

# 05

## New Downtown and Residency in Maringá, Parana State, Brazil

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The study assesses the environmental impact reviews in urban development licensing procedures in Brazil, exemplified by the urban development tendencies observed in the Maringá Metropolitan area, Paraná State. The study starts with a description of the Brazilian urban legal framework, addressing its rules and regulations, allocation of competencies between administrative spheres, procedural design, social protagonism and transparency, and judicial review. Based on this scenario, the two cases reveal the harm to social interest that comes from the contradictory issues regarding municipal autonomy, since both municipal protagonism and restraint seem to lead to unwanted results. The critical analysis and propositions reveal that formal and procedural controls lack effectiveness in transforming the public agents' conduct. A strategic change is needed in order to address the exposed issues with real positive results. In conclusion, the search for balance in municipal autonomy is key. A combination between capacity development and support and supervision from an interfederative governance structure seems to be the way towards better conduction of urban policy in Brazil, and may serve as a model for countries with similar issues.

# 1 INTRODUCTION

1. The northern region of the Paraná State, in Brazil, has been a fertile ground for urban development in the past 10 years. Particularly in the City of Maringá; it is widely recognized that the urban development rhythm there is second to none in the Country, reputed as the best city in Brazil for urban development, second best Brazilian city in sanitation, among other rankings.
2. Founded in 1947, Maringá spreads over an area of 487,930 square kilometers, with 403,063 inhabitants, a Human Development Index of 0,808 and Gross Domestic Income of US\$ 4,551,652.70 per year. Its peculiar urban management history<sup>1</sup> is a fertile ground for this inspection.
3. A recent study regarded Maringá as the best of the 100 larger cities in Brazil, when health, education and culture, public security, sanitation and sustainability indicators are analyzed.<sup>2</sup> Nonetheless, these circumstances do not guarantee the best social interests in the management of urban development projects, specially regarding environmental reviews.
4. In this scenario, according to the Brazilian Institute of Geography and Statistics, Maringá's population grew 1.4662% between 2014 and 2015. The Housing and Condominiums Syndicate in Paraná states that the medium square meter price for real state has risen 76.6% between 2009 and 2014, as the medium worker's income increased only 34.4% in the same period, according to DIEESE. All these factors lead to a natural increase in the need for urban policy surveillance from the Public Administration, especially when the number of licenses jumped 36% in only four years, according to the Construction Industry Syndicate.
5. Several issues related to urban development licensing – specifically in regard to environmental impact assessment procedures – arise: how can local governments deal with the overwhelming increase in number of procedures? Is the function allocation between federal, state and municipal governments adequate? Is the judiciary keeping up with demand for review? Are the local regulations sufficient to provide environmental protection in urban development licensing procedures? How do these issues affect the reliability of this framework? How may the Brazilian model be improved, taking in consideration the NUA and the SDGs?
6. Regarding this scenario, urban development licensing in soaring Brazilian cities such as Maringá, is heavily dominated by economic pressure. Urban development enterprises are a main economic field in these cities, and both companies and workers rely on constant and fast expansion.
7. On the other side, municipal governments struggle to keep up with demand. Although the decentralization of urban public policy brings democracy and social oversight against corruption, cities rarely or never have the capabilities of states and the Federal Governments, and thus the conduction of licensing procedures suffers.

8. Between these two poles sits the legal framework for technical, environmental and social licensing procedures of urban development. Particularly in relation to environmental impact assessments, procedures are extremely complex and expensive, making urban development procedures slow for private actors and difficult for governments.
9. These are the challenges that lay in the path of this study.

# 2 URBAN DEVELOPMENT REVIEWS IN BRAZIL

10. In order to provide answers to the questions and problems described, the outlined case study consists of two parts: the study of a case in which the municipal autonomy for urban planning led to unwanted social and environmental results; and the study of a case in which the lack of municipal autonomy for environmental licensing led to unwanted social and urban results.
11. However, prior to the detailed analysis of these cases, the study is steered towards an accurate description of the legal and institutional framework of environmental reviews in urban development in Brazil, including “national, subnational, or sectorial implementing institutions and applicable laws, regulations, rules and procedures, and implementation capacity, which are relevant to the environmental and social risks and impacts of urban projects,” as stated in the call for proposals.
12. The description includes flow designs, from proposal through approval and the final review or appeal. Special attention will be given to the metropolitan administration structures, still incipient in Brazil, and the following issue areas:
  - a. The criteria to determine whether an urban development project should be submitted to specific environmental impact assessment, and the consequent government tier competent to conduct the review;
  - b. Elements of social review in such processes, especially regarding stakeholder identification and engagement, and transparency and information disclosure, with special care to the nature and relevance of such interventions;
  - c. The overall technical and political assessment of urban, environmental, social and economic impacts of urban development projects, including the mitigation of negative externalities and the enhancement of positive ones.
  - d. The effectiveness of environmental reviews in urban development licensing procedures, regarding the positive or negative impacts of the environmental report's propositions on the final design of the project;

<sup>1</sup> CORDOVIL, Fabiolla Castelo de Souza. A aventura planejada: Engenharia e urbanismo na construção de Maringá. 2010. Thesis (Doctorate in Architecture and Urbanism) – University of São Paulo, São Paulo, 2010.

<sup>2</sup> PORTO, Claudio; et. al. Desafios da gestão municipal. Rio de Janeiro: Macroplan, 2017. E ainda: BRETAS, Valéria. As melhores e piores 100 grandes cidades do Brasil. Exame, São Paulo, 16 mar. 2017.

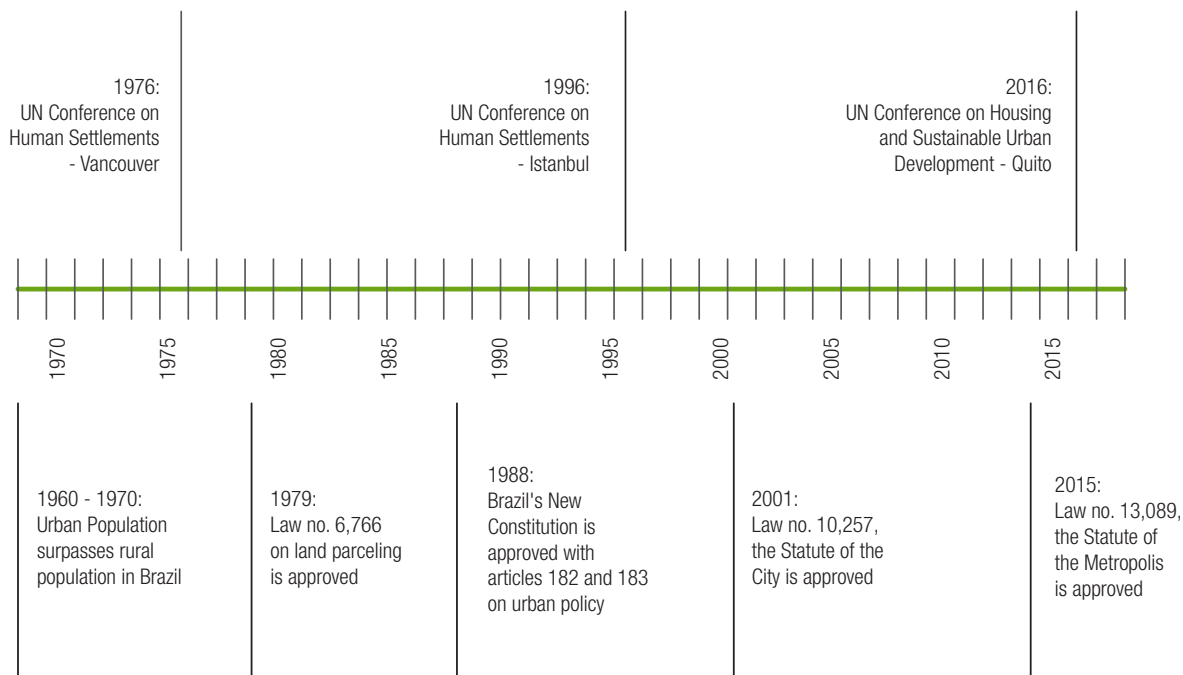
- e. The stability of policy and regulations stability, particularly regarding issues of legislative changes, bias and manipulation;
  - f. The structures and frameworks of Metropolitan administrations;
  - g. Consistency of the actual analysis conducted in environmental and social review of urban development projects, including compliance with the national, state and local policy frameworks;
  - h. Administrative review and judicial control over urban development procedures, along with social and environmental impact monitoring mechanisms.
13. Finally, the theoretical and practical background of the assessment will lead to critical conclusions for improving the design of environmental law and processes for urban development in Brazil, taking into account the capacity building needed to support this improvement.
- ## 2.1 Legal framework
14. The current framework for Brazilian urban law is a phenomenon best studied from a historical perspective. Moreover, urban law in Brazil has developed in parallel with worldwide concerns over the “urban question”, mainly since the second half of the 20th century. Thus, a combined vision of both domestic and foreign urbanism is the key to comprehending the current scenario.
15. As such, although several years of discussion over each legal Act are needed, specific domestic Acts (called “leis”, “laws”) in Brazil keep up with the international tendencies and events in urban law. This is the case, for example, regarding the United Nations Conference on Human Settlements in Vancouver in 1976, and the subsequent Law no. 6,766, on land parceling of 1979; as well as with the United Nations Conference on Human Settlements in Istanbul in 1996, and Law no. 10,257, the “Statute of the City” of 2001; and the United Nations Conference on Housing and Sustainable Urban Development in Quito in 2016, and Law no. 13,089, the “Statute of the Metropolis” of 2015.
16. Nonetheless, the contemporaneity between the development of urban legal instruments both in Brazil and internationally didn’t result in a perfectly functional system of reviews – including environmental – for urban development initiatives. This is an issue approached throughout the study, especially in the final section.
17. The second half of the 20th century marks the urban spin in Brazil. Between 1960 and 1970, Brazil’s urban population surpassed its rural population,<sup>3</sup> almost thirty years before the same was observed in a global perspective. These tendencies started in the Southeastern Region – comprising States such as São Paulo and Rio de Janeiro – during the 1950s, and were consolidated throughout the other regions during the 1970s.<sup>4</sup>
18. During this period, some historically important urban laws in Brazil dedicated efforts to these issues. Law no. 4,380 of 1964 was dedicated to the financing and planning of housing programs; Law no. 5,318 of 1967 established the National Policies on Sanitation; the Complementary Law no. 14 of 1973<sup>5</sup> created and briefly regulated several Metropolitan Areas.<sup>6</sup>
19. In 1976, contemporary international concerns with the urban issues were addressed at the United Nation’s Conference on Human Settlements in Vancouver. At this point, urban policy guidelines were focused on housing and land parceling, but relied mainly on the leadership of national governments; thus, incipient urban policy was established in an unstructured manner.
20. The Vancouver Declaration on Human Settlements demonstrated deep concerns with the problems rising from the urbanization phenomena worldwide and established eleven guidelines for urban actions that may be outlined as (i.) governmental and international organizations’ efforts, (ii.) the focus on governments for policy adoption and strategic planning; (iii.) how policies should harmonize several components such as population growth and distribution, employment, shelter, land use, infrastructure, and services, through adequate mechanisms and institutions, (iv.) and that they should work towards the improvement of rural habitats, thus containing the rural exodus.
- (v.) The pressing need for policies on growth and distribution of population, land tenure and localization of productive activities translated into (vi.) progressive minimum standards for an acceptable quality of life in human settlement policies and programmes, (vii.) with care to avoid international transposition of inadequate standards and criteria.
- Finally, the Declaration states core values of (viii.) adequate shelter and services, (ix.) health and (x.) human dignity for all, (xi.) with equal employment “of all human resources, both skilled and unskilled”.
21. In Brazil, the urban scenario was reflected in the Law no. 6,766 of 1979 on land parceling. This piece of legislation represented a rupture with past conceptions on urbanism; aligned with the Vancouver Declaration on Human Settlements’ guidelines, urbanization and land parceling directives were thus marked with a social trait.<sup>7</sup> Accordingly, Law no. 6,766’s dispositions were centralized, stressing the national government’s leadership regarding urban standards.
22. Thus, Law no. 6,766 was the first contemporary legal landmark in Brazilian urbanism, aligned with pressing global debates. Still in force, its dispositions empower states and municipalities to complement federal provisions on urban law, in order to adapt them to “regional and local peculiarities” (Article 2).

Table I - Distributed Population in the Demographic Censuses 1960-2010

Census	1960	1970	1980	1991	2000	2010
Urban	32.004.817	52.904.744	82.013.375	110.875.826	137.755.550	160.925.792
Rural	38.987.526	41.603.839	39.137.198	36.041.633	31.835.143	29.830.007

Source: IBGE, Demographic Censuses 1960, 1970, 1980, 1991, 2000 and 2010.

Figure 1 - Timeline of the Brazilian Legal Framework on Urban Law



Source: Composed by the author.

23. Law no. 6,766 determines standards for land parceling – as allotments or dismemberments – establishing minimal infrastructure, prohibitions, acceptance criteria, documents, review and approval procedures, and public registry standards for urban development projects. It also regulates the relations between entrepreneurs and the general public, establishing contractual standards and sanctions.
24. The arrival of the 1980s also held important innovations in Brazilian urban law. Of special importance for this study is Law no. 6,938 of 1981 that established the National Environmental Policy. Moreover, the 1988 Brazilian Constitution stressed the importance of urban real estate's social function for the full development of the city and the welfare of its inhabitants, thus elevating urbanistic concerns to the constitutional level.
25. The several previous Brazilian Constitutions – of 1824, 1891, 1934, 1937, 1946, 1967 and 1969 – lacked specific dispositions on urban law, while consistently protecting private property. Although the Constitutions of 1824, 1891, 1934 and 1937 contemplated the possibility of public expropriation – with the 1946 Constitution steering its disposition towards a more important role for municipal governments<sup>8</sup> and the use of property in accordance with social welfare – only the 1967 Constitution included dispositions of property's social function.<sup>9</sup> Nonetheless, this Constitution did not address the urban nature of real estate issues, maybe due to the still incipient characteristic of urbanization in Brazil during that period of time.
26. With the 1988 Constitution, the concept of urban real estate in Brazil changed. This rupture with the previous order – by which the urban real

<sup>3</sup> BRITO, Fausto, O deslocamento da população brasileira para as metrópoles. Estudos Avançados, São Paulo, v. 20, n. 57, may-aug, 2006.

<sup>4</sup> BRAZIL. INSTITUTO Brasileiro de Geografia e Estatística. Tendências Demográficas: Uma análise dos resultados da Sinopse Preliminar do Censo Demográfico 2000. Rio de Janeiro: IBGE, 2001. P. 13.

<sup>5</sup> In the Brazilian system of legal diplomas, a Complementary Law is a piece of legislation that is dedicated to specifically regulate matters addressed by the Constitution, thus complementing the latter. In such conception, it may be said that a Complementary Law is an act hierarchically superior to a Law, called ordinary.

<sup>6</sup> PIRES, Maria Coeli Simões. Os Rumos do Direito Urbanístico no Brasil: Avaliação Histórica. Revista Fórum de Direito Urbano e Ambiental, Belo Horizonte, v. 3, p. 107-124, 2004.

<sup>7</sup> PIRES, Maria Coeli Simões. Os Rumos do Direito Urbanístico no Brasil: Avaliação Histórica. Revista Fórum de Direito Urbano e Ambiental, Belo Horizonte, v. 3, p. 107-124, 2004.

<sup>8</sup> COSTALDELLO, Angela Cassia. As transformações do regime jurídico da propriedade privada: a influência no direito urbanístico. Revista da Faculdade de Direito da UFPR, Curitiba, v. 45, p. 151-168, 2006.

<sup>9</sup> PIRES, Maria Coeli Simões. Os Rumos do Direito Urbanístico no Brasil: Avaliação Histórica. Revista Fórum de Direito Urbano e Ambiental, Belo Horizonte, v. 3, p. 107-124, 2004.

estate became bound to a social function – had impacts on urban law, since real estate rights ceased to be only individual. Although private property is still a right to be protected, the exercise of such an individual right is only adequate under the circumstances of fulfilling the property's social function.<sup>10</sup>

27. Under this scope, urban real estate is conceived not as isolated properties, but as a whole and coordinated network of urban elements that fulfill their social function. They must also comply with the “city's ordination of fundamental exigencies expressed through the master plan”, as stated in Article 182, second paragraph of the 1988 Brazilian Constitution, balancing public and private natures.<sup>11</sup>
28. Thus, as Costaldello (2006) stresses and Silva declares (2000), the social function of urban real estate is founded in “human activity's projection, impregnated with cultural value, in the sense of something that is built through the human spirit's projection”.<sup>12</sup>
29. Nonetheless, as detected by Pires (2004), while this [urban law structuration] effort was materializing in 1988, over 70% of the Brazilian population lived in cities, and Brazil's urban tragedy was already settled: irregular occupations, pollution, housing congestion, epidemics, violence. A tragedy that is not a direct product of the 20th century, but of 500 years of the Brazilian society's formation, resulted from the logic of private concentration of land [...] and of a segregated urban growth process [...].<sup>13</sup>
30. This is an indication that the dispositions in Law no. 6,766 and international debates on urban planning, regardless of their alignment, were not sufficient to properly address urban issues in this period. Even so, the 1988 Constitution deeply influenced urban law, by establishing essential institutions and instruments that guide urban planning and development to this day.
31. Articles 182 and 183 of the 1988 Constitution constitute the chapter dedicated to urban policy, currently in force.
32. Article 182 establishes municipal governments' leadership in the execution of urban development policy – in accordance with the general legal standards – based on the master plan, compulsory for cities with over 20,000 inhabitants. Its fourth paragraph creates three important instruments for the enforcement of urban property's social function: compulsory parceling or building; progressive real estate taxation; and expropriation paid through public debt securities.
33. Article 183 creates a scenario for adverse possession, or usucaption, in which the term of possession is reduced to five years, provided that the occupant, without being the owner of other real estate, uses the land for his housing or his family's. Evidently, this is steered towards the prevention of urban real estate speculation, favoring the social function of urban land, especially for housing of social interest.
34. Immediately, Bill no. 181 of 1989 was presented before the Brazilian Congress, in order to establish norms and regulations regarding the urban policy outlined in Articles 182 and 183 of the Constitution. However, before its approval, another important international event of urban interest took place.
35. In 1996, the United Nation's Conference on Human Settlements (Habitat II) in Istanbul steered international debates on urban issues towards sustainability, focusing on the performance of local governments, although lacking specific provisions on this matter according to some authors.
36. Twenty years had passed since Habitat I in Vancouver. The Istanbul Declaration on Human Settlements established the Habitat Agenda – followed by an extensive Global Plan of Action – revising the guidelines from Vancouver under fifteen topics: the member states (i.) endorsed the goals and values already established under the two major themes of adequate housing and sustainable development, (ii.) showing concern about “the continuing deterioration of conditions of shelter and human settlements”, although recognizing them as centers of human existence. The declaration (iii.) stressed the need for better standards of living for all, (iv.) depending on the “combat [of] the deterioration of conditions”, (v.) sometimes critically demanding specific assessments for specific countries. Its content adopted as values the harmonization (vi.) of urban and rural development and (vii.) of the living conditions of all people, reaffirming (viii.) the commitment to the right to adequate housing, (ix.) with special attention to housing markets. The (x.) sustainable development of human settlements, (xi.) respecting heritage, is paramount, made feasible through (xii.) partnership, participation and strengthening of local governments, (xiii.) and adequate funding, not only national and international, but also public and private. Finally, the declaration (xiv.) highlighted the importance of UN-Habitat for all these achievements, (xv.) foreseeing a “new era of cooperation, an era of a culture of solidarity” towards sustainable urban development.
37. These directives were reaffirmed and reinforced by the United Nations General Assembly's Declaration on Cities and Other Human Settlements in the New Millennium of 2001. Remarkably, it noted that notwithstanding the governments' commitment to work towards the Habitat Agenda, general urban conditions continued degrading in several countries.
38. At the historical moment when Bill no. 181 of 1989, after almost twelve years under the scrutiny of the Brazilian Congress, was approved, the Statute of the City – Law no. 10,257 of 2001 – was birthed. This piece of legislation established the general regulations claimed by Article 182 of the 1988

<sup>10</sup> COSTALDELLO, Angela Cassia. As transformações do regime jurídico da propriedade privada: a influência no direito urbanístico. *Revista da Faculdade de Direito da UFPR, Curitiba*, v. 45, p. 151-168, 2006.

<sup>11</sup> DI SARNO, Daniela Campos Libório. *Elementos de direito urbanístico*. São Paulo: Manole, 2004. P. 48.

<sup>12</sup> SILVA, José Afonso da. *Direito urbanístico brasileiro*. São Paulo: Malheiros, 2000. P. 74. [Our translation].

<sup>13</sup> PIRES, Maria Coeli Simões. Os Rumos do Direito Urbanístico no Brasil: Avaliação Histórica. *Revista Fórum de Direito Urbano e Ambiental, Belo Horizonte*, v. 3, p. 107-124, 2004. [Our translation].

- Constitution, with standards for the fulfilment of urban real estate's social function and the democratic management of cities.
39. Law no. 10,257 comprises a broad set of urbanistic instruments. As general guidelines, it affirms that its goal is to “regulate the use of urban real estate in favor of collective good, safety, and the welfare of citizens, as well as of environmental balance” (Article 1, single paragraph).
  40. Thus, the Statute of the City establishes goals and guidelines for urban policy, highlighting environmental concerns in subsections I, IV, VIII, XII and XVII of Article 2, distributing competencies between governmental tiers, and outlining several instruments of urban policy.
  41. Specifically, Law no. 10,257 outlines the three instruments created by the fourth paragraph of Article 182 from the Brazilian Constitution. It addresses compulsory use, building or parceling (Articles 5 and 6), progressive real estate taxation (Article 7) and public expropriation paid through public debt securities (Article 8). It also regulates the special adverse possession of social nature, created by Article 183 of the Brazilian Constitution, and instruments such as surface rights, governmental pre-emption rights, the onerous grant of building rights, and urban operations in consortium, among others.
  42. Finally, Law no. 10,257 erects the decision making process on urban matters through two main instruments: urban master plans (Articles 39 through 42-A) and democratic city management (Articles 43 through 45).
  43. Again, just like Law no. 6,766, Law no. 10,257 aligned its provisions with the contemporary international debates on urban law, especially those of the Habitat Agenda. After Law no. 10,257, other legal instruments also regulated particular issues in urban management, such as: Law no. 11,445 of 2007, the national guidelines on sanitation, Law no. 11,977 of 2009, on housing and urban land regularization, Law no. 12,305 of 2010, which established the national solid waste policy, and Law no. 12,587 of 2012, dedicated to the national policy on urban mobility.
  44. Progressing with the international debates on urban issues, the Sustainable Development Goals approved by the United Nation's member states in 2015 included an important goal regarding urban development, SDG11: “Make cities and human settlements inclusive, safe, resilient and sustainable.” These new provisions were followed by the UN Conference on Housing and Sustainable Urban Development (Habitat III) in 2016, with the establishment of the New Urban Agenda.
  45. In order to achieve SDG11, the New Urban Agenda outlined the ideal human settlement as being the one that (i.) fulfills its social function, including the social and ecological function of land, (ii.) is participatory, promotes civic engagement, engenders a sense of belonging and ownership among all their inhabitants, (iii.) achieves gender equality and empowers all women and girls, (iv.) meets the challenges and opportunities of present and future sustained, inclusive, and sustainable economic growth, (v.) fulfills their territorial functions across administrative boundaries, (vi.) promotes age- and gender-responsive planning and investment for sustainable, safe, and accessible urban mobility, (vii.) adopts and implements disaster risk reduction and management, and (viii.) protects, conserves, restores, and promotes its ecosystems, water, natural habitats, and biodiversity, minimizes its environmental impact, and changes to sustainable consumption and production patterns.
  46. Meanwhile, Brazil witnessed the birth of the Statute of the Metropolis, through Law no. 13,089 of 2015 – after the Bill no. 3,460 remained under the scrutiny of the National Congress for ten years – that innovated by creating a new governmental tier of review for urban development projects.
  47. As stated in Article 1, Law no. 13,089 [...] establishes: general guidelines for common interest public function planning, management, and execution, in State-created metropolitan areas and urban clusters; general rules for the integrated urban development plans and other interfederative governance instruments; and criteria for the Union's support for interfederative governance actions in the field of urban development.
  48. Notably, Law no. 13,089 defines several urban concepts, such as “metropolis”, “metropolitan area”, and “urban cluster”, with special attention to the concept of common interest public function: “public policy or action whose accomplishment by an isolated municipality would be unfeasible, or would cause impact on neighboring cities”.
  49. Thus, the Statute of the Metropolis creates parameters for the institution of metropolitan areas (Articles 3 through 5), establishes principles, guidelines and structures for the interfederative governance of metropolitan areas and urban clusters (Articles 6 through 8), provides for integrated urban development instruments (Articles 9 through 12), and establishes the Union's role in supporting integrated urban development (Articles 13 through 16). The creation of a National Integrated Urban Development Fund, in Articles 17 and 18, was vetoed.
  50. As a result, the current legal framework in Brazilian urban law may be organized, based on a timeline, as follows:

Table II - Mapping of the Brazilian Urban Law Provisions

Instrument	Theme	Article(s)	Contents
Law no. 6,766 of 1979	Urban Land Parceling	1	Preamble and allocation of competencies
		2	General concepts
		3	Constraints to urban land parceling
		4	Minimal requirements for allotments
		5	Land reserve for urban equipment
		6-8	Preliminary procedures
		9	Parameters for allotment projects
		10-11	Parameters for dismemberment projects
		12-17	Review procedures
		18-24	Project's public registry
		25-36	Contract's regulations
		37-49	Sanctions and judicial review
		Brazilian Constitution of 1988	Urban Policy
182 § 1	Master plan		
182 § 2	Social function of urban real estate		
182 § 4	Adequate urban exploitation instruments		
183	Special urban adverse possession		
Law no. 10,257 of 2001	Statute of the City	1-2	General guidelines
		3	Union's attributions
		4	Urban policy instruments
		5-6	Compulsory parceling, building or use
		7	Progressive urban real estate taxation
		8	Public expropriation paid with securities
		9-14	Special urban adverse possession
		21-24	Surface rights
		25-27	Government pre-emption rights
		28-31	Onerous grant of building rights
		32-34A	Urban operations in consortium
		35	Building rights transference
		36-38	Neighborhood impact studies
Law no. 13,089 of 2015	Statute of the Metropolis	39-42B	Master plan
		43-45	Democratic urban management
		46-58	General and final provisions
		1	Preliminary provisions
		2	Definitions
		3-5	Creation of metropolitan areas and urban clusters
		6-8	Interfederative governance
9-12	Integrated urban development instruments		
13-16	Union's support to integrated urban development		
19-25	Final provisions		

Source: Composed by the Author.

51. Of course, some of these provisions are too recent to be judged on their effectiveness. Nonetheless, it may be noted that, in a historical panorama, Brazilian urban law is subject to several efforts to keep up to date with the contemporary international debates.
52. With that being said, one may keep questioning the results of this legal framework in the improvement of urban life conditions in Brazil. Thus, the following analysis may shed some light on these issues.
- ## 2.2 Distribution of competencies and administrative spheres
53. As described in the prior topic, regarding the parallel development between the Brazilian legal framework of urban law and the international debates on this matter, one may detect the progressive decentralization of competencies.
54. Originally, diplomas prior to Law no. 6.766, of 1979, established a typically centralized system, in which federal and state governments held the power to determine regulations of still incipient urban development.
55. Internationally, the focus on local capacity building has been achieved mainly through the developments that led to the positions revealed in Habitat II and that conditioned the conduction of Habitat III.
56. In Brazil, the municipal competencies regarding urban policy gained initial expression during the decentralizing democratic period of 1946-1964, though in an incipient form. The 1946 Constitution did not address this matter adequately, but nonetheless, practice led to a scenario where a municipal government, in order to “administrate [...] its peculiar interest and [...] organize local public services” (Article 28, subsection II, item b), should manage urbanistic instruments.<sup>14</sup>
57. In the legal framework outlined by the 1988 Constitution, federal and state-level governments hold shared competencies in establishing rules in urban law (Article 24, subsection I) and in related matters, as environmental and heritage law (Article 24, subsections VI, VII, VIII). These concurrent competencies are shared by the Union, which holds the power to establish general rules (Article 24, first paragraph), and by the states and the Federal District, which hold supplementary power in detailing federal provisions of general nature (Article 24, second through fourth paragraphs).
58. Also, the federal government holds the power to articulate national policies and programs, creating and funding initiatives that, due to their cost or scale, are not within reach to the other government levels.
59. Municipal governments, in turn, hold the constitutional competencies to “legislate on local interest matters [...], supplementing federal and state legislation where applicable”, especially to “promote [...] adequate territorial organization, through land use, parceling and occupation planning and control” (Article 30, subsections I, II and VIII). Even further, Article 182 expressly determines that the urban development policy should be executed by municipal governments. This task is conducted through the urban master plan, mandatory to cities over twenty thousand inhabitants.
- [...] the current arrangement invokes cooperative efforts between federative entities and overall, the attention to the subsidiarity principle applicable in the urban policy concertation, in a way that public powers should be oriented in a successively supplementary fashion, towards the nearest entity in relation to the obligation to provide social and urbanistic needs.<sup>15</sup>
60. Within this framework, the constitutional urban law system notably lacks more detailed and specific provisions. In several cases, competency on a matter is undetermined; the clash between federal, state and municipal acts on urban law is not uncommon. More specifically, the review process of urban development projects is frequently subject to federal, state and municipal rulings, a circumstance that leads essentially to the problems addressed in this study.
61. Finally, regarding the distribution of competencies between government tiers, Brazilian urban law is currently facing a new scenario that is not fully defined yet. Law no. 13,089 of 2015 – whose instruments are still under initial implementation – establishes a new level to the decision-making process, the “interfederative governance” that sits between state and municipal tiers.
62. These new interfederative governance entities will hold the power to rule on questions of shared urbanistic interest between cities in metropolitan areas and urban clusters, composed by representatives of the municipalities and the civil society. Thus, urban matters of collective interest – mainly, “common interest public functions” – in metropolitan areas and urban clusters will be subject not to three, but to four tiers of review, through an additional “integrated urban development plan”.
63. All the current provisions on distribution of competencies in urban governance in Brazil may be summarized as follows:

<sup>14</sup> PIRES, Maria Coeli Simões. Os Rumos do Direito Urbanístico no Brasil: Avaliação Histórica. Revista Fórum de Direito Urbano e Ambiental, Belo Horizonte, v. 3, p. 107-124, 2004.

<sup>15</sup> PIRES, Maria Coeli Simões. Os Rumos do Direito Urbanístico no Brasil: Avaliação Histórica. Revista Fórum de Direito Urbano e Ambiental, Belo Horizonte, v. 3, p. 107-124, 2004. [Our translation].



Table III - Distribution of Competencies in Brazilian Urban Governance

Government Tier	Competencies
The Union	General rules
	National policies and programs
	Macro-regional plans
States and Federal District	Supplementary rules
	Regional plans
Interfederative Governance	Integrated urban development plans (metropolitan areas)
	Common interest public functions (metropolitan areas)
Municipalities	Master plans
	Local rules
	Execution of urban policy

Source: Composed by the Author.

64. It is also necessary to address the issue of the distribution of competencies and the regulations regarding environmental reviews – a topic of special importance to this study – established by Law no. 6,938 of 1981.
65. The CONAMA (National Environmental Council) Resolution no. 237 of 1997 defines the environmental review and licensing procedures, and Complementary Law no. 140 of 2011, in Articles 6 through 17, establishes a coordinated system of environmental competencies between governmental levels.
66. Regarding issues that pertain to environmental reviews of urban development projects, the Complementary Law no. 140 provides that all of the cooperation actions between the three government tiers should be conducted in an integrated and harmonized fashion, in order to achieve sustainable development and applicable principles (Article 6).
67. Thus, the Federal Government holds the power to establish the National Environmental Policy and promote it nationally and internationally, coordinating and integrating programs and actions in all the government levels, as well as articulating the National Environmental Policy and the urban policy (Article 7, subsections I, II, IV and VII). Also, it is the Union's responsibility to create national and regional environmental zoning, defining territorial spaces worthy of special protection (Article 7, subsections IX and X).
68. So as to concrete review and licensing attributions, the federal government holds the power to control projects of transnational or cross-border nature, located in indigenous land or conservational units, or located between two or more states (Article 7, subsection XIV).
69. Regional level governments – states and the Federal District – in turn, are entitled to execute the National Environmental Policy in their territories, establishing the state environmental policies and zoning, and coordinating state and municipal level actions (Article 8, subsections I, III, IV, IX).
70. Regarding review and licensing powers, state governments are entitled to a residual competency, reviewing projects that are not subject to special federal or municipal government licensing (Article 8, subsection XIV).
71. The municipal tier, in turn, is entitled to execute locally the national and state environmental policies and to establish the Municipal Environmental Policy and the Urban Master Plan (Article 9, subsections I and III).
72. Also, municipal governments hold the power to review and license all activities and enterprises that are subject to these procedures under local administrations by the legislation, especially regarding projects that cause or may cause local environmental impact, considering the size, nature and polluting potential, as determined by State Environmental Councils (Article 9, subsections XIII and XIV).
73. Thus, it is noteworthy that the case analysis, regarding distribution of competencies, will rely on the verification of specific applicable law. Nonetheless, Complementary Law no. 140 determines that the review process should be conducted by only one governmental entity, with the other public administration tiers eventually acting in a supplementary and subsidiary fashion in relation to the review process, as established by Articles 13 through 16.
74. Despite all these competencies attributed to the different government tiers, one has to bear in mind that, regarding urban licensing environmental reviews, these assignments are only related to the analysis of the studies and the application of its conclusions, and not to the concrete composition of Environmental Impact Assessments. CONAMA Resolution no. 1 of 1986 determines that the studies and documents that compose the Environmental Impact Assessment should be “submitted” to the competent governmental entity (Articles 3 and 10), since it will be conducted by an independent, private multidisciplinary team, funded by the entrepreneur (Articles 7 and 8).

75. These are, of course, essential factors in this study. One of the main problems in environmental reviews in urban development has its roots in the superposition of competencies and conflicting decision-making processes between government tiers. This issue is addressed in the critical analysis.

## 2.3 Social protagonism and transparency

76. An important element in the Brazilian system of urban policy is the participatory management of the city. The search for democracy in governmental affairs has been a main topic in Brazilian administrative law since the 1988 Constitution, and these tendencies also cast their influence on urban law.

77. Law no. 10,257 of 2001 – the Statute of the City – is the first piece of legislation to heavily rely on social protagonism in order to establish urban policy. Prior provisions, mostly concentrated in Law no. 6,766 of 1979, did not focus on these democratic components as criteria to appreciate urban management.

78. Democratizing provisions are profuse in Law no. 10,257. Article 2, subsection II, determines that democratic management is a general directive in urban policy. This democratic component in urban management would be achieved through individual and collective participation in the establishment, execution and review of urban development plans, programs and projects.

79. Thus, Article 4, subsection III, item f, and its third paragraph elect participatory budgeting and social review as special parts of municipal planning, an essential instrument in Law no. 10,257. Other instruments, such as the urban operation consortium funding mechanism<sup>16</sup> (Article 32, first paragraph, and Article 33, subsection VII) require participatory procedures.

80. The main piece of legislation in local urban planning, the master plan, should rely heavily on participatory procedures in order to establish its provisions, as determined by Article 40. Specifically, the master plan approval process requires public hearings and debates, and full disclosure of documents and information, as determined in subsections I through III in its fourth paragraph.

81. In order to accomplish all these participatory goals, Law no. 10,257 dedicates its Chapter IV to the democratic management of the city, which is here fully reproduced and translated in order to achieve optimal fidelity:

### Chapter IV

#### On the Democratic Management of the City

*Art. 43. In order to ensure the democratic management of the city, the following instruments, among others, shall be used:*

*I - collegiate departments of urban policy, in national, state and municipal levels;*

*II - public debates, hearings and consultations;*

*III - conferences on urban interest topics, in national, state and municipal levels;*

*IV - popular proposition of bills and urban development plans, programs and projects.*

*Art. 44. At the municipal level, the participatory budgeting determined by item f of subsection III of Article 4 of this Law shall include the conduction of public debates, hearings and consultations over the yearly budgets,<sup>17</sup> as mandatory conditions for their approval by municipal councils.*

*Art. 45. The managing agencies of metropolitan areas and urban clusters shall include mandatory and significant individual and collective<sup>18</sup> participation in order to ensure the direct control of their activities and the full exercise of citizenship.*

82. Amongst these participatory instruments, the ones that stand out as particularly typical in Brazilian public administration are the Public Policy Councils and the Sectorial Conferences – respectively, subsections I and III of Article 43.

83. Public Policy Councils are collegiate agencies composed equally of governmental and civil society members, holding powers to decide matters regarding their fields of expertise. In these councils, the government gives up part of its decisional competency, with democratic intentions.<sup>19</sup>

84. Sectorial Conferences, in turn, are temporary instances of deliberation and participation aiming to provide directives for national, state and municipal public policy. They are called by the public agency in charge of the specific policy, and are usually composed equally of governmental and civil society representatives.<sup>20</sup>

<sup>16</sup> NIEBUHR, Karlin Olbertz. *Operação urbana consorciada*. Belo Horizonte: Fórum, 2011.

<sup>17</sup> The original redaction refers to all three types of budgetary acts in Brazilian public finance law.

<sup>18</sup> The original wording comprises particular categories for collective participation.

<sup>19</sup> PEREZ, Marcos Augusto. *A Administração pública democrática: Institutos de participação popular na Administração pública*. Belo Horizonte: Fórum, 2004. P. 142.

<sup>20</sup> BRASIL. *Conferências nacionais, participação social e processo legislativo (Série Pensando o Direito)*. Brasília: Ministério da Justiça, 2010. P. 15.

85. These instruments should be real institutional spaces for dialog and approximation between the State and citizens regarding public policy and, specifically for this study, urban policy. These instruments are deeply tied to each other, in an almost pendular movement between the composition of the councils and the organization of the conferences: usually the councils organize the conferences, and in the conferences the composition of the councils is defined. Thus, the Sectorial Conferences are broader participatory spaces, but short in duration; whereas, the Public Policy Councils are perennial, although heavily delegated regarding social participation.<sup>21</sup>
86. Finally, it may be said that the Public Hearings – subsection II of Article 43 – are the simplest and most common participatory instruments. There are no particular standards for these hearings; the criteria widely adopted to assess their adequacy, nonetheless, is based on the vast publicity of the public call, the varied composition of the participatory group and the weight given to the conclusions of the hearings.
87. Establishing the Statute of the Metropolis, Law no. 13,089 of 2015, follows the democratic line of action that comes from Law no. 10,257. One of the specific directives for the interfederative governance of metropolitan areas and urban clusters, as determined by subsection V of Article 7 of Law no. 13,089 is “the participation of the civil society’s representatives in the decision making process, in the monitoring of services and in the development projects of common interest public functions”.
88. In order to fulfill this directive, the interfederative governance entity shall be structured in order to comprise, between its departments, a deliberative collegiate body with representation from the civil society (Article 8, subsection II), a measure that should also be observed by the National System of Urban Development (Article 20).
89. Finally, just as the master plan regulated by Law no. 10,257, the integrated urban development plan for a metropolitan area or an urban cluster regulated by Law no. 13,089 should rely heavily in participatory procedures in order to establish its provisions, as determined in Article 12. Thus, the integrated urban development plan approval process demands public hearings and debates in all affected municipalities, and full disclosure of documents and information, as determined in subsections I and II of its second paragraph.
90. Due to all these provisions, the critical analysis conducted in this study adopts as a premise the quality and effectiveness of the participatory process in order to assess the adequacy of the urban review processes.

## 2.4 Administrative procedures

91. The detailed analysis of the legal framework regarding urban management in Brazil along with the description of the distribution of competencies and participatory instruments, this study reaches the point where it is possible to describe the administrative review procedures of urban development projects, specifically regarding environmental licensing.
92. In order to achieve this goal, the paper presents flowcharts of the procedures, from proposal through approval and, finally, their review or appeal. Separate flowcharts are produced for the project review process and for the environmental and neighborhood impact assessments.
93. As exposed by the introductory portion of this topic, some issues are particularly evident: the criteria to determine whether an urban development project should be submitted to specific environmental impact assessment and the consequent government tier competent for conducting the review.
94. Elements of social review in such processes, regarding specially stakeholder identification and engagement, and transparency and information disclosure, with special care to the nature and relevance of such interventions; and overall technical and political assessment of urban, environmental, social and economic impact of urban development projects, including mitigation of negative externalities and enhancement of positive ones.
95. As a consequence of the distribution of competencies in Brazilian urban law, previously exposed, it is noteworthy that the procedures described are not necessarily homogeneous in the several governmental entities involved.
96. Since several competencies are bestowed to state and municipal level entities, and as the national legal framework establishes only general regulations,<sup>22</sup> review procedures by those entities may vary. Thus, the procedures described are based, when necessary, in Paraná State and Maringá City provisions.
97. The connectors adopted in the flowchart take the procedure to complementary reviews, like the environmental impact assessment (Diagram II) or the neighborhood impact assessment (Diagram III), described below.
98. Regarding environmental impact assessments, CONAMA Resolution no. 237, of 1997, determines that project proponents may apply to three types of environmental licenses: preliminary license, in order to study and develop the project; installation license, through which the construction of the enterprise is permitted; and operation license, that allows the enterprise to fulfill its core activities (Article 8). Therefore, with regard to urban development reviews, the preliminary license is the most related environmental review procedure.

<sup>21</sup> GREGO-SANTOS, Bruno. Controle Social e Responsabilidade dos Orçamentos Públicos. In: GREGO-SANTOS, Bruno; CARVALHO NETO, Joaquim Mariano Paes de; BERNARDO, Leandro Ferreira; FRACALLOSSI, William (orgs.). *Temas Avançados da Advocacia Pública IV: Advocacia Pública e Combate à Corrupção*. Curitiba: ESAPR, 2014. P. 121-176.

<sup>22</sup> In this context, Law is the name by which the piece of legislation is called in the Brazilian legal system; a translation of the Portuguese Lei.

99. As already exposed in the “distribution of competencies” section above, the role of the governmental entities in urban development environmental reviews is rather passive. Thus, it is noteworthy that, regarding urban licensing environmental reviews, the governmental competencies are only related to the analysis of the studies and the appreciation of the conclusions, and not to the concrete composition of environmental impact assessments. CONAMA Resolution no. 1 of 1986 determines that the studies and documents that compose the environmental impact assessment should be “submitted” to the competent governmental entity (Articles 3 and 10), since it will be conducted by an independent private multidisciplinary team, funded by the entrepreneur (Articles 7 and 8).
100. In order to obtain the environmental licenses, the undertaker shall conduct the environmental impact assessment studies, including (i.) an environmental diagnosis of the full influence area, describing resources and iterations of the current environmental situation of physical, biological and socio-economic features of the area; (ii.) an analysis of the project’s environmental impacts and its alternatives, both positive and negative; (iii.) an outline of mitigating measures for negative environmental impacts, and an assessment of their efficiency; (iv.) a program of monitoring and follow-up of positive and negative impacts (Article 6).
101. These studies will result in a report “reflecting the conclusions of the study”, comprising at least (i.) the project’s goals and justifications, its relation and compatibility with public policy, plans and programs; (ii.) the project’s description and its technological and locational alternatives, with full technical assessment; (iii.) the synthesis of the environmental diagnosis’ results; (iv.) the description of the probable activities’ environmental impacts; (v.) the assessment of the future environmental quality of the area, comparing different alternative scenarios including the project’s abortion; (vi.) the description of the expected effect of mitigation measures for the negative impacts, mentioning the ones that could not be avoided; (vii.) the impact monitoring and follow-up program; (viii.) conclusive recommendations on the most favorable alternative (Article 9).
102. It is also noteworthy that, in most cases, although urban development reviews are a municipal competency, environmental reviews of urban projects are usually under state competency. This circumstance renders the environmental reviews in urban development project licensing subject to two – or sometimes, as the cases studied below, three – government tiers, which brings several issues to be addressed in the critical analysis.
103. The analysis to be conducted in the neighborhood impact assessment, regulated by Articles 36 through 38 of Law no. 10,257, shall assess positive and negative impacts of the project over the quality of life of implied and neighboring populations, considering at least the resulting populational density, urban equipment, territorial use, real estate growth, traffic and transportation, ventilation and lighting, and scenery and heritage (Article 37).
104. The decision whether to submit a project to the neighborhood impact assessment procedure shall be made under criteria elected by municipal law, as determined by Article 36 of Law no. 10,257.

## 2.5 Management of legislative changes and stability

105. Being an instrument of urban regulation, the master plan is an essential piece of urban law. However, the urban master plan is bound not only to this legal nature, but to urbanism in a general perspective.
106. That being said, an issue to be essentially addressed in this study is the legislative process for master plans alterations, and their role in the current (in)stability of the main reference in local urban law.
107. As an instrument that comprises several instances of traditional and scientific knowledge for its formation – including, but not limited to, architecture, urbanism, geography, biology, meteorology, sociology, law, among others – the master plan is made effective through law, but is not only a piece of legislation. This circumstance is recognized in Brazilian urban law by Article 40 of Law no. 10,257, which states that the master plan, as the basic instrument of urban development and expansion policy, is approved by a municipal Law<sup>23</sup>; that is, the piece of legislation is not the master plan, but rather the vehicle by which the master plan becomes legally binding.
108. Thus, as already addressed in the topic dedicated to the participatory issues, the fourth paragraph of the same Article determines that the legislative process of bills related to the master plan – originally approving or later altering it – should be deeply democratic, demanding public hearings and debates, and full disclosure of documents and information.
109. It may be said, then, that the legislative procedure regarding the urban master plan is one of a special nature, diverse from the common creation or alteration of law. Probably due to this special need for legitimacy and stability, several municipalities determine in their Organic Laws<sup>24</sup> that the urban master plan is subject to the legislative procedures of Complementary Laws – as opposed to the simpler procedures of ordinary Laws – that require, among other elements, a qualified parliamentary quorum and multiple Council sessions for bill approval.
110. This does not imply that the master plan should not be changed. On the contrary, the third paragraph of Article 40 of Law no. 10,257 determines that the master plan should be reviewed, at least every ten years, in order to keep up with the urbanistic needs of a given city.

<sup>23</sup> The Organic Law is, for Brazilian municipalities, the legal instrument analogue to the Federal and State Constitutions.

<sup>24</sup> MEDAUAR, Odete. O direito administrativo em evolução. São Paulo: Revista dos Tribunais, 2016.

111. Nonetheless, alterations to the urban master plan should not be conducted by the flow of random – or not so – circumstances, resisting the economic pressure that comes from urban development enterprises. Given the importance of such issues as the origin of several problems in Brazilian urban management, the stability of the master plan is adopted as a criterion to assess the environmental reviews of urban development projects in this study.

## 2.6 Judicial review

112. Finally, a short notice on Brazilian administrative law needs to be presented regarding judicial review of administrative procedures. This is due to the particular progression that administrative law was subject to in Brazil, and to how these factors influence the enforcement of urban law.

113. Being a part of state – or public – law, urban law is bound by the fundamental rules applied in administrative law. And, in administrative law – at least in the system and tendencies in which Brazilian administrative law is inserted – the bind between administrative decision making and law may vary.

114. Theoretically, the acts of the Public Administration may be bound, when the law determines the exact choice to be adopted in a determined scenario, or discretionary, when subject to the factual findings of the public agent.

115. Thus, bound administrative acts would be fully subject to judicial review; otherwise, discretionary administrative acts may be reviewed by the judiciary only in its formal features, since its merit – the content of the discretionary decision making process delegated by law to the agent – could only be decided by the competent administrative agent.

116. Usually, licensing procedures would be bound administrative acts, while planning activities would be discretionary. This is observed when one admits that absolute binding to written law is impossible, since the law, as Medauar (2016) stresses, could not encompass provisions to regulate all of reality's situations.<sup>25</sup>

117. Nonetheless, the current scenario in Brazilian administrative law – and, by consequence, in urban law – is that of an expansion of this binding nature of law over prior discretionary decision making.

118. A special field of study analyzes the self-containment of judicial review over the democratic results of public hearings. Thus, regarding participatory instruments, the judiciary must refrain itself from interfering in the legal procedure and from creating participatory instances other than those legally provided,<sup>26</sup> as explained above.

119. As a consequence of these tendencies, judicial review of administrative decisions in Brazil has grown to very large proportions. Several lawyers – including attorneys, prosecutors, judges, authors, etc. – understand that judicial intervention in administrative affairs should be as broad as possible, which leads to a scenario in which several licensing procedures tend to deadlock due to judicial review.

## 3 MUNICIPAL AUTONOMY CASES IN URBAN DEVELOPMENT

121. As stated in prior sections of this paper, the proposed analysis, based on the detailed description of the legal framework for reviewing and licensing urban development projects, consists of two different cases: firstly, the municipal autonomy for urban planning led to unwanted social and environmental results; secondly, the lack of municipal autonomy for environmental licensing led to unwanted social and urban results.

122. The first study analyzes the New Downtown Maringá (Novo Centro de Maringá) brownfield project, in which environmental and social reviews contradicted other existing policies. Authors credit the urban issues regarding this project to the distortion of the original Oscar Niemeyer project,<sup>27</sup> a factor that is directly linked to the City's autonomy to conduct urban development policy.

123. The second study is dedicated to the Green Diamond Residential greenfield project, in the Marialva city outskirts – located in the Maringá Metropolitan Area – where the environmental review was appealed and ended up blocking the project. In this case, the urban development project had licensing problems that were amplified by the fact that all three tiers of government were involved,<sup>28</sup> resulting in the stoppage of the project due to the lack of municipal autonomy to conduct the process.

124. The apparently contradictory nature of both cases – in which both autonomy and lack of autonomy lead to unwanted results – combined with the detailed description of the framework, is the background to the critical analysis of the study. This critical analysis will assess whether the existing legal and institutional framework is adequate to address the risks and impacts of the project, and enables the project to achieve objectives materially consistent with the social and environmental reviews.

125. The complexity of the analysis comes precisely from the said contradiction, outlined by the necessary summary of the identified challenges, the strengths and weaknesses of the legal and institutional structure for social and environmental review. Finally, the theoretical and practical backgrounds of the assessment will lead to critical conclusions so as to improve the design of environmental law and the process for urban development in Brazil, taking into account the capacity building needed to support this improvement.

<sup>25</sup> BIM, Eduardo Fortunato. A autocontenção judicial no Direito Administrativo participativo: O caso das audiências públicas ambientais. Revista Digital de Direito Administrativo, Ribeirão Preto, v. 2, n. 1, p. 37-70, 2015.

<sup>26</sup> ANDRADE, Carlos Roberto Monteiro de; CORDOVIL, Fabiola Castelo de Souza. A cidade de Maringá, PR: O plano inicial e as "requalificações urbanas". Scripta Nova, Barcelona, v. 12, n. 270, p. 53, aug. 2008.

<sup>27</sup> GREGO-SANTOS, Bruno. Ação de Nunciação de Obra Nova Urbanística. Revista de Direitos Difusos, São Paulo, v. 13, p. 119-130, 2013.

<sup>28</sup> ANDRADE, Carlos Roberto Monteiro de; CORDOVIL, Fabiola Castelo de Souza. A cidade de Maringá, PR: O plano inicial e as "requalificações urbanas". Scripta Nova, Barcelona, v. 12, n. 270, p. 53, aug. 2008.

### 3.1 New Downtown Maringá

126. As stated in the presentation above, the first case study in this paper, unveiled below, analyzes the New Downtown Maringá (Novo Centro de Maringá) brownfield project. In this case, environmental and social reviews that composed the urban development project analysis contradicted prior urban policies, incurring a distortion in the undertaking of the original Oscar Niemeyer's project.<sup>29</sup>

127. As analyzed, this is a factor directly related to the City's autonomy to conduct urban development policy, an issue addressed in the critical analysis.<sup>30</sup>

#### 3.1.1 Overall background

128. The city of Maringá has its origins in a colonization project, founded by the Northern Paraná Land Company (Companhia de Terras do Norte do Paraná) and developed by the Northern Paraná Development Company (Companhia de Melhoramentos do Norte do Paraná). In order to establish the colonization settlements, several cities were founded, Maringá among them.

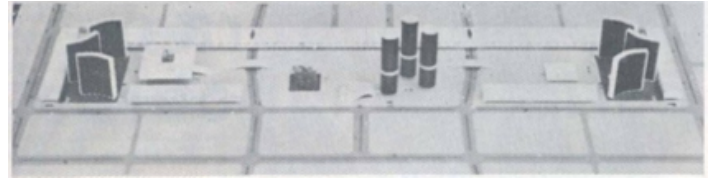
129. Therefore, the initial settlement of Maringá was constructed according to an urban plan, in order to constrain its growth to an organized progression. It was to be expected, however, that this original urban ideal would need adaptations and improvements during time, as it was effectively changed.

*Image III - New Downtown Maringá region during development*



*Source: O Diário.*

*Image IV - Rendering of the original development project*



*Source: Revista Tradição, aug. 1991.<sup>31</sup>*

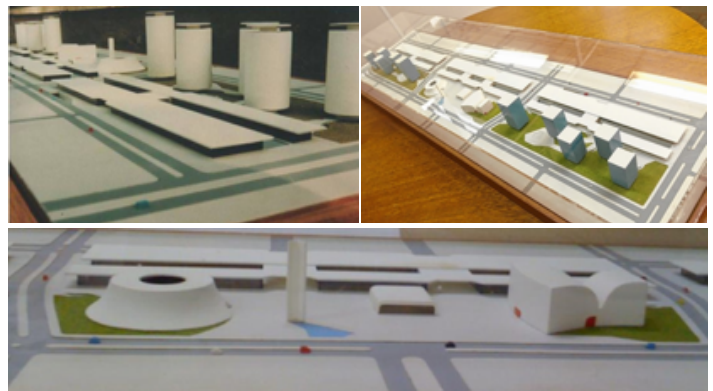
130. One of the areas that were object to a repurpose is the railroad station and train maneuver field, originally located in the central region of the city. Aligned both vertically and horizontally along the central urban axis, this area of several blocks held potential to radically change the urban landscape of Maringá. Since the 1970s the local population had been questioning such a fracture in the urban continuum by the presence of an almost unsurpassable rail infrastructure complex.

#### 3.1.2 From the Agora to the New Downtown

131. In order to repurpose the railroad station and the train maneuver field areas, enclaved as they were in the heart of Maringá, the municipal government commissioned, in 1985, a project by Oscar Niemeyer, the most internationally prominent Brazilian architect.

132. The Agora Project "proposed a new urban, architectonic and occupational concept" to these areas, with the design of three superblocks, the central one being fully public in its destination.<sup>32</sup>

*Images V, VI and VII - Architectural Models for the Agora Project*



*Sources: Museu da Bacia do Paraná<sup>33</sup>, Gazeta do Povo<sup>34</sup> and O Diário.*

<sup>29</sup> Disclaimer: All case descriptions produced in this paper are based on data gathered from official and academic publications, with special attention to the papers and Articles produced by researchers at the State University of Maringá's Branch of the Metropolis' Observatory.

<sup>30</sup> ANDRADE, Carlos Roberto Monteiro de; CORDOVIL, Fabiola Castelo de Souza. A cidade de Maringá, PR: O plano inicial e as "requalificações urbanas". Scripta Nova, Barcelona, v. 12, n. 270, p. 53, aug. 2008.

<sup>31</sup> ANDRADE, Carlos Roberto Monteiro de; CORDOVIL, Fabiola Castelo de Souza. A cidade de Maringá, PR: O plano inicial e as "requalificações urbanas". Scripta Nova, Barcelona, v. 12, n. 270, p. 53, aug. 2008.

<sup>32</sup> CORDOVIL, Fabiola Castelo de Souza; RODRIGUES, Ana Lúcia. Segregação socioespacial e a negligência ao patrimônio construído: Legado dos projetos e práticas do poder público municipal em Maringá - PR (Brasil). Scripta Nova, Barcelona, v. 16, n. 418, p. 41, nov. 2012.

<sup>33</sup> SALVATICO, Tatiane; KJBASKI, Derek. Projeto de Niemeyer para Maringá não foi executado por completo. Gazeta do Povo, Curitiba, 6 dec. 2012.

<sup>34</sup> ANDRADE, Carlos Roberto Monteiro de; CORDOVIL, Fabiola Castelo de Souza. A cidade de Maringá, PR: O plano inicial e as "requalificações urbanas". Scripta Nova, Barcelona, v. 12, n. 270, p. 53, aug. 2008.

133. Such a project could hold the potential to revolutionize the entire city. The open concept of the public spaces, with wide squares and public buildings, could bring urban structures and monuments to a central location that would not be as well located otherwise.
134. However, soon the alterations to the Agora Project began. The project suffered its first revision in 1990 and, during that decade, it was completely disfigured: at the end of 1992 the avenues crossing the area were opened, in order to create 206,600 square meters of development space; in 1993, under pressure from the real estate market, the minimal lot area was reduced by four times, and the use coefficient expanded by one third. Finally, the project was renamed as “New Downtown Maringá”.<sup>35</sup>
135. Currently, none of the original public structures exists, and the area has been almost fully destined to private developments of apartment buildings.

### 3.1.3 Real estate market and environmental impact

136. Several scholars tend to find the real estate market pressures as the cause for the disfigurement of the Agora Project, resulting in the New Downtown Maringá. During the city's history, several of these waves were observed, with “deliberate degradation processes, followed by the private appropriation of originally public and collective buildings and spaces, parallel to the deepening of socio-spatial segregation”.<sup>36</sup>
137. Surprisingly, this is not the first nor the last time these maneuvers are observed, since they were responsible for the private appropriation of areas that originally corresponded to the Rail Station and to the Bus Station and, currently, may also be observed in the Eurogarden project, that intends to repurpose the former Airport area.
138. The concerns of these scholars may be better comprehended when one observes the central location of the New Downtown Maringá in relation to the overall urban plan:

Image VIII - Location of the Development



Source: Google Maps.

139. It may be said, thus, that in such cases municipal governments fail to comply with their central roles in urban policy and law, with the capture of these activities by private actors. Although some development activities are better conducted by private investors, the central legislative and administrative activities regarding urban planning – especially regarding the preservation of public and collective structures and spaces – should never be delegated to private biased actors.<sup>37</sup>
140. Currently, there are several concerns regarding the impacts – mainly environmental ones – of the New Downtown in Maringá. The choice for the tunneling of the rail system, with the constant transit of flammable and dangerous products in bulk in a confined space right under the central part of the city, has impacts that are not yet fully assessed.
141. This case shows clearly the several impacts that unlimited municipal autonomy in urban matters has over the quality and reliability of environmental reviews of urban development, and takes us to its counterpart below.

## 3.2 Green Diamond Residence

142. The second case subject to the present study consists in a greenfield land parceling project, named Green Diamond Residence, in the Marialva city outskirts – located in the Maringá Metropolitan Area. In this case, the urban development licensing procedure, including the environmental review, was appealed and ended up deadlocked, condemning the project.
143. This is a case in which the urban development project had licensing problems that were amplified by the fact that all three tiers of government were involved,<sup>38</sup> resulting in the stoppage of the project by the lack of municipal autonomy to conduct the process.<sup>39</sup>

### 3.2.1 Overall background

144. In early 2012, the Green Diamond Residence urban development project was submitted to the Marialva municipal government, in an urbanistic licensing procedure for greenfield land parceling.
145. The location of the development highlighted in the image above shows that even though it is located in Marialva territory, it is intended for the Maringá population. The parceling undertaking was presented to prospective buyers as a luxury gated community, composed of around 2,500 lots covering an area of 2,481,509 m<sup>2</sup> (two million, four hundred eighty-one thousand, five hundred and nine square meters).

<sup>35</sup> CORDOVIL, Fabíola Castelo de Souza; RODRIGUES, Ana Lúcia. Segregação socioespacial e a negligência ao patrimônio construído: Legado dos projetos e práticas do poder público municipal em Maringá - PR (Brasil). Scripta Nova, Barcelona, v. 16, n. 418, p. 41, nov. 2012.

<sup>36</sup> DI SARNO, Daniela Campos Libório. Elementos de direito urbanístico. São Paulo: Manole, 2004. P. 45.

<sup>37</sup> GREGO-SANTOS, Bruno. Ação de Nunciação de Obra Nova Urbanística. Revista de Direitos Difusos, São Paulo, v. 13, p. 119-130, 2013.

<sup>38</sup> Disclaimer: All case descriptions produced in this paper are based on data gathered from official and academic publications, with special attention to the Ação de Nunciação de Obra Urbanística nº 0003238-41.2012.8.16.0113, a case heard by the Public Law Section of the Marialva Regional Forum of the Maringá Metropolitan Area Judicial District.

<sup>39</sup> Information provided by the Marialva City Attorney General's Office in the Ação de Nunciação de Obra Urbanística nº 0003238-41.2012.8.16.0113, heard by the Public Law Section of the Marialva Regional Forum of the Maringá Metropolitan Area Judicial District.

*Image IX - Location of the Development*

Source: Google Maps.

146. The request was submitted to the adequate participatory council, which rejected the urbanization of such an isolated rural area. Nonetheless, the proponent obtained the approval directly from the City Council, that expedited an approval under the form of a legislative act. According to the Municipal Urban Planning and Development Department, there was evidence of prompt sale of lots at this time.<sup>40</sup>
147. Handling this direct legislative approval, the proponent required General Public Directives for the development project – despite the Municipal Environmental, Urban Planning, Education, Public Health and Sanitation Departments' contrary opinions – in April 2012. However, the Directives were not expedited since the proponent failed to present the necessary documents, including real estate registries and the Preliminary Environmental License, under the competency of the state government.

*Images X and XI - Remoteness of the Development*

Source: Judicial procedure.

148. During these procedures, the municipal government received several consultations of prospective lot buyers, indicating that the lots were being offered to the public without the proper license. The Municipal Urban Planning and Development Department notified the proponent about the irregularity.

149. During the site survey, between July and September 2012, the Municipal Urban Planning and Development Department detected construction works already being conducted, including native vegetation removal, which led to multiple administrative fines and the suspension of the urban development review procedure.
150. In October 2012, the Marialva City Attorney General's office took legal action against the proponent, and the judge in the public law section of the Marialva Regional Forum of the Maringá Metropolitan Area Judicial District granted an injunction that fully blocked any progress of the development in November 2012.

*Images XII and XIII - Suppression of vegetation*

Source: Judicial procedure.

151. Since then, the development project has been subject to several review and licensing procedures and instances, and the site remains embargoed.

### 3.2.2 Urban licensing and environmental review

152. The complexity of the case is highlighted when the analysis scope is steered towards the urban licensing procedures, especially regarding environmental and heritage reviews. According to the undertakers' declarations,<sup>41</sup> their behavior was caused by the inertia of licensing authorities.
153. Even though five years have passed by, the development project is still subject to several assessments from diverse governmental entities, from municipal, state and federal levels.
154. In this scenario, and taking into consideration the detailed description of the legal framework above, the case ended up being subject to three tiers of governmental review, regarding three different aspects of the development project.
155. In the first place, the municipal government holds the power to review and license the urban policy aspects of the development project. Thus, as the procedure outlined in Diagram I indicates, the initial municipal consent regarding the viability of the undertaking was key to the following procedure.

<sup>40</sup> Information provided by the proponent in the Ação de Nunciação de Obra Urbanística nº 0003238-41.2012.8.16.0113, heard by the Public Law Section of the Marialva Regional Forum of the Maringá Metropolitan Area Judicial District.

<sup>41</sup> Information provided by the proponent in the Ação de Nunciação de Obra Urbanística nº 0003238-41.2012.8.16.0113, heard by the Public Law Section of the Marialva Regional Forum of the Maringá Metropolitan Area Judicial District.



- In so far as the consent was denied by the competent Municipal Urban Development Council – a participatory instance with deliberative powers on urban policy – the procedure should have been immediately terminated.
156. However, whatever the motivations were, the City Council<sup>42</sup> – the legislative branch of municipal entities – decided to directly grant legislative consent. This procedure is evidently contrary to the applicable regulations, exposed in the chapter dedicated to the social protagonism and transparency. The Brazilian urban policy framework is deeply based in democratic management principles and, thus, this direct legislative consent is far from compliant with Law no. 10,257 and other provisions analyzed.
157. Also, the Municipal Government failed to objectively conduct the urban review procedure. After the injunction was judicially granted, instead of abiding to a strict schedule and prescribed procedures, the Municipal Governments continued requesting adjournments – twice from September 2013 to April 2014, and three times between December 2016 and May 2017 – but the procedure remains unconcluded.
158. The second tier involved in the procedure is the Federal Government, which holds the competency to review the project regarding cultural and historical heritage. On the news that there were archeological remains of indigenous occupations in the land under parceling,<sup>43</sup> the National Historical and Artistic Heritage Institute (Instituto do Patrimônio Histórico e Artístico Nacional - IPHAN), a national agency responsible for heritage protection, determined in August 2013 the complete shutdown of the undertaking for a period of 24 months, in order to proceed with “heritage prospection and education” in the area.<sup>44</sup>
159. As a consequence, the Federal Prosecution Office (Ministério Público Federal - MPF), in October 2013, recommended the urban review procedure and the environmental review procedure to be halted until the final appreciation of the case by the National Historical and Artistic Heritage Institute.<sup>45</sup>
160. The archaeological prospections were conducted by the Archaeology Department of the State University of Maringá, with final report in November 2013. However, the report was found insufficient by the National Historical and Artistic Heritage Institute in December 2015.<sup>46</sup> Thus, although it had consented with the conduction of environmental public hearings in May 2014,<sup>47</sup> the prospection procedure was still halted by November 2016.<sup>48</sup>
161. Finally, the state government was involved in the review procedures, as Paraná State regulations give them the competency for environmental review and licensing of such projects.
162. As outlined in Diagrams I and II, environmental reviews are crucial to the urban development licensing procedure, since the Preliminary Environmental License is a requisite for the urban review procedure in the General Public Directives stage. Thus, a procedure that is being conducted by the municipal government has to wait for the State Government to rule the environmental review.
163. Also, in the Marialva City case study, although the facts started prior to Law no. 13,089 of 2015 – the Statute of the Metropolis that created the interfederative governance system – that Marialva City is a part of the Maringá Metropolitan Area, the procedure needed the consent of the metropolitan authority, according to Article 13 of Law no. 6,766. At the time, and still to this date, the metropolitan authority is supported by the state government and, thereby, the state government is involved.
164. Although the request for the Preliminary Environmental License was presented by the proponent before the Environmental Institute of Paraná (Instituto Ambiental do Paraná - IAP) in mid 2012,<sup>49</sup> only in September 2013 and December 2014 were the public hearings conducted, and only in May 2015 was the Multidisciplinary Technical Commission designated for the analysis of the corresponding environmental report.<sup>50</sup> Besides, the state competency over this review led to the intervention of the State Prosecution Office (Ministério Público do Estado do Paraná - MPPR), in order to achieve the adequate conduction of the hearings.<sup>51</sup>
165. As a consequence of this scenario, since all the procedures in the three governmental tiers are interconnected and none of them was concluded, all the reviews of the development project are halted, with special attention to the environmental review, considerably delayed and incomplete.

### 3.2.3 Issues regarding national, state and local competencies

166. Evidently, the “Green Diamond Residence” case is a notable example of an urban development project where the environmental and social review was appealed and ended up blocking the project, with dire consequences to both the proponent and the community. More specifically, it may be said that the lack of municipal autonomy for environmental licensing – or the multiple governmental instances – led to unwanted social and urban results.

<sup>42</sup> In Portuguese, Câmara Municipal.

<sup>43</sup> There is no notice in the Ação de Nunciação de Obra Urbanística nº 0003238-41.2012.8.16.0113 about how the IPHAN gained knowledge about the existence of such archaeological findings.

<sup>44</sup> IPHAN Ordinance no. 35, of 2013, Process no. 01508.0000134/2013-13.

<sup>45</sup> MPF Letter no. 988/2013-GAB/PRM, Recommendation nº 1/2013.

<sup>46</sup> IPHAN Letter no. 260/2015-CNA/DEPAM, Technical Opinion no. 760/2015-CNA/IPHAN.

<sup>47</sup> IPHAN Certificate no. 2/2014-PR.

<sup>48</sup> IPHAN Letter no. 1.123/2016-PR.

<sup>49</sup> IAP Letter no. 123/2012-DIRAM/DLE, of September 2012.

<sup>50</sup> IAP Ordinance no. 85, of May 2015, Process no. 07.951.906-5.

<sup>51</sup> MPPR Letter no. 12.171.019-6, of October 2013.

167. Given the news that several lots were sold before the final approval of the project, in direct violation of Article 50 of Law no 6,766, it may be expected that several families were harmed, whether by the conduct of the undertaker or by the lack of surveillance by the Public Administration.<sup>52</sup> In any case, without any attempt to determine the liable party, it is a fact that the overall urban development review – especially the Environmental Impact Assessment – failed enormously.
168. Even though both Article 7 of CONAMA Resolution no. 237 of 1997 and Article 13 of Complementary Law no. 140 of 2011 determine that enterprises and activities should be licensed or authorized by only one governmental entity and level of competency, it is clear that the overlap of powers to review and license the several aspects of urban development projects menaces the adequate assessment of the environmental impact of such ventures.
169. Also, it is clear that the mechanisms for social review and participatory management of urban policy are, at best, fragile. The effectiveness of such mechanisms in the case is near to null, since they were solemnly bypassed by the so-called “traditional” politics. The cooptation of participatory instances is a rather common issue in Brazil and, thus, demands special treatment by the present paper.
170. These issues steer the analysis, also, to the lack of stability of local legal frameworks in Brazil. In the case of Marialva City, the Master Plan, created in 2009, has surprisingly been subject to ninety-one major alterations: three to its Main Instrument, one to the Road System Act, fifty-one to the Urban Zoning Act, fourteen to the Land Parceling Act and twenty-two to the Construction Code. Evidently, as the sheer amount of alterations suggests, very few of these modifications adequately addressed social and environmental stakes and most of them had merely formal participatory procedures.
171. Finally, the effectiveness of the judicial review over the administrative procedures is in jeopardy. The case shows that, in practice, the administrative instances were transferred to the judicial stage, and the main judicial process regarding the case progressed for almost five years without even a lower instance ruling.
172. Therefore, the final movement of this study is dedicated to extracting propositions out of the critical analysis of the cases described.

## 4 CRITICAL ANALYSIS AND PROPOSITIONS

173. The two cases presented and analyzed provide this study with a plethora of questions in need of answers. The main issue that rises from the confrontation of the two cases is the role of municipal autonomy in the quality of environmental reviews in urban development.

174. In the New Downtown Maringá case, a brownfield project is analyzed in which environmental and social reviews contradicted prior existing policies, with the disfigurement of the original Agora Project. As exposed, this is a factor directly related to the City’s autonomy to conduct urban development policy, since there are no other instances of urban policy stability control. Thus, municipal government is able to constantly alter urban zoning and policy, without care to the continuity of urban development, apparently by the pressures of private investors.
175. The Green Diamond Residence case, on the other hand, is a greenfield project in which the environmental review was appealed and ended up blocking the project. In this case, the urban development project had licensing problems that were amplified by the fact that all three tiers of government hold competencies to review different aspects of the project, resulting in its stoppage by the lack of municipal autonomy to conduct the process.
176. Thus, a supposed contradiction underlies both cases: an unlimited municipal government leads to severe urban policy problems, as a constrained municipal government results in serious risks to the sustainability of urban development by weakening environmental reviews. Nonetheless, the contradiction is only apparent and not evident since none of the extreme situations could lead to a successful outcome; in fact, the conclusion to be made is heavily supported by the balance in the establishment of municipal autonomy, by combining effective interfederative governance with the development of local government capabilities.

### 4.1 Effectiveness of environmental reviews of urban development projects in Brazil

177. With all factors given, urban development licensing in Brazil passes through some severe problems that are evidently related to multifactor scenarios characteristic of Brazil.
178. Specifically regarding environmental reviews in urban development, a study conducted by the Brazilian Institute for Applied Economic Research (Instituto de Pesquisa Econômica Aplicada - IPEA) assessed these issues by directly asking state and local governments. The study reveals that decentralization of the licensing procedures is essential to its effectiveness, but with care to the adequate political and institutional mechanisms; also, it is necessary to create adequate technical referentials in order to support homogeneous licensing decisions. Regarding the allocation of competencies exposed in chapter 2.2, municipal governments rarely structure themselves in order to conduct environmental reviews, which leads to the prioritization of state governments in this field, with little to no exchange of information between government tiers. Also, in order to improve reviews, it is necessary to simplify procedures, making them more efficient; the solution should reside, also, in reducing the

<sup>52</sup> Statistically, in the Marialva Regional Forum of the Maringá Metropolitan Area Judicial District there exists one case in the Small Claims Section, four cases and one class action in the Civil Section, and one case in the Criminal Section; in the Maringá Regional Forum of the Maringá Metropolitan Area Judicial District there are seven cases in the 1st Civil Section, eight cases in the 2nd Civil Section, one case in the 3rd Civil Section, nine cases in the 4th Civil Section, five cases in the 5th Civil Section, three cases in the 6th Civil Section, five cases in the 7th Civil Section, four cases in the 1st Small Claims Section, and three cases in the 3rd Small Claims Section; in a total of 51 (fifty one) cases to be heard by the Justice.

duration and cost of administrative procedures, alongside with the deepening of social protagonism. Finally, the study reveals that a considerable amount of time and effort is dedicated to the sometimes exaggerated judicial and prosecutorial review.<sup>53</sup>

179. The confrontation of these conclusions with the two cases studied leads to the outline of the main problems faced in environmental reviews and urban development steering in Brazil, especially regarding municipal autonomy, as exposed below.
180. First, the legal framework itself is considerably poor. Due to the noteworthy autonomy of local governments in establishing urban regulations – within, of course, general rules from federal and state governments – cities struggle with both heavy pressure from real estate investors and lack of capacity to conduct urban policy. It is especially noticeable that many local urban policy regulations are only copied from other cities, making several dispositions useless and lacking others that are essential. This leads to the next two problems.
181. Local governments in Brazil have no hierarchy or classification and, thus, all local governments hold rather similar duties. Altogether, cities with a few thousand people and cities with a few million people have the same responsibilities in urban policy but, of course, have very different capacities, both technically and politically. The lack of specialized personnel is evident in several smaller cities.
182. Another problem is, evidently, corruption. The combination of unstructured governments, complex and lengthy procedures, and intricate regulations leads to a scenario of incentives for corruption, since some economic agents would think it is easier and cheaper to just pay their way through licensing. Of course, this reveals a notable fragility of policy enforcement, unjust cities, and environmentally hazardous urban development enterprises.
183. The fourth problem that has to be addressed is the conflicting allocation of roles in environmental licensing in Brazil. The government branch responsible should be chosen based on the activity and area of impact, before an environmental impact assessment procedure should be initiated. However, urban development projects have a broad spectrum of externalities to be prevented or mitigated, and sometimes two or even three tiers of government are involved, leading to a slower and sometimes contradictory procedure.
184. These factors may lead to a fifth problem, related to a merely formal character of urban development licensing. Despite being instruments of environmental, social and economic protection – bringing democratic rule to the conduction of urban policy – these procedures may lead to mere legitimization of otherwise harmful undertakings.

185. Finally, legal uncertainty rises as a severe problem. Urban policy rules and regulations tend to be seen as fragile and subject to the discretion of public officers, with constant changes to urban development plans. Excess of judicial reviews tend to rise from these situations, aggravating the reliability issues experienced.

186. All these problems gravitate around the issue of municipal autonomy, control and accountability regarding environmental reviews in urban development projects licensing. Thus, this is the main issue approached by the perspective outlined which leads to the proposals of balance between municipal capabilities and interfederative governance.

## 4.2 Challenges and future perspective

187. Given that the examples chosen as provocation for the debate carried out in this study are both from cities in the same metropolitan area, located in the Paraná State, the outline of the regional challenges in such State is useful for the construction of a future broader perspective. This vision may be thoroughly extrapolated to represent the situation of urban environmental public policy all over the country.

188. In this scenario, a study conducted by the Paraná Institute for Economic and Social Development (Instituto Paranaense de Desenvolvimento Econômico e Social - IPARDES) proposes four essential measures for the improvement of environmental reviews in urban development: first, the Paraná State's own environmental institute should broaden its role within the State, nearer to the local governments; second, both the state government and other institutions should act in the improvement of the municipal governments' capacity to conduct the environmental licensing procedure, since between the 399 municipalities in Paraná, only the capital city of Curitiba has its own urban environmental licensing structure; third, the Paraná State's environmental review capacity should also be improved in order to overcome the growing demand for environmental reviews; and finally, the technology instruments for the collection and organization of data in environmental reviews should be deeply improved in order to multiply the capacity of these agencies.<sup>54</sup>

189. Another challenge that still lacks proper assessment is the stability of the legal framework, especially in local governments. This challenge is deeply related to the frequent co-opting nature of the participatory mechanisms in Brazil,<sup>55</sup> through which the governments merely use the democratic spaces of purely formal participatory procedures as a governability instrument, disguising rather malicious intentions as democratic voice.

190. Thus, a future perspective may only be outlined through the abandonment of the merely formal and procedural controls over the Public Administration in Brazil. This is an issue already deeply assessed in another work,<sup>56</sup> but that remains current due to its omnipresence in the Brazilian State.

<sup>53</sup> MOTTA, Diana Meirelles da; PÉGO, Bolívar (orgs.). Licenciamento ambiental para o desenvolvimento urbano: Avaliação de instrumentos e procedimentos. Rio de Janeiro: IPEA, 2013.

<sup>54</sup> INSTITUTO Paranaense de Desenvolvimento Econômico e Social; INSTITUTO de Pesquisa Econômica Aplicada. Licenciamento ambiental para fins urbanos no Estado do Paraná. Curitiba: IPARDES/IPEA, 2010.

<sup>55</sup> TATAGIBA, Luciana; TEIXEIRA, Ana Claudia Chaves. Democracia representativa e participativa: ¿complementariedad o combinación subordinada? Reflexiones acerca de las instituciones participativas y la gestión pública em la ciudad de São Paulo (2000-2004). In: CLAD; ESPANHA. Contraloría y participación social em la gestión pública. Venezuela: CLAD, 2007. P. 38-44.

<sup>56</sup> GREGO-SANTOS, Bruno. Extrajudicial contractual dispute settlement in public administration. 2015. Thesis (Doctorate in Law) – Faculty of Law, University of São Paulo, São Paulo, 2015.

191. The habit of adopting formal and procedural controls in order to transform administrative conduct constitutes, by itself, one of the main barriers to such a transformation. The detachment between the posture of public administrators and the legally established evolution movements appears to be typical of the Iberoamerican public administration's cultural scenario. Thus, the balancing of municipal autonomy should rely on more than simple legal acts.

### 4.3 Obstacles to improvement

192. The assessment of challenges and perspectives thoroughly conducted in this study draws a palpable scenario regarding the improvements needed on the current Brazilian environmental reviews in urban licensing. Thus, a brief description of the obstacles that could prevent these challenges from being met is key for concluding the analysis.

193. Initially, it is evident that the lack of democratic intentions is still common in the conduction of public affairs in Brazil. Although, of course, it can not be generalized, several public authorities still lack the commitment to the democratization of public policy; thus, strategies are needed in order to overcome the resistance imposed by current governmental structures.

194. Regarding this resistance, another related obstacle to be surpassed is the natural rigidity of organizations and institutions, both public and private. The transformation of the current scenario and, even simpler, the effective adoption of changes already underway in legislation rely heavily on the adherence of public officers. As long as the contemporary nomenclature resists the evolution, changes will be deemed difficult, although not impossible.

195. This resistance finds support in the difficulties in legal reform that are typical to the Brazilian legal system. While, as exhaustively exposed in the legal framework description, Brazilian urban policy law keeps up with global tendencies, some adjustments necessary to adapt these models to the national reality are paralyzed by the Brazilian legal rigidity.

196. When one adds the current political instability to this circumstance, the result is an evolution horizon too far to be effective; thus, extra doses of political will and social pressure are needed in order to make improvements to the legislative process a priority.

197. Another obstacle that defies the improvement of environmental reviews of urban development in Brazil is the relevance of economic power in urban projects. Urban development – and, by consequence, urban policy – is still widely seen as a business and, sadly, the problems described in the cases may be deemed as “business as usual”. A deeper publicization of the development directives is key.

198. Finally, this paper concludes that the challenges outlined are greatly prevented from being met by the weaknesses of municipal governments. According to the Brazilian Institute of Geography and Statistics (Instituto Brasileiro de Geografia e Estatística - IBGE), only 50% of Brazilian cities have a master plan as of 2015, while 12,4% are preparing their master plans and 37,6% have none. Also, only 30,4% of the municipalities are prepared to conduct environmental review procedures.<sup>57</sup>

199. The strengthening of municipal governments is essential to the balance between private and public forces in the steering of urban development.

### 4.4 Capacity building and the role of metropolitan administration

200. Throughout this study, analyses were conducted in order to detect problems in urban development environmental reviews that come from extreme autonomy or extreme restraint of local governments.

201. In a very complex way, city autonomy is the source and the solution for these problems. That is to say, we sustain that the denouement for these problems lies with the adequate balance of municipal autonomy regarding urban policy.

202. The keynote of Habitat III was the strengthening of local protagonism, and this focus on capacity building and municipal empowerment may pave the path towards this equilibrium. The development of urban management independence in relation to the private sector economic interests, in order to avoid the situation in which “the businessmen build the city”,<sup>58</sup> is key to the solution; nonetheless, as exposed above, the mere adoption of rules and regulations that establish such independence is unsatisfactory.

203. Private initiative is essential for the city's dynamism and for the adequate allocation of urban development investment burdens. However, in a context in which “the entrepreneurial logic of largest benefit with the smallest charge not rarely goes against the will of the environmental law”, private developers tend to design their undertakings in order to stand just shy of the limits for more complex environmental licensing procedures, as exposed by Cunha Filho (2016).<sup>59</sup> This intricate scenario reveals the need for governmental initiatives that are not determined only by objective legal criteria – especially regarding cumulative environmental urban licensing – but by reasonably discretionary urban authority initiative.<sup>60</sup>

204. Thus, as already discussed, the mere adoption of formal and procedural controls over urban environmental licensing ends up ruining the municipality's own capacity to manage the city. This is the current context in Brazil.

<sup>57</sup> BRAZIL. INSTITUTO Brasileiro de Geografia e Estatística. Perfil dos Municípios brasileiros. Brasília: IBGE, 2015. P. 18.

<sup>58</sup> ANDRADE, Carlos Roberto Monteiro de; CORDOVID, Fabiola Castelo de Souza. A cidade de Maringá, PR: O plano inicial e as “requalificações urbanas”. Scripta Nova, Barcelona, v. 12, n. 270, p. 53, aug. 2008.

<sup>59</sup> CUNHA FILHO, Alexandre Jorge Carneiro da. In: CUNHA FILHO, Alexandre Jorge Carneiro da; NERY, Ana Rita de Figueiredo; ARAÚJO, Alexandra Fuchs de (coords.). Direito urbanístico: Ensaios por uma cidade sustentável, da formulação de políticas à sua aplicação. São Paulo: Quartier Latin, 2016. P. 137-155.

<sup>60</sup> CUNHA FILHO, Alexandre Jorge Carneiro da. In: CUNHA FILHO, Alexandre Jorge Carneiro da; NERY, Ana Rita de Figueiredo; ARAÚJO, Alexandra Fuchs de (coords.). Direito urbanístico: Ensaios por uma cidade sustentável, da formulação de políticas à sua aplicação. São Paulo: Quartier Latin, 2016. P. 137-155.

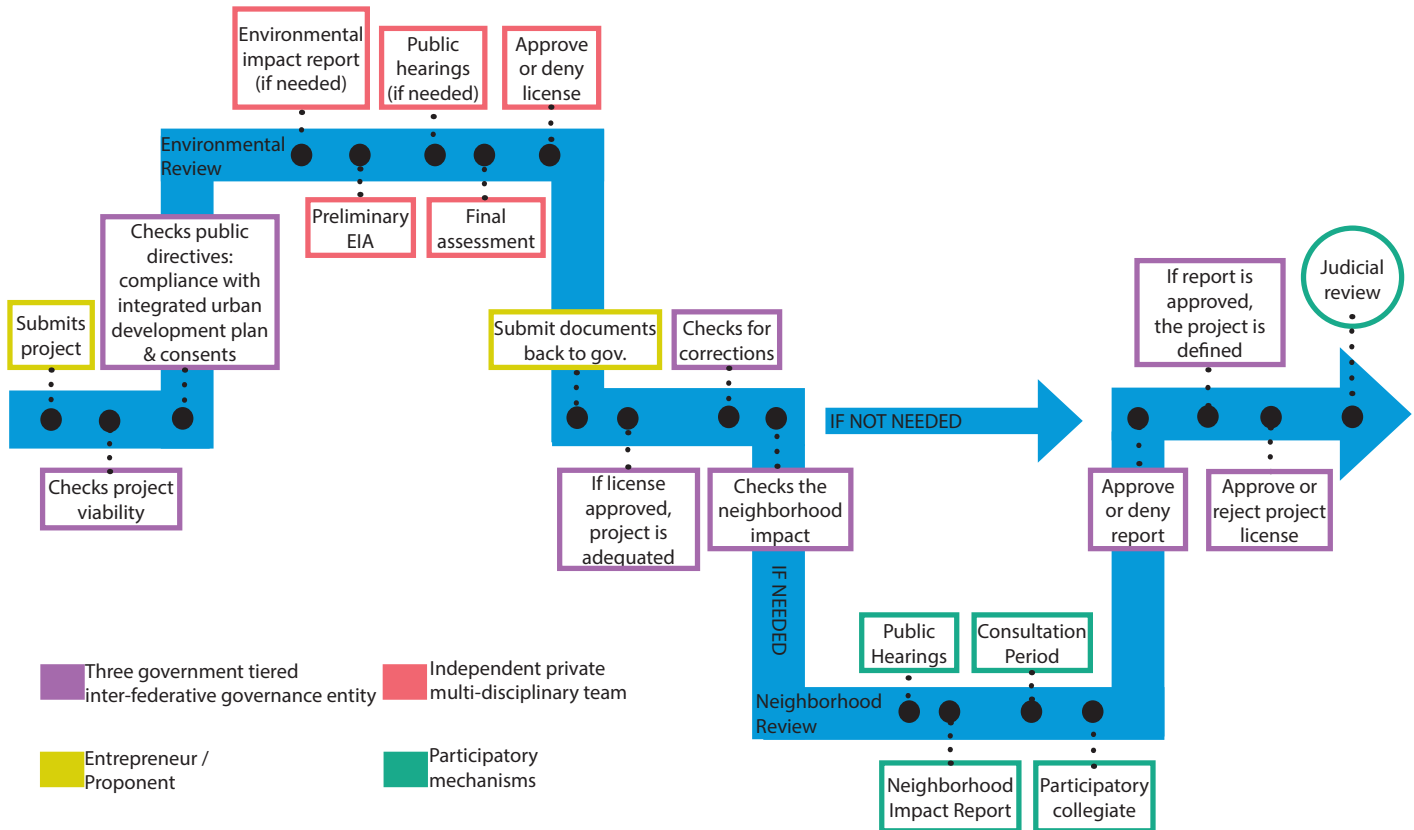
205. In order to address such a problem, we believe that the strengthening of local governments' autonomy should be accompanied by the broadening of the "interfederative governance" concept. Thereby, not only metropolitan regions and urban clusters would rely on a special sphere of decision making regarding urban policy, but every local government in need of support would have access to it, at the same time being adequately monitored. Of course, this sort of solution should be structured in order to comply with and respect local populations' and authorities' autonomy and influence.
206. It is not the case that public agents are obliged not only to comply, but to build an environment in which, when confronted with choice, they actively opt for the best realization of urban public interest. The success of this initiative would come from the optimal combination between the mobilization of public opinion and social reviews, the efficient demonstration of positive results and the national coordination of incentives to regulate action.<sup>61</sup>
207. In conclusion, self containment of established powers is key to avoid abuse against the urban environment.
- ## 5 CONCLUSION
208. As stated in the original proposal, the case study of environmental impact assessment in urban development licensing procedures in Brazil is a fertile ground for research. Brazilian governments, central, regional, and local, still struggle with the duties related to policy enforcement, and at the same time urban growth is pressing for fast and easy expansion.
209. In this scenario, municipal capacity development is essential. Thus, the study of Maringá City's metropolitan area case is a rare opportunity to assess the characteristics of relatively new settlements with strong economic growth, leading to a myriad of outcomes able to guide local governments in Brazil and abroad on how to build strong institutions in favor of environmentally, socially and economically friendly urban policy.
210. The main conclusions of this study, due to their complexity and plurality, are better exposed throughout its development. Altogether, it is noteworthy that all of them lead towards the proposals above, in a logical and, why not to say, necessary way.
211. The legal framework related to urban management and policy in Brazil is rather labyrinthine. The complexity of the rules and regulations – typical of Brazilian law – is often counter-productive and, alongside with the allocation of competencies between administrative spheres, procedures design and judicial review tend to render urban development reviews long and difficult.
212. This scenario leads to sensitive problems regarding social participation and transparency, as well as the management of legislative changes and policy stability, whereby the best public results are frequently surpassed by private interests.
213. Under this context, the two cases exposed and deeply analyzed reveal the threats to social interest that come from the apparently contradictory issues regarding municipal autonomy. Whereas in the New Downtown Maringá case the absolute lack of control over municipal initiatives led to unwanted results, the negative results in the Green Diamond Residence come precisely from the lack of municipal control.
214. Thus, some barriers arise in solving the apparent contradiction. The critical analysis and propositions that compose the final conclusions reveal that formal and procedural controls lack effectiveness in transforming the public agents' conduct. A strategical change is needed in order to address the exposed issues with real positive results.
215. Under the vision constructed here, the search for balance in municipal autonomy is key. A combination between capacity development and support and supervision from an interfederative governance structure – complying with all the parameters discussed above – seems to be the way towards better conduction of urban policy in Brazil, and may serve as a model for countries with similar issues.

<sup>61</sup> GREGO-SANTOS, Bruno. Extrajudicial contractual dispute settlement in public administration. 2015. Thesis (Doctorate in Law) – Faculty of Law, University of São Paulo, São Paulo, 2015.

## Brazil

The Urban Development Review Procedure, including Environmental Review and Neighborhood Review

\*There is no legally specified timeframe



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