Urban Land Regularization: Reurb-s process and the benefits for the population

Regularização Fundiária Urbana: Processo de reurb-s e os benefícios para a população

Regularización del Suelo Urbano: El proceso reurb-s y los beneficios para la población

Abstract

Land tenure regularization aims to legalize the property of residents of urban areas irregularly occupied for housing purposes and consequently provide security, improve the urban environment and the population’s quality of life. This research aims to study how the process of legalization of occupations in Goiânia, contributed as an instrument of social inclusion of low-income people. In order to answer: does urban land regularization contribute as an instrument of inclusion for the low-income population to have access to housing? In this context, through an exploratory bibliographic research, which had in documents its main source for collecting information, for the case study carried out in the neighborhoods Quebra Caixote, Vila Lo-bó, St. University, Vila Romana, have been regulated or in the process of being legalized. Thus, the procedure implemented by the city hall of Goiânia, through the title and ownership of housing, in the neighborhoods, ended up ending, for these residents, the dignity of the urban space, contributing as an instrument of social inclusion, meeting the demand for housing and legal security of the property.

Keywords: Social inclusion; Legal certainty; Home; Land regularization.

Resumen

La regularización de la tenencia de la tierra tiene como objetivo legalizar la propiedad de los residentes de áreas urbanas ocupadas irregularmente para fines de vivienda y, en consecuencia, proveer seguridad, mejorar el medio ambiente urbano y la calidad de vida de la población. Esta investigación tiene como objetivo estudiar cómo el proceso de legalización de ocupaciones en Goiânia contribuyó como instrumento de inclusión social de personas de bajos ingresos. Para responder: ¿Contribuye la regularización del suelo urbano como instrumento de inclusión para que la población de bajos ingresos tenga acceso a la vivienda? En este contexto, a través de una investigación bibliográfica exploratoria, que tuvo como fuente principal de recolección de información los documentos, para el estudio de caso realizado en los barrios Quebra Caixote, Vila Lo-bó, St. Universidad, Vila Romana, fueron reguladas en proceso de legalización. Así, el procedimiento implementado por el ayuntamiento de Goiânia, a través de la titulación y propiedad de viviendas, en los barrios, terminó por acabar, para estos vecinos, con la dignificación del espacio urbano, contribuyendo como instrumento de inclusión social, atendiendo a demanda por moradia e segurança jurídica da propriedade.

Palabras clave: Inclusión social; Seguridad jurídica; Moradia; Regularização fundiária.
1. Introduction

Urban Land Regularization, or Reurb, according to Law 13.465\17 is the process of legally formalizing “housing structures, land, enterprises and other forms existing in practice, then irregular, of land use and occupation, the so-called informal urban centers”. as explained by Lages and Marques (2021).

Considering the aspect of the law added to the City Statute (2001), a work will be developed focused on the study and research in the city of Goiânia, both the historical aspect and the legislation on land regularization and the Constitutional approach of the fundamental right to housing and housing punctuating the Reurb’s process with its legal security aspect and its benefits for the population who live in illegal properties in the city. By briefly analyzing the history of Land Regularization in Goiânia, it is clear that the inadequate occupation of the territory is a relevant issue in the territorial management of municipalities.

It is worth noting that the problem originated in historical moments due to the large-scale rural-city-city migratory processes, lack of urban planning and ineffective implementation of public policies in relation to land use and planning, especially for housing. During the study, the research will approach the property right and its main historical links with the fundamental rights, the property, the existential minimum and the other links that are intended for the legal protection of your house for housing and/or your land for housing, family support and the dignity of the human person in having their property legalized and consequently their deed.

Currently, a large part of the territory has some kind of housing and land irregularity. In the city of Goiânia, an expressive number of properties are inserted in the context of subnormal urban agglomerations according to the IBGE and city hall census that will be surveyed at an opportune moment of the research.

The research is supported by Fundo Amparo e Pesquisa do Estado de Goiás (FAPEG) and will use the legal basis of Law No. as well as the City Statute, a landmark in the establishment of norms for land regularization, which is important for urban and housing planning in cities.

Point out the great milestone that the legislation provided to the urban land regularization process through an administrative procedure which guarantees the right to housing of those residing in informal settlements located in urban areas and demonstrate that it deals with Social Land Regularization applicable to informal urban centers occupied predominantly by the low-income population, as declared in an act of the municipal Executive Power.

The method developed in the present research work was an academic analysis, with emphasis on bibliographic research, legislation, public documents, doctrine, jurisprudence, files and records of the municipality, electronic systems, removing practical evidence that was used as tools to know the result of scientific research.

This article is organized into sections, being divided into three sections, namely: Reurb-S Process and its benefits for the population, legislation on land regularization and Constitutional approach to the fundamental right of housing and housing and a brief history of land regularization in Goiania.

2. Methodology

According to the work of Cardano (2017) the research must have its design in the form of an analytical and functional structure of the actions performed. For this research project, the detailed design in Figure 1 is proposed.
For this research it is proposed to use the exploratory qualitative methodology, which according to Gil (2009):

"Tandm with the aim of providing greater familiarity with the problem, with a view to makingTheit more explainícite or constitute hipOtheses, the improvement of ideas or the discovery of intuitionit's".

This author also considers that in most cases, these researches involve:

a) bibliographic surveyTheI am;

b) on-site visit to gather experienceandNencias prTheethics with the researched problem;

c) anTheanalysis of examples that stimulate understandingTheO.

There is a need and the adoption of more than one research technique – they are not mutually exclusive – being: bibliographic research, based on written records: books, articles, dissertations, theses and articles published on the internet; and the case study, where the concrete case is investigated, in this work, of the "barriers" to land regularization in the city from goiânia.

The bibliographic research intends to be supported by the acquisition and collection of data through researches from different sources, books, scientific journals (periodicals), internet, dissertations and theses.
The case study will comprise the identification, characterization and critical analysis of the cases of “obstacles” identified, whether for successful or unsuccessful regularizations.

In order to produce information and knowledge for more effective use, at the academic level as well as at the level of public administration, in order to promote conditions for actions and transformations of situations within managerial customs, this plan also has the specific character of action research.

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3. Reurb-S Process and Benefits for the Population

In the focus of explaining the concept of Urban Land Regularization (REURB) is the procedure through which the right to housing of those residing in informal settlements located in urban areas is guaranteed and demonstrate that Reurb-S deals with land regularization applicable to the nuclei informal urban areas predominantly occupied by the low-income population, as declared in an act of the municipal or district Executive Power, in accordance with art. 5, I of Decree 9,310/2018.

In the view of Marrara and Castro (2019) Reurb-S involves low-income population in an irregular urban area, some authors and among legal operators, the expression regularization of favelas is used, not as a derogatory means, but rather, to be precise in which specific location is the majority of the population that can be served by the Law and to seek means given their absolute and supreme social relevance, and which reach a large percentage of the less favored population.

For Almada, (2020) Reurb is classified into two modalities, Reurb-S of social interest, to serve the predominantly low-income population, and Reub-E of specific interest, where the economic criterion of the population that occupies the informal nucleus, used for groups that do not fit the classification of social interest.

In accordance with art. 13 of Law 13.465 17, it is the economic situation of the population in the occupation of the informal urban nucleus that will define the form that will be legalized, and the difference between the two modalities is that the Reurb-S is funded by the public power, in it there is the incidence of gratuitousness in the costs and fees for notary and registration, as well as the responsibility for the implementation of infrastructure works. The law mentioned above establishes the possibility of having parts considered of social interest and parts considered of specific interest in the same informal urban nucleus, and each part must be well identified in order to apply the appropriate procedure to each area of land subdivision.

As provided by art. 30.I, of Law 13.465\17, it is the responsibility of the Municipality and the Federal District to define the classification of the informal nucleus, or, of the States and the Union in some cases, art. 30, paragraph 1, of law 13.465\17, being current the setting of the objective criterion, it was established by art. 6 of Decree 9,310\18, sets the family income cannot be higher than five times the minimum wage in force in the country, and the composition or range of family income to define the low-income population established by the mentioned federated entities. In this vein, as the law in question allows the recognition of the two modalities, Social and Economic, in the same urban area, in accordance with Law 13.465\17 and Decree 9.310\18 in its art. 26, b, defines that the Reurb-S is operated on pre-securitized by a private individual.

Continuing to explain the aforementioned law and the decree, the environmental approval in Reurb-S because it is of social interest, the legislation brings a less rigorous treatment in its approval, already in the case of Reub-E of specific interest, the environmental approval it is stricter. Furthermore, regarding the completion already in the registration phase at the property registry office of the location of the property, the collection of fees according to Decree 9.310\18 art. 54, if Reurb-E is of specific interest because it is outside the exception rule, the fees due are normally levied, under the terms of the current table of the State, under the terms of art. 56, for the exemption of costs and fees provided for in law n. 13.465\17, the title of land title, possession
or other instrument of acquisition will be presented, by the legitimized or by the occupants, to the competent real estate registry officer, within a maximum period of one year from the date of issue of the title. Thus, the exemption rule has a period of validity, for cases of titling.

In his thesis Almada (2020), he defines that a third type of Reub, which did not receive a special designation by law 13.465\17, is that of plots divided for urban purposes on a date before 19\12\79, a date that coincides with the edition of law 6,766\1979. Thus, installations that occurred before the enactment of this law receive an even more simplified treatment for their regularization, since at the time there was no rigid regulation of the aforementioned law for the preparation and implementation of subdivisions. It is worth mentioning that at the time, Decree-law 58\1937 was in force. Thus, for academic purposes the author calls this kind of Innominata Reurb.

In this context, for a better understanding of the study, Decree No. 9310, of 2018, came to regulate Law No. 13,465, of 2017, and among the requirements stipulates the observation that the income of the family to be benefited by REURB-S must be maximum of 5 (five) minimum wages. Therefore, the beneficiary who fulfills the above requirement may have the right to free notary and registry fees and fees, and the costs of preparing the Urban Land Regularization Project and its infrastructure if it is REUR-S and within the requirement mentioned, the costs are borne by the Public Power, with regard to REURB-E, the regularization will be contracted and paid for by its beneficiaries, and in the case of public areas, if there is public interest.

Reub Innominada is regulated in art. 69 of law 13.465\17 and was regulated by Decree 9.310\18, through its art. 87, which, despite bringing the same wording, innovated in the inclusion of paragraph 3, which brought important clarification to the simplified procedure of this Reurb, that is, the author makes it clear that regularization can be done in stages, and clarified the possibility of legalization regardless of rectification of area, equating it to the other Reurb-S and Reurb-E.

In the meantime, before concluding this section of the article, some of the benefits of urban REURB for the population were addressed, being: one of the main ones is the guarantee of the right to housing for those residing in informal settlements located in urban areas, reducing bureaucracy, simplifying, streamlining and unlocks the procedures of urban land regularization, expands the possibilities of access to urbanized land for the low-income population, promotes the rescue of citizenship, heats up the real estate market, with new property registrations and the economic growth of the Municipality.

4. Legislation on Land Regularization and Constitutional Approach to the Fundamental Right of Housing and Housing

The research will use the legal foundation punctuating the position of authors, jurists, public bodies on the support of Law No. the City Statute, had a milestone in the establishment of rules for land regularization important to urban and housing planning of cities, set out in Chapter II, which deals with “URBAN POLICY”, explained in arts. 182 and 183 of the CF of 1988. It is important to register the great milestone of the inclusion of Urban Policy as a constitutional right. What provided the advance of the legislation regulated in mid-2017 provided celerity to Reurb by allowing the process of urban land regularization through an administrative procedure.

In this way, the focus that some authors bring to the fore regarding the application of the legislation is that the urban land regularization policy focuses on the objective and subjective aspects of property, seeking at the same time to incorporate informal urban centers into the urban planning and to stabilize the links of subjective appropriation of the irregular property, through the titling of its occupants. In the words of Nalini (2013, pg.125) “Housing is a fundamental right and imposes a continuous effort on the part of authorities in order to facilitate access to regular registration, a prerequisite for the enjoyment of this primary right without which there is no true human dignity.”

Souza, (2004, p. 76), defines that housing “is a historically improved right, since there has always been an instinct in
relation to its great need, even if its dignified suitability for the complete development of the human being”. The author explains that “having a place to stay and develop is linked to the individual’s desires, because in order to achieve the basic needs of life, such as relaxing, working, educating, it is necessary to have a fixed place that is widely recognized by all. ” Nolasco (2008) makes it clear that the right to housing stamps the basic need of man, since the beginning of antiquity, being an essential requirement for a full life.”

Nolasco (2008, p. 88) defines the right to housing as being the exclusive possession of a place where there is protection, privacy and conditions to develop basic life practices. It is an erga omnes right, a place of survival for the individual. It is the shelter and support for themselves and their families “[…] from there arises the right to their inviolability and the constitutionality of their protection”. Sarlet (2008) emphasizes the vision of independence of this right, treating it as an autonomous right that has its own sphere of coverage and purposes, which does not preclude its possible connection with other goods considered fundamental.

Souza brilliantly complements on the subject that:

“Housing is an inalienable good of the natural person, inseparable from his will and inaccessible, which allows him to be fixed in a specific place, not only physical, but also the fixation of his natural interests in everyday life, exercised definitively by the individual. and, secondarily, its exercise falls on any landing or place, but being the object of law and legally protected. The good of “housing” is inherent to the person and independent of physical object for its existence and legal protection. For us, "housing" is an essential element of the human being and an extra-patrimonial good. "Residence" is the simple place where the individual would find himself. And housing is the effective exercise of "housing" on a certain immovable property. Thus, "housing" is a legal situation recognized by the legal system […].” (SOUZA, 2004).

However, the right to housing was treated by the 1988 Constitution in an indirect way, which before opened support for its non-application and a stir about its essentiality, but in 2000, with the constitutional amendment n. 26, the right to housing was expressly included as a constitutional right. Before the aforementioned amendment, in a brief reading of articles 5 and 6 of the Constitution, a less knowledgeable person could interpret that the right to housing was not recognized in the current Magna Carta due to the express gap in the regulation on this subject, concluding, therefore, that this right until that moment had never been affirmed in the Brazilian constitutional scope. (SOUZA, 2004).

However, the right to housing was already enshrined in the Federal Constitution of 1988, in its article 7, item IV, by establishing that the minimum wage should be sufficient to meet the primary needs of rural and urban workers, together with their dependents, including the right to housing:

“Art. 7 The rights of urban and rural workers, in addition to others aimed at improving their social condition: […] V - minimum wage, established by law, nationally unified, capable of meeting your basic vital needs and those of your family with housing, food, education, health, leisure, clothing, hygiene, transportation and social security, with periodic adjustments that you preserve the purchasing power, being prohibited its binding for any purpose;[…]]”

In this vein, housing, although not yet defined as a universal social right, was already seen as a concern and sought after as a Constitutional status. In the article referred to above, the consideration of housing as a primary essential need of the individual is already seen. And from this thought, Souza (2004) highlights its very important characteristic not only as a social right, but also as a very personal, human and fundamental right in the face of its evident precision for the survival of the human person.

It is convenient to emphasize that the right to housing, as it is an essential human right, is protected by the principle, which governs all relationships and is the basis of the Federal Constitution, human dignity. Its primacy is notorious, as it is not enough to be characterized by its moral and spiritual value, it is also the object of legal protection, hence its super-relationship
with other rights, since, when living under a roof, it required the realization of other rights such as honor, peace, health, education, etc. There is no way to admit it in isolation, since, because they are so essential, they are united in a single individual, because there is no way to develop a healthy life in an inhumane situation. (SOUZA, 2004).

In this vein, this article interprets the definition of the concept of housing an essential, primordial and fundamental right, as well as guaranteed by our federal constitution of 1988, being a fundamental right, the regularization of irregular properties is of paramount importance in a general context for all society.

5. Brief History of Land Regularization in Goiânia

Regarding the history of REURB in Goiânia, to develop a study and research of some irregular areas with data from the years 2010 to the present, the situation of these properties in front of the city hall and if they have already been regularized in the Property Registry, and if not, how is the processing and the procedure of the public power in the face of the regularization of these properties.

It is worth mentioning that the UN study “State of the World's Cities 2010-2011” - bringing the urban indicates Goiânia as one of the most unequal cities in the world, the architect Luís Saia - IAB - May 1960 to 1964 - Governador Mauro Borges Urban Plan, did not generate an urban law for the city and there was an environment of political dispute over the management and the plan was not concluded.

On these paths, it is important to note that the land use of Goiânia has Special Areas of Social Interest (AEIS) - according to LAW N° 8834, OF JULY 22, 2009:

AEIS - I:
 a) Legally and urbanistically regularize and improve the living conditions of occupations consolidated by the low-income population;

AEIS - II:
 a) The area is occupied by predominantly residential use;

AEIS - III:
 a) The areas identified in items I, II and IV of article 112 of Complementary Law No. 171/2007.

According to the IBGE, the largest favela in Goiânia is located in St. Universitário known as Quebra Caixote is a subnormal agglomeration in the eastern region of Goiânia, with more than eight hundred people living, having its precise location located next to the Leste Universitário neighborhood, on the banks of the BR-153, see Figure 2.

Figure 2 - Georeferenced Figure Goiânia, Irregular Regions surveyed.

Source: Google Earth
The unbridled and irregular occupation, over the years, it is verified, even with its regularization through the administrative procedure and its titling after 5 years of land legitimation, the deficiencies of the irregular and unplanned occupation, reflects its lack of structure for the population, as seen in Figure 3, Vila Lobó, close to one of the prime regions of Goiânia, but without proper planning and regularity in its occupation for more than 30 years, reflects on the city as a whole, as a regular urban space. in accordance with the legislation, but visibly irregular, as it is occupied without organization and structure with smaller lots, without sidewalks, adequate postage, water, and sewage.

Figure 3 - Current view of Vila Lobó (Jardim Goiás), Goiânia.

In an article in the newspaper, about the reintegration of an area in Goiânia “is the object of legal action, and this space in the central region of the capital has historically been the target of invasions, and the proximity to the meeting of the Botafogo stream has concerned municipal administration and the defense civil.” (O Popular newspaper in 2019).

Data collected in an interview in the aforementioned newspaper, it appears that over the years the City Hall of Goiânia removed residents who built sheds in the so-called “Occupation Emílio Póvoa, in the East Crimea Sector, on the banks of Marginal Botafogo, near the intersection with Avenida Goiás. North. About 10 years ago, the Public Ministry of the State of Goiás (MP-GO) made a request for an inspection at the site and requested the immediate removal of the residents, as the region was at risk of landslides.

In 2016, after several families were removed, four still inhabited the place, in a local visit the newspaper found and counted almost a dozen masonry shacks built. In a survey of current data for this article, on November 21, 2021, as shown in Figure 4, I captured images of some irregular areas in Goiânia, which corroborate with UN, IBGE, Goiânia City Hall surveys.
It is possible to notice that even in the year 2021, these houses built many years ago, on the margin of the marginal Botafogo, even some already regularized, do not have adequate infrastructure, as the sewage flow is carried out through pipes without the proper built-in piping. It should be noted that the proximity of the houses to the marginal Botafogo, does not respect any of the minimum limits of 15 meters that can be reduced by municipal or district law to 5 meters on each side, the non-buildable strip, the municipalities are authorized to change this reserve not buildable from changes in urban laws and the Master Plan, in addition to taking into account the Land Installment Law.

In the present case, it is very important to point out that the marginal Botafogo, has the Botafogo stream that cuts the highway, therefore, the obligation to keep the distance from buildings in the space of 15 meters in relation to the running and dormant waters of the rivers and the highways. The rampant irregular occupation, has serious consequences, because with the flooding of the marginal botafogo stream, the risk of houses collapsing is high, and the lane of marginal botafogo has already given way, Figure 5, in the year 2018 according to data from the newspaper O popular, and the volume of rains considered to be millimeters higher than normal, but within the proportion of the rainy season.
Figure 5 - Reopening of the Botafogo Marginal, February 2018 data.

Furthermore, according to the master plan for Goiânia, no construction is allowed less than 50 meters from each bank of the streams in Goiânia, specifically Meia Ponte, Anicuns and João Leite, the minimum limit is 100 meters. Being a risk area, according to the Civil Defense Coordinator of Goiânia in 2018, Francisco Vieira, also highlighted that one of the problems in the area is the existence of a judicial imbroglio. “There is part of that region that is a private property”. The owner of the place asks in court for the municipality to keep the place and give it another area”, says the resident. In addition to the occupation issue, the possibility of risks of landslides and landslides increases with the rainy season. According to the coordinator of civil defense, mentioned above, together with the Municipal Secretariat of Social Assistance (Semas), carries out work in several risk areas in Goiânia, including the Emílio Póvoa Occupation. “What happens is that sometimes we go in the morning and people are at work or they get scared and don't welcome us for dialogue”, says Vieira.

Next, the new dynamics of urbanization in the municipality of Goiânia are presented, with emphasis on the occupation of the territory, respecting the legislation and the social function of cities.

Since the process of disorderly occupation of the territory generates implications for management and, above all, new challenges in the organization of the city, in this way, the municipal public power sought legal alternatives to minimize the problems of irregular land occupation and housing problems in the city. Entering the framework of legislation, the City Statute, law 10,257 of 10, 2001, brought the regulation of the urban policy provided for in CF 88 and outlined participatory planning and the social function of property, a milestone was also listed for municipalities to achieve address the issue of land tenure regularization.

In this sense, art. 30 of the Federal Constitution, assigns municipal competence to legislate on matters involving local interest, and in a supplementary way to federal and state legislation, as appropriate, being also of municipal responsibility for territorial planning, planning, control of use, installment and of urban land occupation.

In this way, the Constitution also establishes in art. 23, item IX, the common competence of the Union, the States, the Federal District and the Municipalities to “promote housing construction programs and the improvement of housing conditions and basic sanitation”. In addition, when reading articles and legislation on land regularization and the Constitutional support of the fundamental right to housing, it is concluded that the Magna Carta is the law that guarantees the fundamental right to housing.
Making a link with the subject addressed and researched in this article, the informal urban nucleus, is the main theme of the present study: clandestine, irregular or in which it was not possible to carry out, in any way, the titling of its occupants, even if the legislation in force at the time of its implementation or regularization.

It is worth ending with the concept of consolidated informal urban nucleus: one that is clandestine, irregular or in which it was not possible to carry out, in any way, the titling of its occupants, even if the legislation in force at the time of its implementation or regularization was complied with. Therefore, it is concluded that the support that Law 13.465/17, stipulated a period for the consolidation of the areas object of Reurb promoted through land legitimation, can only be applied to informal urban centers proven to exist until December 22, 2016. According to the Ministry of Cities (2017), more than 50% of urban properties in Brazil have some type of irregularity.

In numbers, it means that approximately 100 million people live in irregular properties in Brazil. According to data from the Goiás State Government Housing Agency (AGEHAB) in 2018, in Goiânia there are more than 24 thousand properties for regularization, most concentrated in the Northwest Region, where more than 10 thousand deeds have already been delivered, distributed in 13 neighborhoods in the region. The regularization process has no cost for families with income from zero to four times the minimum wage.

6. Conclusions

The detailed analysis of the land bases was carried out through a bibliographic research and in loco research, to obtain data, which precisely define the legal and spatial situation of the aforementioned occupied areas. In view of this, the study of Land Regularization Projects, that is, the history of some occupations to be legalized in the Municipality of Goiânia, will apply the applicable municipal and state laws and in particular Law 13.465/17, with the main objective of integrating from the occupied area to the local urban context, urban, not only in its physical structure, or internal accessibility; these interventions must add all public services to this new area.

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