

Governance for Urban Sustainability and the Land Regularization

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Abstract: This research aims to study urban governance performed from a sustainable point-of-view that could enable it to encompass the city in every aspect and to ensure the safeguarding of individual and collective rights. Its specific aim is to emphasize how important is the land regularization in the urban context as an instrument to grant the effectiveness of the right to housing — in special to the part of the population that lives in precarious conditions and needs the public policies to support them — by converting tenure into a property. The research leads to the conclusion that comprehending sustainability — that is, perceiving the web of life, understanding the interconnection of the human being, environment and the nonliving components in a systemic relationship — is vital nowadays. The Inductive approach with bibliographical research was the method adopted to apprehend the justification for the topic and to elaborate this scientific article.

Key words: urban governance, land regularization, sustainability

1. Introduction

We live in a generation that lacks environmental awareness; child, teenager and adult all need to receive adequate ecological literacy to allow them to build a sustainable society. Therefore, a sustainable governance — understood as a collaborative interaction between political, social and economic actors taking sustainability into consideration while deliberating in favour of society — becomes indispensable to manage a society.

According to Bosselmann (2017, p. 70) [1]: “[...] Without effective participation of civil society and transparency of governance, sustainable development will remain an unfulfilled promise.”

However, despite the need for a “macro” vision and the effectiveness of such perspective in what concerns the global aspects of sustainability, we also have to examine the cities. It’s becoming a big challenge to

actualize the principle of sustainability in the face of the exaggerated economic development in local scenarios.

Addressing the concept of a sustainable city which encompasses a series of fundamental rights, we have highlighted the right to housing. We have identified considerable inequality between the urban centres and the so-called ghettos since in those places, people don't enjoy the fundamental rights and warranties with equality. The land title regularization then appears as an instrument to take those people from their situation outside the law and establish their right to housing.

The Aim of this research is the analysis of the category “sustainable governance” and the sustainability before the challenges it faces to establish the effectiveness of fundamental rights, such as the right to housing, through essential public policies.

Its General Aim is to analyze the governance that aims for urban sustainability within contexts of social and environmental vulnerability and informality and to investigate the role of land title regularization as an instrument of change in informal and marginalized

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cities, with a potential to promote a new socio-environmental paradigm, the sustainable city.

Its Specific Objectives are: characterizing the governance for urban sustainability in general lines, including structures and authorities connected with the defense of the sustainable city's environment and fundamental rights; analyzing the granting of formal access to land and housing as a fundamental precept for urban sustainability, through full land regularization; identifying the social actors and the occurrence of protection of fundamental rights within the urban governability model, highlighting the importance of the citizen participation; verifying the basic legal aspects of land regularization and the recognition of inherent rights as provided for the Constitutional and sub-constitutional norms; emphasizing the importance of land regulation in the urban context, as an instrument able to assure the effectiveness of the right to housing by converting the title of tenure into property, especially to the part of the population that lives in precarious conditions and needs access to the public policies and the judiciary system; and to stress that comprehending the sustainability is crucial both in global and local scenarios.

The Method (Approaches and Techniques) chosen to elaborate this Article considered the Scientific Research stages [2].

Considering this reference, the Deductive Approach was applied during the Research Stage; the Analytical Approach was used during the Data Analysis stage; and the Inductive Approach was used during the Reporting Stage, during the elaboration of this scientific article.

The Bibliographical Research Technique supported the Approaches.

2. Sustainable Urban Governance

When the Brazilian Constitution of 1988 addresses the theme of urbanism, it emphasizes the importance of the protection among the rights pertaining to the society related to environmental preservation, and its rules provide much more than conditions to live at

subsistence level. It is necessary to safeguard the fundamental principles and rights of the citizen inserted in the society. Sustainable governance then arises to manage the whole collectivity considering both the environment and the citizens.

Studying the urban governance, Rhodes characterizes governance as “a change in the meaning of government, referring to a new process of governing; or a changed condition of ordered rule; or the new method by which society is governed”. This new method brings the innovative idea of cooperating with the political agents and with the citizens in a way to provide equality, with rich and poor being supported indistinctly. The principle of public participation becomes fundamental to implement this thesis [3].

Cymbalista says those who are “inside” the city get full support from the public policies resulting of a good management: they can access libraries, universities, museums. Usually, such places are built in the established parts of the city. The ghettos, on the other hand, suffer due to separation caused by the greed of the market, which stimulates indifference through surveillance and security apparatuses, and fails to promote a governance performed jointly by the society, the government and the environment [4].

According to Stephens and Wikstrom, one reason for the outbreak of the concept of governance or urban governance is that the context in which the local government works is becoming ever wider and more complex. In the United States, the researchers are replacing the term “metropolitan government” with “metropolitan governance” when dealing with metropolitan problems, due to the more inclusive connotations of the older terminology [5].

One of the biggest challenges of governance is a quadripartite challenge, in which the organizer, the facilitator, the inspector and the regulator should interact and promote the interaction with the other social agents, to outline, democratically and with public participation, some relevant management plans and sectoral agreements in favor of the society and the

environment [6].

The concept of urban governance “relates to the new practices of coordinating activities through networks, partnerships and deliberative forums that have grown up on the ruins of the more centralized and hierarchical corporatist representation of the period up to the 1970s” [7]. It is important to mention the relevance of social media as governments’ partner in urban governance, as Frey advocates. The rise of social networks to counter the dominant social groups’ traditional selective media deserves to be highlighted. The initiative of local governments to create deliberative municipal councils, participatory budgets and the very Agenda 21 represent an attempt to break with the elite consensus, to create countervailing powers capable of promoting equality and democracy, and of granting to the whole population access to the financial and informational resources, to the public services and to the political decision-making arenas [8].

When coming across this relevant approach to the governance from a pro-sustainability point-of-view, it is natural to think of it as a new theme. However, in municipal administration, the sustainable politics and governance are not fresh news. The activities traditionally commissioned to the municipalities are, in fact, inseparable from their environmental assignments. Those assignments have belonged to the municipalities for a long time and are carried out with different degrees of quality. The culture of the city and the public policies that once looked only to the individual are being transformed. Within this new sustainable perspective, we break with old paradigms to promote good governance by inserting in the praxis regulations that integrate paradigms of defense of the environment, as it has been happening in the sanitation, solid waste and urban planning sectors [9].

Nowadays, when the governance is mentioned in association with the discussions about State reforms, it is sheltering considerations about the efficiency and the effectiveness of the governments’ management practices. When we talk about sustainable governance,

we're following the same line of thinking: we should analyze what these governments that arise and appear with the power to do something have done in favour of the environment. Taking this into account, the researchers and authorities that study this theme usually classify governance as “public” or “local”, to differentiate different applications in practice. For example, the concept of “public governance” appeared within the field of Public Administration and Political Science, and its definition points to a new model of public administration and development management, which links the different political, administrative and social actors. On the other hand, the term “local governance” is used when we refer to the local urban management of cities and metropolitan areas. The local governance strongly requires engagement by social and political actors prepared to deal with sustainable governance within the city, what is certainly a big challenge [10].

It is in this context we notice that governance differs from government. Governance refers to a relationship between civilians, the society and the State, between the people in the government and those governed by them, all debating future sustainable ideas. The citizens’ participation should be active, in this light. In short, [...] it is this last aspect — the relationship between civil society and State — that distinguishes the study of governance from other studies of government [11].

Klaus Bosselmann emphasizes the need of conciliating economic development with the protection of the environment. Sustainable governance should be thought with this focus [12]. According to the traditional concepts, the administration of a city was considered good when it created jobs and generated income. This, of course, is an excellent goal. But the sustainable development appears in the article 225 of the Brazilian Constitution of 1988, bringing upon the concern with the welfare of your neighbour: we ought to think about the environment, to increase the economy along with the sustainability, in this generation and in the next ones.

The concept of environmental governance also deserves mention. It is fundamentally different from the concept of governance for sustainability, and it's considered the poor man's economic governance, for it addresses only superficially and in a minimalist way the social factors in relation to the environment. We should go further. The governance for sustainability carries the concern for the whole environment. The human being should be contemplated by a good governance just as much as the rivers, seas, forests, cities and other phenomena. The traditional focus of the current governance is the human community; the new focus should be the community of life in its widest range. Including all forms of life in its concept, side by side with the human life, is a big advance.

We see the legislative power editing laws of public interest every day; with this new concept of governance, though, the "public" would be expanded. By using the principle of sustainability as a compass to guide projects of law and urban governance both in the local and regional levels, we would make great progress, from which the whole Earth would benefit, as we accept that not only the human being should benefit from such attitudes, but all the living community [12].

The Earth Charter also raises our awareness to the importance of the environment, aiming "to bring forth a sustainable global society founded on respect for nature, universal human rights, economic justice, and a culture of peace". The Charter contains a series of principles; however, the concern for the environment deserves highlight. The environment is not seen as a mere resource available for human consumption, but as a pillar, a basis for all the life. From its beginning, the Charter highlights the importance of the cooperation and the exercising of one's citizenship to provide a local sustainable governance, or a global one — which is the greatest goal. It proclaims in its preamble: "We are at once citizens of different nations and of one world in which the local and global are linked. Everyone shares responsibility for the present and future well-being of the human family and the larger

living world". The partnership between government, civil society, and business becomes essential to an effective governance, and, to build a better world, our obligations should be fulfilled, since the smallest actions concerning the environment to the big obligations that can only be fulfilled in the international level [12].

3. Land Regularization, Its Applicability and Challenges

The concept of land regularization is provided for in the article 46 of the Brazilian Federal Law N° 11.977 of 2009. It establishes that it's indispensable to pay attention to the urbanistic aspects when performing a land regularization, aspects such as the design of the roadways, the mandatory sizes of the plots of land, the allocation of precarious houses or houses at risk, everything that can be done to integrate the urban space under regularization to the city. Besides, it's vital to regularize the area formally and legally, to provide legal certainty to the area residents. And the whole process should consider both the environmental and the social aspects, involving all the population.

What happens is that "the informality of the hovels jeopardizes the dignity of people". They cannot enjoy their right to the city and, therefore, they aren't effectively citizens. To live irregularly is the same as to sail in permanent insecurity. Besides, the land regularization will reverberate in the rational management of urban lands, since the settlements, once regularized, appear in the municipal records [13].

We can see two immediate purposes for the land regularization. The first is adopting measures to regularize the settlement itself. Those measures are a set of actions which aim to implement the public facilities provided for in the Brazilian Federal Law N° 6.766 of 1979 as a way of granting elements essential to the dignity of the human person. And [...] as a second aspect, the regularization of the enterprise aims to entitle its occupants [13].

From this point-of-view, Nalini [14] highlights that housing is essential to the dignity of the human person; in this logic, the housing can be considered the fundamental social right of the citizen. “Red” fundamental social right, to be exact, as it demands from the State a concrete action so that its holders could enjoy it. It’s easy to understand why it is so. A shelter is indispensable to warrant most of all the other rights pertaining to the rational being.

Land regularization is a legitimate instrument to enable the dignity of people who were compelled to occupy or buy land in irregular condition. This occurs often with people of low purchasing power, who, due to their precarious economic situation, submit to living in irregular houses in a bad state of repair. The omission of the State in creating and administrating public policies appears as the main cause of this phenomenon. The land regularization isn’t carried out only in favour of the irregular occupant. The legal incompatibility of mere tenure forbids investments in public policies, including sanitation, urban infrastructure and the betterment of life quality. Besides, it’s a fundamental *erga omnes* right, and it can be argued against the State that omitted to adopt the needed measures and let the situation grow into a debacle [14].

It’s important to highlight that the fundamental right to housing is acknowledged in countless international treaties and instruments [12], however, the failure to bring it to effectiveness remains remarkable. The City Statute of Brazil is an example of a legal text that should be strictly followed. The City Statute “introduces the legal concept of guarantee of the right to sustainable cities. It’s a fundamental right whose holders are every person. The right to the urbanistic order is also stated there” [14]. It should be said this right must be equalitarian and *sine qua non*, granted to everyone in a fair and isonomic way. Not only the great businessmen and the holders of the most significant part of the wealth should enjoy the urbanistic order; the goal is to bring the equality of rights to effectiveness.

Still, it’s of high importance to regard the social function of property within this context. The social function of property is not only a legal principle but also a legal rule since it was incorporated in the statute elaborated to establish the city planning guidelines. The Master Plan, another important instrument to promote urbanistic order, should specify the content of the social function of property, paying attention to the peculiarities of each city, and thus materializing this legal principle and rule [13].

In the same work organized by Nalini, Salles (2014, p. 86) points out, concerning the social function of property:

With the status of a constitutional principle, and as the vector of all the ordinary law (City Statute of Brazil, Brazilian Federal Law Nº 10.257 of 2001, and the Master Plan), the social function should be comprehended within the implement of the several legal instruments. Among these instruments, the land regularization assumes special relevance due to the disorganization and ownership informality that reigns in the large urban agglomerations nowadays. It aims to promote the urbanization by providing the region or area with the public services that make up the basic city infrastructure, and with the needed titles of property, through the acknowledgement or declaration of the right to property of the area residents.

The local government, the Public Prosecutor’s office, the Public Defender’s office or the municipal service of legal assistance, the Land registration office, the Judiciary and the residents of the areas affected by the land regularization should all take part in its process. The local government should regulate the uses of the urban land. It’s the main actor of the land regularization process, as it’s responsible for approving the projects of collective interest, including those that discuss land regularization, even if other institutions elaborated these projects. In such cases, the local government can close partnerships with the federal government and other interested institutions.

The Public Prosecutors should act to defend the social right to property, and for the sake of the diffuse right to urbanistic order, considering they belong to a permanent institution dedicated to the defense of the legal order, enabled to inspect the fulfillment of the law in every legal suit, aiming to reassure the democracy and the consolidation of the social rights and the individual non-disposable rights.

The Public Defenders or the attorneys appointed by the municipal service of legal assistance are responsible for assisting the occupants of the irregular areas, providing for the citizens of minor acquisitive power a quality service that will reflect upon the materialization of these citizens' social right. And, as the property of the real estate in Brazil is formally constituted by the registration of the title of the property in the respective office, the official entitled to realize this registration also takes part in the process of land regularization. If there is no title, there are no legal conditions to constitute the property. In the absence of the title, there's only tenure (informal property) of the real estate. Considering this circumstance, the participation of the official responsible for land registration in the process of land regularization is of major importance, as he can intervene to prevent the uselessness of the titles that result from the process, due to the unfulfilment of legal requirements.

Thus, this official will have a double function within the land regularization process: he shall be the guarantor of the legal certainty and the professional with a knowledge of Law that will assist the citizen, showing how the citizen should act to bring their right to effectiveness, and he will also make available as much legal assistance as possible to identify the area to be regularized, its dimensions, neighbors and all the information required by law. It is the registration that enables the people contemplated by the social interest land regularization to convert their tenure into a property.

The Judiciary, in its turn, will take care of eventual adverse possession suits, sometimes, and respond to

the doubts manifested in a petition by the official responsible for the land registration, according to the procedure provided in the Brazilian Law. The participation of the area residents and the municipal house of representatives deserve to be highlighted. It's impossible to act without effective participation of the portion of the society that needs the fulfilment of their rights, and without the participation of the entire society. The society should be acknowledged with these rights that are sometimes forgotten. A previous contact between the population and the institutions that will act during the land regularization is also vital to the success of this process.

Finally, the house of representatives shall deliberate and approve the laws and projects pertaining the materialization of such rights (ZEIS, the Master Plan, concession laws, etc.), and other public policies relevant to the exercise of these fundamental rights. For example, in the State of Santa Catarina (Brazil), there is the Legal Home Program (Programa Lar Legal), thought to make the concession of titles of property easier and guarantee the land regularization. Such projects are of major relevance to the population.

There are many types of land regularization provided for in the legal order, such as the social interest land regularization, the specific interest land regularization, the nameless land regularization, the social interest land regularization in public real estate authorized by the Brazilian Federal Law N° 11.481 of 2007. Every one of these types has peculiarities and they're all very important to the consolidation of the individual rights and guarantees, especially the right to housing. They won't be detailed in this paper, but it's indispensable to know them and use them as needed.

In short, Prestes quoting Nalini [14] shows that it's indispensable to face the land regularization in all its three dimensions:

[...] urbanistic, with the necessary investments to improve living conditions; legal, with the recognition of tenure, using the instruments that make it possible to acquire property in private areas and with the

concession of the right to housing in public areas; and the registration dimension, writing down the rights acquired in the real estate main document, to attribute *erga omnes* efficacy for all purposes of civil life.

The acknowledgement of the fundamental rights goes beyond the urban agglomerations; the whole society should enjoy the public policies, and that is why such instruments appear as fundamental tools to consolidate democracy. Looking at the human being as a holder of rights encompasses a series of factors that must be considered in their peculiarities. The right to decent and legitimate housing is a great step towards the realization of human dignity.

4. Urban Sustainability and the Sustainable Development

Outlining a concept for sustainability is not completely viable if our aim isn't to find a closed concept according to this or that author and stick to it because the sustainability evolves every day in the risk society we live in and unfolds in many questions.

However, to think of sustainability we should look beyond the political borders, as the environmental damages affect not only the local scenarios but even cross the limits of the sovereign countries. This characteristic gives reason to concerning, as it's of little use for a single country to adopt extremely sustainable measures while others break international treaties and agreements, and keep degrading and polluting the planet Earth.

According to BOFF (2013, p. 17) [15]:

Sustainability must be thought from a global perspective, encompassing the whole planet, and with equity, not making what's good for some at the cost of damage to others. Costs and benefits must be proportionately and jointly distributed. It's not possible to ensure sustainability to one portion of the planet without elevating the other parts to the same level or to a close level of sustainability, as much as possible.

It's a valid point, as the environment, the human being and even the non-human being aren't separated

into different categories in relation to the world. We're all interconnected by the unbreakable bonds of life. This interconnection is the so-called Web of Life [16], and can be understood as well through the theory of Santiago [17]. Capra (2006, p. 135) [18], still from this point-of-view, highlights that:

Comprehending nature from a systemic perspective means to identify a set of general criteria through which we can make a clear distinction between living and non-living systems. Throughout the whole history of biology, many criteria were suggested, but they all turned out to be flawed in one way or another. However, recent formulations of self-organizing models and the mathematics of complexity indicate that it is now possible to identify these criteria. The key idea of my synthesis is to express these criteria in the three conceptual dimensions: standard, structure and process.

Understanding we are united in this ecosystem is to comprehend that when we talk about protection of the environment and sustainable development, we shouldn't look at it through anthropocentric eyes, searching only the benefit of men; the entire living community should enjoy it, not just one part, to the detriment of the other.

Thus, treating the earth as a resource chest is a big mistake. Century after century, the earth has received the treatment of a mere *res extensa* (a broad thing). We have devastated about 83% of the planet, due to our values that benefit only the mankind. The remaining 17%, luckily, are inaccessible to men. It's a great advance to break with this anthropocentric vision extracted even from the bible. The man was not made to rule and destroy all the surrounding environment, but to coexist with it, and although he needs natural resources, he should extract them in an aware and sustainable way [15].

Bobbio (2005, p. 8) [19] affirms that the fundamental right to environment is informed by third generation rights: "[...] The most important of these is being demanded by the ecological movements: the

right to live in an unpolluted environment”. However, some people criticize this position. Eduardo Gudynas, for example, comprehends this question within a conception of citizenship called by him “Ecological Meta-Citizenships” [20]. The group rights that appear in the modern times cannot exclude the non-human community, by adhering to the anthropocentric concept of sustainability. Increasing civil awareness and bringing to effect the decisions of the international courts — including those that discuss the principle of sustainability — is vital to avoid adopting the anthropocentric concept.

The importance of the duty of solidarity in relation to the environment was acknowledged in a case debriefed by the Minister Celso de Mello [21], when he appointed in the judgement performed by the Supreme Federal Court of Brazil that the environment is a right of all, therefore, we can also say everyone must preserve and protect the environment, not only the government and the political actors, but the whole society.

The Spanish author Luño (2013, pp. 163-169) understands solidarity as a value that guides us like a compass in what refers to equality. Solidarity is essential to the constitutionalism, but its dimensions in the cases connected with the environment surpass the national borders, generating a right to the collectivity that also implies a distribution with equality of the rights to health, life, and to legitimate and decent housing.

However, understanding the category “sustainable development” is a matter of great complexity. To Bosselmann, “the need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development” [1]. The target is not to merely reduce the economic development in favour of the sustainability, because, in a boomerang effect, we would increase the masses of unemployed people and boost poverty and misery. There’s always a risk. We should strive for a balance between the economic and

the sustainable; even if it looks like an utopia, there’s a chance.

Beck asserts that, even if it seems impossible to solve a problem, we should take action to face it. It’s not enough to keep a critical distance from this civilization crisis that generates risks by adopting a mocking, cynical or indifferent attitude, just because the doom seems unavoidable. We might be a minority doing something, but we should promote good ideas, establish parameters, propose solutions, even if they seem utopian — the Earth is our home.

4.1 Sustainability in the Cities and the Challenges of Bringing the Fundamental Rights into Effect

To comprehend how a sustainable city could be, it’s fundamental to analyze first the City Statute of Brazil, provided in the Brazilian Federal Law N° 10.257, of July 10th, 2001 [22], which regulates the articles 182 and 183 of the Brazilian Constitution of 1988 and establishes:

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:

I — to guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transportation and public services, employment and leisure, for current and future generations;

Under this light, it’s easy to notice that, although the sustainability is a global matter that crosses borders and transcends horizons, leading people to talk even of a transnational sustainability, it is also a local question worthy of emphasis and effectiveness.

Romero (2007, p. 51) [23] understand the sustainable city as:

[...] the human settlement constituted by a society aware of its role as an agent that transforms spaces and whose relationship is not based on the nature-object logic but on a synergistic action between ecological prudence, energetic efficiency and socio-spatial equity.

In the meanwhile, sustainable development should be thought of especially in the cities that impact the most the economies of the states in which they are located. Such cities are spread throughout the country. About this affirmation, Leite & Awad [24] emphasize that “The sustainable development is the biggest challenge of the 21st century. The agenda of the city is, on an urban planet, of major importance for all countries”. When we realize that a) two-thirds of the world's energy consumption comes from cities, b) 75% of the waste is generated in the cities, and c) there is a dramatic process of water depletion and excessive consumption of drinking water in course, we can see the truth in their arguments. Everything starts in the city, and thus, increasing the local awareness and stimulating sustainable actions and public policies that bring the principle of sustainability to effectiveness in the city is of vital importance to the development of the country and, consequentially, of the entire world.

5. Final Considerations

During the research that led to the writing of this article, it was possible to take part in study groups, presentations and conferences on Sustainability, Urban Law and Public Policies and publish texts on these topics. Therefore, upon the conclusion of the research, it can be stated that the knowledge of the researchers about its theme increased.

From the perspective of the General Aim of the research, we noticed that the ghettos are marginalized and rejected in the urban context. The introduction of Public Policies is restrained by the lack of governmental interest, and this makes even the right to housing unfeasible, increasing the difficulty to implement the land regularization. However, as the concept of sustainability encompasses the whole collectivity, to get a sustainable city, the fundamental rights of every citizen should be acknowledged, and these citizens may also exercise their citizenship and take an active part in the democratic process of conquering their own rights.

When the specific objectives of the research were taken into consideration, the land regularization was highlighted as an instrument able to bring effectiveness to the right to housing. Its types and derivations were studied along with the ways to make use of this important legal mechanism that allows converting titles of tenure into a property, especially for those who lack assistance from the State to do so. After this analysis, the inequality existent inside the urban scenery became clear. Sustainability was highlighted as a paradigm that should gain effectiveness also in the cities through the comprehension that the earth is not an inexhaustible resource chest, but instead should be taken care of, as it is our home.

In short, this research was of great value for the improvement of the researchers' knowledge about the topics covered here. It served as well to stimulate the discussion of this topic still unknown for many but that has already resulted in programs created to provide opportunities to the community members of regularizing the situation of their properties, such as the Legal Home Program. Such initiatives make clear the purpose of the Urban Governance, properly carried out with a partnership between state and private organs, to consolidate Public Policies and make the effectiveness of the Fundamental Rights leave the field of theory and materialize in the practical life. This is fundamental.

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