

CONSORTIUM URBAN OPERATIONS AN INSTRUMENT OF MUNICIPAL MANAGEMENT: AN ANALYSIS OF ITS ATTEMPTED IMPLEMENTATION IN THE MUNICIPALITY OF MANAUS



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ABSTRACT

The objective of this research was to evaluate what were the implications of the City Statute in the application of Consortium Urban Operations? Was there any attempt to carry out a Consortium Urban Operation in Manaus? The Consortium Urban Operation (OUC) is an instrument for the implementation of large urban projects using public and private investments. Showing the importance of popular participation, the relationship with progressive property tax and with the Master Plans of the cities, especially Manaus. A methodology was used regarding the technical procedures, the research is classified as bibliographic and documentary; as for the objectives, it was an exploratory study, analyzed some cases to arrive at the one in Manaus. It was concluded that there is a low level of popular participation, a lack of transparency, which makes it impossible for society to participate, and the use of progressive taxes would have a certain effect, but without solving the problem. With the introduction of Consortium Urban Operations it could be an option to reduce the housing deficit.

Keywords: Consortium Urban Operation, Popular Participation, Progressive IPTU, Master Plan.

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INTRODUCTION

In 2001, Law 10.256 was enacted, which establishes the Statute of the City, which in turn regulated articles 181 and 182 of the Federal Constitution of 1988, obliging Brazilian municipalities with greater powers of state intervention through social public policies aimed at urban development.

The municipality is the presence of the State in society, it is *a privileged locus* for the planning of inclusive actions, aiming to contribute to the reduction of socio-spatial inequalities, ensure the fulfillment of the social function of property and expand the participation of all citizens in the decision-making processes about urban policy. (BENSO and ALLEBRANDT, 2020)

Being mandatory for municipalities with more than 20 thousand inhabitants, the institution of a master plan, it is now possible to institute means to curb the speculation of land inserted in the urban environment, subjecting the owners of these areas to the payment of taxes, such as the Improvement Contribution, the Urban Property and Territorial Tax (IPTU) which can be Progressive in Time, the Onerous Grant of the Right to Build.

The article Delimited itself to is associated with what is recommended by the Constitution, showing its relationship with the "Statute of the City", as it is the legal framework of Law No. 10.257/2001 that established mechanisms for the reduction of socio-spatial inequalities, enabling municipalities to adopt legal instruments to balance and harmonize social relations in the urban space, through the elaboration of a master plan.

Karlin Olbertz proposes the following conceptualization for the theme: "the consortium urban operation is an urban enterprise, led by the municipal government and developed in partnership with civil society, financed in whole or in part by the counterparts resulting from the execution of a flexible urban plan, and translated into an urban procedure cumulatively oriented to structural urban transformation, environmental enhancement and the promotion of social improvements in a certain area of the habitable space.

Neto and Moreira (2013) found that instead of fulfilling the purpose of recovering Urban land capital gains, in both cases studied on the Consortium Urban Operations, the government accelerated and boosted private accumulation. (KRUGER, 2020)

According to Saboya (2008), consortium, negotiated and compulsory urban operations correspond to punctual interventions through partnerships, negotiation or imposition, respectively, under the coordination of the Municipal Public Power, with the involvement of the private sector, residents and users of the site in order to achieve

structural urban transformations, social improvements and environmental enhancement of the intervening place (KRUGER, 2020).

They take the consultation to the population so that it can deliberate on a certain subject 'of marked relevance' [...]. What differs one instrument from the other is that in the referendum the population is consulted 'a posteriori' (after) the law approved in Congress, while in the plebiscite the consultation is made 'a priori' (before) the law is approved (KRUGER, 2020).

As Freitas and Kruger (2016) ponder, when the population shares the discussion, the planning, when it gives its opinion and is heard, it takes responsibility and gets involved with compliance with the rules, transforming the budget into a participatory instrument. Thus, at the same time that they take responsibility, the people guarantee and coordinate the construction of the development of the place in which they live.

This article shows themes of citizenship, popular participation, the master plan and social management, as the work refers to social, political and citizenship rights for city dwellers, ending by showing the relationship between Consortium Urban Operations and the City of Manaus.

The article shows how a legitimate partnership between the Municipal and Private Public Power as an instrument for improving urban policy can contribute to the reduction of the housing deficit.

Two decades after the enactment of the City Statute, what were the implications of this legislation in the application of Consortium Urban Operations? Was there any attempt to carry out a Consortium Urban Operation in Manaus? This question guided all research, which began to research publications in journals of the upper stratum, with the objective of knowing and analyzing experiences that aimed to institute tax and urban instruments for the recovery of land surpluses, curbing speculation in urban real estate, expanding the participation of civil society in urban planning.

METHODOLOGY

Research regarding the objectives is classified as exploratory, conceptualized by Gil (2017, p. 128) as that which "aims to provide greater familiarity with the problem, with a view to making it more explicit or to build hypotheses".

As for the technical procedures, the research is classified as bibliographic and documentary.

When a selection of the database was made to search, the scientific article was analyzed and selected based on criteria and bibliographic protocols that became part of this article.

It emphasizes bibliographic research, as Severino (p. 122, 2007) states that this type of study "is the one carried out from the available record, resulting from previous research, in printed documents, such as books, articles, theses, etc."

In addition, it is also documentary, as it is prepared from material that has not received analytical treatment. Documentary analysis is a rich and stable source that supports the researcher's statements, in addition to completing information obtained through other techniques. These sources are: laws, regulations, letters, statutes (LUDWIG, 2012).

Using these guidelines, the articles that make up this research were examined and the main results were addressed, the main sources of this research revolve around 5 years of publication with few exceptions, with this the result was from the construction of the problem to the way the articles were included in this article

The present research has journals published in Qualis/CAPES A1, A2 and B1, with a few exceptions that were explicit in the work to start from an idea and return to journals that had become evident throughout the work.

CONSORTIUM URBAN OPERATIONS

Consortium Urban Operations are used to requalify, implement or expand urban infrastructures in an area of the city, through interventions, where there is real estate interest with demand above the limits established by urban legislation. The City Statute cites a basic concept of Consortium Urban Operation, being a "set of interventions and measures coordinated by the Municipal Public Power, with the participation of owners, residents, permanent users and private investors, with the objective of achieving structural urban transformations, social improvements and environmental enhancement in an area".

The Consortium Urban Operation (OUC) was instituted by the City Statute (Law 10.257) in articles 32, 33 and 34, it is an instrument of Urban Law. It is important to note that urban operations have already been practiced in Brazil in other ways. Its objective is urban development, environmental enhancement and social improvements in a predetermined area, as Karlin Olbertz teaches:

"[...] The Consortium Urban Operation is an urban enterprise, led by the municipal government and developed in partnership with civil society, financed in whole or in part by the counterparts resulting from the execution of a flexible urban plan, and translated into an urban procedure cumulatively oriented to structural urban transformation, environmental enhancement and the promotion of social improvements in a certain area of the habitable space[...]

Consortium Urban Operation proves to be an example of partnership between the Public Power and the private sector, because in paragraph 1 of article 32 of the City Statute it is established who the participants are, with the Municipal Public Power as coordinator and private sector entities as participants, the City Statute mentions the importance of having a specific law for the creation of each Consortium Operation.

Article 32. A specific municipal law, based on the master plan, may delimit an area for the application of consortium operations.

Consortium urban operations are specific interventions carried out under the coordination of the Government and involving the private sector, residents and local users, seeking to achieve structural urban transformations, social improvements and environmental enhancement (SABOYA).

The Consortium Urban Operation aims at the social management of land valuation, to the extent that it must contribute to the recovery of the valuation obtained from public works in order to effect the social function of property. (BENSO and ALLEBRANDT, 2022)

Defenders of urban consortium operations say that they are an advanced instrument, as Mariana Fix mentions:

- 1) They enable large works, despite budget constraints, making densification and infrastructure capacity compatible in a given perimeter;
- 2) They allow the beneficiaries of a work to pay their costs, freeing up public resources for application in priority investments;
- 3) They enable the recovery of the so-called "urban surplus value", capturing part of the appreciation resulting from a public investment so that it is not appropriated solely by real estate owners and developers.

Urban Operations can take place in any location within the Municipality. Attention is needed, however, to ensure that the benefits arising from the application of this instrument are distributed fairly among the various sectors of society. In this sense, some factors can bring difficulties. First, the requirement contained in the Statute that the investments of the resources obtained in an urban operation be made within the area defined for the operation. Another factor is that the private sector only tends to be interested in urban operations in

areas that are already attractive from the point of view of real estate capital and that, therefore, should not be prioritized by the Government for reurbanization (SABOYA).

Consortium Urban Occupation comes with another option to solve problems with housing, reoccupying abandoned spaces, as in several capitals they are usually located in city centers.

It seems to me a fabulous instrument in the construction of a housing policy, which can adopt any structure within a public garb its execution, limited only by the creativity of the administration. (ALMEIDA FILHO, 2023)

POPULAR PARTICIPATION

These instruments are responsible for ensuring that the community participates, thus promoting a democratic management of the city, as it will ensure that the population inspects, monitors and deliberates on the Municipal Urban Policy.

The public consultation is a procedure that, when the matter involves a matter of collective interest, a period is publicly opened for third parties to learn about the process and express themselves about it in writing, before the decision on the request. Regarding the instrument of the public hearing, it characterizes it as an institute of administrative participation open to individuals and certain social groups, aiming at the legitimacy of the administrative action by which the right to expose trends, preferences, and options that can lead the Government to a decision of greater consensual acceptance is exercised (KRUGER, 2020).

Democratizing decisions is fundamental to transform the planning of municipal action into shared work among citizens and assumed by citizens, as well as to ensure that everyone is committed and feels responsible and accountable in the process of building and implementing the Master Plan (ROLNIK and PINHEIRO, 2004).

In fact, (LAURIA) for most Brazilian urban policies today institutionalized arenas of participation are foreseen, such as forums, councils and management centers, while moments of discussion for specific topics are still stipulated in public conferences and hearings. The question is whether these arenas are in fact capable of balancing relations that are already unequal and that, therefore, enter the participatory process in an equally unequal way (SIQUEIRA and SOUZA, 2020).

Even more important for the Brazilian demands for urban reform and the right to the city, participatory processes can help in the formation of an active citizenship, i.e. of political

subjects capable of reflecting on their role in society, their rights and duties. In this way, personal development, political empowerment, and the formation of bonds of solidarity and belonging can help build a more just and egalitarian society. Indeed, citizens should have the right and duty to participate in the design, implementation, and management of decisions that impact their lives as profoundly as those of urban planning. (SIQUEIRA and SOUZA, 2020)

With this, the population could propose bills, plans, programs and development projects at the urban level, which promote the development of cities and the quality of life of the population, thus ensuring the objective of using idle spaces for the benefit of society, reducing housing deficits.

PROGRESSIVE IPTU

This instrument aims to encourage the use of land and property in an appropriate manner, thus being able to encourage the creation of consortium urban occupations, and thus helping to solve housing deficits.

The progressivity of the Urban Property Tax (IPTU) allows the municipal government to progressively increase the value of the IPTU rate of a property, if the owner does not give the property the use as provided for in the Master Plan. The objective is to combat real estate speculation and prevent the occupation of urban spaces further away from the center (FRANZESE). The value of the property tax increases every year, reaching a maximum value of 15% of the property's market value and, after five years, the owners lose the property. (KRUGER, 2020)

The use of progressive property tax could prevent certain situations from occurring, as in the analysis of Neto and Moreira (2013), who studied two of the few existing Urban Operations in Brazil: the OU Faria Lima, in São Paulo and the OU Linha Verde in Paraná.

Neto and Moreira (2013) found that instead of fulfilling the purpose of recovering Urban land capital gains, in both cases studied on the Consortium Urban Operations, the government accelerated and boosted private accumulation. (KRUGER, 2020)

The authors sought to verify whether the structuring elements of the Consortium Urban Operations hinder or foster the recovery of urban land gains, and found: strengthening of an exclusionary urban development model; concentration of resources and opportunities in restricted areas of the city in favor of select groups of beneficiaries; accelerated real estate appreciation of noble sectors of the city, promoting gentrification;

public investments catalyzed real estate activity and did not achieve urban success; low investment in social housing. (BENSO and ALLEBRANDT, 2022)

In the City Statute, the operations appear side by side with instruments considered important, from the point of view of urban reform: compulsory construction, progressive property tax, expropriation with payment in public debt securities, etc. (FIX, 2004)

Its main objective is to occupy and reoccupy idle urban space, thus being able to face the problem of homelessness, as Mariana Fix rightly mentions, to capture part of the appreciation resulting from a public investment so that it is not appropriated only by owners and real estate developers, thus enabling the recovery of the so-called "urban surplus value".

Another example is around the central area of São Paulo, the concern with old buildings has been going on for years, we continue to see these buildings with no social function everywhere, this occurs because the owners are trusting in the potential of the area and believe in an appreciation, so the properties are abandoned, waiting for a period to undertake, It turns out that this is nothing more than real estate speculation, which ends up making the rehabilitation of these buildings even more difficult, even using the progressive IPTU to discourage this from occurring, but often the building ends up in even greater debts and as a result ends up making rehabilitation difficult.

These aim to regulate, promote and ensure the fulfillment of the social function of property, curbing the maintenance of idle properties with a market reserve for real estate speculation, ensuring the occupation of urban voids, expanding the supply of housing in the city (KRUGER, 2020).

However, the lack of priority given to social objectives and the lack of participatory processes in their decisions have resulted in those realities of the most well-known consortium urban operations in the country, mentioned above, and which go against the principles of the city's social function and its democratic planning and management, as idealized by the Statute. Considering this ambiguous nature of the instrument, or the differences between theory and practice, it is necessary to have a clearer view of the impacts of urban operations in consortium based on their local experiences. (SIQUEIRA and SCHLEDER, 2022)

MASTER PLAN

A master plan aimed at occupying empty spaces and mitigating environmental risks aims to tackle the housing deficit, thus improving the quality of life of the population, by respecting a constitutional minimum by guaranteeing the right to housing.

Compulsory subdivision deals with the division or redivision into parcels intended for the exercise of urban elementary functions in a mandatory manner of urban land (SILVA, 1995). Therefore, the government may, through a specific law, for the area defined in the Master Plan, when the social function of the property is disrespected, oblige the owner to subdivide or dismember land with dimensions greater than the maximum allowed by law (KRUGER, 2020).

Compulsory construction, on the other hand, deals with the situation where the municipality imposes the obligation to build on the owner of urban property that is without any use, provided that the situation of non-construction of the land contravenes the provisions of the Master Plan, and provided that the other legal requirements are met (MEIRELLES, 2020).

As the federal constitution provides, by using the principle of the supremacy of the public interest over the private interest, the Public Administration, on a legal basis, can carry out expropriation for social interest in order to improve the quality of life of society, thus seeking to reduce inequalities.

The municipality may also proceed with the total or partial listing of movable and immovable property, public or private property existing in its territory which, due to their cultural, historical, artistic, architectural, documentary, bibliographic, paleographic, urban, museographic, toponymic, ecological and water value, are under the special protection of the Municipal Public Power (KRUGER, 2020).

Thus, the instruments to induce urban development are supported by national legislation, placing the municipality as the main actor to put into practice a Consortium Urban Operation. Carrying out a study of the impact on the neighborhood, environmental impact, its positive and negative effects, always aiming to improve the quality of life of the population residing in the area and those who may come to reside in that place

Saboya mentions that urban operations have great potential for qualification in cities, as they allow the treatment of urban spaces, this treatment is difficult to obtain only by the Master Plan.

The need to keep the plane intelligible requires the adoption of generalizing parameters for the various zones, which cannot respond to the special situations that are certainly part of the fabric. Through Urban Operations, these situations can be defined and worked on individually, with a higher level of detail than in the Master Plan (SABOYA).

After a long process of debate, the Brazilian Constitution of 1988 included a chapter on urban policy that exposes the principles of the right to the city, the social function of property and democratic management. The latter is emphasized in several parts of the constitutional text and is clear in the emphasis given by Article 192 to the participatory master plan as the main instrument to guide urban development. Furthermore, most of the instruments of the City Statute impose social participation, as is the case of urban operations (SIQUEIRA and SOUSA).

MANAUS

Before mentioning the case of Manaus, it is important to mention other municipalities as a comparison effect, such as the case of Rio de Janeiro, which in 2021 launched the Reviver o Centro project and the city of São Paulo with its current Consortium Urban Operations.

In the region close to Porto Maravilha, which provides for tax incentives and the relaxation of urban legislation for the construction of new housing and via retrofit of commercial buildings. The program launched provides for the constitution of a real estate park of the city hall for social leasing, thus, the scale of the urban intervention seems to be small to actually have a qualitative leap in urban quality, there would be the provision of extra resources for this purpose coming from a mechanism of consortium urban operation in which the construction of residential units in the center gives the right to build more vertically in more valued areas of the city (NADALIN, 2023).

In São Paulo, the same idea was approved at the same time, mid-2021: it is the Requalifica Centro Program. It also provides tax incentives for the requalification of buildings to house housing in the center (NADALIN, 2023). Once again, the criticism is the lack of social participation in the process, promising the intensification of conflicts caused by gentrification (Rolnik, 2021).

In 2012 the historic center of Manaus was listed, with its main architectural landmark being the boom cycle of rubber, thus becoming known as the old metropolis of rubber, there are about two thousand properties covered in the perimeter. Its Master Plan recognizes the

importance of preserving the city's building heritage, approved by Complementary Law No. 2, of January 16, 2014, provides for the collection of abandoned listed property as one of the measures aimed at protecting the assets that are part of the urban cultural heritage, in the mold of specific legislation still pending edition by the Municipality.

Nevertheless, a significant number of buildings are in a situation of abandonment in the city of Manaus, which motivated the establishment of a Civil Inquiry by the Prosecutor's Office Specialized in the Protection and Defense of the Urban Order of Manaus in 2012. The investigation found the existence of at least 60 abandoned properties in the city, which would be offering threats to public safety and health. The actions adopted by the Municipality were restricted to the imposition of fines and other administrative penalties due to the poor conditions of conservation of the properties, without advancing to the management of the instruments that induce the social function of the property or the collection of abandonment, in spite of the fact that both were contemplated in its Master Plan. (SOTTO)

The public civil action filed against the Municipality of Manaus by the Public Prosecutor's Office in 2016, distributed under No. 0621190-23.2016.8.04.0001, was upheld in the first instance in 2018 (PUBLIC PROSECUTOR'S OFFICE OF AMAZONAS, 2018). In the context of provisional compliance with the sentence, pending judgment on appeals and ex officio appeals in the 2nd instance, the Municipality of Manaus was summoned, in June 2020, to collect 12 abandoned properties identified in a report dated 2019 as vacant assets, in addition to charging the progressive IPTU over time on unbuilt urban properties, underutilized or unused listed in the same report. Although not yet final and unappealable, the public civil action in question is an important precedent, which should accelerate the implementation of urban policy instruments that induce the social function of property in the city of Manaus (SOTTO).

In Manaus there is a great lack of transparency in data collection, despite this, an Urban Consortium Operation Popular Commerce of Manaus was attempted, this attempt took place through Law No. 1,388/2009, in which there was no provision for a management group for the operation, but as described in the law in its article 11, when mentioning, that the Municipal Institute of Urban Planning (IMPLURB) would be responsible for implementing the project.

However, in 2010, the Special Commission for Analysis, Evaluation, Classification and Accreditation was created, being responsible for managing the studies provided for by

law and for implementing the OUC. The question is: the members of this council must necessarily belong to the staff of IMPLURB, in addition to receiving remuneration. The president receives R\$ 1,500.00 reais, while the other members receive R\$ 1,000.00, for a total of five members. This operation was revoked by Law No. 1755/2013, but it is possible to question whether the fact that the members of the council are public servants paid by the City Hall for this function could not lead to biased positions, considering the requests of the Executive above local needs. (SIQUEIRA and SOUZA, 2020)

FINAL CONSIDERATIONS

This article is the result of a research on the experience with urban operations in Brazil and the fulfillment of the objectives set by the City Statute of structural urban transformations, social improvements and environmental enhancement, as well as the urban reform agenda in a broader way. However, the projects have been criticized for being little more than road works, with low urban benefits and meeting the demands of the local population (SIQUEIRA and SOUZA, 2020). The research questioned whether the lack of social participation in the preparation, implementation, monitoring and review of the Consortium Urban Operations is not one of the weaknesses of the projects that could lead to such results.

Democratizing decisions is fundamental to transform the planning of municipal action into shared work among citizens and assumed by citizens, as well as to ensure that everyone is committed and feels responsible and accountable in the process of building and implementing the Master Plan (ROLNIK and PINHEIRO, 2004).

The article shows how a legitimate partnership between the Municipal and Private Public Power as an instrument for improving urban policy can contribute to the reduction of the housing deficit.

The Consortium Urban Operation aims at the social management of land valuation, to the extent that it must contribute to the recovery of the valuation obtained from public works in order to effect the social function of property. (BENSO and ALLEBRANDT, 2022)

Consortium Urban Occupation comes with another option to solve problems with housing, reoccupying abandoned spaces, as in several capitals they are usually located in city centers.

It seems to me a fabulous instrument in the construction of a housing policy, which can adopt any structure within a public garb its execution, limited only by the creativity of the administration. (ALMEIDA FILHO, 2023)

The progressive IPTU instrument aims to encourage the use of land and property in an appropriate manner, thus being able to encourage the creation of consortium urban occupations, and thus helping to solve housing deficits.

These aim to regulate, promote and ensure the fulfillment of the social function of property, curbing the maintenance of idle properties with a market reserve for real estate speculation, ensuring the occupation of urban voids, expanding the supply of housing in the city (KRUGER, 2020).

A master plan aimed at occupying empty spaces and mitigating environmental risks aims to tackle the housing deficit, thus improving the quality of life of the population, by respecting a constitutional minimum by guaranteeing the right to housing.

Therefore, the government may, through a specific law, for the area defined in the Master Plan, when the social function of the property is disrespected, oblige the owner to subdivide or dismember land with dimensions greater than the maximum allowed by law (KRUGER, 2020).

In the article it is evident that in Manaus an Urban Operation Consortium Popular Commerce of Manaus was attempted, this attempt took place through Law No. 1,388/2009, in which there was no provision for a management group for the operation, but as described in the law in its article 11, when mentioning, that the Municipal Institute of Urban Planning (IMPLURB) would be responsible for implementing the project.

Once again, the criticism is the lack of social participation in the process, promising the intensification of conflicts caused by gentrification (Rolnik, 2021).

In conclusion, the lack of transparency and popular participation in consortium urban operations has made it difficult to be a means of municipal management, making it difficult to build a fairer society. It would take more willingness from the Government to expand society's participation so that these operations are truly inclusive and democratic. Contributing to the construction of a more dignified city for the majority of Brazilian society,

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