social inequality. This situation manifests in various forms, including informality, housing deficits, the selective distribution of urban and sanitary infrastructure, occupations in environmentally sensitive areas, and underdevelopment.

Furthermore, the State's response to these issues has involved "solutions" centered on spatial control and the (often violent) suppression of movements advocating for change. In this context, the enactment of the Brazilian 1988 Federal Constitution (especially Articles 182 and 183) and the subsequent emergence of the City Statute (Law No. 10,257/2001) signaled a significant paradigm shift that recognized the socio-environmental function of the city and the need for legal legitimization of factual urban conditions that had been marginalized from Rights by a strictly legalist-liberal perspective, such as alternative and resistant urban occupations. Additionally, it became evident that the primary challenge to effective urban management is poverty. Consequently, it is no longer feasible to

design urban and housing policies outside the framework of genuine development, as doing so would contribute to the persistence of social inequality. This is because the concept of “development” entails transformations in economic, political, human, and social dimensions.

One of the alternatives capable of contributing to this objective is urban land regularization (REURB), which concentrates efforts on reducing social inequalities via the democratization of access to urban land and the protection of the right to decent housing. In summary, urban land regularization can be conceptualized as a public policy comprising legal, urban planning, environmental, and social measures—executed by a multidisciplinary team—aimed at integrating alternative and resistant urban nuclei into the urban territorial order. Its goal is to guarantee the social right to housing, the full development of the social functions of urban property, possession, and the city, as well as the right to a balanced environment, effective popular participation, and social emancipation. Thus, the question arises: How does REURB qualify as a policy for development?

To offer preliminary reflections on this question and stimulate further debate from various perspectives, this paper aims to analyze how sustainable urban land regularization may qualify as a policy for urban and human development. The primary challenges addressed include the socioeconomic impacts of unequal access and the inadequate infrastructure in disadvantaged sectors, which directly impact people’s lifestyles, their opportunities for choice, and their access to the city and broader citizenship rights. Consequently, understanding REURB as an instrument for development involves recognizing it as a tool to reduce inequalities via the democratization of urban land access and the protection of the right to decent housing.

Methodologically, this study adopts a theoretical research approach combined with practical insights, always from a socio-legal perspective and considering the potential for dialectical convergence. The qualitative approach is anchored in the concept of development as a broad phenomenon with multiple, interconnected meanings centered on promoting social and economic well-being. Accordingly, the study is developed via an in-depth bibliographic review of the themes of development, land regularization, and popular participation, always grounded in the constitutional hermeneutics and normative analysis of Federal Law No. 13,465/2017.

The first section of this paper addresses the discussion on development as a means to comprehend the breadth of the concept and subsequently correlates it with urban policies, specifically, urban land regularization policy (REURB). The

second section outlines the normative and doctrinal configuration of REURB, thereby laying the groundwork to discuss how and why it qualifies as a policy for development. Finally, the fourth section examines an essential methodological premise for the study: popular participation.

1 The idea of development: a conceptual debate

First, it is necessary to establish the theoretical foundations upon which the analyses and discussions of this article will be based. Accordingly, this section presents a debate on the concept of development to understand the full scope of this category and, subsequently, to relate it to urban policies—specifically, to urban land regularization policy (REURB).

The theoretical category of “development” emerges from the need to manage the deleterious impacts of industrial capitalism (Radomsky, 2015). This is because it has been observed that capital (and, therefore, the market) is selective both spatially and in relation to its destined economic activities (Bacelar, 2003), meaning that it invests in and develops only those sectors that allow for its reproduction, multiplication, and exploitation. The outcome of this selectivity in investments is, to a large extent, poverty and social inequality, which calls for the presence of a strong State in both planning and implementing public policies aimed at development, expressed, among other aspects, by access to services and rights (Rister, 2007).

In this context, Bacelar (2003) emphasizes that the predominant role of the State is to counterbalance the relative absence of private investments in certain sectors, rather than to reinforce investments in areas in which the market is already active. The focus, therefore, should be on the least competitive sectors and on areas that are more vulnerable from a socioeconomic standpoint, such as most alternative/resistant urban nuclei¹ (generally referred to as informal sectors), in addition to regulating key sectors dominated by the market but essential for ensuring a dignified life for the population.

In this context, Oliveira (2002) points out that the notion of development is opposed to mere economic growth (although it is part of it). For Oliveira,

¹ Although Law no. 13.465/2017 employs the expression “informal urban centers”, in this work, for a theoretical-methodological option supported by Gonçalves and Santos (2021), Alfonsin *et al.* (2023), and Fernandes (2022), the expression “alternative/resistant urban centers” will be used. This is because it is understood that the term “informal” is not suitable for the planning and execution of REURB policies that aim to establish a bridge between the normative/legal panorama and the dynamics of the occupations, customs, and practices that produce the city and that contribute to the access and permanence of people in their localities.

development is a chain of “complex processes of economic, political, and, above all, human and social changes and transformations” (Oliveira, 2002, p. 40, free translation)², which cannot be fully explained by economic growth, even if it results from it. Precisely because of this,

[...] development comes to be understood as the result of the growth process, whose maturity is reached when it achieves self-sustaining growth, that is, perhaps the capacity to grow indefinitely in a continuous manner. In the name of development, ever-increasing values are sought: more goods, more years of life, more scientific publications, more people with doctorates, among several others (Oliveira, 2002, p. 41, free translation)³.

Based on this broad and sustained understanding, the United Nations (ONU, 1986), in the Declaration on the Right to Development, recognizes development as a human right characterized by the active, free, and meaningful participation of individuals in the creation of public policies aimed at social well-being. In this context, urban land regularization can be understood as a development policy not only due to its territorial impact but also because it fosters social inclusion and equal access to urban resources, aligning itself with the UN’s principles on sustainable development and social justice (ONU, 1986).

This conjunction of distinct elements and the continuous linking of variables leads to the conclusion that the dimension of this theoretical category, namely development, is a holistic and integral perception that, when applied to territory, produces tangible effects on the improvement of people’s quality of life via the planning and implementation of various policies such as housing, health, education, security, culture, leisure, environment, and climate.

It is in this sense that Oliveira (2022) discusses the correlations between development and the environment, human development, and development and industrialization. Regarding the environment, based on the author’s considerations, it becomes evident that any integrated and holistic development plan must consider the rational and sustainable use of natural resources to ensure an equitable distribution of these resources.

This perspective is aligned with the United Nations Sustainable

2 In the original: “complexos de mudanças e transformações de ordem econômica, política e, principalmente, humana e social”.

3 In the original: “[...] o desenvolvimento passa a ser entendido como uma resultante do processo de crescimento, cuja maturidade se dá ao atingir o crescimento autossustentado, ou seja, talvez alcançar a capacidade de crescer sem fim, de maneira contínua. Em nome do desenvolvimento buscam-se valores crescentes: mais mercadorias, mais anos de vida, mais publicações científicas, mais pessoas com títulos de doutor, dentre vários outros”.

Development Goals (SDGs)⁴, specifically SDGs 7, 11, 12, 14, 15, 16, and 17, which aim, respectively, to guarantee access to affordable and sustainable energy; make human settlements inclusive, safe, resilient, and sustainable; ensure sustainable consumption and production patterns; take urgent action to combat climate change and its impacts; protect, restore, and promote sustainable use of terrestrial ecosystems; and promote peaceful and inclusive societies for sustainable development.

Concretely, this context imposes the recognition that the irrational exploitation of territory, dissociated from principles of environmental balance, sustainability, and alternative energy sources, will exacerbate an urgent (and longstanding) issue related to global climate and environmental emergencies. On this matter, Acselrad (2002) had already reflected and warned more than two decades ago, demonstrating, among other issues, how the spatial distribution of pollution and the irrational exploitation of natural resources—expressed by “inadequate sanitation conditions, chemical contamination of residential and work areas, and improper disposal of toxic and hazardous waste” (Acselrad, 2002, p. 52, free translation)⁵—occur according to criteria of race and social class. In other words, in areas where ethnic minorities concentrate, where social vulnerability is more pronounced, and where urban land is occupied via informal possession (alternative/resistant urban nuclei), there are generally greater environmental risks. It is precisely for this reason that the notion of development cannot be dissociated from environmental justice, understood as the “equitable distribution and qualitative differentiation of the environment” (Acselrad, 2002, p. 54, free translation)⁶.

To envision development, it is first necessary to reflect on how the current model of development (ultraliberal) fails to capture the urgency of environmental and climate issues. This scenario, already concretely verifiable since the end of the last century, was starkly revealed in the last decade and has resulted in tragedies such as the dam failures in Mariana and Brumadinho in the state of Minas Gerais; dozens of landslides, such as the one that occurred in the city of São Sebastião/SP in Vila Sahy, where the municipal government, despite knowing it to be a

4 Global compact signed during the United Nations Summit in 2015, by the 193 member countries, to promote sustainable growth. Although its goals are, in practice, difficult to achieve, the aforementioned pact serves as a protocol of intent capable of supporting public and private management, which can contribute to sustainable development in the long term.

5 In the original: “condições inadequadas de saneamento, de contaminação química de locais de moradia e trabalho e disposição indevida de lixo tóxico e perigoso”.

6 In the original: “distribuição equânime de partes e a diferenciação qualitativa do meio ambiente”.

high-risk area, kept the resident population in place; and, more recently, the sinking process of the city of Maceió/AL due to the exploitation of rock salt by the Braskem group.

It is important to note that in this context, by failing to implement development policies (such as housing and land regularization policies), by allowing the execution of potentially environmentally degrading activities, and consequently disregarding the urgent climate and environmental issues, the State—being the main promoter of development (Rister, 2007)—explicitly selects individuals who will have a higher or lower life expectancy, exercising its “political power capable of scrutinizing the urban population” (Foucault, 2003, p. 86, free translation)⁷. In this sense, the principle of the “bare life” emerges, whereby normative construction enables the existence of subjects deprived of rights in the “intersection between the juridical-institutional model and the biopolitical model of power” (Agamben, 2004, p. 14, free translation)⁸.

It can be said that this is a case of life control via State action (or inaction), configuring a (bio)power over life and death concerning individuals. The lower life expectancy and reduced life opportunities—based on access to rights, public services, and consequently development policies—are almost always reserved for individuals belonging to socioeconomically vulnerable populations (Radomsky, 2015). This is what Foucault (2003) refers to as the disciplining of bodies, which gradually transforms into biopolitics, a scenario in which the State controls the biological aspects of human life. This control is manifested in various areas, such as in policies promoting or controlling birth rates, hygienist policies, and even via the encouragement of using genetically modified seeds, as discussed in Radomsky (2015).

In this context, Oliveira (2002) argues that human development should focus on reducing social inequalities, which significantly impact Latin America and, even more so, Brazil. This means that it is not enough to generate wealth; it is necessary to ensure its distribution in a more balanced manner, “in order to achieve the desired social justice and implement an economic democracy” (Rister, 2007, p. 239, free translation)⁹. In this regard, it is important to emphasize that this generation of wealth should not be confused with the mere circulation

7 In the original: “poder político capaz de esquadrihar a população urbana”.

8 In the original: “intersecção entre o modelo jurídico-institucional e o modelo biopolítico do poder”.

9 In the original: “de modo que se consiga alcançar a almejada justiça social e implementar uma democracia econômica”.

of money, but rather with the expansion of opportunities and possibilities for developing a dignified life (human development). This concept also explains why industrialization alone does not promote development.

Following this line of thought, Furtado (1998) recognizes the insufficiency of industrialization as the sole solution to integrate countries considered underdeveloped into contexts of higher levels of economic, social, and human development. From this perspective, the author states that “economic growth comes with the birth of a new form of social organization that redefines income distribution patterns” (Furtado, 1998, p. 27, free translation)¹⁰. It is worth mentioning that the author was not always an advocate of this argument. At first, he considered industrialization an essential condition to promote development. However, after the Brazilian industrialization process and the persistence of underdevelopment in the country, he recognized the need to combine multiple elements to achieve effective development.

In the same vein, Furtado (1998) indicates that the process of industrialization without the promotion of effective development—as occurred in Brazil—can only be understood by what he calls “new capitalism”, which, in essence, refers to the predominance of transnational capital over the national State. In other words, it is about integrating countries into the global economic order under the hegemony of major powers, which results in standardized plans and scenarios of economic growth financed via international loans (such as those from the International Monetary Fund), as well as in subordination to the interests and necessary structure for the expansion and exploitation of local territories by international capital, multiplying at the expense of these countries.

The byproduct of this equation is not only the maintenance but the deepening of social inequalities and the proliferation of various crises: financial, ecological-environmental, cultural, democratic, representative, and institutional (Castells, 2018). Moreover, it fosters a relationship of (even symbolic) overexploitation between the global center and periphery. For Castells (2018), the current crisis is not only of liberal democracy but of the very development model promoted by it. In view of this scenario, there are no alternatives other than the creation of new forms of representation and public State control aimed at protecting the right to development for individuals, understood as “equal opportunities, inclusion in the market, awareness of the best economic and social options, and cooperation” (Rister, 2007, p. 244, free translation)¹¹.

10 In the original: “crescimento econômico passa a ter como contrapartida o nascimento de uma nova forma de organização social que redefine o perfil de distribuição de renda”.

11 In the original: “equal opportunities, inclusion in the market, awareness of the best economic and social options, and cooperation”.

Contemporarily, this scenario of overexploitation and crises has been updated with the advent of the internet of communications, the internet of logistics, and the internet of things, which are strongly monopolized by big tech companies (Morozov, 2018), shifting the economic focus towards data and information. Gallegos (2021) terms this phenomenon “infocognitive transfer”, precisely because it represents a form of knowledge extraction, accomplished via the flow of skilled migrants; the appropriation, by transnational companies, of scientific research produced in the Global South by local researchers; biopiracy, characterized by the devastation and appropriation of biodiversity; and even the extraction of ancestral knowledge for the generation of new technologies.

According to Gallegos (2021), breaking away from these new forms of exploitation and the maintenance of underdevelopment in certain territories requires “the construction of social platforms with open technologies and the respective regulations that enable social innovation to flourish” (Gallegos, 2021, p. 153, free translation)¹². He adds that such construction must consider the specific characteristics of each locality to enhance favorable elements and minimize territorial vulnerabilities, thus contributing to a relative equilibrium. This is endogenous development, based on effective popular participation, with individuals at the center of the debate.

This discussion connects with the reflections of Oliveira and Lima (2003) on popular participation (a theme to be addressed in the final section of this article) in development policies, particularly housing policies. According to these authors, the lack of popular participation in decision-making processes directly impacts the centralization and hierarchization of urban planning. This process results in exogenous and standardized development that disregards the peculiarities, potentials, and limitations of each locality as a means to contribute to integrated and coordinated development. This centralizing effect is clearly observed in Brazil, where urban planning creates severe scenarios of social fragmentation, socio-spatial inequality, and urban informality, deviating from the conception of development discussed by Oliveira (2002), Radomsky (2015), Rister (2007), Furtado (1998), and Oliveira and Lima (2003). This situation highlights the need to debate alternative approaches.

In this context, given that one of the main objectives of sustainable urban land regularization policy (REURB) is to reduce social inequalities via the democratization of access to urban land and the protection of the right to decent

¹² In the original: “construção de plataformas sociais com tecnologias abertas e as respectivas regulamentações que permitam que a inovação social floresça”.

housing, this policy can be qualified as an important instrument for development. Thus, it is crucial to understand its juridical-social nature, a topic that will be addressed next.

2 Urban land regularization (REURB) policy: a brief conceptual review in norms and doctrine

The REURB policy is not entirely new in Brazil, given that laws and normative acts have sporadically addressed the subject since the 1960s. Examples include Decree-Law No. 271/1967, Law No. 6,766/1979, and CONAMA Resolution No. 369/2006. However, it was only with Law No. 11,977/2009 that this policy became regulated at the national level, being later superseded—regarding urban land regularization—by Law No. 13,465/2017, which constitutes the current legislative framework for REURB, in conjunction with Decree No. 9,310/2018. In addition to these norms, there are local legislations, organic laws, and state constitutions from each federative unit that have jurisdiction over the matter. In this regard, its legal concept is addressed in Article 9 of Law No. 13,465/2017, which establishes:

General norms and procedures applicable to Urban Land Regularization (REURB) are hereby instituted in the national territory, encompassing legal, urban planning, environmental, and social measures aimed at incorporating informal urban nuclei into the urban territorial order and at granting titles to their occupants (Brasil, 2017, free translation)¹³.

Thus, based on the concept outlined by the law and considering that a public policy is configured as a set of political and administrative decisions and actions geared toward organizing society and, consequently, the city in its various aspects (Bacelar, 2003), REURB cannot be reduced to a mere administrative procedure. On the contrary, it is a multisectoral public policy. This perspective is reinforced by the legal definition provided in the aforementioned Article 9, as urban land regularization is not defined solely as a set of technical-administrative actions and decisions but rather as a broader, multidimensional initiative. It involves guidelines, planning, and procedures that impact legal, environmental, social, and urban planning fields, among others, in the areas of intervention. REURB is,

13 In the original: “Ficam instituídas no território nacional normas gerais e procedimentos aplicáveis à Regularização Fundiária Urbana (REURB), a qual abrange medidas jurídicas, urbanísticas, ambientais e sociais destinadas à incorporação dos núcleos urbanos informais ao ordenamento territorial urbano e à titulação de seus ocupantes”.

above all, a public development policy.

Regarding the legal concept presented in the new law, one can observe what may be characterized as a hierarchy among the main dimensions of this policy, with an emphasis on legal measures. This occurs because the legislator highlighted the “granting of titles to the occupants” as an essential condition for guaranteeing the right to housing, which, in addition to constituting a legal fallacy, may indicate a reinforcement of the hierarchy of the REURB policy, with a focus on juridical-dominant aspects. Although these aspects are capable of providing property titles (and, consequently, security in possession), they do not by themselves ensure full housing and dignified habitability, “[...] contradicting the broader conceptual and legal framework built since the late 1970s and ignoring the lessons learned from international experience” (Fernandes, 2022, p. 9, free translation)¹⁴.

Precisely because of this limitation, this mere juridical-registral regularization is not, in itself, a development policy, even if it may represent economic growth—along the lines defended by Soto (2001)—by favoring the inclusion of thousands of properties into the formal legal world (as occurred in Peru) and transforming them into financial assets subject to transfer, acquisition, and guarantee. As discussed by Oliveira (2002), Radomsky (2015), Rister (2007), Furtado (1998), and Oliveira and Lima (2003), real development cannot be measured unilaterally by econometric indices but rather by a balance in access to services, rights, and income, which promotes greater social equality.

This scenario was recently observed in the case of Peru, where a comprehensive REURB policy was implemented nationwide, yet with an almost exclusive focus on juridical-dominant aspects. This approach resulted in the “legalization” of hundreds of thousands of urban nuclei without, however, guaranteeing adequate urban infrastructure that would confer dignified housing conditions upon their occupants. Fernandes (2022), when analyzing the REURB policy adopted in Peru, argues that the promises of increased access to credit, housing improvements, and poverty eradication did not materialize through the granting of titles, legalization, and formalization of so-called “informal settlements”. On the contrary, the Peruvian experience generated negative externalities, such as “higher land prices, more occupations, low urban-environmental quality of the settlements, new distortions in gender relations, etc. [...] and the ‘market expulsion’ of residents” (Fernandes, 2022, p. 12, free translation)¹⁵.

14 In the original: “[...] indo contra o marco conceitual e jurídico mais amplo construído desde o final da década de 1970 e ignorando as lições da experiência internacional”.

15 In the original: “preços mais altos dos terrenos, mais ocupações, baixa qualidade urbanístico-ambiental dos assentamentos, novas distorções das relações de gênero etc. [...] e a ‘expulsão pelo mercado’ dos moradores”.

In addition to the aforementioned implications, another byproduct of the Peruvian REURB policy was the high death toll among the population during the COVID-19 pandemic. This outcome resulted not only from the vulnerability of the health system, as occurred in most countries (Pandiello; Chaparro, 2020), but also from the housing necropolitics (Mbembe, 2018) implemented in that country. By prioritizing exclusively juridical regularization, solutions appropriate to the sanitary realities of each locality were neglected. Consequently, the population was deprived of basic measures, such as access to running water for handwashing and the ability to effectively socially isolate in their homes, which, although now duly regularized, became even more vulnerable (Fernandes, 2022).

On the other hand, for a perspective more suited to the highly asymmetric urban reality of Brazil, and one that truly considers the need to encompass the multiplicity of facets of REURB and the premises of development, understood as more than mere economic growth, we can conceptualized it as a public policy that at least encompasses urban planning, environmental, legal, and social measures. These measures should be implemented by a multidisciplinary team, aimed at the incorporation of alternative/resistant urban nuclei into the urban territorial order, as well as toward the granting of title to their occupants. The objective is to guarantee the social right to housing, the full development of the social functions of urban property, possession, and the city, along with the right to a balanced environment, effective popular participation, and social emancipation. In other words, this is what can be called “sustainable REURB” or “comprehensive REURB”, as it fully addresses the needs of the area under intervention, thereby constituting a complete development policy (Correia; Farias, 2015). This is due to the fact that:

Human development is far more important and complex than programs for the urbanization of degraded areas. Opening a street, constructing buildings, and installing basic sanitation are much easier to carry out than emancipating the excluded. These people have become accustomed to living without dreams. They see no prospect of a better future. The issue of urban inclusion involves matters far more comprehensive than the construction of physical spaces. Social inclusion implies the creation of psychological and cultural spaces. Poverty is not solved solely via visible actions, as the visible is merely the externalization of poverty; true poverty is unseen. Without addressing the causes of poverty, it is impossible to speak of urban promotion (Gazola, 2022, p. 64-65, free translation)¹⁶.

16 In the original: “O desenvolvimento humano é muito mais importante e complexo que programas de urbanização de áreas degradadas. Abrir uma rua, construir prédios, implantar saneamento básico é muito mais fácil de realizar do que a emancipação dos excluídos. Estes se habituaram a viver sem sonhos. Não veem qualquer perspectiva de um futuro melhor. A questão da inclusão urbana implica

In general terms, it involves the inclusion/incorporation of the factual reality in which millions of people live into the dynamics of urban life in an integrated manner. However, this incorporation must aim at the development of the area under intervention, which includes the creation of job and income opportunities, the presence of the State as evidenced by the provision of public services and facilities (healthcare, transportation, education, culture, leisure, etc.), and an urban structure adequate to the local reality and the needs of the occupying population. Thus, it is not merely a matter of recognizing and legitimizing occupation within the urban fabric, but ensuring that the population can remain in the occupied area. As previously mentioned, it goes beyond simply guaranteeing a legally regular roof; it is about safeguarding housing dignity.

Thus, after outlining the general framework of what constitutes REURB, it remains to discuss how and why it qualifies as a development policy—a topic that will be addressed in the following section.

3 How does sustainable REURB qualify as a development policy?

There are at least three pieces of evidence that qualify REURB as an urban and human development policy. The first is found in the very objectives for which urban land regularization is intended, as provided in Article 10 of Law No. 13,465/2017; the second centers on the recognition of REURB as an individual citizen's subjective right; and finally, the third is its incorporation within Title VII of the Federal Constitution of 1988 (CRFB), which deals with the Economic and Financial Order (Brasil, 1988).

To begin with, Article 10, item I of Law No. 13,465/2017 indicates that one objective of REURB is to ensure the proper urbanization of the area subject to intervention and to guarantee the provision of public services to its occupants (Brasil, 2017). “Urbanization” here is understood as having an adequate urban infrastructure that includes public and collective facilities, as well as appropriate sanitary solutions, among other aspects. The public services encompass the provision of water in adequate quantity and quality, electricity, public transportation, among others. Thus, it is evident that this aim is fundamental to ensuring the dignified permanence of the population in the regularized area, and hence constitutes a contribution to local development—as long as it is effectively

em questões muito mais abrangentes que uma construção de espaços físicos. A inclusão social implica na construção de espaços psicológicos e culturais. A pobreza não se resolve apenas com ações visíveis, pois visível é a exteriorização da pobreza, a verdadeira pobreza não se vê. Sem combate às causas da pobreza, não há como se falar em promoção urbana”.

considered from the planning phase onward.

Another objective of the REURB policy is to create real estate units that are compatible with the urban territorial order and to establish real rights in favor of their occupants (Article 10, item II). Thus acknowledging the need to create or adjust the real estate units to the socio-spatial reality experienced by the beneficiary population, an approach that aligns with the UN Sustainable Development Goals discussed earlier in this article and also agrees with the UN General Comment No. 4, which, as Milovic (2004) noted, involves adjusting housing to reflect the cultural identity of the locality, promoting its development. This context calls for a change in governance, in planning, and in the execution of REURB policies, so as to “shape the perspective toward that which is not represented in the institutional archetypes” (Almeida; Almeida; Vieira, 2023, p. 112, free translation)¹⁷ and normative frameworks—for example, urban occupations characterized by resistance and alternatives to the formal model, which structure themselves around informality as a way of life and housing (Almeida; Almeida; Vieira, 2023).

Moreover, concerning this latter objective, the legislator chose to use the term “real rights” without directly mentioning ownership, even though the overall “spirit” of the law reflects a preference for exclusive property rights¹⁸. In this regard, it should be noted that absolute and exclusive ownership, as typically understood in Liberal Law, is not always the most suitable model to safeguard a locality’s land interests, particularly when it involves areas of real estate market interest that are occupied by vulnerable populations, as Fernandes (2022) cautions.

Item III of Article 10 lists as a priority the expansion of access to urbanized land by low-income populations (Brasil, 2017). This purpose naturally arises from the social vulnerability experienced by the occupants of these nuclei and, thus, from the greater need to guarantee and protect the right to housing, which makes this objective fully justifiable. In this context, there is a clear intent to reduce social inequalities via the democratization of access to land—also the main aim of development, as previously discussed by Oliveira (2002).

The provisions of Article 10 also set objectives for promoting social

17 In the original: “moldar o olhar para o que não se encontra representado nos arquétipos institucionais”.

18 This context is noted in several provisions, such as the definition of land legitimation (the main legal-urban instrument of regularization) in Article 23 and in the possibility/facilitation of automatic conversion of the legitimation of possession into property rights, provided that the requirements of Article 183 of the CRFB are followed (Brasil, 1988). This emphasis on individual property titles neglects diverse and alternative ownership models that aim at collectivity and community development, and reproduces legal stigmas that focus security of tenure on narrow and non-comprehensive aspects of human development.

integration and generating employment and income in the implementation of REURB. In view of this, generating employment and income is not an aspect that is readily deducible when considering REURB; however, it is a fundamental element to ensure that people can remain in the regularized areas. This is the argument presented by Fernandes (2010) when he asserts that it is insufficient to simply legalize property rights and promote urbanization. Moreover, the success of REURB policies depends also on programs that generate employment and income for excluded communities, as debated by Oliveira (2002) and Rister (2007). More than producing wealth, it is essential to ensure its balanced distribution. This aim is furthered by the possibility of regularizing mixed-use residential/commercial units (as provided in Article 13, Paragraph 4), which can aid guarantee family income, as well as by encouraging the creation of community-based cooperative associations that facilitate commercial transactions, reduce production costs, and socialize earnings in an equitable manner.

Additionally, items VI, VII, VIII, and IX of Article 10 address, respectively, the objectives of guaranteeing the social right to decent housing, ensuring the social function of property, promoting the full development of the city's social functions, and ensuring the well-being of its inhabitants, in addition to realizing the constitutional principle of efficient land occupation and use (Brasil, 2017). Precisely, these cited objectives aim to provide a more equitable distribution of the burdens and benefits of urban living (in line with what was previously stipulated in the City Statute). Moreover, they intend to manage the various interests and forces that shape the urban fabric to achieve more balanced and integrated development—via, for example, minimizing speculative processes that hinder low-income populations' access to and retention in housing. Essentially, it is about

Redistributing the fruits of development so as to achieve the desired social justice and implement an economic democracy, as the concentration of these fruits by a minority throughout history has given rise to a structural duality that has only reinforced the concentration of income. It is imperative to break this vicious circle, in which those who participate in the process do not perceive its fruits, making redistribution a key principle (Rister, 2007, p. 239, free translation)¹⁹.

In this regard, it is important to note that the normative predilection in

¹⁹ In the original: “Redistribuir os frutos do desenvolvimento, de modo que se consiga alcançar a almejada justiça social e implementar uma democracia econômica, uma vez que a detenção de tais frutos por uma minoria ao longo do processo histórico acabou por fazer surgir uma estrutural dual a que se denominou subdesenvolvimento, que só vem reforçando o processo de concentração de renda. É preciso romper tal círculo vicioso, em que aqueles que participam do processo não percebem os seus frutos, sendo um princípio-chave a redistribuição, portanto”.

Law No. 13,465/2017 (and in the Brazilian legal system as a whole) for full and exclusive private ownership can present a barrier to this redistribution, on the contrary, it does not democratize access but rather exacerbates the concentration of land and capital in already privileged sectors.

The second piece of evidence that qualifies REURB as a development policy is that it is a subjective²⁰ right of its potential beneficiaries. This means that any citizen, either individually or via collective actions, can seek its implementation from the Public Authority. In this way, residents of alternative/resistant urban nuclei may request the regularization of their area based on Law No. 13,465/2017, and in cases of municipal omission, may file an individual lawsuit. Similarly, community associations can file collective actions to ensure the regularization of a given area. In this context, Mukai (2008, p. 93, free translation)²¹ states that “the duty to regularize clearly arises from the right to housing established in the head of Article 6 of the constitutional text, which sets forth the social rights recognized by the Constitution”. These provisions, in conjunction with those set out in Articles 40, 182, and 183 (Brasil, 1988) of the CRFB, also constitute REURB as a subjective right of potential beneficiaries—provided that there is technical feasibility regarding legal, environmental, social, and urban planning elements. The application may be denied only in cases of unmitigable risk in the intervention area, where the occupation is recent and not consolidated or reversible, or where there is an issue of national security.

In other words, if the REURB policy is technically feasible, the Public Authority is obligated to plan and execute it in its entirety, and should it fail to do so, the Judiciary may adopt the necessary measures to ensure compliance with that obligation. It can be said that REURB is an instrument in favor of the citizen for the right to development as applied to the territory, as well as for recognizing the state’s duty to promote, as far as possible, the integrated development of the city via redistribution (its primary function) and a management approach based on values rather than merely economic objectives (Rister, 2007, p. 239).

Naturally, the outcome of this Public Authority obligation will only be effective if it considers the multiple dimensions of the policy and the needs of the intervention area and its occupants; otherwise, it will be merely a way of complying with a judicial mandate that contributes little (or very little) to real development.

20 In general terms, subjective right is the capacity conferred on a certain subject to legally demand the fulfillment of a given obligation in accordance with the laws in force.

21 In the original: “o dever de regularizar nasce claramente do direito à moradia previsto no caput do artigo 6.º do texto constitucional, que estabelece quais são os direitos sociais reconhecidos pela Constituição”.

In this vein, it must be acknowledged that the effectiveness of enforcing decisions that impose the duty on the Public Authority to plan and execute REURB policies faces challenges such as budgetary constraints and the argument of ‘reserve of the possible’ (Costa; Romeiro, 2022).

The third and final piece of evidence discussed here relates to the inclusion of the Urban Policy Chapter in Title VII of the Brazilian Federal Constitution of 1988, which deals with the Economic and Financial Order. Considering this, and from the perspective of normative-guiding principles and the constitutionally adopted ideology,

[...] the Constitution sheds its veil of neutrality and assumes a discourse of an instrumental-transformative nature, as the constitutional norm aims to establish a program to alter the social and economic structures of the State and society. In this sense, the legitimacy discourse moves beyond a purely formal legal aspect—as seen in the legitimacy of the legal system in Kelsen or Hart—to a material justification, as the Governing Constitution mandates that political action (including economic and social life) be bound by the socio-legal project enshrined in the Constitution” (Clark; Corrêa; Nascimento, 2013, p. 279, free translation)²².

This constitutional-normative configuration makes it clear that urban land must prioritize urban development combined with human development, whether via housing or cultivation. Hence, the institutes of special urban acquisitive prescription for both *pro morare* (residence) and *pro cultivare* (cultivation); the compulsory use, subdivision, and building schemes; the progressive urban property and land tax over time; punitive expropriation; the possibility for public properties to be subject to use concessions with a public purpose that reflects their social function²³; and, most importantly, the message to the market that land should not be treated as a mere object for real estate speculation—especially considering that, within the Economic Order, urban policy and its planning and implementation premises, as well as the social function of property, the city, and possession, must “serve as a hermeneutic filter in the process of justifying

22 In the original: “[...] a Constituição despe-se do véu de neutralidade e assume um discurso de natureza instrumental-transformadora, na medida em que a norma constitucional visa estabelecer um programa de alteração das estruturas sociais e econômicas para o Estado e para a sociedade. Nesse sentido, o discurso de fundamento de legitimidade passa de um aspecto puramente jurídico-formal – como é o caso da legitimidade do ordenamento jurídico em Kelsen ou Hart – para uma justificação de cunho material, uma vez que a Constituição Dirigente determina a vinculação da ação política (incluindo a vida econômica e social) ao projeto jurídico-social positivado na Constituição”.

23 It should not be forgotten that all the institutes listed, as well as others, can be used when implementing the REURB policy.

economic policies” (Clark; Corrêa; Nascimento, 2013, p. 279, free translation)²⁴.

This perception and constitutional configuration impose a mode of interpreting, planning, and implementing urban policies such as REURB. They were fundamental not only for the development of legal-urban instruments but also for the creation of dedicated administrative bodies, primarily at the federal level, that provided a more functional and integrative approach to the city via policies aimed at democratizing access to land and ensuring the right to full housing. Examples of these measures include the Ministry of Cities (which was dissolved in previous administrations and reactivated in the current Federal Government), the Council of Cities, the City Statute, the Metropolis Statute, and social interest housing programs such as *Minha Casa Minha Vida*. In this sense, Rister (2007, p. 240, free translation) argues that “as one could infer from its fundamental principles, which enshrine social and economic ends in legal ends, the Federal Constitution of 1988 is oriented toward the transformation of Brazilian reality”²⁵.

Following the discussion on how REURB qualifies as a development policy, it remains to reflect on the fundamental methodological premise required to effectively achieve its objectives and promote development: popular participation.

4 The methodological premise: popular participation

Initially, it is necessary to outline some of the elements that compose this much-debated concept—one that is rarely effectively reflected and yet is so important for the emancipation of individuals. After all, what is popular participation? According to Valla (1998), popular participation comprises the possibility for different actors and social forces to impact decision-making as well as the formulation, execution, inspection, and evaluation of public policies in various areas, including housing. This capacity to influence is particularly problematic considering the myopic perception that popular sectors lack the ability to make their own decisions and therefore must be guided by those who control technical (and technological) expertise, which is often combined with political and social power. In line with Morozov (2018), it is important to recognize that the monopoly represented by so-called big tech companies runs counter to fostering true popular participation, as it jeopardizes the very notion of

24 In the original: “funcionar como um filtro hermenêutico no processo de justificação das políticas econômicas”.

25 In the original: “conforme se poderia depreender de seus princípios fundamentais, que consagram fins sociais e econômicos em fins jurídicos, a Constituição Federal de 1988 seria voltada à transformação da realidade brasileira”.

freedom and democracy by outsourcing individuals' choices, needs, and desires to platforms and artificial intelligence (AI).

In this regard, the legal framework plays (or should play) a crucial role in ensuring that these individuals are effectively heard and considered. For this reason, the Brazilian legal system has adopted instruments aimed at making popular participation in decision-making on collective issues mandatory. Concerning urban matters specifically, the City Statute, in addition to establishing democratic management of cities as a principle of Urban Law, set forth in its Article 43 several mechanisms to ensure effective democratic governance. These include urban policy collegiate bodies at the national, state, and municipal levels; debates, public hearings, and consultations; conferences on topics of urban interest at various levels; and popular initiatives for projects, plans, programs, and projects related to urban development. However, although there is regulation, the challenge of implementation remains pressing. This is because “the vague and diffuse manner in which the proposal for popular participation appears in official texts, alongside its weak regulation, tends to render it, consequently, something centralized in the hands of technicians and governmental bureaucracy” (Valla, 1998, p. 9, free translation)²⁶, a situation which today is further exacerbated by the control exercised by the major companies that extract personal data and information (Morozov, 2018).

In this context, Law No. 13,465/2017, in its Article 10, item XII, aims to grant the interested parties participation in the various stages of the land regularization process (Brasil, 2017). This perspective is fundamental to ensuring that REURB is sustainable and effective over the long term. Only via the mobilization, integration, and participation of potential beneficiaries will it be possible to understand and account for the community's needs in the policy planning process. Moreover, it is via popular participation that practices, local knowledge, social and ecological arrangements (Gallegos, 2021), as well as instruments from local culture that may have contributed to the security of occupancy (even if outside the scope of classical property) will be identified. These processes enable the selection of the most appropriate legal-urban tool for that locality, considering its specific characteristics.

However, Law no. 13,465/2017 reiterates the logic of setting generic objectives without practical effectiveness, as it does not establish minimum parameters to

26 In the original: “o tom vago e difuso em que a proposta de participação popular aparece em textos oficiais, ao lado de sua frágil normatização, tende a torná-la, como consequência, algo centralizado nas mãos dos técnicos e na burocracia governamental”.

regulate and enforce this popular participation, nor does it provide for sanctions for failing to meet this essential premise. This is due to the innumerable possibilities and the absence of a closed formula that can encompass the complexity of popular participation and apply it to all realities. Therefore, the primary guideline must be the development of instruments and strategies based on the specificities of each locality, considering the needs, limitations, and potential of the beneficiaries, with the aim of ensuring valid participation. For example, in a particular alternative nucleus, the use of information and communication technologies (ICT) may be effective provided there are adequate schooling levels (understood here as literacy), internet access, and the availability of equipment that enable the exchange of information, such as smartphones and laptops. Conversely, in realities lacking these conditions, establishing channels for participation solely via digital means would be ineffectual, resulting in the absence of active participation and valid consensus. This is because poverty, in fact, is a barrier to democratizing digital services that could contribute to civic emancipation, as is the case with popular participation.

Notably, the use of ICTs in the context of public administration, and consequently, in the implementation of development policies such as REURB, must always be committed to meeting the needs of the population and based on the premises of efficiency, transparency, and security. This recognition implies that promoting popular participation should go beyond merely creating apps and online pages. It must be associated with broadening access to various rights (citizenship) and strengthening state institutions, always with the individual at the center of the discussion (Pagani; Correia, 2022).

For these reasons, effectively ensuring popular participation represents a challenge in the promotion of development policies, being a responsibility of the stakeholders involved in this area to recognize the right to development as a constitutional guideline and to give it practical effect, as pointed by Rister (2007). To that end, measures such as radicalizing democracy (Castells, 2018) and democratizing education in all aspects are essential, particularly to foster the recognition and public debate over contemporary forms of territorial overexploitation and the persistence of underdevelopment and social inequality, as highlighted by Gallegos (2021).

Conclusion

This article aimed to analyze how sustainable urban land regularization (REURB) can qualify as a development policy. In this regard, it was highlighted that the concept of “development”—understood primarily as the promotion of multisectoral policies that expand opportunities, guarantee rights to choice, and foster civic emancipation—enables a profound and equitable transformation of territory aimed at reducing social inequality and poverty. This is the main argument that distinguishes development from mere economic growth, despite the latter being part of the dynamics of the former.

In this perspective, as discussed, sustainable REURB shares objectives with the broader concept of development, as it focuses its efforts, among other aspects, on reducing social inequalities via the democratization of access to urban land and ensuring the right to decent housing. This convergence is precisely what qualifies REURB as a development policy. To support this assertion, three main pieces of evidence were presented: (i) the objectives of urban land regularization as provided in Article 10 of Law No. 13,465/2017; (ii) the recognition of REURB as an individual citizen’s subjective right; and (iii) the inclusion of urban policy in Title VII of the Federal Constitution (CRFB), which deals with the Economic and Financial Order.

Regarding the first point, it is necessary to recognize that despite the fundamental importance of the objectives of REURB outlined in Law No. 13,465/2017, the challenge of effectiveness persists. This is because the general law on REURB did not provide instruments or conditions for its sustainable and integrated implementation. In practice, the norm introduced flexibilities that enable REURB to be executed merely as a procedure for the delivery of property titles—similar to what occurred in the Peruvian case mentioned earlier—even in areas lacking adequate urban infrastructure and characterized by social vulnerability, which are typically the most impacted by urban and environmental imbalances (Acselrad, 2002). In short, the law permits a restrictive interpretation of sustainable or comprehensive urban land regularization, which can hinder its effectiveness as a development policy and certainly distort the objectives established in Article 10.

This conclusion leads to the second piece of evidence: the recognition of REURB as a subjective right of the citizen. The fact that urban land regularization is a right subject to judicial protection for its implementation (as recognized by case law) is a key element for its effectiveness as a development policy, as it

becomes a tool for citizens to have their right to development and its application to the territory. Moreover, it can minimize distorted interpretations regarding its objectives. Thus, it serves as a mechanism to reduce the possibility that those responsible for implementing REURB policies might plan and execute actions in disagreement with the objectives set forth in Article 10 of the law and with the principles of effective development. Additionally, the possibility of judicial monitoring ensures that public policies conform to these objectives.

Finally, the third piece of evidence highlights the inclusion of urban policy in Title VII of the CRFB, which deals with the Economic and Financial Order. This normative framework imposes a fundamental interpretative directive: urban land must prioritize urban development in conjunction with human development. Accordingly, practices such as land retention for future appreciation and real estate speculation, the maintenance of social inequalities, and urban policies limited to the mere construction of housing units and the regularization of properties limited only to the judicial sphere cannot continue to be tolerated, as they are flagrantly unconstitutional.

Thus, based on the above, it can be affirmed that sustainable urban land regularization—according to the premises presented throughout this article—qualifies as an urban and human development policy, provided that it is planned and implemented by considering the multiple characteristics of the intervention area and its occupants, and with valid popular participation as its methodological premise.

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