



## Social participation in urban planning as a human right

*Participação social no planejamento urbano como direito humano*

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**Abstract**

The article aims to examine the Right to active citizenship in urban planning policies in cities, from a critical perspective. We started from the notion of existing socio-spatial inequalities in order to recognize the illusion / insufficiency of the universal inclusion project. It was concluded that there is a need for instruments for the modal and progressive inclusion of socially excluded groups, taking into account their specificities, from the affirmation of the human right to participation in urban management.

**Keywords:** Right to the city; Human Rights; Democratic governance.

**Resumo**

O artigo objetiva examinar o Direito à cidadania ativa nas políticas de planejamento urbano nas cidades, a partir de uma perspectiva crítica. Partiu-se da noção das desigualdades socioespaciais existentes, a fim de reconhecer a ilusão/insuficiência do projeto de inclusão universal. Concluiu-se apontando a necessidade de instrumentos para a inclusão modal e progressiva dos grupos socialmente excluídos, atendendo suas especificidades, a partir da afirmação do direito humano à participação na gestão urbana.

**Palavras-chave:** Direito à cidade; Direitos humanos; Gestão democrática.



## Introduction

The city is not just a place, but a reflection and producer of an urban reality which has to be analyzed through the reproduction of everyday life. At the same time, the city is a place for the circulation of goods, as the urban space itself is one of those goods, being valued or devalued according to the conditions of each region (infrastructure and proximity to valued areas) – being a producer of inequalities, having as a weak link the poor working class that moves according to the needs of capital, either towards work or fleeing from places valued by the increase in the cost of housing renting (ROLNIK, 1995, p. 53-71).

In this sense, it is necessary to answer the following research problem: how should the issue of social participation in urban planning be delineated as a direct consequence of a specific way of thinking about the city, in particular linked to the principles of corporate management? It starts from the hypothesis that means are necessary for the modal and progressive inclusion of socially marginal groups, with special attention to their specificities, with the aim of affirming the human right to participation in urban management.

For this, a descriptive research is developed, as it seeks to develop and explain facts – causes, characteristics and relationships – based on a theoretical framework. Having as procedure method the bibliographic and documental one, and a dialectical and qualitative approach. The general objective of this work is to focus on the issue of social participation in urban planning as a direct consequence of a specific way of thinking about the city, linked to the principles of corporate management. As specific objectives, its first part deals with the determination of the status quo of social participation in accordance with the legislation – Brazilian Federal Constitution of 1988, the Brazilian Statute of Cities (Law No. 10.257), the Brazilian Statute of Metropolises (Law No. 13.089) and the Ministry of Cities (Decree of the Brazilian Presidency of the Republic nº 4.665/2003) – and the legally determined forms of citizenship. In its second part, the emergence of new private social actors is developed, which directly affect urban planning and also infer in participatory processes in organizations. At its end, it addresses the impossibility of including “everyone” – as Human Rights stand – exposing the limits of formal equality in a deeply unequal society.

The work is justified by the actuality of the Right to the City and how this theme brings reflections on forms of oppression/exclusion of marginalized communities. As



conceptualized in the booklet of the Polis Institute (TORRES; GINTERS, 2016, p. 43), it is necessary to provide the formation of subjects with critical conscience, capable of questioning certain situations and social situations in order to understand and transform their realities. Therefore, the text seeks to provide a moment of critical reflection on the themes dealt with here, above all, about the importance of social participation in the State, a subject that will be dealt with from now on.

## **1 Participative paradigm as democratization of the state**

The right to the city and spatial justice presuppose a radicalization of the processes of production of difference, that is, a high-intensity democracy that takes place in everyday life. Here it is clarified what participation in urban planning actually is. Political participation may mean, according to Sani (1998, p. 888), voting, militancy in a party, participation in demonstrations, support for a candidate in an electoral campaign, pressure on a representative and the dissemination of political information, among others. Therefore, three forms or levels of participation are suggested: (I) presence: linked to receptive or passive behaviors of political decisions, being excluded in relation to decision-making; (II) activation: in which subjects develop, inside or outside political organizations, activities linked to specific agendas, such as party work; (III) participation: effectively, in the strict sense, which refers to direct or indirect contribution to political decisions. The third level unites the practices of participation in urban planning – inserted in a process of expansion of what Santos and Avritzer (2002) call “participatory democracy” – in which forms of participation, rational deliberation, search for equity and inclusion are included. politics of the excluded (OLIVEIRA FILHO, 2009, p. 76). These practices represent a transition in which a society governed by representatives is reconfigured to a system in which the direct participation of the citizen acquires a much more important weight (DOWBOR, 2016, p. 31). For Avritzer (2002, p. 165), public policies for social participation play an important role in the democratization of a nation, whether in increasing the complexity of institutions or in the democratization of the actors involved.

After the formalization of democracy in the Brazilian Constitution of 1988,



a democratizing trend of the State and society is characterized, being that the upward trends (oriented “from the bottom up”) are the most strongly democratizing and distributive in it (AVRITZER, 2008, p. 59- 60). The institutional design of participation derived from the Federal Constitution of 1988 supports a notion of “politicized planning”, that is, urban planning inclined to the principles of urban reform, materialized in the new urban master plans, with a view to the municipalization of urban planning and management. The democratization process in Brazil, added to the legal incorporation of the right to housing, to the city and to the social function of property characterize the urban policy adopted by the legislation. However, during the period of their institutionalization, these practices coincided with processes of reduction of the State, that is, of “modernization” of public practices with axes of privatization of wide areas, even when aligned with the participationist discourse and the revaluation of civil society (ROLNIK, 2009, p. 31-32). Hence, at the same time as the democratic role of State decentralization is recognized, there is also the rise of a capitalist clientelism that weakens the State in its capacity to provide social rights. According to Dagnino (2004, p. 141-142), this is the “perverse confluence” of two distinct political projects.

The level of participation is closely related to the planning tradition, the planning school and the planning models.<sup>1</sup> Souza (2010, p. 203-205) points out how these categories or degrees of participation in planning are important as analytical levels to understand the intensity of this participation,<sup>2</sup> explaining and updating them, with “a” being the least participatory and “h ” as much as possible:<sup>3</sup> (a) coercion: typical of exceptional regimes, where there is neither political representation nor where part of the population is not represented or considered, as in the cases of removals in favelas; (b) manipulation: there are no proposals for dialogue and it is usually based on propaganda; (c) information: the State makes information available about its methods and what interventions are planned, it is an incipient level of administrative transparency; (d) consultation: aims at the

<sup>1</sup> Arnstein's (1969) famous participation ladder contemplates levels of participation in: (a) manipulation, (b) therapy – as levels of (I) non-participation; (c) inform (d) consultation, (e) appeasement – as levels of (II) minimum empowerment; (f) partnership, (g) delegated power, (h) citizen control – as levels of (III) citizen power.

<sup>2</sup> This scale of participation is inspired by the one made by Arnstein (1969), updated to the author's autonomist perspective.

<sup>3</sup> Where *a* and *b* are situations of (I) non-participation; *c*, *d* and *f* (II) degrees of pseudoparticipation; and *g*, *h*, *i* (III) degrees of authentic participation (SOUZA, 2010, p. 207)



population's approval of an intervention or project, even without a guarantee that it will compel politicians to respect the wishes of this consultation; (e) co-option: corresponds to the integration of activist individuals or collectives or social movements interested in exercising functions in administrative posts of urban management, establishing a channel of participation through social leaders, even if there is no real delegation of decision-making power; (f) partnership: transparent collaboration between the State and organized civil society; (g) delegation of power: it goes beyond partnership, reaching the point where the State gives up part of its attributions in favor of sectors of civil society, embodies elements of direct democracy and co-management (State and Society); (h) self-management: form of management without the presence of a higher authority (in this case, the State, but it could even be the market), based on marginal forms of management and autonomy (individual and collective).

Therefore, the levels of participation allow us to see whether the models presuppose the existence of participation, because even if the principle of social participation is generally accepted in legal systems, the verification of the intensity of participation allows us to differentiate the rhetoric of participation from effective participation – and whether with this there is a reflection of truly public interests (PACIONE, 2019, p. 6). More than providing for direct social participation as an element of planning, it is important to avoid that it could become a mere “listening without listening” (CONRAD et al., 2011). This is the case of urban planning established by the legal and urban order in Brazil, which provides instruments for the exercise of active citizenship and instruments for the formation of participatory urban policies. However, the decentralization of the State, on the other hand, points to mechanisms of privatization and consequent self-regulation that directly affect the production of urban space. The Federal Constitution of 1988 represents the rise of a participatory paradigm. Overcoming an authoritarian period characterized by the military regime means the constitution of the Democratic State of Law, therefore, democratic participation is a fundamental element for the implementation of the fundamental principles of the Republic.<sup>4</sup>

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<sup>4</sup> And it also guides the Universal Declaration of Human Rights (art. 21), the International Covenant on Civil and Political Rights – received in Brazil by the Decree of the Presidency of the Republic No. 592/1992 – in its art. 25, points out non-discrimination for participation in the conduct of public affairs directly or represented



This process of rising democracy and democratization can also be analyzed from two points of view, according to Avelino (2016, p. 131-132): the State and Society. In the public administration of cities, democratization symbolized the new orientation of policies and institutions, seeking a logic of integrated and participatory development. In society, this step towards the democratization of urban management nurtures the intensity of political actions and social movements linked to the right to the city and demonstrations with specific demands in relation to urban public policies.

The institutionalization of spaces for social participation occurs as the implantation of the democratic value contained in the 1988 Constitution, with the instruments of participation being the main mechanisms for the realization of active citizenship that Avritzer (2009a) calls participatory institutions. National conferences transformed the participatory panorama in Brazil, reconciling institutional and non-institutional forms of participation – in which Avritzer (2013, p. 126) points to a new participatory dynamic based on political and social inclusion. Participatory inclusion is the objective of public policy conferences, which aim, by recognizing social and political inequality, to propose the participation of excluded agents in decision-making – or as defined by Cunha (2013, p. 165), “segments of the population traditionally identified as absent from important political spaces”.

The defense of participation and proactive citizenship became shared objectives that contemplate both advances in the formal democratic regime and its institutions, as well as mechanisms for the inclusion of marginalized actors in politics (SERAFIM, 2013, p. 18). This occurs as an urban policy based on the normativity established by the Brazilian Federal Constitution of 1988 and the Brazilian Statute of Cities, in the so-called Democratic Management of cities. This new citizenship is the “claim to access, inclusion, participation, and belonging to an already given political system” (DAGNINO, 2004, p. 104). Active citizenship presupposes social participation, precisely because it is citizenship that defines who participates (inclusion) and who does not (exclusion) – exposing this concept that is always conflicting and changing the struggle for decision-making power in politics (MILANI, 2008, p. 560). This scenario of active citizenship linked to city management is a

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– respect for these Human Rights in Brazil, which is a principle that governs the country's international relations (art. 4, II, of the CRFB /88).



milestone in the historical process of claiming urban reform that was enshrined in the 1988 Constitution and eventually in the City Statute – recognizing the role of popular movements and relevant organizations in the politicization of the city (BASSUL, 2002).

The form of effecting this participatory citizenship adopted by the Federal Constitution is the “democratic management of the city” (CAMERA; MACIEL, 2019). Brazilian urban policy has its general guidelines inscribed in the City Statute (art. 2 of Law 10.257/2001), one of which is linked to citizen social participation in urban management: “democratic management through the participation of the population and representative associations of the various segments of the community in the formulation, execution and monitoring of urban development plans, programs and projects”. As for the subjects (I), the participatory paradigm of the Democratic Management of Cities recognizes the emergence of new actors in urban management, both from popular demand movements and local community associations – and also from communities that are not recognized or that are excluded from political debates about the future of cities. Furthermore, this participatory paradigm goes beyond, or represents a qualitative leap, according to Fedozzi (2001, p. 97), from paternalistic submission, that is, from the mere position of marginalized populations in “asking” for rights to the placing of themselves as instruments of their own realization.

However, more than unilateral agendas, the participatory scope of the democratic management of cities serves to contemplate multiple subjects, from the progressive and/or conservative field, as pointed out by Tonella (2013, p. 39), which also differently manifest themselves: associations of class, unions, councils, forums, social movements linked to neighborhoods or localities, thematic struggle groups (specific agendas, such as women, black people, LGBTQIA+, etc.), State-legal entities such as the Public Ministry and the press, among others. They are spaces of dispute between political groups that can be antagonistic. It moves away from a conception of participation centered on the Public Power, but structured by society as a whole (OLIVEIRA, 2010, p. 83-91), bringing together different political cultures and practices differentiated by different interests.

The intervention of these subjects in urban management, under the principles of democratic management of cities, occurs at all times (II) of planning,



that is, in previous assessments, in the progress of projects or legislation and in the analysis of results. For example, a master plan may involve stages of process preparation, reading of the local reality, definition of guidelines and proposals, drafting the bill, forwarding the bill, approval and application (VIEIRA et al., 2013, p. 123); and, according to the paradigm of democratic management of the city, participatory intervention in all these phases is necessary, although the specificities of this procedure depends on the municipalities – what defines the Statute of Cities, in its article 40, §4º, is that both in the elaboration as in the inspection of its implementation, the Master Plan must promote mechanisms of social participation.

This permanent observation of participation in planning becomes specific in the objects (III) of this participation, such as the master plan, being the main urban management procedure described in the Statute of Cities, in which the law defines (art. 40, §4º) that both the process of elaboration and inspection of its implementation depend on “I – promotion of public hearings and debates with the participation of the population and associations representing the various segments of the community;” expressing the insertion of these “new subjects” of urban reform, that is, the relevance given to associated or not citizens, to define the content of the master plan; “II – publicity regarding the documents and information produced”, aiming at the need for transparency of the acts given the need for social control by the population of the contracts effectively signed; “III – access by any interested party to the documents and information produced”. This participatory framework corroborates the constitutional determination in which municipal planning must also cooperate with representative associations (art. 29, XII).

The instruments that guide the application of urban policy (art. 4º of the Statute of the City (Law 10.257/2001) are directly linked to the guideline of democratic management of the city. Its fundamental principle is to take the absolute decision-making power out of the hands of the mayors (NASCIMENTO; CAMPOS; SCHENINI, 2003, p. 189) – the law (art. 4º, III) points out these specific instruments in which they are directly related to social participation: the master plan, participatory budget management, popular referendum, preliminary environmental impact study (EIA, in Portuguese) and preliminary neighborhood impact study (EIV, in Portuguese).

Particularly with regard to urban policy and the management of cities, the



law defines the instruments that should be used to guarantee the “Democratic Management of the City” (art. 43): (I) “collegiate urban policy bodies, at the national, state, and municipal levels”;<sup>5</sup> (II) “public debates, hearings and consultations”;<sup>6</sup> (III) “conferences on matters of urban interest, at the national, state and municipal levels”;<sup>7</sup> (IV) “popular initiative of bill and plan, programs and urban development projects”.<sup>8</sup> These instruments make up the legal framework of the Statute of the Cities for participation, promoting permanent, occasional and temporary tools for the exercise of deliberation and the enhancement of public debate (OLIVEIRA; LOPES; SOUSA, 2018, p. 331).

## 2 Participative paradigm in organizations

The privatization movement promoted by neoliberal capitalist policies has been the key engine of capital accumulation, in view of the forged capacity of commodifying fields that were once exclusively public, such as public services with a State nature – such as health, education and housing. Harvey (2003, p. 148) points out how this is a force that makes corporate and privatized public assets, which means a regression regarding the protective regime of work and contractual relations in the name of new legal orders that indicate a new regulatory framework.

According to Sassen (2006, p. 269) it is a relationship of the detriment of State territoriality against the emergence of institutional territoriality of the global economy. The State's participation in these processes is to promote deregulation, privatization and the promotion of non-state actors. State reforms occur in a process of universalization of political-economic standards and guidelines — rescuing the idea of a minimum State and *laissez-faire* — characterizing the market without political intervention by the State as a space of neutrality (LEME, 2010, p. 134). This

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<sup>5</sup> It corresponds to the initiatives that create and maintain city councils. The most significant example of this practice is the rise of “municipal councils”, which, although they depend on articulation by the municipalities, always share the universal objective of expanding social participation in urban planning.

<sup>6</sup> They reflect this other mechanism, linked to specific moments, needs or projects, which go beyond the performance of permanent councils, guaranteeing the participation of citizens with specific interests, and serving as decision-making instruments for urban planning.

<sup>7</sup> They include the holding of events that publicize debates on urban development at all levels

<sup>8</sup> Instrument by which the ability to provoke the city's legislative process is reserved to the citizen or organized collectives.



implies the promotion of new (private) actors for the provision of public services, whether they are completely delegated or partners of the Public Power.

The expansion of agents participating in urban planning suggests tools for co-management between the private sector and the Public Administration, considering both the privatization processes and the possibility of public-private partnerships (PPPs). The processes of restructuring of the productive sector and globalization in neoliberalism have been responsible for transforming global capitalism and, consequently, for bringing about several social transformations. Therefore, it is not appropriate to point out here whether the social actions of companies are socially legitimate or advertising processes, as from the point of view of the current market and the neoliberal political economy, these values are simultaneous – in view of the relevant social role given to these organizations as responsible for the development of society.

What is meant when talking about neoliberal “values”, it is that a subjectification of individuals under this ethics is legitimized, based on corporate objectives and market language, something that Dardot and Laval (2016, p. 17) call a “new reason of the world” – by understanding neoliberalism as a rationality that tends to structure both the conduct of the rulers and the ruled – and exactly for this reason Brown (2019, p. 141) identifies it as a profoundly anti-democratic political rise in which nations reconfigure themselves and begin to behave like private companies – expanding an ideology that was understood only as economic privatization, subverting politics. Therefore, it is an ideology that not only occurs linked to the State, but as a social practice implied by its own rationality.

This situation in society raises non-state legal phenomena, that is, movements linked to self-regulation and social validation of the companies' own regulations. The reconfiguration of the economy and politics promotes a social hypercomplexification that affects the very configuration of legal phenomena, beyond the idea based on the centralization of politics and the creation of Law by the State – thus emerging new social forms of organization, disconnected from the regulatory limits of state normativity (FORNASIER; FERREIRA, 2015). The very concept of public policy undergoes a transformation according to these factors, now including, in addition to the State and the social actors targeted by such policies, economic agents, such as those of the business social movements, considering that



companies have advanced the limits of private, becoming protagonists in the construction of public space and social policies (GUERRA, 2002).

This context directly affects urban planning, marked by privatizations and more and more instruments that seek partnership or the delegation of urban policy objects to private activity – that is, the implementation of urban policy is now subject to principles established by the neoliberal reform approach to Public Administration, with the 1988 Brazilian Federal Constitution and the Brazilian Statute of Cities devising ways to align the inherently public interest in making the principles of urban policy viable with the expanded role given to the private sector – recognizing forms of privatized city management, PPPs and consortium urban operations. Furthermore, recognizing the importance given to the private initiative and the representation of large corporations, mechanisms of participation and social control of organizations emerge that confront the idea that public and private interests are antagonistic – the legal form of urban policy points to a reconciliation of these factors to its implementation.

The expansion of the role of the private sectors raises the notion of corporate social responsibility, which is why tools such as compliance related to Human Rights and notions of accountability in which the performance of companies must be aligned with social interests and the promotion of transparency movements and social participation in their activities – with corporate social responsibility being characterized as a market phenomenon promoted by the scenario of economic globalization (ARAÚJO, 2006, p. 417). Principles of public interest, such as "sustainable development", are now aligned with the strategic organizational path of organizations – in which social, economic (in relation to shareholders) and environmental responsibility axes contemplate a relationship between profit, personnel and environment for organizational sustainability (MUNCK; SOUZA, 2009, p. 192). Therefore, these ideals are consistent with corporate administration, which understands the company's social responsibility as a commitment that exceeds the expectation of generating employment, taxes and profit, but locates the company with an important role in maintaining the ecological balance, economic sustainability and social development (TENÓRIO, 2015).

Recognizing that decision-making by corporations and the result of their activities reach many more interested parties than partners and shareholders,



encompassing a large number of agents – a true public responsibility of organizations (TINOCO, 2001) – the tools of corporate social responsibility can reach social and environmental dimensions, promoting values, conducts and procedures aligned with principles such as social development and sustainable environment. Transnational corporations need to promote ways that guarantee their responsibility both in relation to their impacts on society and what they can do for its development. In other words, there is a rearrangement of the division between public and private due to the expansion of roles relegated to the private sector and the massification of its activities in the globalized economy. These practices are sustained under a perspective that changes even the concept of development – not only linked to economic gain – but, by incorporating corporate responsibility, comprising multifaceted forms of social participation and the need for reciprocal action by organizations, with a view to their responsibility and the diversity of society, bringing the idea of community development allied to the growth of companies, with the role of corporate governance being that of “an articulating instance in the construction of common axes for purposeful and interventional actions” (COELHO; OLIVEIRA, 2008, p. 4).

Accountability, a fundamental element of corporate governance, is considered a requirement for transnational corporations, being the main topic through which they are demanded to present transparency regarding activities – both regarding personnel, ethical aspects, and sustainability, demanding governance frameworks that excel in this aspect, seeking to reach larger audiences, that is, beyond the limits of the organization itself (KOLK, 2008, p. 2). In short, it is the ability of a company to be socially auditable; that its performance, from a social and environmental point of view, is seen, explained, and questioned by society. Therefore, social accountability is a broad category of practices that includes, according to Fox (2015, p. 346): (a) public monitoring of the private sector; (b) access and dissemination of user-centered information; (c) mechanisms for complaints from the general public; and (d) citizen participation in resource allocation and decision-making. Social participation as accountability of organizations occurs through community involvement – such as social responsibility committees that allow community participation in their meetings.

Malena, Forster and Singh (2004, p. 10-11) present applications and tools



that make these processes effective, such as: (a) participatory policy in budget formulation – through which citizens are encouraged to participate in the formulation of proposals and pointing out strategies to be addressed; (b) participatory policy in budget analysis – when citizen reviews decisions taken, giving them publicity; (c) public participation in expenditure control – transparency in expenditures and accessibility of information about expenditures; (d) participation in performance evaluation, monitoring and evaluation – referring to the use of service evaluation tools that involve cycles of participation that affirm or reaffirm productivity principles. This scenario points to the inherent interconnection between corporate social responsibility and sustainable environmental development, considering that principles of environmental preservation end up guiding the two about the need imposed by the environmental reality (ZELAZNA; BOJAR; BOJAR, 2020, p. 9), in which non-state organizations are also responsible for imposing codes of conduct related to social and environmental issues (DOH; GUAY, 2004).

Standardization or certification systems linked to the globalized economy (thus, with a global reach) also guide transnational normativity, that is, norms that standardize processes and/or certify that a certain activity follows certain quality standards – an example are the ISO certification standards. These systems even achieve corporate social responsibility, with its ISO 26000 standard – certified in Brazil by the Brazilian Association of Technical Standards (ABNT), under the name ABNT NBR ISO 26000 (2010) – designed on the expression of this phenomenon and the need to certify standards of guidelines for organizations, such as: (a) concepts, terms, and definitions related to social responsibility; (b) history, trends, and characteristics of social responsibility; (c) principles and practices relating to social responsibility; (d) integration, implementation, and promotion of socially responsible behavior throughout the organization (its policies and practices) within its sphere of influence; (e) identification and engagement of stakeholders; (f) communication of commitments, performance and other information regarding social responsibility. Therefore, there is a certification of global application that concerns social responsibility practices, guided by principles that recognize the role of large corporations and require verifiable guidelines for action – thus, there is a standardization of these practices at a global level, so that they are certified as such, even if they come from non-state organizations. Furthermore, that document points



out accountability as a principle, social dialogue, human rights, and community involvement and development as central themes.

These forms of accountability are constituted as legal normativity, arising from the relevant role that transnational corporations acquire in the globalized economy, through the transnationality of their procedures and accreditation platforms. These legal regimes end up binding the organizations' internal public and clients, or external public in every place of business activity, even to the detriment of national State orders. Transnational organizations that establish ethical standards related to corporate social responsibility create a new global paradigm, an agenda that runs through the entire organizational performance, even if the corporation concomitantly operates in profoundly different national legal regimes. Participation can then be part of the codes of conduct imposed by the corporate social responsibility regimes, in the name of a relevant social value in listening to the opinion of communities for the activities of organizations – correlated with the idea of participation as a human right, being these rights object of implementation by large transnational organizations, in addition to the national State.

### 3 Human rights and full inclusion

Social inequality is the structural mark of the capitalist system, being poverty and social/political exclusion products of social relations. For Marx, the dividing line between who is included or not in society's decision-making is made by those who control the means of production (bourgeoisie), being the proletariat, composed by those who are dispossessed of that control worthy only to sell their labor force – submitted to this as a condition for subsistence, through wages – which in “surplus value” expresses the fundamental economic component for maintaining that division (MARX, 2008, p. 432-433). Therefore, the idea of contemporary social participation, as pointed out by Gohn (2019), is linked to social inclusion based on differences – recognizing the structural inequalities derived from the economic inequality that marks the division into classes of capitalism. It is a direct relationship between the exclusion/inclusion binomial and democracy, as well as the process



through which the excluded ones would be included in the political decision processes (STASSEN, 1999).

The recognition of Human Rights occurs in historical processes through which social movements confront States and institutions that act/exist on their behalf, seeking a culture of rights for all – which could effectively be considered a full democracy (VIOLA; PIRES, 2014, p. 101). Therefore, social exclusion is one of the objects of social participation policies, recognizing that part of the population is (or not) recognized as a political actor with interference in the future of politics. The objective is to promote the inclusion of citizens as a political-administrative principle, creating informed networks that elaborate, implement and evaluate political decisions (MILANI, 2008, p. 554).

The concept of active citizenship that sustains social participation as an objective of the Brazilian State involves the inclusion of emerging social actors in civil society, even when it occurs without the State itself – democratizing the State apparatus itself. However, currently, this right to participation is a transversal right to the public-private logic, surpassing its dimension vis-à-vis the Nation-State; and, from the perspective of the horizontal effectiveness of fundamental and human rights, it must be understood, as explained by Teubner (2016, p. 262), that such effectiveness must be a foundation for inclusion within specific social sectors, that is, inserted in the context of organizations under the guise of corporate social responsibility and the inherent link that transnational corporations must have with Human Rights.

However, there is an important challenge to expand the truly plural participation processes in which “conflicts become visible and differences confront each other” (JACOBI, 2002, p. 452), being contradictory to enshrine an inclusion of “all” as a principle, bearing in mind structural differences established in society. Two criticisms of this vision of full inclusion in social participation stand out: one of a systemic nature – due to the current nature of the processes of differentiation, and the impossibility of defining what (or who) integrates this “whole” – and one of a Marxist nature – which points out that there is a central contradiction of the alleged universality of Human Rights in relation to a society fundamentally divided into classes.

Human rights have been established over the centuries aiming the



inclusion, featuring a universalist foundation for rights.<sup>9</sup> The relationship between Human Rights and the exercise of political participation is evident (THOMPSON, 2002, p. 103). The emergence of systems for the protection of Human Rights occurs in parallel, therefore, with the collective defense of democracy and the processes of democratization of institutions (BERNALES BALLESTEROS, 2006, p. 10), being democracy, in this sense, a well-established and grounded political foundation in Human Rights (and the reciprocal can be considered true), being directly influenced by notions of equality and expansion of the category of citizen to "all people", as well as being the identification of public matters that also interest "all" (CASTELLANOS CLARAMUNT, 2020, p. 48).

Human Rights are central to understand the expansion of social participation mechanisms precisely because of their universal nature, based on the legal equality of all human beings. Political participation is a human right that binds all people and obliges nation-states and relevant organizations to always preserve it. Although the paradigm is a "inclusion of all" one, the particularity of some peoples or identities (intersectionalities) requires a deepening of this conception to the point where minorities are also understood as parts of the whole.

Participation is essential to understand the processes of social inclusion, the struggles against injustices, and for the recognition of rights arising from different sectors of society or promoted within the State (GOHN, 2019, p. 76) – workers, women, and LGBTQIA+ individuals/organizations, for example. Therefore, the affirmation of social participation as a human right exposes the need for movements "from the invisibility to social participation" (MUNGUBA; VIEIRA; PORTO, 2015), through which Human Rights frameworks raise social and political inclusion of diverse actors. In this sense, the political inclusion of subjects worthy of social participation in public decisions moves towards confronting structural inequalities, recognizing paradigms of inequality of social class, race, or gender, bringing attention to those actors through the creation of mechanisms that make the socially marginal become equal participants in politics, while recognizing the difference and particularities of their interests.

This inclusion of different subjects is based on a paradigm of inclusion of

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<sup>9</sup> The Universal Declaration of Human Rights uses the term "human family" in its preamble, considering equal rights for all human beings.



all, that is, the need to identify the invisible and promote their entry into the institutions and decision-making acts of politics, using the legal mechanism promoted by Human Rights to political participation to demonstrate the need to contemplate differences and new subjects of law that are not reached even when the right of “every person” is formalized. There is an imminent challenge regarding the possibility of including minorities in politics using generic and broad forms of inclusion – mainly due to the complex multicultural and socially dynamic characteristics (SANTOS; SANTOS; EDLER, 2015) – and also the inevitable clash of interests that may be irreconcilable.

Bora (2019) understands the inclusion process not as being of social integration, but as belonging in communicative processes in a functionally differentiated society — thus requiring a modalized and gradual form of inclusion in communication processes. There is no mere inclusion in society, as theories of social integration through full inclusion presuppose, but several different inclusions through legal communications. Under this critique, the theme of inclusion and integration are seen differently: inclusion refers to “who participates” — that is, the participation of people in social systems, while integration is something related to benefits between social systems. This perspective allows us to identify and interpret problems related to inclusion and integration in society not as mere problems of the political-legal practices that promote them, but to identify their systematic causes that make it impossible to broaden inclusion as normative theories intend – and participation must be seen as one of many modes of inclusion.

Inclusion is the “way of addressing people in communication systems” (BORA, 2019, p. 12), the way through which individuals are treated as people in the context of each communication system. The distinction between participant/non-participant, or between person with relevant/irrelevant communication is established. Inclusion occurs under the tension between the structural differentiation of society and the pressure for inclusion of individuals. Thus, these individuals start to be described as subjects – included as participants, or communication individuals relevant to each system, not in a total social integration. Therefore, inclusion under these aspects has two characteristics: it is a (I) modal and (II) gradual concept.

(I) Inclusion as a modal concept defines who a person is and how one is



distinguished from others, according to the code and the program of each system (legal, political, economic, etc.) from which inclusion/exclusion is intended to be analyzed. These are the formulas through which individuals are represented, or how functional systems observe these subjects, whether as litigants (in Law), voter (in Politics), buyer/seller (in Economics), student/teacher (in Education), faithful/priests (in Religion), among others. The mode through which the subject participates is precisely determined – not only by answering the question “who participates?”, but also, “in what way, who and where does it participate”.

(II) Inclusion as a gradual concept, by its turn, admits that inclusion only occurs in an evolutionary way and containing gradations, considering that, in principle, everyone is already included in society in general. However, what participation is really meant depends on the inclusion carried out in each specific context, which only occurs through the levels of differentiation molded in the forge of the modes of inclusion – that is, this gradation occurs under the general principles of inclusion, such as Human/Fundamental Rights, legal capacity, equality, etc., which establish differentiated modes of inclusion according to the functions of the system and its levels. At the organizational level, there are other specific modes of inclusion, that is, gradual, differentiating specific roles such as positions, actors and their own spaces – such as the ability to make business or vote, the ability to be criminally responsible, or even liability (criminal, civil and/or administrative) of a legal person. In the political system, distinctions of mode and gradation occur in a similar way, while full inclusion affirms everyone as "political subjects" or "citizens", and the way through which their communications are considered relevant is differentiated – and they are determinants of participation in specific spaces, although all have, in general and in principle, the condition to participate.

With this conceptual apparatus it is possible to verify participation as one of the modes of inclusion that takes place in a modal and progressive way, even if the assumptions of the legal system admit the impossibility of social exclusion of anyone – the incessant demands for participation claim precisely this promise made by the full inclusion on which Human Rights are based. The statement that "everyone must decide" collides with a functionally differentiated society, which also recognizes relevant communications in a differentiated way, requiring specific inclusion processes – revealing that problems linked to the lack of social



participation in public processes is not exactly a deficient practice, but rather, a contingency arising from the concept of general (or even generalized) inclusion (BORA, 2019, p. 26).

From a Marxist point of view there is also a systemic opposition to full inclusion, which is impossible due to the social structure divided into classes. The image of a subject of universal law is nothing more than the equivalence to the universality intended by the commodity form – a universal condition that makes it worthy of circulation, that is, in the same way through which the commodity form, in capitalism, is formally equaled, to all other goods, the subject of law acts under the same bond – being the concrete diversity of human beings and social relations indifferent (KASHIURA JUNIOR, 2012, p. 119-120).

Marxist critique is valuable in revealing the contradictory nature of the affirmation and realization of Human Rights, understanding that even the processes that guarantee them occur in a contradictory way, affirming rights and consolidating exploitation practices. Furthermore, this contradictory nature of capitalism implies the inevitability of directly contrary interests, according to which the interests of the capitalist are opposite to those of the working layers – being this also evident in the urban plan, in which real estate accumulation and income are antagonized with the right to housing, for example – making the idea of a “whole” as a participant in the decision-making process impossible or illusory.

## Conclusion

The research demonstrated that the difficulty imposed by the legal/formal equality of Human Rights persists: the full inclusion of everyone falls back on idealism and becomes impossible given the material reality of a complex and stratified society, with political inclusion being a highly particular process for certain social groups and highly contradictory for others. It appears that social participation in urban planning is part of a legal and political framework for the democratization of the State, which in Brazil is manifested by the so-called Democratic Management of Cities, and instrumentalized through practices such as public hearings, councils and conferences, which formally



promote participatory institutions that operationalize a human right to social participation in political decision-making.

Furthermore, in the context of globalization, the transnationalization and privatization of public services, and also, consequently, of urban management are explored. Practices such as corporate social responsibility and accountability promote participatory mechanisms in private organizations, with a view to increasing their role in providing fundamental services to the population, also linking the human right to participation to the standards of conduct of these organizations, understanding the need for engagement of the population as an element of legitimacy in acting on public issues. However, in part three, we conclude that this human right to participation encounters structural obstacles by assuming widespread inclusion (that is, of "all"), which were exposed from two criticisms: one, that by identifying the complexity of society, understands that full inclusion is impossible in the face of the range of differences; and the other, which identifies the division of society into classes and understands that it is impossible to reconcile the interests of each one of the classes with the others.

In this sense, it is concluded that thinking about the human right to participation in urban management, in this scenario, is to identify the contradictions in which this right is affirmed: in an unequal urban development, in which the production of space at the same time establishes islands of wealth and oceans of misery, there is no way to effectively include "all", that the universality intended by Human Rights is full, that is, class interests are distinct and opposed, being irreconcilable, despite the formal equality postulated by legal forms. Therefore, the effectiveness of participation must be increased through mechanisms that make the socially excluded ones equal participants in politics, while recognizing the difference and the particularities of their interests; this can be done considering inclusion in a modal and progressive way, based on specific inclusion processes.

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