



ANALYTICAL STUDY ON THE URBAN OPERATION FOR IMPLEMENTING SUSTAINABLE CITIES

Estudo analítico da operação urbana para implementação de cidades sustentáveis

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ABSTRACT

Aiming to contribute to the debate on the use of Brazilian urban policies instruments to promote the transition to more sustainable cities, this article analyses the Urban Operation institute (in Portuguese, Operação Urbana Consorciada, “UO”) from its theoretical perspective, identifying its main potentialities: that enable participation and synergy between various city actors in urban operation, and the implementation of an urban project, which can reconcile diverse interests and address actions on multiple urban challenges, elements that are fundamental to the implementation of more sustainable cities. And for its practical perspective, elucidating its main challenges on the ground, linked to its use to prioritize real estate expansion and the understanding given by Government as a collection instrument, emphasizing mechanisms such as sale and issuance of Additional Building Rights Certificate (in Portuguese, Certificado de Potencial Adicional de Construção, CEPAC), which takes the centrality and, consequently, leading to a distorted use of the UO.

Keywords: Right to Development, Sustainable Cities, Urban law, Urban Operations, CEPACs.

RESUMO

Com o objetivo de contribuir para o debate sobre a utilização dos instrumentos das políticas urbanas brasileiras para promover a transição para cidades mais sustentáveis, este artigo analisa o instituto da Operação Urbana (UO) a partir de sua perspectiva teórica, identificando seus principais potencialidades: que possibilitem a participação e a sinergia entre os diversos atores da cidade na operação urbana, e a implementação de um projeto urbano, que possa conciliar interesses diversos e abordar ações sobre múltiplos desafios urbanos, elementos fundamentais para a implementação de cidades mais sustentáveis. E pela sua perspectiva prática, elucidando os seus principais desafios no terreno, ligados à sua utilização para priorizar a expansão imobiliária e ao entendimento dado pelo Governo como instrumento de cobrança, enfatizando mecanismos como a venda e emissão de Certificado Adicional de Direitos de Construção (em português, Certificado de Potencial Adicional de Construção, CEPAC), que assume a centralidade e, conseqüentemente, conduz a uma utilização distorcida da UO.

Palavras-chave: Direito ao Desenvolvimento, Cidades Sustentáveis, Direito Urbanístico, Operações Urbanas, CEPACs.



INTRODUCTION

The dating of the new era called the Anthropocene, debated in international forums such as Nobel Prize in Chemistry Paul Crutzen, indicates the capacity that we, human beings, have acquired to modify the ecosystem to the point of leading to its destabilization and disruption of its balance. The departure from the Holocene expresses humanity's urgent need to redirect its development and progress towards sustainability, which has been debated since the second half of the 20th century and is now widely known under the figure of the United Nations 2030 Agenda and its Objectives of Sustainable Development (SDG).

In the meantime, cities were not left out. The need for a transition to a more sustainable urban system brought attention to the so-called "sustainable cities", which have been gaining global relevance. The urban environment concentrates an increasing number of people and brings with it countless structural, environmental, and social challenges. And it starts to require a more decentralized and public participatory urban management, encompassing various actors of the society (public power, civil society, academies, private sectors etc.); more planned, reconciling the varied interests of the actors and covering multiple urban challenges in an articulated manner; and a people and environmental centralized development, avoiding an urban production only through the logic of market opportunity and adverse economic forces.

In the face of such demands, the Urban Operation (UO), set forth in the City Statute, Brazilian Federal Law n. 10,257, of 2001, from articles 32 to 34-A, seems to be a very interesting urban policy instrument. Briefly, this instrument has three most striking characteristics by which it is possible: (i) to reorganize a certain area, without being tied to traditional legislations such as the zoning law, allowing a development with mixed use of land and more organic urbanization (ii) to shelter and to monitor coordinated and articulated actions between various actors of the society, supported by a comprehensive urban project, and (iii) to allow public-private partnership and a multisectoral public policy focused on the area that will be developed in line with the SDG-17 of the UN's 2030 Agenda.

However, in practice, there are several indications about its distorted use on carrying out real estate projects, without much concern on social and environmental improvement, those that are clear objectives that any UO should pursue (article 32, paragraph 1 of the City Statute), neither a development with a structure allowing the enhancement of public space, exploring the mixed use of land and innovative formats and precepts of a sustainable city.



Art. 32. Specific municipal law, based on the master plan, may delimit area for the application of urban operations.

§ 1 The urban operation is the set of inventions and measures coordinated by the municipal government, with the participation of owners, residents, permanent users and private investors, with the objective of achieving urban transformations, social improvements and environmental enhancement in an area. (Authors translation)

Thus, in order to contribute to the discussion of different uses of Brazilian urban policies instruments to promote the transition of urban systems towards more sustainable cities, this paper analyzes the UO institute. First, we discuss the relationship between sustainable development, cities, the City Statute and the UO, as well as its potentials to shelter a sustainable urban development, and then we will analyze the institute in social reality, verifying how it has been implemented in practice, seeking to identify its main challenges and consequences. Therefore, the article seeks to answer questions such as: which elements for a sustainable city can be met by the UO in the conceptual aspect? Has the Public Power been using the UO as an attempt to urbanize based on sustainable development or to foster private interests and real estate speculation? What are the social and structural consequences of UO use that only prioritizes the exploration of real estate projects? How can we perceive the UO to implement a more sustainable city? In advance, it is important to point out that, recognizing the breadth of the theme of sustainability in cities, this is a non-exhaustive debate.

At the end, we will reinforce the argument that the collection mechanisms in the UO must be understood as a complement mechanism, putting in centrality its main characteristic of being an instrument that enables synergistic and articulated action between various actors of the society for the implementation of an (sustainable) urban project. And finally, we will address additional points that can be explored in future research.

PART OF THE HIDS PROJECT EFFORTS

Around the world, there are an increasing number of urban initiatives seeking to drive the development of cities towards sustainability (Devolder; Block, 2015, p. 3270). And among these initiatives, there is the HIDS (International Hub for Sustainable Development), a project in the city of Campinas, State of São Paulo, Brazil.

HIDS is an ambitious project aiming to create a sustainable and intelligent district in the city of Campinas, and to act as a complex of living laboratories and as a leading innovation hub in Latin America to integrate scientific and technological knowledge to contribute to achieving the United Nations



Sustainable Development Goals (SDGs) (HIDS, Terms of Reference, 2020), p. 1). Captained by Campinas State University (Unicamp), it has the support of other research institutions such as the Pontifical Catholic University of Campinas (PUC-Campinas); public entities such as the Government of São Paulo, the Municipality of Campinas, the Brazilian Agricultural Research Corporation (EMBRAPA); innovation institutions such as the National Center for Research in Energy and Materials (CNPEM) and the Center for Research and Development in Telecommunications (CPQD), as well as support from the Inter-American Development Bank (IDB), which financed the HIDS Masterplan, that has been finally drafted by 2022.

Among its ambitions for the 2030 Agenda is the effort to establish a use of its area inline with the precepts of sustainable cities and communities (HIDS, Terms of Reference, 2020, p. 2), exploring the mixed use of land and adopting as a reference the best global practices of cities that planned their urban spaces anchored in sustainable principles. However, as professors Gabriela Celani, Carlos Vaz and Sidney Bernardini (2021) already warned, conventional urbanistic instruments, such as the zoning law, will not be able, on their own, to achieve the desired transformations for the HIDS area, or for any other innovation environments, what requires a differentiated use of the territorial management instruments present in the City Statute, and drawing attention to instruments that reverberate public-private partnerships.

Therefore, the HIDS Legal Strategy team, made up of students and professors from PUC-Campinas, suggested the use of the Urban Operation to embrace HIDS' ambitions, acknowledging the implementation of a complex urban project, the production of urban space with differentiated spatial organization, and synergy between the various actors interested in developing the region. This article also is part of this effort, aiming to analyze Brazilian urban instruments to implement the HIDS project.

FROM SUSTAINABLE DEVELOPMENT TO SUSTAINABLE CITIES

The SDGs initiate a real approximation of development and environmental governance, which had remained too autonomous and distant since June 1972, when the world began to realize the size of this trouble at the United Nations Conference on the Environment Human (Veiga, 2015, p. 23).

As initially stated, sustainable development, currently widely represented in the SDGs figure, drew global attention to the pressure that human activity has been exerting on the biosphere, and to the urgent need for a change during human progress. This way, it becomes a requirement that the right to development must be exercised to equitably meet the needs of the development and of the



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environment for present and future generations, as stated in the third principle of the "Rio Declaration" (Veiga, 2015, p. 21).

Besides environmental sustainability, it also requalified the very notion of "development", detaching it from the central ideal of economic growth, of the productive and material growth, and becoming understood to promote greater human prosperity for all people. Amartya Sen and Mahbub ul Haq, authors of the first "Human Development Report" of the United Nations Development Program (UNDP), state that there is only development when the benefits of growth serve to expand human capacities, understood as a set of things that people can be, or do, in life (Veiga, 2015, p. 15).

Hence, sustainable development starts to debate both new challenges, as environmental, as many other old ones, such as fighting the persistence of poverty and social inequality, and promoting development that seeks to increase wealth, no longer economic, but the wealth of the human life, focused on providing instruments and opportunities, to open the possibilities of choices for all people (UNDP, 2019, p. 8).

This shift of focus could also be seen when debating new horizons for cities, that also began to give importance to people-centered smart and sustainable cities initiatives (Porto, 2020, p. 71), and no longer exclusively to economic factor, treating the city as an instrument of capital accumulation (Nascimento; Moreira, 2013).

Among the new concepts about cities is the "sustainable city", which has gained global attention thanks to the impulses given by the Rio-92 Conference and the Habitat II Conference (Silva, 2015, p. 243), which recognized its importance in relation to sustainable development and starts to seek for more socially just and environmentally sustainable urban systems (Devolder; Block, 2015, p. 3270).

Furthermore, "sustainable city" is also related to other new conceptions of cities as "right to the city", which strengthens the notion of the city as a space for the provision of public policies linked to the guarantee of rights, emphasizing that social issues should not be placed in the background to the detriment of economic interests (Ferreira *et al*, 2020, p. 43). And as "cities for people", whose main precursor is Jan Gehl and his *City for People* (2013). The author draws attention to the treatment of the city as a gathering point for people, and how the urban structure can encourage a life in the city, prioritizing the movement of people on foot, providing pleasant, diversified common spaces in the city on a human scale that can encompass human spontaneities and alternative activities. People-centered standpoints give importance to an urban development that considers the scales of needs and demands of people, which benefits everyone, and which promotes emancipation and structural solutions (Devolder; Block, 2015, p. 3272).



Evidently, care for the environment is not left out. Urban sustainability refers to climatic conditions, renewable energy, circular-closed-cyclic ecosystems, urban biodiversity, sustainable transport, use of local and sustainable materials, local food and short supply chain, quality of life, healthy communities, green spaces and mixed land use programs (Devolder; Block, 2015, p. 3271).

At last, the “social” and “environmental” aspects can neither be disregarded, dissociated nor treated separately, since there is an intimate relationship between these elements. For example, the social vulnerability of a poor population implies a lower condition for them to worry and debate about environmental sustainability; on the other hand, main environmental issues are found on the most vulnerable areas and the greatest victims of the lack of environmental control are the most unfortunate (Antunes, 2017, p. 54).

Faced with this range of challenges, demands and requirements, the Rio+20 Declaration defended that, in order to promote sustainable societies in the economic, social and environmental spheres, “a holistic approach to development” with “an integrated strategy for planning and construction of sustainable cities and urban settlements” is needed, as well as “partnerships between cities and their inhabitants” that play an important role in promoting sustainable development (Ferreira *et al*, 2020, p. 43).

Such elements can also be observed in the 2030 Agenda. In the report prepared by the Brazilian Institute of Applied Economic Research - IPEA (2018, p. 277 and p. 489) that adapted the 2030 Agenda goals to Brazil's priorities, the SDG 11.3 aims the improvement of capacities for planning, for social control and for a participatory, integrated and sustainable management, and the SDG 17.17 expresses the goal of encouraging and promoting effective partnerships in the public, public-private, private and civil society spheres.

Through a holistic approach, strongly related to the systemic approach, it expresses the need to treat the city as a complex system, in which the parts are interconnected and influence each other's behavior (Oliveira, *apud* Carvalho, 2019, p. 6). Translating this to city plans, it means that subsystems, such as security, education, health, transport, employment, housing, solid waste management, environmental component, social component, economic component, among others, exert influence on each other, and should not be worked in isolation, but integrated (Carvalho, 2019, p. 10), which can be better promoted and articulated through planning and urban project.

Along with this, the need for a participatory and integrated governance with all actors of the society: public power, population, entrepreneurs, academia, social organizations, is another imperative point. The city's complexity and the multiple demands, needs and focuses cannot be efficiently



answered by the government alone through a centralized, "top-down" management (Carvalho, 2019, p. 12). It must prioritize other forms of governance that explore, for example, a "bottom-up" approach and a multilevel perspective (Geels, *apud* Devolder and Block, 2015, p. 3276) and encourage the population to participate in the urban development process. Devolder and Block (2015, p. 3277) recall that, at the most recent Eurocities conference, the network of major European cities, shifted the focus from the "smart city", where new technologies are applied to make the city more efficient, safer and more pleasant, to the "smart citizen" who is indispensable in the search for innovative solutions to deal with unsustainable urban systems.

CITY STATUTE, URBAN OPERATION AND THEIR CONCEPTUAL POTENTIALITIES FOR SUSTAINABLE CITIES

The Brazilian Federal Constitution of 1988 holds an entire chapter dedicated to Urban Policies, set forth in articles 182 and 183, covering the guidelines brought by social movements and by the demands of the National Urban Reform Movement. In 2001, Federal Law n. 10,257, known as the City Statute, was created to regulate and detail the constitutional articles. The City Statute establishes the main guidelines for Brazilian urban policies, brought in its spirit the idea of sustainable cities, placing them as a new concept of urbanization (Silva, 2013, p. 239). Such recognition can be clearly observed in its art. 2, item I:

I – to guarantee the right to sustainable cities, understood as the right to urban land, housing, environmental sanitation, urban infrastructure, transport and public services, work and leisure, for present and future generations;

The new horizon of Brazilian urban policies also emphasizes the importance of urban planning and participatory urban management, permeating all urban instruments contained in the City Statute. Abascal *et al* (2013, p. 76) remind us that with its elaboration, Brazil was recognized by international organizations, especially in the UN-Habitat World Urban Forums, as a country that anticipated the elaboration of innovative institutional policy instruments of urban intervention.

Among the instruments provided for in the City Statute is the Urban Operation (art. 32 to 34-A), with great conceptual potentials regarding the sustainable city. Article 32, §1 of the Statute defines the UO as a set of interventions and measures coordinated by the municipal government, with the participation of owners, residents, permanent users and private investors, with the objective of achieving structural urban transformations in an area, social improvements and environmental enhancement. Based on the concept, it is already possible to identify the possibility of enabling a multi-sector public policy focused on the area of operation, encompassing various actors, and answering the



need for participatory and integrated governance.

Also, the City Statute Guide (2002, p. 78) complements the definition of the UO, emphasizing that it is an instrument for the implementation of an urban project to configure or reconfigure a certain area of the city indicated by the city master plan. Through an urban project it is possible to articulate and reconcile the interests of various actors of the society in an integrated and synergistic way, valuing the collective character of the city (Abascal *et al*, 2013, p.76). In addition, it can address multiple urban challenges, such as mitigating social, environmental, and economic imbalances, structural imbalances between buildings and public space, infrastructure for mobility, among others in an integrated manner.

Now talking about public-private partnership, within the scope of the UO, the partnership takes place mainly through counterparts, in which the Government allows the alteration of the indices and characteristics of subdivision, use and occupation of the soil and subsoil, and of the verticalization indices provided for in the Master Plan and by the Zoning and Land Use Law (Castro, *apud* ABASCAL *et al*, 2013, p. 77), against counterparts from owners, permanent users and private investors. In the Brazilian model, Ferraz and Benfatti (2020, p. 7) explain that the sale of the Additional Building Right Certificate (a bond that can be negotiated in the stock market, known in Brazil by the acronym CEPAC) by means of counterpart has been the main financing strategy through which private investors can consort with the OUC, a matter that will be better dealt later. Although the City Statute opens up margins to define forms of compensation beyond the financial one, such as concession of part of the land by the owner or public works at the expense of the investor (Guide – City Statute, 2002, p. 84).

Finally, the urbanization of "exception" to the rules in force in the area under the Urban Operation opens a possibility of an urbanization exploring the mixed use of land and treating the city in a more organic way. Different from urbanization brought by traditional legislation that, for example, separates the use of land in residential, commercial, institutional, industrial. Maricato and Ferreira (2002, p. 4) remember that the idea of the UO, which arrived in Brazil in the 1980s, had been well received for having represented an alternative to the moorings of modernist/functionalist legislation which, through strict rules and a centralized and impersonal administration, sought to normalize land use without considering spatial, social and environmental specificities:

Well-founded critics point out the errors of such a conception of centralized and bureaucratic control over the city by the State. One of them is formulated by Jane Jacobs in her classic *The Death and Life of Great American Cities*. The need for specific treatment to certain areas or neighborhoods of the city, the importance of society's involvement in urban maintenance and control, the flexibilization of very strict rules that ignored daily routines, the monotony and impersonal administration, the emptying and deterioration of neighborhoods were some of



the reasons for the demand for new legal instruments and new procedures in urban management. (Maricato; Ferreira, 2002, p. 4).

UO IN SOCIAL REALITY, AN INSTRUMENT FOR REAL ESTATE ENTREPRENEURS

In the face of so many conceptual possibilities, however, when reviewing bibliographies about Brazilian case studies, such as Faria Lima UO (São Paulo-SP), Água Espraiada UO (São Paulo-SP), Vila Leopoldina-Jaguapé UO (São Paulo-SP), Linha Verde UO (Curitiba-Paraná), we noted that there was no implementation of the instrument with full use of its capabilities. The expected "synergy between various actors" was reduced to partnerships mostly between the Public Power and the private sector, especially real estate actors, and the possibility of differentiated urbanization was further explored to give vent to real estate projects that faced significant limitations imposed by zoning law, having the experiences of large urban operations in areas where there was already great interest in the real estate market (Guide – City Statute, 2002, p. 81).

In the cases of São Paulo, such as at the paradigmatic Urban Operation Faria Lima, Maricato and Ferreira (2002, p. 9) explain that the main idea of carrying out urban operations was to enable public-private partnerships that would allow the payment of important counterparts, from the financial point of view, capable of ensuring the opening of avenues that were of great interest to the real estate sector. With this, the authors point out how Faria Lima was designated to support the demand of the real estate sector and not from a study of urban demands brought by civil society. In fact, they also show that, as a result, the greatest social mobilization took place against the operation and not in favor of it.

By the way, it is worth mentioning that Brazilian urban production usually follows the direction of creating new centralities to the detriment of old ones, in new and sparsely dense areas, in a segregated manner and marked by signs of distinction (Fix, *apud* Maricato; Ferreira, 2002, p. 11). Maricato and Ferreira (2002, p. 11) state that this results from the fact that these operations are more worthwhile for private capital, and it is not surprising that punctual projects of this nature increase the region's valuation and real estate speculation, resulting in gentrification and making low-income population settlement unfeasible.

The implementation of Urban Operations in areas that are already "valued" or have "possible valorization" by the sole or main interest of the real estate market leads to the persistence of an already well known Brazilian urban territory morphology: of the immense differences between illegal, hidden, ignored urban reality, and the other hand, an hegemonic market, official, formal, legal urban



reality (Maricato; Ferreira, 2002, p. 11). However, in addition, this contrast of precarious occupation with the high quality of noble neighborhoods not only is an expression of inequality, but also an element that reproduces inequality:

The contrast between a qualified minority and a majority with precarious urban conditions is much more than an expression of income inequality and social inequalities: it is an agent of reproduction of this inequality. (...) In a city divided between the legal portion, rich and with infrastructure, and the illegal portion, poor and precarious, the population that is in an unfavorable situation ends up having very little access to work, culture or leisure opportunities. Symmetrically, growth opportunities circulate among those who are already living better, as the overlapping of the different dimensions of exclusion affecting the same population makes the permeability between the two parties increasingly smaller. (Guide - City Statute, 2002, p. 23).

Evidently, this goes against both Federal Republic of Brazil's fundamental goals of reducing social and regional inequalities (art. 3rd, III, of the Brazilian Constitution) and the global goals of the SDGs of the United Nations and the New Urban Agenda - Habitat III.

COLLECTION MECHANISM AS A CENTRAL ELEMENT OF URBAN OPERATIONS

As a result, the collection of counterparts, which should be a complementary instrument to finance public works, infrastructure, social housing programs, services and equipment within the limits of the target area (Abascal *et al*, 2013, p. 85) are now included as a central element of the UO, distorting the use of the instrument. And its essence of being an instrument of structural transformation of an area based on synergistic management between various actors expressed through urban project is left aside (Montadon; Souza, *apud* Abascal *et al*, 2013, p. 85).

If counterparts paid become, as in the case of the failed UO area (Vila Leopoldina-Jaguare UO), exclusive collection mechanisms, since the resources obtained through the CEPACs negotiation are destined to a Municipal Public Fund and are waiting for dispersed and voluntary reapplication in the territory, the original conceptual function is lost (Abascal *et al*, 2013, p. 85).

The understanding of the UO as a “collection mechanism” by the Government and the prioritization of the reproduction of real estate expansion leads to a marked appreciation of the region and, consequently, to real estate speculation and exclusionary urbanization. In this situation, the CEPACs mechanism, provided for in article 34 of the City Statute, ends up exacerbating this harmful character even more, by definitively linking the operation to areas with potential for



“valuation” of the CEPACs title (Maricato; Ferreira, 2002, p. 11). The CEPAC converts the additional building rights into securities to be issued by the municipality, functioning as a counter-sale mechanism related to the onerous grant of the right to build (Nascimento and Moreira, 2013, p. 585).

The proponent of this mechanism, the Secretary of Planning of São Paulo, justified the adoption of it, for allowing quickly raise of necessary resources to make the investments and thus streamline operations without having to advance budget resources to invest in works (Guide - City Statute, 2002, p. 85). In fact, its advantage lies in the faster collection of resources from the sale of benefits and in the great advantage for the Government of anticipating the collection, which is now made regardless of the pace of UO progress (Maricato; Ferreira, 2002, p. 8).

However, CEPAC reinforces the logic of the need to value the area, as it is necessary that the market sees a certain valuation of the operation area that justifies the purchase of additional building rights. There is a need for the area to have potential of title valuation, and vice versa, as real estate valuation is also the fuel of CEPAC (Maricato; Ferreira, 2002, p. 8).

With this, Maricato and Ferreira (2002, p. 9) highlighted a danger of market forces capturing the State, as it is forced to assume the risks of an operation failure, investing heavily in advances in the improvements that will attract the private sector (Fix, *apud* Maricato; Ferreira 2002, p. 11), to enhance the valorization of these areas, and consequently of the CEPACs related to them. Therefore, the market plays the game of generating differential income in a fragment of the city (Ferreira; Fiz, *apud* Maricato; Ferreira, 2002, p. 8).

In fact, the focus and dependence on valuing the area makes it difficult to implement projects such as the installation of social housing, because, as Maricato and Ferreira explain:

The further away the area of operation is from social housing, the greater the value of additional building rights certificates. Keeping the “poor population” in the area of operation works as a real break in the valuation process, which in some cases is interesting, as we will see later, but not when using CEPACs (Maricato; Ferreira, 2002, p. 9).

Regarding the distorted use of the UO, understood as a mechanism to explore CEPACs, Ferreira and Fix state that: CEPACs – and consequently the urban operations in which they will be launched – are seen only as a source of resources. As City Hall needs money, if it adopts this logic, it will seek to multiply urban operations as much as possible.

The conformation of its design is not based on the planned action of the Government and the urban priorities that it establishes based on the participatory demand of the population (especially the 70% excluded), but it is subordinate to the interest of the market, which will justify or not the operations. However, partnerships with the private sector must be part of a larger plan, in which the Public Power and the population establish the needs of the area to be renovated - housing, public parks, tours - and only then define the counterparts to be offered to the private sector. When areas are chosen solely for their potential to generate money through CEPACs, the urban constraints of public space are forgotten. (...) They will serve for public investments essentially in areas of market interest, to the detriment of the periphery (Ferreira; Fix, *apud* Maricato; Ferreira, 2002, p. 8).

Although Fix (2001) has also posed as the main danger brought by CEPACs the possibility of converting the CEPACs into speculative merchandise, making it become a mechanism for capturing land surplus value by the holders of these titles, Ferraz and Benfatti (2020), analyzing the sales of these titles in the public auctions of the Faria Lima UO and Água Espraiada UO in the period 2004 to 2018, found that the conversion rate of CEPACs into additional construction area was 96.7% in the Água Espraiada UO and 94, 5% at Faria Lima UO, leading to the conclusion of the almost non-existence of these securities trading in the secondary market (Ferraz; Benfatti, 2020, p. 3 and 18). However, when monitoring the valuation of the CEPACs titles of the two operations they noted that:

(...) the minimum prices of CEPACs of UO Água Espraiada increased from R\$ 300.00 in the first distribution in July 2004, to R\$ 1,261.00 in the fifth distribution in June 2012, showing a 320% increase in value for 8 years (...) UO Faria Lima rose from R\$1,100.00 in the first distribution in December 2004, to R\$6,531.01 in the fourth distribution in September 2017, showing an appreciation of approximately 500% (Ferraz; Benfatti, 2020, p. 10).

And the authors confirm the consequences such as the increase in land prices in the UO areas and the consequent generation of formal and informal gentrification processes. At the same time, they also highlighted that the establishment of CEPACs made it difficult for owners and small builders to purchase additional construction areas, as it made it necessary to participate in auctions through stockbrokers. In addition, they warn about the process of economic-financial globalization that has been conditioning an even greater overlap between financial and real estate capital making them more aggressive in search of opportunities for reproduction and accumulation, and greatly influencing the production of urban space (Ferraz; Benfatti, 2020, p. 18).



REAL ESTATE EXPANSION AND THE TRAMPLING OF URBAN PROJECT

Abascal *et al* (2013, p. 88) point out that the real estate expansion and the municipal government action in the sense of trampling the urban project and diminishing technical efforts, based on gains that this practice allows, inhibits the reach of new configurations of public space and equipment such as social housing and other structures who seek to guarantee social diversity, mixed use of land promoting functional diversity and multiple centralities, infrastructure for mobility that focuses on public transport, foot traffic and non-polluting means, among others. As a result that leads to a conservative urban space configuration (Abascal *et al*, 2013, p. 88) with focus on rich private spaces segregated from the public space, leaving behind new possibilities of city models that exist today that value the collective space.

In the Vila Leopoldina-Jaguari UO, Abascal *et al* (2013) also point out how projects in closed vertical condominiums were prioritized and predominant, with its high standard buildings, protected by grids, walls, visitors filtering and a security layout, placed in the urban environment in an introverted and isolated way from the public space and denying any relationship with the street. Inside, there is a large leisure area restricted to residents, which reinforces the widespread taste for closed condominiums and the refusal to relate with the public space (ABASCAL *et al*, 2013, p. 97).

In Faria Lima, a similar landscape. Grids, walls, thorny plants demarcating the private lot next to the public road, raised gardens that make access difficult, corner plaza completely fenced and impossible to access except from inside the lot, narrow sidewalks with no accessibility for the disabled or space for newsstands, bus stops, dumps and other equipment, with little or no public ground floor space (Maricato; Ferreira, 2002, p. 10).

These are opposite characteristics to the configuration of cities that value the quality of the urban environment, especially the collective space, and human-centered urban space. Jan Gehl (2013, p. 21 and 29) explains that, after nearly fifty years of neglecting the human dimension, there is now an urgent need and a growing desire to, once again, create cities for people. And with that, he presents how planning and projects can promote the physical quality of urban space and can influence the scope and character of new outdoor activities and stimulate other activities in the city's common space. Sidewalks, squares, mixed areas that include commerce and residence open up for recreational, more alternative and diversified activities in public spaces, thus reinforcing social sustainability. The versatility and complexity of activities are common characteristics of life in the space of cities (GEHL, 2013, p. 20) which can be reinforced by urban projects.



THE LACK OF SOCIAL PARTICIPATION

But to encourage life in the cities and the sustainable city, promoting physical quality is not the only component. As seen initially, participatory management with engagement of the civil society is a necessary condition to promote a sustainable city, being a key component both to respond to multiple urban challenges efficiently, and to extract "identities" and "vocations" of the region, stimulating a sense of belonging to the place and make the city more alive, fulfilled, and creative.

Devolder and Block (2015, p. 3270) stress that in sustainable urban initiatives, "strong urban debates" should be promoted, with substantive conversations and detailed discussions about the type of the city we want to live in and shared understanding of sustainable urban projects and how they affect the urban system. By the way, the opening to a participative process is directly related to the idea of providing opportunities and mechanisms for people to choose the life they would like to live, advocated by Amartya Sen (Veiga, 2015, p. 55) already mentioned initially.

Natália Garcia, a journalist specialized in urban planning (TED Talks, 2013), exemplifies how the democratic and participatory management of space could be based on the case of Copenhagen. In this Danish city an urban life department was created in the city hall, through which the servers talk to people in the city to understand "what improves people's relationships in public spaces and what worsens them". This department is above all other departments, and it is up to it to decide whether to give viability to projects that would be implemented in the city. She also explains that democratic management makes urban projects more efficient to answer demands and increases the chance of being successful.

Within the scope of the UO, social participation is provided for in article 33, item VII of the Statute, as a legitimate agent with whom the Public Authority must share control of the operation. Abascal *et al* (2013, p.78) describe that civil society is represented as a legitimate agent that must share in the implementation process and decisions present in the plan and in the project. However, in practice, the prioritization of service to the market's interests and the lack of political will of the Public Power create barriers to a space for effective engagement of the population in the process.

In Brazil is notorious the difficulty that the government has in dialoguing with civil society. Gonçalves (2011, p. 205) states that, although no Brazilian municipality disregards the importance of popular participation, few present consistent results from truly participatory processes. Based on Vila Sônia Urban Operation, Gonçalves (2011, p. 212-215) elucidates the reality of civil society participation in the UO implementation process.



During this operation, which also encompassed a region of real estate interest as it was close to Faria Lima and Água Espraiada, a set of high-standard neighborhoods in the South Zone of São Paulo, there was a project to build a tunnel that would pass under a park called Parque Previdência. This caused a movement by several associations of residents of Butantã and in 2005 they asked for and obtained a dialogue with the Municipal Planning Secretariat (Sempla). At this meeting, the government presented the urban operation and committed to the continuity of the dialogue. But without fulfilling the promise, the second meeting was rescheduled several times and never happened. In 2009, the newspapers announced the resumption of the tunnel project, justifying it as part of the works that would qualify the Morumbi football stadium as the venue for the 2014 World Cup matches.

Although the proposal was not absurd as the connectivity of the region's road system was low, the work would jeopardize the integrity of Parque Previdência, one of the most preserved and significant green areas used by the population. And also, the planned destruction of the Elis Regina square would put at risk the schools and apartment buildings that surrounded the square and the artisan fairs and children's game spaces located there and widely used by all the local residents. As a result, the associations invited the city hall to organize a meeting in 2009, which was attended by a group from the city hall, including technicians who claimed to be researching alternatives for the tunnel project.

At the time, the associations regretted the project for not aiming to increase green areas or fight floods and demanded that the tunnel allow the passage of pedestrians, cyclists and public transport. And again, after the agenda had been agreed upon, the next meeting was postponed and no longer held. In the end, Gonçalves says that the neighborhood's defense associations continued to be not successful in mobilizing the government, remembering that over these years the population remained uninformed about the proposal, implementation, and progress of Urban Operations.

Maricato and Ferreira (2002, p. 7) warn that the legal provision of mandatory sharing with representatives of civil society (art. 33, item VII of the City Statute) by itself does not guarantee effective participation, as democratic management depends on the local correlation of forces, and also pointing out the vagueness in the term “representative of civil society”.

The case of the Linha Verde UO (Curitiba-PR) highlights the ineffective application of representative of civil society. Nascimento and Moreira (2013, p. 596) first pinpoint the lack of popular engagement both in the UO formulation process and in the implementation process:



(...) the inexistence of popular participation in the process of formulating the urban operation is questioned here. And, even if this were carried out, how could the population evaluate an urban intervention project that does not have a clearly delineated action plan, in which there is no clear definition of the environmental, social and economic impacts involved and their mitigating measures? (Nascimento; Moreira, 2013, p. 596).

With the questioning, the authors analyzed the composition of the management group responsible for monitoring and implementing the UO. Among the 11 members, there were 7 (63.7%) representatives of the government, 3 representatives of entities related to the real estate market (27.3%) and only one representative (8%) of the City Council of Curitiba on behalf of the civil society.

With this, social participation is still seen as an obstacle to the Government and for a use of UO to allow real market intentions and the persistent practice of project formulation and implementation away from population. In that sense, it is evident that the presence of civil society will just seek to limit real estate expansion unrelated to socio- environmental consequences and to demand for the rights to a sustainable city from public authorities. As Maricato and Ferreira (2002, p. 2) expose, the progressive effect depends on the mobilization capacity of civil society to maintain the interest of the majority.

URBAN OPERATION AS AN INSTRUMENT TO PROMOTE SYNERGY BETWEEN ACTORS OF THE SOCIETY

However, when thinking about the transition to a more sustainable city, the role of the civil society goes beyond social control and monitoring. In a sustainable urban project, Devolder and Block (2013, p. 3277) explain that civil society assumes the role of innovators, initiators, or entrepreneurs to address countless ways the multiple challenges that the city presents, acting alongside (urban) public authorities, playing a crucial role within the urban transition, as well as being a fundamental element that reinforces local identity and vocation.

In contrast to social participation that depends on the correlation of local forces, in concepts such as an energetic society, citizens are encouraged by public authorities to seek all kinds of creative solutions themselves, and enabling public authority to take more creative advantages of social energy already existing and better respond to urban challenges (Devolder; Block, 2013, p. 3277). Bringing this idea to the UO scope, the government could use the instrument to induce and encourage the articulation and organization of civil society to participate in the process of elaboration and implementation of the urban project, but also to exercise them to the daily urban life decision making processes after the operation, enhancing the participatory management of the city.



Moreover, authors also express that citizen initiatives, as well as social movements, educational institutions and companies are increasingly taking the lead in urban initiatives. Academies, for example, that occupy a privileged place within society, seen neutrally by other actors and have a leading role in the creation and dissemination of knowledge and innovations, can help the community to understand the challenges, opportunities and interactions between the SDGs and assist public policies (SDSN, 2017, p. 29), as has been happening in the case of the HIDS project, in which the academies are at the forefront of this sustainable city project.

Regarding the partnership between the Private Initiative and the Public Power, Maricato and Ferreira (2002, p. 14) recall that the counterparts to be demanded could fit to the profile of local private initiatives and that the UO could be used for smaller interventions in the city aiming urban improvements, such as installation and construction of gardens, sidewalks, squares, exploring partnerships with stalls, kiosks, small or medium-sized businesses, and partnerships with the private sector or associations in the maintenance of squares, gardens and furniture, as does the Parks and Gardens Foundation of the City of Rio de Janeiro. Furthermore, the authors (2002, p. 14) explain that negotiations and case-by-case agreements between public authorities and large enterprises are also fundamental, so that private initiatives absorb environmental and social impacts, as in the case of Shopping West Plaza in São Paulo, which resulted in sufficient resources to build 700 social housing.

Identifying local potential, adapt conditions to the local partners, making "tailor-made" businesses and formal agreements between with the private sector materialized in contracts seems to integrate the characteristics of successful public and private projects, as pointed out by Sagalyn:

Successful public/private projects generally share three attributes: partners are cooperative rather than adversarial, because their interests align; formal contracts set the terms under which they share risk and responsibility for mutual financial gain and social benefit; and custom-tailored business arrangements often persist after the project is completed and operating. (Sagalyn, 2007, p. 8). These attributes make joint ventures different from the conventional subsidy relationship involving a one-way flow of money, tax incentives, and eased or enhanced regulatory entitlements from government to the private entity (Held *et al*, *apud* Sagalyn, 2007, p. 8).

THE DETAIL AND LANGUAGE OF THE SPECIFIC UO LAW

Finally, on the more technical-legal aspect, it is imperative to draw attention to the text and writing of the specific law of the UO as the operation must be created by a specific municipal law (article 32 of the City Statute). Although the law itself does not guarantee the implementation of the



UO with the objectives described in the Statute, the clarity and detail of the law will constitute the basis for the interpreters of the law and for all the actors involved who will make their own monitoring and control in the implementation phase.

In cases such as the Linha Verde UO, Moreira and Nascimento Neto (2013, p. 595) remind that, although the specific law of the Linha Verde had mentioned the economic and social service program among its general objectives, it did not provide mechanisms for its implementation or even define the minimum elements that the program consists of. This is related to the criticism that Maricato and Ferreira (2002, p. 7) make about the requirement for an economic and social program to serve the population affected by the operation, provided for in item III of article 33 of the City Statute, in which there is a lack of definition about the destination (location, conditions) of this population, showing that there is a risk of formal and general insertion of such programs at the specific law without proper detailing. This lack can also culminate in its inefficiency of a democratic and participatory management, which can be succumbed by the interest of the real estate market at the organizing and directing the UO.

With this in mind, it enhances the importance of the role of other actors, civil society, academia and other organizations in the process of UO elaboration as well, to guarantee the detail and an accessible and clear language, in order to guarantee the collective interest.

(...) to administer is to interpret public norms for application in concrete cases. The interpretation is an inseparable task from implementation especially in the Brazilian case where laws aimed at administration are not very detailed and full of legal uncertainty (Palma, 2020, p. 227).

Thus, the text of the law is a condition for its implementation, and must be clear, precise and accessible. Because, as Maricato and Ferreira (2002, p. 12) put it, "it is important to remember here how the interpretation of the law is strategic for the public and social interest".

CONCLUSION

Thus, it is concluded that urban systems play an important role in the transition to sustainable development, and Brazilian legal instruments are able to support innovative urban policies aimed at the sustainable city. The Urban Operation, an instrument to implement a (sustainable) urban project for the reconfiguration or configuration of the target area of the city indicated by the master plan, through multisectoral public policy and through public-private partnership, presents great



potentialities in relation to the sustainable city implementation.

However, the legal provision itself is not capable of achieving the objectives and guidelines of the City Statute and the SDGs. Conservative and distorted practices for the use of the UO instrument that prioritizes urbanization through the real estate market main or sole interests is still persistent. Even so, it can be said that this does not indicate the fate of the UO of always leading to urbanization with the overlap of the market's logic of opportunity.

For this, it is necessary to explore and centralize its essence, of being an instrument for the implementation of an urban project, in which coordinated, synergistic and articulated action can be promoted between various actors in society and, therefore, attend multiple local demands and needs, and enhance local vocations and identities and conditions of a sustainable city. And financial viability conditioned by a collection mechanism, although it is a factor that cannot be ignored for the execution of the project, must remain as a complementary instrument to finance public works, infrastructure, services, and equipment, that must aim the promotion of social diversity and environmental sustainability, as well as reaffirming the collective character of the city.

Thus, further discussions and future researches on the possible means to effect synergy between various actors in society in an integrated and participatory manner, ways to promote greater debate on sustainable urban system in urban projects within the scope of the UO, possibilities of public-private partnerships anchored in sustainability within the scope of the UO seem to be key questions to expand the horizon of the use of this instrument towards more sustainable cities.

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