"WHEN MORE IS LESS": DISTORTIONS IN THE QUOTA LAW FOR ACCESS TO HIGHER EDUCATION IN THE SELECTIVE PROCESS

"QUANDO MAIS É MENOS": DISTORÇÕES NA LEI DE COTAS PARA ACESSO AO ENSINO SUPERIOR EM PROCESSOS SELETIVOS

"CUANDO MÁS ES MENOS": DISTORSIONES EN LA LEY DE CUOTAS PARA ACCESO A LA ENSEÑANZA SUPERIOR EN PROCESOS DE SELECCIÓN

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How to reference this paper:

SANTOS, R.; CONTINI, A. A. M.; OLIVEIRA, E. L. "When more is less": Distortions in the Quota Law for access to higher education in the selective process. **Rev. Educação e Fronteiras**, Dourados, v. 12, n. esp. 2, e023025, 2023. e-ISSN: 2237-258X. DOI: https://doi.org/10.30612/eduf.v12iesp.2.17401

| **Submitted**: 05/01/2022
| **Revisions required**: 22/04/2022
| **Approved**: 16/05/2022
| **Published**: 10/06/2022

Editor: Prof. Dr. Alessandra Cristina Furtado
Deputy Executive Editor: Prof. Dr. José Anderson Santos Cruz

ABSTRACT: This article aims to analyze the effectiveness of the Law of Quotas in Higher Education, seeking to identify distortions in its application. The methodology of the social research encompassed the following stages: search for the final provisions of the Law of Quotas, using pertinent legislations; description of the results of the Law of Quotas in the admission process, with quantification through the selection process notices and the offer per selection process in a federal university; and analysis of the effectiveness of the legislation in the differences between the total number of vacancies that should be offered by general competition and quotas, and the actual number of the vacancies provided and occupied by quota beneficiaries in the analyzed context. The obtained results indicate that the segmentation of the offer of vacancies in the selection process notices restricts the effectiveness of the quota law since it forces candidates to compete only in one category of vacancies, preventing them from competing in others for which they also qualify. With its technical and bureaucratic complexities, the system of offering vacancies by SISU distorts the effectiveness of the quota law, resulting in a higher number of vacancies allocated to quotas, but that, in reality, represents fewer opportunities for competition. This situation configures a perverse effect of exclusion in promoting educational and social inclusion.

KEYWORDS: Human rights. Quotas Act. Higher Education. Inclusion.

RESUMO: *Este artigo visa analisar a efetividade da Lei de Cotas no Ensino Superior, buscando identificar distorções em sua aplicação. A metodologia da pesquisa social abrangeu as seguintes etapas: busca pelas disposições finais da Lei de Cotas, utilizando legislações pertinentes; descrição dos resultados da Lei de Cotas no processo de ingresso, com o dimensionamento por meio dos editais e a oferta por processo seletivo em uma universidade federal; e análise da efetividade da legislação nas diferenças entre o total de vagas que deveriam ser oferecidas pela ampla concorrência e cotas, e o número real de vagas ofertadas e ocupadas pelos cotistas no contexto analisado. Os resultados obtidos apontam que a segmentação da oferta de vagas nos editais de processos seletivos restringe a efetividade da lei de cotas, uma vez que obriga os candidatos a concorrerem apenas em uma modalidade de vagas, impossibilitando-os de concorrerem em outras para as quais também possuem perfil. Pode-se concluir que o sistema de oferta de vagas pelo SISU, com suas complexidades técnicas e burocráticas, distorce a efetividade da lei de cotas, resultando em um número aparentemente maior de vagas destinadas às cotas, mas que na realidade representam menos oportunidades de concorrência. Essa situação configura um efeito perverso de exclusão em uma ação que deveria promover a inclusão educacional e social.*

PALAVRAS-CHAVE: *Direitos Humanos. Lei de Cotas. Ensino Superior. Inclusão.*

RESUMEN: *Este artículo tiene como objetivo analizar la efectividad de la Ley de Cuotas en la Enseñanza Superior, buscando identificar distorsiones en su aplicación. La metodología de la investigación social abarcó las siguientes etapas: búsqueda de las disposiciones finales de la Ley de Cuotas, utilizando la legislación pertinente; descripción de los resultados de la Ley de Cuotas en el proceso de admisión, con el dimensionamiento a través de los avisos públicos y la oferta por proceso selectivo en una universidad federal; y análisis de la eficacia de la legislación en las diferencias entre el número total de vacantes que deberían ser ofrecidas por la amplia competencia y cuotas, y el número real de vacantes ofrecidas y ocupadas por titulares*

de cuotas en el contexto analizado. Los resultados obtenidos indican que la segmentación de la oferta de vacantes en los avisos de procesos selectivos restringe la efectividad de la ley de cuotas, ya que obliga a los candidatos a competir solo en una modalidad de vacantes, imposibilitándoles competir en otras para las que también tienen un perfil. Se puede concluir que el sistema de oferta de vacantes del SISU, con sus complejidades técnicas y burocráticas, distorsiona la efectividad de la ley de cuotas, resultando en un número aparentemente mayor de vacantes destinadas a cuotas, pero que en realidad representan menos oportunidades de competencia. Esta situación configura un efecto perverso de exclusión en una acción que debe promover la inclusión educativa y social.

***PALABRAS CLAVE**: Derechos humanos. Ley de Cuotas. Enseñanza Superior. Inclusión.*

Introduction

In 2022, the Affirmative Action Law in Higher Education will reach its tenth year in effect and undergo an evaluation process, as stipulated in Law 12.711/2012 itself. In this regard, numerous researchers from diverse fields have undertaken investigations on affirmative action, exploring themes such as fraud, judicialization, retention/dropout rates, support, empowerment, profile, and performance of affirmative action beneficiaries, as well as data on the presence and shape of public-school alums, Black, Indigenous, and disabled individuals in Brazilian higher education.

This article falls within this investigative realm and seeks, through interdisciplinary approaches encompassing sociology, law, and education, to reflect on the effectiveness of the Affirmative Action Law, highlighting certain deviations, inversions, and distortions. The theoretical-conceptual framework is based on elements of the Three-Dimensional Theory of Law and considerations regarding legislation effectiveness and enforcement law. The methodology employed relies on bibliographic research (theoretical and thematic studies on legislation effectiveness), documentary research on laws, decrees, ordinances, and notices related to affirmative action in Brazilian higher education, and sociological-juridical analysis of the proximity/distance between the prescribed aspects of the legislation and the descriptive application of the affirmative action law in selection processes.

The main question that guided this article was: What are the effectiveness factors in the application of the Affirmative Action Law that led to a reduction, rather than an expansion, of opportunities for Black candidates to compete for undergraduate positions at UFGD (Federal University of Grande Dourados)? In what dimension did the affirmative action policies, meant to signify more opportunities and vacancies for competition, result in fewer vacancies?

Effectiveness of Legislation

Brazilian political culture has coined two highly thought-provoking expressions for legal sociology: "lei que não pegou" (a law that didn't catch on) and "lei para inglês ver" (a Law for the English to see). Both originated from the mid-19th century, stemming from perversions in the context of nation-building in Brazil and were related to social and racial rights. They refer generically to limitations in the effectiveness of the law, meaning deviations, obstacles, constraints, and the emptiness in implementing what is established in a norm.

The expression "lei que não pegou" refers to the idea of a law that comes into effect but is systematically not complied with by society, either due to resistance and non-acceptance by those who should follow the law or due to the lack of action or insufficient action by those who should ensure its compliance. According to Oliveira (2014, p. 61, our translation), "a law that comes into effect but is not complied with by society is commonly known as a law that 'didn't catch on.'" Historian José Murilo de Carvalho points out that the first Brazilian law that "didn't catch on" was the Land Law of 1850, which, in its legislative origin, aimed to regulate access and registration of rural property in Brazil but was not complied with, resulting in large estates, land grabbing, and agrarian conflicts: "The Imperial land policy hardly moved from the legislative stage, as it was systematically sabotaged and blocked during implementation. It would be the first major national example of a law that didn't catch on" (CARVALHO, 1981, p. 42, our translation).

The expression "lei para inglês ver" refers to the idea of a law that, from its inception, was designed to be systematically disregarded, simulated, wholly or partially converted into a sham, an empty formality, either due to the intentional non-compliance by those who draft the law or due to the omission/insufficient execution by those responsible for ensuring its compliance. From the perspective of philologists and historians, the expression's origin directly relates to a racial issue concerning simulations and resistance by political elites during the imperial period in Brazil regarding the abolition of slavery for African and Afro-Brazilian people.

> Expression emerged during the Empire, when Brazil entered into agreements with England to suppress the slave trade, with trial courts established for seized slave ships. Brazil was obligated to patrol the coasts, which were also patrolled by British ships. However, the trafficking continued, with the government disregarding it. It was said, therefore, that our patrolling was fictitious, just for the English to see, as a mere platonic satisfaction to the agreements officially established (MAGALHÃES JÚNIOR, 1974, p. 237, our translation).

> Promulgated on November 7, 1831, the first law prohibiting the Atlantic slave trade to Brazil is the origin of one of the most popular expressions in the country, always used when referring to legal provisions that are tiny or not effective: "lei para inglês ver" (Law for the English to see). As a result of pressure exerted by the British government, which was interested in ending the slave trade, the Feijó law was practically ignored by slave traders, and even by the State, until the Eusébio de Queiroz law, promulgated in 1850, put an end to the importation of enslaved Africans to Brazilian lands (COTA, 2011, p. 65, our translation).

Although it permeates other legislative themes, in Brazilian socio-legal culture, the emptiness of the law is quite characteristic of rights/duties involving racial issues, with the sense of the expression "lei para inglês ver" arising to disguise the rights of Black individuals and the obligations of the State/Society to enforce laws establishing such rights:

Table 1 - Summary of Effectiveness of Laws Concerning Black Rights

Law	Objective	Result
Law of November 7, 1831 - Feijó Law	Declared all enslaved people brought from outside the Empire free and imposed penalties on the importers of these enslaved people.	Emptiness, as there was virtually oversight, and sanctions were rarely applied.
Law n. 581/1850 - Eusébio de Queirós Law	Established stricter measures for repressing African trafficking within the Empire, making the practice a crime for all involved.	Deviation, as the seized enslaved people were handed over to the State, which then granted them to individuals upon a small payment, subjecting them to compulsory and unpaid labor, effectively remaining as enslaved people.
Law n. 2040/1871 - Rio Branco Law or Free Womb Law	Children born in the Empire to enslaved women from the date of this law shall be considered free.	Deviation, as the children of enslaved women were required to work (compulsorily and without pay) for their owners until the age of 21 or be handed over, with compensation, to the State to work until the age of 21.
Law No. 3270/1885 - Saraiva-Cotegipe Law or Law of the Sexagenarians.	It determined the emancipation of enslaved people over 60 years of age.	Emptiness, as the average life expectancy of an enslaved person at that time, was less than 30 years, and in the sporadic cases where they reached 60 years of age, they still had to compensate the owners either with money or work until the age of 65.
Decree 7.031-A/1878.	It allows the enrollment of adult black men in evening courses at public schools.	Emptiness, because the number of public schools during that period was reduced, and very few operated in the evening.
Law 7716/1989 - Law on the Crime of Racism.	It defines crimes resulting from racial or color prejudice.	Deviation, as the vast majority of cases are classified as "injúria" (sentence of 3 months to 1 year) or "injúria racial" (sentence of 1 to 3 years), and convictions for "racism" (non-bailable and sentence of 2 to 5 years) are extremely rare.
Law 12.711/2012 - Law on Quotas in Higher Education.	It establishes quotas, including for black, mixed-race, and indigenous individuals, in federal educational institutions.	Deviation, as in the early years, a candidate's self-declaration was sufficient, and the lack of oversight and significant judicialization resulted in non-black individuals occupying quota positions.

Source: Table elaborated by the authors

The scope of analysis in legal theory and sociology delves much more than whether a law was made to be effective or not or whether it was successful or not. It refers to investigations about normative effectiveness, which means the factors within a system that determine the degree to which a norm approaches its ideal implementation, and the consequent explanations and indications for advancing effectiveness, considering difficulties, obstacles, dilution, deviations, and perverse effects, involving subjects, resources, practices, and institutions.

The approach intended in this article is based on the Three-Dimensional Theory of Law and involves the concepts of "enforcement law" and "legislation effectiveness" to analyze the efficacy of the quota law using a Prescription-Description-Analysis (PDA) approach. This includes the apprehension of what the **norm** prescribes regarding quotas, the description of the resulting **fact** from the model in the offer and occupation of quota positions, and the analysis of the norm's **valuation** in its technical-administrative regulation and implementation.

In the Three-Dimensional Theory, Law consists of the harmonious conjunction of three primary and primordial aspects (fact, value, and norm), presupposing a constant communication (dialectics of implication-polarity) between fact and matter, which originates and is also related to the norm. According to Reale (2017, p. 65-66, our translation):

> Wherever there is a legal phenomenon, there is always and necessarily an underlying fact (economic, geographical, demographic, technical, etc.), a value that gives a certain meaning to this fact, inclining or determining the action of men towards achieving or preserving a certain purpose or objective, and finally, a rule or norm that represents the relationship or measure that integrates one of those elements with the other, the fact with the value.

In this three-dimensionality: a) a fact/situation economic, political, social, criminal, educational, environmental, etc., most of the time, already shaped by an existing norm and resulting from a previous valuation; b) the fact is perceived/assimilated through relationships between individuals, groups, and institutions and valued as desirable, undesirable, tolerable, reprehensible, etc., receiving an attribute of intentionality for intervention towards extinction, mitigation, conservation, enhancement, or modification of the fact and its consequences; c) and this fact valuation is converted into a norm, aiming to carry out the intentionality and result in a modified fact. On the other hand, Reale points out that the three-dimensionality of Law comprises three senses or vectors of analysis:

> [...] so that the jurist's discourse goes from fact to value and culminates in the norm; the sociologist's discourse goes from norm to value and culminates in the fact, and finally, we can go from fact to norm culminating in value, which is always a modality of the value of the just, the proper object of the

> Philosophy of Law.
> Thus, there are three distinct but correlated orders of studies, as shown in the following directional table:
> LAW SCIENCE: fact ------> value > norm
> LAW SOCIOLOGY: norm ------> value > fact
> LAW PHILOSOPHY: fact ------> norm > value
> (REALE, 1993, p. 305, our translation).

In the context of Law Sociology, the three-dimensionality involves a) a norm, resulting from the previous valuation of a fact; b) the perception/assimilation of the norm through relationships between individuals, groups, and institutions, and its valuation as just, legitimate, and applicable to a greater or lesser degree, receiving efforts, actions, and resources proportional to its effectiveness as the realization of the norm's intentionality; c) and this norm valuation results closer or further from the intended form, conditioned by the valuation within the conditions of effectiveness.

The proposed approach of this article is to establish what the quota norm prescribes (resulting from the valuation of an initial fact), describe the resulting fact from the quota norm (offered and occupied positions), and analyze aspects of the norm's valuation in certain constraints on its effectiveness.

Table 2 – Three-Dimensionality of Law Relationship

Tridimensionality of the Science of Law ---------> --------->			*Tridimensionality of the Sociology of Law* ---------> --------->	
Event (initial)	**Value** (of the event)	**Norm** [Prescription]	**Value** (of the norm) [Analysis]	**Resulting** Event [Description]
The initial event is perceived socially by individuals, groups, and institutions.	Evaluation of the initial event, with the attribution of modifiable intentionality by individuals, groups, and institutions.	The norm results from the valuation of the event through power relations, aiming for a different resulting event from the initial one and in accordance with the valuation.	Valuation of the norm in its implementation, with actions, efforts, and proportional resources, to ensure the effectiveness of the norm.	The resulting event from the norm's implementation, with varying degrees of effectiveness, resulted from the valuation of the norm.

Source: Table elaborated by the authors

The following table presents examples of how the effectiveness of a law can be compromised in the valuation of the norm, where the way it is applied results in fact far from the intended objective:

Table 3 - Examples of Constraints on Legislation Effectiveness

Event (initial)	**Value** (of the event)	**Norm**	**Value** (of the norm)	**Resulting** Event
The ticket prices charged remained the same for almost all (half of double the amount set before the law), and there was no significant increase in young people's access to cultural events, resulting in a dilution of the law's intent. The 20 to 30% penalty continued to be charged (disguised as a discount for punctuality)	Evaluated as low and negative, to promote more outstanding young people's access to cinema and shows. Evaluated as high and negative to limit the percentage of the fine.	**Law of half-price entrance,** so that students pay half of the regular value of the tickets (charged from the general public) **Consumer Protection Code,** which limits to a 2% penalty for late payment.	Artists and exhibitors resisted the revenue loss due to the half-price entrance, and without robust enforcement of supervision and sanctions, they doubled ticket prices and extended half-price promotions to the general public. Creditors resisted revenue loss and, without adequate supervision and sanctions, increased the installment amounts and established discounts of 10 to 30% for punctual payment.	The ticket prices charged remained the same for almost all (half of double the amount set before the law), and there was no significant increase in young people's access to cultural events, resulting in a **dilution** of the law's intent. The 20 to 30% penalty continued to be charged (disguised as a discount for punctuality) along with a 2% cap on fines, leading to emptying and deviation from the law's original intent.

Source: Table elaborated by the authors

To analyze effectiveness in the norm-value-fact relationship, it is necessary to establish a concept of effectiveness, which simultaneously involves the concepts of legal efficacy and social efficacy. In other words, it is not only the capacity to produce effects but also whether these effects are effectively produced, not only legal efficacy, which refers to the possibility of applying the norm but also social efficacy, the mechanisms for its actual implementation, for its EFFECTIVENESS. As Barroso (1994, p.42, our translation), highlighted, "the effectiveness of legal acts consists of their aptitude for producing effects, for the irradiation of the consequences that are peculiar to them."

> It is essential to distinguish legal efficacy from what many authors call the social efficacy of the norm, which, as pointed out by Miguel Reale, refers to the effective compliance of rights by society, the "recognition" (AnerKennung) of ownership by the community, or more specifically, the effects that a rule elicits through its compliance. In this sense, social efficacy is the realization of the normative command, its operational force in the world of facts (BARROSO, 1994, p. 42, our translation).

The analysis of the effectiveness of a norm can be carried out in its dimensions of elaboration, application, compliance, or the interaction among them.

Table 4 - Dimensions of Norm Effectiveness Analysis

The Elaboration of the Law *(issuance, origin, command)*	**Application of the Law** *(implementation, application)*	**Compliance with the Law** *(reception, receptivity, obedience)*
If the subjects who elaborate the law do so in a legal, legitimate, clear, and potentially effective manner of application and compliance.	If the subjects responsible for the implementation/application of the law do so with sufficient effort and resources to ensure it can be fulfilled.	If the subjects are obligated to comply with the Law, do so without high levels of resistance, conflict, disobedience, denial, or fraud and instead follow, obey, and receive it willingly.

Source: Table elaborated by the authors

The elements related to the application of the law can be associated with the concept of enforcement law from the field of political science and legal sociology, which traditionally does not have a direct translation but can be interpreted as compliance or execution of the law.

> Thus, I believe that the translations "personnel or public officials responsible for **ensuring compliance with the law**" and "officials responsible for **ensuring compliance with the law**" would be more appropriate.
> Regarding the second suggested equivalent, "police services," it appeared in a paragraph where the author of the English text lists activities and services that must be jointly ensured and provided by government authorities and private entities to eliminate discrimination and gradually promote the integration of excluded individuals. Among these activities are the measures necessary to ensure the availability of various services, including "law enforcement and administration of justice, and political and administrative activities."
> As mentioned above, the term "law enforcement" is related to the enforcement of criminal laws and the detection and punishment of violations of norms in general. The term can even be used in contexts of administrative and traffic infractions, among others (SIQUEIRA NOBILE, 2008, p. 100, our translation).

In a broader sense, particularly in the United States of America, the expression "law enforcement" encompasses both police and judicial action to enforce criminal law. However, in other contexts, including Brazil, the expression takes on a more comprehensive meaning, referring to the set of activities, agents, agencies, and technical-administrative resources to implement legislation, encompassing its police, judicial, political, and administrative aspects.

Among the factors that influence legislation's effectiveness in law enforcement, it is essential to highlight that this is a selected set of elements and not an exhaustive list. These factors can be listed as follows (SANTOS, 2015, p. 7):

- Regulation: documents complementing the law with technical, normative, and instructional instructions, norms, guides, and manuals;
- Personnel: sufficient personnel for operation, management, and support with

adequate conditions;

- Training: personnel that is educated, trained, and competent, with sufficient technical, operational, and scientific capabilities;
- Technical-administrative resources: sufficient facilities, furniture, materials, inputs, equipment, forms, and systems;
- Empowerment: agents and managers sufficiently empowered to comply with the norm;
- Institutional commitment: institutional commitment (personnel, management, and institutional culture) to efforts to implement the law and pursue its objectives;
- Dissemination: continuous and campaign resources and actions for disseminating the norm and aspects of its compliance;
- Time: deadlines, periods, and necessary days/months/years for applying the norm;
- Education: continuous actions of preparation, training, and instruction for Enforcement law agents and the target audience of the norm for its application and compliance.
- Inspection: efficient resources for inspection and monitoring of norm compliance, identifying and dimensioning non-compliance;
- Sanction: efficient and expeditious mechanisms for accountability and sanction, including criminal penalties, if applicable, for non-compliance with the norm (and rewards for compliance);
- Transparency: transparency regarding data, records, statistics, and analyses of the norm's application, as well as its results;
- Evaluation: continuous and punctual actions and programs for the evaluation and monitoring of the implementation of the norm and its results; specific actions: complementary or related actions to promote the application/compliance of the model, such as subsidies, awards, programs, and campaigns.

In this sense, the theoretical-conceptual framework of the approach of this article consists of analyzing the social effectiveness of the Law of Quotas in Higher Education, focusing on the consequences of the segmentation of the offer/occupation of vacancies for Black individuals in the technical-administrative implementation of quotas for the enforcement law, within the context of normative valuation of Miguel Reale's Three-Dimensional Theory of Law.

Law of Quotas in Higher Education

The word "quota" refers to a quantity, percentage, part, measure, or portion set aside and used as a reference for specific proportions, minimums, maximums, or intervals. Historical examples of minimum quotas include the 20% charged as Quinto on gold production in colonial Brazil, as well as the minimum annual quota of presumed gold production to prevent tax evasion in the collection of Quinto, and the mandatory minimum quota for the importation of Port Wine in the 18th century.

The quota, specifically applied as the obligation to reserve a minimum quantity of total vacancies for access/occupation by individuals who meet an identity profile, came about with the "Law of 2/3", which took effect with Decree No. 19,482/1930, obliging any company and commercial firms to have at least two-thirds of Brazilian native employees. Similarly, there is a norm establishing a quota of at least 30% of female candidates per party/coalition in proportional elections (Law 9.504/97), and legislation establishing quotas for people with disabilities in public exams (Article 37 of the 1988 Constitution, regulated by Decrees 3298/1999 and 9508/2018).

Regarding higher education, the adoption of the first quotas occurred through Federal Law 5.465/1968, popularly known as the "law of the ox," which established that:

> Art. 1º. The establishments of agricultural high schools and the higher schools of Agriculture and Veterinary Medicine, maintained by the Union, shall annually reserve, preferably, 50% (fifty percent) of their vacancies for candidates who are farmers or their children, landowners or not, residing with their families in rural areas, and 30% (thirty percent) for farmers or their children, landowners or not, residing in towns or villages without high school establishments (BRASIL, 1968).

This first law on educational quotas was revoked in 1985, amidst student mobilizations, due to the high number of frauds and because it mainly benefited the children of the rural elite, composed of large landowners, to the detriment of rural workers and small farmers. Regarding social and racial quotas in higher education, in the 2000s, some universities, especially state ones, were pioneers in adopting quotas for students from public schools, black and indigenous individuals in reserved places for undergraduate courses:

> The first universities in Brazil to have affirmative action for access to higher education were: the State University of Rio de Janeiro (UERJ) in 2002, modifying the law in 2003; the State University of Bahia (UNEB) in 2002, with the first selective process in 2003 and admission in 2004; UEMS with

> the first entrance exam in 2003 for admission in 2004. Then the University of Brasília (UnB), the first federal university to have quotas, was created in June 2003 but only implemented in 2004 (CORDEIRO, 2010, p. 102, our translation).

In the context of implementing these first quotas for undergraduate courses (through state laws and internal administrative acts of universities), there was a deepening of the debate on quotas in higher education. On the one hand, social movements and a significant portion of the university community advocated for the PT governments (2002-2016) to expand and decentralize higher education and implement a national system of quotas for admission as an affirmative policy. On the other hand, actions were challenging racial quotas brought forth by opposition parties, a large part of the press, and even segments of the university community, including the judiciary.

In 2009, the Democratic Party (DEM) filed a Direct Action of Unconstitutionality (ADPF), prompting the Supreme Federal Court (STF) to examine the constitutionality of an administrative act of the University of Brasília (UNB) that reserved 20% of the vacancies in its entrance exam for self-declared black and mixed-race students. Then, in 2016, the Brazilian Bar Association (Ordem dos Advogados do Brasil) filed a Declaratory Action of Constitutionality (ADC), requesting that the STF examine the constitutionality of Law No. 12,990/2014, which reserved 20% of the vacancies in all federal public exams for self-declared black and mixed-race candidates and had been systematically subject to judicial review.

The ADC 41 was judged in 2017, and the Supreme Federal Court (STF) unanimously ruled in favor of the constitutionality of racial quotas:

> The reservation of 20% of the vacancies offered in public exams for effective positions and public employment in direct and indirect public administration is constitutional. The use of subsidiary hetero-identification criteria, in addition to self-declaration, is legitimate, as long as the dignity of the human person is respected, and the right to contradict and defend oneself is guaranteed (BRASIL, 2017, our translation).

The ADPF 186 was judged on April 26, 2012, with the Supreme Federal Court (STF) ruling on the constitutionality of adopting racial quotas for admission to higher education in Brazil:

> I – I - The possibility for the State to use universalist policies, covering an indeterminate number of individuals through structural actions or affirmative actions that target specific social groups, attributing certain advantages to them for a limited time, allowing them to overcome inequalities resulting from

> particular historical situations, does not contradict but rather upholds the principle of material equality provided for in Article 5, caput, of the Constitution.
> [...] V - A differentiated selection methodology can perfectly well take into account ethnic-racial or socio-economic criteria to ensure that the academic community and society itself benefit from the plurality of ideas, which is one of the foundations of the Brazilian State, as provided for in Article 1, V, of the Constitution (BRASIL, 2012, our translation).

After four months of the STF decision, which affirmed the constitutionality of racial quotas in higher education, Law No. 12,711, known as the Law of Quotas in Higher Education, was promulgated on August 29, 2012. This legislation was later modified by Law No. 13,409/2016, which included quotas for undergraduate vacancies for people with disabilities.

Officially, Law No. 12,711/2014 originated from Bill No. 73/1999, presented by Federal Deputy Nice Lobão from the Liberal Front Party (PFL) of Maranhão, which dealt with "admission to federal and state universities and other provisions" and proposed the "reservation of fifty percent of vacancies to be filled through student selection in high school - university quota." Although Bill No. 73/1999 served as the basis for its passage, it did not specifically refer to racial quotas but to the selection process for admission to public universities. The proposal suggested that half of the vacancies be filled through selection based on the arithmetic average of the candidate's grades in high school rather than all vacancies being designated for the entrance exam selection process. The only article vetoed in the 2012 Law was precisely the one that provided for the use of the average grade coefficient from high school as a selection criterion for admission to public higher education and, optionally, to private higher education, justifying that the diversity of standards, methods, and curricula would make such a selection process unviable.

During the fifteen years of the Law's processing, nearly two dozen Bills and Substitutions from the Federal Chamber, the Senate, the Executive, and rapporteurs in Committees, addressing different forms of selection processes, quotas for public school graduates, quotas for black individuals, quotas for indigenous people, and quotas for low-income individuals (e.g., PL 1447/99, PL 1643/2019, PL 2069/99, PL 3.627/2004, and PL 3913/2008), were attached and detached to the proposal, culminating in the composition of the text approved in plenary in mid-2012.

The main justifications that stood out in the approval of the Law were the specificity of the proposal, which combined social quotas for public school graduates and low-income family members with ethnic-racial quotas for black, mixed-race, and indigenous people, along with

the framework of socioeconomic differences in Brazil, a history of opportunity inequality with racial divisions, and the potential for overcoming inequalities through access to higher education:

> Recent studies from reputable sources point out that in Brazil, the evolution of wealth and opportunity distribution is not neutral, crystallizing differences among the ethnicities that make up the characteristic diversity of the Brazilian population, with the fact that the black population and indigenous peoples have been and still are systematically disadvantaged throughout the entire republican experience (BRASIL, 2004, our translation).

Law 12.711 was published on August 29, 2012, and despite becoming known as the "Law of Quotas in Higher Education," its heading does not present the words quota or vacancy: "Provides for admission to federal universities and federal technical education institutions of medium level and other measures" (BRASIL, 2012c, our translation). In the *caput* of Article 1, it establishes the reservation of at least 50% of the vacancies in federal institutions of higher education for candidates who have completed their entire high school education in public schools:

> Art. 1º Federal higher education institutions linked to the Ministry of Education will reserve, in each selective admission process for undergraduate courses, by course and shift, at least 50% (fifty percent) of their vacancies for students who have fully completed high school in public schools. Sole paragraph. In filling the vacancies referred to in the heading of this article, 50% (fifty percent) shall be reserved for students from families with a per capita income equal to or less than 1.5 minimum wages (one and a half minimum wages) per capita (BRASIL, 2012c, our translation).

The sole paragraph of the first article establishes a sub-quota of the quota provided in the heading, determining that half of these vacancies should be reserved for students from families with a per capita monthly income of up to one and a half minimum wages. Implicitly, students from any family income can occupy the other half, including those with incomes below 1.5 minimum wage.

In Article 3, the quotas are established, with the determination that the vacancies reserved in the *caput* and sole paragraph of this article must be filled by black, mixed-race, indigenous, and disabled individuals, in a proportion at least equal to the balance of these segments in the population of the Federation Unit where the course is offered, according to data from the latest census of the IBGE.

> Art. 3º In each federal institution of higher education, the vacancies referred to in Article 1 of this Law shall be filled, by course and shift, by self-declared black, mixed-race, and indigenous individuals, and by persons with disabilities, in accordance with the legislation, in proportion to the total number of vacancies, at least equal to the **respective proportion** of black, mixed-race, indigenous, and disabled individuals in the population of the Federation Unit where the institution is located, according to the latest census of the Brazilian Institute of Geography and Statistics - IBGE
> Sole paragraph. Suppose the vacancies are not filled according to the criteria established in the heading of this article. In that case, the remaining vacancies shall be completed by students who have fully completed high school education in public schools (BRASIL. 2012c, emphasis added, our translation).

The sole paragraph of the third article indicates that the vacancies not filled by black, mixed-race, indigenous, and disabled individuals should be completed by students who completed their entire high school education in public schools, in a hierarchy of quotas, without immediately transferring them to general competition. Articles 4 and 5 bring, for federal medium-level technical education institutions, the same provisions that Articles 1 and 3 establish for higher education. Article 6 identifies the government agencies responsible for monitoring and evaluating the implemented "program," and Article 7 stipulates that within ten years of the publication of the Law, a unique program review should be conducted. Article 8 establishes a progressive four-year implementation of the reserved vacancies.

From these indications, it can be concluded that the objective of the Law of Quotas, regarding higher education and black individuals, **is to ensure entry** (specifically through reserved quotas for approved candidates in undergraduate and higher technology courses at federal higher education institutions) **of black individuals who completed their high school education in public schools**, in several vacancies at least equal to the percentage of black individuals in the population of the federal unit where the course is offered, as determined in the latest census by IBGE.

The objective of Law 12.711 unfolds into three dimensions: a) the macro dimension, which seeks to advance the reduction of social inequalities through potential opportunities for social mobility for black individuals, resulting from affirmative educational policies that guarantee access to higher education; b) the meso dimension, which focuses on affirmative actions to increase the number of black students entering public higher education institutions; c) the micro dimension, which encompasses the selection processes for admission to undergraduate and higher technology courses at federal universities, with the reservation, offer, selection, and enrollment of black candidates, according to the percentages and profiles

established in the Law.

The analysis of the effectiveness of the meso and, especially, the macro dimensions requires research and debates in economics, sociology, history, statistics, public policies, and education. The analysis of the micro extent requires interdisciplinary work among sociology, Law, and teaching, with an investigation of the Law and its regulations, selection process notices, lists of applicants, approved candidates, enrolled students, and so on, with analytical segments to assess the effectiveness or not of the Law of Quotas in samples of federal higher education selection processes.

Building upon the prescriptions of the Law for the quotas for black access to higher education and comparing them with the segmentation of vacancies in the offer and occupation of these reserved spots, the article continues with its analyses.

Analysis of calculation, offer and occupation of vacancies

The Federal University of Grande Dourados (UFGD) is a federal institution of higher education linked to the Ministry of Education, created in 2005 and based in the city of Dourados in the southern state of Mato Grosso do Sul. It offers 38 on-site undergraduate courses (3 using an alternation methodology), 8 distance learning undergraduate studies, and 25 Master's and Doctoral degree programs. In its Institutional Development Plan (PDI), UFGD highlights as strategic and priority programs those related to "social development, innovation, and inclusion" and the expansion of access and permanence of black, indigenous, and disabled individuals (UFGD, 2014), and concerning quotas, it adopted:

- 2006 - Specific vacancies for indigenous students in the Teko Arandu teaching course;
- 2008 - Specific vacancies for rural settlers in the Pronera Social Sciences course;
- 2009 - Specific vacancies for individuals with hearing disabilities in the Letras-Libras course;
- 2009 - 25% quota for undergraduate vacancies for public school graduates (internally adopted quotas by UFGD);
- 2012 - 50% quota for undergraduate vacancies for public school graduates, including black, mixed-race, and indigenous individuals, in accordance with Law 12.711;

- 2016 - Quota for undergraduate vacancies for individuals with disabilities who graduated from public schools, in accordance with Law 13.409;
- 2018 - 20% quota for masters and doctoral vacancies for black, indigenous, and disabled individuals (voluntary quotas by Capes and internally adopted by UFGD);
- 2019 - Specific quotas for one vacancy for indigenous students in each undergraduate course in the vestibular exam (internally adopted quotas by UFGD).

UFGD adopts two modalities of selection processes for admission to its undergraduate courses: the SISU - Unified Selection System selection process, promoted by the Ministry of Education, with UFGD's adherence to about half of the vacancies in almost all of its undergraduate courses; the Vestibular selection process, promoted by UFGD itself, for filling about half of the vacancies in each class (while distance learning courses and specific courses for field workers and indigenous individuals have separate vestibular exams).

The General Vestibular selection process (which does not include specific vestibular exams for particular courses), which is the focus of the quota vacancies for black individuals in this article, has its regulations regarding the offer and occupation of vacancies shaped by the provisions/regulations of Law 12.711/2012 (amended by Law 13406/2016), Decree 7.824/2012 (amended by Decree 9034/2017), Normative Ordinance MEC 18/2012 (amended by Normative Ordinances MEC 19/2014 and 9/2017), Resolution COUNI-UFGD 54/2013 (amended by Resolution 171/2018), and by the specific annual notices of each vestibular exam (as well as the functionalities of digital registration systems).

Law 12.711 establishes three essential points regarding quotas in the higher education system: a) At least 50% of the vacancies in each course must be reserved for candidates who completed their entire high school education in public schools; b) Students must fill at least half of the vacancies reserved for candidates from public schools with a family per capita income equal to or less than 1.5 minimum wages; c) From the total vacancies reserved for public school graduates, a minimum quantity, equivalent to the respective proportion of the segment in the Brazilian population of the federation unit where the course is offered, must be filled by self-declared black, mixed-race, indigenous, and disabled individuals.

Despite providing that vacancies not filled by black, mixed-race, indigenous, and disabled individuals should be occupied by public school graduates, the Law does not specify certain aspects, such as the calculation method for the number of vacancies per quota segment, whether the competition is concurrent or not, rounding of fractions, among others.

Decree 7.824, which acts as a regulation for Law 12.711, clarifies the following points related to quotas: the definition of what should be considered as high school education; the meaning of public-school graduate; guidelines for rounding fractions of vacancies and the requirement of having at least one vacancy per quota segment. Additionally, the Decree allows higher education institutions to include additional quota modalities or supplementary vacancies beyond the minimum required by Law:

> Art. 5º The notices of the selection exams of the federal education institutions referred to in this Decree shall indicate, in a separate manner, the number of reserved vacancies by course and shift.
> § 1º Whenever the application of the percentages for the calculation of the reserved vacancies referred to in this Decree implies results with decimals, the immediately higher whole number shall be adopted.
> § 2º he reservation of at least one vacancy must be ensured due to the application of item II of the caput of Article 2 and item II of the caput of Article 3.
> § 3 º Without prejudice to the provisions of this Decree, the federal education institutions may, through specific affirmative action policies, establish supplementary quotas or quotas of another modality (BRASIL, 2012b, our translation).

However, in item II of Article 2, the Decree repeats a provision from the Law that deals with the reservation of vacancies without providing specifications regarding the calculation, offer, and filling of these vacancies.

> II - the vacancies referred to in Article 1 of Law 12.711, 2012, shall be filled, by course and shift, by self-declared black, mixed-race, indigenous, and disabled individuals, in accordance with relevant legislation, in proportion to the total number of vacancies, at least equal to the respective proportion of black, mixed-race, indigenous, and disabled individuals in the population of the federation unit where the institution is located, according to the last census of the Brazilian Institute of Geography and Statistics – IBGE (BRASIL, 2012b, our translation).

The same Decree delegates the responsibility for the edition of complementary acts necessary for the application of its provisions to the Ministry of Education, although it remains silent about this attribution regarding the verification of the black, mixed-race, or indigenous status:

> Art. 9 º The Ministry of Education shall issue the necessary complementary acts for the application of this Decree, providing, among other topics, for:
> I - the method of calculation and verification of gross family income referred to in item I of the caput of Article 2 and the thing I of the caput of Article 3;

> II - **he formulas for calculation and the criteria for filling the reserved vacancies referred to in this Decree;** and
> III - he method of verifying the disability referred to in item II of the caput of Article 2 and item II of the caput of Article 3 shall occur in accordance with relevant legislation (BRASIL, 2012b, our emphasis, our translation).

Normative Ordinance MEC 18/2012 details the procedures for calculation, offer, and occupation of quota vacancies in federal universities, as well as specifying the order of priority for occupancy of the emptiness and the methods of verification for each quota group, except for black, mixed-race, and indigenous individuals, for whom the Ordinance does not provide information. It is in this Ordinance that three provisions have the potential to lead to distortions in quotas for black individuals: the obligation to add the percentages of the IBGE census for black, mixed-race, indigenous, and disabled individuals to establish a total share of vacancies to be calculated with the quota profiles; the requirement to add the percentages of the IBGE census for black, mixed-race, and indigenous individuals to offer the vacancies together (without distinguishing the sub-profile), but establishing separate and crossed offers for disabled individuals; the requirement to fill the emptiness within each quota segment, generating confusion regarding the possibility of simultaneous and hierarchical competition.

In Chapter II, which deals with the modalities of quota reservations, Enact 18 establishes in item 2 of Article 3 that:

> II - the proportion of the total vacancies, at least **equal to the sum of black, mixed-race, indigenous, and disabled individuals** in the population of the Federation unit where the institution offers vacancies, according to the last Demographic Census published by the Brazilian Institute of Geography and Statistics - IBGE, shall be reserved, by course and shift, for self-declared black, mixed-race, indigenous, and disabled individuals (BRASIL, 2012a, our emphasis, our translation).

This instruction, intended for operational purposes, which determines the sum of the percentages of the segments, deviates from what is established in Law 12.711 and Decree 7.824, which do not include the idea of sum but rather explicitly state that quotas must meet the percentage of the "**respective** proportion of black, mixed-race, indigenous, and disabled individuals in the population of the Federation unit." The majority of dictionaries leave no doubt about the meaning of the word "respect," which, in Aulete, presents as its first and foremost entry "referring to each one in **particular**... that concerns each one **separately**... belonging to the **interested** parties" (GEIGER, 2020, our emphasis, our translation). The original meaning of the Law, as being part, particular, and separate, has been converted into the instruction to be

a sum, set, and general, which had repercussions on the offer and occupancy of vacancies.

However, the exact sum of the four segments that are determined for the calculation by the Enact is not observed when making the offer, as the vacancies reserved for black, mixed-race, and indigenous individuals are offered together (without distinction by segment), while for disabled individuals, they are shown separately and with a crossing of sub-profiles.

> CHAPTER IV - CALCULATION OF RESERVED VACANCIES
> Art. 10 - The minimum number of reserved vacancies in each federal educational institution referred to in this Enact shall be fixed in the notice of each selection exam and calculated according to the following procedure:
> I - the total number of vacancies per course and shift to be offered in the selection exam is defined;
> II - a minimum percentage of 50% (fifty percent) of the total vacancies defined in item I, per course and shift, is reserved for students who have completed their entire elementary or high school education, as the case may be, in public schools;
> I - a percentage of 50% (fifty percent) of the total vacancies determined after the application of the rule in item II, per course and shift, is reserved for students with a per capita gross family income equal to or less than 1.5 (one point five) minimum wages;
> II - within the percentage of vacancies reserved in the terms of item III, the vacancies are reserved for self-declared black, mixed-race, and indigenous students with a per capita gross family income equal to or less than 1.5 (one and a half) minimum wages, as follows:
> **a) the percentage corresponding to the sum of black, mixed-race, and indigenous individuals in the population of the Federation unit where the institution offers vacancies is identified in the last Demographic Census published by IBGE;**
> **b) the percentage referred to in item "a" of this item is applied to the total number of vacancies determined after the application of the provisions in item III**;
> III - within the percentage of vacancies reserved in the terms of item III, and taking into account the reservation made in the terms of item IV, the vacancies are reserved for disabled individuals with a per capita gross family income equal to or less than 1.5 (one and a half) minimum wages, as follows:
> **a) the percentage corresponding to the disabled individuals in the population of the Federation unit where the institution offers vacancies is identified in the last Demographic Census published by IBGE**;
> **b) the percentage referred to in item "a" of this item is applied to the total number of vacancies determined after the application of the provisions in item III, taking into account the reservation made in the terms of item IV**;
> IV - the vacancies reserved for self-declared black, mixed-race, and indigenous students with a per capita gross family income exceeding 1.5 (one and a half) minimum wages are reserved as follows:
> a) the difference between the numbers of vacancies found after the application of the provisions in items II and III is determined;
> b) the percentage corresponding to the sum of black, mixed-race, and indigenous individuals in the population of the Federation unit where the institution offers vacancies is identified in the last Demographic Census

published by IBGE;
c) the percentage referred to in item "b" of this item is applied to the number of vacancies determined after the application of the provisions in item "a" of this item.
V - the vacancies reserved for disabled individuals with a per capita gross family income exceeding 1.5 (one and a half) minimum wages are reserved as follows
a) the difference between the numbers of vacancies found after the application of the provisions in items II and III is determined, taking into account the distribution made in the terms of item VI;
b) the percentage corresponding to the disabled individuals in the population of the Federation unit where the institution offers vacancies is identified in the last Demographic;
c) the percentage referred to in item "b" of this item is applied to the number of vacancies determined after the application of the provisions in item "a" of this item.
§ 1º - The calculations referred to in the items of the caput shall be carried out based on the formulas outlined in Annex I to this Enact.
§ 2o Considering the peculiarities of the population in the location where vacancies are offered and provided that the minimum number of vacancies reserved for the sum of black, mixed-race, and indigenous individuals and disabled individuals of the Federation unit where vacancies are offered is ensured, as determined in this article, federal educational institutions, in the exercise of their autonomy, may provide separate reservation of vacancies for indigenous individuals in their notices."
Art. 11 - Whenever the application of the percentages for determining the reserved vacancies referred to in Article 10 results in decimals, the higher whole number shall be adopted at <u>each stage of the calculation</u>
Sole paragraph - The **reservation of at least one vacancy i<u>n each of the provisions of items</u>** IV and V of Article 10 **must be ensured** (BRASIL, 2012a, our emphasis, our translation).

In the complex step-by-step calculation of vacancies for each segment, it becomes evident that the sub-profiles of black, mixed-race, and indigenous individuals are calculated together, which does not allow for the application of rounding of fractions or the guarantee of the minimum number of one vacancy per segment in each stage of the vacancy calculation. On the other hand, to calculate the vacancies for disabled individuals, it is required that this calculation be performed separately, without considering the sum set mentioned in item II of Article 3 of the Enact, and there is still the need for cross-divisions, allowing for rounding benefits. In the quotas for black, mixed-race, and indigenous individuals, the sum of the set is applied, with only two subdivisions: low-income and free income. In contrast, the quotas for disabled individuals are calculated separately, resulting in four subdivisions: disabled low-income; disabled free-income; disabled individuals who are black, mixed-race, or indigenous and low-income; disabled individuals who are black, mixed-race, or indigenous and free-income.

The Enact also establishes the order of filling the quota vacancies, in charge of classification, within each group of registration profiles:

> CHAPTER V - FILLING RESERVED VACANCIES
> Art. 14 - Reserved vacancies **shall be filled according to the ranking order based on the grades obtained by students within each of the following groups of applicants:**
> I Students from public schools with a gross family income equal to or less than 1.5 (one point five) minimum wages per capita:
> a) Self-declared black, mixed-race, and indigenous students;
> b) Non-self-declared black, mixed-race, and indigenous students.
> II - Students from public schools with a gross family income exceeding 1.5 (one point five) minimum wages per capita:
> a) Self-declared black, mixed-race, and indigenous students;
> b) Non-self-declared black, mixed-race, and indigenous students.III - Other students.
> Sole Paragraph - Ensuring the minimum number of vacancies mentioned in Article 10 and exercising their autonomy, federal educational institutions may, in their selection processes, adopt a system for filling vacancies that first considers the overall ranking based on grades and, subsequently, the scale within each of the groups indicated in the main caput (BRASIL, 2012a, our emphasis).

Although not explicitly stated, the Ministry of Education (MEC) and Universities understand this chapter as decisive for quotas applicants, as they must choose only one quotas category to compete, even if they are eligible for more than one. Additionally, the candidate is only classified in the selected group or segment, even if their performance or grades would qualify them for other groups. The candidate may also be called for a vacancy in another group or segment only if there are remaining vacancies, meaning that no other candidate is qualified in that group, following a hierarchy established in the Ordinance, even if they have higher grades or performance than another candidate. The sole paragraph of Article 14 allows Institutions to adopt a classification system based first on the general list and then on the hierarchy of groups or segments, but it does not reference simultaneous competition or order in all elements for which the candidate is eligible.

Regarding the internal regulation of UFGD, quotas were adopted strictly in the minimum percentages established by Law 12.711, except for creating an additional vacancy per undergraduate course for indigenous candidates.

> Art. 2º In the Vestibular Selection Process and the Unified Selection System (SiSU), UFGD will reserve 50% (fifty percent) of the vacancies for each undergraduate course, per course and shift, from 2014 onwards, for students who have completed high school entirely in public schools, including technical vocational education courses, observing the following conditions:

> I. At least 50% (fifty percent) of the vacancies mentioned in the main section shall be reserved for students with a family income equal to or less than 1.5 (one point five) minimum wages per capita; and
> II - In proportion to the total number of vacancies, at least equal to the sum of black, mixed-race, and indigenous people, and people with disabilities in the population of the Federation Unit where the institution offers vacancies, according to the latest Demographic Census disclosed by the Brazilian Institute of Geography and Statistics - IBGE, shall be reserved, per course and shift, for self-declared black, mixed-race, and indigenous people, and people with disabilities.
> Sole Paragraph - From the Vestibular Selection Process 2020, out of the vacancies intended for universal access in the mentioned process, UFGD will reserve one vacancy per course, in all classes the institution offers, for indigenous students (UFGD, 2013, our translation).

Despite being one of the pioneers in adopting social quotas in 2013, concerning Law 12.711, UFGD maintained the minimum percentage of 50% of reserved vacancies and precisely incorporated the criteria and procedures for calculating and offering vacancies established by MEC in Ordinance 18/2012. However, concerning filling vacancies, the institution utilized the limited margin of autonomy and specific regulation mentioned in the sole paragraph of Article 14 of the Ordinance above. This allowed vacancies to be filled as follows: first by the overall ranking for open competition vacancies, encompassing all candidates registered in all categories; in a second step, only by candidates registered within each group or segment; and finally, if there are remaining vacancies for open competition, candidates who were not able to enroll within their segment and those who could not prove their quotas eligibility (a change adopted in 2019) are reclassified in the open competition list. The Edital establishes that the failure to prove the quotas eligibility will result in the reclassification of the candidate in the Open Competition and emphasizes that:

> The call for filling the vacancies for each course will occur as follows:
> a) Candidates with the best performance in the single list of the entrance exam will be called until the limit of vacancies is set for the admission system through the General Competition;
> b) Reserved vacancies (50%) will be filled in the classification order by course and shift, considering the specific distribution of vacancies;
> c) Subsequent calls will be made for each admission system according to their respective legislation (UFGD, 2020, p. 19, our translation).

The Edital (notice) also establishes the basis for calculating the vacancies, although it does not provide details of the steps:

> The reserved vacancies mentioned in item 4.1 will be filled by self-declared indigenous or black (black/brown) candidates and People with Disabilities

> (PCD), in accordance with the legislation, in a proportion at least equal to the sum of indigenous and black (black/brown) individuals in the population of the state of Mato Grosso do Sul, which is 51.95%, and PCD, which is 21.48%, as calculated based on the latest census data from the Brazilian Institute of Geography and Statistics (IBGE). The fractional number will be rounded to the nearest whole number in calculating these vacancies (UFGD, 2020, p. 6, our translation).

It should be noted that, regarding the SISU selection process, the computer system adopted by the Ministry of Education (via a smartphone application or Internet website) does not allow the candidate to choose to compete in more than one category. Therefore, the candidate must select and compete for vacancies in only one of the groups, segments, or quota profiles registered by the Institution, even if their score is higher than those classified or called in another category.

Final considerations

Regarding the calculation of vacancies for the offer, there is a distortion between what is established in Law 12.711 (vacancies according to the respective percentages of groups/segments) and what is indicated in Administrative rule 18 (vacancies based on the sum of blacks, browns, and indigenous without adding for people with disabilities). This criterion established by the Ministry of Education reduces the number of vacancies that should be offered for black candidates. The table below details examples of vacancy calculations in both systems to highlight that, as required by the Ministry of Education, the number of vacancies for blacks, browns, and indigenous results in an increase in vacancies for public school graduates who are not black, brown, and indigenous or disabled (PPI and PCD), and in cases of offering few vacancies, the fractional rounding also benefits general competition at the expense of black, brown, and indigenous candidates.

Table 5 - Calculation of Offered Vacancies

Segment/Group X calculation of vacancies, based on data from Mato Grosso do Sul (4.9% black; 44.1% brown; 2.9% indigenous; 21.51% PCD)	**Calculation according to Law 12.711 and Decree 7.824, without sum**			**Calculation according to Administrative rule 18, with the sum of PPI**		
	Course with 100 vacancies	Course with 50 vacancies	Course with 25 vacancies	Course with 100 vacancies	Course with 50 vacancies	Course with 25 vacancies
Total number of Course vacancies in the specific selection process per shift	100	50	25	100	50	25
Minimum of 50% of total vacancies for quotas	50	25	13 (16)	50	25	13

Minimum of 50% of reserved vacancies for low-income candidates	25	13	7 (8)	25	13	7
Vacancies for low-income black candidates, according to the IBGE percentage	2	1	1	11	6	3
Vacancies for low-income brown candidates, according to the IBGE percentage L2	11	6	3			
Vacancies for low-income indigenous candidates, according to the IBGE percentage	1	1	1			
Vacancies for low-income PCD candidates, according to the IBGE percentage	6	3	2	---	---	---
Vacancies for low-income PCD candidates, combined with the profile of black, brown, and indigenous candidates L10	---	---	---	3	2	1
Vacancies for low-income PCD candidates, without connecting with the profile of black, brown, and indigenous candidates L9	---	---	---	3	1	1
Vacancies for low-income candidates who are not black, brown, indigenous, or PCD L1	5	2	1	8	4	2
Remaining vacancies for free-income candidates from the reserved vacancies for low-income candidates	25	12	6 (8)	25	12	6
Vacancies for free-income black candidates, according to the IBGE percentage	2	1	1	11	6	3
Vacancies for free-income brown candidates, according to the IBGE percentage L6	11	6	3			
Vacancies for free-income indigenous candidates, according to the IBGE percentage	1	1	1			
Vacancies for free-income PCD candidates, according to the IBGE percentage	6	3	2	---	---	---
Vacancies for free-income PCD candidates, combined with the profile of black, brown, and indigenous candidates L14	---	---	---	3	2	1
Vacancies for free-income PCD candidates, without mixing with the profile of black, brown, and indigenous candidates L13	---	---	---	3	1	1
Vacancies for free-income candidates who are not black, brown, indigenous, or PCD L5	5	1	1	8	3	1
Vacancies for General Competition A0	50	25	9	50	25	12

Source: Table elaborated by the authors

As can be observed in Table Figure 5, in courses with lower availability of vacancies in selection processes (25 vacancies, for example), the number of vacancies for black, brown, and indigenous candidates decreases from 10 vacancies in the methodology of Law 12.711 to 6 vacancies in the method of Administrative rule 18, representing a deviation of 4 vacancies or 40%, mostly allocated to the general competition segment.

Another distortion resulting from the sum of vacancies for PPI and the fragmentation of vacancies for PCD, which is not merely bureaucratic or mathematical, is that when placing black, brown, and indigenous candidates to compete against each other in the same quota category, there is an absolute prevalence of brown candidates over black candidates, and indigenous candidates practically struggle to gain admission, especially in more competitive courses (AGUIAR, 2014). However, some universities offer separate vacancies for indigenous candidates, regardless of the vacancies reserved for black and brown candidates, as is the case at the Federal University of Mato Grosso do Sul.

From another perspective of analysis, regarding the options for competition and the hierarchy for filling vacancies, there are also distortions, with significant possibilities of reducing the number of quota beneficiaries, including black candidates, in the allocation of vacancies and restricting the number of vacancies for which a quota beneficiary can compete, contradicting the objectives of a quota system.

The SISU system only allows candidates to compete in a single quota segment/modality or general competition, making it impossible for concurrent or hierarchical competition. This can lead to situations where for example:

- A candidate who was forced to choose to compete in the quota segment for low-income black, brown, or indigenous candidates and public school graduates, even if they achieved a higher score than a candidate classified in the quota segment for free-income black, brown, or indigenous candidates and public school graduates, may be excluded from the course because their score is not enough to place them within that specific segment;
- Or a candidate who was forced to choose to compete in the quota segment for low-income black, brown, or indigenous candidates and public school graduates, even if they achieve a score that would be sufficient for them to be accepted in a general competition vacancy, ends up being accepted in a PPI (black, mixed-raced, indigenous) quota vacancy, occupying the place of another black candidate who would be taken if they competed concurrently and entered through general competition, freeing up the quota vacancy for another

quota beneficiary

The system reverses the situation and encourages quota beneficiaries to only compete for vacancies in one segment, leaving the general competition vacancies for non-quota beneficiaries. For example, in a course with 50 vacancies:

- A candidate without any quota profile can compete for 25 vacancies or 50% of the total;
- A black candidate from a low-income background and coming from a public school can exclusively compete for 3 vacancies or 12% of the total;
- A candidate from a public school with a low-income background can only compete for 2 vacancies or 8% of the total;
- And a black candidate with a disability, from a public school, and a low-income background can only compete for 1 vacancy or 4% of the total.

This logic distorts the purpose of quotas, as instead of expanding opportunities for competition, allowing quota beneficiaries to compete for vacancies in general competition and in all quota profiles they fall under (enabling them to compete for 100% of the vacancies), bureaucracy, mathematics, and computer systems force them to only compete for a small fraction of the vacancies, establishing a situation where more means less.

The UFGD's entrance exam system partially alleviates this situation by establishing the priority for all candidates to first compete in a general competition, and if not approved for those vacancies, they are then classified in the specific quota segment they chose during the registration for the selection process. However, the inversion of the purpose of quotas also affects the entrance exam, as it does not allow concurrent competitions and hierarchical and successive classifications of quota candidates in all quota profiles they are eligible to compete for.

These results lead to the consideration that, although it does not fully constitute a "for-show law" or a "law that didn't catch on," the Law of Quotas in Higher Education presents some problems of effectiveness, leading to deviations and distortions in the calculation, offer, competition, and filling of quota vacancies.

It can be concluded that, in the process of valuing Law 12.711 as a norm, an evaluation, debate, and planning are necessary to correct the deviations and advance in effectiveness, with

the indication of measures such as:

- Revising the procedures for calculating quota vacancies, following the guidelines established in Law 12.711 and avoiding distortions of merging and fragmentation imposed as regulations;
- Revising competition guidelines, ensuring that, both in the entrance exam and in SISU, all candidates automatically register in general competition and simultaneously in as many quota categories as they are eligible for and choose to compete in;
- Revising classification and filling guidelines, adopting an informatics system to process the competition of each candidate successively and hierarchically, allowing them to compete for the maximum number of vacancies possible, starting with general competition, then free-income quotas, followed by low-income quotas, then disability quotas, and finally ethnic-racial profile quotas.

This will allow the Law of Quotas to signify an expansion of opportunities for competition for access to higher education (rather than reduction/limitation) and a classification system in which quota beneficiaries can enter the vacancy for which they had the best performance and release the vacancy they would have filled due to rigidity for another quota beneficiary, increasing the number of quota beneficiaries. This will bring Law 12.711 closer to its original intention of increasing competition opportunities and the number of quota entrants.

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Processing and editing: Editora Ibero-Americana de Educação.
Proofreading, formatting, normalization and translation.