

KEY QUESTIONS ON THE LEGAL NOTION OF THE RIGHT TO THE CITY**QUESTÕES CHAVE SOBRE A NOÇÃO JURÍDICA DO DIREITO À CIDADE**

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Abstract

The study proposes to analyze the legal concept of the right to the city that needs to be better developed and consolidated, in the field of law, especially urban law. This analysis considers the human rights approach at the international level, the constitutional norms on urban policy and the treatment of the Cities Statute. For the development of this concept, an approach is taken on the terminological meaning of sustainable cities, and cities (especially in their territorial dimension) that integrate the definition of the right to the city in the Cities Statute. The question of ownership of the right to the city is considered as essential for understanding the legal notion of this right; as well as about the legal good that should be protected, based on the understanding of the city as a common good whose components for that qualification are: the city: free of any form of discrimination; with inclusive citizenship, with greater political participation; which fulfills its social functions; with quality public spaces; with gender equality; with cultural diversity, with inclusive economies, such as a common settlement system and ecosystem.

Keywords: Legal Concept of the Right to the City - Statute of the City - Sustainable Cities - City as a Common Good

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1. Introduction

Some issues need to be deepened for a consolidation of the legal notion of the right to the city in the Brazilian urban legal order, having as a premise that this right is the main source for the construction of urban rights in our country. The meaning of the right to the city continues to be disputed in several political, philosophical and economic fields in the areas of public management, territorial planning and urbanism, especially in local public arenas. Likewise, on the international level, it remains a critical and controversial issue to recognize that in the United Nations system, the right to the city is an existing human right based on international norms for the protection of these rights. In the law field it is no different even in urban law that the production of knowledge over the right to the city holds many open and inconclusive issues about the meaning of the legal notion of this right.

Without intending to address all the issues necessary to consolidate a legal notion of the right to the city, the intention is to cover some of what we consider essential issues that can also provide the direction for the development of this legal notion.

Initially, we seek to identify which are the sources that should be considered for understanding the right to the city as a human right and a fundamental right. Then, the elements, which should be considered for the establishment of this legal notion, are analyzed, based on the evolution of the understanding of this right, having as a time frame the period of the elaboration of the Brazilian Constitution of 1988 and that of the institution of the City Statute.

With the definition of the right to the city provided for in the City Statute, we begin to analyze what should be the understanding of the terminology sustainable cities and what is the meaning of the term cities under this right, taking into account the territorial matter (urban and rural), the typology of cities, size and population density and institutional organization (political and administrative) of cities. One of the issues is not to bend to the understanding of cities defined by article 3rd of the Decree-Law 311 of 1938 as the base of Municipalities, excluding the rural area from the territorial extension of urban policy and the right to the city.

As a primary issue, the ownership of the right to the city is the object of analysis on who are the people who should be recognized as holders of the right to the city, considering the following aspects: generational, nationality, diversity of inhabitants who live, work and enjoy cities and period of residence or permanence in the city. It points out the reasons for the holders of this right to be inhabitants of present and future generations of cities, whether permanent or temporary.

The last issue addressed is the one concerning what should be the legal and juridical protection of the right to the city. The elements for the understanding that the city must be

considered as the legal good that must be protected by the right to the city are highlighted when this city has the qualification of the city as a common good.

Finally, the components that characterize this qualification are introduced. In several countries as well as in Brazil we already have cities declared as historical or cultural heritage that result in legal and juridical protection to preserve the memory and identity of these cities.

These issues are not terminal but should be considered as a starting point so that we can have a more consistent and solid legal notion of the right to the city, so that this right can be consolidated as primary institute for having fairer, more democratic and sustainable cities.

2. The Foundation of the Right to the City in Human Rights

To get to the outline of the legal notion of the right to the city such as the concept, elements, its territorial extension, ownership, protected legal good and responsibilities, we must assume that this right integrates human rights with the characteristics of the category of collective and diffuse rights.

Even with international and national systems for the protection of human rights that have been well developed since the middle of the last century, what human rights are and its implications are still under construction.

Despite the prevailing thinking that human rights are now protected and generate responsibilities and obligations to international organizations, national States and Governments in their various spheres and society in general, it remains a great challenge to draw the definitions of human rights from generic expressions.

BOBBIO (1996, p. 67) when dealing with the difficulties of the substantiation of human rights considers that most definitions are tautological: Human rights are those that belong to man as a man. *“Ou nos dizem algo apenas sobre o estatuto desejado ou proposto para esses direitos e não sobre o seu conteúdo; Direitos do homem são aqueles que pertencem ou deveriam pertencer a todos os homens, ou dos quais nenhum homem pode ser despojado”* Finally, when some reference is added to the content, one cannot fail to introduce evaluative terms: *“Direitos do homem são aqueles cujo reconhecimento é condição necessária para o aperfeiçoamento da pessoa humana ou para o desenvolvimento da civilização, etc., etc.”*³

³ *“Or they tell us something only about the desired or proposed status of those rights and not about their content; Rights of man are those which belong or should belong to all men, or from which no man can be dispossessed”* Finally, when some reference is added to the content, one cannot fail to introduce evaluative terms: *“Human rights are those whose recognition is a necessary condition for the improvement of the human*

We can consider that the right to the city as a human right stems from the condition of the human person in cities, as a key issue for the development of civilization with values of solidarity, social justice and peace.

The United Nations estimates that over the next 30 years, two-thirds of the world's population will live in urban areas. 90% of urban growth takes place in regions with less developed countries, particularly in the regions of South and East Asia and the Sub-Saharan Africa. About 1 billion people live in slums and informal settlements find themselves in conditions of urban poverty and inequality. Around 2.3 billion people still do not have access to basic sanitation services in 2015, and 1.2 billion people do not have access to safe drinking water.

The issue of waste is also dramatic, as only 35% of cities in developing countries have sewage water treated. With regard to housing, 1.6 billion people live in inadequate housing, not in tenure security, making them vulnerable to evictions and illegal removals.⁴

It is estimated that by 2030 around 706 cities will have over 1 million inhabitants. As global crises are increasingly complex and multidimensional, they are progressively accentuated as urban crises considering the flows of migration, displacement, extreme weather events, armed conflicts and land tenure.

Evictions and illegal land invasions are displacing an increasing number of refugees – to the cities. They are approximately 60% of the 22 million refugees residing in urban areas, waiting for better livelihood opportunities, housing and shelter, security and access to services

Urban poverty characterized by low income, low levels of access to justice, housing, water, sanitation, education and health services, as well as hunger and malnutrition, remains an elusive situation. Nearly half of the world's children live in urban areas, many of them residing in informal settlements and around 300 million live in slums.

Regarding climate change and global warming, we need to take a closer look at cities, which are at the same time significant contributors to and victims of climate change. Megacities play an important role in energy consumption and production of pollution. The Intergovernmental Panel on Climate Change (IPCC) in its 2018 special report, identified urbanization as one of the four megatrends that need to be tackled in order to meet the global warming targets of limiting the

person or for the development of civilization, etc., etc. (Free Translation) Norberto Bobbio Sobre os Fundamentos dos Direitos do Homem – Era dos Direitos, Editora Campus Rio de Janeiro 1996, Page 67.

⁴ Executive Director'S Policy Statement , First Session of the UM-Habitat Assembly (27-31 May 2019 – Nairobi, Kenya) UN System-Wide Strategy on Sustainable Urban Development prepared by the High-Level Committee on Programmes under the leadership of UN-Habitat <https://unhabitat.org/wp-content/uploads/2019/05/UN-System-Wide-Strategy-on-Sustainable-Urban-Development-1.pdf>

average global temperature rise to 1.5 degrees. The urban population is increasingly vulnerable to the consequences of extreme events due to climate change.

From this scenario, we can draw several indications referring to human rights comprised in international and domestic norms that are being impacted or violated, such as the right to equality, an adequate standard of living, education, health, housing, work and to the environment. It is also possible to highlight the need for a better precision and categorization of what should be considered as human rights of the people living in cities and human settlements.

As CARVALHO (2014, p. 27) points out: *não existe um rol predefinido de direitos humanos: Não há um rol predeterminado desse conjunto mínimo de direitos essenciais a uma vida digna. As necessidades humanas variam e, de acordo com o contexto histórico de uma época, novas demandas sociais são traduzidas juridicamente e inseridas nas listas dos direitos humanos.*⁵

Understood as a human right, the right to the city will precisely qualify the meaning of the rights of people who live in cities, by configuring a vision of the city that must be fair, democratic and sustainable

ALMEIDA (1996, p.20) when addressing the general concept of human rights considers that: *ao lado e talvez acima dos Direitos Humanos existe a categoria dos Direitos Cósmicos, direitos ainda mais universais dos quais o ser humano é o centro mais limitado este pela vedação de um apartheid, vedação essa que se concretiza concretamente nos dias de hoje pelos movimentos ecológicos, em defesa de espécies ameaçadas de extinção, pela proclamação dos direitos dos animais, contra as experiências e armas nucleares contra o lixo atômico oceânico e tantos outros similares.*⁶

To MARÉS (2006, p.24)⁷: *a partir das constituições que permitiram ou compungiram o Estado a interferir no domínio econômico e na propriedade privada, foram surgindo normas infraconstitucionais que protegiam a natureza ou o meio ambiente, criando direitos a todos os*

⁵*There is no pre-defined list of human rights: There is no predetermined list of this minimum set of essential rights for a decent life. Human needs vary and according to the historical context of a time, new social demands are legally translated and inserted in the lists of human rights. (Free translation) André de Carvalho Ramos, Curso de Direitos Humanos, Editora Saraiva, São Paulo, 2014, page 27*

⁶*Alongside and perhaps above Human Rights there is the category of Cosmic Rights, even more universal rights of which the human being is the most limited center, this by banning an apartheid, that is concretely materialized nowadays by ecological movements, in defense of endangered species, by the proclamation of the rights of animals, against experiments and nuclear weapons, against oceanic atomic waste and many other. (Free translation) Fernando Barcelos de Almeida, Teoria Geral dos Direitos Humanos, Sergio Antonio Fabris Editor, Porto Alegre, 1996, page 20*

⁷*From the Constitutions that allowed or compelled the State to interfere in the economic domain and over the private property, infra-constitutional norms that protected nature or the environment, creating rights for all citizens – diffuse collective rights – that overlaps individual rights. This new collective right can be translated as the right of everyone to have protected the environment in certain circumstances and rules, imposing limits on the exercise of individual property rights. They are rights over other people's things. Carlos Frederico Marés de Souza Filho, Bens Culturais e sua Proteção Jurídica, Juruá Editora, Curitiba, 2006, page 24*

cidadãos – direitos coletivos difusos – sobre pondo-os aos direitos individuais. Este novo direito coletivo pode ser traduzido como o direito de todos de terem protegido o ambiente em certas circunstâncias e regras, impondo limites ao exercício do direito individual de propriedade. São direitos sobre coisas alheias.

The right to the city can be included in this category as it aims to provide protection to a city with certain qualifications as a legal good to be protected such as life and the environment. In order to outline this right, it is necessary to consider some aspects such as its category in the field of human rights, whether it is individual, collective or diffuse, who the holders of this right are, how this right is exercised by people and its territorial dimension, which legal good should be protected by this right, and what are the responsibilities and obligations.

The first attempt to configure the right to the city that could meet the aforementioned issues was the conception presented in the process of drafting the Brazilian Constitution of 1988 through a popular initiative during the National Constituent Assembly, as will be seen in the following topic.

3. The concept of the Right to the City in the 1988 Constitution of Brazil

In period of the redemocratization of Brazil – in the 1980s – there was a great social mobilization for the restitution of rights in the civil and political fields and an expansion of social, economic, cultural and environmental rights in the process of the National Constituent Assembly, so that the Brazilian State would embrace the promotion of human rights among its priorities.

There was a need for the Constitution not only to expand the set of human rights recognized as fundamental rights, but also to constitute obligations and instruments to ensure effectiveness for these rights.

COMPARATO (2005, p. 57-58) emphasizes the importance of recognizing human rights as fundamental rights in the internal order of countries: *a efetividade desses direitos no meio social ou seja quanto o seu caráter de obrigatoriedade importante a contribuição da doutrina germânica entre direitos humanos e direitos fundamentais (Grundrechte). Estes últimos são os direitos humanos reconhecido como tais pelas autoridades às quais se atribui o poder político de editar normas, tanto no interior dos Estados quanto no plano internacional: são os direitos humanos positivados nas Constituições, nas leis, nos tratados internacionais. Segundo outra terminologia fala-se em direitos fundamentais típicos e atípicos, sendo estes os direitos humanos ainda não declarados em textos*

*normativos. Sem dúvida, o reconhecimento oficial de direitos humanos, pela autoridade política competente, dá mais segurança às relações sociais*⁸

The conception of the right to the city presented in the National Constituent Assembly did not contemplate this terminology and neither the perspective of a human right in the field of collective and diffuse interests, but rather a predominant traditional view of individual rights, so-called urban rights.

Urban rights were conceived in the proposal for a popular amendment for urban reform presented in the Constituent Assembly, which contained a set of principles and instruments aimed at institutionalizing the rights of people living in the city, and strengthening the powers of the municipal government, especially for the promotion of local public policies.

Article 1 of the popular amendment on urban reform provided:

Todo cidadão tem direito a uma condição de vida urbana digna e justiça social obrigando se o Estado a assegurar :
I acesso a moradia, transporte público, saneamento, energia elétrica, iluminação pública, comunicações, saúde, educação, lazer e segurança, assim como proteção ao patrimônio ambiental e cultural
*II – gestão democrática da cidade*⁹

The institution of urban rights aimed at assuring every citizen the right to decent urban living conditions and social justice was based on human rights, especially the right to an adequate standard of living. It seeks to sort the meaning of an adequate standard of urban living and establish what the obligations and actions of the State should be to achieve this condition of life, such as: housing, public transportation, sanitation, electricity, street lighting, communication, health, education, leisure and security, and in the field of diffuse interests, the protection of the environmental and cultural heritage and the democratic management of cities.¹⁰

⁸ *The effectiveness of these rights in the social environment, in other words, their mandatory character. The Germanic doctrine plays a key role regarding human rights and fundamental rights (Grundrechte). The latter are human rights recognized as such by the authorities who are given the political power to issue norms, both within States and at the international level: they are human rights enshrined in the Constitutions, in laws, in international treaties. According to another terminology there are typical and atypical fundamental rights, the latter related to human rights not yet declared in normative texts. Undoubtedly, the official recognition of human rights by the competent political authority, gives more security to social relations. (Free translation) Fabio Konder Comparato, A Afirmação Histórica dos Direitos Humanos, Editora Saraiva 4ª edição, São Paulo, 2005, pages 57-58.*

⁹ *Every citizen has the right to a dignified urban living condition and social justice, obliging the State to ensure: I - access to housing, public transport, sanitation, electricity, public lighting, communications, health, education, leisure and security, as well as protection of environmental and cultural heritage II - democratic management of the city (Free translation)*

¹⁰ The popular proposal to amend the Constitution project, an amendment on urban reform, signed by 131,000 voters, was presented by the Articulação Nacional do Solo Urbano (National Articulation of Urban Soil – ANSUR), Movimento de Defesa do Favelado (Movement for the Defense of the Slum Dweller – MDF),

Another proposition that is worth emphasizing was the one that established that the right to worthy conditions of urban living, conditions the exercise of property rights in addition to the social interest, pursuant to Article 2 of the Popular Amendment on Urban Reform:

Article 2 O direito a condições de vida urbana digna condiciona o exercício do direito de propriedade ao interesse social no uso dos imóveis urbanos e o subordina ao princípio do estado de necessidade¹¹

In this conception of urban rights there was a clear connection with the fulfillment of the social function of property, claiming the right to conditions of decent urban living, conditioning the exercise of the right to property to the social interest in the use of urban properties and subordinating this exercise to the principle of the state of need. The state of need presupposes a conflict between holders of lawful and legitimate interests, in which one may perish lawfully so that the other survives, which can be applied precisely in cases of housing and property conflicts prevailing housing due to the state of need of people who do not have a decent place to live.

SAULE (1997, p. 30-31) addressed this theme in his work *Novas Perspectivas do Direito Urbanístico* (New perspectives on urban law) when dealing with the meaning of the popular amendment of urban reform for the introduction of the urban policy chapter in the 1988 Brazilian Constitution. The understanding of the right to the city was systematized as follows: “*Em síntese, o Direito à Cidade compreendido no conjunto das proposta defendidas através da emenda popular de reforma urbana visava:*¹²

assegurar e ampliar os direitos fundamentais das pessoas que vivem na cidade;

Federação Nacional dos Arquitetos (National Federation of Architects – FNA), Federação Nacional dos Engenheiros (National Federation of Engineers – FNE) and the Coordenação Nacional dos Mutuários e Instituto dos Arquitetos do Brasil (National Coordination of Borrowers and Institute of Architects of Brazil – IAB). Source: Anais da Constituinte, Federal Senate, 1988.

¹¹ *The right to a state of decent urban living conditions the exercise of the right to property to the social interest in the use of urban properties and subordinates it to the principle of the state of need. (Free translation)*

¹² *"In summary, the Right to the City, included in the set of proposals defended through the popular amendment for urban reform, aimed to: Ensure and expand the fundamental rights of people living in the city; Establish the regime of urban property and the right to build, conditioning the exercise of the right to property to its social function based on the guarantee of urban rights, being also subordinated to the principle of the social state of necessity; To make the right to the city effective through the adoption of effective instruments of urban policy, such as the expropriation for the purposes of Urban Reform, in order to ensure that urban property fulfills its social function; Ensure that the city fulfills its social functions, such as promoting the fair distribution of urban goods and services and preserving the environment; Give the Municipality the competence and the duty to apply urban policy instruments in accordance with its local reality, using the most appropriate instrument for each specific situation; Establish the instruments of popular participation in order to ensure the Democratic Management of the City as a way to exercise citizenship. (Free translation) Nelson Saule Júnior, Novas Perspectivas do Direito Urbanístico Brasileiro. Ordenamento Constitucional da Política Urbana. Aplicação e Eficácia do Plano Diretor, Sergio Antonio Fabris Editor, Porto Alegre, 1997, pages 30-31.*

estabelecer o regime da propriedade urbana e do direito de construir, condicionando o exercício do direito de propriedade a função social com fundamento na garantia dos direitos urbanos, ficando ainda subordinado ao princípio do estado social de necessidade; efetivar o direito à cidade mediante a adoção de instrumentos eficazes de política urbana como a desapropriação para fins de Reforma Urbana, visando assegurar que a propriedade urbana atenda a sua função social; assegurar que a cidade atenda a suas funções sociais como a de promover a justa distribuição dos bens e serviços urbanos e de preservar o meio ambiente; conferir ao Município a competência e o dever de aplicar de acordo com a realidade local, os instrumentos de política urbana, devendo para cada situação concreta utilizar o instrumento mais adequado; estabelecer os instrumentos de participação popular visando assegurar a Gestão Democrática da Cidade como forma de exercer a cidadania”.

This conception of urban rights was a reference in the constituent processes that took place in several States and Municipalities during the period of elaboration of State Constitutions, Organic Laws and master plans from the 1990s onwards and contributed to the vision that is now built on the legal notion of the right to the city adopted in the City Statute which will be the next topic of approach.¹³

3. The Meaning of Sustainable Cities in the City Statute

The period of the elaboration of the City Statute in the National Congress lasted more than 10 years (1989-2001) due to the resistance of conservative political groups to make viable the implementation of urban policy aimed at the full development of the social functions of property and the city.

During this period, there were relevant discussions and formulations about the connections between human rights, environment and sustainability starting with the United Nations Global Conferences on Environment and Development (Rio de Janeiro, 1992), and on Human Settlements -

¹³The study *A Cidade faz a sua Constituição* (The City Makes Its Constitution) found an incorporation of the concept of urban rights of the popular amendment of urban reform in several Municipal Organic Laws in Brazilian capitals: “In São Paulo, Rio De Janeiro, Porto Alegre, Vitória and Recife a understanding of the social functions of cities took place from the perspective of rights. Cities begin to fulfill their social function when social justice and the conditions for dignified urban living are ensured by urban rights. These include not only the access of all citizens to basic equipment and services, such as housing, public transportation, sanitation, electricity, street lighting, communication, culture, education, health, leisure and security, etc., as well as access to a democratic management of cities and the preservation of environmental and cultural heritage.... Two important observations are worth mentioning. In most of the laws analyzed, what is emerging in this new urban ethic is not only the registration of rights and basic equipment and services but, above all, the acute perception of the fundamental importance of cultural values and the preservation of the environment for dignifying living conditions in cities”. (Free translation) Ana Amélia e Silva e Nelson Saule Júnior, “A Cidade faz a sua Constituição”, Publicação Pólis nº 10, São Paulo, 1993, pages 23-24.

Habitat II (Istanbul,1996), and the National Conference of Cities (Brasília - Chamber of Deputies, 1999).

The experiences of participatory municipal administrations in several Brazilian municipalities by governments of democratic and popular characters were fundamental for the transition from the vision of urban rights to that of the right to the city, which was adopted in the City Statute.

In this evolution, this right is qualified as the right to sustainable cities, bringing the dimension of sustainability to our cities, which must be achieved through an urban policy that guarantees its exercise. Thus, it is comprehended by the urban land, housing, environmental sanitation, urban infrastructure, transport and public services, work and leisure. The elements of dignified urban life conditions is what predominates in this vision of the right to the city, which were transported from the vision of urban rights.

Accordingly, the terminology sustainable city comes from the principle of sustainable development, which is one of the principles of the environment.

The principle of sustainable development is the one that underlies meeting the needs of the present, without compromising the ability of future generations to meet theirs as well. There is much criticism about the effectiveness of this principle as it can keep the door open to the predominance of the economic interest in the form of use and exploitation of environmental resources, which impact the lives of people and the planet, such as the issue of use and access to drinking water and the increasing pollution of the oceans because of plastic and other non-degradable materials.

The terminology of sustainable cities was influenced by several factors and actors, in special the international commitments assumed by Brazil related to the environment. The country hosted a Global Conference on the Environment – Rio 92 – in the city of Rio de Janeiro, which resulted in the **Rio Declaration on Environment and Development and the Agenda 21 of 1992, as well as in the Convention on Climate Change.**

The Declaration on Environment and Development emphasizes environmental and economic responsibility, places human beings at the center of sustainable development concerns and defines the rights and obligations of the State.

The Agenda 21, in its turn, indicated the strategies for achieving sustainable development. Accordingly, it identified actors and partners, methodologies for reaching consensus and the institutional mechanisms necessary for its implementation and monitoring.

The democratic management of cities provided for in item II of Article 2 of the City Statute is also one of the components of the right to sustainable cities through an integrated interpretation of the urban policy guidelines defined in this legislation.

In order not to leave the meaning of sustainable cities empty, as they are a right, we have to look for sources in the field of human rights to fill this void.

Because the right to sustainable cities is included in the urban development policy guidelines in the City Statute, one of the sources must be the Declaration on the Right to Development, which in its article 1 recognizes this right as one in which every human person and all peoples are entitled to participate in economic, social, cultural and political development, to contribute to it and to enjoy it. Under Article 2, the human person is considered the central subject of development and should be an active participant and beneficiary of the right to development.

As for the States, it is assigned the duty to formulate appropriate national development policies, aimed at improving the wellbeing of the entire population and all individuals, based on their active, free and meaningful participation in the development and also to an equitable distribution of the resulting benefits.¹⁴

It is clear in this right the emphasis on the effective participation of people for an equitable distribution of benefits that we can consider to be incorporated, to give content to the right to sustainable cities in urban development policy guidelines, in particular: the democratic management of cities; the offer of urban and community facilities, transport and public services suited to the interests of the population and local characteristics; adoption of patterns of production and consumption of goods and services and urban expansion compatible with the limits of environmental, social and economic sustainability of the Municipality and the territory in its area of influence; and the fair distribution of benefits and burdens resulting from the urbanization process. (Article 2 II, V, VII, IX).

Despite the difficulties of having a consolidated understanding of the term sustainable cities in the City Statute, the guidelines for urban development policies allow us to define parameters to

¹⁴The United Nations Assembly Resolution 41/128 adopted the Declaration on the Right to Development. The United Nations Conference on Human Settlements Habitat II held in the city of Istanbul in 1996 approved the Istanbul Declaration on Human Settlements, which had as one of the strategic themes the sustainability of cities and human settlements. Item 10. In order to sustain our global environment and improve the quality of living in our human settlements, we commit ourselves to sustainable patterns of production, consumption, transportation and settlements development; prevention; respect for the carrying capacity of ecosystems; and the preservation of opportunities for future generations. In this connection, we shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the Earth's ecosystem. In view of different contributions to global environmental degradation, we reaffirm the principle that countries have common but differentiated responsibilities. We also recognize that we must take these actions in a manner consistent with the precautionary principle approach, which shall be widely applied according to the capabilities of countries. We shall also promote healthy living environments, especially through the provision of adequate quantities of safe water and effective management of waste. <https://unhabitat.org/wp-content/uploads/2014/07/The-Habitat-Agenda-Istanbul-Declaration-on-Human-Settlements-20061.pdf>

have a concept of sustainable cities through the dimensions of extended sustainability and progressive sustainability.

When dealing with these dimensions, CANEPA (2005, p. 137-138) explains these two dimensions of sustainability:

“a sustentabilidade ampliada trabalha a sinergia entre as dimensões ambiental, social e econômica do desenvolvimento. Realiza em outras palavras, o encontro político necessário entre a Agenda estritamente ambiental e a Agenda social, ao enunciar a indissociabilidade entre os fatores sociais e os ambientais e a necessidade de que a degradação do meio ambiente seja enfrentada juntamente com o problema da pobreza.....A noção da sustentabilidade progressiva trabalha a sustentabilidade como um processo pragmático de desenvolvimento sustentável. É dizer, reduzir a degradação do meio ambiente, mas também concomitantemente, a pobreza e as desigualdades. O termo progressividade significa não adiar as decisões e as ações que importam para a sustentabilidade, trabalhando paulatinamente para romper os mecanismos e instrumentos que fazem com que a economia e a sociedade se desenvolvam em bases insustentáveis.”¹⁵

An example of how these sustainability dimensions are indicators for promoting the right to sustainable cities is urban mobility with measures to reduce the use of cars in the road system, to expand the offer of public transport, to shift energy sources from the motorized transportation for clean energy such as electricity, and the encouragement of non-motorized transportation such as bicycles, roller skates, etc.

The last source worth mentioning for the terminology entitled to sustainable cities is the Treaty on Urbanization, entitled "Towards Just Democratic and Sustainable Cities, Towns and Villages", prepared at the Civil Society Conference on Environment and Development, during the United Nations Conference on Environment and Development, in the city of Rio de Janeiro (ECO-92). This Treaty was built with contributions from the National Forum on Urban Reform and the international organization Habitat International Coalition.

This treaty states that it is necessary to create a new model of sustainable development that aims at the well-being of humanity in balance with nature, centrally based on the values of democracy and social justice today and for future generations, without any discrimination based on gender, beliefs, economical or social status or political preferences. It also considers that the active

¹⁵ “Extended sustainability works on the synergy between the environmental, social and economic dimensions of development. In other words, it accomplishes the necessary political meeting between the strictly environmental Agenda and the Social Agenda, by enunciating the inseparability between social and environmental factors and the need for environmental degradation to be faced together with the problem of poverty..The notion of progressive sustainability deals with sustainability as a pragmatic process of sustainable development. That is to say, to reduce the degradation of the environment, but also, concomitantly, poverty and inequalities. The term progressivity means not postponing the decisions and actions that matter for sustainability, working gradually to break the mechanisms and instruments that make the economy and society to develop on unsustainable bases.” (Free Translation) Carla Canepa Cidades Sustentáveis - A Cidade e o seu Estatuto (Coordinator Maria Garcia), 1st edition, Editora Juarez de Oliveira, São Paulo, 2005, pages 137,138.

participation of civil society is essential, especially that of social movements, popular entities and associations, as new actors and decisive agents in the construction of a new development model. Additionally, it conditions the processes of production, appropriation and consumption of urban space, in its public and private dimension, to the potential of the physical environment, infrastructure, ecological balance, preservation of historical and cultural heritage, and cultural practices, and the use of natural and material resources, within a social and sustainability perspective.¹⁶

These sources were remarkable in the adoption of the term sustainable cities in the treatment of the right to the city in the City Statute. To understand the terminology of sustainable cities we must:

- understand as dimensions of sustainable cities the dimensions of extended and progressive sustainability based on the guidelines of urban policy defined in the City Statute as explained above;
- consider as components of sustainable cities the components included in Article 2, item I of the City Statute, which deals with this right: urban land, housing, environmental sanitation, urban infrastructure, transport and public services, work and leisure;
- consider that the Municipality, due to its constitutional attributions on urban development policies, may establish through master plans or by specific municipal law elements and components of the term right to sustainable cities in municipalities that do not have a regulation on the content;
- consider the goals and indicators of the Agenda 2030, in particular the Sustainable Development Goal 11, which deals with Sustainable Cities, to assess whether the right to sustainable cities is being implemented;

Another fundamental issue is to understand the terminology of the city, its territorial, political and institutional dimension, based on the Federal Constitution and the City Statute, which will be addressed in the next topic.

4. On the legal notion of the term 'City' of the Right to the City

The understanding of the term city referring to the legal notion of the right to the city must start from the constitutional treatment of urban policy. First, due to the adoption of the constitutional principle of the city's social functions and second, due to the determination of the

¹⁶ Visit: <https://docplayer.com.br/23279786-Tratados-sobre-a-questao-urbana-por-cidades-vilas-e-povoados-justos-democraticos-e-sustentaveis-preambulo.html>

obligation to institute a master plan in cities with more than 20,000 inhabitants as basic instruments of urban development policy with the character of law as it needs to be approved by the City Council.

Two issues were intensely discussed, one whether the cities mentioned in the constitutional rule corresponded to the federative entity of the Municipality and the second whether the territorial extension that the master plan should deal with was only the urban perimeter of the Municipality or extended to the rural area of the municipal territory.

SILVA's position (2018, p.18) is for the city to be considered as the urban nucleus that is the seat of the municipal government in its classic Brazilian urban law:

*O Centro Urbano no Brasil, só adquire a categoria de cidade quando o seu território se transforma em Município. Cidade no Brasil, é um núcleo urbano qualificado por um conjunto de sistemas político-administrativo, econômico, não agrícola, familiar e simbólico como sede de governo municipal, qualquer que seja a sua população. A característica marcante da cidade, no Brasil, consiste no fato de ser um núcleo urbano, sede do governo municipal.*¹⁷

This understanding is contemplated in Decree-Law 311 of 1938 that provides for the territorial division of the country. Through its article 2, it establishes which municipalities will comprise one or more districts, forming a continuous area. When necessary, the districts will be subdivided into zones with ordinal ordering, which may also have special names. According to article 3, the seat of the municipality has the category of city and gives it its name.

The Complementary Law No. 1, of November 9, 1967, which establishes the criteria for the creation of Municipalities, considers as an urban center one with a number of houses greater than 200 (two hundred), and has as a population criterion the need for a estimated population greater than 10,000 inhabitants or not less than 5 thousandths of the existing in the State;

This treatment in the 1938 Decree-Law brings a restricted conception of the city that would be limiting the Municipality's role in its territorial planning only to the urban perimeter of the urban nucleus that is the seat of the municipality.

This issue began to be faced by the Municipalities in the elaboration of their organic laws, which have territorial planning as a mandatory matter in order to plan the municipal area in its entirety.

As stated above, several municipalities incorporated the concept of urban rights in their Municipal Charters and interpreted the constitutional text based on their attributions, which should extend territorial planning to the rural area.

¹⁷ "The Urban Center in Brazil only acquires the category of city when its territory becomes a Municipality. City in Brazil is an urban center qualified by a set of political-administrative, economic, non-agricultural, family and symbolic systems as the seat of a municipal government, whatever its population. The striking feature of the city in Brazil is the fact that it is an urban nucleus, the seat of the municipal government." (Free translation) José Afonso da Silva, *Direito Urbanístico Brasileiro*, Malheiros Editores, 8th Edition, São Paulo, 2018, page 18.

The Municipality of São Paulo, e.g., when dealing with the master plan in its Municipal Organic Law (1990) establishes that it must cover the entire territory of the Municipality, defining guidelines for land use and circulation systems, subject to the potential of the physical environment and the social, cultural and environmental interests (§1st Article 150).

With this treatment, the current master plan of the Municipality of São Paulo instituted a Sustainable Rural Economic Development Hub, with the objective of promoting economic activities and generating jobs in the rural area, in a compatible manner considering the conservation of the areas that provide environmental services in the Macro-area of Urban Containment and Sustainable Use.

To implement the *Polo de Desenvolvimento Rural Sustentável* (Sustainable Rural Development Hub), actions were established, including: strengthening Technical Assistance and Rural Extension through the Ecological Agriculture Houses; support organic certification of family farmers, especially the participatory certification; establish an agreement with the *Instituto Nacional da Colonização e Reforma Agrária* (INCRA - National Institute of Colonization and Agrarian Reform) to promote the re-registration and land tenure regularization of properties; implement policies and programs in the Municipality aimed at family farming and agroecology, implement programs to improve rural vicinal roads and basic sanitation; enable the construction of a trading and distribution warehouse for agricultural products; ensure the introduction of organic food produced in the city of São Paulo in school meals.¹⁸

With the City Statute, the extension of the territory for territorial planning is understood in its entirety, therefore urban and rural. Item II of article 40 provides that the master plan must encompass the territory of the Municipality as a whole.

Accordingly, the term 'city' in the legal and institutional aspect, as to its territorial extension in the constitutional treatment of urban policy, comprises both urban and rural areas. The term 'city' for institutional purposes corresponds to the figure of the federative entity of the Municipality thus prevailing over the treatment established in Decree-Law 311 of 1938.

For the legal notion of the right to the city, this understanding is relevant because it clarifies that the territorial extension of the term 'cities' of the right to the city is the entire territory of the Municipality in which the inhabitants who live in that territory can exercise their right.

This understanding avoids misconceptions that the right to the city is a right restricted only to inhabitants living in urban areas, excluding inhabitants living in rural areas from exercising this

¹⁸ See Articles 189 and 190 Law No. 16.050, of July 31, 2014 - <https://leismunicipais.com.br/plano-diretor-sao-paulo-sp>

right. It also avoids another misconception that the rural population would have to live in urban areas to have access to the components of the right to the city discussed above, such as housing, environmental sanitation, transport, public services, work and leisure.

This understanding aims to give greater effectiveness to the protection and implementation of the right to the city, as it delimits a specific territory in which this right can materialize for the inhabitants who live in this physical space. This is one of the relevant characteristics of this right by which its enforcement is linked to the city that has the urban and rural areas of the Municipality as its territorial coverage.

This legal notion of cities should be understood as a common good, configuring the legal good protected by the right to the city, as it will be further discussed in this article.

Some of the urban development policy guidelines established in Article 2 of the City Statute are crucial to avoid this mistaken view of the limit of the territorial scope of the right to the city, such as: offer of urban and community facilities, transport and public services appropriate to the interests, population needs and local characteristics, integration and complementarity between urban and rural activities, protection, preservation and restoration of the natural and built environment, as well as cultural and historical heritage; urbanization and land regularization of areas occupied by low-income population.

Regarding land regularization, Law No. 13.465/2017, which deals with this matter, began to admit, through article 9, the urban regularization of properties located in rural areas provided that the real estate unit has an area less than the minimum fraction of the land subdivision provided for in the Law No. 5.868 of December 12, 1972.

For this regularization to be carried out, a specific territorial ordering established in the master plan as a special zoning will be necessary, which means a municipal regulation on land regularization in rural areas.¹⁹

¹⁹ Article 11 of Law No. 13.465/2017 has established the following categories of urban centers:

I - urban nucleus: human settlement, with urban use and characteristics, consisting of real estate units with an area less than the minimum fraction of the subdivision provided for in Law No. 5868, of December 12, 1972, regardless of land ownership, even if located in an area qualified or registered as rural;

II – informal urban nucleus: that clandestine, irregular or in which it was not possible to carry out, in any way, the giving of title for its occupants, even if the legislation in force at the time of its implementation or regularization is complied with;

III - consolidated informal urban nucleus: that which is difficult to reverse, considering the time of occupation, the nature of the buildings, the location of traffic routes and the presence of public facilities, among other circumstances to be evaluated by the Municipality; (Free translation)

There is a responsibility not only of the Municipality but also of the other federal entities (Union and States) to promote the right to the city for the inhabitants of rural areas, considering that the guidelines of the urban development policy are commands for all federative entities as general rules of urban law.

In summary, the legal notion of the terminology "City" of the right to the city in terms of territorial, political and institutional extension is that this terminology is the Municipality comprising the entirety of its territory (urban and rural area) based on the guidelines of the urban development policy and the treatment of the master plan in the Federal Constitution and in the City Statute.

5. Holders of the Right to the City

One element that must be considered in the legal notion of the right to the city is what people are entitled to in order to have the protection and exercise of that right. A positive aspect of the evolution of human rights is the understanding of the abstract human person for a qualification of that person due to their condition regarding generations, gender, age, race, ethnicity, civil criminal and political capacity, etc.

BOBBIO (1996, p. 68) when dealing with the multiplication of rights, considers that this occurred in three ways:

- a) porque aumentou a quantidade de bens considerados merecedores de tutela; b) porque foi estendida a titularidade de alguns direitos típicos a sujeitos diversos do homem; c) porque o próprio homem não é mais considerado como ente genérico de homem em abstrato mas é visto na especificidade ou na concreticidade de suas diversas maneiras de ser em sociedade, como criança, velho, doente²⁰.

It is necessary to specify who are the people who hold the right to the city. A benchmark that we should consider is the World Charter on the Right to the City, prepared by a group of international organizations during the World Social Forums held in the city of Porto Alegre in the 2000s²¹.

²⁰ "a) Because the amount of goods considered deserving of protection increased; b) because the ownership of some typical rights was extended to subjects other than men; c) because man himself is no longer considered as a generic entity of man in the abstract, but is seen in the specificity or concreteness of his various ways of being in society, as a child, elder, sick person, etc" (Free Translation) Norberto Bobbio. *Direitos do Homem e Sociedade*, Editora Campus Rio de Janeiro 1996, Page 68

²¹ This Charter is an important source for understanding the Right to the City at the international level, having been an important reference for the incorporation of this right in the New Urban Agenda approved at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) held in the city of Quito in 2016. Article 1 of this charter contains the following understanding of the right to the City:
1. Everyone has a right to the city without discrimination of gender, age, race, ethnicity, political and religious orientation and preserving cultural memory and identity, in accordance with the principles and norms established herein.

In this Charter, item 6 of article 1, Citizens are considered to be all people who live permanently or temporarily in cities, adopting the understanding of inhabitants as holders of the right to the city.

This understanding was adopted by the New Urban Agenda²², which was approved at the United Nations Conference on Housing and Sustainable Urban Development (Habitat III) that was held in the city of Quito in 2016. Its paragraph 11, which deals with the vision of the right to the city, reads as follows: *We share a vision of cities for all, referring to the equal use and enjoyment of cities and human settlements, seeking to promote inclusivity and ensure **that all inhabitants, of present and future generations**, without discrimination of any kind, are able to inhabit and produce just, safe, healthy, accessible, affordable, resilient and sustainable cities and human settlements to foster prosperity and quality of life for all. We note the efforts of some national and local governments to enshrine this vision, referred to as “right to the city”, in their legislation, political declarations and charters.*

In the 1988 Federal Constitution, article 182 defined as the objective of this policy the full development of the social functions of the city and the well-being of its inhabitants, and the City Statute, when dealing with the right to sustainable cities, considers that this right must be guaranteed for the present and future generations.

The Municipality, based on its constitutional competences on urban policy, can perfectly establish that the inhabitants who live in its territory are the holders of this right.

The Municipality of São Paulo, for example, in its Organic Law, article 148, when dealing with urban policy establishes as one of the objectives of this policy to **guarantee the well-being of its inhabitants**, aiming to ensure the socially fair and ecologically balanced use of its territory. Its master plan, through paragraph 1 of Article 1, advocates that this policy has as its objective the full development of the social functions of the city and the socially fair and ecologically balanced and

2. The Right to the City is defined as the equitable enjoyment of the cities while respecting the principles of sustainability, democracy and social justice, and is a collective right of all city inhabitants especially the vulnerable and disfavored on whom is further conferred legality for such actions and organization as their culture and custom suggests as a means of achieving the complete enjoyment of the right to an adequate standard of living. The Right to the City is interdependent to all recognized international human rights; and its conception is based on an integral view, which includes civil, political, economic, social, cultural and environmental rights enshrined in the international Human Rights Treaties. It includes also the right to liberty of association and organization; the respect for minorities and racial, ethnic, sexual and cultural plurality; respect for immigrants; and the guarantee of preservation of historical and cultural heritages.

3. The city is a rich and diversified cultural space that belongs to all the inhabitants.

²² See New Urban Agenda: <https://uploads.habitat3.org/hb3/NUA-English.pdf>

diversified use of its territory, **in order to ensure the well-being and quality of life for its inhabitants**²³

With an integrated reading of the constitutional text on urban policy and the legal concept of the right to the city in the City Statute, we can affirm that the people who hold this right are the inhabitants of cities of present and future generations.

An important matter is which people can be considered city dwellers. One component for this qualification concerns the temporality of people's residence in cities. The simplest tendency is to understand that they are people who reside permanently in the city considering the period of residence, own housing, work and economic activity, family relationships, social life, etc.

But this understanding does not include the various realities of people who live temporarily in the city, such as students, workers, service providers, those that seek medical treatment etc. In addition, those that have not acquired the status of permanent residency because of their nationality, as is the case, e.g., of several of our cities in which immigrants or refugees from Latin and African countries live.

These different situations corroborates for the understanding that the inhabitants of cities in relation to the period of residency are people who live permanently, temporarily or transiently in its territory.

The conditions of informality or even illegality of people living in the city as an obstruction – or not – to being considered inhabitants entitled to the right to the city, is another important matter. In addition to immigrants or refugees, other people may also be in this condition such as informal workers similar to street vendors and waste pickers, residents of informal precarious settlements such as slums, tenements, popular neighborhoods, homeless people, etc.

The New Urban Agenda in the part that deals with the call to action (Paragraph 20) makes it clear that these people should have special treatment because they suffer discrimination: *We recognize the need to give particular attention to addressing multiple forms of discrimination faced by, inter alia, women and girls, children and youth, persons with disabilities, people living with HIV/AIDS, older persons, indigenous peoples and **local communities, slum and informal-settlement dwellers, homeless people, workers, smallholder farmers and fishers, refugees, returnees, internally displaced persons and migrants, regardless of their migration status.***

Based on the fundamental right that no person can suffer any type of discrimination and on the principle of the social functions of the city, people who find themselves in conditions of

²³ See Master Plan for the City of São Paulo: Law No. 16.050, of July 31, 2014.. https://gestaourbana.prefeitura.sp.gov.br/arquivos/PDE-Suplemento DOC/PDE_SUPLEMENTO-DOC.pdf

marginality and vulnerability cannot be excluded from the status of citizenship and therefore cannot be excluded from the status of inhabitants in terms of ownership of the right to the city.

Regarding the ownership of this right for its effectiveness, we must understand that it is for the people living in present and future generations who live permanently or temporarily or transiently in cities, contemplating people who are living in informality and vulnerability.

6. The City as a Common Good - Legal Good protected by the Right to the City

The last issue that needs to be addressed about the legal notion of the right to the city is about what legal good should be protected by this right.

This approach helps to combat some assertions that are revealed in public debates that do not contribute to determining which legal good should be the object of legal protection through this right.

One assertion is that the right to the city is basically an umbrella that covers all the individual rights of people in cities such as education, health, housing, transport, work and the other is that this right is a mere juxtaposition of existing human rights. These statements result in an extremely limited and emptied view of the purpose and scope of this right and create misinterpretations. If the right to the city is only a sum of existing rights, it means that it is not necessary because it does not imply any different consequences that the existing individual rights entail in the responsibilities and obligations and also in the legal, juridical and administrative scopes.

A distinctive aspect that we have already highlighted is that the right to the city is a right that materializes in a given territory, which in the case of Brazil is the territory of a municipality encompassing urban and rural areas. Through the implementation of this right, we will be fighting not only the social exclusion that individual rights can face, but also the spatial exclusion, enabling the expansion of public spaces with socio-environmental quality. It allows for a better understanding of the very principle of the city's social functions, which must be applied to combat socio-spatial discrimination and promote sustainable and inclusive rural-urban development.

Given that the modeling of the right to the city in the City Statute holds the terminology sustainable cities and given that the titleholders are the inhabitants of present and future generations, this right fits in the field of collective and diffuse rights, such as the right to the

environment; the right to development; and also to cultural rights in which the right to the cultural heritage of humanity is included²⁴.

This modeling breaks off with the traditional way of seeking the protection of the rights of city dwellers in legal systems that carry the concept of protection of an individual legal good, in order to provide protection for the rights of the human person in the city.

The legal good that must be protected by the right to the city must be extracted once more from the City Statute, which introduced the urban order as a property of the city's inhabitants through article 54, which amended article 4 of federal law no. 7.347 of 1985 that disciplines the public civil action.

This change allows an injunction action to be filed to avoid damages to the environment, to the consumer and to goods and rights of artistic, aesthetic, historical, touristic and landscape value, as well as to urban planning. Article 1 of this law also incorporated the urban order as the object of actions for liability for moral and property damage at the same level of the environmental protection and also to goods and rights of artistic, aesthetic, historical, touristic and landscape value.

The protection of the urban order must be associated with the protection of the right to the city, and it is necessary to describe which city should be the object of protection as a legal good. Recognizing that a city can be considered a legal good that needs to be protected is nothing new in the field of law, as we already have precedents in relation to cities that have this protection because they are considered to be of historical and cultural value such as cities that are declared as part of the historical or cultural heritage of humanity.

MARÉS (2006, p. 24)²⁵ examines this matter:

o bem cultural – histórico ou artístico – faz parte de uma nova categoria de bens, junto com os demais ambientais, que não se coloca em oposição aos conceitos de público e privado, nem altera a dicotomia, porque ao bem material que suporta a referência cultural ou importância ambiental – este sempre público ou privado – se

²⁴The Rio Declaration on Environment and Development (1992) establishes that “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations” (Principle 3). The United Nations Convention on the Law of the Sea (1982); and the Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction (1970), define the seabed and the ocean floor, along with its resources, as “common heritage of humanity”.

²⁵ *The cultural good – historical or artistic – is part of a new category of goods, together with other environmental goods, which does not oppose the concepts of public and private, nor does it change the dichotomy, because the material good that supports the cultural reference or the environmental importance – always public or private – adds a new, immaterial good, whose owner is not the same subject of the material good, but the entire community. This new good that arises from the sum of the two, that is, material and immaterial, not yet baptized by Law, has been called a public interest good, and has a diffuse ownership and perhaps another name fits it better: a socio-environmental good, because it always needs to have a humanely referenced environmental quality.* (Free translation) Carlos Frederico Marés de Souza Filho op. cit. page 24

agrega um novo bem , imaterial , cujo titular não é o mesmo sujeito do bem material , mas toda a comunidade. Este novo bem que surge da soma dos dois , isto é, do material e do imaterial , ainda não batizado pelo Direito, vem sendo chamado de bem de interesse público, e tem uma titularidade difusa, e talvez outro nome lhe caiba melhor , como bem socio ambiental , porque sempre tem que ter qualidade ambiental humanamente referenciada.

At the international level, The World Heritage Convention (1972)²⁶ imposes on States Parties the obligation to ensure the identification, protection, conservation, presentation and transmission of cultural and natural heritage to future generations. Under this convention, many cities, ancient cities and other urban districts were declared “World Heritage Sites” such as Potosí, Bolivia in 2014, the Old City of Jerusalem and its Walls in 1982 and the Maritime Mercantile City of Liverpool, United Kingdom of Great Britain in 2012.

The Convention for the Safeguarding of Intangible Cultural Heritage (Paris, October 17, 2003) also enables the protection of cities, neighborhoods that need to be preserved due to its history, its cultural and artistic expressions and also its memory and identity that were built by the inhabitants of these urban territories.²⁷

Article 2 of this Convention understands by intangible cultural heritage:

“the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity”.

Internally, we already have the tradition of using the listing instrument for the protection of neighborhoods, historic centers, cities considered as historic heritage based on Decree Law No. 25 of November 30, 1937 which, through. Article 1, of Decree Law 25 reads as follows: “*Constitue o patrimônio histórico e artístico nacional o conjunto dos bens móveis e imóveis existentes no país e cuja conservação seja de interesse público, quer por sua vinculação a fatos memoráveis da história do Brasil, quer por seu excepcional valor arqueológico ou etnográfico, bibliográfico ou artístico*”²⁸.

²⁶The Convention considers as cultural heritage: Monuments. – Monumental architectural, sculpture or painting works, elements of archaeological structures, inscriptions, caves and groups of elements with exceptional universal value from the point of view of history, art or science; The sets. – Groups of isolated or combined buildings which, by virtue of their architecture, unity or integration into the landscape, have exceptional universal value from the point of view of history, art or science; Places of interest. – Works of man, or combined works of man and nature, and areas, including places of archaeological interest, with exceptional universal value from a historical, aesthetic, ethnological or anthropological point of view. <http://whc.unesco.org/archive/convention-en.pdf>

²⁷Convention for the Safeguarding of Intangible Cultural Heritage <http://portal.iphan.gov.br/uploads/ckfinder/arquivos/ConvencaoSalvaguada.pdf>

²⁸ The national historical and artistic heritage is the set of movable and immovable goods existing in the country

This protection can also happen when cities are considered cultural goods of an immaterial nature based on Decree No. 3551 of August 4, 2000 which institutes the listing of these cultural goods.

Article 1, paragraph 1, in its item IV of Decree No. 3551 of August 4, 2000 enables listings of places where markets, fairs, sanctuaries, squares and **other spaces where collective cultural practices are concentrated and reproduced**. The aforementioned spaces open up the possibility for cities to be considered immaterial cultural goods with legal protection due to the need to preserve cultural memory and identity. Another existing opening of this decree is the provision of paragraph 3 of article 1: other registration books may be opened for the listing of cultural goods of an immaterial nature that constitute Brazilian cultural heritage and do not fit into the books defined in this article.

With the understanding that we have legal and juridical support to constitute the city as the legal good that should be the object of protection through the exercise of the right to the city, the main challenge is to develop a profile of which city should be the object of this protection to avoid the perpetuation of situations of social and territorial inequality and the exploitation of the city as if it were a mere commodity.

The description that we defend for having democratic, fair, sustainable cities is that of the city as a common good that is clearly opposed to the city as a commodity. A source of inspiration for us to develop this description is the vision of the right to the city built by the Global Platform for the Right to the City.

This Platform is an international network that brings together networks and international organizations from civil society and local governments that promoted mobilization and articulation during the United Nations Conference on Housing and Sustainable Urban Development (Habitat III). This work resulted in the incorporation of the vision of the right to the city in the New Urban Agenda mentioned above.²⁹

The Global Platform considers the right to the city to have the nature of a collective/diffuse human right, combined with the social functions of the city and the democratic management of

and whose conservation is of public interest, either because of its link to memorable facts in the history of Brazil, or because of its exceptional archaeological or ethnographic, bibliographical or artistic value. (Free Translation)

²⁹ The Global Platform for the Right to the City gathers the following organizations in its facilitating group: Habitat International Coalition (HIC), Habitat for Humanity, Cities Alliance, Huairou Commjssion, International Alliance of Inhabitants (IAI), Shack/Slum Dweillers Intenational (SDI), UCLG Committee on Social Inclusion, Participatory Democracy and Human Rights, Polis Institute, TECHO, Women in Cities International (WICI), Women in Informal Employment (WIEGO), International Network for Social Solidarity Economy (RIPESS). See Right to the City Agenda – For the Implementation of the 2030 Agenda for Sustainable Development and the New Urban Agenda 2018. <http://polis.org.br/publicacoes/right-to-the-city-agenda-for-the-implementation-of-the-2030-agenda-for-sustainable-development-and-the-new-urban-schedule/>

cities, which allows for the integrality of human rights in a given territory based on international norms for the protection of human rights.

Regarding ownership, the right to the city is the right of all inhabitants of present and future generations and adopts the vision of a citizen brought by the World Charter, which covers both permanent and temporary inhabitants.

The way to exercise the right to the city is to occupy, use and produce cities and the purpose of exercising this right is to have fair, inclusive and sustainable cities. **The city is defined as a common good for an adequate living condition containing the following components:**

- **the city free from any form of discrimination** based on sex, age, health status, income, nationality, ethnicity, migratory status, or political, religious or sexual orientation.

- **the city with inclusive citizenship** in which all inhabitants, permanent or transitory, are considered citizens and granted equal rights. E.g. women, people living in poverty or in environmental risk, informal economy workers, ethnic and religious groups, LGBT people, people with disabilities, children, youth, elderly, migrants, refugees, homeless people, victims of violence and indigenous peoples.

- **the city with greater political participation** in the definition, implementation, monitoring and budgeting of urban and territorial planning policies, in order to reinforce the transparency, efficiency and inclusion of the diversity of inhabitants and their organizations.

- **the city that fulfills its social functions**, that is, it guarantees equitable access for all to housing, goods, services and urban opportunities, especially for women and other marginalized groups; a city that prioritizes the public interest collectively defined, ensuring a socially fair and environmentally balanced use of urban and rural spaces.

- **the city with quality public spaces** that improves social interaction and political participation, promotes socio-cultural expressions, embraces diversity and promotes social cohesion; a city where public spaces contribute to building safer cities and meeting the needs of its inhabitants.

- **the city with gender equality** that takes all necessary measures to combat discrimination in all its forms against women, men and LGBT people in political, social, economic and cultural terms; a city that takes all appropriate measures to ensure the full development of women, to guarantee them equality in the exercise and in the fulfillment of their fundamental human rights and a life free from violence.

- **the city with cultural diversity** that respects, protects and promotes the different ways of life, customs, memory, identities, expressions and socio-cultural forms of its inhabitants.

- **the city with inclusive economies**, which guarantees access, ensuring decent livelihoods and work for all inhabitants, which gives space to other economies such as the solidarity economy,

the collaborative consumption, the circular economy, and which recognizes the role of women in the care economy.

• **the city as a system of settlement and common ecosystem** that respects rural-urban linkages and protects biodiversity, natural habitats and surrounding ecosystems, it also supports city-regions, city-city cooperation, and connectivity.

Accordingly, the city as a common good is the legal good that must have legal and juridical protection through the right to the city in an analogous way to the environmental and cultural heritage, which are goods that have juridical value and legal protection.

Another relevant source for the development of the description of the city as a good is the New Urban Agenda approved at the United Nations Conference (Habitat III). Despite not being an international convention, Brazil assumed commitments to its implementation, when approving this agenda. From the New Urban Agenda we must, in a subsidiary way, incorporate the vision of the right to the city that considers as components of this right those contained in paragraph 13.

In paragraph 13 of the New Urban Agenda, the components of the right to the city are contemplated, such as cities without any form of discrimination, with social function, with gender equality, with public spaces, with inclusive economy, with protection of their ecosystems.

Regarding the components that qualify the city as a common good, the following items in paragraph 13 are worth mentioning:

(a) Fulfill their social function, including the social and ecological function of land, with a view to progressively achieving the full realization of the right to adequate housing as a component of the right to an adequate standard of living, without discrimination, universal access to safe and affordable drinking water and sanitation, as well as equal access for all to public goods and quality services in areas such as food security and nutrition, health, education, infrastructure, mobility and transportation, energy, air quality and livelihoods;

(b) Are participatory, promote civic engagement, engender a sense of belonging and ownership among all their inhabitants, prioritize safe, inclusive, accessible, green and public spaces that are friendly for families, enhance social and intergenerational interactions, cultural expressions and political participation, as appropriate, and foster cohesion, inclusion and safety in peaceful pluralistic societies, where the needs of all inhabitants are met, recognizing the specific needs of those in vulnerable situations;

(c) Achieve gender equality and empower all women and girls by ensuring women's full and effective participation and equal rights in all fields and in leadership at all levels of decision-making, by ensuring decent work and equal pay for equal work, or work of equal value, for all women and by preventing and eliminating all forms of discrimination, violence and harassment against women and girls in private and public spaces;

(f) Promote age - and gender - responsive planning and for sustainable, safe and accessible urban mobility for all and resource-efficient transport systems for passengers and freight, effectively linking people, places, goods, services and economic opportunities;

The conception of the city as a common good is a choice that we need to make in order for the right to the city to have the city pictured as a good of legal protection. This leads to the full development of this right as the key institute for having more resilient cities to fight social inequalities and the environmental degradation, increasingly present in the lives of the city's inhabitants.

7. Final Considerations

The notes that were put forward on the legal notion of the right to the city seek to identify the sources that support its understanding as a human right and understand its configuration as a fundamental right in the Brazilian legal order, based on the constitutional norms of urban policy and its evolution to a right in the field of collective and diffuse interests with the treatment given by the City Statute. Based on the topics that were discussed, we can consider them as elements of the legal notion of this right;

a) The description of sustainable cities established in the dealing of the right to the city in the City Statute arises from the dimensions of expanded and progressive sustainability based on the general guidelines of the urban development policy;

b) The term "sustainable cities" includes the components of Article 2, item I of the City Statute; urban land, housing, environmental sanitation, urban infrastructure, transport and public services, work and leisure;

c) "City" in terms of political and institutional understanding and territorial extension, should be understood as "Municipality", encompassing the entire territory (urban and rural area) based on the guidelines of the urban development policy and the guidelines of the master plan of the Federal Constitution and of the City Statute;

d) Holders of the right to the city are inhabitants of present and future generations who live permanently, temporarily or transitorily in cities, covering people who are living in conditions of informality and vulnerability;

e) A legal good that must be protected through the right to the city is the city as a common good based on the international and domestic treatment of historical and cultural heritage and cultural goods, and the legal protection of the urban order;

f) The components of the right to the city that qualify the city as a common good are the following: **the city free from any form of discrimination; the city with inclusive citizenship; the city with greater political participation; the city that fulfills its social functions; the city with quality**

public spaces; the city with gender equality; the city with cultural diversity, the city with inclusive economies, the city as a system of settlement and common ecosystem;

g) The vision of the right to the city established in the New Urban Agenda that was approved at the UN Conference Habitat III held in 2016 in the city of Quito must be adopted in the urban legal order to fulfill the aforementioned components of the right to the city.

The legal notion of the right to the city with these elements contributes to greater precision and clarity on the obligations and civil, administrative and criminal liability by public or private agents that cause damage to this right. With these elements it is possible to identify situations, actions and omissions, legislative, administrative and judicial measures and social practices that result in violation and damage to this right.

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