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EDITORIAL

THE URGENCY OF REINVENTING THE COMMON

"*We are at war! I don't know why you're looking at me with such a nice face*" (Airton Krenak).

"... war is the continuation of politics by other means" (Focault).

"... politics must be the art of making the impossible possible" (Marta Harnecker)."

For at least half a century, humanity has recognized that the planet burns. From Stockholm in 1972, through Rio-92, the Kyoto Protocol, to the Paris Agreement and successive COPs, we have accumulated diagnoses and resolutions that attest to the obvious: climate change is not a future threat, but a present reality. And yet, the paradox repeats itself like a wound that refuses to heal: while international conferences multiply, promises pile up and reports thicken, the engine of industrial-financial development continues to advance, fed by the same fuel as always — unlimited accumulation, the commodification of life, the transformation of nature itself into a market asset. The wealth produced from this devastation continues to be appropriated in a very unequal way. Inequalities are only deepening, globally and locally. The gap between what is needed and what has been done is increasingly abysmal.

The reason for this gap is political and structural. Industrial capitalism — and later its contemporary phase of financialization — is not just a technical arrangement of production; it is a value machine that internalizes private gains and *Outsource* social and ecological costs. In the last decade, the phenomenon has been accurately described. Land, forests, ecosystem services and even the atmosphere (via the idea of "credits") are transformed into financial instruments. The financialization of nature promises to correct market failures, while often replicating and amplifying appropriation practices. In practice, the right to pollute is sold, a market for climate remedies is created and, with this, a new front of speculation on territories and lives is opened.

The latest scientific data has left no room for complacency. It is not new that the IPCC's assessment reports synthesize evidence that climate impacts are already manifesting themselves with increasing intensity and that avoiding catastrophic scenarios requires rapid, deep and simultaneous

transformations in energy, agricultural, urban and financial systems. Environmental degradation has daily impacts on the lives of the population. It is a problem that affects public health in all corners of the globe. Air, soil and water pollution translates into avoidable mortality and morbidity (respiratory diseases, cardiovascular diseases, heavy metal poisoning, etc.). There is no shortage of studies that estimate that pollution is among the leading causes of death that could be avoided in the world, with millions of lives lost annually and significant economic impacts on communities and health systems.

In the Amazon, the expansion of agribusiness and mining threatens indigenous territories and provokes direct violence against leaders. In the Cerrado, quilombola communities lose their territories to soy and sugarcane monocultures. Riverine communities face fish die-offs and loss of livelihoods due to dams and industrial pollution. The consequences, therefore, are not abstract. They insinuate themselves into the plate and the lungs, in drought and flood, in contaminated food and polluted water. They materialize in the bodies of indigenous populations expelled from their lands, of riverside dwellers who see their rivers transformed into sewage, of quilombolas besieged by the advance of agribusiness. These are devastated biomes, mutilated territories and entire cultures put at risk. There is no possible separation between ecology and social justice. The defence of the environment is inseparable from the defence of the peoples who inhabit and preserve it. What economists call negative "externalities" are not collateral accidents, but the very heart of a model that rests on the depredation of life.

The impacts, however, are not equally distributed. Indigenous populations, quilombolas, riverside dwellers and peasant communities usually pay the highest price. They are the ones who face forced displacement, the poisoning of water resources, the loss of food and cultural practices, the criminalization of resistance, and direct violence against their bodies, violence that often results in death. In Brazil, tragedies such as the rupture of the tailings dams in Mariana (2015) and Brumadinho (2019) have exposed the confluence between extractive industry, regulatory fragility, and massive social-environmental damage — they remind us that "externality" there means the destruction of entire ways of life. The effective protection of these rights is linked both to international instruments and to local mobilization and restorative justice capacity; In many cases, however, the judicial system and compensatory negotiations have repeatedly proved insufficient to restore lives and ecosystems.

In institutional discourses and in the market, with each movement of organized society in the sense of demanding and seeking solutions, solutions that promise to reconcile conservation and

capital are presented, with new makeup — always following the same logic — solutions, which promise to reconcile conservation and capital: carbon markets, Reduction of Emissions from Deforestation and Forest Degradation/REDD+, biodiversity credits, payment mechanisms for ecosystem services. But critical evidence is growing, and the most recent analyses point out that many projects overestimate reductions, create incentives that pervert the stated logic of ecosystem protection, and can result in rights violations, displacement, or instrumentalized conservation — a commodification that, in addition to being fragile in terms of climate integrity, tends to reproduce inequalities.

Market mechanisms are instruments for the production and reproduction of inequalities. The river of a poor community is polluted because it has less political power to resist. The market's solution often deepens injustice. The rich pay to pollute and the poor bear the costs of degradation or are removed from their territories for the creation of conservation units or compensation projects. In short, financialization and its market mechanisms preserve power structures while transferring responsibility for the degradation produced to already vulnerable territories.

Capitalism, as a system, depends on the production of inequalities. The externalization of environmental costs is key in this process. It is not a flaw, but a characteristic. Capital treats nature as an infinite mine of resources and at the same time as a sewer, an infinite sink of waste. This is a structural premise, it is not an error that can be corrected, fixed, equated. There is no possibility of "green growth" or decoupling from the logic of accumulation and expanded reproduction on a scale that matters, that makes a difference in the global. The mechanisms of financialization employed in the so-called socio-environmental protection do the opposite of what they announce, they subordinate life, and everything that serves as its basis, to financial valorization. Far from being a solution, it is the supreme stage of commodification. It represents the final colonization of the planetary commons by the logic of the reproduction of capital.

If the diagnosis is severe, there is also an accumulation of practical and political alternatives — not just abstract ideas. Social movements (La Via Campesina, the Landless Workers' Movement among the most visible), agroecology networks, community experiences of food sovereignty, proposals for "good living" and theoretical currents of degrowth and regenerative economy present concrete repertoires based on peasant production practices that reduce industrial inputs; envision models of community governance; they build breaches, such as the rights of nature embodied in

constitutions (as in Andean experiences); work with just transition strategies that articulate jobs, training and social protection in the transition to low-carbon economies. These experiences share a common trait. They strive to reframe value as reciprocity and care rather than mere profit extraction. But we also need to imagine others not yet tried.

The immediate horizon may seem narrow and saturated by the empty promises of the market, but it is precisely in this impasse that we need to exercise the political imagination. Donna Haraway reminds us that theory is not a mere description of reality, but also fabulation, the creation of figures that authorize us to think the unthinkable. His "cyborg" and his "Chthuluceno" are not ornamental metaphors, but gestures of rupture that can break naturalized dualisms and, perhaps, have the strength to summon us to inhabit other possibilities of existence. At the heart of the ecological crisis, imagining is a radical act. It is through the invention of worlds — worlds of multispecies cooperation, of reciprocity instead of accumulation, of care instead of expropriation — that we make room for alternatives that are now a minority to become viable. Without this critical fabulation, we will remain confined to the vicious circle of capital, unable to conceive of ways out beyond its devastating grammar. Imagining, as Haraway insists, **is not an escape, it is a condition** for survival.

But the challenge is titanic. The forces that feed the current model are powerful, globalized, entrenched in political and economic institutions that capture not only the environmental agenda, but strive to keep our minds locked to ontologically bankrupt alternatives. International Conferences, Panels, Summits, in many cases, are stages of rhetoric without consequence. These are promises that are not fulfilled, commitments that do not cross paper. The COPs continue to highlight the strategy of "much ado about nothing" and the holding of COP 30 in Brazil is just one more act in this theater of farces. Between the lucid diagnosis of science and the inertia of politics, time slips away — and with it the chance to avoid the irreversible.

And the paths to other possible worlds are also political paths. necessary transformations are, by definition, political. There are power negotiations, disputes over agendas, the design of public instruments and — above all — the democratization of decisions about resources and the future. Technical instruments without democratic bases or without real participation of the affected populations tend to be captured by corporate interests. The "just transition" category is an example of an attempt to institutionalize equity in the process of change — requiring social dialogue, industrial plans, and labor protection — but its realization depends on political will and targeted public funding.

In other words: without a radically redistributive policy, technologies alone do not untie the structural knots of the problem.

The crux of the matter remains — and here we must be clear and without euphemisms: as long as the expanded reproduction of capital depends on continuous extraction, the coexistence between infinite accumulation and biophysical limits will be less and less possible. This does not mean that one-off changes are useless; it means that they will not be sufficient or socially just if they are not part of a larger restructuring project. The real alternative requires redesigning investment flows, restricting the private capture of common goods, guaranteeing effective territorial rights, promoting economies of care, and instituting mechanisms that place the preservation of life as a normative priority.

It is therefore necessary to call a spade a spade: the environmental crisis is not a technical problem, nor an accident along the way. It is the wound produced by a civilizational model that devours the possibilities of the future. It is a wound that bleeds. With each tree felled, each river poisoned, each species extinct, we not only lose biodiversity, we lose the possibility of the near future and the future of the human species. How long will we continue to seek the impossible reconciliation between capital accumulation and the preservation of life? How long will we naturalize devastation in the name of a progress that no longer promises a future?

These questions are both an invitation and a warning. Invitation to critical reflection and, above all, to collective action. He warns that there is no longer time for conciliatory illusions. If we want to exist as humanity, we will have to reinvent the very meaning of development, refuse the desert that is being announced, and affirm, with courage, that another world is not only possible: it is urgent. Earth's time does not wait. And political action can no longer hesitate.

Morrinhos, September 17, 2025.

Vilma de Fátima Machado

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AGROECOLOGY: THE QUEST FOR SUSTAINABILITY AND ENVIRONMENTAL PRESERVATION IN AGRICULTURE IN THE LIGHT OF LAW

AGROECOLOGIA: A BUSCA PELA SUSTENTABILIDADE E PRESERVAÇÃO DO MEIO AMBIENTE NA AGRICULTURA A LUZ DO DIREITO

AGROECOLOGÍA: LA BÚSQUEDA DE LA SOSTENIBILIDAD Y PRESERVACIÓN DEL MEDIO AMBIENTE EN LA AGRICULTURA A LA LUZ DEL DERECHO

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ABSTRACT

This article revolves around the central theme of agroecology from a legal perspective. Agroecology is a concept that seeks to align agricultural production with environmental preservation. The objective is to discuss how this practice can contribute to sustainability in

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agriculture using more natural techniques that respect ecological balance. This work was conducted based on literature review and data analysis. In conclusion, we found that agroecology is an important tool for environmental preservation and conscious production, aiming to produce without harm, protect fauna, flora, water resources, promote local economy, and produce healthier foods, all of which are protected by regulations and laws.

Keywords: Agroecology. Environment. Sustainability. Legal Norms.

RESUMO

Este artigo tem como tema central a agroecologia a vista do direito, podemos trazer que agroecologia é um conceito que busca aliar a produção agrícola com preservação ambiental. O objetivo é discutir como essa prática pode contribuir para a sustentabilidade na agricultura, através da utilização de técnicas mais naturais, que respeitem o equilíbrio ecológico. Este trabalho foi realizado com base em pesquisa bibliográfica e análise de dados. Como conclusão, obtivemos que a agroecologia é uma importante ferramenta para preservação do meio ambiente e produção consciente, que busca produzir sem agredir, proteger a fauna, a flora, os recursos hídricos, além de promover a economia local e produzir alimentos mais saudáveis e isso é protegido por normas e leis.

Palavras-chave: Agroecologia. Meio Ambiente. Sustentabilidade. Normas Jurídicas.

RESUMEN

Este artículo tiene como tema central la agroecología desde la perspectiva legal. La agroecología es un concepto que busca conciliar la producción agrícola con la preservación ambiental. El objetivo es discutir cómo esta práctica puede contribuir a la sostenibilidad en la agricultura mediante el uso de técnicas más naturales que respeten el equilibrio ecológico. Este trabajo se realizó mediante una revisión bibliográfica y análisis de datos. Como conclusión, encontramos que la agroecología es una herramienta importante para la preservación del medio ambiente y la producción consciente, que busca producir sin agredir, proteger la fauna, la flora, los recursos hídricos, además de promover la economía local y producir alimentos más saludables, todo ello protegido por normativas y leyes.

Palabras clave: Agroecología. Medio Ambiente. Sostenibilidad. Normas Jurídicas.

INTRODUCTION

Agroecology emerges as a crucial practice in food production, gaining increasing relevance amid global concerns with sustainability and environmental preservation. From the perspective of Brazilian law, this approach assumes a fundamental role in building an agricultural model aligned with the constitutional principles of environmental protection and the promotion of public health. The harmonization between food production and environmental preservation thus becomes a legal and ethical imperative in the face of contemporary challenges.

Understanding the principles and objectives of agroecology through the lens of Brazilian law reveals a remarkable convergence: the appreciation of biodiversity, the preservation of natural resources, and their responsible use are all supported by the legal provisions governing environmental protection in the country. In this sense, agroecology not only aligns with existing regulations but also proposes a path for the effective implementation of these principles in agricultural practice.

The adoption of agroecology implies a paradigmatic shift, moving the focus from the maximization of agricultural output to the prioritization of environmental preservation. This change not only reflects an evolution in the understanding of environmental law but also positions agroecology as a means to achieve the constitutional goals of ecological balance.

The practice of agroecology goes beyond environmental benefits, extending to human health and local economies. The production of healthy food, free from pesticides and chemical additives, not only fulfills the legal principles of the right to adequate food but also strengthens food security and promotes income generation in rural communities.

Despite its undeniable benefits, the implementation of agroecology is intrinsically linked to the development and enforcement of specific public policies. An analysis of this interconnection—interwoven with the legal challenges and the resistance faced by farmers—reveals the need for a normative framework that supports and protects agroecological practices.

The relationship between agroecology and public policies is vital for its effective implementation. The promotion of measures that encourage and support the adoption of this approach must be grounded in the convergence of legal principles and the pursuit of a more sustainable and equitable agriculture.

In this context, the present article proposes a discussion on the importance of agroecology in food production, highlighting its legal foundations, its broad-ranging benefits, and the need for public policies aligned with constitutional principles. Through this analysis, the article aims to contribute to the understanding of agroecology as a practice that not only meets environmental and social demands but also finds legal support and guidance within the Brazilian legal framework.

1 ENVIRONMENTAL LAW AND ITS LEGAL FOUNDATIONS

The concern with environmental preservation in the face of rampant consumption and unsustainable practices in contemporary society is a matter of utmost importance. Today's society, marked by consumerism—where the possession of material goods often prevails over being—contributes significantly to the depletion of natural resources. This reality is evidenced by studies such as those of Sachs (2008), who highlights the unsustainability of the current economic model and

its environmental consequences. The author argues that the increase in production and consumption generates a range of negative impacts on the environment, including the depletion of natural resources and environmental degradation.

Neglect for the environment and the prioritization of individual interests, without considering the responsibility to preserve nature, have contributed to a scenario in which the environment is left vulnerable and defenseless. It is imperative to rethink human attitudes toward natural resources and adopt an ethical and responsible stance. As Leff (2001) asserts in his work *"Environmental Knowledge: sustainability, rationality, complexity, and power"*, it is crucial to recognize the interdependence between humans and nature, and that human survival depends on environmental preservation.

Article 225 of the Federal Constitution of Brazil is a foundational legal framework for environmental protection. This article guarantees everyone the right to an ecologically balanced environment, imposing duties on both the government and society to defend and preserve it. As Antunes (2012) observes in *"Environmental Law"*, this provision establishes a set of obligations aimed at preserving biodiversity and ensuring sustainability for future generations.

In this context, public policies, and legal instruments, such as the National Environmental Policy (PNMA), play a crucial role. Agroecology emerges as a sustainable alternative, promoting agricultural practices that respect the environment and biodiversity. Altieri (2002), in *"Agroecology: the productive dynamics of sustainable agriculture"*, emphasizes the importance of agroecology as a means to achieve sustainability in food production while minimizing negative environmental impacts.

2 PARADIGM SHIFT: PRIORITIZING ENVIRONMENTAL PRESERVATION

The urgency of a paradigm shift that prioritizes environmental preservation is a central theme on today's global agenda. As Sachs (2008) emphasizes, we face the challenge of re-evaluating the dominant values and practices in our societies, particularly concerning consumption and our relationship with natural resources. This transformation is crucial to ensuring the planet's sustainability and the well-being of future generations, guiding us toward a development model that values conservation and the sustainable use of natural resources.

Capra (2002) argues that a holistic and interconnected understanding of the world is essential in this new era. He maintains that environmental preservation should not be perceived as an obstacle to development, but rather as an integral and vital component of it. This concept of sustainability implies a shift in how we perceive and interact with our environment, adopting a systemic perspective that recognizes the interdependence among all forms of life.

One of the greatest challenges to this paradigm shift is consumerism. Leff (2001) highlights how the current economic model—based on excessive consumption—produces significant negative environmental impacts, such as the overexploitation of resources and pollution. To change this paradigm, a critical review of this model and the pursuit of more sustainable alternatives are essential.

Environmental education emerges as a fundamental pillar in this transformation. Guimarães (2004) underscores the importance of raising awareness and cultivating a sustainable mindset from early childhood. Environmental education is key to shaping conscious citizens committed to environmental preservation, who will become future leaders and responsible consumers.

Moreover, we face economic and social challenges in this transition. As Veiga (2005) points out, the shift to more sustainable practices may challenge an economic model rooted in non-renewable resources. However, this change is vital to ensuring the longevity of natural resources and the quality of life for the population. Technology and innovation also play a crucial role in promoting sustainability. Hawken, Lovins, and Lovins (1999) discuss how innovative and sustainable technological solutions can lead the way toward a greener future, encompassing everything from the adoption of renewable energies to sustainable and efficient agricultural practices.

In the political realm, governments and environmental legislation play a crucial role in driving this transformation. Antunes (2012) discusses the importance of strong environmental laws and regulations to ensure the protection of the environment and to promote sustainable practices. The creation of public policies that encourage green initiatives is indispensable for this transformation. In other words, the paradigm shift toward environmental preservation is a complex but essential journey. It requires collaboration across various sectors of society, including governments, businesses, communities, and individuals. Environmental preservation must be regarded as a shared responsibility and a common goal—crucial to securing a sustainable future for all.

3 EXPANDED BENEFITS: HUMAN HEALTH AND THE LOCAL ECONOMY

Environmental preservation, beyond its intrinsic ecological importance, has significant beneficial effects on human health and the strengthening of local economies. According to the World Health Organization in its report *"Environment and Public Health"* (WHO, 2016), maintaining a healthy environment is essential for preventing a wide range of diseases and for fostering the general well-being of the population. This link between a healthy environment and human health underscores the importance of environmental preservation, which transcends the ecological imperative and also establishes itself as a crucial public health issue.

In economic terms, environmental preservation has significant impacts on local economies. Jacobs (1995) points out that the transition to sustainable practices can open up new markets and economic sectors, thus boosting the local economy. This transition toward sustainability not only contributes to environmental protection but also to economic resilience and diversification, particularly in communities that depend on natural resources.

Environmental health, directly affected by environmental quality, is a growing concern. As Jackson (2012) discusses in *"Environmental Health: From Theory to Practice,"* exposure to polluted environments significantly increases the risk of various diseases, including respiratory, cardiovascular issues, and even cancer. Therefore, environmental preservation in both urban and rural areas can reduce these risks, contributing to a healthier population.

Edward B. Barbier (2010) highlights the importance of transitioning to sustainable practices in revitalizing local economies. This transition creates economic opportunities, especially in rural and developing communities, where the economy is closely tied to natural resources. Sustainable agriculture also plays a crucial role in local health and economy. As Jules Pretty (2008) states, sustainable agricultural practices not only conserve natural resources but also promote healthier, pesticide-free food, positively impacting public health and strengthening the local economy through organic and local markets.

Therefore, sustainable tourism exemplifies how environmental preservation can benefit the local economy. Mowforth (2015) discusses how areas with rich biodiversity and preserved ecosystems attract tourists, generating local income and jobs while encouraging environmental conservation. In sum, environmental preservation is more than an ecological responsibility; it is a strategic investment in public health and in the strengthening of the local economy. The interconnection between environment, health, and economy is a fundamental pillar of sustainable development, demonstrating that environmental preservation practices bring broad and positive benefits to society as a whole.

4 LEGAL CHALLENGES AND PUBLIC POLICIES

The transition to agroecological practices represents a multifaceted challenge that encompasses both legal issues and the need for effective public policy development. Altieri (2002) argues that agroecology offers a foundation for the development of sustainable agricultural systems but emphasizes the need for legislative reform to support such practices. In this regard, it is imperative that existing legislation be reviewed and adapted to promote and facilitate the adoption of agroecological methods, which are essential for environmental sustainability and food security

(Wezel et al., 2009). The inadequacy of the current legal framework—often favoring conventional agriculture to the detriment of agroecology—emerges as a significant obstacle.

In the realm of public policy, Pimentel et al. (2014) underscore the importance of developing measures that encourage agroecological research, facilitate market access for agroecological products, and provide technical assistance to farmers. This requires an integrated approach involving various sectors and levels of government, as well as active community participation. De Schutter (2008) highlights the need for public policies that foster education and awareness about the benefits of agroecology, both for environmental sustainability and for public health.

The reorientation of financial incentives and government subsidies—which have traditionally favored large-scale agriculture and the intensive use of chemical inputs—toward the support of agroecology presents a substantial political challenge (Rosset and Martinez-Torres, 2012). Resistance from established sectors and the need to ensure farmers' participation in decision-making processes are critical aspects for the effective implementation of agroecological policies.

Finally, international cooperation and the exchange of successful practices are essential to overcoming the legal and political challenges in promoting agroecology (Francis, 2003). The harmonization of regulations and the promotion of sustainable food systems on a global scale require a strong political commitment and an adaptive legal framework that incorporates agroecological principles.

This analysis highlights the complexity of the legal and public policy challenges associated with the advancement of agroecology. A continuous dialogue among the various stakeholders—including legislators, researchers, legal professionals, and civil society—is fundamental to developing effective strategies that support the transition toward more sustainable agricultural systems.

5 THE ROLE OF PUBLIC POLICIES IN THE IMPLEMENTATION OF AGROECOLOGY

The role of public policies in the implementation of agroecology is crucial for transforming food and agricultural systems toward sustainability. Public policies can provide the necessary support to overcome economic, technical, and social barriers faced by farmers who wish to adopt agroecological practices. According to Altieri and Nicholls (2012), effective public policies in agroecology should include financial incentives for farmers during the transition period, technical assistance for agroecological management of production systems, and support for the commercialization of agroecological products. This demonstrates the need for governmental

commitment to food security and environmental sustainability, aligning agricultural policies with the principles of agroecology.

Moreover, the implementation of public policies focused on education and research in agroecology is fundamental for building a solid knowledge base to support agroecological practice. According to Francis (2003), investment in research and development is essential to adapt agroecology to diverse local realities, promoting resilient and productive food systems. These policies should also encourage the creation of spaces for dialogue among farmers, scientists, and decision-makers, facilitating knowledge exchange and the co-creation of sustainable solutions.

The regulation and promotion of markets for agroecological products are also key aspects of public policies in agroecology. Simón et al. (2010) argue that the development of local and regional markets for agroecological products not only provides economic support to farmers but also promotes biodiversity and healthy eating habits among consumers. Public policies that establish certification standards for agroecological products and encourage the procurement of sustainable food by public institutions can significantly stimulate demand for these products.

Finally, the protection of natural resources and the promotion of biodiversity are essential components of public policies for the effective implementation of agroecology. De Schutter (2008) emphasizes that public policies should aim to conserve soil, water, and biodiversity, which are fundamental to the resilience of agricultural systems and the maintenance of ecosystem health. This entails policies that restrict harmful agricultural practices, such as excessive agrochemical use, and promote practices that restore ecosystems and improve soil fertility. The convergence of these public policies—focused both on direct support for farmers and on environmental conservation—is vital for establishing agroecology as a sustainable model of agricultural production.

6 CONCLUSION

The analysis conducted illustrates how agroecology, supported by an appropriate legal framework and effective public policies, can give effect to Brazilian constitutional principles of environmental protection and health promotion, aligning food production with sustainability and social equity.

It is worth highlighting that the transition to agroecology requires a paradigm shift in how agriculture is conceived, moving from a model focused on maximizing production to one that values environmental preservation, biodiversity, and the well-being of rural communities. This movement is not only an environmental necessity but also an opportunity to strengthen public health and local economies by producing healthy food and promoting food security.

Nevertheless, the implementation of agroecology faces legal challenges and depends on public policies that encourage its adoption. It is essential that such policies address not only technical and financial support for farmers but also education, research, and the development of markets for agroecological products. Furthermore, the protection of natural resources and the promotion of biodiversity must be central components of these policies, ensuring the long-term sustainability of agricultural systems.

Collaboration among various stakeholders—including the government, the scientific community, farmers, and civil society—is vital to overcoming these challenges. International cooperation can also play a key role by fostering the exchange of knowledge and successful practices in agroecology.

In conclusion, agroecology represents a viable and necessary path to achieving sustainability in agricultural production, aligned with the principles of environmental protection, public health, and social justice. The implementation of this approach depends on a collective commitment to reshaping agricultural practices, supported by a legal framework and public policies that promote and protect agroecology. Through this analysis, we aim to contribute to the understanding of agroecology not merely as an agricultural practice, but as a comprehensive strategy for sustainable development—one that is strongly grounded in Brazil's legal framework and broader social objectives.

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PUBLIC *COMPLIANCE* PROGRAM OF THE EXECUTIVE BRANCH OF THE STATE OF GOIÁS

PROGRAMA DE *COMPLIANCE* PÚBLICO DO PODER EXECUTIVO DO ESTADO DE GOIÁS

PROGRAMA DE *CUMPLIMIENTO* PÚBLICO DEL PODER EJECUTIVO DEL ESTADO DE GOIÁS

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ABSTRACT

This article delves into the transformations in Public Administration, governance practices, and public policies centered on transparency and efficiency in the state of Goiás. Goiás was selected due to its recent commitment to innovations in public management, which may serve as a model for other Brazilian regions. The primary aim is to assess how administrative reforms, prompted by global demands, impact the state government's ability to deliver public services effectively. The research adopts a qualitative methodology, based on the analysis of official documents and secondary data from the National Program for Public Transparency (PNTP). The findings indicate that governance practices in Goiás foster a more transparent and accountable government. However, they face significant challenges, including resistance to change and resource constraints. The Goiás experience demonstrates that the integration of technology, efficient management, and civic engagement can substantially enhance the quality of public services. This highlights the crucial role of adaptive and transparent governance

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in advancing sustainable development and promoting a more equitable society.

Keywords: Public Administration. Governance Practices. Policy Implementation.

RESUMO

Este artigo investiga as transformações na Administração Pública, as práticas de governança e as políticas públicas de transparência e eficiência no Estado de Goiás. A escolha de Goiás se justifica por seu recente compromisso com inovações em gestão pública, que podem servir de referência para outras regiões do Brasil. O objetivo é examinar como as adaptações administrativas, induzidas por demandas globais, impactam a eficácia do governo estadual na prestação de serviços públicos. A pesquisa adotou uma metodologia qualitativa, baseada na análise de documentos oficiais e dados secundários do Programa Nacional de Transparência Pública (PNTP). Os resultados indicam que as práticas de governança em Goiás promovem um governo mais aberto e responsável, embora enfrentem desafios relacionados à resistência a mudanças e limitações de recursos. A experiência de Goiás sugere que a combinação de tecnologia, gestão eficiente e envolvimento cívico pode melhorar substancialmente a qualidade dos serviços públicos, destacando a importância de práticas de governança adaptativas e transparentes para o desenvolvimento sustentável e uma sociedade mais justa.

Palavras-chave: Administração Pública. Práticas de Governança. Implementação de Políticas.

RESUMEN

Este artículo analiza las transformaciones en la Administración Pública, las prácticas de gobernanza y las políticas públicas de transparencia y eficiencia en el estado de Goiás. La elección de Goiás se justifica por su compromiso reciente con innovaciones en la gestión pública, que pueden servir como referencia para otras regiones de Brasil. El objetivo es examinar cómo las adaptaciones administrativas, impulsadas por demandas globales, afectan la eficacia del gobierno estatal en la prestación de servicios públicos. La investigación adoptó una metodología cualitativa, basada en el análisis de documentos oficiales y datos secundarios del Programa Nacional de Transparencia Pública (PNTP). Los resultados indican que las prácticas de gobernanza en Goiás promueven un gobierno más abierto y responsable, aunque enfrentan desafíos relacionados con la resistencia al cambio y las limitaciones de recursos. La experiencia de Goiás sugiere que la combinación de tecnología, gestión eficiente y participación cívica puede mejorar sustancialmente la calidad de los servicios públicos, destacando la importancia de prácticas de gobernanza adaptativas y transparentes para el desarrollo sostenible y una sociedad más justa.

Palabras clave: Administración Pública. Prácticas de Gobernanza. Implementación de Políticas**.**

INTRODUCTION

We live in a context of rapid technological, economic, and social transformations that directly affect public administration, requiring governments to adapt their practices to promote more transparent and efficient management. The State of Goiás has stood out in this scenario due to its

recent public governance initiatives, aimed at modernizing administration and improving the delivery of services to the population. Among these initiatives, the Public Compliance Program (PCP), established by Decree No. 9,406 of 2019, is particularly noteworthy. It focuses on promoting transparency, accountability, and risk management within the scope of state public administration.

This article aims to investigate the governance practices adopted by the State of Goiás, with a focus on the PCP and other policies aimed at improving public management. The relevance of this study lies in analyzing how these practices influence public administration in terms of transparency, efficiency, and governmental accountability, as well as exploring the challenges faced in implementing these policies and the benefits generated for the people of Goiás. The study also seeks to discuss the role of technology and civic engagement as facilitators of administrative modernization.

The specific objectives of this study include:

• Presenting theoretical concepts related to public governance and compliance within the context of modern public administration: This objective seeks to introduce and discuss the main theoretical foundations that guide public governance, with an emphasis on the concept of compliance in the public sector. It will address the theories and principles that support these practices, highlighting the historical evolution of public governance and the innovations introduced by the State of Goiás' Public Compliance Program (PCP). The theoretical foundation will be supported by a review of the existing literature, emphasizing best governance practices and both international and national regulatory frameworks that influence public management in Brazil.

• Discussing the norms and regulations applicable to governance in the State of Goiás, focusing on the implementation of the Public Compliance Program (PCP): This objective seeks to provide a detailed analysis of the main rules and decrees that structure public governance in the State of Goiás, with emphasis on Decree No. 9,406 of 2019, which established the Public Compliance Program within the state executive branch. The analysis will focus on the implications of these regulations for transparency, efficiency, and accountability in the context of Goiás' public administration, assessing how these legal guidelines contribute to building a more ethical, efficient, and transparent public management.

• Assessing the impact of governance practices in the State of Goiás based on data from the National Public Transparency Program (PNTP): This objective focuses on evaluating the results achieved by the State of Goiás within the framework of the National Public Transparency Program (PNTP), which maps the level of transparency of government portals throughout Brazil. The analysis will be based on secondary data provided by the PNTP, enabling a quantitative and qualitative evaluation of the transparency practices adopted by the state. It will discuss how transparency has influenced administrative efficiency, as well as the challenges and benefits observed in the

implementation of governance policies in Goiás, highlighting the main success indicators and the areas that still require improvement.

To achieve these objectives, a qualitative methodology will be adopted, including the analysis of official documents and relevant legislation, complemented by a literature review on public governance and modern administration. The secondary data used, obtained from public sources such as the PNTP, will be analyzed based on administrative effectiveness criteria, allowing for a broader assessment of the impact of governance practices in Goiás. Furthermore, public managers' perceptions regarding progress and challenges encountered will also be considered.

This study is relevant to understanding the administrative reforms that directly impact the quality of public services in Goiás, providing valuable insights for other regions in Brazil seeking to modernize their public administration and promote more efficient and transparent governance. Goiás may serve as an example for the implementation of adaptive and sustainable governance practices aligned with the contemporary demands of a globalized context.

1 THE NEW PUBLIC ADMINISTRATION AND GOVERNANCE

The fast transformations brought about by globalization deeply affect society in various aspects, ranging from the economy to culture, and extending to technology and the environment. In the economic sphere, there is a noticeable rise of intellectual capital as the main resource, replacing physical capital, which represents a paradigm shift in the global economic drive. At the same time, the technological revolution facilitates the exchange of information on an unprecedented scale, promoting faster and broader communication (Matias-Pereira, 2010).

These changes directly impact the functioning of the State, government, and society, creating the need to reformulate models of the State and public management to adequately respond to the new demands and challenges emerging from this globalized context.

Within this transformative scenario, public administration faces the challenge of adapting to meet society's growing expectations for high-quality public services, marked by transparency and integrity. Governance in the public sector becomes a crucial element in this process, requiring a reformulation that incorporates sound management practices focused on ethics and transparency. The principles of good governance—such as accountability, legality, and ethical conduct—are essential for guiding the actions of both the public and private sectors, highlighting the interdependence between ethics and efficiency in public management (Matias-Pereira, 2010).

The barriers to achieving the desired transparency in public administration are significant, ranging from a lack of resources and specific skills to cultural and technological resistance. Matias-Pereira (2010) emphasizes the importance of redefining the role of the State, underlining the need for

an administration that is both efficient and capable of promoting equity, human development, and poverty reduction. This balance between economic efficiency and social justice reflects one of the main challenges of modern public governance, requiring ongoing efforts to reform and adapt public management models to the new realities imposed by globalization and the demands of a more active and conscious citizenry.

In response to these challenges, the adoption of new management practices inspired by the private sector is beginning to be replicated in the public sector, marking a movement toward collaborative and transparent governance. The New Public Administration emerges as a response to these demands, proposing a management model that emphasizes efficiency, effectiveness, and responsiviness[3] to the needs of the population.

Matias-Pereira (2010) argues that this new approach to public administration, aimed at improving service delivery, must be accompanied by a commitment to transparency, ethics, and social inclusion. In this regard, governance in the public sector plays a vital role in redefining the contemporary State, seeking to reconcile demands for efficiency with the imperatives of equity and social justice—both essential to sustainable development and the promotion of societal well-being.

1.1 The Public Governance and the Present-Day Ethics

In today's corporate setting, the interconnection between corporate governance and compliance programs is undeniable and essential for the efficient management of companies. Bittar *et al.* (2021, p. 17) highlight that the implementation and maintenance of robust compliance programs go beyond operational measures. They are strategic decisions that directly influence the conduct and management guidelines of corporations. This integration underscores the need to understand both the fundamental concepts and the key historical events that shape corporate dynamics and their interactions with various stakeholders.

In this context, it is crucial to understand that corporate governance goes beyond a mere set of practices or structures. Its essence lies in how relationships among the different actors—both inside and outside the organization—are managed, ensuring rights, defining power structures, and establishing clear norms. This understanding is essential to guarantee the functional autonomy of compliance programs, as well as to identify and mitigate risks related to such activities (Pironti & Ziliotto, 2021).

It is important to clarify that the vast universe of corporate governance cannot be fully covered in a single article. However, by providing an overview and simplifying some of its core

[3]Ability to provide quick and appropriate responses to a given situation.

concepts, this article seeks to offer a starting point for more in-depth discussions—especially regarding the integration of compliance programs. This approach facilitates a clearer understanding of the topic and emphasizes its strategic importance for the long-term sustainability and integrity of corporations.

The symbiotic relationship between corporate governance and compliance programs is a central pillar in building strong, ethical, and socially responsible companies. As noted by Bittar *et al.* (2021, p. 17), the effectiveness of this integration is crucial for strategic decision-making, positively influencing not only the organization's internal environment but also its public image and relationship with the market and society at large.

1.2 The *Compliance* concept

We are currently experiencing an era marked by profound global reflections on the need for transparency and integrity in the actions of public and private entities. According to Bittar et al. (2021, p. 52), this scenario is driven by frequent corruption scandals, which generate significant economic and social impacts. Considering this reality, it has become urgent to minimize the incentives for corruption inherent in political and economic systems, highlighting the increasingly important role of compliance as an essential part of the daily operations of Brazilian companies.

Historically, the concept of compliance emerged in the United States, taking on specific legal characteristics in the 1950s and 1960s. Legislative instruments, such as the US Patriot Act of 2001, reinforced the need for robust internal control and monitoring policies, particularly in combating money laundering (Patriot Act – USA, 2001). However, the essence of compliance goes beyond merely adhering to regulations. As Renato de Mello Silveira and Eduardo Saad explain, compliance is aimed at risk prevention and the promotion of ethical and sustainable conduct within corporations (Bittar et al., 2021, p. 52).

An effective compliance program goes beyond merely creating codes of conduct or holding training sessions. It involves a variety of procedures, such as the implementation of internal controls, the establishment of whistleblowing channels, and the execution of audit processes. This system must be fully integrated into the company's culture, reflecting an ongoing practice that permeates all business activities.

Thus, it is imperative to recognize that the effectiveness of a compliance program lies in its ability to be more than a mere formality. A lack of concrete actions aligning discourse with practice can result in even more serious reputational and legal risks. As Bittar et al. (2021, p. 52) emphasize, compliance is a complex system that intertwines with business strategy, requiring genuine and

continuous commitment to ensure its effectiveness and to contribute to an ethical and trustworthy corporate environment.

2 PUBLIC GOVERNANCE AND THE STATE OF GOIÁS

According to Decree No. 9,203 of November 22, 2017, public governance is defined as the set of actions and processes carried out by public sector institutions, aimed at formulating and implementing public policies. Its main objective is to ensure that the expected results are achieved effectively, delivering value to society with transparency and integrity. The legal framework reinforces this perspective by stating that public governance encompasses all activities of a public institution intended to ensure that its actions are aligned with the interests of society (Brasil, 2017). Matias-Pereira (2010, p. 109) adds that the concept of governance is inspired by the idea of good governance, highlighting the State's ability to consistently implement public policies.

Santos (2021) expands upon this definition by emphasizing that public governance is not limited to evaluating the results of public policies, but also involves the way in which the government exercises its power. Governance entails the use of authority and the management of the country's economic and social resources to promote development, in addition to the government's capacity to plan, formulate policies, and perform its functions.

The principles of public governance include responsiveness, integrity, reliability, accountability, transparency, and responsibility for the use of public resources (Brasil, 2017). Thus, public governance ensures that the actions of governmental entities are legitimate in the eyes of society, promoting compliance with social norms and prioritizing the public interest.

The State of Goiás is in the Midwest region of Brazil and has a population of 7.2 million inhabitants. Its economy is diversified, with significant industrial production in the sugar-alcohol and automotive sectors. In agriculture, Goiás is among the largest national producers of soybeans, sorghum, corn, beans, sugarcane, and cotton. Livestock farming also plays a significant role, with a cattle herd of 24.4 million head. The state's Human Development Index (HDI) ranks eighth nationally, at 0.735, according to IBGE data. In 2023, the Gross Domestic Product (GDP) of Goiás reached 336.7 billion (Goiás – State Secretariat of Economy, 2023).

Thus, in accordance with the principles of public governance set forth in Presidential Decree No. 9,203 of November 22, 2017, the government of Goiás instituted, through its own regulatory decree (Decree No. 9,406/2019), its compliance program. This program incorporates tools for strategy, leadership, and control, with the objective of monitoring, evaluating, and guiding management, resulting in the effective implementation of public policies and the improvement of service delivery to society.

2.1 Public Compliance Program – PCP of the Executive Branch of the State of Goiás

Established by Decree No. 9,406 on February 18, 2019, the Public Compliance Program (PCP) of the Executive Branch of the State of Goiás consists of a series of actions and structures designed to ensure that administrative activities are aligned with ethical and legal principles. Furthermore, the program aims to guarantee the effectiveness of public policies and the satisfaction of the population, promoting values such as ethics, transparency, accountability, and effective risk management.

For the effective implementation of the PCP, the State of Goiás relied on internationally recognized practices, adopting standards as illustrated in the table below:

Table 1 – Adopted Standards

Model	**Instrument**
ISO 31000:2018	Risk Management
ISO 37001:2017	Anti-Bribery Management
ISO 19600	Compliance Management System
ISO 19011:2011	Guidelines for Auditing Management Systems
Intern Control	Integrated Framework – 2013 by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)
COSO ERM 2017 (*Enterprise Risk Management*)	*Integrating with Strategy and Performance*

Source: Decree No. 9,406/2019 – Office of the Chief of Staff – State of Goiás.

The Public *Compliance* Program of the Executive Branch of Goiás was structured around four main pillars: the definition of ethical rules and conduct, the promotion of transparency, accountability for management acts, and effective risk management.

The implementation of the program was formalized through a Commitment Agreement, signed on March 21, 2019, by representatives of the State Comptroller General's Office, the State Attorney General's Office, and the entities of the direct and indirect administration of the Executive Branch of Goiás. This document formalizes the implementation of the PCP within the scope of the state Executive Branch.

The commitment involves the adoption of practices that ensure adherence to the ethical and legal principles established by the four pillars mentioned above. It also provides for the creation of the Public Compliance Sectoral Committee, a permanent advisory body responsible for supervising

the application of the program under the guidance of the State Comptroller General's Office, using the regulations and management practices defined in the decree.

As observed, the four foundations of the PCP are ethics, transparency, accountability, and risk management. Each of these pillars will be examined individually below.

2.1.1 Ethics

Aiming to foster an atmosphere of integrity within institutions, the establishment of clear guidelines regarding the expected conduct of public officials emerges as an essential step in any integrity program (Brazil, 2017, p. 45). It is crucial that the values and principles guiding the behavior of civil servants—particularly in areas and processes considered high-risk for the organization—are communicated consistently and clearly. To this end, the development and dissemination of manuals, codes of conduct, and other integrity-oriented guidelines are recommended, outlining expected behaviors and practices to be avoided, with the goal of preventing integrity breaches.

According to Decree No. 1.171/1994, the formation of an Ethics Commission is mandatory in all federal public sector bodies and entities, with the purpose of guiding and advising public servants on professional ethics. The creation or restructuring of an existing Ethics Commission represents a significant step toward consolidating ethical principles and standards of conduct within a public organization.

Among the recommended practices, the drafting of a Code of Ethics stands out, as it should clearly define acceptable and unacceptable behaviors for all members of the organization—from senior management to interns and outsourced collaborators. Moreover, the implementation of a well-structured Ethics Commission, equipped with adequate resources, is essential to ensure and promote adherence to the established ethical and conduct standards.

2.1.2 Transparency

Transparency in public administration is recognized as one of the fundamental pillars for the proper functioning of government management. This principle holds that information generated within the governmental sphere belongs to society and, therefore, must be accessible to all. However, transparency goes beyond the mere disclosure of data; it is crucial that the information is presented in a clear and comprehensible manner to citizens.

The relevance of transparency becomes evident as it enables effective social oversight, allowing citizens to monitor governmental actions. This, in turn, contributes to reinforcing integrity and improving the efficiency of transparency mechanisms (Matias-Pereira, 2010, p. 189).

2.1.3 Accountability

Corporate governance principles require all participants to clearly identify and disclose their responsibilities and relationships. It is necessary to consider who is accountable, to whom this accountability is owed, and at what point in time. It is also essential to recognize the relationships between stakeholders and those entrusted with managing resources and delivering results.

Corporate governance also demands a clear understanding of the roles and responsibilities of stakeholders within the governance framework. Organizational governance bodies are essential components in ensuring sound accountability. Failure to meet these requirements prevents the organization from achieving its objectives (Matias-Pereira, 2010).

2.1.4 Risk Management

Over the past two decades, public administration around the world has undergone significant changes, making management quality a crucial element for improving the public sector. The specific characteristics of public activities—which aim to generate value and deliver essential outcomes to the population—demand specialized training for public managers. This training involves not only content and methodologies tailored to the sector's particularities but also coordination between different administrative levels and public policy training institutions.

One of the main concerns in public sector risk management is the obligation to safeguard public assets by managing risks with a focus on the public interest. Estimating risks and assessing technically feasible and socially acceptable alternatives are fundamental challenges for public policy makers. These professionals must be prepared to make informed and responsible decisions (Ávila, 2014, p. 181).

To foster innovation in public administration, it is essential to manage the risks associated with innovation itself. There are various approaches to learning in risk management, such as learning from past experiences, active experimentation, and understanding how mental models influence risk perception. Strategies like case studies, adaptive management, and scenario development are key to equipping managers with the necessary skills (Ávila, 2014, p. 181).

Furthermore, risk management aims to minimize the costs related to uncertain activities while maximizing social and economic benefits. This practice plays a crucial role in several governmental functions, such as social assistance, health, education, and environmental protection. Effective risk management requires public managers to carefully evaluate conflicting interests in order to identify optimal and politically viable solutions. These managers often face difficult moral choices when deciding which risks may be imposed on society.

3 DATA ANALYSIS

This initiative, part of the National Program for Public Transparency (Programa Nacional de Transparência Pública – PNTP), is promoted by the Association of Members of the Courts of Accounts of Brazil (Associação dos Membros dos Tribunais de Contas do Brasil), the Court of Accounts of Mato Grosso (Tribunal de Contas do Estado de Mato Grosso – TCE-MT), and the Federal Court of Accounts (Tribunal de Contas da União – TCU). It is also supported by other Courts of Accounts throughout the country, the Rui Barbosa Institute (Instituto Rui Barbosa – IRB), the National Council of Presidents of Courts of Accounts (Conselho Nacional de Presidentes dos Tribunais de Contas – CNPTC), the Brazilian Association of Municipal Courts of Accounts (Associação Brasileira de Tribunais de Contas dos Municípios – Abracom), and the National Council of Internal Control (Conselho Nacional de Controle Interno – Conaci). The collaboration aims to map the level of transparency of Brazilian public portals, making the data accessible through a single online portal.

The program seeks to enhance transparency in public administration by preventing irregular practices and strengthening democratic participation. The strategy involves verifying active transparency, ensuring the proactive disclosure of data in accordance with the provisions of the Fiscal Responsibility Law (Complementary Law No. 101/2000) and the Access to Information Law (Law No. 12.527/2011). It is expected that easy access to this information will benefit citizens, the media, academics, and oversight bodies.

The mapping aims to assist the evaluated authorities and institutions, as well as oversight bodies, in adopting necessary measures to improve the availability and quality of public information. The publication of the results and the awarding of the most transparent portals are intended to encourage continuous improvement. The auditing focuses on the transparency portals and websites of the Executive and Legislative Branches at the federal, state, district, and municipal levels, as well as the portals of the Judiciary, Public Prosecutor's Offices, Public Defender's Offices, and Courts of Accounts, referring to the year 2023. The portals of federal indirect administration are also included (ATRICON, 2023).

The Transparency Assessment Matrix used to calculate the transparency index includes 124 criteria. Of these, 70 are common across all branches and bodies, while the others are specific to each institution, reflecting their particular functions. These criteria are categorized as essential, mandatory, and recommended, and are weighted as 2, 1.5, and 1, respectively, based on their legal requirements and relevance (ATRICON, 2023).

The total score for each criterion is distributed across various assessment items, such as availability, timeliness, historical records, report archiving, and search tools. Proportional weights are

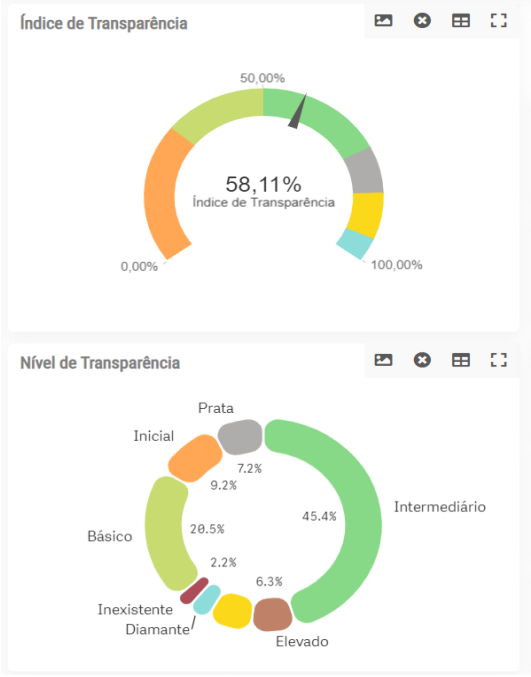
assigned to each of these elements. If an item is not applicable, its weight is redistributed among the remaining ones. The final score of an institution is calculated by considering both the individual criterion weights and the group criterion weights, which are adjusted according to their importance for external and social oversight and the complexity of disclosure (ATRICON, 2023).

As a result, the following levels of transparency may be achieved:

> I. Diamante: 100% dos critérios essenciais e nível de transparência entre 95% e 100%;
> II. Ouro: 100% dos critérios essenciais e nível de transparência entre 85% e 94%;
> III. Prata: 100% dos critérios essenciais e nível de transparência entre 75% e 84%;
> IV. Elevado: menos de 100% dos critérios essenciais e nível de transparência entre 75% e 100%;
> V. Intermediário: nível de transparência entre 50% e 74%;
> VI. Básico: nível de transparência entre 30% e 49%;
> VII. Inicial: nível de transparência entre 1% e 29%;
> VIII. Inexistente: nível de transparência de 0% (ABRICON, 2023, p. 19).

According to the Report (2023)[4], the average transparency score across all states, based on the assessed criteria, is 58.11%.

Figure 1 – Average Transparency



Source: Public Transparency Radar (2023).

[4]Report on the PNTP Portal Survey: 2023 Cycle. Available at: https://radardatransparencia.atricon.org.br/pdf/relatorio-nacional-2023.pdf. Accessed on: April 24, 2024.

The State of Goiás achieved an average score of 69.26%, positioning itself above the national average and meeting the intermediate level. However, the most notable result was the Goiás Transparency Portal, which received a Diamond rating with a score of 95.22%, ranking second only to the State of Rondônia, as shown in the table below:

Figure 1 – Transparency Index by State

Nome Estado	Índice de Transparência
Rondônia	96,02%
Goiás	95,22%
Ceará	93,22%
Mato Grosso	91,97%
Amazonas	90,32%
Maranhão	87,60%
Santa Catarina	84,27%
Rio Grande do Sul	82,43%
Piauí	82,43%
Distrito Federal	81,84%
Pará	81,83%
Pernambuco	81,21%
Paraná	80,51%
Mato Grosso do Sul	79,04%
Espírito Santo	77,54%

Source: Public Transparency Radar (2023).

3.1 Analysis of Results

With the goal of promoting a more ethical, responsible, transparent, efficient, and beneficial management for citizens, the Government of Goiás established the Public Compliance Program (PCP) for the state's Executive Branch. This program is mandatory for all bodies of the direct and indirect administration, as determined by Decree No. 9.406/2019 (Goiás, 2019), which regulates Article 21-A of Law No. 18.672/2014 – the State Anti-Corruption Law (Goiás, 2014).

To facilitate and manage the PCP, Sectoral Compliance Committees were created in all entities of the Executive Branch. These committees are responsible for implementing, monitoring, and evaluating the risk management process, in addition to other aspects of the program, such as

ethics, transparency, and accountability. The effective implementation of these committees is supported by the Executive Secretariats, Compliance Offices, or their equivalents.

These bodies serve to assist the committees in strategic decisions and act as intermediaries between the committees and those responsible for operational risks in each department. The term "Executive Secretariat" is used to describe these support groups, although they may be referred to by different names in various agencies.

Since its creation, the Executive Secretariats have become essential for the implementation of the program within the agencies. The effective performance of these Secretariats is crucial for the success of the Sectoral Committees, playing a central role in the efficient development of the program. In the four years since the program's establishment in Goiás, it has become clear that the agencies with active Executive Secretariats achieve the best results, according to the criteria of the Goiás PCP ranking, which demonstrates the effectiveness of the outcomes achieved.

CONCLUSION

The results presented throughout this study directly address the objectives outlined in the introduction. The analysis of public governance practices in the State of Goiás, particularly within the context of the Public Compliance Program (PCP), highlighted the significance of these initiatives for promoting transparency and administrative efficiency. However, challenges such as resistance to change and limitations in financial and human resources persist, impacting the full implementation of these policies.

The analysis of data provided by the National Public Transparency Program (PNTP) reveals that the State of Goiás achieved a score of 69.26%, positioning itself above the national average of 58.11%. These results indicate that the transparency initiatives implemented by the state government, while promising, still need further enhancement to reach higher levels of transparency, as observed in states such as Rondônia, which achieved a score of 95.22%. This difference suggests that governance in Goiás still faces barriers that hinder the full realization of transparency policies.

Although the study demonstrated significant progress in strengthening public governance in Goiás, the analyzed data indicate that considerable challenges remain, particularly regarding resource allocation and resistance to implementing new management practices. As evidenced by transparency and administrative efficiency indices, the full implementation of compliance policies in the state will depend on increased training for public servants and more strategic allocation of financial resources. Overcoming these challenges is crucial to ensure the long-term sustainability of governance practices.

Based on the evidence presented, it is recommended that the Government of Goiás intensify the training of public managers in compliance and risk management practices, further aligning with

international standards such as ISO 31000 and ISO 37001. Additionally, additional resources should be allocated for the implementation of these policies, as budgetary limitations were identified as one of the main obstacles to their full execution. Overcoming these challenges, coupled with the promotion of a more innovation-friendly organizational culture, could ensure the continuity and strengthening of public governance practices in the state.

In summary, while Goiás has made significant progress in strengthening governance and increasing transparency, the impact of these actions on the efficiency of public services still requires ongoing monitoring and adjustments. Goiás' experience suggests that the combination of transparency, efficient risk management, and civic engagement can promote substantial improvements in public administration. However, the success of this combination will depend on the continued and integrated application of these policies.

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CRIMES AGAINST PROPERTY IN THE RURAL AREA OF GOIÁS: THEFTS AND ROBBERIES IN RURAL PROPERTIES RECORDED BETWEEN 2017 AND 2021

CRIMES CONTRA O PATRIMÔNIO NA ZONA RURAL GOIANA: ROUBOS E FURTOS EM PROPRIEDADES RURAIS REGISTRADOS ENTRE 2017 E 2021

DELITOS CONTRA LA PROPIEDAD EN LA ZONA RURAL DE GOIÁS: ROBOS Y HURTOS EN PROPIEDADES RURALES REGISTRADOS ENTRE 2017 Y 2021

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LEONARDO VIEIRA FURTADO[2]

ABSTRACT

This research aims to analyze agrarian crimes and their repercussions on the Brazilian and Goiás contexts of violence and criminality in rural areas, by identifying the structure of repression of rural crimes in Brazil and Goiás. The main objective is to discuss the difficulties in combating crime in the rural environment, considering crimes against property in rural areas. The research discusses the development of public security policies to combat property crimes in rural areas. Additionally, it evaluates data related to theft and robbery crimes recorded at the Rural Crimes Police Station of Goiás between 2017 and 2021. Through documentary research using a qualitative methodology, the study observes positive results obtained by the public policy of integration between the public security agencies of the State of Goiás and other bodies involved with agribusiness, as well as the participation of the private sector and the population.

Keywords: Public security. Collective rights. Socio-legal diversity.

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RESUMO

A pesquisa visa analisar os crimes agrários, suas repercussões no cenário brasileiro e goiano de violência e criminalidade no campo a partir da identificação da estrutura de repressão a crimes rurais no Brasil e em Goiás. O objetivo geral consiste em discutir as dificuldades de se combater a criminalidade no ambiente rural considerando os crimes contra o patrimônio na zona rural. A pesquisa debate o desenvolvimento de políticas de segurança pública no combate a crimes contra o patrimônio no meio rural. Além disso, avalia dados relacionados aos crimes de furto e roubo registrados na Delegacia de crimes rurais de Goiás entre 2017 e 2021. Por meio de pesquisa documental utilizando a metodologia qualitativa, observa resultados positivos obtidos pela política pública de integração entre os órgãos de segurança pública do Estado de Goiás e os demais órgãos envolvidos com o agronegócio, bem como com a participação da iniciativa privada e da população.

Palavras-chave: Segurança pública. Direitos coletivos. Sociojusdiversidade.

RESUMEN

La investigación tiene como objetivo analizar los delitos agrarios y sus repercusiones en el contexto brasileño y de Goiás en relación con la violencia y la criminalidad en el campo, a partir de la identificación de la estructura de represión de los delitos rurales en Brasil y Goiás. El objetivo principal es discutir las dificultades para combatir la criminalidad en el entorno rural, considerando los delitos contra la propiedad en la zona rural. La investigación debate el desarrollo de políticas de seguridad pública en la lucha contra los delitos contra la propiedad en el medio rural. Además, evalúa datos relacionados con los delitos de hurto y robo registrados en la Delegación de Delitos Rurales de Goiás entre 2017 y 2021. A través de una investigación documental utilizando la metodología cualitativa, se observan resultados positivos obtenidos por la política pública de integración entre los organismos de seguridad pública del Estado de Goiás y los demás organismos involucrados con el agronegocio, así como con la participación del sector privado y la población.

Palabras clave: Seguridad pública. Derechos colectivos. Socio-jusdiversidad.

INTRODUCTION

The State's difficulty in ensuring basic constitutional principles, such as the right to public security, is one of the factors contributing to the occurrence of violence in rural areas. In this context, it is necessary to analyze the responsibility of the federative entities and their actions, both in providing support to farmers and in implementing public policies to curb the rise in criminality and the marginalization of rural workers. Evaluating the policies for prevention and repression of property crimes in rural areas, as well as the role played by the Civil and Military Police forces of different Brazilian states, and identifying measures to be adopted by the State to ensure that those engaged in agriculture and agribusiness can carry out their activities safely, is therefore essential for fostering reflection on rural development and socio-environmental justice in Brazil.

The national policy of traditional policing adopted by most of Brazil's federative entities is carried out by public security agencies with limited interaction with other agencies and institutions. At times, even among the Civil and Military Police forces within the same state, strategies of cooperation and coordination are lacking. This model has proven ineffective, as evidenced by the positive results achieved by the current public security policy of the State of Goiás.

In Goiás, through the integration of public security agencies with other public bodies, and even with the private sector and actors involved in monitoring and advancing rural development, the integrated policing model resulted in a 30% reduction in thefts and a 56% reduction in robberies in rural properties between 2017 and 2020, according to data from the Public Security Secretariat of Goiás (QlikSense, 2021).

The general objective of this research is to understand the structure for combating crime in Brazil's rural areas, by evaluating the results of the public policy of integration between public security agencies and other entities responsible for agricultural oversight and development in Goiás, with the aim of tackling property crimes in rural areas.

Accordingly, the research seeks to understand the issue of rural violence, particularly concerning property crimes and their impact on society as a whole, taking into account not only the profile of the criminal offenders, but also identifying common socioeconomic aspects among the victims of theft and robbery recorded in Goiás between 2017 and 2021. The discussion draws from the critical theory of collective rights, the Federal Constitution, and core concepts of Agrarian Law to describe the profile of rural residents who have been victims of the increase in theft and robbery in rural properties (Feliciano, 2015, p. 83).

Furthermore, the research identifies the structure of public security agencies and the challenges they face in carrying out their duties in rural environments, aiming to ensure the safety of small, medium, and large farmers. The reflection on more effective procedures and mechanisms for combating crime in rural areas also involves the analysis of the State's responsibility in implementing security measures, exploring potential programs to combat rural crime, as well as preventive and repressive actions against offenders (Trindade, 2004).

To achieve these objectives, documentary research was carried out, following a qualitative approach through case studies. Police incident reports from 2017 to 2021 concerning thefts and robberies in rural properties in the State of Goiás were analyzed. These records served as instruments for delimiting the study of rural criminality during the analyzed period (Marconi; Lakatos, 2007; 2011).

The data obtained from the Public Security Secretariat of Goiás (SSP-GO) was analyzed using the QlikSense system, which hosts a database of police incident reports fed by various state agencies, such as the Military Police, Civil Police, Forensic Police, Penal Police, among other entities linked to SSP-GO[3]. The results were interpreted in light of Feliciano's work (2016), which discusses the landscape of rural violence from historical, economic, and political perspectives, offering insights into various types of rural crimes between 2001 and 2016.

Official data from public databases of the Federal Government were also used, such as the Public Security Observatory Management Office (GEOSP, 2019) and the Crime Observatory of the National Confederation of Agriculture (CNA, 2017, 2021, 2022). In addition to Feliciano (2016), works by Vieira and Doula (2019) and other authors dedicated to the study of rural criminality in Brazil were consulted.

The case study is considered an appropriate research design for investigating contemporary events, considering the context in which they occur (Gil, 2010). The research's qualitative approach aims to understand the proposed topic and problems, not limited to numerical representation, but exploring a universe of meanings, motivations, beliefs, values, aspirations, and attitudes. This allows for a deeper understanding of relationships, processes, and phenomena that cannot be reduced to the operationalization of variables (Minayo; Deslandes; Gomes, 2001). The method employed is deductive, beginning with an understanding of the rural world's socio-historical construction, constitutional foundations, and current analyses to reach conclusions about the State's role in addressing rural criminality. Therefore, it begins with a broad perspective and advances toward a specific conclusion (Marconi; Lakatos, 2007; 2011).

The article is divided into three sections. The first defines the national and Goiás-specific context, presenting data on rural violence and its repercussions on society. The second addresses the policy of repression of rural crimes and presents the national and state-level structures for combating crimes committed in rural areas, particularly those involving property. Finally, the third section presents the pilot integration project implemented in the State of Goiás to combat crimes against rural property and identifies the social group most affected by such violence.

It is important to emphasize that this work does not intend to exhaust the subject or offer a definitive answer, but rather to encourage further research on the topic. Considering public security as a third-generation collective right and its role in planning rural development policies directly

[3] Access to the system was granted, as per SEI Proceeding No. 202100007086703, and allowed access to both quantitative and qualitative data on crime in the rural areas of the State of Goiás.

affects the outcomes of investments in rural areas, the permanence of rural workers, and the production of food for all.

To speak of the countryside is to discuss one of Brazil's largest international markets, addressing an issue that involves various movements for land, life, and the right to a dignified existence. After all, rural activities are fundamental to the national economy, providing food and raw materials for various sectors of society.

1 VIOLENCE AND CRIMINALITY IN RURAL AREAS: BRIEF OUTLINES OF THE BRAZILIAN AND GOIÁS SCENARIOS

Crimes against property have impacted the lives of rural inhabitants, especially those dedicated to agriculture. This is reflected in the growing difficulty they face, not only due to the financial losses resulting from the increase in thefts on their rural properties, but also in the impossibility of continuing their agricultural activities and ensuring their families' livelihood when inputs or equipment are taken from their land. In addition to theft, farmers have also been affected by the increase in robberies on rural properties, facing the brutality of this type of crime. This is due to the territorial vastness and the reduced police presence to prevent and assist victims in the countryside, who, left unprotected, become easy targets for criminal organizations specialized in this type of crime (Oliveira, 2020).

We start from the definition of the subjects, as proposed by Trindade (2004), when he asks, “Who cares about the victim?” Expanding this question and considering personal and social relationships, it is therefore relevant to ask who are the victims, the perpetrators, the co-authors, and the participants in the crimes that take place in the countryside.

Understanding the profile of the people who live in rural areas is essential for effective intervention, which justifies the need to impose limitations regarding the date, location, and types of crimes to be researched, since the absence of institutional support results in State inaction, which lacks training and information to act. Mechanization and the implementation of technological advances and new inputs have reduced the demand for labor in the countryside, leading to the impoverishment of inhabitants of small towns or the outskirts of large cities, forming an underprivileged class deprived even of the fragile support once provided by life on farms.

Thus, we observe an increase in violence and criminality in rural areas, frequently reported in the crime sections of the press, covering not only crimes against property, but also various other offenses in the countryside, such as conflicts over land ownership or the cultivation of psychotropic plants. Rural areas have been marked by various types of crimes over time, leaving traces on the

national reality and contributing to the maintenance of inequality (Pessoa, 2013, p. 09). With the modernization of rural activities and the increase in the number and value of agricultural equipment, robbery and theft have become more common on both large and small properties with extensive crops. These criminal actions often involve armed groups that frequently operate in regions near state borders, using paved roads as escape routes. The machines are usually loaded onto trucks directly from the property (QlikSense, 2021).

Rural crime in Brazil encompasses a considerable variety of occurrences, ranging from environmental offenses to violations against property and life itself. A portion of the homicides committed in rural areas results from complex processes related to agrarian conflicts and contract killings, known as “pistolagem”. These acts, usually carried out in a silent and intimidating manner, rarely lead to the punishment of either the perpetrators or those who hired them. According to Feliciano (2016), approximately 166,377 Brazilian families were threatened by hired killers between the years 2003 and 2014 across the country.

Property-related violence has become increasingly present in the daily lives of many rural families, who often do not receive adequate protection from the public security authorities. Measuring crimes against property is challenging, both due to the lack of detailed statistics from security agencies and the absence of reports filed by victims. This situation stems not only from the State’s negligence in distinguishing urban and rural areas, but also from the failure of those affected by criminal acts to report incidents to public security authorities (GEOSP, 2019).

Most property crimes can now be reported online through Virtual Police Stations, which has facilitated crime reporting by victims. However, this possibility is a recent development, largely brought about by the coronavirus pandemic that affected Brazil in 2020. In the 20th century and during the first decade of the 21st century, however, the majority of criminal occurrences in rural areas were not reported—either because victims faced logistical challenges in reaching the nearest police station in a city, or because they saw no possibility of recovering the stolen goods. Furthermore, rural properties lacked identifiable addresses, a situation that changed with the implementation of the Rural Patrol Units of the Military Police, which were responsible for identifying both residents and rural properties, even performing their georeferencing (Vieira; Doula, 2019).

Rural properties, equipped with modern technologies, electrification systems, and high-value agricultural machinery, have become targets of criminal organizations specialized in this type of offense. In some cases, criminals go so far as to commit homicide to carry out the crime or to avoid being identified and arrested, since a large number of rural thefts and robberies are carried out by current or former farm employees (Freitas; Oliveira, 2017).

Theft and armed robbery on rural properties in the State of Goiás increased at the beginning of the 21st century, reaching a total of 535 registered robberies in 2017. Nevertheless, this data is difficult to quantify due to the lack of precise statistical information provided by public security authorities. Many rural crime cases are not recorded with this specific categorization and are included in the statistics of thefts and robberies committed in urban areas. For this reason, it has been necessary to seek information in scholarly articles authored by researchers who have studied the rise in rural criminality (Oliveira, 2020).

The National Confederation of Agriculture (Confederação Nacional de Agricultura – CNA), a trade union entity that represents the interests of Brazil's commercial rural producers, operates at the federal level—in the National Congress, within the Federal Executive Branch, and before the higher courts. In 2018, through its Rural Crime Observatory, it made available a form for the specific reporting of crimes occurring in rural areas and contacted the Brazilian states to gather information on rural criminality between 2015 and 2017 (CNA, 2017, 2021, 2022).

Among the proposals presented by the CNA, one of the most significant is the incorporation, within the national policy framework, of specific programs and projects aimed at preventing and controlling crime in rural areas, along with the creation of national and regional statistical databases containing detailed information on the most common criminal occurrences in these regions (CNA, 2017, 2021, 2022). The objective is to standardize and make these data publicly accessible. However, the lack of accurate national statistics still hinders both the fight against rural crime and the implementation of preventive actions (GEOSP, 2019). The official numbers on thefts and robberies committed on rural properties in the country are imprecise, as in most Brazilian states, such crimes are not identified as having occurred in rural areas at the time of reporting and are instead included in the statistics for crimes committed in urban zones. The public authorities' neglect toward rural criminality does not align with the sector's significance to both Brazilian and global society, given that agribusiness is fundamental to Brazil's economy (Cristina, 2021). Nevertheless, within the Ministry of Justice and Public Security (MJSP), initiatives to separate rural crime statistics already exist, though coordination with state governments remains necessary (GEOSP, 2019).

Specialized crime has increasingly shifted toward rural areas due to the trend of criminals targeting regions with greater financial potential. Considering that agribusiness accounts for 26% of Brazil's Gross Domestic Product (GDP), rural properties have become a prime target for criminal operations (Vieira; Doula, 2019).

The most frequent crimes involve theft and robbery of livestock, representing 54% of reported incidents, followed by the theft of agricultural equipment, accounting for 28%. Large-scale

equipment—such as tractors, harvesters, and planters—comprised 2.46% of police reports related to crimes committed on rural properties nationwide (GEOSP, 2019).

According to the CNA (2017; 2021; 2022), most crimes were reported on farms where livestock was the main activity (54% of cases), located less than 50 kilometers from municipal centers (65% of cases), and covering no more than 100 hectares (51% of reports)[4].

The lack of police reports filed by some rural producers hampers an accurate assessment of crimes occurring on these properties, a fact made evident in the analysis of police records from 2017 to 2021 in the State of Goiás (QlikSense, 2021). The CNA (2017; 2021; 2022) highlights that the absence of standardized data and the scarcity of information are among the main challenges faced by public security authorities in addressing rural criminality.

A survey carried out through the analysis of Police Investigations initiated by the Rural Crimes Division between 2017 and 2021 shows that those responsible for the theft and robbery of agricultural machinery in the State of Goiás are divided into the following groups: "a." those who subdue victims using firearms; "b." those who start the engine, maneuver, and load the machines; and "c." those who escort the truck transporting the equipment along the escape route until reaching the first location where the stolen machinery will be hidden.

Public security agencies face difficulties in monitoring agricultural machinery due to the absence of registration with the Department of Transit (DETRAN) or the National Motor Vehicle Registry (RENAVAM), as well as the lack of identification plates (Oliveira, 2020). In response to this issue, the Federal Government, in partnership with the CNA and the Ministry of Agriculture, Livestock, and Supply (MAPA), launched ID Agro, a Digital Platform for the Registration and Management of Tractors and Agricultural Equipment. This platform was created in January 2016 and was re-regulated in November 2021 through Ordinance No. 49/2021-MAPA. This regulation allows for the official registration of tractors and agricultural equipment at no cost to rural producers (BRASIL, 2021; MAPA, [2023]).

This procedure complies with Law No. 13.154/2015, which amended the Brazilian Traffic Code (CTB) and exempted agricultural tractors from the license plate and registration requirements applicable to conventional motor vehicles at DETRAN, making their registration in a specific database of the Ministry of Agriculture mandatory. With the registration, agricultural machinery

[4] The CNA document (2021) does not specify the period during which the data were collected. However, it praises the information provided by the Public Security Secretariat of Goiás (SSP-GO), which made available a specific report allowing for the identification of various relevant data, such as the number of monthly occurrences, incidents during weekends, by time range, among other information.

owners can verify whether a tractor is linked to criminal activity. As of 2023, it is already possible to register both new and used machines (BRASIL, [2023]).

The criminal appropriation of these assets is often facilitated by access to privileged information, since protecting them requires special attention from the producer due to their high value (Feliciano, 2016). Typically, access gates to storage sheds for agricultural inputs are broken into. Criminal groups targeting these inputs often use small trucks or cars that allow quick movement during the escape. Before acting, the criminals gather detailed information about the movement of people on the rural property and map the access roads. It is also common for them to use handheld radios, gloves, and closed clothing. Frequently, these groups operate across multiple regions, including other states in the federation (QlikSense, 2021, [n.p.]).

In relation to the lower population density in rural areas compared to urban[5], areas, provided by the Public Security Secretariat of the State of Goiás reveal that crime has been migrating to the countryside, affecting not only residents and small farmers but also large-scale rural producers in the agribusiness sector. According to statistics from the Public Security Observatory Management Office (GEOSP, 2019), rural properties in Goiás have been a constant target of criminals committing property crimes. In just the years 2017 and 2018, 8,968 thefts and 892 robberies were recorded, totaling 9,860 incidents.

The assessment of police reports and the Statements of the Reporting Officer, which served as the basis for this research, covered incidents registered with the SSP-GO from 2017 to 2021. This evaluation shows that the number of thefts across the state of Goiás dropped from 5,017 cases in 2017 to 3,521 in 2020. The number of robberies decreased from 535 in 2017 to 232 in 2020 (QlikSense, 2021).

This analysis connects with the second phase of the investigation, which more superficially addresses the years 2001 to 2016, allowing dialogue with the studies of Feliciano (2016), who examined rural violence in general, emphasizing a historical approach with economic and political aspects. Following a rise in rural crime at the beginning of the 21st century, the policy of integrating public security agencies with other entities responsible for the development and oversight of agribusiness in Goiás has yielded positive results in combating rural violence (Feliciano, 2016).

Due to the lack of accurate statistics up to 2016, the Public Security Secretariat of the State of Goiás was unable to detail crimes occurring in rural areas before the implementation of the Integrated Service Registration (RAI). This made it impossible to compare the period prior to the

[5] The state of Goiás has 7,056,495 inhabitants and is the 8th most urbanized state in the country (IBGE, 2023).

integration of public security in combating crime in rural areas with the years from 2017 to 2021 based on available data. However, research in the Civil Police database indicates a significant increase in the number of police procedures resulting in the arrest of individuals involved in criminal organizations specialized in property crimes against rural properties over the past five years (QlikSense, 2021, [n.p.]).

The analysis of police reports of theft and robbery on rural properties in the State of Goiás between 2017 and 2021 indicated a gradual increase in property crimes in rural areas during the first decade of the 21st century. However, following the implementation of the Rural Patrol of the Military Police and the creation of the State Division for Rural Crimes (DERCR), along with an integrated network of public agencies to combat rural crime, there has been an increase in arrests for criminal association involving individuals linked to organizations specialized in rural crimes, in addition to a reduction in reports of property offenses in the rural areas of Goiás (Oliveira, 2020).

In Brazil, there are still few public policies specifically aimed at combating crime in rural areas, particularly property crimes on rural properties. The lack of standardization and the absence of accurate information regarding the exact number of crimes in rural zones are among the main challenges faced by public security administrators in addressing rural criminality. Even within the Federal Constitution of 1988—especially in Article 3, item III, which addresses the fundamental objective of the State to eradicate poverty and marginalization and to reduce social and regional inequalities—one notes the relevance of public security policies directed toward the rural environment and its socio-legal ramifications today. Likewise, Article 144 defines the structure and functions of public security agencies (Brazil, 1988).

The National Secretariat of Public Security (SENASP) created, in 2018, the Unified Public Security System (SUSP), a program for combating rural violence coordinated by the Ministry of Justice and Public Security (MJSP), in cooperation with the Public Security Secretariats of the states and the Federal District. This system aims to reduce all types of conflicts and crimes in rural zones. However, achieving such results requires not only financial investment but also a more dynamic and integrated effort between the Federal Government and the states, as well as the effective participation of the agencies responsible for promotion and oversight in rural areas, with the shared goal of developing public policies that are both preventive and repressive in the face of rural violence (Brazil, 2018).

At the beginning of the 21st century, the Federal Government created the National Public Security Fund, allocating, in installments from 2000 to 2004, R$ 1,600,000.00 (one billion and six hundred thousand reais) for investments in public security by state-level public security agencies.

However, nearly all of this funding was used for police infrastructure reforms and the implementation of public policies aimed at large urban centers. Furthermore, the Federal Government did not effectively participate in the management of these funds in partnership with the states' Public Security Secretariats, failing to follow the basic guidelines of the Integrated System of Financial Administration (SIAFI). In this context, even the priority public policies for urban centers—which could have impacted the fight against rural violence, such as the centralization of data and crime-related information—proved to be unsatisfactory. Brazil still faces challenges in operationalizing police work in rural areas, both due to the lack of qualified personnel and the lack of appropriate equipment, such as police vehicles adapted to dirt roads and satellite communication phones. Most arrests result from being caught in the act (*flagrante delicto*), and there is still a pressing need for more technical investigations based on forensic evidence and operational procedures, in conjunction with the usual search for witnesses and the gathering of statements (Costa; Oliveira Junior, 2016).

With rare initiatives for cooperation between public or private entities related to agribusiness and the state-level public security agencies—such as Agreement No. 168/2021-PMGO, entered into by the Public Security Secretariat of the State of Goiás, the State Secretariat of Economy (SEFAZ), and the Goian Agency for Agricultural Defense (AGRODEFESA), along with private sector entities that have been assisting public security agencies in overcoming the challenges of combating property crimes in rural settings—the national public security policy for combating property crimes on rural properties remains poorly integrated with other agencies and even among the police forces themselves (PMGO, 2021, p. 02).

2 THE FIGHT AGAINST RURAL CRIME IN BRAZIL AND IN GOIÁS

As a rule, the policing model in Brazil until the beginning of the 21st century was focused on urban areas. However, the increasing number of crimes committed on rural properties made it necessary to create specialized and properly equipped police teams to operate in rural environments. In the training courses for state military police officers, no criteria were adopted to differentiate the Standard Operating Procedure (SOP) according to the specificities of the area where policing activities would be carried out. The recognition of the many challenges inherent to rural environments led public security authorities to create a policing model specialized in rural crime (Leal, 2009).

Rural policing is preventive, ostensive, and repressive in nature, aimed at rural areas of municipalities, with the goal of preventing crimes on rural properties and surrounding areas. This policing is conducted by patrol vehicles with two or more military police officers (Leal, 2009).

The rural policing model, designed for the prevention of crimes on rural properties, was developed starting in the 1990s and implemented by the military police through the Rural Patrol. This form of ostensive policing was adopted by various military police forces in states such as Goiás, Minas Gerais, and São Paulo. According to Caixeta (2009) and Gonçalves (2008), rural patrolling likely began in the state of Minas Gerais in the mid-2000s and later spread to other states. Due to positive results, neighboring states like Goiás and São Paulo implemented rural patrols shortly thereafter.

The Rural Patrol of the State of São Paulo (PMESP) was established in 2004, through regulation PM3-08/02/04, dated June 29, 2004, which created a new structure by developing a specific approach to policing. The directive addressed the migration of criminal acts to rural areas, particularly rural properties used for production, tourism, and leisure, in addition to crimes typical of rural settings, such as cattle theft and theft/robbery of rural properties, equipment, and agricultural supplies (São Paulo, 2004).

The Rural Patrol of the State of Paraná was created in January 1996, but it was only in 2000 that it began implementing community rural policing, aimed at preventing and combating the trafficking of wild animals, drugs, and firearms, cattle slaughter within rural properties, and the theft of livestock and agricultural machinery. Officers also conducted community visits to understand the local routine and provide guidance for preventing theft and robbery (Azevedo, 2022; PMPR, 2022).

Combating rural crime requires an analysis of the problems created by the current crime-fighting model, which range from environmental crimes to crimes against property and life, as well as the unique challenges of the rural environment. In Goiás, the Rural Patrol began experimentally in 1993 in the municipalities of Piracanjuba, Quirinópolis, and Indiara, but it was not systematized within the police force due to the absence of a regulation formally establishing rural patrolling. It was only in 2003, through Ordinance No. 678/2003-PMGO, that a process of systematization and standardization of rural patrolling techniques began, through the adoption of a Standard Operating Procedure (SOP), given that, in practice, there were already several officers working in rural companies or battalions (Goiás, 2003; PMGO, 2008).

Since 2017, the state of Goiás has been collecting crime statistics for rural areas. The Rural Patrol of the Military Police of the State of Goiás created a registration and georeferencing program that allows state military police officers to visit and register rural properties, rural producers, and their employees. Additionally, they can georeference the location of the property with the goal of reducing response time in the event of a crime. The registration also includes a list and photographs of farm

machinery, which are used for dissemination and identification in cases of theft or robbery. Producers receive a monitoring sign containing the registration number of their property (Oliveira, 2020).

After the implementation of this system and through joint efforts with the State Police Department for the Repression of Rural Crimes, the main members of criminal organizations operating in rural properties in the state of Goiás were arrested, and there was a decrease in the number of reports of theft and robbery in rural properties between 2017 and 2021. Data provided by the Public Security Secretariat of the State of Goiás show that the number of thefts in rural properties dropped from 5,018 in 2017 to 3,521 in 2020, a 30% decrease. In the first half of 2021, there were only 1,529 reports of theft (Qlinksense, 2021).

The number of reported robberies in rural properties decreased from 535 in 2017 to 232 in 2020, a reduction of 56%. In the first half of 2021, there were only 83 reports of robbery (Qlinksense, 2021).

The creation of the Rural Patrol Battalion in Goiás (BPMRural), however, was only formalized in 2019, through State Law No. 20.488/2019, which assigns to BPMRural the responsibility for protection and ensuring peace in rural communities, as well as acting against criminal activity and preserving social peace in the countryside.

Due to the need to strengthen the fight against rural crimes throughout the state, the Rural Crime Combat Network — as a pilot project in Brazil — established the State Police Department for the Repression of Rural Crimes (DERCR) through Ordinance No. 465/2021-DGPCGO (Ordinance 465/2021-DGPCGO, 2021).

DERCR is responsible for investigating high-profile crimes, monitoring criminal associations specialized in rural crimes, and processing data from reports of such crimes, in addition to other activities outlined in State Law No. 19.907/2017 (Goiás, 2017).

The centralization and dissemination of data and reports on crimes committed in rural properties, along with the strengthening of ties and integration with other police forces from the State of Goiás and neighboring states, allow for information sharing to achieve the common goal of repressing rural crime. Strengthening relationships with producers, rural workers, companies, and cooperatives related to agribusiness follows the same purpose (Goiás, 2017).

The legislation also addressed the issue of vehicles suitable for rural environments, specifying the use of unmarked vehicles capable of traveling on unpaved and hard-to-access roads. This is a highly relevant matter, since in certain cases, vehicles commonly used by police in urban areas would not even be able to reach rural properties (Goiás, 2017).

The State Police Department for the Repression of Rural Crimes (DERCR) is directly subordinate to the Superintendency of Judicial Police, but also reports to the Public Security Secretariat of the State of Goiás. The law also provided for the creation of an integrated network between the police forces and other state agencies related to agribusiness (Goiás, 2017).

This Rural Crime Combat Network aims to integrate police forces and other public and private entities through proper data compilation and information production, as well as integrated and collaborative action in investigations and police operations to repress rural crimes. To this end, the network operates under the coordination of units of the Civil Police of the State of Goiás and in partnership with public and private organizations and institutions linked to rural activity, aiming at the consolidation of information and the development of strategies and actions to fight rural crime.

The Public Security Secretariat of the State of Goiás (SSPGO) is responsible for controlling the other state public security agencies and for integrating other state bodies, especially the Secretariat of Economy (SEFAZ GO) and the Secretariat of Agriculture, Livestock and Supply (SEAPA), as well as at the federal level, particularly with the Federal Police (PF) and the Ministry of Agriculture, Livestock and Supply (MAPA), and at the municipal level, especially with Municipal Secretariats of Development and Agriculture, and also in the private sector, among other institutions, such as the Agriculture and Livestock Federation of Goiás (FAEG), the Federation of Agricultural Workers of the State of Goiás (FETAEG), the National Rural Learning Service of Goiás (SENAR Goiás), the Soy and Corn Producers Association of Goiás (APROSOJA Goiás), the Brazilian Confederation of Agriculture and Livestock (CNA), as well as private companies (FAEG, 2007).

Created by the Public Security Secretariat and distributed by the Civil and Military Police — especially by the Rural Battalion of the Military Police — a guidebook instructs rural residents on how to adopt preventive measures against crime in the countryside.

Once the property is registered with the Rural Battalion, owners and workers gain direct access to the police officers assigned to that region in case they need assistance. The Civil Police can then more easily locate the farm, gather timely information, and increase the chances of quickly arresting criminals. Furthermore, the chances of recovering stolen items also improve.

Created by the Public Security Secretariat and distributed by the Civil and Military Police — especially by the Rural Battalion of the Military Police — a guidebook instructs rural residents on how to adopt preventive measures against crime in the countryside[6].

[6]Among the preventive measures described in the Guidebook are the following guidelines: Always mark the herd to facilitate identification; Keep someone on the property whenever possible; Regularly count the herd; Always record the personal information of employees; Never share relevant information about the property and the herd with strangers;

With the property registered by the Rural Battalion, landowners and workers gain direct access to the police officers assigned to that region in order to request assistance. The Civil Police can more easily locate the farm and gather information in a timely manner, which increases the chances of arresting criminals more quickly. In addition, the chances of recovering stolen property from the victims are also increased.

3 RURAL CRIMES IN GOIÁS BETWEEN 2017 AND 2021

Crimes against property were those that increased the most in the early 21st century in the state of Goiás. Among the most stolen items were electronic devices, such as televisions and cell phones; work tools, such as drills, chainsaws, brush cutters, and submersible pumps; as well as firearms (Feliciano, 2016).

Despite a decrease in the number of reported cases of theft and robbery between 2017 and 2021 (QlikSense, 2021), the theft and robbery of livestock continued to rise. This offense has received a specific legal classification under Article 155, § 6, of the Brazilian Penal Code (introduced by Law No. 13.330 of 2016), which establishes a prison sentence of two to five years if the stolen item is a domesticated livestock animal for production, even if it is slaughtered or dismembered at the site of the theft.

Given the connection between the crimes of theft and receiving stolen goods, the latter also received its own legal classification in the case of livestock, applying to anyone who "acquires, receives, transports, drives, hides, stores, or sells, for the purpose of production or commercial sale, a domesticated livestock animal for production, even if slaughtered or dismembered, knowing it to be the product of a crime" (introduced by Law No. 13.330 of 2016) (Article 180-A of the Penal Code).

Although livestock robbery shows a smaller number of reported cases compared to livestock theft, it has increased in absolute terms when observing the numbers from the beginning of the 21st century. Criminal organizations that previously focused on bank robbery, drug trafficking, and other types of crimes began to recognize the weaknesses in rural policing and the lucrative potential of livestock robbery. In some instances, the profits from a single robbery can exceed those from a bank heist (Vieira; Doula, 2019).

Establish a network of contacts with neighbors and the police; Invest in security equipment such as cameras and alarms; Use dogs to reinforce surveillance; Avoid exposing any firearms stored on the property; Never sell cattle with payment by check; Do not keep cash on the property and avoid paying workers in cash; and Regularly check the property's state registration and monitor cattle movements.

In addition to material losses, this type of crime has disrupted the peace of rural communities, as it is generally carried out by specialized criminal groups that already have a pre-established division of tasks among their members (Goiás, 2018).

An analysis of police reports regarding theft and robbery in rural properties between 2017 and 2021 in the state of Goiás revealed that criminal groups typically use firearms to overpower workers and landowners, holding them captive inside the residence, usually tied up. The group's division of labor follows this pattern: one part of the group gathers the cattle and loads them into livestock trucks, while the other part subdues the residents and secures the property. These criminals often remain on-site for a few hours after the truck has departed with the animals to ensure the transportation reaches its initial destination, thereby preventing the victims from quickly contacting law enforcement (QlikSense, 2021).

The increase in property crimes in the early 21st century (Oliveira, 2020), coupled with the growing sophistication of these crimes, underscores the need to rethink the model for addressing such criminal activities. In this context, the creation of specialized police forces focused on rural environments emerged as a key strategy to counter the level of organization and complexity of the criminal groups operating in Goiás. Some of these individuals were already part of other criminal organizations specializing in drug trafficking and bank robberies.

The results achieved through the establishment of DERCR (Delegacia Estadual de Repressão a Crimes Rurais) and its integration with other police forces and agencies connected to the productive sector led to a 30% reduction in theft and a 56% reduction in robbery between 2017 and 2021. The resulting sense of security among the rural population serves as a deterrent to the commission of further crimes in these areas (QlikSense, 2021).

There is a recognizable correlation between certain social groups and specific types of crimes, yet there are few studies that re-identify some contributing factors—especially the relationship between geographic space and human predictive capacity. In the 1990s, studies on violence, criminality, and public security focused primarily on violent crime and the social representations of violence (Lima; Misse; Miranda, 2000).

Following the analysis of police reports on theft and robbery in rural properties in Goiás between 2017 and 2021, as well as the study by Feliciano (2016), which analyzed property crimes in rural areas in early 21st-century Goiás, it became evident that victims commonly shared the habit of keeping valuable items—such as agricultural inputs, electronic devices, firearms, and cash—on their properties, and often lacked security equipment such as surveillance cameras. Moreover, police reports showed that in most cases, the perpetrators were local residents or neighbors who were

familiar with the victim's routine or, at the very least, the characteristics of the targeted property (QlikSense, 2021).

There are several factors that contribute to criminality, its forms, and the places where it occurs, as well as the causal relationships associated with crime. After conducting a hierarchical clustering analysis and applying some econometric measures regarding the relationship between space and time, it was found that various types of crimes related to drugs and alcohol play a decisive role in distinguishing and gradually varying the criminal characteristics of different groups of individuals, in addition to correlating with other indicators that identify the relationship between certain social groups and specific types of crime (Henriques, 2014).

Factors such as population density or the number of police officers per capita have been evaluated for the development of public policies to combat violence in rural areas. These aspects influence the rise in property crimes in rural zones. Due to the relationship between the location where the crime is committed and the small number of officers available for a vast area, it is important for public security agencies to engage with and understand the characteristics of both the rural residents and the rural environment itself in order to carry out policing activities more effectively (Schlemper; Shikida; Carvalho, 2020).

The influence of inequality on crime rates has long been the subject of study, and the results are controversial. Some scholars claim that inequality is positively associated with crime rates, but negatively when considered over time. Other researchers argue that additional factors influence the relationship with crime, such as environmental conditions, the relationship between criminal profiles and exposure to certain environments—such as global warming—or to certain materials, such as lead (Trindade, 2004).

The development of rural public security policies must go beyond merely analyzing criminal[7] behavior. Before that, it is essential to understand the specific data of the rural context.

A practical evaluation of police reports of theft and robbery in the State of Goiás between 2017 and 2021 also indicated that several crimes committed on rural properties were not included in rural crime statistics because they were registered as having occurred in urban areas (QlikSense, 2021). In light of this, it is necessary to create a uniform and reliable criminal statistics system for the country, especially with regard to rural violence.

[7]Becker (1968) defines the economic criminal as a type of entrepreneur, classifying crime into two categories: one of an economic nature, in which crimes ultimately aim at profit—such as usurpation, fraud, receiving stolen goods, theft, robbery, and extortion—and another of a non-economic nature, whose objective is not profit-driven, such as rape, homicide, abuse of power, and torture. Although pursuing profit like an entrepreneur, the economic criminal is harmful both to the social group and to society as a whole, as crime is an indicator of social collapse (Henriques, 2014).

Beyond the lives and financial assets lost due to theft and robbery in rural properties, it is difficult to measure the full extent of the damage caused to society. According to the Atlas of Violence (2019), the losses resulting from violence in Brazil amount to approximately 373 billion reais, equivalent to 5.9% of the Gross Domestic Product (GDP) in 2016. This data not only reveals the magnitude of Brazil's problem (IDB, 2017), but also the urgent need to (re)think outdated strategies for combating criminality.

4 CONCLUSION

Violence in rural areas has hindered the development of agricultural and livestock activities, with effects that also extend to urban environments. Although rural inhabitants represent a small portion of the Brazilian population, they perform essential activities that ensure food security in both rural and urban settings.

The research indicates a rise in criminal activity in the Brazilian countryside, particularly crimes against property, despite the lack of official and consolidated statistical data from public security agencies. In light of the absence of official figures, a successful initiative in combating rural crime was identified through the efforts of the Public Security Department of the State of Goiás, with the creation of the State Police Division for the Repression of Rural Crimes. Through the integration of police forces, the community, and the private sector, a reduction in property crimes committed in rural areas of Goiás was observed between 2017 and 2021.

The responsibility for ensuring public safety for rural residents, especially those engaged in agricultural or livestock production, lies with the States. Since 2017, Goiás has shifted its public security policies toward programs focused on the prevention and repression of property crimes committed in rural areas. Therefore, this research evaluated existing strategies for combating rural violence, as well as potential measures that institutions involved in the productive sector may adopt to prevent such crimes in both Brazil and Goiás.

For public security forces, the countryside represents a vast and often inhospitable environment that demands integrated action from the state government, law enforcement agencies, and all actors involved in agricultural activities. Such coordination is essential for ensuring the constitutional right to human dignity for farmers, allowing them to live without the constant fear of physical or property-related violence. In fact, the prevailing climate of violence may prevent rural residents from bearing the financial burdens of their agricultural or livestock operations due to the economic losses caused by theft and robbery on their properties.

Criminal organizations that previously operated in major urban centers are now migrating to rural areas and specializing in crimes committed in the countryside, where they take advantage of communication difficulties between neighbors, the challenging access to farms, and knowledge of the specific assets present on each property. In response to the increasing sophistication of these criminal groups, the State of Goiás is rethinking its rural policing strategy by promoting integration among stakeholders, analyzing public security data, and encouraging community participation.

Despite the absence of precise official data regarding the number of property crimes in rural areas and the profiles of the victims, this study presented information obtained from public security agencies and through bibliographic research.

Nonetheless, it is important to emphasize the need to develop improved mechanisms to differentiate crimes committed in urban areas from those occurring in rural properties. Such differentiation is crucial for the accurate identification and classification of rural crimes by law enforcement authorities. Many of these institutions still struggle to clearly define what constitutes a crime on rural property. Thus, acquiring more accurate data on the number of criminal incidents occurring in rural areas is essential for formulating effective public security strategies.

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LAW OF PARENTAL ALIENATION AS A REACTION TO WOMEN'S RIGHTS: AN EXPRESSION OF THE INTENSIFICATION OF HUMAN RIGHTS VIOLATIONS

A LEI DA ALIENAÇÃO PARENTAL COMO REAÇÃO AOS DIREITOS DAS MULHERES: EXPRESSÃO DA AGUDIZAÇÃO DA VIOLAÇÃO DOS DIREITOS HUMANOS

LA LEY DE ALIENACIÓN PARENTAL COMO REACCIÓN A LOS DERECHOS DE LAS MUJERES: EXPRESIÓN DEL AGRAVAMIENTO DE LAS VIOLACIONES DE DERECHOS HUMANOS

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ABSTRACT

It is well known that within family conflicts are an endemic problem in Brazilian society. Judicial disputes due to the dissolution of unions are increasing daily, offering the academic world an interesting subject for research. Among the issues that have caused significant disturbances is Lei n. 12.318/2010, which addresses the alleged parental alienation syndrome. Various scientific bodies have positioned themselves against it, including UN Women and the World Health Organization. Thus, this article seeks to investigate the relationship between this law, which provides for parental alienation, and the Inter-American human rights system, to which Brazil is part of. The specific objectives are: (i) to present the law on parental alienation as well as the context of its enactment; (ii) to present the Inter-American human rights system and Lei n. 11.340/2006; and (iii) to relate the subject of this article—parental

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alienation—to the Inter-American human rights system. For this purpose, the methodology used will be a literature review along with statistical data and relevant legislation. In the final considerations, it is observed that Lei n. 12.318/2010, besides being clearly unconstitutional, represents the intensification and persistence of human rights violations against women.

Keywords: Patriarchy. Human Rights. Family Law.

RESUMO

É sabido que os conflitos intrafamiliares é um problema endêmico na sociedade brasileira. Os litígios judicializados devido a dissolução da união aumentam cotidianamente e oferecem ao universo acadêmico interesse objeto de pesquisa. Dentre as questões que tem causado transtornos importantes é a Lei n. 12.318/2010, que versa sobre a suposta síndrome da alienação parental. Diversos entes científicos já se posicionaram contra, inclusive a ONU Mulheres e a Organização Mundial da Saúde. Deste modo, este artigo busca investigar a relação entre esta lei que prevê a alienação parental e o sistema interamericano de direitos humanos, ao qual o Brasil está vinculado. Como objetivos específicos, tem-se: (i) apresentar a lei de alienação parental bem com o contexto de sua edição; (ii) apresentar o sistema interamericano de direitos humanos assim como a Lei n. 11.340/2006; e (iii) relacionar o objeto deste artigo - alienação parental - com o sistema interamericano direitos humanos. Para tanto, a metodologia empregada será de revisão bibliográfica bem como uso de dados estatísticos e da legislação pertinente. Em considerações finais, verifica-se que a Lei n. 12.318/2010, além de ser patentemente inconstitucional, é a expressão da agudização e da persistência da violação dos direitos humanos das mulheres.

Palavras-chave: Patriarcado. Direitos Humanos. Direito das famílias.

RESUMEN

Se sabe que los conflictos intrafamiliares son un problema endémico en la sociedad brasileña. Los conflictos judiciales por la disolución de la unión aumentan día a día y ofrecen al mundo académico un interesante objeto de investigación. Entre las cuestiones que han causado importantes trastornos se encuentra la Ley número, 12.318/2010, que trata del supuesto síndrome de alienación parental. Varias entidades científicas ya se han pronunciado en contra, entre ellas, la ONU Mujeres y la Organización Mundial de la Salud. Por lo tanto, este artículo intenta investigar la relación entre esta ley que prevé la alienación parental y el sistema interamericano de derechos humanos, al que Brasil está vinculado. Como objetivos específicos tenemos: (1) presentar la ley de alienación parental, así como el contexto de su edición; (2) presentar el sistema interamericano de derechos humanos, así como la Ley número, 11.340/2006; y (3) relacionar el objeto de este artículo -la alienación parental- con el sistema interamericano de derechos humanos. Para ello, la metodología utilizada será la revisión bibliográfica, así como el uso de datos estadísticos y de la legislación pertinente. En las consideraciones finales, aparece que la Ley número 12.318/2010, además de ser expresamente inconstitucional, es expresión del agravamiento y persistencia de la violación de los derechos humanos de las mujeres.

Palabras clave: Patriarcado. Derechos Humanos. Derecho De Las Familias.

INTRODUCTION

Family law disputes can be very tense and stressful for the parties involved, especially for women with minor children. A divorce petition requires discussing the division of property, child custody, visitation rights, alimony, and all matters involving the former couple, demanding sensitivity, attentive listening, and technical expertise from those involved in the justice system in order to resolve the issues in the best possible way.

After the legalization of divorce in the late 1970s and the promulgation of the Constitution of the Republic in 1988, which expressly granted equal rights to men and women, including in the family context, there was an increase in actions both for the dissolution of marriage and for the enforcement of fundamental rights. Therefore, remaining in a relationship became a choice for both men and women.

But this does not mean that these personal relationships are free from violence; on the contrary, women are constant victims of physical and verbal abuse, threats, and coercion, including financial coercion. According to the study "Visible and invisible: the victimization of women in Brazil," "33.4% of Brazilian women aged 16 or older have suffered physical and/or sexual violence at the hands of an intimate partner or ex-partner" (2023), which means that this rate is above the global average of 27% (FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA, 2023). The same survey shows that the average number of assaults in the last year is four, but for divorced women it is nine.

Regarding this serious social problem, it is pertinent to note that on August 7, 2006, based on the Constitution of the Republic and the "Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women" (OAS, 1994), Lei n.. 11,340/2006 was enacted with the aim of curbing domestic and family violence against women in Brazil.

Despite high social expectations, Lei n. 11,340/2006 was enacted with significant resistance from conservative and even reactionary groups. It is worth remembering the case of Judge Edilson Rumbelsperger Rodrigues of the Minas Gerais Court of Justice, who considered the Maria da Penha Law unconstitutional, denying measures against male aggressors. For him, the law is diabolical and, among other considerations, he stated that "human misfortune began in Eden: because of women, as we all know, but also because of the naivety, foolishness, and emotional fragility of men (...) The world is masculine!" This is an example of opposition to Lei n. 11,340/2006, given the normalization of violence against women and the deep-rooted influence of religion in our society (BRASIL, 2007).

The reaction also came through legislative instruments with the enactment of Lei n. 12,318/2010, which, as will be demonstrated, introduced a pathology—parental alienation syndrome—not recognized by the scientific community and which drastically affects women's lives in clear violation of women's rights.

What can be seen with the parental alienation law is that the State, to the same extent that it innovated with the Maria da Penha Law, has exacerbated the precariousness of women's condition in the family context. For Stolz and Lemos (2021), the parental alienation law has been an institutional instrument to prevent women's autonomy and break the cycle of domestic violence.

This justifies the relevance of this research, which aims to investigate the relationship between this law that provides for parental alienation and the inter-American human rights system, to which Brazil is bound. The specific objectives are: (i) to present the parental alienation law and the context in which it was enacted; (ii) to present the inter-American human rights system as well as Lei n. 11,340/2006, which resulted from the recommendations contained in Report n. 54/2001 of the Inter-American Commission on Human Rights; and (iii) to relate the subject of this article—parental alienation—to the inter-American human rights system.

The methodology is a literature review, as it will draw on authors who address the relationship between human rights and women's rights, the use of statistical data, and relevant legislation. Given the interdependence and intertwining present in the theme of this research, in the final considerations, it is verified that the parental alienation law, despite claiming to protect the rights of children and adolescents, represents the sophistication and refinement of social technique (SAFFIOTI, 2013) of controlling the physical and psychological lives of women who seek to leave abusive relationships, constituting a serious violation of human rights.

1 PARENTAL ALIENATION AND THE LEGAL AND POLITICAL CONTEXT OF ITS INCLUSION IN BRAZILIAN LAW

According to Lei n. 12. 318/2010 (Parental Alienation Law or LAP), parental alienation is considered to be the conduct of one of the parents, grandparents, or guardians who interfere in the psychological sphere of the child or adolescent in such a way that they repudiate the other parent who does not have custody or that causes harm to the establishment or maintenance of parental bonds.

This concept, called syndrome, was created by American psychiatrist Richard Alan Gardner (1931-2003). He was director of child psychiatry in the United States Army Medical Corps in Germany and, after returning to the United States, held the position of clinical professor of psychiatry at Columbia University, without remuneration.

In addition, he served as a court expert in more than 400 child custody disputes, defending parents (mostly men), teachers, and members of religious communities (such as pastors and priests) from accusations of sexual abuse and pedophilia. In his expert reports, as well as in his books, he often recommended to the courts that children be removed from the care of alienators, a term used to refer to mothers, and placed in the custody of fathers accused of sexual abuse. Sheila Stolz and Sibele de Lima Lemos announce that he was the author of several books and articles published by his own publishing house, Creative Therapeutics. In addition, they attest that:

> É notório que seus trabalhos sobre a Síndrome de Alienação Parental (SAP) não foram respaldados por instituições acadêmicas ou sociedades científicas, pois ele não apresentava dados empíricos que comprovam a existência dessa síndrome idealizada. Se valendo exclusivamente a apelação de sua autoridade, o que por si só já torna o termo bastante discutível (Stolz; Lemos, 2021, p. 182).

According to Gardner, who creates the concept in a simplistic manner and without scientific criteria, psychiatric disorders are considered a consequence of the behavior of the custodial parent, known as the alienating parent, commonly associated by him with mothers, which harms or prevents the establishment of a bond between children and the alienated parent (the father) after separation or divorce. This is because mothers, whom he considers to be alienating, often use false accusations of violence and sexual abuse, performing mental manipulation that implants false memories in children. In his works, it is common for Gardner to use terms such as “harmful” and “alienating” mother, and with regard to the parent, he considers his position to be one of

> profundo sofrimento [...], qualificando-o com os seguintes adjetivos: esposo desprezado, abatido, carentes de ajuda, vítima da indiferença, preocupado, alguém que necessita ajuda e ser encorajado para que possa resistir e se proteger das severas punições impostas aos que, em nosso tempo e sociedade, exercem seus impulsos sexuais. Portanto, a terapia com o pai alienado não deve focar na molestação sexual, mas sim no esquecimento deste que atualmente é considerado um problema (Stolz; Lemos, 2021, p. 186).

Without scientific criteria, it should be emphasized, and openly defending parents, Richard Gardner attempted to introduce a pathology that demonizes women and harms children and adolescents involved in the conflict between the former couple. It should be noted that he worked on several cases in which fathers were accused of sexual abuse and pedophilia, demonstrating that the syndrome he created can lead to the silencing of many victims of this heinous crime.

Richard Gardner introduces terms such as brainwashing, brain programming, and amnesiac children. According to him, in some children, the programming was so severe that they forgot any

positive and loving experiences they had with the alienated parent. He goes so far as to say that "children are naturally sexual and can initiate sexual encounters to seduce an adult."

The obvious lack of scientific basis is pointed out by the World Health Organization (WHO) and corroborated by other serious scientists who demonstrate that, although it is possible to find psychological damage in children and adolescents as well as rejection of the non-custodial parent, the construction of false memories would only be possible in a very specific environment, such as a laboratory. The literature also understands that it would be possible to implant memories in a single event, but it would be practically impossible to sustain them in repeated acts. It is also worth noting that memories attributed as false should contain the vocabulary of the alleged alienator, since the child would narrate the facts based on the materiality of their own repertoire.

Neither Richard Gardner nor the advocates of parental alienation have been able to refute these contradictions in the scientific community. What Gardner cites as a smear campaign is, in fact, a violation of the right

Neither Richard Gardner nor the advocates of parental alienation have been able to refute these contradictions in the scientific community. What Gardner cites as a smear campaign is, in fact, a violation of the child's right, who sees their narrative being invalidated as a subject of law.

Psychological violence can be practiced, but parental alienation, having a different meaning, is just dangerous pseudoscience. Even lacking scientific support, in 2008, former congressman Regis de Oliveira, then affiliated with the Social Christian Party (PSC), presented a bill to introduce this pseudo-syndrome into the legal system. Generically characterized as interference in the psychological development of children or adolescents, it was justified by the increase in conflicts in family arrangements, especially since the 1980s[3].

The author of the bill reproduced an extensive excerpt from a book by Maria Berenice Dias, a retired judge of the TJ/RS and founder of the Brazilian Institute of Family Law (IBDFAM). In other words, despite mentioning articles by Rosana Barbosa Ciprião Simão, information from the collectives "SOS – Papai e Mamãe" (SOS – Dad and Mom), APASE, "Pais para Sempre" (Parents Forever), "Pai Legal" (Cool Dad), and "Pais por Justiça" (Parents for Justice), its rationale is strongly anchored in the perspective of the aforementioned jurist.

Although the bill deals with problems in parental relationships - fathers or mothers - the rationale is rooted in the supposed feelings of abandonment, rejection, and betrayal that mothers come to harbor toward their ex-husbands because of the separation. This point already reveals a very serious indication that the law serves to socially control women. In addition, the author of the bill, still

supported by the former magistrate who defends parental alienation, argues that after divorce, women tend to become vengeful and, therefore, crusade to discredit their ex-husbands.

In the words of Maria Berenice Dias, “the child, who loves his parent, is led to distance himself from him, who also loves him. This creates a contradiction of feelings and destroys the bond between them. Left orphaned by the alienated parent, he ends up identifying with the pathological parent, accepting as true everything he is told.” She states that in this game of manipulation, any action is acceptable to remove the parent from the child's life, even accusing him of sexual assault, involving other professionals such as doctors and legal practitioners who will immediately go to great lengths to take measures to remove the parent from the children.

In the understanding of Maria Berenice Dias, mentioned by the author of the bill, the mother, cunningly, uses spurious arrangements to remove her children from her ex-husband out of pure revenge and can manipulate a myriad of professionals. It should be noted that, on this occasion, Maria Berenice Dias is cited because she is the jurist appointed by the author of the bill, but there are other professionals who also follow the same line, both in the fields of law and psychology, social work, and medicine.

At the time the bill was being debated, there was a shift in focus: from reflections on parental equality about custody to the dissemination of the discussion on parental alienation. According to Sousa and Brito (2011), Brazil introduced it with little debate and in an uncritical manner.

This context of the period is important for understanding the LAP. This bill was introduced in 2008 and quickly approved in 2010. In 2006, Lei n. 11,340/2006 was enacted to curb domestic and family violence, strongly supported by the Constitution of the Republic and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, known as the Belém do Pará Convention. Lei n. 11,340/2006, known as the Maria da Penha Law, proved to be a comprehensive statute, a set of criminal and extra-criminal rules and principles aimed at preventing, protecting, and redressing violence against women in the domestic and family environment.

This law is a significant milestone in the legal system with an impact on the Brazilian social and political structure. It is a viable instrument for transforming the endemic issue of violence against women in the domestic environment and, therefore, capable of promoting a cultural, behavioral, social, political, and even economic schism. This law came to definitively address a very serious problem that affects, to some degree, practically all women in Brazilian society.

In addition to this highly transformative law, on November 5, 2008, Lei n. 11,804/2008 was enacted, which regulates the right to pregnancy support and how it will be exercised. It is a brief law

with the clear intent of guaranteeing material conditions for the pregnant woman and the fetus during a delicate period. The first provisions have the following content:

> Art. 1º Esta Lei disciplina o *direito de alimentos da mulher gestante* e a forma como será exercido.
> Art. 2º Os alimentos de que trata esta Lei *compreenderão os valores suficientes para cobrir as despesas adicionais do período de gravidez e que sejam dela decorrentes, da concepção ao parto, inclusive as referentes a alimentação especial, assistência médica e psicológica, exames complementares, internações, parto, medicamentos e demais prescrições preventivas e terapêuticas indispensáveis*, a juízo do médico, além de outras que o juiz considere pertinentes.
> Parágrafo único. Os alimentos de que trata este artigo referem-se à parte das despesas que deverá ser custeada pelo futuro pai, considerando-se a contribuição que também deverá ser dada pela mulher grávida, na proporção dos recursos de ambos.

In other words, along with legal instruments to prevent and protect women in situations of domestic violence and punish their aggressors, a law was enacted that determines that the alleged father indicated by the pregnant woman must bear part of the expenses during pregnancy and the postpartum period, aiding the fetus and future baby, the child of this couple.

This context of recognition of the material inequality experienced by women in Brazilian society, expressed through important laws that protect women in vulnerable situations, led to a reaction from those who defend the maintenance of the status quo; those who aim to preserve their privileges and prevent more profound changes in Brazilian society.

The reaction came in the form of a law to put a brake on the process of harmonizing Brazilian laws with the international human rights system. The law, which is the subject of this article, was enacted to prevent mothers from rebelling against the intense and contentious divorce process, in which parents often use their children as bargaining chips. In this regard, Stolz and Lemos, in their research on the Rio Grande do Sul Court of Justice, demonstrate that, in many cases, decisions on parental alienation are unfavorable to mothers.

Along with the Statute of the Unborn and the Statute of the Pregnant Woman and so many other projects that are a clear affront to human rights, this law came as a reaction to keep women's lives and bodies under control, preventing them from enjoying their right to freedom, equality, and security, as demonstrated in the following items.

2 BRAZIL AND THE INTER-AMERICAN HUMAN RIGHTS SYSTEM: INTRODUCTION

Since 1988, Brazil has been consolidating its project to respect and promote human rights (Piovesan, 2013). In fact, this is the scenario throughout Latin America due to long periods of dictatorship with restrictions on rights and impediments to popular participation. Talking about human rights during this period was practically delusional.

The democratic transition that culminated in the promulgation of the Citizen Constitution in 1988 is a milestone in Brazilian society because, at least formally, it envisions a project aimed at enforcing the fundamental rights of freedom and equality, a robust social protection system with the prevalence of human rights.

According to Article 1, the Federative Republic of Brazil is a democratic state governed by the rule of law and founded on the principles of sovereignty, citizenship, human dignity, the social values of work and free enterprise, and legal pluralism. In addition, Article 1, sole paragraph, explicitly states that the people are the holders of power, which may be exercised representatively or directly. In other words, the Constitution of the Republic, from the outset, sets forth its founding principles, which will guide all other precepts contained therein.

It should also be noted that the Constitution of the Republic imposes the following objectives: "(i) to build a free, just, and supportive society; (ii) to ensure national development; (iii) to eradicate poverty and marginalization and reduce social and regional inequalities; (iv) to promote the welfare of all, without prejudice based on origin, race, sex, color, age, or any other forms of discrimination." The project conceived during the Constituent Assembly is to promote and respect the rights of Brazilian citizens, without distinction. To reiterate: the project focuses on the dignity of the human person and the construction of a free, fair, and supportive society without prejudice or discrimination. The constituents left it to subsequent congressmen to determine how to build a materially equal and free society.

It is also important to mention that, according to the fundamental principles of the Brazilian Republic, international relations are governed by the prevalence of human rights, the peaceful resolution of conflicts, the rejection of racism, and cooperation among peoples. Article 4 of the Constitution also provides for the self-determination of peoples, equality among states, the defense of peace, and the granting of political asylum as core principles of the Brazilian legal and political system, in the apt words of Celso Antônio Bandeira de Mello (2000).

In short, anyone who reads the Constitution of the Republic is greeted by the fundamental principles of Brazilian society, which cannot be disregarded in any way and which guide all political measures, whether in the public or private sphere.

With regard specifically to human rights, in addition to their prevalence, Article 5, which enshrines fundamental rights and guarantees, establishes that:

> Art. 5º Todos são iguais perante a lei, sem distinção de qualquer natureza, garantindo-se aos brasileiros e aos estrangeiros residentes no País a inviolabilidade do direito à vida, à liberdade, à igualdade, à segurança e à propriedade, nos termos seguintes:
> [...]
> § 2º Os direitos e garantias expressos nesta Constituição não excluem outros decorrentes do regime e dos princípios por ela adotados, ou dos tratados internacionais em que a República Federativa do Brasil seja parte.
> § 3º Os tratados e convenções internacionais sobre direitos humanos que forem aprovados, em cada Casa do Congresso Nacional, em dois turnos, por três quintos dos votos dos respectivos membros, serão equivalentes às emendas constitucionais. (Brasil, 1988)

It is therefore evident that there is a commitment to the principles of equality and freedom, respect for the life and safety of all, without discrimination, and the country's adherence to the international human rights system, including making it clear that future documents must be incorporated into the domestic legal system. The congressmen gathered there marked the choice of society: the construction of a society requires the acceptance of political transformations and, therefore, the embrace of new human rights as well as the deepening of what is already established. At this point, it is worth remembering Article 26 of the American Convention on Human Rights, known as the Pact of San Jose, Costa Rica, which states:

> Artigo 26. Desenvolvimento progressivo
> Os Estados-partes comprometem-se a adotar as providências, tanto no âmbito interno, como mediante cooperação internacional, especialmente econômica e técnica, a fim de conseguir progressivamente a plena efetividade dos direitos que decorrem das normas econômicas, sociais e sobre educação, ciência e cultura, constantes da Carta da Organização dos Estados Americanos, reformada pelo Protocolo de Buenos Aires, na medida dos recursos disponíveis, por via legislativa ou por outros meios apropriados (OEA, 1969).

Brazil has been a member of the Organization of American States (OAS) since its inception in 1948, but it was after 1988 that it began to ratify the legal documents produced there. For example, the American Convention on Human Rights was ratified by Decree No. 678 of November 6, 1992. The 1988 Constitution is, above all, a civilizational milestone that promotes the protection and promotion of human rights for Brazilian society.

In this sense, Brazil is internationally obliged to develop internal rules that take into account the documents of the inter-American human rights system; therefore, any regression in the legal protection of citizens is prohibited. This has been called conventionality control, which, according to Valerio de Oliveira Mazzuoli, is the “conventionality control” of laws, which is the harmonization of domestic legislation with human rights treaties ratified by the government and in force in the country

(2009, p. 237). It is simple: public officials must be guided by the Constitution of the Republic and by international treaties ratified by Brazil in the development of all measures, actions, and public policies.

Invariably, public officials are subject to these controls, which, it should be emphasized, are based on material equality, freedom, human dignity, and the prohibition of regression, which is, in itself, a violation of human rights. In the same vein, Flávia Piovesan understands that the Pact of San José, Costa Rica "is limited to requiring States to progressively achieve the full realization of these rights through the adoption of legislative and other measures that prove appropriate" (2013, p. 333).

The American Declaration of Human Rights establishes, in its Article 2, that "for the purposes of this Convention, a person is every human being," that is, women are human beings and, therefore, are subjects of human rights. In addition, this same document deals with the right to life (Article 4), physical, mental, and moral integrity (Article 5), personal liberty (Article 7), and protection of honor and dignity (Article 11). There is also the right of the child in the sense that "every child has the right to the measures of protection that his or her condition as a minor requires from his or her family, society, and the State."

Thus, it is up to the Member States to comply with what is set forth therein, under penalty of suffering the penalties provided for at the international level. Pointing out that this movement of primacy of human rights is recent in the history of Western civilization, Flávia Piovesan highlights the "impact and repercussion on the process of defining and reconstructing citizenship in the Brazilian context" (2013, p. 441). However, recognizing its "youthfulness" does not mean relaxing the application of human rights.

Brazil has been urged by the bodies of the inter-American human rights system—the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACHR)—for violating human rights in various ways. With regard to women's rights, the Maria da Penha Law is the result of Report 54/2001, in which Brazil was denounced for its lethargy in prosecuting and punishing Mr. Marco Antonio Heredia Viveros for two attempted homicides in a domestic context. In the mid-1980s, Maria da Penha Maia Fernandes was the victim of an attempted murder, leaving her paraplegic. The perpetrator was her then-husband, who reported a story of home invasion for such aggression. As she survived but needed care, he tried again, electrocuting her in the bathtub.

Another example that relates women's rights and the inter-American human rights system is that in 2021, Brazil was condemned by the Inter-American Court of Human Rights for discrimination in access to justice, for failing to investigate and judge from a gender perspective, for using negative

stereotypes in relation to the victim, and for the improper application of parliamentary immunity in the case of the murder of Márcia Barbosa de Souza by the then state deputy for Paraíba, Aércio Pereira de Lima.

There are many other emblematic cases involving violence against women, such as Case 12.001 Simone André Diniz v. Brazil, in which the Inter-American Commission recommended several measures to the country to eradicate human rights violations against black women. Another case worth mentioning is Case López Soto et al. v. Venezuela, due to the deprivation of liberty and submission to psychological, physical, and sexual violence suffered by Ms. López Soto, without the facts being investigated and the perpetrator being held criminally responsible.

In the wake of the prohibition of retrogression and the imposition of improvements to international legal instruments, the National Council of Justice (CNJ) issued Recommendation n. 123, dated January 7, 2022, recommending "that the Brazilian Judiciary comply with international human rights treaties and conventions and use the jurisprudence of the Inter-American Court of Human Rights" (CNJ, 2022). In addition, on March 17, 2023, the CNJ issued Resolution n. 492/2023 which, according to its summary,

> estabelece, para adoção de Perspectiva de Gênero nos julgamentos em todo o Poder Judiciário, as diretrizes do protocolo aprovado pelo Grupo de Trabalho constituído pela Portaria CNJ n. 27/2021, institui obrigatoriedade de capacitação de magistrados e magistradas, relacionada a direitos humanos, gênero, raça e etnia, em perspectiva interseccional, e cria o Comitê de Acompanhamento e Capacitação sobre Julgamento com Perspectiva de Gênero no Poder Judiciário e o Comitê de Incentivo à Participação Institucional Feminina no Poder Judiciário. (CNJ, 2023)

Thus, the Judiciary in Brazil is required to use the "Protocol for Judgments with a Gender Perspective," which recognizes that social relations are "simultaneously the result and reproducer of inequalities, reinforcing them in terms of stereotypes, asymmetries, hierarchies, and inequalities (material and symbolic)." (CNJ, 2023). This Protocol recognizes that, despite the provision of human rights to equality, freedom, and security, thousands of women are assaulted, raped, and murdered in Brazilian society, and that there is persistent violation of the human rights of women and girls.

Violence against women, not only domestic violence, is an endemic problem that must be addressed as such, and the main instrument for combating it is the international human rights system, specifically the inter-American human rights system.

3 LEI N. 12,318/2010, PARENTAL ALIENATION LAW: THE EXPRESSION OF THE VIOLATION OF WOMEN'S HUMAN RIGHTS IN THE DOMESTIC AND FAMILY ENVIRONMENT

The violation of human rights by the parental alienation law is a sensitive issue that requires a thorough analysis of its implications from the perspective of women's and children's rights. The concept of indirect discrimination is fundamental here, referring to laws or actions that, although apparently neutral, result in harmful effects for groups or individuals based on characteristics such as gender, age, sex, or race.

When it comes to women, it is crucial to highlight that several international treaties, to which Brazil is a signatory, establish the obligation of authorities to eliminate legislative measures or government practices that may result in discrimination and disadvantage. The State has a duty, as stipulated in international treaties and national legislation, to adopt all necessary measures to combat discrimination against women, as provided for in the Federal Constitution, the Maria da Penha Law, the Statute of Children and Adolescents, among other legal instruments.

From the perspective of women's human rights, the existence of laws that subjugate women and make reporting domestic violence a means of punishment for both women and their children is questioned. The parental alienation law is criticized for being based on gender bias and incompatible with the right of women and children to live free from violence and discrimination. Although seemingly neutral, this law carries a significant burden of discrimination in its application, reproducing gender roles and stereotypes that harm women.

The concept of parental alienation lacks a reliable scientific basis and tends to stereotype and discriminate against women. What parental alienation has proven to be is a tool for maintaining power and control over women who are victims of gender-based violence. In addition, the symptoms listed as indicative of alienation are often confused with those of children who are victims of violence and abuse, which makes it difficult to accurately assess the situation.

It is important to note that, in cases of reports of abuse and violence against children, the investigation has been distorted and public officials have not focused on the facts of the complaint, but rather on questioning whether the child or mother is lying. As society is deeply sexist, as recognized by public documents such as the Protocol for Gender-Sensitive Judgments, professionals considered experts, who commonly lack gender literacy and, therefore, knowledge about the issue of parental alienation, end up pointing their doubts toward mothers. Stolz and Lemos (2021) demonstrated this in their research on court decisions. Furthermore, the presumption of guilt against women is so serious that mothers claim that the courts ignore or minimize their reports of violations

committed by the aggressive/abusive parent against the child. As a result, these mothers are punished for trying to protect their children (Pina, 2022).

In addition to infringing on women's rights, the law violates children's rights to a life free from violence and neglect. This includes the right to be heard, the right to experience a childhood free from trauma, the right to free development of personality and the ability to form healthy bonds, as well as the right to personal integrity.

The parental alienation law, by disqualifying complaints and hindering proper investigation, places victims—especially women and their children—in situations of risk and ongoing suffering. Judicial decisions, therefore, reflect a misogynistic view, discrediting women's complaints and placing them at a disadvantage in the justice system.

In the old Código Civil de 1916, Article 233 stipulated that married women did not enjoy full civil capacity. They could only engage in work activities or carry out financial transactions with their husband's authorization, reflecting a clear patriarchal mentality that gave men power over women and children. This same logic is found in the Parental Alienation Law, but with cunning maneuvers cloaked in science. As Saffioti (2013) teaches, the increasing complexity of society promotes the sophistication of social techniques. Without confronting the structures that sustain the various forms of violence, their eradication cannot be achieved.

The parental alienation law imposes on women the need to obtain permission from the father for fundamental aspects such as housing and work, leaving them subject to the constant threat of unfounded accusations of implanting false memories. This legislation alarmingly supplants even constitutional principles and international human rights treaties, perpetuating male hegemony over women and children.

Ultimately, the parental alienation law runs counter to the best interests of children by preserving coercive methods, inequalities in family relationships, and gender discrimination. It is essential to rethink this legislation in light of human rights, ensuring the protection of women and their children against all forms of violence and discrimination.

In addition to violating constitutional provisions—Articles 1, 3, 4. 5, and 226, §8—and the American Convention on Human Rights, this supposed syndrome is rejected by the UN and UN Women, and the WHO has already called for its removal from the ICD-11 classification, as it violates the provisions of the Belém do Pará Convention and CEDAW. It should be clarified here that ICD 11 stands for the "11th International Classification of Diseases" and in this catalog is "QE52.0 Caregiver-child relationship problem" or "QE52 - Problems associated with interpersonal interactions in childhood." Considering that caregiver can be translated as personal carer, advocates of parental

alienation as a syndrome use this parameter. However, what it is, in fact, is more of a search term in this list of diseases that associates some interpersonal problems in childhood, such as poverty, malnutrition, and abrupt separation from affectionate relationships.

The introduction of this law into the legal system is, therefore, a reaction to the achievement of women's rights. In addition, this law means the institutionalization of violence, mainly psychological and patrimonial. At any disagreement with the demands of women-mothers, parents allege parental alienation, increasing the conflict and further judicializing family law issues. Therefore, the parental alienation law is an expression of the worsening violation of the human rights of women and children.

4 CONCLUSION

The existence of a direct relationship between the Parental Alienation Law and the condition of violence against women in family contexts exposes a serious violation of human rights, especially about the autonomy and protection of women and children.

Thus, this study contributes to a critical analysis of Lei n. 12,318/2010, highlighting the discrepancies between the apparent protection of the rights of children and adolescents and the real impacts on women victims of domestic violence and children's victims of abusers and aggressors.

The objective of this article was to investigate how the Parental Alienation Law violates the inter-American human rights system, aiming to understand the mechanisms that perpetuate the violation of the rights of women, children, and adolescents in family contexts.

Regarding limitations, it is important to note that this study was based mainly on a literature review and studies conducted by international organizations, as court decisions on this subject must be kept confidential in accordance with current legislation. In addition, the complexity of the subject requires a multidisciplinary analysis that could be explored in future research.

For future research, we suggest conducting empirical studies that investigate the specific impacts of the Parental Alienation Law as a means of coercion for women victims of domestic violence to report abuse, as well as comparative analyses between different legal and cultural contexts for a broader understanding of the problem and possible solutions.

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[3] Interestingly, it can be seen that controversies over custody and parental authority began a few years after EC No. 09 of 1977 to Lei n. 6515/1977, which established an end to the indissolubility of marriage.

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THE TREATMENT OF PEOPLE WITH DISABILITIES IN THE FACE OF CRIMINAL EXECUTION AND THE SYSTEMATIC PERPETUATION OF SERIOUS VIOLATIONS OF THE HUMAN RIGHTS OF CONVICTS[1]

O TRATAMENTO DAS PESSOAS COM DEFICIÊNCIA FRENTE À EXECUÇÃO PENAL E A PERPETUAÇÃO SISTEMÁTICA DE GRAVES VIOLAÇÕES AOS DIREITOS HUMANOS DOS APENADOS

EL TRATAMIENTO DE LAS PERSONAS CON DISCAPACIDAD ANTE LA EJECUCIÓN PENAL Y LA PERPETUACIÓN SISTEMÁTICA DE GRAVES VIOLACIONES A LOS DERECHOS HUMANOS DE CONTENIDOS

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ABSTRACT

The present article addresses the unconstitutional state of affairs to which individuals with disabilities are subjected within the Brazilian prison system. The problem involves understanding how prison facilities contribute to the perpetuation of the segregation of groups, such as people with disabilities, hindering their dignified reintegration into society. The research justification is demonstrated by the high social relevance and the legal significance of the topic at hand, due to the serious human rights violations experienced by individuals within the brazilian prison system. The objective is to assess whether the *modus operandi* of the brazilian prison system is responsible for perpetuating

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the unconstitutional state of affairs experienced by people with disabilities during and even after their incarceration. The methodology employed relies on the qualitative method through bibliographic research. The research discusses the Unconstitutional State of Affairs recognized by the Brazilian Supreme Federal Court when judging the Fundamental Precept Assertion filed under number 347, as well as principles, articles, and objectives outlined in the Resolution of November 22, 2018, from the Inter-American Court of Human Rights and, especially, in Brazilian legislation, particularly in the Federal Constitution and the Penal Execution Law. The article concludes that the Brazilian prison system is insufficient to reintegrate individuals due to inhumane treatment and the non-compliance with the set of norms to be followed, and this state is perpetuated due to the lack of interest and planning by the Public Authorities.

Keywords: Person With Disabilities. Prison System. Human Dignity. Unconstitutional State Of Affairs.

RESUMO

O presente artigo tem como tema o estado de coisas inconstitucional a que estão sujeitas as pessoas com deficiência inseridas no sistema prisional brasileiro. O problema consiste em entender a forma como os estabelecimentos prisionais contribuem para a perpetuação da segregação de grupos, como as pessoas com deficiência, de forma a obstar sua digna reintegração à sociedade. A justificativa da pesquisa é demonstrada pela alta relevância social, bem como a relevância jurídica do tema em questão, em razão das graves violações a direitos humanos às quais são submetidas as pessoas inseridas no sistema prisional brasileiro. O objetivo consiste em avaliar se o *modus operandi* do sistema carcerário brasileiro é responsável pela perpetuação do estado de coisas inconstitucional vivenciado pelas pessoas com deficiência durante o período de encarceramento e até mesmo depois dele. A metodologia utilizada vale-se do método qualitativo, por meio de pesquisa bibliográfica. A pesquisa disserta sobre o Estado de Coisas Inconstitucional reconhecido pelo Supremo Tribunal Federal ao julgar a Arguição de Preceito Fundamental autuada sob número 347, bem como princípios, artigos e objetivos previstos na Resolução de 22 de novembro de 2018, da Corte Interamericana de Direitos Humanos e, principalmente, na legislação brasileira, em especial na Constituição Federal e na Lei de Execução Penal. O artigo conclui que o sistema carcerário brasileiro tem se mostrado insuficiente para reintegrar indivíduos devido ao tratamento desumano e o descumprimento do conjunto de normas a ser seguido, sendo tal estado perpetuado devido ao desinteresse e falta de planejamento do Poder Público.

Palavras-chave: Pessoa com Deficiência. Sistema Prisional. Dignidade da Pessoa Humana. Estado de Coisas Inconstitucional.

RESUMEN

El tema de este artículo es el estado de cosas inconstitucional al que están sometidas las personas con discapacidad en el sistema penitenciario brasileño. El problema es comprender cómo las cárceles contribuyen a perpetuar la segregación de grupos, como las personas con discapacidad, para impedir su reintegración digna a la sociedad. La justificación de la investigación se demuestra por la alta relevancia social, así como jurídica, del tema en cuestión, debido a las graves violaciones de derechos humanos a las que son sometidas las personas en el sistema penitenciario brasileño. El objetivo es

evaluar si el modus operandi del sistema penitenciario brasileño es responsable de perpetuar el estado de cosas inconstitucional vivido por las personas con discapacidad durante el período de encarcelamiento e incluso después de él. La metodología utilizada utiliza el método cualitativo, a través de una investigación bibliográfica. La investigación analiza el Estado de Cosas Inconstitucional reconocido por el Supremo Tribunal Federal al juzgar el Argumento de Precepto Fundamental interpuesto bajo el número 347, así como los principios, artículos y objetivos establecidos en la Resolución de 22 de noviembre de 2018 de la Corte Interamericana. de Derechos Humanos y , principalmente en la legislación brasileña, especialmente en la Constitución Federal y la Ley de Ejecución Penal. El artículo concluye que el sistema penitenciario brasileño se ha mostrado insuficiente para reintegrar a las personas debido al trato inhumano y al incumplimiento del conjunto de reglas a seguir, perpetuándose este estado por el desinterés y la falta de planificación por parte de las Autoridades Públicas.

Palabras clave: Persona con Discapacidad. Sistema Penitenciario. Dignidad de la Persona Humana. Estado de Cosas Inconstitucional.

INTRODUCTION

The central idea of this article is to analyze the treatment of persons with disabilities in the context of criminal enforcement under the framework of the constitutional principle of human dignity. This is because the Brazilian prison system, recognized as a true *estado de coisas inconstitucional*, fosters some of the most serious existing violations of human rights.

The fundamental premise of this work lies not only in the precarious conditions to which Brazilian inmates are subjected—especially those with some form of disability—but, more importantly, in the existence of systematic marginalization, which is intensified within the prison environment, as will be demonstrated.

The issue at hand is to understand how prison facilities contribute to the perpetuation of the segregation of groups in situations of social vulnerability, such as persons with disabilities, thereby obstructing their dignified reintegration into society.

In this regard, Article 10 of the *Lei de Execução Penal* establishes that assistance to prisoners and inmates is a duty of the State, aiming to prevent crime and guide the return to social life. The sole paragraph of the article, in turn, adds that such assistance extends to the released individual and that this, as provided in Article 25, consists, among other requirements, of guidance and support to reintegrate them into life in freedom, once again highlighting the term *reintegração* (Brasil, 1984).

Considering the *estado de coisas inconstitucional* recognized by the *Supremo Tribunal Federal*, the hypothesis is that the Brazilian prison system is not equipped to provide conditions for the harmonious social integration of convicts and inmates, as established by the *Lei de Execução Penal* (Law No. 7.210, of July 11, 1984).

With regard to groups in situations of social vulnerability, such as persons with disabilities, the hypothesis is that the prison system significantly contributes to the perpetuation of their segregation, hindering their full reintegration into society.

The research aims to assess whether the *modus operandi* of the Brazilian prison system is responsible for perpetuating the *estado de coisas inconstitucional* experienced especially by persons with disabilities during incarceration and even afterward, when, in theory, they should be fully reintegrated into society.

The justification for the research lies in its high social relevance, since the segregation of groups in vulnerable situations—although intensified by state omission—is, above all, a historical responsibility of society. Furthermore, the legal relevance of the topic must be emphasized, due to the serious human rights violations suffered by individuals within the Brazilian prison system.

Precisely for this reason, the *Supremo Tribunal Federal* deemed the prison situation in Brazil an "*estado de coisas inconstitucional*," which requires joint and integrated action in order to be remedied.

Moreover, this is a topic of great academic importance, due to its interdisciplinary nature as well as its originality. For this reason, the present debate is necessary, since academia—as a space for the fostering of ideas—has the potential to become a precursor of important social and legal changes concerning the topic at hand.

The theoretical framework of this research is based on the primacy of human dignity, on the full exercise of citizenship by persons with disabilities, and on the recognition of the concept of *estado de coisas inconstitucional* by the *Supremo Tribunal Federal*.

The theoretical approach is also grounded in the analysis of the social position historically occupied by persons with disabilities as victims of successive human rights violations, based on the theoretical contributions of decolonial theory.

The methodology employed is qualitative, through bibliographic research, consisting of the analysis of scholarly literature, articles, legislation, and especially the following documents: the *Constituição da República Federativa do Brasil de 1988*; Law No. 13.146, of July 6, 2015, which established the *Lei Brasileira de Inclusão da Pessoa com Deficiência* (*Estatuto da Pessoa com Deficiência*); and *Arguição de Descumprimento de Preceito Fundamental* (ADPF) 374/DF, which sought the recognition of the "*figura do 'estado de coisas inconstitucional'*" in relation to the Brazilian prison system (Brasil, 1988; Brasil, 2015a; Brasil, 2015b).

To understand the relationship between the perpetuation of the *estado de coisas inconstitucional* and the situation experienced by persons with disabilities during incarceration and

even after their release, the research explores the current legal framework, including all relevant norms and principles. In addition, it includes an analysis of the feasibility of proposed solutions, such as draft legislation.

1 PEOPLE WITH DISABILITIES AND THEIR PREROGATIVES IN THE BRAZILIAN LEGAL SYSTEM

People with disabilities currently benefit from broad protection under the Brazilian legal system, although this has not always been the case. In Brazil, the enactment of the 1988 Federal Constitution represents a historic milestone in guaranteeing legislative protection for this specific group.

This is because the original constituent deliberately included in the Brazilian Constitution provisions related to the guarantee of non-discrimination (e.g., art. 7, XXXI), as well as the promotion of accessibility (e.g., art. 227, § 2º) (Brasil, 1988).

The inclusion of these provisions in the constitutional text aligns closely with one of the foundational principles of the *República Federativa do Brasil*, set forth in Article 1, III, namely the dignity of the human person (Brasil, 1988). According to Luís Roberto Barroso (2016, p. 14), "a dignidade humana, como atualmente compreendida, se assenta sobre o pressuposto de que cada ser humano possui um valor intrínseco e desfruta de uma posição especial no universo".

Precisely for this reason, the *caput* of Article 5 of the 1988 Constitution is now interpreted not merely as a corollary of the principle of equality, but of the principle of *isonomia*. The distinction lies in the fact that *isonomia* goes beyond simply treating people and situations equally, considering their specificities.

The issue is not simply to treat everyone equally without any distinction, but rather to "treat equals equally and unequals unequally, to the extent of their inequality," as stated by Aristotle (384–322 BC).

In this regard, Sidney Pessoa Madruga da Silva (2021, p. 14) highlights that the codification of human rights—understood as rights grounded in human dignity—stems from historical processes that lead to their incorporation into legislation. However, the mere codification of rights, in isolation, is not sufficient to ensure their full effectiveness.

It is understood that, in abstract terms, legislative provisions grant citizens entitlement to rights and impose upon the State certain positive obligations, which are essential for ensuring the effectiveness of the legal system. In theory, this is how codified rights should be concretely

guaranteed—not merely in the abstract—either through their exercise by right-holders or through the implementation of public policies by the State.

With regard to people with disabilities, the author argues that the guarantee of rights is more difficult to achieve, since the legal recognition of their dignity clashes with the social, political, economic, and cultural exclusion they experience.

In this context, it is worth emphasizing that, although the historical struggles and demands of this group for equal dignity have led—and continue to lead—to the development of a comprehensive legal framework, the existing legal provisions clearly reflect the *capacitista* (ableist) society that produced them, both in terms of their normative content and their lack of effectiveness.

As Luana Adriana Araújo warns, this happens because the "extensão dos direitos e atribuição de titularidade aos que possuem deficiência é sempre feita em um contexto normativo externamente ordenado, que paradoxalmente também constrói, confirma e reitera a categoria identitária oprimida" (Araújo, 2021).

According to Fernanda Frizzo Bragato, society, to redress the historical discrimination against certain groups, invests in the construction of a broad normative framework (Bragato, 2016).

Despite this, rights and guarantees "têm se tornado meras palavras vazias: são sistematicamente violados e não há consequências graves para aqueles que se beneficiam e praticam as violações" (Bragato, 2016).

Nonetheless, even though there is a paradoxical gap between these social and legal realities—and even though the law alone is not sufficient to change the social reality of people with disabilities—it must be noted that change is not possible without the law either. In this sense, it is important to highlight the impact generated, above all, by the enactment of the *Lei Brasileira de Inclusão da Pessoa com Deficiência* (Law No. 13.146/2015), better known as the *Estatuto da Pessoa com Deficiência*.

This piece of legislation revolutionized the national legal framework by, for example, introducing changes to the *Código Civil*, particularly regarding the legal capacity framework, and by establishing the term "pessoa com deficiência" as the standard, ruling out the use of socially discriminatory expressions such as "pessoa portadora de deficiência," among others.

1.1 Law No. 13.146/2015 as a Fundamental Norm for the Protection of People with Disabilities in Brazil

Although the enactment of the 1988 Federal Constitution is considered a milestone in the protection of people with disabilities in Brazil, it is Law No. 13.146/2015 that truly deserves prominence, due to the significant progress its sanction represented.

This law was based on the text of the *Convention on the Rights of Persons with Disabilities* and its *Optional Protocol*, signed in New York on March 30, 2007. It was established with the aim of ensuring and promoting, under equal conditions, the exercise of rights and fundamental freedoms by people with disabilities, to foster their social inclusion and citizenship (Brasil, 2015).

The first innovation introduced by the law concerns the adoption of the term "pessoa com deficiência" (person with disability) as the standard to be followed. Article 2 establishes that "considera-se pessoa com deficiência aquela que tem impedimento de longo prazo de natureza física, mental, intelectual ou sensorial, o qual, em interação com uma ou mais barreiras, pode obstruir sua participação plena e efetiva na sociedade em igualdade de condições com as demais pessoas" (Brasil, 2015).

Sidney Madruga highlights that the terminology adopted by the law is free of prejudice, unlike others commonly used, such as: *pessoa portadora de deficiência*, *pessoa com necessidades especiais*, *pessoa portadora de necessidades especiais*, etc.

Silva (2021, p. 08) points out that "a deficiência é inerente à pessoa que a possui. Não se carrega, não se porta, não se leva consigo, como se fosse algo sobressalente ou um objeto." Precisely for this reason, it is incorrect to use the expression *portador*, as well as all other words and expressions that undeniably carry a pejorative tone, yet are still widely used and even appear in various legal provisions.

According to Silva (2021, p. 09), it is completely mistaken to claim that words do not serve to change reality, especially when they are easily understood and enter popular usage, potentially reinforcing prejudice and becoming offensive. This is not only about modifying vocabulary, but also about eliminating from the social sphere the prejudice historically built against people with disabilities.

As Luana Adriana Araújo warns, "desde o surgimento do modelo social de deficiência, nos anos 1970, os estudos de deficiência têm depositado uma grande confiança nos sistemas legais, deixando de problematizar o papel desempenhado pela lei na manutenção de significados anormalizados de deficiência" (Araújo, 2021).

The perpetuation of abnormalized meanings of disability referred to by the author relates precisely to the systematized discrimination established throughout history for various reasons, which are generally summarized in two issues: aesthetic standards and social role. The social role today

refers to the perceived utility of the individual within an extremely capitalist and globalized society. According to Sandra Regina Schewinsky (2004), "na nossa sociedade, em que o indivíduo 'vale' pela sua produção e riqueza, no momento em que fica impossibilitado de exercer papéis profissionais que lhe conferem o status quo, recai sobre ele a imagem de inutilidade e de menos-valia."

It is precisely for this reason that people who deviate from the social standard—such as people with disabilities—face barriers that prevent them from fully exercising their rights and, consequently, their citizenship.

These barriers can be considered abstract instruments that promote the segregation of socially unwanted groups, especially through the creation of hierarchies among human beings. This stems directly from *coloniality*, which is nothing more than a clear representation of power structures historically established because of colonialism.

According to Fernanda Frizzo Bragato:

> (...) coloniality helps to explain the depreciation of certain human beings through their discursive and practical dehumanization. The discourse of human gradation and inferiority continues to resonate precisely because it reinforces what we have been taught to believe: that there are superior peoples who speak about and on behalf of others, defining what should be seen as weaknesses, flaws, and defects to be rejected (Bragato, 2016, free translation).

The author further emphasizes that discrimination, although it dates to colonial times, persists today "porque persiste a ideia de que existem seres inferiores e descartáveis" (Bragato, 2016). Thus, it can be concluded that the historically constructed collective consciousness represents the main obstacle faced by people with disabilities in their pursuit of equality.

In addition to abstract barriers, the *Estatuto da Pessoa com Deficiência* also lists concrete and tangible obstacles imposed on people with disabilities, which pose a significant hindrance to achieving the much-desired accessibility. The barriers cited by the *Estatuto* refer to obstacles—whether physical or otherwise—that hinder or limit the social participation of people with disabilities, as well as their freedom of movement and expression. These are classified as: urbanistic barriers; architectural barriers; transportation barriers; communication and information barriers; attitudinal barriers; and technological barriers (Brasil, 2015b; Brasil, 2004).

Such barriers impose a burden on people with disabilities that prevents them from fully exercising their rights. These manifest through elements such as public spaces (*urbanistic barriers*), public and private buildings (*architectural barriers*), and public transportation (*transportation barriers*) that lack proper adaptations.

Additionally, it is important to highlight obstacles to accessing information (*communication and information barriers*), impediments to social participation (*attitudinal barriers*), as well as the difficulty or even impossibility of accessing technology (*technological barriers*) (Brasil, 2004).

The *Estatuto* represents a major advancement regarding the rights of the individuals it protects, as it is strongly grounded in constitutional principles and aims to ensure equal opportunities while repressing any form of discrimination. Among its provisions of concepts, list of rights, and definition of criminal offenses, one of its main legal impacts lies in the amendments it introduced to Articles 3 and 4 of the *Código Civil*.

From the moment the *Estatuto* came into effect, the provision of Article 6 altered the *Código Civil*, which now considers people with disabilities fully capable of exercising civil acts (Brasil, 2015). According to Erival da Silva Oliveira (2019), by enacting this change, "o legislador buscou afastar o preconceito que a palavra deficiente costuma carregar, evitando fazer sua relação com eventual incapacidade."

Based on the analysis carried out so far, it is evident that the examined law is indeed highly significant. However, it must be noted that it is primarily derived from other existing international norms and is not applied in isolation, but in conjunction with the broader set of legal norms currently in force, which will be discussed in the next section.

1.2 The Legal and Supralegal Framework for the Protection of People with Disabilities

It is indisputable that people with disabilities are broadly protected by the Brazilian legal system. This is because, in addition to the *Constituição Federal* and the *Estatuto da Pessoa com Deficiência*, the following legal instruments are also in force: *Lei n. 7.853/89*; *Lei n. 8.213/91*; *Decreto n. 3.691/2000*; *Decreto n. 3.956/2001*; *Decreto n. 5.296/2004*; *Decreto n. 5.626/2005*; *Decreto n. 6.949/2009*; and *Decreto n. 9.522/2018* (Brasil, 1989; Brasil, 1991; Brasil, 2000; Brasil, 2001; Brasil, 2004; Brasil, 2005; Brasil, 2009; Brasil, 2018).

Lei n. 7.853/89 addresses support for people with disabilities, their social integration, the creation of the *Coordenadoria Nacional para Integração da Pessoa Portadora de Deficiência* (Corde), the establishment of judicial protection for collective or diffuse interests of this group, defines crimes, and provides other provisions (Brasil, 1989).

Lei n. 8.213/91, in Article 93, establishes that companies with 100 (one hundred) or more employees must allocate 2% to 5% of their job positions to rehabilitated beneficiaries or qualified people with disabilities (Brasil, 1991).

Decreto n. 3.691/2000 regulates *Lei n. 8.899/94*, which addresses the transport of people with disabilities in the interstate collective transport system. It mandates the reservation of two seats for people with disabilities and allows them to access free transportation if they demonstrate financial hardship (Brasil, 2000).

Decreto n. 3.956/2001 promulgates the *Convenção Interamericana*, an international document aimed at preventing and eliminating all forms of discrimination against people with disabilities and ensuring their full inclusion in society. It includes definitions of disability and discrimination for clarification purposes (Brasil, 2001).

Decreto n. 5.626/2005 regulates *Lei n. 10.436/2002*, which addresses the *Língua Brasileira de Sinais* (Libras), and Article 18 of *Lei n. 10.098/2000*, establishing, for instance, Libras as a mandatory subject in the school curriculum (Brasil, 2005).

Decreto n. 5.296/2004 regulates *Leis n. 10.048/2000* and *10.098/2000*, establishing general rules and basic criteria to promote accessibility for people with disabilities or reduced mobility (Brasil, 2004).

Decreto n. 6.949/2009 promulgates the *Convenção Internacional sobre os Direitos das Pessoas com Deficiência* and its Optional Protocol, which served as the foundation for the current *Estatuto da Pessoa com Deficiência* (Brasil, 2009).

Decreto n. 9.522/2018, in turn, promulgates the *Tratado de Marraquexe para Facilitar o Acesso a Obras Publicadas às Pessoas Cegas, com Deficiência Visual ou com Outras Dificuldades para Ter Acesso ao Texto Impresso* (Brasil, 2018).

The international treaties mentioned above were incorporated into the Brazilian legal system in accordance with the approval quorum established in Article 5, §3 of the *Constituição Federal*, thus granting them constitutional amendment status.

The laws and decrees form part of the national legal framework for the protection of people with disabilities, which may also be referred to as the *bloco de constitucionalidade*. According to Padilha (2019, p. 130), the Brazilian *bloco de constitucionalidade* consists of the set of constitutional rules, principles, values, ADCT provisions, Constitutional Amendments, and international treaties with constitutional status that serve as parameters for constitutional review.

Thus, a much broader standard of review is established nationally, as norms endowed with constitutional character—though not necessarily included in the main body of the *Constituição Federal*—are interpreted systematically, that is, in conjunction with one another.

At the international level, Silva (2021, p. 61) highlights that “a Convenção sobre os Direitos das Pessoas com Deficiência constitui-se no mais abrangente e significativo documento internacional

dedicado exclusivamente às pessoas com deficiência." This humanized and socialized perspective is precisely what is missing from the national legislative framework. The latter limits itself to enacting rights, guarantees, and obligations, without addressing the origins of the violations it aims to prevent, nor effectively repressing such violations.

Given all of the above, the question arises: how is it that, despite the existence of broad legal and even constitutional protection—at both the national and international levels—people with disabilities still are not fully integrated into Brazilian society?

1.3 The (In)Dignity of People with Disabilities

All sources consulted and used in the development of this study were analyzed through a constitutional lens. This is because the *Constituição Federal de 1988*, as the supreme law, serves as the foundation of validity for all other norms within the Brazilian legal system (Brasil, 1988).

The constitutional text was pivotal in addressing discrimination against people with disabilities, ensuring their right to health care, access to public assistance, protection and guarantee of their rights, reserved positions in public jobs, and specialized educational services. In other words, it marked a legislative effort to achieve substantive equality, which ultimately led to the enactment of the *Estatuto da Pessoa com Deficiência*, *Lei n. 13.146 de 2015* (Brasil, 1988; Brasil, 2015a).

This statute inherited from the Constitution the intent to ensure dignity for people with disabilities. It introduced a more inclusive concept, defining disability as conditions that may obstruct an individual's full and effective participation in society on an equal basis with others (Brasil, 2015a).

In this sense, the debate surrounding the concept of accessibility is introduced. According to Silva (2021, p. 63), a truly accessible society must ensure not only physical accessibility but also the guarantee of political, social, economic, and cultural rights for people with disabilities. The author further argues that an inclusive society is one that provides the same opportunities for everyone to enjoy, under real and equal conditions, both material and immaterial goods and rights, according to their needs.

The notion of accessibility is therefore closely linked to the concepts of isonomy and, consequently, dignity. The kind of access being discussed and pursued goes far beyond what engineering and architecture can offer. Physical accessibility alone is insufficient. People with disabilities dream of, deserve, and are entitled to much more.

However, the main barrier they face is precisely the one that hinders the realization of legally established rights and guarantees. Socially, people with disabilities remain somewhat invisible, which prevents them from fully enjoying their social and political rights, as well as their individual

guarantees. Despite legal and constitutional provisions regarding isonomy, what is still observed in society is the absence of an isonomic reality.

From the perspective of Ferdinand Lassalle (2006), it can be concluded that the national legal framework, in this scenario, appears to be nothing more than a mere piece of paper, incapable by itself of changing the reality faced by people with disabilities. These individuals are subjected to a diminished form of citizenship, which clearly violates the principle of human dignity, as it deprives them of the full exercise of the prerogatives inherent to a true rights-bearing subject.

As a constitutional principle set forth in Article 1, III, of the *Constituição Federal de 1988*, human dignity should be respected in all areas of society—and especially in those where the notions of society and citizenship are most fragile, such as in prisons (Brasil, 1988).

In this context, ensuring dignity for all, including socially excluded groups, requires bridging the gap between social and legal realities.

This gap exists because both the Brazilian and international legal systems are founded on the premise of the universality of human rights, granting all individuals the same legal status without exception. However, this principle is often challenged by the "real world, marked on a large scale by asymmetrical and unjust power relations rooted in historical dehumanizing discourses" (Bragato, 2016).

Furthermore, it is essential to consider that, according to Débora Diniz, Lívia Barbosa, and Wederson Rufino dos Santos, ensuring a dignified life does not simply mean "the provision of goods and medical services, but also requires the elimination of barriers and the guarantee of a socially accessible environment for bodies with physical, intellectual, or sensory impairments" (Diniz; Barbosa; Santos, 2009).

In other words, the true guarantee of a dignified life for marginalized individuals is directly linked to overcoming all existing barriers, whether tangible or intangible.

However, the logic of coloniality hinders this dismantling of barriers, as it enables the selective violation of human rights, especially in invisible settings such as correctional facilities.

The debate surrounding the daily challenges faced by people with disabilities in societies that continue to disregard the legal provisions mentioned above points to a clear form of social segregation. This segregation becomes even more pronounced when analyzed through the lens of the prison system, which is precisely the focus of this article.

2 THE BRAZILIAN PRISON SYSTEM AND THE DEHUMANIZATION OF INCARCERATED INDIVIDUALS

The Brazilian prison system is a multifaceted subject, frequently analyzed and debated—especially following the adoption of human dignity as one of the foundational principles of the *República Federativa do Brasil*, as expressly stated in Article 1 of the 1988 *Constituição Federal*.

Among the many issues within the prison system, overcrowding stands out as the ignition point for several others. According to data from the *Conselho Nacional do Ministério Público* (CNMP), there are 1,450 prison facilities in Brazil, with a total capacity for 511,679 detainees. However, the actual incarcerated population stands at 687,603, resulting in an occupancy rate of 134.38% (Conselho Nacional do Ministério Público, 2022).

The vulnerability of the Brazilian prison system—exposed by this overcrowding—acts as a catalyst for human rights violations, as it fosters riots, rebellions, and clashes among criminal factions. These situations lead to various forms of violence and clearly reflect the inefficiency and failure of the State in fulfilling one of the central objectives of criminal sanctions: the resocialization of inmates (Pereira, 2017).

As a result, this issue becomes an area in which measures are often adopted—particularly by the Judiciary—with the aim of ensuring that prison conditions align with the principle of human dignity. Therefore, there is a direct relationship with the constitutional principle of isonomy.

In this light, an analysis of the problem through the lens of isonomy leads to the conclusion that the Brazilian prison system demands the application of equitable and preventive treatment against discrimination and, consequently, the promotion of more humane conditions within the prison environment. This is because, under precarious conditions, prisons—as argued by Eugenio Raul Zaffaroni (2001)—become institutions that act as true agents of deterioration, resulting in a pathological process characterized primarily by regression.

Based on these considerations, the explicit constitutional prohibition of inhuman or degrading treatment in the *Constituição da República Federativa do Brasil de 1988* is both justified and understandable, given the historical trajectory of the Brazilian prison system toward the dehumanization of the individual.

2.1 The Reintegration of the Inmate into Social Life as an Objective of Penal Execution

The *Lei de Execução Penal* of 1984, even though enacted prior to the promulgation of the 1988 *Constituição Federal*, already established the objectives of prevention, punishment, and the resocialization of the detainee.

In this context, the research identified the need to distinguish between the terms *ressocialização* and *reintegração*. For a more humane approach, *reintegração* is the more appropriate

term, since it "presupposes communication between the inmate and society, causing not the transformation of the inmate, but the transformation of society, so that it recognizes the problems of incarceration as its own" (Depiere, 2015, p. 53).

In contrast, as also observed by Vanessa Cristina Depiere (2015), *ressocialização* directs the inmate toward passivity, imposing upon them the characterization of "bad" and upon society the characterization of "good," which consequently requires the former to be readjusted to the latter.

The *Lei de Execução Penal* technically uses a term closer to *reintegração*, establishing in its Article 1 that one of its objectives is to provide conditions for harmonious social integration (Brasil, 1984). Thus, the penalties imposed should be guided by humanistic principles that aim at the reintegration of the sentenced individual into social life (Sarue, 2020).

Along the same lines, Article 10 of the same legal text establishes state duty to provide assistance aimed at preventing crime and guiding the return to social coexistence (Brasil, 1984). Therefore, according to Rodrigo Felberg (2015), there is no incompatibility in providing the inmate with humane conditions, environment, and means for personal development, aiming at the ultimate goal of crime prevention.

Thus, as established both by the *Lei de Execução Penal* and the *Constituição da República Federativa do Brasil*, penalties must ensure conditions for inmates that are sufficient for their reintegration into social life.

2.2 Unconstitutional State of Affairs

The so-called *Estado de Coisas Inconstitucional* (Unconstitutional State of Affairs) originated in Colombia through the Colombian Constitutional Court and can "be understood as a legal technique or mechanism created and employed by a constitutional court" (Pereira, 2017). Through this legal mechanism, the Constitutional Court recognizes and declares an unconstitutional situation based on the massive violation of fundamental rights, whether by commissive acts or omissions of different state authorities. These violations are aggravated by the persistent negligence of these authorities and can only be altered through structural changes in the performance of public power (Campos, 2015).

According to Garavito (2009, p. 435), the declaration of the *Estado de Coisas Inconstitucional* arises from cases in which there is: the allegation of numerous people reporting violations of their rights; the involvement of different state entities due to their responsibilities; the implication of complex orders, i.e., judicial determinations to the referred state entities for joint and coordinated action to protect the affected population, not only those who brought the claims.

Thus, the following are identified as prerequisites for the declaration of the *Estado de Coisas Inconstitucional*:

> [...] (i) a context of widespread, continuous, and systemic violations of fundamental rights affecting a significant number of individuals; (ii) the prolonged omission, inertia, and/or persistent and repeated inability of public authorities to change the scenario of ongoing violations in order to guarantee the rights enshrined in law; and (iii) a set of unconstitutional (and unconventional) transgressions that demand the involvement not of a single body, but of a plurality of authorities ("structural transformations"), from which the adoption of a complex and coordinated set of actions is required (Pereira, 2017, p. 178, free translation).

In Brazilian territory, the recognition of the Unconstitutional State of Affairs in Brazilian prisons occurred due to ADPF 347 MC/DF, which requested the acknowledgment of such a legal mechanism, as well as the adoption of structural measures in response to the various human rights violations suffered by inmates, resulting from a series of actions and omissions by state entities.

Consequently, with the recognition of the Unconstitutional State of Affairs of Brazilian prisons, the Supreme Federal Court, in its ruling, understood that the advanced stage of dehumanization of the individual promoted by the prison system cannot be attributed to a single branch of government, but is therefore distributed among the Legislative, Executive, and Judiciary Powers at all levels (Pereira, 2017).

Based on the decision of the Supreme Federal Court, grounded in articles 9.3 of the International Covenant on Civil and Political Rights and 7.5 of the American Convention on Human Rights, judges and courts were mandated to carry out custody hearings (Brasil, 2015a).

Custody hearings aim to verify the legality of the arrest in flagrante delicto and to consider the measures to be taken in the specific case, since the individual's deprivation of liberty, as a precautionary measure, should be used only as a last resort, given that the constitutional principle of presumption of innocence prevails in Brazilian law.

According to Eugenio Pacelli (2016, p. 548), the purpose of such hearings “is to verify possible illegalities related to the arrest itself or to the treatment suffered by the detainee while in police custody,” as well as to enable the accused’s first statement about the event, resulting in the maintenance of the arrest, its release, or even its replacement by other precautionary measures (Oliveira, 2016).

Since the mandatory implementation of custody hearings, according to data from the National Justice Council (CNJ), 1,396,392 hearings have been held, resulting in 3,698 house arrests, 556,532 releases granted, 836,069 preventive arrests, 57,307 sentences for community service, and 104,072 reports of torture and mistreatment (Conselho Nacional de Justiça, 2023).

In 2023 alone, up to October 18, 287,686 hearings were held, resulting in 1,084 house arrests, 113,101 releases granted, 173,454 preventive arrests, 11,314 sentences for community service, and 24,136 reports of torture and mistreatment (CNJ, 2023).

Despite the Supreme Federal Court's recognition of the Unconstitutional State of Affairs, no important precautionary measures were granted to immediately change the inhumane conditions of the Brazilian prison system. However, some measures adopted, such as the implementation of custody hearings, have generated positive effects, considering the reduction in the number of people arrested in flagrante delicto, increased adoption of other precautionary measures, and the exposure of the large volume of previously underreported cases of torture and mistreatment (Pereira, 2017).

Thus, due to the noncompliance with constitutional principles and legal determinations already mentioned, coupled with the normalization of prison precarity, the ruling of the Arguição de Descumprimento de Preceito Fundamental (ADPF) 347 MC/DF recognized the unconstitutional state of affairs of national prison establishments.

This state of affairs confirms that the penitentiary system segregates vulnerable groups in society, among which are people with disabilities, with no evidence that this segregation aims at reintegration of inmates into society but rather at their definitive exclusion.

3 THE PRISON REALITY OFFERED TO PRISONERS WITH DISABILITIES

In a recent speech, Supreme Federal Court (STF) Minister Luís Roberto Barroso (2023) stated that when it is said there is an "estado de coisas inconstitucional" in the Brazilian penitentiary system, "quer-se dizer que não é uma falha pontual e sim uma massiva violação de um conjunto de direitos e cuja superação exige um esforço coletivo e prolongado."

The term "massiva violação de direitos" assumes that not even the most basic rights, which minimally guarantee a dignified life to human beings, such as food and hygiene, are ensured in the Brazilian prison system.

According to Barroso (2023), it is necessary to emphasize that "o preso foi condenado à privação de liberdade. Ele não foi condenado a passar fome, ele não foi condenado a ser violentado, ele não foi condenado a viver em um ambiente fétido." In other words, the imposition of a custodial sentence authorizes the State to restrict the fundamental right of the inmate to freedom of movement but does not legitimize violating other rights inherent to human beings and corollaries of a manifestly dignified life.

Precisely for this reason, the Federal Constitution provides in its article 5°, XLVII, that in Brazil the application of the death penalty is prohibited, except in the case of declared war; perpetual

penalties; forced labor; banishment; and cruel punishments (Brasil, 1988). In this sense, it can be considered that the reality experienced by incarcerated people in Brazil constitutes a true affront to constitutional provisions that clearly prohibit cruelty and arbitrary violations of rights.

It also represents an evident affront to the very objectives of punishment, inscribed in article 10 of the Lei de Execução Penal, according to which "a assistência ao preso e ao internado é dever do Estado, objetivando prevenir o crime e orientar o retorno à convivência em sociedade" (Brasil, 1984).

More than merely punishing the transgression committed, the sentence should have as its main objective enabling the offender to return to social life. Barroso (2023) highlights that people who enter the penitentiary system are individuals who at some point came into conflict with the law, and precisely for this reason, the system should help them find themselves again, not lose themselves definitively.

The study of data related to the Brazilian prison population profile, provided by the Conselho Nacional do Ministério Público, reveals social vulnerability as one of the main common characteristics among inmates.

Social vulnerability, beyond financial issues, mainly concerns the lack of educational and professional qualifications. Precisely for this reason, one of the main ways to reduce prison sentences in Brazil — that is, to obtain gradual sentence remission — is through studying and working within the penitentiary environment.

Such sentence remission represents a practical application of the social reintegration objective attributed to criminal sanctions. This is because study and work enable inmates to develop activities that are socially considered lawful and remunerated, which perhaps were not accessible to them before incarceration.

In general, the Brazilian prison environment, as currently established, relegates inmates to the challenge of surviving under undignified conditions and, consequently, fosters criminal recidivism, turning crime into an endless vicious cycle, precisely because the effectiveness of projects aimed at resocialization is manifestly insignificant.

In this context, one questions: how does the Brazilian prison system intend to resocialize people while treating them in an inhumane way? And further: how is it possible to resocialize someone who, even before incarceration, was not fully socialized?

3.1 Alternatives for Serving Custodial Sentences by Persons with Disabilities

Regarding persons with disabilities, a clear social segregation is observed, which is not limited to the mere existence of physical barriers. In fact, it goes much further, relegating these individuals to the exercise of a mitigated citizenship, which directly impacts the main principle enunciated by the Constitution of the Federative Republic of Brazil, namely the dignity of the human person.

The social segregation imposed on this group of people becomes even more pronounced when analyzed from the prison perspective, since, as recognized by ADPF 347 MC/DF, the penitentiary establishments themselves already segregate vulnerable groups of society, keeping them permanently separated, given that the conditions therein do not demonstrate a search for their integration into society (Brasil, 2015b).

According to data provided by the Conselho Nacional do Ministério Público, referring to the year 2022, the Brazilian prison system houses approximately 644,480 inmates, among whom 12,723 have some type of disability, whether physical or mental, representing approximately 1.97% of the total (Conselho Nacional do Ministério Público, 2022).

The Lei de Execução Penal, as well as the entire legal-penal framework, aims at the punishment and prevention of crime, as well as the reintegration of the sentenced individual into society.

In this interim, one of the main principles established by the Brazilian Democratic State of Law must be highlighted, known as *ne bis in idem*. According to André Estefam (2022, p. 180), "o princípio do ne bis in idem veda a dupla incriminação. Por isso, ninguém pode ser processado ou condenado mais de uma vez pelo mesmo fato."

This principle objectively ensures that a person cannot be punished more than once for the same fact, aiming to guarantee a just punishment. Its applicability also extends to the sentencing process, preventing sentence increases derived from the recognition of qualifying circumstances that correspond to elements of the criminal type, for example.

In this regard, it is worth highlighting the Resolution of November 22, 2018, by the Inter-American Court of Human Rights, which prohibited the admission of new prisoners into the Instituto Penal Plácido de Sá Carvalho, in the Bangu Penitentiary Complex, located in the West Zone of Rio de Janeiro, due to overcrowding and blatant violations of the fundamental rights of inmates detained there (Corte Interamericana de Direitos Humanos, 2018).

As a way to mitigate the referred situation, the Court determined that the sentences of the inmates should be counted double, except for those who committed crimes against life, against physical integrity, or sexual crimes (Corte Interamericana de Direitos Humanos, 2018).

The double counting of the sentence due to the conditions of the prison environment can be considered intrinsically linked to the prohibition of *bis in idem*, since the prison conditions themselves already configure a kind of double punishment, which is manifestly contrary to the principle established.

Following the central idea of the mentioned principle, linked to the decision of the Inter-American Court of Human Rights, in 2021, the Superior Court of Justice confirmed a monocratic decision issued by Minister Reynaldo Soares da Fonseca, which granted a habeas corpus order so that the sentence of an inmate held at the Instituto Penal Plácido de Sá Carvalho could be counted double (Brasil, 2021).

One of the main controversies faced by the decision was the determination of the date that should be considered as the start of the sentence computation and, consequently, its double counting.

On the one hand, the Court of Justice of Rio de Janeiro understood that the starting point should be the notification date of the country regarding the resolution, since the latter does not have a specific forecast; after the monocratic decision, the Public Ministry of Rio de Janeiro argued that the decision of the Inter-American Court of Human Rights has a "nature of a provisional precautionary measure," consequently preventing its retroactive effect (Brasil, 2021).

The monocratic decision and the ruling issued by the Fifth Panel of the STJ invoked human rights principles and international law foundations, highlighting the need for individual protection as well as recognizing Brazil's submission to international norms, since it is a signatory country of the Pact of San José, Costa Rica.

This submission was used as the basis by Minister Reynaldo Soares da Fonseca both in his monocratic decision and in his vote, as follows:

> As of Decree No. 4.463, issued in November 2002, Brazil submitted itself to the contentious jurisdiction of the Inter-American Court of Human Rights (IACtHR) and began to appear as the respondent in international claims, which resulted in obligations to implement domestic adjustments to ensure its norms would conform to the American Convention on Human Rights (Brasil, 2021, Free translation).

In his vote, the Minister stated that the country's submission to the jurisdiction of the Inter-American Court of Human Rights "expands the range of people's rights and the dialogue with the international community. Thus, Brazilian jurisdiction, by relying on international cooperation, can broaden the effectiveness of human rights" (Brasil, 2021). Finally, he concluded:

> In the same vein, public authorities - including the judiciary - must exercise the control of conventionality, taking into account the effects of international legal provisions and adapting their internal structures to ensure full compliance with their obligations before the

> international community, given that signatory States are guardians of human rights protection and must apply the interpretation most favorable to the individual (Brasil, 2021, Free translation).

This ruling holds a historic character, both in the defense of human rights and in guaranteeing the humanization of the incarcerated individual, but especially since the protagonist is an organ of the Brazilian Judiciary. The reasoning employed, particularly the invocation of fundamental human rights principles as well as the necessity of utilizing international law, aligns with the evident omission and lack of coercion by the Brazilian State – more specifically, by the executive and legislative branches—regarding the regulation of the criminal justice sphere.

As already stated, there are norms and principles within Brazilian law aimed at a just and effective punishment, seeking the reintegration of the individual into society, the prevention of new crimes, and the protection of human rights, ensuring that inmates' physical and moral integrity is respected.

However, according to data from the Public Prosecutor's Office and the National Council of Justice, the Brazilian prison system is in a flagrant state of degradation and neglect. Thus, imprisonment ends up having as its sole objective the segregation of the individual from society, contradicting all legislation drafted to prevent such an outcome.

The degrading conditions to which the individual is subjected upon entry into the Brazilian prison system are exacerbated for those with disabilities, since overcrowding and the lack of minimum conditions to ensure physical and moral protection are aggravated by their specific condition.

As previously stated, the precarious conditions of the Brazilian penitentiary system have the potential to constitute double punishment, in violation of the principle of *ne bis in idem*. In this regard, Bill No. 5,372/2016, authored by Congressman Carlos Bezerra of PMDB/MT, was drafted, which has the following summary:

> Amends Article 126 of Law No. 7,210, of July 11, 1984 (Law of Criminal Enforcement), to allow convicted persons with disabilities to reduce part of their sentence time when serving it in a correctional facility lacking accessibility, and provides other measures (Brasil, 2016, Free translation).

It is known that the *Lei de Execução Penal* has as its objectives: punishment, the prevention of new crimes, and the reintegration of the individual. In this sense, aiming at effective legal compliance, the previously mentioned Bill proposes sentence remission when the prison facility lacks

accessibility. It is based on the idea that subjecting a person with a disability to an already dilapidated location, which is not equipped to ensure the sentence is served under equal conditions compared to others, is intrinsically linked to the concept of double punishment already explained.

The text approved by the Committee for the Defense of the Rights of Persons with Disabilities of the Chamber of Deputies also introduced the possibility of house arrest under an open regime for persons with disabilities. This bill is currently under review by the Committee on Public Security and Combating Organized Crime.

Along similar lines, there is Bill No. 4,008/2019, authored by Senator Mara Gabrilli of PSDB/SP, currently awaiting the assignment of a rapporteur, which establishes that "*a pessoa com deficiência cumprirá pena em estabelecimento penal adaptado à sua condição peculiar*" (Brasil, 2019). This bill provides for the creation of facilities adapted to the conditions of convicted individuals with disabilities, and aims to ensure that funding for the adaptation of prison units is supplied by the *Fundo Penitenciário Nacional – Fupen* (Brasil, 2019).

Both bills share the same goal: to promote fair punishment and effectively reintegrate the individual into society, without violating their physical and moral integrity or characterizing the sentence as a form of double punishment—thus preventing the further segregation of persons with disabilities from society.

However, despite the existence of a broad array of norms and principles aimed at humanizing inmates, protecting human rights, and reintegrating individuals into society, a critical issue remains—namely, legislative omission, exemplified by the stagnation of bills concerning the rights of persons with disabilities.

Beyond the existence of the referred extensive legal framework and its evident lack of enforcement, it is also worth mentioning the publication of a booklet by SENAPPEN (*Secretaria Nacional de Políticas Penais*) in partnership with the United Nations Development Programme (UNDP), which outlines procedures for the custody of persons with disabilities in the prison system (Brasil, 2022).

This booklet is grounded in the guarantee of human rights, the principles of equality and non-discrimination, and considers the specificities of persons with disabilities, as does Technical Note No. 83 from the *Departamento Penitenciário Nacional* (DEPEN).

The aforementioned note is based on "*a necessidade de cumprimento de procedimentos apropriados e de rotinas transformadoras do sistema prisional em ambientes adequados para o processo de ressocialização e de trabalho para a (re)integração do cidadão preso à sociedade*" (Brasil, 2020).

It establishes that inmates with some form of disability should initially undergo a screening process that leads to their placement in accessible cells or cells with reasonable accommodation (Brasil, 2020). However, according to Júlia Ferraresi Tietz (2021), an environment marked by physical and social violence and the scarcity of basic supplies is incapable of offering all that is proposed, failing to adequately care not only for inmates with disabilities but for the prison population.

Although the issuance of the technical norm in question is commendable, it is concluded that simply adapting cells is insufficient to meet all the mobility and communication needs of inmates with disabilities.

Furthermore, it is concluded that granting inmates with disabilities the possibility of reducing their sentence time when serving it in facilities without accessibility – or even allowing them to serve it under house arrest – may socially create the illusion of impunity and, in addition, shift the State's duty to provide appropriate environments.

It is also worth emphasizing that adapting existing prison facilities is extremely difficult to accomplish, mainly due to overcrowding, which is already a prevailing issue. In this sense, the proposal of Bill No. 4,008/2019 appears more reasonable, as it is based on the creation of facilities fully adapted to the conditions of inmates with disabilities.

One could also consider the possibility of building a prison unit capable of receiving both people with disabilities and those without, to avoid the segregation of the former from the latter.

The entire discussion presented here reveals a reality that is difficult to achieve, since the situation of people with disabilities is, to a certain extent, rendered invisible even when they are free—let alone when they are confined in what is considered the pinnacle of social segregation.

4 CONCLUSION

It is therefore concluded that the Brazilian prison system is incapable of rehabilitating individuals while treating them in an inhumane manner and disregarding legal provisions. Moreover, such a situation cannot be remedied without the joint efforts of the officials responsible for the Public Authority, precisely because the massive violation of human rights – representative of the *estado de coisas inconstitucional* – is the responsibility of the system, according to the Brazilian Federal Supreme Court (STF).

As already stated, one of the main objectives of penal execution is to reintegrate the convicted individual into society. For this reason, the system includes mechanisms such as sentence

reduction through education and labor, and the possibility of regime progression—from the most to the least severe.

It becomes evident that the lack of governmental initiative hinders not only the provision of decent living conditions within prison facilities but also the availability of the very means for social reintegration. The justifications presented almost always boil down to a lack of resources. However, the State's inertia can be held accountable for the absence of planning and even for a lack of genuine interest in solving a problem whose roots run much deeper.

An analysis of the profile of incarcerated individuals in Brazil shows that most of them were not fully socialized even before being imprisoned. In the case of people with disabilities, for example, we speak of an experience of mitigated citizenship, since socially, these individuals face daily barriers that prevent them from moving freely, studying, and working under the same conditions as others, among other things.

Once placed in the prison environment, these barriers are evidently amplified, preventing access even to the most basic rights of survival inherent to the dignity of the human person. It is clear, therefore, that the lack of adaptation in prison units constitutes a form of violence against the very existence of the inmate with a disability, as the lack of accessibility entails deprivation of liberty combined with restrictions on mobility and socialization.

Prison, therefore, exacerbates the marginalization experienced by people with disabilities, hindering not only the full exercise of citizenship but, more importantly, the realization of the right to a dignified life, which is inherent to the human person, regardless of whether it is codified.

According to Debora Diniz, Lívia Barbosa, and Wederson Rufino dos Santos, "*a desvantagem social vivenciada pelas pessoas com deficiência não é uma sentença da natureza, mas o resultado de um movimento discursivo da cultura da normalidade, que descreve os impedimentos corporais como abjetos à vida social*." (Diniz; Barbosa; Santos, 2009).

Thus, the barriers imposed on people with disabilities do not stem from their own existence; rather, they originate from discriminatory social constructions that propel and justify their exclusion process as a logical consequence of coloniality.

Precisely for this reason, it is concluded that the struggle of this social group for the guarantee of rights must not aim solely at the drafting of new laws, but rather at the reformulation of the prevailing social model, since the maintenance of the *status quo* is one of the main obstacles to recognizing disability as a matter of justice, human rights, and the promotion of equality.

Finally, it is concluded that the treatment of people with disabilities by society—and more critically, within the context of the Brazilian penal execution system—constitutes a true affront to

their very existence. This affront has repercussions not only during the period of incarceration but especially afterward, when, in theory, they should be fully reintegrated into the social environment—a space to which they have historically never been properly integrated.

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ANALYSIS OF LAW 9.985/2000 AND ENVIRONMENTAL PRESERVATION: THE CASE OF CHAPADA DOS VEADEIROS

ANÁLISE DA LEI 9.985/2000 E A PRESERVAÇÃO DO MEIO AMBIENTE: O CASO DA CHAPADA DOS VEADEIROS

ANÁLISIS DE LA LEY 9.985/2000 Y LA PRESERVACIÓN DEL MEDIO AMBIENTE: EL CASO DE LA CHAPADA DOS VEADEIROS

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ABSTRACT

Recognized as one of Brazil's most significant areas for environmental conservation, Chapada dos Veadeiros, located in the state of Goiás, exemplifies the effectiveness of Brazilian environmental legislation in protecting unique ecosystems rich in biodiversity. This article aims to examine the application of Law No. 9,985/2000, which established the National System of Nature Conservation Units (SNUC), in Chapada dos Veadeiros, with the goal of understanding the impacts of sustainable development in the region and the role of environmental preservation in areas requiring protection. To this end, the study addresses legislative proposals for regulating preservation zones in Chapada dos Veadeiros and the challenges posed by agricultural pressure, tourism, and conflicts of interest following the implementation of the SNUC. Ultimately, the findings reveal that conservation measures for the Cerrado biome, such as the establishment of national parks and reserves, despite various challenges, have significantly contributed to local environmental preservation.

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Keywords: Environmental Preservation. Law 9.985/2000. Chapada dos Veadeiros.

RESUMO

Considerada uma das áreas mais importantes de conservação ambiental no Brasil, a Chapada dos Veadeiros, localizada no estado de Goiás, é um exemplo de como a legislação ambiental brasileira pode ser efetiva na proteção de ecossistemas únicos e ricos em biodiversidade. Diante disso, o presente artigo teve como objetivo analisar a aplicação da Lei n.º 9.985/2000, que institui o Sistema Nacional de Unidades de Conservação da Natureza (SNUC) na Chapada dos Veadeiros, a fim de compreender os efeitos do desenvolvimento sustentável na região e a função da preservação ambiental nas áreas que carecem de proteção e preservação. Para tanto, discutiram-se os projetos de lei de regulamentação das zonas de preservação da Chapada dos Veadeiros e os problemas enfrentados com a pressão agrícola, turismo e conflitos de interesse a partir da implementação do SNUC. Por fim, como resultado, verificou-se que as medidas adotadas para conservação do bioma do Cerrado, como a criação de parques nacionais e reservas, mesmo com os desafios, têm contribuído significativamente para a preservação ambiental local.

Palavras-chave: Preservação Ambiental. Lei 9.985/2000. Chapada dos Veadeiros.

RESUMEN

Considerada una de las áreas más importantes de conservación ambiental en Brasil, la Chapada dos Veadeiros, ubicada en el estado de Goiás, es un ejemplo de cómo la legislación ambiental brasileña puede ser efectiva en la protección de ecosistemas únicos y ricos en biodiversidad. Ante esto, el presente artículo tuvo como objetivo analizar la aplicación de la Lei n.º 9.985/2000, que instituye el Sistema Nacional de Unidades de Conservación de la Naturaleza (SNUC), en la Chapada dos Veadeiros, con el fin de comprender los efectos del desarrollo sostenible en la región y el papel de la preservación ambiental en las áreas que carecen de protección y conservación. Para ello, se discutieron los proyectos de ley de regulación de las zonas de preservación de la Chapada dos Veadeiros y los problemas enfrentados con la presión agrícola, el turismo y los conflictos de interés a partir de la implementación del SNUC. Finalmente, como resultado, se verificó que las medidas adoptadas para la conservación del bioma del Cerrado, como la creación de parques nacionales y reservas, incluso con los desafíos, han contribuido significativamente a la preservación ambiental local.

Palabras clave: Preservación Ambiental. Lei 9.985/2000. Chapada dos Veadeiros.

INTRODUCTION

Environmental preservation is an issue of global importance, especially in regions of great biodiversity and environmental sensitivity, such as Chapada dos Veadeiros. This area stands out for its ecological relevance, hosting unique ecosystems of the Cerrado biome. The enactment of Law No. 9,985/2000, which establishes the National System of Conservation Units, emerges as an essential instrument in safeguarding these precious natural resources.

The Brazilian Cerrado is the second largest biome in the country and the most biodiverse savanna in the world. Its original area covered approximately 2,045,064 km², which corresponds to approximately 24% of the national territory (IBGE, 2019). The biome extends across 11 states, predominantly in Minas Gerais, Goiás, Tocantins, Mato Grosso, Mato Grosso do Sul, Bahia, Maranhão, Piauí, São Paulo, and the Federal District, and faces several threats that compromise the integrity of the ecosystem. Among these challenges, the expansion of agricultural and livestock activities stands out, especially the production of grains such as soybeans. These practices are identified as the main drivers of deforestation in the region, contributing considerably to habitat loss and environmental degradation (Strassburg et al., 2017). Ferreira and Lin (2021) indicate that about half of the original Cerrado area has already been converted to planted pastures, annual crops, and other uses related to agriculture and livestock.

The devastation of the Cerrado compromises the preservation of endemic species, jeopardizes the region's water security, and contributes to the intensification of climate change. In addition, the loss of native vegetation cover is closely associated with increased illegal deforestation, habitat fragmentation, and increased pressure on protected areas.

Given this worrying situation, there is a clear and urgent need for effective measures to curb the advance of deforestation and promote the conservation of the Cerrado in Chapada dos Veadeiros. In this context, the enforcement and strengthening of environmental legislation becomes important. However, it is necessary to recognize that the effectiveness of these regulations is often compromised by a lack of enforcement and by political and economic pressure exerted by sectors interested in the uncontrolled exploitation of natural resources.

Therefore, the main objective of this article is to analyze Law No. 9,985/2000 and its importance in Chapada dos Veadeiros. Its specific objectives are to analyze the
sustainable development, highlighting the environmental preservation function of conservation areas, as well as discussing the importance of Chapada dos Veadeiros for the Cerrado biome, discussing bills to regulate conservation areas.

To this end, a literature review was conducted as a fundamental step, which consisted of searching, selecting, and critically analyzing previously published materials on the topic in databases such as the Coordination for the Improvement of Higher Education Personnel (CAPES), Virtual Library Network (RVBI), and sources such as the Legal Advisor (CONJU) and the Senate website to find scientific articles, books, theses, dissertations, technical reports, and legislation. The readings provided an understanding of the current state of knowledge about the main threats facing the region, as well as the environmental laws relevant to its preservation.

1 IMPORTANCE OF THE CERRADO AND THE CHAPADA DOS VEADEIROS

The Cerrado, classified as the second largest Brazilian biome, is recognized for its vast biodiversity and ecological richness, being important both in the environmental and economic context of the country. This region, characterized by unique vegetation that mixes savannas, shrubs, and grasses, is home to an impressive variety of flora and fauna species, many of which are endemic. Its importance transcends simple natural wealth; the Cerrado is essential for maintaining water resources, mitigating climate change, and promoting sustainable agriculture. (Silva; Araújo, 2023).

One of the main attributes of the Cerrado is its role as the cradle of waters. The biome is home to important springs that feed rivers that are important for water supply in several regions of Brazil, including river basins that support large urban centers and agricultural activities. The vegetation of the Cerrado acts as a water regulator, contributing to the recharge of aquifers and the prevention of soil erosion. With climate change and increased demand for water, the conservation of this biome becomes even more relevant. (Silva; Araújo, 2023).

In addition to its ecological functions, the Cerrado is an important economic area. Its vast expanse of land is used for agriculture and livestock farming, and it is one of the regions that contributes most to grain production in Brazil, such as soybeans and corn. However, this economic exploitation must be carried out in a sustainable manner to prevent environmental degradation and biodiversity loss. The development of sustainable agricultural practices is essential to balance production and preservation, ensuring that future generations can enjoy the natural resources of the Cerrado. (Vilarinho, 2023).

The Cerrado plays a significant role in mitigating climate change. Native vegetation sequesters carbon, contributing to the reduction of greenhouse gases in the atmosphere. The preservation of this biome is therefore a fundamental strategy in the fight against climate change and in promoting a sustainable future. The degradation of the Cerrado, resulting from deforestation and unsustainable agricultural practices, not only compromises local biodiversity, but also exacerbates environmental problems on a global scale. (Andrade; Souza; Almeida, 2020).

Thus, the importance of the Cerrado extends to its cultural and social relevance. Traditional communities, such as indigenous peoples and quilombolas, depend on this biome for their subsistence and the maintenance of their cultural practices. The value of the Cerrado goes beyond environmental conservation, as it also involves recognizing and respecting the practices and knowledge of these communities, which have historically lived in harmony with the environment. (Vilarinho, 2023).

1.1 Chapada dos Veadeiros National Park and the main environmental threats facing the Cerrado

The history of Chapada dos Veadeiros National Park dates to the 18th century, around 1750, when the region began to be populated with the establishment of the Veadeiros Farm by Mr. Francisco de Almeida. At that time, activities such as cattle ranching and the cultivation of wheat and coffee emerged on a small scale.

At the end of the 19th century, in 1892, the Central Plateau Exploration Commission, led by astronomer Luís Cruls, conducted expeditions through the plateau and surrounding areas with the aim of delimiting and surveying the area that would later become the capital of Brazil. (Andrade; Souza; Almeida, 2020).

The region was established in 1961 and is characterized as a natural gem covering a vast area of approximately 240,611 hectares, located in the Cerrado biome. It is home to incomparable riches: varied plant formations, hundreds of springs, and watercourses, as well as rock formations over a billion years old, giving the landscape a unique beauty that changes with the seasons. In addition, the Park preserves traces of ancient mining activities, an integral part of local history. (Andrade; Souza; Almeida, 2020).

Recognized as a UNESCO World Natural Heritage Site in 2001, Chapada dos Veadeiros National Park's primary objectives are the preservation of biodiversity and geodiversity, combined with the promotion of scientific research, environmental education, and public visitation. Among the activities most enjoyed by visitors are hiking and waterfall bathing, providing an immersion in the vast landscapes of Chapada and a journey through the rich Cerrado biome, following ancient paths once traveled by prospectors. (Parque Nacional da Chapada dos Veadeiros, 2025).

In terms of hydrography, Chapada dos Veadeiros is important as a drainage dispersal center, marked by the presence of rivers that carve V-shaped valleys. The Preto River stands out as the main watercourse in the region, a tributary of the Tocantins River, which forms several waterfalls along its course, with highlights being falls with heights of 80 and 120 meters. (Silva; Araújo, 2023).

About 50 animal species have been classified as rare, endemic, or endangered in the area, while 1,476 plant species have been identified, out of a total of 6,429 existing in the Cerrado biome. Among the most prominent plant species are the red earth tree, the wild cashew tree, the purple ipê tree, the copaiba tree, and the buriti palm, among others. As for fauna, mammals such as the marsh deer, pampas deer, jaguar, and maned wolf stand out, as well as birds such as the rhea, king vulture, and hawk. (Silva; Araújo, 2023).

In the economic context, tourism plays a significant role, with access to the park made possible by the village of São Jorge, connected to the city of Alto Paraíso de Goiás (Figure 1). The

main tourist attractions include the Preto River waterfalls, the Moon Valley, the Almécegas Waterfalls, Raizama, the hot springs, and the Abismo Waterfall, providing unique experiences of contact with nature and adventure. Managed by the Chico Mendes Institute for Biodiversity Conservation (ICMBio), the unit is recognized as a regional reference in scientific research, environmental education, and public visitation. (Ribeiro; Franco, 2020).

Figure 1. Chapada dos Veadeiros National Park Coordination, Communication ICMBio.

Fonte: Google Maps, 2025.

The Cerrado, one of the richest biomes on the planet (MMA, 2007), faces a series of threats that compromise its ecological integrity and pose a significant challenge to its preservation. The main cause of these threats is the expansion of agribusiness over native vegetation, which has led to large-scale deforestation and habitat fragmentation. (Vilarinho, 2023).

Deforestation in Chapada dos Veadeiros, an area of extreme ecological importance in the Cerrado biome, has significant impacts not only on the soil but also on the region's water availability. The removal of native vegetation and soil compaction, often caused by the use of agricultural machinery and livestock farming, result in erosion processes that reduce the soil's water infiltration capacity.

This, in turn, intensifies surface runoff and sediment transport, compromising the quality of water resources and the sustainability of local ecosystems. In addition to environmental damage, deforestation directly affects traditional communities that depend on the Cerrado for their livelihoods,

such as indigenous peoples, riverine communities, and quilombolas, highlighting the interconnection between environmental conservation and social well-being in Chapada dos Veadeiros. (Vilarinho, 2023).

The data reveal an alarming scenario: from 2001 to 2019, more than 283,000 km² of the Cerrado were deforested, with the states of Tocantins, Maranhão, Mato Grosso, and Bahia accounting for more than 70% of deforestation during this period. The expansion of agribusiness, with grain cultivation and livestock farming, is identified as the main cause of this deforestation, with half of the original Cerrado area converted into pastures and agricultural areas. (Maboni, 2021)

Forest fires in the Cerrado Biome, whether caused by natural or anthropogenic factors, represent one of the main threats to protected areas, causing serious impacts on the environment, the economy, and society. These events result in the destruction of ecosystems, loss of biodiversity, and degradation of essential natural resources, in addition to generating significant economic losses and risks to the health and safety of local populations (Silva et al., 2024).

Deforestation of the Cerrado has profoundly affected Chapada dos Veadeiros. Although the protected area of the park functions as a refuge for biodiversity, the advance of deforestation around the park has considerable environmental, social, and ecological impacts. One example is ecological isolation (edge effect), in which deforestation in areas neighboring Chapada dos Veadeiros National Park creates a kind of island of native vegetation surrounded by monocultures, pastures, and degraded areas. This ecological isolation compromises the gene flow of animal and plant species; the migration of wildlife (such as jaguars, maned wolves, and migratory birds); and the balance of ecosystem services such as pollination, seed dispersal, and biological pest control (Fernandes, Castro, Amorin et al, 2023).

Chapada dos Veadeiros is considered one of the main water recharge areas in the Cerrado, with numerous streams, springs, and rivers. Deforestation in the surrounding area negatively affects the volume and quality of river water (Rio Preto, Tocantins, Paranã), the soil's ability to recharge aquifers, and promotes soil erosion and silting of watercourses (Fernandes, Castro; Amorin et al, 2023).

In this regard, in 2019, almost 1.5 million fires were detected in the Cerrado, with disastrous consequences for biodiversity and environmental balance. In 2021, 73 fires were recorded in the Chapada dos Veadeiros National Park alone, the highest number since 2017. These fires, often deliberately started to clear land or as a form of soil management, have devastating consequences for biodiversity and contribute to the degradation of the Cerrado ecosystem (Silva; Araújo, 2023).

The replacement of native vegetation with pastures and agricultural crops favors the spread of forest fires, which can reach the interior of the park, especially during dry seasons; affecting

endemic and fire-sensitive fauna, which disrupts the natural cycle of the Cerrado, which is adapted to periodic fires but not to uncontrolled fires (Silva; Araújo, 2023).

In addition to deforestation and burning, other human activities, such as the installation of hydroelectric plants, hunting and trapping of animals, urban expansion, mining, and predatory extraction of flora species, also put pressure on the biome (MMA, 2007). These activities result in habitat loss, decreased biodiversity, and degradation of natural resources, affecting not only fauna and flora, but also local communities and indigenous peoples in Chapada dos Veadeiros who depend on the Cerrado for their subsistence and preservation of their culture (Ataíde, 2024).

The Chapada is home to a significant sociocultural diversity formed by traditional communities, quilombolas, and indigenous peoples. Among the best-known groups are the Kalunga, a remnant quilombo community composed of about 39 communities distributed in the municipalities of Cavalcante, Monte Alegre de Goiás, and Teresina de Goiás. Occupying an area of approximately 262,000 hectares, the Kalunga preserve ancestral practices of cultivation, extractivism, and sustainable management of the Cerrado. Their territory is considered an important stronghold of biodiversity, with more than 80% of the native vegetation preserved, in addition to hundreds of cataloged springs (Fiocruz, 2023).

In addition to the Kalunga, the Chapada is home to representatives of various indigenous peoples through the so-called Multiethnic Village, located near Alto Paraíso de Goiás. In this space, cultural encounters and immersion experiences take place with ethnic groups such as the Kayapó, Krahô, Guarani Mbyá, Fulni-ô, Kariri Xocó, Xavante, Yanomami, and representatives of the Upper Xingu (Fiocruz, 2025).

Another traditional group present in the region are the so-called chapadeiros, local populations recognized by the National Policy for the Sustainable Development of Traditional Peoples and Communities (PNPCT). These communities maintain ways of life based on family farming, sustainable use of natural resources, syncretic religious practices, and preservation of dialects and customs inherited from previous generations. Although little studied, they play an essential role in environmental conservation and the transmission of ecological knowledge about the Cerrado.

In addition, charcoal production, eucalyptus and pine monocultures, and real estate speculation also contribute to the degradation of the Cerrado, causing significant socio-environmental impacts and compromising the quality of life of local populations. Burning, which is part of the natural ecology of the Cerrado, has become a tool for soil management and a method for clearing land, but it often gets out of control and causes irreparable damage to the biome (Silva; Araújo, 2023).

The expansion of illegal construction in the Chapada dos Veadeiros region has intensified, as evidenced by the recent operation carried out by the Goiás Public Prosecutor's Office (MPGO) in Cavalcante, where more than 100 irregular plots were fined. During the 2024 inspection, developments without environmental licenses were identified, including a luxury resort and three inns, in addition to serious environmental violations, such as deforestation and contamination of water resources (ICMBio, 2024).

These illegal practices, motivated by growing interest in the region's natural attractions, not only degrade the environment but also create legal and economic risks for both sellers and buyers. The actions of the MPGO, in conjunction with environmental and safety agencies, resulted in fines exceeding R$ 500,000.00 (five hundred thousand reais) and the embargo of irregular construction projects, highlighting the urgent need for regulation and awareness to preserve the natural heritage of Chapada dos Veadeiros (Feitosa, 2024).

2 ANALYSES OF LAW 9.985/2000 AND ENVIRONMENTAL PRESERVATION: THE CASE OF CHAPADA DOS VEADEIROS

Law 9.985/2000, which establishes the National System of Nature Conservation Units (SNUC), represents a significant legal milestone for environmental protection in Brazil. This legislation aims to regulate Article 225 of the Federal Constitution, establishing criteria and standards for the creation, implementation, and management of conservation units, which are essential for the preservation of ecosystems and biodiversity.

Chapada dos Veadeiros, located in the state of Goiás, is an emblematic example of the application of this law, demonstrating how conservation policies can be implemented and the challenges faced in protecting natural areas of great importance (Alvares, 2024).

Chapada dos Veadeiros, considered a Natural Heritage Site by UNESCO, is protected by several categories of conservation units that are part of the SNUC. The definition of “conservation unit” (Art. 2, I) as a legally established territorial space for conservation with defined boundaries is reflected in the management of Chapada.

This area is composed of the Chapada dos Veadeiros National Park, which falls under the category of integral protection, according to art. 2, VI, which implies the maintenance of ecosystems free from changes caused by human interference. The management of these units aims to ensure the long-term preservation of habitats and ecosystems, preventing the simplification of natural systems, as described in art. 2, V (Brazil, 2000).

Law 9.985/2000 also emphasizes the concept of “in situ conservation” (Article 2, VII), which is fundamental for Chapada dos Veadeiros, given that the conservation of ecosystems and the

maintenance of viable populations of species in their natural habitats are important for environmental sustainability. Proper management (Article 2, VIII) and sustainable use (Article 2, XI) are essential practices for balancing preservation with human development in the region, especially in the buffer zones and ecological corridors surrounding the park (Article 2, XVIII and XIX) (Silva et al., 2024).

However, the enforcement of Law 9.985/2000 faces significant challenges in Chapada dos Veadeiros, especially about the management of external pressures, such as the advance of agriculture, the expansion of tourism, and mining.

2.2 From the national system of nature conservation units (SNUC)

Chapada dos Veadeiros, an area of environmental, geological, and cultural importance, is a clear example of how the SNUC contributes to the protection of sensitive ecosystems. The objectives of the SNUC, such as the preservation and restoration of the diversity of natural ecosystems (Art. 4, III), and the protection of natural landscapes of outstanding scenic beauty (Art. 4, VI), are directly applicable to the management of Chapada, where scenic beauty and biodiversity are determining factors for its conservation (Lima and Franco, 2024).

In addition, Law 9.985/2000 provides essential guidelines for the effective management of conservation units, including the participation of society and local populations in the creation and management of these units (Art. 5, II and III). In Chapada dos Veadeiros, this participation is fundamental, as interaction between the local community and environmental authorities ensures that economic and social needs are considered in the preservation process. The economic sustainability of conservation units (Art. 5, VI) is another vital aspect, especially in areas such as Chapada, where ecotourism is an important source of income for the local population (Alvares, 2024).

2.3 Categorizations, creation, implementation, and management

Chapter III of Law 9.985/2000 is fundamental to the structuring of the SNUC, establishing a detailed classification of conservation units based on their objectives and levels of human intervention. Integral Protection Units, which include categories such as Ecological Stations, Biological Reserves, National Parks, Natural Monuments, and Wildlife Refuges, are designed to preserve nature with minimal human interference. These units aim to protect ecosystems and species in their natural states, allowing only indirect and regulated uses of resources. Restrictions on public visitation and limitations on environmental changes ensure that the areas maintain their ecological integrity, which is essential for the preservation of biodiversity and the conduct of scientific research (Alvares, 2024).

On the other hand, Sustainable Use Units, such as Environmental Protection Areas, National Forests, and Extractive Reserves, seek to balance conservation with the sustainable use of natural resources. These categories allow for some degree of occupation and use of resources, provided that the principles of sustainability and conservation are respected. The management of these units is designed to support traditional and sustainable practices, integrate local populations, and ensure the protection of natural resources while promoting harmonious coexistence between conservation and development. The diversity in categories and objectives reflects the need for strategies adapted to the varied characteristics of Brazilian ecosystems and social demands, promoting a conservation model that is both effective and fair (Rego et al., 2021).

Chapter IV of this Law outlines the procedures for the creation, implementation, and management of conservation units, providing an essential regulatory framework for the protection and sustainable use of natural resources. Articles such as Art. 22 and Art. 22-A establish guidelines for the creation of conservation units, requiring technical studies and public consultations to ensure that areas are properly assessed and adjusted to local environmental and social needs. The possibility of imposing provisional administrative limitations to prevent environmental damage prior to the creation of a conservation unit reinforces the commitment to the early protection of ecosystems (Barbosa, Selgalerba, and Brandão, 2023).

The case of Chapada dos Veadeiros illustrates the practical application of these legal provisions. However, the implementation of the SNUC brought a more structured approach to the management of this and other conservation units. Article 27, which requires the preparation of Management Plans, is a significant example of this evolution. The Management Plan for Chapada dos Veadeiros integrates conservation practices with sustainable development, reflecting the principles established by the SNUC.

2.4 Incentives, exemptions, and penalties

Chapter V of the Law is important to ensure that protective measures are effective, assigning responsibilities and consequences to offenders who cause damage to conservation units and their natural attributes. Articles such as Art. 38 and Art. 39 detail the penalties and aggravating circumstances associated with environmental crimes, reinforcing the protection of conservation units, such as Chapada dos Veadeiros (Brazil, 2000).

Article 38 of Law 9.985/2000 stipulates that any action or omission that causes damage to the natural attributes of conservation units, including buffer zones and ecological corridors, is subject to penalties provided for by law. This is particularly relevant for Chapada dos Veadeiros, where the

protection of adjacent areas and the prevention of negative impacts are essential to maintain the integrity of ecosystems (Lima and Franco, 2024).

Article 39, by increasing penalties for damage affecting endangered species, highlights the importance of protecting the region's unique biodiversity. This increase is important for Chapada dos Veadeiros (Brazil, 2000).

Thus, Law 9.985/2000, through its provisions on penalties and aggravating factors, provides a solid legal basis for the preservation of Chapada dos Veadeiros and other conservation units, promoting more effective and responsible environmental manage.

2.5 From the biosphere reserves

Chapter VI of Law 9.985/2000 addresses Biosphere Reserves, an internationally adopted model for the integrated and sustainable management of natural resources. This model aims to balance environmental preservation with sustainable development, serving as an important tool for biodiversity conservation and improving the quality of life of populations (Alvares, 2024).

The Biosphere Reserve, as defined in Article 41 of the Law, consists of core areas, buffer zones, and transition zones. The core areas are intended for the integral protection of nature, ensuring that the critical ecosystems of Chapada dos Veadeiros are preserved with minimal human interference.

The buffer zones surround these areas and allow activities that do not cause damage to the protected core areas, while the transition zones are areas where natural resource management is planned in a participatory and sustainable manner. This structure allows for a balanced approach between conservation and resource use, which is essential for a region (Brazil, 2000).

The management of Biosphere Reserves is carried out by a Deliberative Council, which includes representatives from public institutions, civil society organizations, and the resident population. This ensures participatory and transparent management, which is important for the integration of local interests and the effective implementation of conservation policies.

The inclusion of Chapada dos Veadeiros in UNESCO's “Man and the Biosphere – MAB” program reinforces its global role in biodiversity preservation and sustainable development. This integration with UNESCO provides access to international networks of knowledge and support, enhancing conservation efforts and promoting sustainable development in the region (Barbosa, Selgalerba, and Brandão, 2023).

Therefore, the implementation and management of Biosphere Reserves in Chapada dos Veadeiros not only promote environmental protection and biodiversity preservation, but also

encourage community participation and sustainable development, aligning with international goals for conservation and improvement of quality of life (Barbosa, Selgalerba, and Brandão, 2023).

2.6 General and transitional provisions

Chapter VII of the law addresses general and transitional provisions, establishing important guidelines for the implementation and maintenance of conservation units, including Chapada dos Veadeiros (Alvares, 2024).

The law guarantees that traditional populations residing in conservation units, such as Chapada dos Veadeiros, will be compensated for existing improvements and relocated under agreed conditions. This measure is essential to minimize the impacts of the creation and expansion of conservation units on these communities, ensuring that their ways of life and sources of livelihood are respected. The government must prioritize the resettlement of these populations and establish rules to reconcile their presence with the objectives of the unit until the resettlement is effective (Alvares, 2024).

Article 43 determines that the government must conduct a national survey of vacant lands to define areas designated for conservation, while Article 44 establishes that oceanic and coastal islands must be prioritized for nature protection. In the context of Chapada dos Veadeiros, this guideline ensures that areas critical for environmental conservation are not disregarded or designated for inappropriate uses, preserving the ecological integrity of the region (Brazil, 2000).

The installation of infrastructure in conservation units, such as Chapada dos Veadeiros, must be previously approved by the responsible agency, and those responsible for water supply and electricity generation must contribute financially to the protection and implementation of these units. These measures aim to ensure that infrastructure development does not compromise conservation objectives and that the beneficiaries of environmental protection contribute to the maintenance of the unit (Rego et al., 2021).

The National Register of Conservation Units, maintained by the Ministry of the Environment, is an important tool for monitoring and managing conservation units. Article 51 provides for the biannual submission of reports to the National Congress on the status of federal units, which allows for continuous evaluation and the implementation of appropriate policies. Ibama is also responsible for updating lists of endangered species and regulating the capture of specimens for captive breeding programs (Brazil, 2000).

The law provides for the reassessment of conservation units created under previous legislation to ensure their compliance with the categories and functions established by Law 9.985/2000. In addition, the responsible agencies must establish working groups to deal with overlaps

between indigenous areas and conservation units, ensuring the participation of the communities involved (Brazil, 2000).

3 ANALYSIS OF EVOLVING LAWS ON THE NATIONAL PUBLIC PROCUREMENT PORTAL (PNCP)

The protection of protected areas, such as national parks, nature reserves, and conservation areas, is essential for preserving biodiversity, maintaining healthy ecosystems, and ensuring the well-being of the human communities that depend on these areas.

Environmental laws establish the legal framework necessary to create, manage, and protect protected areas. They define the criteria for the designation and delimitation of these areas, establish conservation objectives, and provide guidance on how these areas should be managed. In addition, environmental laws often assign authority to government agencies responsible for the administration of protected areas and establish penalties for those who violate environmental regulations (Boaventura et al., 2020).

Furthermore, environmental laws often include specific provisions related to the sustainable use of natural resources, including sustainable forest management. These provisions help to ensure that activities related to paper production are carried out responsibly and in accordance with the conservation objectives of protected areas (Amaral, 2022).

3.1 Decree n.º 70.492/972

O Decreen.º 70.492, May 11, 1972, represents an important milestone in the history of environmental preservation in Brazil, giving a new name and promoting significant changes to the Tocantins National Park, which was renamed Chapada dos Veadeiros National Park.

Article 1 of the decree made the name change official, recognizing the park's importance and uniqueness as part of Chapada dos Veadeiros, an area of rare natural beauty and exuberant biodiversity. With this, the government reaffirmed its commitment to protecting and conserving this environmental heritage.

Articles 2, 3, and 4 established the new territorial boundaries of the Chapada dos Veadeiros National Park, detailing its geographical limits and defining its total area, which covers 171,924.54 hectares. These measures aimed to ensure the ecological integrity of the park, protecting its natural ecosystems and natural resources.

In addition, the decree authorized the Ministry of Agriculture, through the Brazilian Institute of Forest Development, to carry out expropriations and obtain land donations necessary for the implementation and expansion of the Chapada dos Veadeiros National Park.

Finally, the decree determined that the Ministry of Agriculture should draft the Chapada dos Veadeiros National Park Regulations and the necessary instructions for their implementation, ensuring the effective application of the established protection and conservation measures.

Thus, Decree 70.492/1972 represented an important step in the consolidation of the Chapada dos Veadeiros National Park as a protected area of inestimable value for Brazil's biodiversity and natural heritage.

3.2 Law No. 9.985/00 - Management Plan, art. 2, item XVII

Article 2, paragraph XVII, of Law no 9.985/2000 defines the management plan as a fundamental technical document for the management of conservation units, including the Chapada dos Veadeiros National Park. This plan is based on the general objectives of the conservation unit and establishes guidelines for the use of the area and management of natural resources present.

One of the essential elements of the management plan is zoning, which consists in dividing the area of the conservation unit into zones with different levels of protection and permitted uses. These zones may include intensive use areas, sustainable use areas and integral protection areas, each with its own specific rules and restrictions. Zoning is essential to ensure that human activities are compatible with the conservation objectives of the unit, avoiding negative impacts on ecosystems and biodiversity (Brazil, 2000).

In addition to zoning, the management plan also establishes rules for the management of natural resources present in the protected area. This includes measures for the conservation of fauna and flora, the protection of fragile ecosystems, the prevention of forest fires, the restoration of degraded areas and other actions aimed at ensuring the environmental sustainability of the conservation unit (Brazil, 2000).

Another aspect addressed by the management plan are the physical structures necessary to manage the unit, such as trails, lookouts, visitor centers, checkpoints and accommodations for employees and contribute to the proper administration and monitoring of the protected area.

3.3 Law nº 12.651/2012 - Forest Code

Law 12.651/2012, known as the Forest Code, is a fundamental legislation for the protection of native vegetation and the sustainable management of natural resources in Brazil. It establishes general rules on the preservation of areas of native vegetation, such as the Cerrado, and defines instruments for the control and prevention of forest fires, in addition to promoting the sustainable development of the country.

In the context of Cerrado, the Forest Code is important in the conservation of this biome so important for biodiversity and environmental balance. The implementation of this law is especially relevant for the Cerrado due to the following aspects: Preservation of native vegetation; Sustainable development; incentives to conservation; Land regularization; Research and innovation.

The Forest Code establishes the mandatory maintenance of permanent preservation areas (APPs) and legal reserve in rural properties, ensuring the protection of remnants of Cerrado and other associated ecosystems. The law recognizes the importance of agricultural activity for the Brazilian economy, but seeks to reconcile it with environmental preservation, promoting sustainable management practices of soil and natural resources (Leite, 2021)

The Forest Code provides economic and financial instruments to encourage the preservation of native vegetation, such as payment for environmental services and compensation for legal reserves. In addition, it establishes rules for the regularization of irregularly occupied areas, which contributes to the reduction of illegal deforestation and the recovery of degraded areas in the Cerrado (Leite, 2021). The Forest Code encourages scientific and technological research aimed at the sustainable use of natural resources, including the development of management techniques and restoration of Cerrado ecosystems (Leite, 2021).

3.4 Decreto 5/2017 – Ampliação do Parque Nacional da Chapada dos Veadeiros

The Decree of June 5, 2017 marks an important milestone in the history of environmental conservation in Brazil by expanding the Chapada dos Veadeiros National Park. Located in the municipalities of Alto Paraíso de Goiás, Cavalcante, Nova Roma, Teresina de Goiás and São João da Aliança, in the state of Goiás, this decree represents a renewed commitment to the preservation of biodiversity and natural ecosystems.

The expansion of the Chapada dos Veadeiros National Park, to a total area of approximately 240,611 hectares, was motivated by several noble and fundamental objectives. The expansion of the Park was intended to ensure the durability of ecosystem services, recognizing the benefits that natural ecosystems provide for the maintenance of life on Earth. Such services include climate regulation, soil conservation, water purification, among others, fundamental to ecological balance and human well-being.

Thus, the Decree seeks to provide the development of recreational activities in contact with nature and ecological tourism. Recognizing the economic and social potential of ecotourism, the government has demonstrated its commitment to promoting sustainable practices that generate benefits for local communities without compromising the environmental integrity of the region.

In addition to the physical expansion of the park, the decree also established measures related to its management and protection. This includes the definition of the buffer zone, the administration by the competent institution, the declaration of public utility of rural properties existing within the boundaries of the park, among other provisions.

4 CONCLUSION

It is concluded that, although Law 9.985/2000 is an important milestone in the protection of the Cerrado biome, there is a constant need to improve public policies and regulations, especially given the growing pressure from agribusiness and economic activities that directly impact the biome. In addition to a rigorous and updated application of environmental legislation, it is essential to promote greater integration between different sectors of society, such as government, companies and non-governmental organizations, so that joint actions can ensure the sustainable use of natural resources.

Thus, sustainable development in the Cerrado requires not only the compatibility between the economic advancement provided by agribusiness and environmental conservation, but also investments in clean technologies, environmental education for local communities and tax incentives for more responsible agricultural practices. These measures are essential to protect key ecosystem services, such as climate regulation, the maintenance of water cycles and the preservation of rich biodiversity, ensuring the continuity of this natural heritage for future generations.

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ENVIRONMENTAL FORENSICS AND RESOURCE MANAGEMENT: THE MODERNIZATION OF THE WATER AND EFFLUENT ANALYSIS LABORATORY AT THE INSTITUTE OF CRIMINALISTICS IN GOIÁS

PERÍCIA AMBIENTAL E GESTÃO DE RECURSOS: A MODERNIZAÇÃO DO LABORATÓRIO DE ANÁLISE DE ÁGUA E EFLUENTE NO INSTITUTO DE CRIMINALÍSTICA EM GOIÁS

PERICIA AMBIENTAL Y GESTIÓN DE RECURSOS: LA MODERNIZACIÓN DEL LABORATORIO DE ANÁLISIS DE AGUA Y EFLUENTES EN EL INSTITUTO DE CRIMINALÍSTICA DE GOIÁS

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ABSTRACT

This study addresses the technical, economic, and operational feasibility of implementing the Inductively Coupled Plasma Optical Emission Spectrometer (ICP-OES) at the Laboratory for Water and Effluent Analysis (LAAE), under the Goiás Police Technical- Scientific Superintendency (SPTC/GO). The research emphasizes the importance of environmental forensics for producing technical evidence related to water pollution crimes and other environmental infractions. The study also explores the strategic feasibility of securing institutional and private funding for implementing the equipment. A qualitative approach was employed, including a bibliographic review, documentary analysis, and

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consultations with case studies and technical literature. The results indicate that the ICP-OES is an indispensable tool for identifying and quantifying heavy metals and other pollutants at trace levels, capable of meeting the requirements of Resolutions CONAMA No. 357, 396, and 430. Despite the high acquisition and maintenance costs, the equipment demonstrates strong technical and economic feasibility, particularly when supported by institutional partnerships and external funding sources. The implementation of the ICP-OES at LAAE will enhance custody chain procedures, expand the laboratory's technical capacity, and establish Goiás as a reference in environmental forensics in Brazil. It is concluded that investing in the ICP-OES will not only meet the growing demand for precise analyses but also contribute to holding offenders accountable and mitigating environmental impacts.

Keywords: ICP-OES. Environmental forensics. Water pollution. Environmental crimes. CONAMA Resolutions.

RESUMO

Este trabalho aborda a viabilidade técnica, econômica e operacional da implementação do Espectrômetro de Emissão Óptica com Plasma Indutivamente Acoplado (ICP-OES) no Laboratório de Análises de Águas e Efluentes (LAAE), vinculado à Superintendência de Polícia Técnico-Científica de Goiás (SPTC/GO). A pesquisa enfatiza a importância da perícia ambiental para a produção de provas técnicas relacionadas a crimes de poluição hídrica e outras infrações ambientais. O trabalho também explora a viabilidade estratégica de captação de recursos institucionais e privados para a implementação do equipamento. O estudo foi conduzido por meio de uma abordagem qualitativa, com revisão bibliográfica e análise documental, além de consultas a estudos de caso e literatura técnica. Os resultados indicam que o ICP-OES é uma ferramenta indispensável para identificar e quantificar metais pesados e outros poluentes em níveis traços, sendo capaz de atender aos requisitos das Resoluções CONAMA nº 357, 396 e 430. Apesar do custo elevado de aquisição e manutenção, o equipamento apresenta alta viabilidade técnica e econômica, especialmente quando associado a parcerias institucionais e fontes externas de financiamento. A implementação do ICP-OES no LAAE aperfeiçoará os procedimentos da cadeia de custódia, ampliará a capacidade técnica do laboratório e consolidará Goiás como referência na perícia ambiental no Brasil. Conclui-se que, o investimento no ICP-OES não apenas atenderá à crescente demanda por análises precisas, mas também contribuirá para a responsabilização de infratores e a mitigação dos impactos ambientais.

Palavras-chave: ICP-OES. Perícia ambiental. Poluição hídrica. Crimes ambientais. Resoluções CONAMA.

RESUMEN

Este trabajo aborda la viabilidad técnica, económica y operativa de la implementación del Espectrómetro de Emisión Óptica con Plasma Inductivamente Acoplado (ICP-OES) en el Laboratorio de Análisis de Aguas y Efluentes (LAAE), vinculado a la Superintendencia de Policía Técnico-Científica de Goiás (SPTC/GO). La investigación resalta la importancia de la pericia ambiental para la obtención de pruebas técnicas relacionadas con delitos de contaminación hídrica y otras infracciones ambientales. El trabajo también explora la viabilidad estratégica de obtener recursos institucionales y privados para la implementación del equipo. El estudio se llevó a cabo mediante un enfoque cualitativo, con revisión bibliográfica y análisis documental, además de consultas a estudios

de caso y literatura técnica. Los resultados indican que el ICP-OES es una herramienta indispensable para identificar y cuantificar metales pesados y otros contaminantes en niveles traza, siendo capaz de cumplir con los requisitos de las Resoluciones CONAMA nº 357, 396 y 430. A pesar del elevado costo de adquisición y mantenimiento, el equipo presenta una alta viabilidad técnica y económica, especialmente cuando se asocia con alianzas institucionales y fuentes externas de financiamiento. La implementación del ICP-OES en el LAAE perfeccionará los procedimientos de la cadena de custodia, ampliará la capacidad técnica del laboratorio y consolidará a Goiás como referente en pericia ambiental en Brasil. Se concluye que la inversión en el ICP-OES no solo atenderá la creciente demanda de análisis precisos, sino que también contribuirá a la responsabilización de los infractores y a la mitigación de los impactos ambientales.

Palabras clave: ICP-OES. Pericia ambiental. Contaminación hídrica. Delitos ambientales. Resoluciones CONAMA.

INTRODUCTION

Environmental crimes, like all other crimes, leave traces and evidence. In cases of water pollution, it is no different. Heavily polluted water sources are a common problem across all federal units of Brazil, affecting both major capitals and the watercourses that run through small towns (Morrison; Murphy, 2006). However, the mere discharge of effluents into a water body does not, in itself, constitute a criminal act. For an environmental crime to exist, the discharge must occur outside the limits set by laws and regulations, such as those outlined in CONAMA Resolution No. 357/2005, which establishes the conditions and standards for effluent discharge (National Environmental Council, 2005), and in the Environmental Crimes Law (Brazil, 1998).

Therefore, during criminal investigations of water pollution cases, the occurrence of the crime cannot be determined solely through visual observation by the forensic expert. In order to investigate and substantiate the potential crime, it is necessary to collect samples for laboratory analysis. This enables verification and measurement of parameters indicating the quality of the water and effluents, thus allowing one to determine whether a specific discharge is occurring outside the legal parameters and constituting an environmental offense.

In 2019, the Water and Effluent Analysis Laboratory was inaugurated at the Leonardo Rodrigues Institute of Forensics in Goiânia, Goiás, becoming a pioneer among Forensic Institutes in Brazil. This laboratory represents a milestone in environmental forensics, providing the necessary infrastructure to substantiate evidence in water pollution crimes and establishing Goiás as a national reference in the field (Goiás, 2019; A Redação, 2019).

The expansion of environmental crime and its devastating impacts on water resources demand increasingly swift, effective, and scientifically grounded responses from public institutions

such as the Technical-Scientific Police Superintendency of Goiás (SPTC-GO). In light of this, the present work proposes an in-depth analysis of the feasibility of implementing the Inductively Coupled Plasma Optical Emission Spectrometer (ICP-OES) in the Water and Effluent Analysis Laboratory (LAAE) of the SPTC. The ICP-OES is a cutting-edge technology that would significantly enhance the laboratory's capacity for chemical analysis, enabling precise identification of contaminants in water and effluent samples and, thereby, providing robust technical evidence in water pollution cases. Its practical application would represent a major advancement in the strategic management of environmental forensics, directly benefiting the production of material evidence that supports the accountability of offenders and strengthens efforts to combat environmental crimes (Kemp et al., 2004).

This equipment is widely used in identifying pollutants linked to mining and industrial activities, contributing to the production of strong material evidence. According to Zhang, in China, for example, the equipment was used to map the distribution of heavy metals such as lead and mercury in areas near smelters. The results revealed high concentrations of these elements in both soil and water, exceeding environmental limits and highlighting the impact of human activities on environmental quality (Zhang et al., 2018). Furthermore, the ICP-OES has proven effective in identifying contamination sources, supporting mitigation measures and legal accountability.

In the United States, the Environmental Protection Agency (EPA) adopted the ICP-OES to assess contamination of sediments and soils in industrial areas, revealing the presence of arsenic and cadmium in critical concentrations. These analyses were fundamental in establishing a causal link between industrial activities and environmental damage, reinforcing legal actions and public policies aimed at environmental protection (Arroyo et al., 2010).

Implementing the ICP-OES in the Water and Effluent Analysis Laboratory (LAAE), part of the Technical-Scientific Police Superintendency of Goiás (SPTC/GO), will bring significant advancements to environmental forensics in the state. The equipment will allow for the analysis of contaminated water samples, identifying pollutants such as heavy metals often associated with mining and the intensive use of agrochemicals in agriculture. Such contamination not only affects biodiversity but also poses serious risks to human health—for instance, the bioaccumulation of mercury in food chains, which can lead to severe neurological damage (Egger et al., 2021; Nain et al., 2020).

The use of Inductively Coupled Plasma Optical Emission Spectrometry (ICP-OES) in environmental investigations in Brazil has proven to be an essential tool for identifying and quantifying pollutants in the context of environmental crimes. In a study conducted in the state of São

Paulo, the equipment was employed to analyze contaminated soils and sediments in a region affected by industrial discharges. The results identified high levels of heavy metals such as lead (Pb), cadmium (Cd), and mercury (Hg), with concentrations exceeding the limits established by Brazilian environmental regulations, as outlined in CONAMA Resolution No. 357 (Brazil, 2005).

The analytical precision of the ICP-OES enabled the spatial mapping of contaminants, highlighting the most affected areas and the likely sources of pollution. This approach provided technical support for the preparation of robust forensic reports, which were used as scientific evidence in legal proceedings and in the formulation of environmental remediation measures (Arroyo et al., 2010). The investigation illustrated how the use of advanced technologies strengthens the capacity of environmental enforcement agencies and contributes to holding offenders accountable.

Another significant example was recorded in Minas Gerais, where the ICP-OES was used to analyze groundwater contaminated by waste from mining activities. The investigation revealed critical concentrations of arsenic (As), a highly toxic element, demonstrating the severity of environmental damage caused by the improper disposal of mining residues. The data obtained were fundamental in guiding environmental compensation efforts and reinforcing inspection measures in mining regions, consolidating the role of the ICP-OES as an indispensable instrument in environmental forensics (Arroyo et al., 2010).

These cases underscore the importance of the ICP-OES in detecting pollutants associated with highly complex environmental crimes. By allowing the identification of elements at minimal concentrations, the equipment significantly contributes to the production of technical evidence that supports legal proceedings and environmental mitigation efforts. Its application in the Brazilian context reinforces the urgent need to modernize forensic laboratories, especially in states like Goiás, where expanding technological infrastructure is essential to meet the growing demand for environmental investigations.

Within this context arises the central question guiding this study: Is there technical, operational, and economic feasibility for the implementation of ICP-OES in the LAAE-SPTC/GO? Introducing this equipment requires a careful analysis of its benefits and the challenges involved, both from the perspective of existing infrastructure and the investment required for its operation. Moreover, the study seeks to understand the potential impact that adopting this technology would have on the quality of environmental forensic work and the responsiveness of institutions. Accordingly, the general objective of this article is to understand the challenges and potentials associated with the implementation of ICP-OES in the LAAE. To that end, specific objectives were defined, including: assessing the strategic need to invest in advanced technologies for the production

of forensic evidence; describing the physical and organizational structure of the LAAE and the adjustments it requires; and examining the technical and financial feasibility of installing the ICP-OES in the institution (Tochetto, 2017).

Given the complexity and severity of environmental crimes, environmental forensics emerges as an indispensable instrument for producing technical evidence and ensuring the accountability of offenders. It stands out as a crucial field of study for promoting justice and environmental protection, while reducing the prevailing sense of impunity in society.

The relevance of this study is evident on academic, social, and economic levels. Academically, the scarcity of research focused on the application of technologies such as ICP-OES in environmental forensics highlights the need for a pioneering analysis of its impact on environmental crimes. Socially and economically, the implementation of more precise and advanced technologies in water pollution forensics offers benefits that go beyond the criminal sphere: by providing robust evidence, the institution not only strengthens environmental protection but also contributes to public health and the economy, mitigating the damage caused by water contamination (Pereira et al., 2022; United Nations Environment Programme, 2018). Additionally, the absence of consistent evidence in environmental crimes is often the reason cases are dismissed during the final stages of legal proceedings. This contributes to the perpetuation of a cycle of impunity, undermining environmental security and encouraging the recurrence of such crimes.

To carry out this research, a qualitative approach with a deductive method was adopted, based on bibliographic and documentary reviews, as well as the analysis of secondary data. This method allows for an in-depth exploration of the implications of implementing ICP-OES within the forensic context of the State of Goiás. Gil (2002) and Lakatos and Marconi (2003) emphasize that qualitative analysis is essential for exploratory studies such as this, where understanding the technical and financial factors requires a detailed examination of data and previous experiences in the field of environmental forensics.

The structure of this article is organized as follows: the first chapter discusses new technologies and resource management to support technical and forensic evidence, highlighting the importance of investing in environmental forensics and the financial challenges involved. The second chapter examines the organizational and technical structure of the LAAE, addressing its capacity and the adjustments required to operate the ICP-OES. The third chapter presents a detailed analysis of the functioning and applications of the ICP-OES in environmental crimes, considering its economic feasibility and potential impact on the effectiveness of forensic procedures. These elements are

interconnected to provide an integrated analysis of the implementation of the ICP-OES, offering a solid foundation for future decision-making in the field of environmental forensics in Goiás.

1 THE IMPORTANCE OF NEW TECHNOLOGIES AND RESOURCE MANAGEMENT IN THE PRODUCTION OF ENVIRONMENTAL FORENSIC EVIDENCE

Criminal forensics plays an essential role in the elucidation of crimes, as it is responsible for producing technical evidence that guides investigations and ensures the accountability of offenders. However, the high cost and complexity of forensic processes present a constant challenge for the institutions that make up the criminal justice system. According to data from the National Secretariat of Public Security (SENASP), investments in forensics in Brazil have been limited, which compromises both the modernization capacity and the performance of forensic institutes. The lack of resources directly affects the implementation of new technologies—tools that are essential to making forensic work more precise and efficient (SENASP, 2020).

Technologies applied in the forensic field have advanced significantly in recent decades, with the development of sophisticated equipment capable of performing detailed chemical and biological analyses, as well as detecting and quantifying substances with great accuracy. Instruments such as the Inductively Coupled Plasma Optical Emission Spectrometer (ICP-OES) represent a technological leap, as they enable the analysis of traces with high sensitivity, facilitating the identification of contaminants in cases of environmental pollution and providing robust evidence to support criminal prosecution. According to SENASP, the use of advanced technology in forensic work is a determining factor for the effectiveness of criminal investigations—especially in environmental crimes, where evidence is often difficult to detect without the use of sophisticated laboratory methodologies (SENASP, 2019).

However, the implementation of new technologies requires substantial investment, not only in the acquisition of equipment but also in the training of professionals who operate them. Forensics is a highly specialized field, and the improper use of technologies can compromise the integrity of evidence and the accountability process. In addition to the initial installation and operation costs, there are ongoing expenses related to equipment maintenance and the replacement of specific supplies, such as reagents and laboratory consumables, which increase the operational costs of forensic units.

It is also important to consider the operational costs of the ICP-OES as part of the planning process for its implementation. Regular maintenance of the equipment—which includes calibrations

and the replacement of critical components—may range between R$30,000.00 and R$50,000.00 per year, depending on usage intensity (Thermo Scientific, 2024). Moreover, the use of high-purity argon, which is essential for plasma generation, has an average cost of R$800.00 per cylinder, with the frequency of replacement depending on analytical demand. Other consumables, such as chemical reagents for specific analyses, add approximately R$10,000.00 annually to the budget. These figures reinforce the need for detailed budget planning and institutional partnerships to ensure the long-term operation of the equipment.

The integration of advanced technologies and the continuous training of forensic experts is an essential element for maximizing the impact of new tools in the field of environmental forensics. Introducing equipment such as the ICP-OES requires not only technical knowledge for its operation but also analytical skills for interpreting the results. This training must be dynamic, keeping pace with technological updates and the evolving demands of investigated cases. In the context of Goiás, where the LAAE plays a strategic role, specific training could include methodologies for the analysis of heavy metals, as well as practical simulations of the equipment's use in real cases of water pollution and environmental crimes.

In Brazil, environmental forensics has become an increasingly relevant field, given the intensification of environmental crimes and the growing demand for proper accountability of offenders. However, the resources available for this area remain limited, and few forensic institutes have adequate infrastructure to conduct water and effluent analyses. The Water and Effluent Analysis Laboratory (LAAE) in Goiás, for example, is one of the few initiatives in the country dedicated to substantiating water pollution crimes. Nevertheless, even with its current structure, the LAAE still lacks investment in advanced technologies such as ICP-OES, which would allow for more detailed analyses and provide more precise technical evidence (Goiás, 2019).

Goiás faces significant challenges related to environmental crime, particularly water pollution stemming from industrial and agricultural activities, as well as improper disposal of solid waste. A study conducted in the judicial district of Rubiataba between 2012 and 2018 revealed that a large portion of environmental complaints were linked to the contamination of water bodies, highlighting the need for stronger enforcement and effective application of environmental laws (Sainça et al., 2021). The state of Goiás is home to a range of potentially polluting enterprises that, if mismanaged, could cause significant environmental contamination. Modernizing the LAAE by implementing the ICP-OES would enable not only the precise analysis of heavy metals and other pollutants but also increase the robustness of forensic reports, by allowing the assessment of a wider

range of environmental parameters. This would offer a deeper understanding of the extent of pollution and could even assist in determining the perpetrators of water pollution crimes.

Reports by SENASP emphasize the importance of equipping forensic laboratories with appropriate technologies, as environmental crimes—especially water pollution—leave complex traces that often require meticulous chemical analyses to be identified. Without modern equipment, the ability of forensic experts to produce conclusive reports is compromised, making it more difficult to hold polluters accountable and to protect the environment (SENASP, 2020; Goiás, 2019).

It is also worth emphasizing that having an adequately staffed team of forensic experts to meet the demands of environmental crimes in the state is of utmost importance. Financial resources alone are not enough if they are not accompanied by qualified human resources, which are fundamental to effective criminal forensics.

The use of new technologies in criminal forensics is increasingly necessary to keep pace with the sophistication of environmental crimes and to ensure that the evidence produced is scientifically sound and reliable. However, implementing advanced technologies such as the ICP-OES faces substantial financial challenges, given the high cost of such equipment and the complex procurement process, which requires careful budget planning and rigorous technical justification. According to SENASP (2020), the lack of allocated resources for the forensic field is one of the main barriers to the modernization of forensic institutes in Brazil. This situation creates disparities among states, where only a minority have the technical capacity to conduct sophisticated chemical analyses that are essential for proving crimes such as water pollution.

The high costs associated with forensics extend beyond the acquisition of equipment. Maintaining a state-of-the-art laboratory requires continuous investment in maintenance and updates, as well as the purchase of reagents and other specific supplies. The use of equipment like the ICP-OES demands complex laboratory infrastructure and highly trained professionals, since the analysis of environmental samples—especially water and effluents—involves rigorous procedures to ensure result accuracy. Investments in training are also necessary so that experts can operate the equipment efficiently and interpret results accurately, thus improving the quality of forensic reports and strengthening investigations.

In Brazil, the lack of infrastructure in forensic laboratories prevents many regions from having access to appropriate technologies for analyzing pollutants in water bodies. The implementation of equipment such as the ICP-OES in the Water and Effluent Analysis Laboratory (LAAE) in Goiás, for instance, could consolidate the state as a national reference in the production of forensic evidence in water pollution crimes. This laboratory, inaugurated in 2019, was a pioneer

in its category but still lacks cutting-edge equipment to expand its analytical capacity and meet the growing demand for material evidence in environmental crime cases (Goiás, 2019). SENASP emphasizes that access to advanced technologies is essential for forensic reports to have scientific validity and to be used in judicial proceedings, ensuring that environmental offenders are held accountable and that environmental damage is effectively mitigated (SENASP, 2020).

Environmental forensics is particularly challenging due to the nature of the crimes it investigates. Unlike other types of offenses, where evidence may be visible or tangible, environmental crimes often leave traces that can only be detected through complex laboratory analyses. In the case of water pollution, for example, chemical substances discharged into water sources may not be visible to the naked eye but still pose a significant threat to the environment and public health. The introduction of technologies such as ICP-OES would enable the accurate identification and quantification of heavy metals, organic compounds, and other contaminants, providing compelling evidence to support the fight against such crimes. According to the United Nations, the contamination of water bodies is one of the main causes of environmental degradation and requires a rapid, science-based response to be effectively addressed (United Nations Environment Programme, 2018).

Despite its importance, the implementation of new technologies in environmental forensics still faces resistance due to high costs and the lack of public policies prioritizing the strengthening of forensic infrastructure. According to SENASP, one of the greatest challenges is aligning the public budget with the specific needs of the forensic field, which is often considered secondary compared to other areas of public security. However, the production of reliable material evidence is one of the pillars of environmental justice, and neglecting this area undermines the State's ability to respond adequately to environmental crimes. Investing in environmental forensics is, therefore, not merely a matter of improving investigative efficiency, but also of ensuring that Goiás is prepared to face the challenges of a world where environmental protection is key to sustainability and the well-being of society.

Recent SENASP (2020) reports highlight that expert training is just as essential as equipment acquisition, as without adequate technical knowledge, technology becomes underutilized and the results of forensic work may be compromised. In states like Goiás, where the establishment of specialized laboratories already represents progress, the next step must be to ensure that these labs receive the financial and technical support necessary to operate at full capacity.

Environmental forensics, specifically concerning the analysis of water and effluents, demands robust infrastructure and equipment capable of identifying a wide range of contaminants. The lack of investment in this area not only limits the scope of investigations but also allows crimes

with significant environmental impacts to go unpunished, harming sustainable development and the population's quality of life.

The use of new technologies in criminal forensics is increasingly necessary to enable the identification of perpetrators responsible for illegal discharges or environmental contamination. Technologies such as ICP-OES make it possible to identify and quantify compounds, allowing the characterization of the source of contamination and the determination of whether it is consistent with mining activities or certain chemical industries. This greatly facilitates the investigative process and the substantiation of criminal evidence, which often relates to public health risks.

Environmental crimes can sometimes affect large numbers of people simultaneously. Unlike a homicide, an environmental crime can impact the entire population of a city—such as in the case of contamination of the only water source available for public supply.

In this sense, it is imperative that the State has the capacity to detect water pollution crimes, which are not visible to the naked eye. A laboratory structure equipped with cutting-edge technology is essential to ensure that no crime goes unnoticed and to guarantee that crimes are substantiated, properly judged, and environmental damage restored.

Some of the country's most important mineral reserves are located in the State of Goiás. As a result, there are a considerable number of activities forming part of the productive chain in this sector. According to the Mineral Sector Diagnostic Report of the State of Goiás, the state contains 9.25% of Brazil's gold reserves (in the Crixás region), 12.8% of titanium reserves (Catalão region), 72.98% of nickel, 98.14% of cobalt, among others (Goiás, 2002).

In addition to these reserves, Goiás has a highly diversified mineral production, with six enterprises occupying key positions in the national production chain. Goiás's national share by mineral type includes: asbestos – 99%, nickel – 65%, niobium – 40%, phosphate – 30%, vermiculite – 20% (Goiás, 2002). These figures demonstrate the State's important and significant role in Brazil's mineral landscape.

Given the extent of mining activities, environmental crimes are to be expected due to poor management of certain operations, tailings dam failures, among countless other possibilities. In this context, it is essential that the State possesses the necessary infrastructure to properly substantiate environmental crimes occurring in these areas, with the aim of upholding the right to a balanced environment and ensuring justice and public security in Goiás.

The absence of forensic reports is often the reason why criminal cases are dismissed, reinforcing a sense of impunity and potentially increasing the incidence of environmental crimes—generating consequences not only for the environment but also for public health.

To illustrate, consider the case that occurred in 2022 in Campos Verde, Goiás. The severe contamination of the Rio dos Bois in that municipality revealed an alarming scenario of environmental and human impact attributed to mining operations in the region. Technical reports identified high levels of heavy metals in water intended for public consumption, leading to serious illnesses among the population, including cancer diagnoses. In addition to the death of fish stocks that compromised food security, more than 100 families faced difficulties accessing potable water. Despite court orders mandating mitigation measures—such as toxicological analyses of the population and emergency actions—the mining company responsible denied liability, highlighting the complexity of determining the source of contamination in a region naturally rich in minerals (Metrópoles, 2022).

For Brazilian forensic institutes to fulfill their role in environmental protection, it is essential that there be a continuous commitment to modernizing infrastructure and training personnel. Environmental forensics requires not only equipment such as the ICP-OES, but also trained professionals capable of conducting precise analyses and interpreting scientific results rigorously.

2 THE LABORATORY FOR WATER AND EFFLUENT ANALYSIS (LAAE) AND THE EXPANSION OF ENVIRONMENTAL FORENSICS IN GOIÁS

The Laboratory for Water and Effluent Analysis (LAAE), implemented in 2019 at the Leonardo Rodrigues Institute of Forensics (ICLR) in Goiânia, Goiás, marked a turning point in environmental criminal forensics in Brazil. Initially developed as a final project of the CEGESP (Public Security Management Program – UEG/SSP), the laboratory became a reality thanks to resources provided by the Public Prosecutor's Office and the Environmental Operational Support Coordination Office (CAO) (Goiás, 2019; Linhares et al., 2024). Its implementation aimed to meet the growing demand for laboratory analyses that would ensure the materialization of environmental crimes, strengthening the chain of custody[3] and the credibility of the evidence presented (Linhares et al., 2024).

Before the creation of the LAAE, chemical analyses relied on external institutions—a process that often compromised the chain of custody and the quality of the evidence obtained. According to Linhares et al. (2024), the inauguration of the LAAE solved part of these problems by

[3] The chain of custody refers to the set of documented procedures that ensure the control, traceability, and integrity of material evidence from its collection to its presentation in court, being essential for the legal validity of forensic evidence (BARBOSA, 2023).

enabling detailed and reliable analyses to be carried out within the state itself, ensuring the integrity of the chain of custody.

Furthermore, environmental forensics has been gaining importance in Goiás, following the growing public awareness of the need for environmental protection. However, it still faces challenges, mainly related to the lack of investment in infrastructure and human resources (SENASP, 2020). This gap directly impacts the state's ability to respond to the increasing demand for environmental investigations, which has grown significantly in recent years (Goiás, 2019).

Currently, the LAAE staff consists of two forensic experts, one administrative assistant, and one glassware cleaning assistant—a workforce clearly insufficient to meet the growing demand (Linhares et al., 2024). The laboratory's physical structure includes two main rooms where physicochemical and microbiological analyses are conducted, as well as a room for preparing forensic reports. The tests include parameters such as Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD), total coliforms, *Escherichia coli*, and settleable solids (Linhares et al., 2024). Recently, analyses for nitrite, nitrate, and ammoniacal nitrogen have also been incorporated.

Despite this progress, the LAAE's current technical capacity is still insufficient to handle all cases with the necessary agility. According to SENASP (2020), the introduction of more advanced equipment, such as the Inductively Coupled Plasma Optical Emission Spectrometer (ICP-OES), could significantly expand the range of analyses performed and enhance the quality of evidence presented in criminal investigations. However, acquiring such equipment requires not only substantial financial investment but also specific technical training for the professionals involved.

Among LAAE's strengths is the fact that it is the first laboratory in the country to conduct water and effluent analyses with an exclusive focus on criminal investigations. This feature gives the laboratory a prominent position nationally and reinforces the credibility of its forensic work (Linhares et al., 2024). Additionally, the use of internationally recognized methodologies, such as those described in *Standard Methods for the Examination of Water and Wastewater*, ensures the accuracy of results and increases confidence in the issued reports (Hammer; Viessman, 2005).

However, limitations persist, including the lack of advanced equipment and the small number of qualified personnel. These shortcomings restrict the LAAE's ability to expand operations and handle more complex cases (Linhares et al., 2024). According to SENASP (2020), the lack of continuous investment in infrastructure and personnel compromises not only the laboratory's efficiency but also its long-term sustainability.

To reach its full potential, the LAAE must receive significant investments in infrastructure modernization and professional training. The implementation of new equipment, such as the ICP-

OES, would not only expand the laboratory's analytical capacity but also solidify Goiás as a national reference in environmental forensics (Linhares et al., 2024; SENASP, 2020). Moreover, obtaining laboratory certification under international standards, such as ISO 17025, would be a crucial step toward increasing the reliability of its forensic reports (Hammer; Viessman, 2005).

The expansion of the LAAE also requires greater coordination with environmental agencies and strategic partnerships for resource mobilization. Such initiatives would not only improve the quality of services provided but also support the creation of a sustainable management model aligned with international best practices.

3 ICP-OES AND ITS APPLICATIONS IN ENVIRONMENTAL FORENSICS

The Inductively Coupled Plasma Optical Emission Spectrometer (ICP-OES) is widely recognized for its ability to perform highly sensitive and precise elemental analyses. It enables the detection and quantification of environmental parameters. In the case of the Laboratory for Water and Effluent Analysis, the equipment would be acquired with the necessary configuration to comply with CONAMA Resolutions No. 357, No. 430, and No. 396, with the aim of determining whether a sample collected at a suspected environmental crime scene exceeds the limits established by these resolutions, thus constituting an environmental crime under Law No. 9.605/98.

The State of Goiás has intense mining, agro-industrial, and industrial activity. This type of equipment would allow for the detection of environmental crimes and, in many cases—depending on the type and method of field sampling—even make it possible to link pollution in a specific water body to the discharge of effluents from a particular type of activity. This is because the ICP-OES enables both precise identification and quantification of substances.

3.1 ICP-OES as an Instrument for Promoting Justice

Using a high-temperature argon plasma, this equipment excites atoms and ions present in the samples, resulting in the emission of light characteristic of each chemical element. This analytical approach allows for the simultaneous detection of multiple elements at concentrations as low as parts per billion (ppb), with superior efficiency in terms of speed and accuracy compared to traditional methods (Milestone, 2024; Thermo Scientific, 2024).

In the context of environmental forensics, ICP-OES plays a crucial role in identifying contaminants such as heavy metals, which are among the most hazardous pollutants to human health and the environment. Its importance in environmental analyses lies in its ability to detect elements at trace levels, a common requirement in environmental investigations and criminal forensics. Once

configured to meet the requirements of CONAMA Resolutions No. 357, 396, and 430, the LAAE will be equipped to accurately identify and quantify elements such as mercury, lead, cadmium, arsenic, among others, typically present in industrial and mining activities (Brasil, 2005).

ICP-OES is widely used to investigate environmental crimes involving water pollution, particularly in regions affected by mining and industrial activities. In a study conducted in abandoned gold mining areas, contamination of soil and water by mercury and lead—elements associated with mineral extraction processes—was detected. Samples analyzed with ICP-OES revealed concentrations above legal limits, highlighting both environmental impact and public health risks (Dhayalan; Saraswathi; TV, 2024). Documented cases in China demonstrated how ICP-OES was used to map the spatial distribution of heavy metals, including mercury, in lead smelting regions. This study showed how pollution from industrial activities accumulated in the soil and water, causing severe ecological damage and posing direct risks to local communities (Zhang et al., 2018).

In Brazil, similar cases have been identified in illegal mining operations, where the indiscriminate use of mercury for gold extraction has caused serious damage to the Amazon's river ecosystems.

In southeastern Goiás, studies have shown how mining activities have contributed to the contamination of water bodies with heavy metals such as lead and mercury. These substances were found in concentrations exceeding legal limits, harming aquatic fauna and local ecosystems (Vaz et al., 2016). ICP-OES would allow for a detailed analysis of these contaminants, enabling the production of robust scientific evidence to hold offenders accountable and support environmental remediation efforts (Thermo Scientific, 2024).

The environmental and health impacts associated with mining and pesticide use are significant. In the case of mercury—a common pollutant in gold mining—its bioaccumulation in food chains poses a serious threat to riverine communities that rely on fish as a primary source of protein. This heavy metal is associated with neurological damage and chronic illnesses in humans (Egger et al., 2021).

Also common in the state of Goiás is the development of activities such as tanneries, which, if poorly managed, can lead to environmental contamination by hexavalent chromium—a metal toxic to humans, animals, plants, and microorganisms (Kimbrough et al., 1999, apud Ferreira, 2011). The ICP-OES, when configured to comply with CONAMA Resolutions No. 357, 396, and 430, can be used to analyze elements such as chromium, phosphorus, sulfur, mercury, and arsenic, providing reliable data for environmental investigations and supporting legal actions (Brasil, 2005; Milestone, 2024).

These analyses are essential for the substantiation of environmental crimes, offering robust technical data that can serve as evidence in legal proceedings. For example, studies indicate that the analysis of elements such as arsenic and cadmium—frequently found in industrial waste—is crucial for holding polluters accountable and for proposing mitigation measures (Brasil, 2005; Milestone, 2024).

The presence of heavy metals in the environment poses a significant threat to human health. Mercury, for instance, is well known for its toxicity and its ability to bioaccumulate in food chains, especially affecting riverine populations that rely on contaminated fish as their main source of protein. Research shows that prolonged exposure to mercury can cause irreversible neurological damage and increase the risk of chronic diseases (Zhang et al., 2018; Milestone, 2024).

In the agricultural sphere, the use of pesticides containing heavy metals not only compromises soil and water quality but also directly affects biodiversity. Studies have demonstrated that pollution by these elements is linked to the reduced regenerative capacity of natural ecosystems, particularly in Cerrado regions with intensive agricultural activity (Lima-Junior et al., 2024).

From an environmental standpoint, heavy metal pollution undermines the quality of water resources, reduces aquatic biodiversity, and impacts ecosystem services. Implementing ICP-OES at the LAAE will allow for a more effective response to these challenges, expanding the range of parameters analyzed by the laboratory and thus improving the detection of various forms of contamination and environmental crimes.

3.2 On Technical and Economic Feasibility and Usage Perspectives

Although the initial cost of the equipment and the required laboratory adaptations is high (approximately R$ 1,850,000.00), the economic feasibility of the project can be ensured through institutional partnerships, such as those with the Public Prosecutor’s Office and environmental agencies. Moreover, the use of ICP-OES will reduce dependence on external laboratories, thereby saving resources and speeding up criminal investigations (Thermo Scientific, 2024).

In addition to the equipment itself, it will be necessary to acquire consumables, such as high-purity argon gas (≥4.5), and invest in periodic preventive maintenance. The project will also require upgrades to the electrical infrastructure, including the installation of a dedicated uninterruptible power supply (UPS) and exclusive outlets, as well as physical modifications to the laboratory, such as reinforcing the workbench to support the equipment's weight (Milestone, 2024).

Partnerships with government bodies and institutions such as the Public Prosecutor’s Office may assist in financing the project. These collaborations not only make the acquisition of the

equipment feasible but also strengthen institutional integration and promote transparency in the use of public funds (Thermo Scientific, 2024).

The use of ICP-OES will also enhance chain-of-custody procedures and increase the credibility of evidence presented in judicial proceedings. This will be especially relevant in high-profile cases, such as environmental disasters resulting from dam failures or the illegal discharge of industrial effluents.

Thus, the installation of the ICP-OES at the LAAE will represent a significant leap in the quality of environmental forensics conducted in Goiás. Currently, the laboratory's capabilities are limited to less complex analyses, hindering its ability to respond effectively to severe water pollution crimes. The introduction of this equipment will enable detailed analysis of heavy metals and other trace elements, increasing the laboratory's efficiency and strengthening the credibility of the expert reports issued (Milestone, 2024).

Furthermore, this technology will improve chain-of-custody protocols by reducing the need to send samples to external laboratories. This not only ensures faster results but also minimizes the risks of contamination and loss during transport (Thermo Scientific, 2024). The technical training of forensic experts to operate the ICP-OES will be essential to maximize the benefits of the new technology and to ensure the accuracy of the forensic reports.

4 CONCLUSION

The Implementation of the Inductively Coupled Plasma Optical Emission Spectrometer (ICP-OES) at the Laboratory for Water and Effluent Analysis (LAAE) of the Scientific-Technical Police of Goiás will represent a significant technical and scientific advancement in addressing environmental crimes in the State. By enabling the identification and quantification of heavy metals at trace levels, this equipment will provide essential technical support for the production of robust and reliable forensic reports—indispensable elements to strengthen inspection efforts and ensure the accountability of offenders. Such modernization consolidates the relevance of environmental forensics as a central tool in the promotion of justice and the protection of natural resources.

As discussed throughout this paper, the modernization of the LAAE not only addresses the growing demand for more precise environmental analyses, but also aligns with the strategic objectives of public security. The introduction of technologies such as the ICP-OES reinforces the institutional capacity to meet the demands of criminal investigations, allowing for a faster and more effective response in the fight against environmental crime. In this regard, it is concluded that the

modernization of the LAAE is an essential strategy to ensure the effectiveness of public policies for environmental protection and to promote sustainable development in the state of Goiás.

Among the short- and medium-term goals highlighted in this study, the importance of forming institutional and cross-sectoral partnerships stands out as one of the pillars for enabling the implementation of the ICP-OES. These partnerships—potentially involving the Public Prosecutor's Office and universities—will contribute both to the initial funding and to the technical support required for operating the equipment. Furthermore, the ongoing training of forensic experts must be prioritized to ensure that the new technologies are used to their full potential, optimizing the production of technical and scientific evidence.

The objectives outlined throughout this work—including the assessment of the technical, operational, and economic feasibility of implementing the ICP-OES, as well as the description of the necessary structure for its installation—have been addressed through qualitative and documental analysis. The evidence presented demonstrates that, despite financial and logistical challenges, the acquisition of the equipment is both feasible and essential to overcome the current limitations of the LAAE. Moreover, it is concluded that the integration of advanced technologies, such as the ICP-OES, with efficient resource and infrastructure management is the most effective path to confront the complex environmental crimes affecting Goiás.

Finally, the technological modernization of the LAAE is not merely about improving forensic techniques—it is a commitment to environmental preservation, to holding offenders accountable, and to promoting sustainable development. By strengthening the Rule of Law and ensuring the protection of natural resources, the modernization of the laboratory also positions Goiás as a national reference in environmental forensics, reaffirming the importance of investing in science as a pillar in the fight against crime and in building a more just and environmentally conscious society.

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THE LEGAL REGIME FOR THE EXPULSION OF FOREIGN CITIZENS IN THE MOZAMBICAN LEGAL SYSTEM: A VERSED ANALYSIS IN LIGHT OF THE FAILURE TO COMPLY WITH LEGAL AND CONSTITUTIONAL PROCEDURES LEADING TO THE JUDICIAL AND ADMINISTRATIVE EXPULSION OF FOREIGNERS BY THE COMPETENT ENTITIES

O REGIME JURÍDICO DE EXPULSÃO DE CIDADÃOS MOÇAMBICANA: ESTRANGEIROS NA ORDEM JURÍDICA UMA ANÁLISE VERSADA À LUZ DA INOBSERVÂNCIA DOS PROCEDIMENTOS JURÍDICO-CONSTITUCIONAIS CONDUCENTES À EXPULSÃO JUDICIAL E ADMINISTRATIVA DOS ESTRANGEIROS PELAS ENTIDADES COMPETENTES

EL RÉGIMEN JURÍDICO DE EXPULSIÓN DE CIUDADANOS EXTRANJEROS EN MOZAMBIQUE: UN ANÁLISIS A LA LUZ DE LA INOBSERVANCIA DE LOS PROCEDIMIENTOS JURÍDICO-CONSTITUCIONALES CONDUCENTES A LA EXPULSIÓN JUDICIAL Y ADMINISTRATIVA DE EXTRANJEROS POR LAS ENTIDADES COMPETENTES

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ABSTRACT

The present study deals with the Legal Regime for the Expulsion of Foreigners in Mozambique, a very current topic, especially the

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expulsion of foreigners, as the coercive removal of individuals from territories outside their jurisdiction, observing all legal procedures for staying or leaving for reasons duly substantiated by the authorities with powers to carry it out. However, in Mozambican jurisdiction, it is incumbent upon the Minister who oversees the area of migration, specifically that of the Interior, on behalf of the Government to order the administrative expulsion, pursuant to paragraph 1 of article 40 of Decree No. 108/2014, of 31 December, which approves the regulation of Law No. 23/2022 of 29 December, the legal regime for Foreign Citizens and establishes the respective rules for entering, staying and leaving the country, as well as their rights, duties and guarantees and establishes the respective norms for entering, staying and leaving the country. Furthermore, in the Mozambican legal order, there are two types of expulsions, namely: administrative and judicial expulsion. Under the terms of number 2 of article 40 of Decree number 108/2014, of December 31, the foreign citizen covered by the administrative expulsion measure, if he so wishes, may file an appeal with the Administrative Court, without suspensive effects, in order to safeguard its permanence.

Keywords: Legal Regime. Expulsion. Foreigners. Migration. Human Rights.

RESUMO

O presente estudo, versa sobre o regime o Regime Jurídico da Expulsão de Estrangeiros em Moçambique, uma temática bastante atual mormente, entende-se por expulsão de estrangeiros, como o afastamento coercivo de indivíduos em territórios não da sua jurisdição, observando todos os procedimentos legais para permanência ou saída por razões devidamente fundamentadas pelas autoridades com competências para o efetivar. Contudo, na jurisdição Moçambicana, compete Ministro que superintende a área de migração, concretamente o do Interior, em representação do Governo ordenar a expulsão administrativa, nos termos do preceituado no n.°1 no artigo 40 do Decreto n.º 108/2014, de 31 de Dezembro, que aprova o regulamento da da Lei n° 23/2022 de 29 de Dezembro, o regime jurídico do Cidadão Estrangeiro e fixa as respectivas normas de entrada, permanência e saída do País, bem como os seus direitos, deveres e garantias e fixa as respectivas normas de entrada, permanência e saída do País. Ademais, existe na ordem jurídica Moçambicana, existem dois tipos de expulsões, a saber: a expulsão administrativa e a Judicial. Nos termos do n.º 2 do artigo 40 do Decreto n.º 108/2014, de 31 de Dezembro, o cidadão estrangeiro abrangido pela medida de expulsão administrativa, querendo, pode interpor um recurso junto ao Tribunal Administrativo, sem efeitos suspensivos, de modo a salvaguardar a sua permanência.

Palavras-chave: Regime Jurídico. Expulsão. Estrangeiros. Migração. Direitos Humanos.

RESUMEN

El presente estudio versa sobre el Régimen Jurídico de la Expulsión de Extranjeros en Mozambique, una temática bastante actual. Se entiende por expulsión de extranjeros el alejamiento coercitivo de individuos en territorios que no son de su jurisdicción, observando todos los procedimientos legales para la permanencia o salida por razones debidamente fundamentadas por las autoridades competentes para su ejecución. Sin embargo, en la jurisdicción mozambiqueña, corresponde al Ministro que superintende el área de migración, concretamente el del Interior, en representación del Gobierno, ordenar la expulsión administrativa, en los términos previstos en el n.º 1 del artículo 40 del Decreto n.º 108/2014, de 31 de diciembre, que aprueba el reglamento de la Ley n.º 23/2022, de 29 de diciembre, el régimen jurídico del Ciudadano Extranjero y establece las respectivas normas de

entrada, permanencia y salida del País, así como sus derechos, deberes y garantías. Además, en el ordenamiento jurídico mozambiqueño existen dos tipos de expulsiones, a saber: la expulsión administrativa y la judicial. Según lo dispuesto en el n.º 2 del artículo 40 del Decreto n.º 108/2014, de 31 de diciembre, el ciudadano extranjero sujeto a la medida de expulsión administrativa, si así lo desea, puede interponer un recurso ante el Tribunal Administrativo, sin efectos suspensivos, con el fin de salvaguardar su permanencia.

Palabras clave: Régimen Jurídico. Expulsión. Extranjeros. Migración. Derechos Humanos.

INTRODUCTION

Expulsion is an accessory measure substantiated in the coercive removal of a foreign citizen within a given legal order, in accordance with legal procedures. Furthermore, for the enforcement of this punitive measure, the competent authorities must initiate the due expulsion process, taking into account the grounds for the commission of any type of legal crime (through the practice of intentional crime). The classical definition of the expulsion of foreign citizens is simple, it consists of forcibly removing (Nogueira, 2020) from the national territory an individual who does not hold the nationality of that place, for reasons of maintaining national security or public order.

However, under paragraph b) of article 4 of Decreto n.º 108/2014, de 31 de Dezembro, in Mozambique, the implementation of migration measures related to the enforcement of expulsion measures and prohibition of entry or exit of foreigners falls under the responsibility of the national migration services. Thus, it is also incumbent upon these services to determine, in the preparatory proceedings, the decisive facts for expulsion or loss of resident foreigner status. Nevertheless, the weak surveillance of borders constitutes a phenomenon that contributes to the disorderly entry of foreign citizens who do not meet the legal requirements for their stay in Mozambique. Moreover, the requirement for residence visas, which is a fundamental condition for the stay of any foreign citizen in Mozambique, is not rigorously observed.

1 BASIC CONCEPTUALIZATION CONDUCIVE TO MIGRATION AND HUMAN MOBILITY

Migration constitutes one of the processes of displacement of people from one place to another, which may occur within or outside a legal or territorial order. Furthermore, migrations are essential to the process of globalization (Martine, 2005), reinforcing its human dimension, a process that highlights economic and social inequalities and drives migratory demand for better living and working conditions. Currently, except in cases of armed conflicts and natural disasters, globalization and its relation to inequalities (Ramos, 2020) are the main causes of international migrations.

Moreover, migrations have a structural and permanent character in the global economy, constituting one of the essential factors in the process of development and social transformation worldwide. However, the increase in human mobility at the global level raises questions regarding human rights, citizenship rights and the integration of migrants, social awareness, the governance and sovereignty of States, new forms of global regulation and European construction, thereby requiring the adjustment of public policies.

2 THE VISA AND HUMAN MOBILITY

2.1 The entry and settlement of foreign citizens in Mozambican territory

The entry of a foreign citizen into the national territory is carried out through the presentation, at border posts, of the legally required documents, which include the visa (Cossa, 2023) (except in cases of exemption) and means of subsistence, which may be waived upon presentation of a statement of responsibility for food and accommodation issued by a national citizen or a foreign resident in the national territory.

Nevertheless, as Nócita Cossa (2023), understands it, entry into the national territory may be refused when the foreign citizen presents a passport (or equivalent travel document) that is invalid, expired, altered with indications of falsification, belonging to another person, or when the individual appears on the list of persons prohibited from entering, constitutes a danger or serious threat to public order, has been fined for violating migration laws, lacks proven means of subsistence, fails to present a return ticket to the country of origin, is an unauthorized or unaccompanied minor, among other reasons listed in the Law.

In these terms, under the Law (Cossa, 2023, p. 3), responsibility falls on the carriers that transport foreign citizens who do not meet the conditions enabling them to enter the country (Cossa, 2023), including responsibility for the citizen's re-embarkation within a short period of time, repatriation, food expenses, and any necessary assistance (Cossa, 2023) while the citizen remains in the national territory. However, it should be noted that such responsibilities are equally attributed to the individual who transports the foreign citizen (Cossa, 2023, p. 3) that does not meet the entry requirements.

3 THE VISA AS A FUNDAMENTAL PREMISE FOR THE EFFECTIVENESS OF MOBILITY

3.1 On the Materialization of Human Mobility

The visa is a document that enables its holder to receive permission to enter the national territory at the border post (Cossa, 2023, p. 3).

However, within the Mozambican legal order, we may find different types, namely:

a) **Diplomatic, Courtesy, and Official Visa** (Cossa, 2023) – granted to the holder of a diplomatic, service, or ordinary passport, on a diplomatic visit or at the invitation of Mozambican authorities. It allows a stay of up to 30 days and is valid for two (2) entries;
b) **Residence Visa** (Cossa, 2023, p. 4) – granted to a citizen who intends to establish residence in the national territory. It allows a stay of 30 days, extendable up to 60 days, and is valid for one entry;
c) **Tourist Visa** (Cossa, 2023, p. 4) – granted to a citizen traveling for tourism or recreational purposes. It allows a stay of up to 90 days, either continuous or intermittent, within 12 months;
d) **Transit Visa** (Cossa, 2023, p. 4) – granted to a citizen entering the country en route to another destination. It is issued for 7 non-extendable days;
e) **Visitor Visa** (Cossa, 2023, p. 4) granted for purposes not justifying another type of visa. It is valid for 15 days, extendable up to 90 days;
f) **Business Visa** (Cossa, 2023, p. 4) – granted for business prospecting, conducting scientific research, attending meetings, conferences, workshops, general assemblies, among other related events. It allows a stay of up to 90 non-extendable days and is valid for multiple entries;
g) **Student Visa** (Cossa, 2023, p. 4) – granted for the purpose of attending an officially recognized educational institution in the national territory. It is valid for 12 months, extendable for as long as the reasons for its concession remain;
h) **Work Visa** (Cossa, 2023, p. 4) – granted for the exercise of a remunerated or non-remunerated activity, in the interest of the State or on behalf of others, subject to the formalities of foreign labor contracting. It allows multiple entries and a stay of up to 1 year, extendable for an equal period in accordance with the contract;
i) **Border Visa** (Cossa, 2023, p. 4) – granted to a citizen from a country where there is no diplomatic or consular representation of the Republic of Mozambique. It allows a stay of up to 30 non-extendable days and is valid for two (2) entries;
j) **Temporary Stay Visa** (Cossa, 2023, p. 4) – granted to the foreign spouse and minor or dependent children of a foreign citizen holding a work visa or an investment activity visa. It is also granted to those entering the country for medical treatment, religious activity, or

voluntary service. It allows a stay of up to 1 year, extendable while the reasons for its concession persist;

k) **Crew Member Transfer Visa** (Cossa, 2023, p. 4) – granted at maritime, air, or railway posts and allows for the transfer of crew members between the aforementioned means;

l) **Sports or Cultural Activities Visa** (Cossa, 2023, p. 4) – granted to an accredited citizen and intended for participation in competitions or sports training, or in cultural activities. It allows a stay of 30 days, extendable up to 90 days, and is valid for one (1) entry;

m) **Investment Activity Visa** (Cossa, 2023, p. 4) granted to the investor, representative, attorney, or head of the management body of the investing company, for the purpose of implementing an investment project valued at USD 500,000 or more, and allows the granting of a residence permit. It allows multiple entries and a stay of up to 2 years for projects valued at USD 500,000 or more, and up to 5 years, extendable, for projects valued at USD 50 million or more;

n) **Visa for Humanitarian Assistance** (Cossa, 2023, p. 6) – granted to citizens entering the country at the invitation of government authorities, international organizations, and non-governmental organizations, in order to provide non-profit humanitarian work, within the framework of a state of emergency, public calamity, or other situations declared under the terms of the Constitution of the Republic and the law. It is valid for multiple entries and allows a stay of 90 days extendable for an additional 90 days (Moçambique, 2022) upon a duly justified request.

The extension of stay is a migratory act that enables the holder to remain in the national territory for a longer period, in accordance with the authorized time.

Furthermore, the Law establishes the requirements for obtaining a visa as well as the terms of exemption. Regarding visa cancellation, it is important to highlight that the responsibility for canceling a visa when the foreign citizen is already within the national territory lies with the Migration Services, while the cancellation of a visa prior to the entry of the foreign citizen into the national territory falls under the responsibility of the Diplomatic or Consular Missions of the Republic of Mozambique.

3.2 Types of Authorization for the Establishment of Residence of Foreigners in the Mozambican Legal System in Light of the New Legal Framework

The current legal framework in the Mozambican legal system grants different types of residence permits to foreigners, particularly to foreign citizens who are in Mozambique. According

to paragraphs 1 and 2 of Article 35 of Law No. 23/2022 of December 29, foreigners are authorized to reside through the issuance of the proper permit, which takes the following legal forms;

a) *Temporary residence permit*

b) Permanent residence permit.

Furthermore, **the temporary residence permit** (Moçambique, 2022), tem a validade de um (1) ano renovável por igual período, enquanto perdurarem as razões da sua concessão. Mormente, a autorização de residência temporária deve ser atualizada sempre que se verifique a alteração dos elementos de identificação nelas constantes, e cuja vigência se prologue por mais de dez (10) anos consecutivos, confere ao titular o direito à residência permanente, desde que se mantenham as razões que ditaram a primeira concessão.

In turn, **the permanent residence permit** (Moçambique, 2022) is granted upon request by the foreign citizen and is valid for five (5) years, renewable for equal periods. However, the permanent residence permit must be updated whenever there is a change in the identification elements contained therein.

4 EXIT OF FOREIGN CITIZENS, CURRENT LEGAL FRAMEWORK

4.1 Voluntary Exit

With regard to the exit of foreign citizens, it is understood that this legal procedure is carried out under the terms of paragraph 1 of Law No. 23/2022 of December 29, through any authorized border post, upon prior presentation of one of the documents provided for under paragraph 1 of Article 8 of the aforementioned law, and after the fulfillment of the legal formalities.

However, according to paragraph 2 of Article 44 (Moçambique, 2022), exit from the national territory may be voluntary or coercive. Nevertheless, coercive exit (Moçambique. Lei n. 23/2022, art. 44, n.º 3) occurs through the expulsion of the foreign citizen from the national territory.

4.2 Exit Prohibition

This legal procedure results from the provisions of Article 55 of Law No. 23/2022 of December 29, whereby exit may be prevented when the competent authority has official knowledge that, against the respective traveler or emigrant, there is an arrest warrant or exit prohibition issued by an authorized entity. In other words, this procedure may be enforced under the following legal circumstances:

a) *There is a judicial decision prohibiting exit;*

b) The migration services have official knowledge that, against the traveler, there is an exit prohibition or arrest warrant issued by a competent entity.

5 EXPULSION OF FOREIGN CITIZENS IN THE MOZAMBICAN LEGAL ORDER: LEGAL PROCEDURES

5.1 The Expulsion of Foreign Citizens as a Coercive Mechanism of Removal

It is unnecessary, as Silva Vaz (2021:9) states, to say, however, that the fundamental principles of coercive removal or expulsion of foreign citizens are enshrined in the Constitution of the Republic.

However, expulsion by administrative authority applies in cases where the foreign citizen resides irregularly, is not the holder of a residence permit, and has submitted an asylum request which has been denied.

In the same vein, it may be noted that coercive removal or expulsion of foreign citizens in Mozambique essentially consists of an administrative or judicial act whose fundamental purpose is the removal from the national territory of a foreign citizen who has entered or remained in an irregular situation.

5.2 Administrative Expulsion

Administrative expulsion is provided for under Article 45 of Law No. 23/2022 of 29 December, which repeals Law No. 5/93 of 28 December. Thus, without prejudice to the provisions contained in international treaties or conventions, the Government may expel from the national territory a foreign citizen on any of the following grounds, as set forth in paragraph 1 of Article 45 of Law No. 23/2022 of 29 December:

a) Irregular entry and stay in the country;
b) Acting against national security, public order, or good morals;
c) Witnessing illicit migratory activities and failing to report them to the competent authorities;
d) Engaging in illicit migratory activities that threaten the interests and dignity of the Mozambican State or its citizens;
e) Intervening in the political life of the country without being duly authorized by the Government;

f) Disregarding the Constitution of the Republic and other national laws applicable to foreign citizens;
g) Committing acts that would have prevented entry into the country, had they been previously known by the Mozambican authorities;
h) Holding a work visa and becoming linked to another employer different from the one who originally contracted the worker;
i) Having been sanctioned with a fine and failing to make payment within the established deadline;
j) Failing to comply with the notification of voluntary departure from the national territory within the stipulated timeframe and;
k) Having been sentenced to the accessory penalty of expulsion and reentering the country irregularly.

Furthermore, the expulsion process is of an urgent nature.

5.2.1 Obligations of the Foreign Citizen under Expulsion Proceedings

While the administrative expulsion process is ongoing, the foreign citizen (Moçambique, 2022) is obliged to:

a) Declare their residence and not be absent from it without authorization from the migration services;
b) Appear regularly and periodically before the migration services.

Furthermore, in the event of non-compliance (Moçambique, 2022) with any of the obligations provided above, the foreign citizen shall be detained, and the expulsion decision shall be executed immediately.

5.2.2 Expulsion Order

With regard to the expulsion order, it must constar (Moçambique, 2022):

a) The grounds for the expulsion;

b) A reference to the prohibition of entry into national territory for a period not less than 10 years.

5.2.3 Limitation on the Measure of Expulsion

Expulsion (Moçambique, 2022) shall not take place to a country where the foreign citizen may be persecuted for political, religious, racial, or ethnic reasons.

5.2.4 Appeal against the Administrative Expulsion Order

Against the administrative expulsion measure (Moçambique, 2022), the individual concerned may lodge an appeal before the Administrative Court, without suspensive effect, under the terms of the law.

5.3 Judicial Expulsion

Judicial expulsion (Moçambique, 2022), takes place within the Mozambican legal system and, without prejudice to the provisions of the criminal legal framework, the accessory penalty of expulsion is applied in the following cases:

a) To a foreign citizen who is not a resident in the country and who has been convicted by a Mozambican court of an intentional crime with a sentence of more than six months of imprisonment;
b) To a foreign citizen who has resided in the country for less than five years and has been sentenced to more than one year of imprisonment;
c) To a foreign citizen who has resided in the country for more than five years and less than fifteen years and has been sentenced to more than two years of imprisonment;
d) To a foreign citizen who has resided in the country for more than fifteen years and has been sentenced to more than eight years of imprisonment.

5.3.1 Competence for the Execution of the Judicial Expulsion Measure

Under Mozambican legislation, the execution of the judicial decision of expulsion of the foreign citizen from the national territory is the responsibility of the migration services (Moçambique, 2022).

Furthermore, the court sends to the migration services the certificates of the convictions (Moçambique, 2022) issued in criminal proceedings against foreign citizens.

The accessory penalty (Moçambique, 2022) of expulsion is always executed even if the foreign citizen is on parole.

5.3.2 Communication of Expulsion

The expulsion order is communicated to the competent authorities of the country of destination, as provided in Article 53 of Law No. 23/2022 of 29 December.

5.3.3 Expenses Related to Expulsion

With regard to expenses related to the expulsion of foreign citizens in the Mozambican legal system, whenever the individual cannot bear the expenses resulting from the expulsion, they shall be borne by the State (Moçambique, 2022).

Moreover, for the coverage of expenses arising from expulsion, appropriations for this purpose are included in the budget of the Ministry responsible for the area of migration, without prejudice to the use of funds from other institutions, in accordance with paragraph 2 of Article 54 of Law No. 23/2022 of 29 December, which establishes the legal regime of the foreign citizen.

In particular, the foreign citizen whose expulsion (Moçambique, 2022) expenses have been borne by the State (Moçambique, 2022) and who is later authorized to re-enter the national territory is obliged to reimburse the State double the amount spent.

Furthermore, the employer who has in their service a foreign citizen subject to the measure of expulsion is obliged to cover the expenses related (Moçambique, 2022) to such expulsion.

6 OF INFRACTIONS AND SANCTIONS

6.1 Migration infractions (Moçambique, 2022)

Under the terms of national legislation concerning the legal regime of foreign citizens, the following constitute migration infractions:

a) Irregular entry and stay in the country;
b) Use of false or forged documents;
c) Use of false or forged visas;
d) Failure to notify migration or police authorities of the loss of passport or residence permit;
e) Illegal entry and exit on board vessels or aircraft;
f) Failure to renew migration documents within the deadlines established by law;
g) Failure to report changes in identification elements;
h) Lack of lodging report;
i) Transport of passengers without legal and complete documentation required for the formalization of entry into the country;
j) Concealment of a foreign citizen who is in an irregular migration situation;

k) Lack of residence permit;
l) Provision of false statements for the purpose of issuing an entry visa or residence permit in favor of a foreign citizen;
m) Failure by the carrier to report data on foreign passengers; and
n) Entry or exit of vessels or aircraft without authorization and migration clearance, when destined for or coming from abroad.

6.2 Sanctions due to violation of legal procedures for the entry and exit of foreign citizens

In the Mozambican legal sphere, the infractions referred to in the current law are punished with a fine (Moçambique, 2022), under the terms of the regulation, without prejudice to the application of the measure of administrative expulsion or criminal liability.

6.3 Competence for the instruction of proceedings for migration infractions

Regarding the instruction of proceedings concerning violations of the Constitution of the Republic and other internal norms, it is the responsibility of the migration services (Moçambique, 2022) to conduct proceedings related to migration infractions arising from the law.

7 INTERNATIONAL HUMANITARIAN LAW AND THE NEED TO SAFEGUARD THE PERMANENCE OF FOREIGN CITIZENS

7.1 International Humanitarian Law, Humanitarian Assistance and the Implementation of the Refugee Status

International Humanitarian Law (Guedes; Adami, 2021) and international human rights law are two distinct yet complementary branches of law. Moreover, both concern the protection of life, health, and dignity. Likewise, in principle, international human rights law is constantly applied in times of war or armed conflict.

However, there is a need to safeguard the permanence of foreign citizens who remain in national territory as refugees[2] or as individuals fleeing armed conflicts or war. Furthermore, according to Article 32 of the Convention relating to the Status of Refugees, the Contracting States shall not expel (Genebra, 1951) a refugee who is lawfully in their territory except on grounds of

[2]Considering that the United Nations has repeatedly expressed its deep concern for refugees and that it has been striving to ensure for them the widest possible exercise of human rights and fundamental freedoms.

national security or public order. The expulsion of such a refugee shall only occur by virtue of a decision rendered in accordance with the process prescribed by law. Unless compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to justify themselves, to appeal, and to be represented for that purpose before a competent authority or before one or more persons specially designated by the competent authority. In addition, the Contracting States shall grant such a refugee a reasonable period to seek legal admission into another country. The Contracting States may apply, during this period, such internal measures as they deem appropriate.

7.2 Violation of Human Rights in the Context of the Coercive Expulsion of Foreign Citizens

According to some international treaties, governments may suspend certain norms in a public emergency situation that endangers the life of the nation, provided that such suspensions are proportionate to the crisis and their application is neither indiscriminate nor infringes another norm of international law, nor violates the human rights of citizens, whether nationals or foreigners, within the legal order. Nevertheless, there are norms that do not allow for any suspension, such as those related to the right to life, and those prohibiting torture or cruel, inhuman (Genebra, 1951, p. 11) or degrading treatment or punishment, slavery and servitude, as well as the retroactivity of criminal laws. Moçambique, although a signatory to various international conventions, faces within its State reports (Genebra, 1951, p. 11) of improper treatment[3], torture, and the subjection of foreign citizens to mistreatment, even when holding residence permits, as reported by some non-governmental organizations. However, the recurrence of such cases leads us (Liga dos Direitos Humanos, 2004) to believe that this is a problem whose intervention proves urgent, insofar as it contradicts the provisions of the Constitution of the Republic and the international instruments on the matter, namely the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and, above all, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, or simply the Convention Against Torture. And there is no doubt regarding the determination that all executions perpetrated by State bodies (Liga dos Direitos Humanos, 2004, p. 4) or otherwise must be considered extrajudicial, unconstitutional, and violative of Human Rights.

[3]The phenomenon of torture, degrading treatment, and summary executions has been addressed by various international bodies in diverse contexts, according to the *LIGA DOS DIREITOS HUMANOS, Relatório Anual dos Direitos Humanos, Maputo, 2004.*

8 SCOPE OF COMPARATIVE LAW

8.1 The Case of Portugal

The expulsion of foreign citizens or coercive (Liga dos Direitos Humanos, 2004, p. 21-22) removal in Portuguese jurisdiction has an administrative nature in relation to foreigners who enter and remain illegally in Portuguese territory, and it takes on a judicial nature when it constitutes an accessory penalty or an autonomous measure applied to the foreigner who entered and remained legally in Portugal under the terms of Article 32(2) of the Constitution of the Portuguese Republic (Portugal, 2007), in conjunction with Articles 140, 151, and 158 of the Immigration Law. However, in the Portuguese legal system, there exists the concept of readmission. Moreover, in comparison with coercive removal, readmission presents an obvious difference, since readmission is a removal measure applied when foreign citizens are in an irregular situation and are covered by international conventions to which Portugal is a party.

If the foreigner to be readmitted is not covered by a readmission agreement, then Portugal will have to initiate a coercive removal procedure.

8.2 The Case of Brazil

In Brazil, the measure of expulsion operates under the provisions of Articles 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, and 75 of Law No. 6.815 of August 19, 1980, in conjunction with Decree No. 86.715 of December 10, 1981, both of which constitute constitutional provisions pertinent to the statute of foreigners. Furthermore, in the Brazilian legal system, a foreigner is subject to expulsion if, in any way, they threaten national security, public (Brasil, 1980) or social order, public tranquility or morality, or the popular economy, or if their conduct renders them harmful to social coexistence and national interests. Under the terms of Article 70 of the aforementioned law, it is the responsibility of the Brazilian Minister of Justice, either ex officio or upon receiving a duly substantiated request, to order the initiation of an inquiry into the expulsion of the foreign citizen.

Thus, the foreigner whose detention becomes necessary, or who has served (Brasil, 1980) the time limit established under criminal law, shall remain under supervised freedom, in a place designated by the Ministry of Justice, and shall comply with the conditions of enforcement established for them.

CONCLUSION

Considering that the expulsion of foreign citizens must comply with legal procedures in the Mozambican legal system, we may draw the following conclusions:

I. Regarding administrative expulsion, the government inhibits irregular entry and stay in the country, since the foreign citizen did not comply with legal requirements. Furthermore, the Government may expel any foreign citizen who threatens national security and public order, who has engaged in migratory activities considered illicit, or who disrespects the Constitution and other national norms.

II. Regarding judicial expulsion, the Government may expel the foreign citizen who has been convicted by a Mozambican court of an intentional crime with a sentence exceeding six (6) months of imprisonment, or who has resided for more than five (5) years and has been sentenced to more than one year of imprisonment. Moreover, a foreign citizen may also be expelled from the national territory if convicted for more than two (2) years of imprisonment and having resided in the country for more than five (5) years and less than fifteen (15) years, or if having resided for more than fifteen (15) years and sentenced to more than eight (8) years of imprisonment.

With regard to infractions and/or sanctions, foreign citizens may be expelled for the use of false or falsified visas or forged documents, in accordance with the applicable legislation. Thus, these procedures must be observed within the constitutional framework, since Mozambique is a signatory to various treaties, protocols, and conventions; therefore, these must be respected in order not to undermine human rights, within the legal framework of international humanitarian law. The right to life and dignity cannot be questioned, as these are rights naturally enshrined within both domestic and international norms. As enshrined in the Constitution of the Republic, under Article 40, every citizen (national or foreign) has the right to life and to physical and moral integrity and may not be subjected to torture or cruel or inhuman treatment. Hence, the measure of expulsion must strictly comply with the prevailing norms, respecting both the fundamental law and the international conventions to which Mozambique is a signatory.

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REVIEW

ALTERNATIVE WAYS TO FIGHT RACISM: REVIEW OF THE BOOK "O NEGRO: DE BOM ESCRAVO A MAU CIDADÃO?"

FORMAS ALTERNATIVAS DE COMBATE AO RACISMO: RESENHA DO LIVRO "O NEGRO: DE BOM ESCRAVO A MAU CIDADÃO?"

FORMAS ALTERNATIVAS DE COMBATIR EL RACISMO: RESEÑA DEL LIBRO "O NEGRO: DE BOM ESCRAVO A MAU CIDADÃO?"

CARLITOS ROMÃO TOMÉ [1]
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"O negro: de bom escravo a mau cidadão"? is the title of Clóvis Moura's book, the result of compiling three studies on Black slavery. Structured in three interrelated parts, the work offers a powerful critique of the persistence of colonial and slaveholding structures in Brazilian society even after abolition. Originally published in 1977 and reissued in 2021 by Dandara Editora, the book seeks to deconstruct the traditional view of the African slave as "passive," demonstrating the active role of Black people in Brazil's social struggles—both in their fight for liberation and in the country's independence.

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Clóvis Steiger de Assis Moura (1925–2003) was a Brazilian sociologist and an organic intellectual of the working class. The son of a white father and a Black mother, he devoted his theoretical and practical efforts to supporting social movements in defense of oppressed groups, analyzing how stereotypes continue to take shape in the everyday life of Brazilian competitive society. In contrast to Gilberto Freyre—who portrayed a supposedly harmonious relationship between enslaved and enslaver—Moura highlights Black resistance dating back to the era of slavery. In Freyre’s view, the Black person is reduced to a servant of the master, in unquestioning submission to the white man’s desires. The Black individual becomes a passive and obedient subject, stripped of any historical agency in their own emancipation. This portrayal of the enslaved-master relationship is challenged by Moura, who argues that such a view not only glorifies Black passivity but also upholds structural racism. For Moura, Africans in colonial Brazil actively resisted oppression.

In the first part of the book, the author invites both the reader and society to reflect on the origin and persistence of stereotypes surrounding freed Black people in contemporary society, in order to better understand the underlying values at play. According to Moura:

> No passado o bom escravo seria aquele que aceitava tudo a mando do seu senhor, sem questionar, protestar as torturas, aceitando-se desta forma, o seu status como sendo eterno e imutável. Que vivia na senzala trabalhando, aceitava sua condição de escravo passivamente, isto é, sem resistência a estrutura ideológica que o oprimia (Moura, 2021, p.18).

From this perspective, the author challenges the notion of Black passivity, arguing that, although oppressed by an alienating system, Black individuals possessed analytical awareness capable of leading them to resistance. He emphasizes examples such as escapes into the forests, the formation of quilombos (maroon communities), and revolts that eventually culminated in revolution.

Building on this, the author deepens his critique by analyzing the defense mechanisms developed in response to disintegrative forces, showing how Black individuals, often labeled and marginalized in the favelas, feel socially wronged due to the harsh conditions they endure. As a result, Moura defends the sentiment behind Black uprisings, including those expressed through criminal behavior. He also highlights responses influenced by Black movements such as Black Power, “os Panteras Negras”, Negritude, and others. According to Moura, it is from this dual situation that Black protest arises—manifesting in multiple forms: from the formation of Black-specific groups and a Black intellectual class confronting this reality, to cultural, religious, and artistic expressions. For Moura, the stereotype of the “bad citizen” emerges from the Black

individual's attempt at self-affirmation, aimed at breaking the historical patterns that have shaped slave-based social relations. It is through the treatment of Black people in contemporary society that rationalizations arise to recast them as bad citizens.

Within this context, Moura introduces the concept of the sociological myths of "racial democracy" as an ideological mechanism of domination that conceals the existence of racial and ethnic inequalities. He argues that this ideology prevents Brazilian society from confronting racial issues and implementing public policies for historical redress. This false theory is revealed through the systemic restrictions placed on Black individuals in the labor market, in marriage, and elsewhere. Moura also critiques the prejudice directed at Afro-Brazilian religions—so labeled by Brazil's dominant classes as a way to preserve their privileges and justify their Christian-centric religious superiority. He exposes color prejudice in Brazil as the ideology through which racism is expressed, enforcing a series of restrictive measures—though not legally codified—that remain clearly visible in public life.

In challenging the "bad citizen" stereotype, Moura advocates for a redefinition: the "good citizen" is the Black individual who refuses to accept racial discrimination, confinement to the favelas, and exclusion from employment opportunities based on skin color. Instead, they seek alternative paths through active participation in emancipatory movements. It is important to note, however, that society continues to label as "bad citizen" the Black individual living in the favelas, often stereotyped as a criminal, alcoholic, beggar, or as someone who practices Umbanda or Candomblé, or relies on traditional medicine.

In the second part of the book, Clóvis Moura emphasizes the complexity of the Black experience and its role in the construction of Latin American nations, as well as the consequences for the Black population. He demonstrates that Black individuals played a fundamental role in the struggles for Latin American independence. Their knowledge of the territory, physical strength, and willingness to fight were crucial to the success of those uprisings. Along this path of resistance and struggle, their contributions toward achieving equal rights, human dignity, and citizenship become clear, as the author states:

> Mas o escravo não lutou apenas pela sua emancipação, isto é, objetivando livrar-se do cativeiro. No processo da formação da nação brasileira o negro está presente, lutando com outros estratos da nossa população para nos desligarmos de Portugal e, depois da independência, pela instauração da República (Moura, 2021, p. 132).

In light of the above, the author notes that, despite their contributions, Black people were systematically excluded from Brazil's social and political structures. The white elites who led the independence processes retained power and privileges, relegating Black populations to a

marginalized status. Moura then highlights the social and economic structures that continued to benefit whites, perpetuating the exclusion and inequality of Black people. Within the broader landscape of poverty, Black individuals have remained, to this day, among the lowest strata of the social hierarchy. Racism and inequality function as structural elements, and the struggle for their overcoming defines the Black experience—both as Black, fighting against color-based prejudice, and as poor, confronting poverty and exclusion from the labor market.

In this regard, Moura introduces Afro-Brazilian religiosity as an integral part of Black cultural identity. Without romanticizing these practices, he develops a theoretical approach that demystifies the negative image often associated with Black cultural expressions and reveals the protagonism of Black communities in today’s class-based society. Afro-Brazilian religions serve as forms of self-affirmation and defense within a society divided by class, and Moura highlights the reasons for their wide dissemination in major urban centers of Brazil, particularly São Paulo.

In the third part of the book, the process of cultural struggle and the reaffirmation of Black identity becomes evident through the formation of specific community groups. For Moura, this ongoing process of resistance and organization dates back to slavery itself, as Black people sought ways to survive, preserve their cultural patterns, and reclaim their humanity—something that both slavery and the Brazilian state attempted to permanently suppress.

Throughout the work, the author situates the Black individual as being obstructed in multiple ways and at various levels, while also showing how they organize into specific groups in defense of their autonomy and social upliftment. He argues that Afro-descendant religions have been—and continue to be—the foundations of Black life in Brazilian society. These religions are the driving force behind cultural and artistic expressions grounded in sociability and collective identity.

Thus, the trajectory of Black people in Brazil reflects a history of emancipatory struggles, rooted in radical resistance and a determined effort to neutralize the legacy of racism while reclaiming a rightful place in contemporary society. What is most essential in this work is the way Moura interprets the behavior of the current Black population, demonstrating that the image of Black “badness” arises because they break with the traditional behavioral norms of a competitive society that replaced slavery, and because they struggle—on a massive scale—for upward social mobility. The author invites readers to reflect critically and to challenge power structures and social relations, from the judiciary to everyday interactions, in the pursuit of building a more egalitarian and democratic society.

In conclusion, the work reviewed here is of great relevance to contemporary debates on racial issues—not only in Brazil but around the world, wherever Black people are discriminated

against, marginalized, and viewed as citizens destined for submission to other racial groups. Moura’s theoretical contributions are of fundamental importance for proposing concrete actions to combat racism.

Racism—especially based on phenotype—is a social ill that must be overcome not only by those who are discriminated against, but above all within the consciousness of the discriminator, the oppressor. Undeniably, the problem does not lie in the color of the other, but in the individual's own awareness. It is a call for social consciousness at all levels—where men and women of all colors recognize themselves and one another as members of a single, diverse human race. In defense of the so-called “bad” citizen, Moura elevates the spirit of resistance and brings to light the current conditions that give Black individuals the power to speak out and confront all forms of discrimination—something they were denied during the slave era, when silence was their only apparent option.

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REVIEW

MILITARY AND POLITICS IN BRAZIL

MILITARES E POLÍTICA NO BRASIL

MILITARES Y POLÍTICA EN BRASIL

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INTRODUCTION

The book “Militares e Política no Brasil” (Military and Politics in Brazil) presents itself as an essential study for understanding the complex relationship between the Armed Forces and national politics throughout Brazilian history. The authors — Jefferson Rodrigues Barbosa, Leandro Pereira Gonçalves, Marly de Almeida Gomes Vianna, and Paulo Ribeiro da Cunha (eds.) — investigate the intersections between the military and political processes, addressing both the periods of dictatorship and the subsequent democratic regimes.

This review will explore the key arguments and contributions of the book, as well as their implications for understanding contemporary Brazilian politics. It will examine the role of the military in Brazilian political life, analyzing the relationship between the Armed Forces and the government from a historical perspective to future outlooks. The book offers a deep and comprehensive analysis of the military’s involvement in Brazilian politics, underscoring the importance of dialogue and the construction of a balanced and respectful relationship between the Armed Forces and civil society.

SUMMARY OF THE WORK

The author of the aforementioned work, along with the contributing co-authors, identifies that the Armed Forces have never been absent from Brazil’s political history. This enduring presence demonstrates that the military is neither apolitical nor politically disengaged. On the contrary, the military has historically occupied a central role in political power. With the establishment of the Republic, political disputes arose among various military factions—whose presence in the constituent congress once reached a quarter of its members—marking the beginning of a contradictory and lasting intervention in Brazilian politics, a proximity that continues to the present day.

Furthermore, “Militares e Política no Brasil” brings together contributions from scholars dedicated to the subject, offering a historical overview from the formation of the Armed Forces to their current role in society. The book emphasizes the intrinsic relationship between this institution and national political life, aiming to reveal the different ideological tendencies and political positions that exist within the military. These tendencies have been historically present within political parties—both left and right—and have also manifested in illegal acts carried out by military personnel aligned with the dictatorship, such as the Riocentro bombing in the early 1980s, among others, with ongoing relevance today. The book also highlights the military’s involvement in scientific research, humanitarian missions, and security operations at both national and international levels. Like other social forces, the military is both an actor in and subject to the dynamics of class struggle. Its political positioning has varied, whether acting in defense of democratic freedoms or engaging in Law and Order Guarantee (GLO) operations. In short, this volume is organized to contribute to a broader understanding of the conflicts, dynamics, and interactions between the military and politics in Brazil. Moreover, the work aims to support future research and inform readers seeking a more nuanced and pluralistic understanding of the Armed Forces—both as political and social actors and as institutions of hegemonic power—within the context of class struggles and the competing nation-building projects that have shaped contemporary Brazilian history.

Historically, the book begins by introducing the context of the Armed Forces in Brazil, tracing their role from the Imperial period to the present. The author highlights how the militarization of Brazilian politics began as early as the 19th century, culminating in various coups and interventions throughout the 20th century. The analysis of the military regimes—especially from 1964 to 1985—is in-depth, revealing not only the strategies used to sustain the regime but also civil resistance efforts and the social consequences of authoritarian rule.

CRITICAL ANALYSIS

Positive Aspects

This historiographical analysis traces the trajectory of military participation in Brazilian politics from independence through re-democratization. The work highlights the Armed Forces’ influence during key moments in history, such as the Proclamation of the Republic and authoritarian regimes. It provides a thorough examination of how the military became political actors in Brazil, playing diverse roles— from defending national sovereignty to intervening in internal affairs.

From this perspective, it is clear that since independence, the military has actively engaged in Brazilian politics, participating in conflicts, coups, and governments, thereby exerting a lasting influence that extends beyond the military sphere into areas such as security, defense, and infrastructure, continuing to the present day. One of the most compelling points in the book is the discussion of the civilian-military relationship. The author argues that this relationship is marked by ambivalence: while the military is often perceived as a defender of order and security, it frequently opposes the social and political demands of the population. This tension is explored through case studies that reveal how various political groups have sought either to leverage or to restrain military action during critical moments in Brazilian history.

Another crucial issue raised by the author concerns the role of the Armed Forces in post-1985 Brazilian democracy. The book analyzes how, despite their return to the barracks, the military has remained influential in political decision-making and power structures. The author also discusses the military's relationship with Jair Bolsonaro's government, exposing the complexities of an administration that seeks support from the Armed Forces while attempting to uphold a democratic discourse. The book emphasizes the enduring nature of military involvement in Brazilian politics. Furthermore, the volume compiles articles by fifteen academic researchers and three reserve officers from the Army and Air Force, demonstrating the breadth and depth of this longstanding relationship.

From the outset, in the preface, one of the contributing authors, Daniel Aarão Reis Filho, reaffirms the military's role in Brazilian history, stating: "In the current conjuncture, the Armed Forces once again hover like shadows over political institutions. Openly called upon to intervene by various social agents, expressing themselves in a threatening, irregular, and undisciplined manner through the voices of both reserve and active generals, the question remains whether Brazilian society will be subjected once more to 'salvage' interventions by those accustomed to identifying themselves as 'guardians' of the Republic."

Negative Aspects

On the other hand, the presence of the military in decisive moments of Brazil's history is an undeniable fact. In this context, the Bolsonaro government is cited, during which the public administration was unfortunately militarized, resulting in inflated and corruption-prone military expenditures in the country.

Moreover, the comprehensive articles comprising the aforementioned work reconstruct the military's participation from its formation to its role in contemporary society. As the organizers highlight, the compilation "aims to provide tools for new research and to inform readers interested

in a more multifaceted and polyphonic understanding of the dimensions between members of the Armed Forces as political and social actors and the military institutions as hegemonic political apparatuses, within the contexts of class struggles and nation-building projects that permeate contemporary Brazilian history."

The 1930 Revolution, which brought Getúlio Vargas to power, serves as a clear example of how civilians and the military interact within spheres of power. The military became key players in internal politics, alternating between supporting civilian governments and leading coups, such as the 1964 coup that established a military regime lasting until 1985. This period is one of the most discussed in the book, as it represents a time when Brazilian politics was marked by repression, censorship, and institutional restructuring.

A central aspect of the book is its analysis of the military's role in Brazil's democratic transition following the dictatorship. The authors discuss how popular dissatisfaction, coupled with internal and external pressures, forced political opening. Military participation in this process was not unanimous; while some advocated for regime continuity, others recognized the need to return to democracy.

This ambivalence was reflected in the military government's actions, which, although resistant to change, began negotiating the transfer of power back to civilians. The analysis of this historical phenomenon reveals how the civilian-military relationship can simultaneously embody conflict and cooperation. The book includes testimonies and documents evidencing this transition and internal debates within the Armed Forces, showing that not all military personnel were aligned with repression and the maintenance of the status quo. Regarding the term status quo, o *Status Quo* ou *Statu quo* it originates from Latin, meaning "the current state." Both forms, *status quo* (more popular) and *statu quo* (more correct), are used. In this context, the *status quo* relates to the state of facts, situations, and conditions, regardless of time. It is commonly accompanied by verbs such as maintain, defend, challenge, or change.

Moving away from semantics and returning to the work itself, another relevant point in the book is the analysis of the cultural and ideological influence the military exerts on Brazilian politics. Over the years, various narratives have been constructed around the Armed Forces' role—sometimes glorifying their actions, other times denouncing abuses committed during the dictatorship. This duality is crucial to understanding how Brazilian collective memory deals with its military past. The authors investigate how military training institutions, as well as the media, have promoted specific perspectives on the military's role in society. The militarization of certain political and social discourses is a theme that resonates strongly today, especially in moments of crisis or public insecurity. In this regard, the militarization of educational spaces is seen as either a

means to disseminate or to impede society's freedom to engage in important debates. Furthermore, beyond being a historical affront to the redemocratization process, attempts to introduce military corporate values into schools violate the fundamental democratic principle. Constitutionally, schools are spaces of freedom, diversity, and plurality, where children and adolescents must learn democracy through experience—unlike what occurs in military schools, which have existed since Brazil's early history.

Regarding military actions in Brazil, the book provides access to ongoing military interventions in Brazilian politics. This relationship began during the Empire, as John Schulz shows in his book The Army in Politics: Origins of Military Intervention, 1850–1894, and continued through the republican era from its inception: the proclamation of the Republic was a military coup (both of the first presidents, Deodoro da Fonseca and Floriano Peixoto, were military officers). Throughout the Republic, there were many events involving the military in politics, including mutinies and revolts such as the tenentista revolts of 1922 and 1924 and the 1930 Revolution, which was actually a coup, resulting from, among other factors, intra-oligarchic conflicts strengthened by dissident military officers. Even today, this relationship persists, as seen in recent coup attempts and the assassination attempt against President Luiz Inácio Lula da Silva.

In the final chapter, the author proposes some challenges currently facing Brazilian politics concerning the military. These include issues such as the militarization of public security, internal conflicts among different factions within the Armed Forces, and the impact of social media on public opinion regarding military politics. The author suggests that greater understanding of this dynamic is crucial for strengthening democracy and preventing authoritarian backsliding.

CONCLUSION

In light of the above, "Militares e Política no Brasil" is an indispensable work for researchers, students, and anyone interested in understanding the complex relationship between the military and politics in Brazil. Through a meticulous and well-supported analysis, the book opens space for a necessary discussion about the future of the country's democratic institutions—so that democracy itself is not left vulnerable to a dictatorial context forcibly pursued by members of the military.

With its critical lens and extensive research, the work stands out as a valuable contribution to the debate on contemporary Brazilian politics. This review has aimed to offer a detailed overview of the book, aligned with the proposed theme of exploring the relationship between the military and politics in Brazil.

Ultimately, the work seeks to deepen the understanding of the intricate dynamics between these two spheres. The authors argue that Brazil's national history is marked by cycles of tension and cooperation, in which the military—even after redemocratization—continues to play a significant role in political decision-making. By analyzing different contexts and narratives involving the Armed Forces, the book invites readers to reflect on the future of this relationship. The critical analysis offered by the authors is fundamental for understanding both the risks and opportunities that emerge from this interaction—particularly in a political environment that is increasingly polarized and volatile.

In sum, reading “Militares e Política no Brasil” is essential for those seeking to understand not only the past but also the ongoing dynamics that continue to shape contemporary Brazil. Open dialogue and continued research are crucial for civil society to strengthen its institutions and promote a truly participatory and pluralistic democracy.

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TERRITORIES OF LIFE AND LAND-CAPITAL: GIROLAMO DOMENICO TRECCANI'S VIEW OF THE LEGAL AMAZON

TERRITÓRIOS DE VIDA E TERRA-CAPITAL: O OLHAR DE GIROLAMO DOMENICO TRECCANI SOBRE A AMAZÔNIA LEGAL

TERRITORIOS DE VIDA Y TIERRA-CAPITAL: LA MIRADA DE GIROLAMO DOMENICO TRECCANI SOBRE LA AMAZÔNIA LEGAL

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Her academic production and professional performance focus on the fields of Agrarian Law, land regularization, territorial conflicts, rights of traditional peoples and communities, land grabbing and registration law, with an emphasis on Amazonian contexts.

Treccani has received several honors and distinctions, including: title of Citizen of Belém (Municipality of Belém, Legislative Decree No. 59/2024), title of Citizen of the State of Pará (Legislative Assembly of the State of Pará, Legislative Decree No. 12/2009), Francisco Caldeira de Castelo Branco Medal of Merit (Municipality of Belém, Decree No. 34.916/1998), title of Officer of the Order of Merit Jus et Labor (TRT 8th Region), José Carlos Dias de Castro Human Rights Award (OAB/PA), Certificate of Recognition and Aquilombamento (Malungu), patron name of Class 010 of Law/UFPA (2019), Professor Ernesto Adolpho de Vasconcellos Chaves Medal of Academic Merit (Institute of Legal Sciences/UFPA) and Diploma of Honor of Merit from the Civil Police Academy of the State of Pará. In 2025, she was a member of the Evaluation Committee of the Safe Soil Award of the National Council of Justice (Ordinance No. 26/2025).

1 TO START...

> *Thiago Silva:* Professor Treccani, I thank you immensely for your availability. His research has pointed out that the Legal Amazon is the scene of a historical and complex dispute over the territory, marked by land grabbing, deforestation and violence against traditional peoples and communities. How do you conceptualize the idea of "capital land" and how does it contrast with the "territories of life" in the Amazon?

Girolamo Treccani: The debates on the Legal Amazon lead us, first of all, to make a fundamental distinction, which leads us to look at the subjects of rights. On the one hand, traditional peoples and communities who consider the space occupied, or, to use the expression they use, territories, in some cases, territories of life. Territory that is a term enshrined in article 13 of Convention No. 169 of the International Labor Organization (ILO), which shows how it is not exclusively a land.

Although articles 231 of the Constitution and 68 of the Transitional Constitutional Provisions Act (ADCT) use the word land, in the case of traditional peoples and communities, the most correct term is territory, precisely because it is not just any rural property. It is not a rural property codified under the terms of article 4 of the Land Statute, which uses the category of family property to identify a lot to be titled.

Actually, when talking about territory, a much broader expression is used, which goes beyond the physicality of the property, but involves identity categories. This is the place where I was born, where I grew up, where I develop my productive, cultural activities, but it is also the place of my ancestors, it is the place of my tradition, it is the place where, in addition to working, I develop broader activities, so a cultural territory.

On the other hand, we have the so-called idea of capital land, that is, land understood as a patrimonial asset intended for economic exploitation, or destined for non-exploitation, when this is in the interest of capital, that is, I can use it or not use it. In spite of several decisions of the Supreme Court, the Federal Constitution itself, in its article 186, determines that the fulfillment of the social function is only achieved when those four items that concern the productive dimension, the environmental dimension, the dimension of labor relations, the dimension of promoting well-being are fulfilled... But still, it is often unexploited land, land that is destined for speculation.

Capital land is also that property in which the holder seeks to exploit his productive potential to the maximum, to the detriment of the environment itself, for example, using pesticides, which I prefer, on the contrary, to define as pesticides. Brazil is one of the world champions in the use of pesticides. It is important to highlight how recent studies, for example, by the Instituto Escolhas, show that in the case of soybeans we did have an increase in productivity, but much, much more an increase in the size of the area and, above all, an increase in the use of pesticides.

Capital land is also a speculative good, that is, a good that yields over time by its own appreciation. Therefore, we have two absolutely contrasting realities. On the one hand, a territory of life, on the other hand, capital land.

I would like to end this point by recalling that, in the case of territories of life, whether of indigenous populations (since 2014), or of remaining Quilombo communities (since November 2023), there are decrees, norms, that determine that these ethnocultural spaces need to prepare their economic, social, and environmental development plans. Therefore, it will be rules issued by the communities themselves that will fix the use of the territory. This territory that, if there is any type of policy that implies its use, obviously needs that this policy, that these works, that these interventions, whatever they may be, including legislative, pass through the sieve of Article 6 of ILO Convention No. 169, which is the right to prior, free, and informed consultation.

2 AMAZON: BETWEEN LAND GRABBING AND MINING

Thiago Silva: In recent work, you have analyzed emblematic cases of land grabbing in Pará and demonstrated how historical failures in documentation and territorial management fuel conflicts and exclusion. What are the main mechanisms that sustain land grabbing today and what institutional obstacles make it difficult to confront?

Girolamo Treccani: About the second question, I think there is a fundamental situation to be remembered, that is, it is essential that we defend the position enshrined in the Allegation of Non-Compliance with a Fundamental Precept (ADPF) 1056 of the Federal Supreme Court, which decided this in 2023. This ADPF has some fundamental points that give us the context of my answer.

First point, remember how the land, or rather, the ownership of the land was originally public. This means that it is up to the private party to prove the due and legitimate prominence of the public assets of that property. Therefore, we can affirm that at any and all times it is not a question of the existence in Brazil of the so-called lands *a non domino*, land without an owner. If it is not proven that the land is private, and I reiterate that the burden of proof is on the private person himself, the land will certainly be public.

This does not mean, of course, that the mere absence of real estate registration makes that land public. There are several ways to prove ownership.

A second fundamental issue, which derives from ADPF 1056, is the possibility of administrative cancellation by the General Inspector of Justice of the State Courts of

Justice, or by federal judges who have registration competence, to cancel irregular registrations in the administrative sphere, therefore without the need for a judicial process.

It is in this context, therefore, that the debate on land grabbing in Brazil and especially in the State of Pará is placed. One of the issues that we have raised in recent decades, especially since the enactment of Provision No. 13/2006, of the Internal Affairs Office of the Interior Judicial Districts of the Court of Justice of the State of Pará, is a situation in which many municipalities have more paper than land. That is, when the real estate records are added, or when the areas of the National Institute of Colonization and Agrarian Reform (INCRA) are added, it is realized that many municipalities, 17 municipalities to be more precise, have many more hectares registered or registered than the territorial surface of that municipality.

Land grabbing, therefore, is associated with registration difficulties. In what sense? If, as we said, it is necessary to prove the prominence, is it essential that the private party, at the time of making the registration, and the registrar, at the time of accepting the prenotation and, subsequently, the insertion of that document in book 2, which is the property book, as determined by Law No. 6,015/1973, the public registry law, verify the document presented and compliance with the rules in force at the time of its issuance? Provision No. 13, for example, contested and blocked, and, later, the National Council of Justice (CNJ) determined the cancellation of registrations whose title, which of origin or even, did not respect the constitutional limits.

Another fundamental element, which becomes the norm as of next week, when provision 195 of 2025 of the National Council of Justice will come into force: at the time when the prenotation and, therefore, the real estate registry is made, some things need to be documental proven, for example, the Rural Environmental Registry (CAR). Through the CAR, I know the exact location of the property and, above all, the use of the property. And here it is essential to use, for example, MapBiomas to verify whether the fulfillment of the social function in its environmental dimension has been respected or not.

The second fundamental element is the certification after the Georeferencing of the property. All properties over 25 hectares and, as of the end of November 2025, all properties, regardless of their size, must have Georeferencing to be able to open the registration or transfer that property. Certification, that is, the insertion of the polygon within the Land Management System (SIGEF), of the INCRA system, where the *shapefiles* of the properties are housed , is, therefore, fundamental.

And here, unfortunately, we have problems. About 40% of the federal public lands in the Amazon are not certified. The State of Pará has incorporated about 24 million hectares into its patrimony via collection, but not a single inch of land collected by the State of Pará is in the SIGEF.

When a property is not included in the SIGEF, there is the possibility of overlapping with other areas. Today, and increasingly, we need to put the document and its spatialization in the same system. It is what Eymmy Silva calls geolaw, that is, I must make an assessment if that document is valid and I must know where it is. Therefore, territorial management that does not include, does not pay attention to the origin of the documents and their location, evidently generates conflict, and generates social exclusion.

How could we face these difficulties? First, unifying all the registries, therefore, the National Rural Property Registration System (SNCR) of INCRA, the CAR of the environmental agencies – the SICAR in this case – and all this being inserted in the National Territorial Information Management System (SINTER) and in the Digital Real Estate Registry.

Today, unfortunately, many real estate registry offices in the State of Pará have not yet fulfilled the obligation that has been included since 2009 in the Minha Casa Minha Vida Law, which is the digitization of their collection and insertion within the electronic real estate registration service or Electronic Real Estate Registration System (SREI), today within the Federal Data Processing Service (SERPI).

The possibility of verifying the entry of information within the system created by the National Organization of Registries, the RI Digital, as it is called, will certainly allow great advances. This is even more so from the entry into force of Provision No. 195/2025, we will have the possibility to inspect, as the system will be open, therefore transparent, for public consultation, all properties on the same municipal basis.

And here it is important, for example, in the case of Pará, we have 144 municipalities and 105 notary offices. That is, some notary offices whose territorial base is higher than the base of the municipality where the SREI is located. From now on, we will have a municipal base as a reference.

This, of course, will take a lot of work, because there are properties that cover more than one municipality, but from the moment the system is effectively integrated, we will have the possibility, yes, to overcome the current problems.

The SIGEF will allow us to verify the overlaps between documents, we today have a lot of overlap between private documents, but also overlaps of private properties, in quotation marks, with indigenous lands, restricted use conservation units, settlements, etc.

The improvement of the registry system will certainly be an instrument to start fighting land grabbing. This leads us to another discussion, in the same sense, which is to prioritize territorial planning, we are waiting for the publication of a presidential decree on this, because in territorial planning I have the possibility of discussing the priorities for the allocation of federal, state and municipal public lands, and defining, finally, the agrarian reform policy, the policy for the defense of the environment, and so on.

Thiago Silva: Thinking about environmental defense policies, one of the most sensitive points in the current socio-environmental debate is the expansion of mining, legal and illegal, over areas of indigenous peoples, quilombolas and other traditional communities. What direct and indirect impacts have you identified in research and how do you evaluate the role of prior, free and informed consultation in this context?

Girolamo Treccani: This issue is very relevant, when it comes to land grabbing, appropriation of lands of traditional populations, it concerns the clash between mining and the overlapping of mineral exploration on indigenous lands, quilombolas and other traditional populations. Here, we need to show how in many cases, unfortunately, mining produces long-lasting effects and absolutely undesirable effects.

Let us think, for example, about the fact that, and here the most classic example is ICOMI, there in Amapá, a process of manganese exploration for 40 years, in the 50s of the last centuries, the 1950s, 1960s, which left a hole, which left a totally devastated environment.

In other cases, we can, for example, think about the consequences of environmental disasters generated by mining, such as Mariana, Brumadinho and others. It is in this context that mining often takes on the character of destabilizing territories. And here, in Pará, I have been following recently, in the last 4 or 5 years, a process there in Santarém, the Lago Grande agroextractivist settlement project, PAE Lago Grande, where miners are coercing the residents to be able to do their research and, from there, their exploitation.

Any and all enterprises, be it mining or any project for a road, a dam, in short, any work, any norm that may have any impact on traditional territories, evidently, must have a

prior, free and informed consultation, before the beginning of all its research. And here it is fundamental, because all activities, whether mining or others, it begins as an administrative request to the competent body. It could be the Department of the Environment, it could be the department that takes care of mining, the National Department of Mineral Production (DNPM), in short. Now, this initial administrative act must be the object of consultation.

It is essential that the consultation be prior and not *a posteriori*, that it be free, that is, that it is not an instrument of coercion, as we unfortunately observe at various times. Co-optation of leaders, fomentation of division among community members, etc. Finally, the issue of information that must be done along the lines of that community. There is therefore no single model of prior, free, and informed consultation. This model depends on the type of activity, it depends on the subject, on the right.

Normally, I usually give the following example, if it is necessary to consult the Kayapó indigenous people, in the south of Pará, it is enough to consult the chief, because the structure of that people is pyramidal.

The same consultation carried out with the Indians as well, on the border between Pará and Maranhão, cannot take place because the way of organizing that people is much more horizontal, therefore, it is the council of the elders, it is the community itself that must be consulted. The consultation must be carried out by the State, be it the Union, States or Municipalities. It cannot, in any way, be outsourced or be given to any company, or any NGO, or any third party. The obligation of studies is the entrepreneurs, but the consultation must necessarily be done by the government.

3 THE LAND QUESTION

Thiago Silva: In the article you wrote about the National Territorial Information Management System (SINTER), you highlight the potential of this tool to combat land fraud. What would be the necessary steps for systems such as SINTER to effectively function as instruments of territorial justice in the Amazon?

Girolamo Treccani: Over the last decade, several information systems have been created. The Court of the State of Pará, for example, created the Geographic Information System (SIGEO), which was an instrument where technicians from the State itself, from the Court itself, made reports related to properties where there were possessory conflicts.

Other systems have been created, for example, in the case of the Land Institute of Pará (ITERPA), the Land Registry and Regularization System (SICARF) has been created in the last three, four years, probably, in my opinion, the best system that needs to be looked at more closely is SIGEF, precisely because, in the land management system, we have the possibility of verifying the location and, if applicable, highlight any overlaps between the properties.

With the creation of the National Territorial Information Management System (SINTER), we are taking another step. The fundamental issue of this and all systems is transparency, and it is that we need to overcome what, in my opinion, is a false problem. That is, evidently, the public interest prevails in all systems, therefore, the access to information law (LAI) prevails, and not the personal data protection law.

It is evident that there are sensitive data that have to be protected, however, transparency must be a fundamental instrument to ensure effective social participation, which is enshrined in article 1 of the Federal Constitution. Today, Sinter is still in its infancy. Unfortunately, in Sinter, SICAR, the Rural Environmental Registry, has not been included so far.

We need to add all this, just as we need to accelerate the integration of registration information with registration information. This is all provided for, as I said just now, in Provision No. 195/2025, of the CNJ.

Therefore, the creation of a national system that effectively allows to know who owns any property. What is the origin of this detention? What is the legal status of this detention? Is it a possession? Is it a property? If it is property, what is the real estate registration? Is this real estate registration valid? Is it originated?

In this sense, I think it is essential to remember how the Federal University of Pará, together with the State Public Prosecutor's Office, created the land GIS. The great advantage of the land GIS is that, in the same system, I have on one side the process of origin, the title, its specialization and the real estate registration. Unfortunately, no system, for now, is achieving this.

One of SINTER's goals is to achieve this. Unfortunately, we are still a long way from its implementation, but this is the way: to integrate the registers, to integrate the information, to ensure transparency, the starting point for effective national sovereignty and social participation.

In a document published a few months ago by the MDA/INCRA, when there was even talk of territorial planning, there is talk of a new system that aggregates all this

information. We await the publication of the presidential decree, because this decree guarantees, in addition to the integration of systems, the transparency of information, effective social participation.

Thiago Silva: In different interviews and here, during our dialogue, you defended the need for integration between bodies such as INCRA, ITERPA, SPU and the Judiciary. What are the main gaps in interinstitutional articulation and how to overcome them so that land regularization advances in the Legal Amazon?

Girolamo Treccani: We cannot continue to use separate actions. Today, for example, an inter-institutional, inter-federative working group was created this year, two months ago, between INCRA and ITERPA, to discuss the destination of federal public lands in the State of Pará. The Federal Heritage Secretariat has been, in recent years, identifying and certifying, de-referencing and certifying, the properties that are located on the banks of rivers, streams, where there is influence of the tide, therefore, marine land or marginal land of navigable rivers.

We cannot continue to accept isolated jobs. Federal and state land agencies need to work together, they need to define joint strategies, they need to find, therefore, a joint planning of activities. All of this is supported, supervised by the Judiciary.

I believe that the creation of the safe soil week, which the National Council of Justice started a few years ago and which is being repeated every year, is the space for this discussion. Here in the State of Pará, for example, the General Internal Affairs Office of Justice created, at the end of last year, a group called Land Governance, both rural and urban. This group includes all federal and state public land agencies. There is the State Secretariat of the Environment, there are the representatives of the different powers, including legislative, there are the representatives of Family Agriculture, the Federation of Agricultural Workers (FETAGRI), there is the representative of Agriculture, the Federation of Agriculture and Livestock (FAEPA), Corporate Agriculture, and there are, of course, the Registry of Dependencies, represented by the Association of Notaries and Registrars (ANOREG), and the Association of Municipalities. These different bodies meet every month to plan, evaluate, monitor land regulation policies, and, therefore, an inter-institutional articulation that is fundamental to be able to advance further.

We, however, always need to move towards having a better interinstitutional position. In what sense? We need to know how many enrollments there are in the State of

Pará, how many of them have been blocked, canceled, requalified, unblocked. Where are these enrollments located? What is the size, the sum of the areas of all enrollments? We need to advance in the digitization of the INCRA, ITERPA and SPU collections, advance in the spatialization of all these documents, launch all these documents in a single system, as was stated before, and we need, therefore, to define a land regularization policy that has priority to be achieved.

Today, conflicts arise precisely because of the overlapping of interests. Now, when the same territorial space is contested between several people, there must be tie-breaking criteria. Therefore, initially, indigenous lands, quilombola lands, traditional population lands, family farming, and other forms of occupation of territorial space, of course, without forgetting the conservation unit.

It is in the integrated planning of these actions that we will be able to move forward. A significant advance was made at the federal level with the creation, in August 2023, two years ago, of the Technical Chamber of Public Land Management. It is a great advance, precisely because it is a space for debate on the destination of these lands.

Unfortunately, however, in this Technical Chamber there is no participation of civil society, academia, representatives, in short, institutions such as, for example, unions, etc. In the case of Pará, we have a Technical Chamber, more or less along the lines of the federal one, which was legally established in November 2020, but so far nothing has been installed. This is what we need to continue to discuss. That is, it is not possible to continue to have an exclusive action of land agencies without the integrated participation and participation of civil society.

4 A LOOK INTO THE FUTURE

Thiago Silva: Now let us turn our eyes to the peoples who are part of this process. You have already argued that collective titling, as in the case of quilombos and settlement projects, removes land from the market and, therefore, faces resistance from sectors linked to agribusiness and mining. How to transform this perception and expand the understanding of the socio-environmental and legal value of collective titles?

Girolamo Treccani: Considering the initial debate between territory and territory of life *versus* capital land, it can be said that collective titling is the best instrument for the

protection of the remaining Quilombo communities and the environmentally differentiated settlement projects, that is, the agroextractivist settlement project (PAE), the sustainable development project (PDS), and the forest settlement project (PAF). This applies, although it is not a title in the classical sense, of recognition of possession for indigenous populations. The big difference between Quilombo and other traditional populations is that, in the case of Quilombos, there is a private land title, so the domain is transferred to the communities.

Although it is a title, it is a private property, registerable, of course, in the real estate registry office, like all other property, thus guaranteeing all forms of possessory protection. But it is a property that cannot be alienated, that cannot be subdivided, that cannot be mortgaged, etc.

In the case of environmentally differentiated settlement projects, we have the signing of a contract for the concession of the real right of use. Therefore, whether in the case of indigenous territories, quilombola territories, settlement projects, and I would add here the conservation units of direct use, such as the Extractive Reserve, the Sustainable Development Reserve, the national forests themselves, in short, modalities in which the Contract for the Concession of Real Right of Use (CCDRU) is a fundamental element in the relationship between the public power and the population itself, All of this, of course, takes these lands off the market.

Thus, collective titling, whether of quilombo or settlement, therefore, is traditional, but I would also add here the conservation units of direct use, of sustainable use, such as the Extractive Reserve, the Sustainable Development Reserve and the national and state forests themselves. In short, they are relations that have in the execution of a contract for the concession of real right of use, their formal destination from a legal point of view.

Obviously, this type of destination, this type of contract, or in the case of quilombo, this type of property, which is a *sui generis* property, because it is indivisible, inalienable, cannot be the object of mortgage, in short, all these forms of recognition and territorial rights of traditional populations remove these lands from the market and make these populations today the main victims. the main target of socio-environmental conflicts. We need to advance in the consolidation of these projects, thus signing the contracts, ensuring effective territorial protection for these populations.

Thiago Silva: Considering the current scenario, the imminence of COP 30 and the related socio-environmental agendas, at the same time, of pressure on territories, what would be your main recommendations to ensure that the Legal Amazon is not reduced to a "resource frontier" but recognized as a territory of rights?

Girolamo Treccani: The last fundamental point is the resumption of the socio-environmental debate. Unfortunately, for a long time very few indigenous lands have been recognized, quilombolas have been titled, the creation of conservation units is dwindling, the very creation of special settlement projects is not achieving what would be the right response for the recognition of territorial rights. In this frontier of resources that we all recognize as fundamental for Brazil and for the world, we need to recognize who has the right to have the right. That is, those who effectively need government support to have their territorial right recognized and defended. And here it is fundamental, therefore, that the debate be broadened, that the environmental debate be integrated with the land debate. It is not acceptable to make a separation between these two debates.

We cannot run the risk that the 30th Conference of the Parties to the United Nations Framework Convention on Climate Change (COP 30), to be held in Belém, Pará, may become an initiative where what is rotten underneath is painted green. We need, on the contrary, to show the world that the Amazon is rich in biodiversity, but it is rich in sociodiversity. There are people here. We have always had people.

That story of the military dictatorship of the Amazon, a land without men, in fact, was a non-recognition of the rights of the populations, whether indigenous, black, or cabocla, who were here and who continue to be here and who must have their rights recognized. We need, therefore, to make sure that the different local proposals for planning socio-environmental activities proposed in the plans prepared by traditional peoples and communities are effectively transformed into municipal, state, and federal public policy.

Closure:

Thiago Silva: Professor Treccani, your final reflections emphasize that the Amazon cannot be reduced to a frontier of resources, but must be recognized as a territory of rights, where traditional peoples and communities are protagonists. By stating that "the Amazon is rich

in biodiversity, but also in sociodiversity. There are people here. There have always been people", you remind us that any legitimate policy must start from this recognition.

It was an honor to hear from you and, on behalf of the Journal of Socio-Environmental Law (ReDiS), we thank you for your generosity in granting this interview. We are always available to be an instrument for disseminating the research and extensions of you and the groups you participate in.

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