

PRESENTATION: TEN YEARS OF IMPLEMENTATION OF LAW 12.711/2012

APRESENTAÇÃO: DEZ ANOS DE IMPLANTAÇÃO DA LEI 12.711/2012

PRESENTACIÓN: DIEZ AÑOS DE IMPLEMENTACIÓN DE LA LEY 12.711/2012



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Introduction

Since the early 2000s, affirmative action policies (AAP) have been implemented in the Brazilian higher education scenario. Historically, the Black population has been excluded from this context due to a solid and organized mechanism of structural racism (ALMEIDA, 2018) which normalized and maintained the status quo established by Brazilian society. With the introduction of AAP, a new reality was observed, with a significant increase in the presence of this population in higher education. In this context, the dossier "Ten years of implementing Law 12.711/2012" goes beyond mere description, normative implementation, and enactment but also encompasses studies that have analyzed the social movement, the normative genesis, and the social distortions and tensions in the university environment.

To familiarize the reader with the social and legal dynamics of implementation and enactment, it is necessary to present the process of formulating Law 12.711/2012. This process was gradual and continuous in its improvement, with tensions in its implementation observed in the daily interactions among institutions, encompassing access, admission, retention, and the effective integration of quota beneficiaries into the job market.

Law 12.711/2012, also known as the Quota Law, has the main peculiarity of being hybrid, with provisions that consider school background (public/private, with 50% of vacancies reserved for candidates who attended public high schools), income (50% of vacancies reserved for candidates with a per capita family income equal to or less than 1.5 minimum wages; and 50% for candidates regardless of income), ethnicity (Black, Mixed-race, and Indigenous), and people with disabilities. Additionally, the distribution of vacancies is based on the percentage of data from the last population census carried out by the Brazilian Institute of Geography and Statistics (IBGE). Therefore, the norm presents an imperative and determinant complexity in implementation, with *erga omnes* effects of minimum AAP implementation in higher education institutions and federal institutes. This characteristic was not observed in the early 2000s when each national public university freely implemented its own AAP, according to its university collegiate body.

Understood that the genesis of the Quota Law had a historical process marked by legislative advances and setbacks, presenting different configurations. Bill 1.332/1983 faced solid political resistance and was not approved by the National Congress. Federal deputy Abdias Nascimento, the ideator of this bill, proposed compensation mechanisms for Afro-Brazilians, including reserving 20% of vacancies for Black women and 20% for Black men applying for public service positions. The 1.332/1983 bill also provided scholarships and incentives for

private companies to promote the inclusion of Black workers in their workforce. Additionally, it aimed to include the history of African civilizations and Africans in Brazil in the Brazilian educational structure (MOEHELECKE, 2002). It becomes evident that the underlying basic principle of the legal genesis was to promote social inclusion and the advancement of the Brazilian Black population, breaking with the naturalization of social exclusion and political violence present in power spaces.

In 1995, for the first time in Brazil's history, the State recognized, through a report presented to the United Nations Committee on the Elimination of Racial Discrimination, the disadvantages faced by the Black and Grayish-brown population concentrated in lower social strata. This report also pointed out the lack of representation of Black individuals in prominent positions within institutions such as the government, armed forces, and private life (ONU, 1995 apud SILVA, 2011).

On May 13, 1996, the government of Fernando Henrique Cardoso instituted the National Human Rights Plan (PNDH) under the responsibility of the Human Rights Secretariat. This plan brought affirmative action initiatives back to the political agenda for the Black population, aiming to include historically marginalized groups in human and fundamental rights and human dignity. Concerning the representation of Black people in positions of power, the PNDH proposed the creation of access opportunities in vocational courses, universities, and cutting-edge technology fields, as well as the implementation of compensatory policies for economic and social promotion, encouraging the private sector to adopt positive discrimination actions (MOEHELECKE, 2002). Thus, in seeking social justice, Brazilian society transitioned from a context where people were negatively discriminated against and marginalized in their history to an inclusive and socially liberal perspective.

Although the PNDH had limited implementation, it sparked discussions about the need for affirmative action policies (AAP) for the Black population. The document served as a basis for advocating public policies that would effectively uphold the fundamental rights envisioned in the Constitution of the Federative Republic of Brazil of 1988 (CRFB/1988) for the Black population.

Discussions in the context of international relations brought about significant changes to the AAP agenda, with internal repercussions on Brazilian politics and the university environment. The III World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, held on September 8, 2001, in Durban, connected Brazil to the national and international agenda against racism. Silva (2011) pointed out that the Declaration and Plan

of Action from Durban consolidated the debate from a human rights perspective, establishing goals through measures against concrete cases of racism. In the Action Plan, Brazil and other signatory countries unanimously recognized the existence of racism and cultural and religious intolerance towards the Black population.

In the face of this new stance, where Brazil began to recognize itself as a racist society, Silva (2011) highlighted that in deliberative collegiate bodies, discourses and actions contrary to proposals for opening spaces for the Black population emerged within universities. Analyzing the implementation processes of affirmative action policies (AAP) in the early 21st century, Andrade (2021) found this institutional resistance, with scientists strongly opposing quotas in Brazilian higher education. In this political and academic scenario, both advocates and opponents of quotas existed. However, even among proponents, some only supported a meritocratic approach, and others endorsed a social system.

As pointed out in the study by Aguiar and Faisting (2011), a purely social approach does not meet the demands of class and race, as Black individuals who are also economically disadvantaged do not have access to the same public policies available to their White counterparts. This indicates that racism permeates the class divide.

Within the framework of the National Congress, the meritocratic proposal of Bill 73/1999, initiated by Federal Deputy Nice Lobão, PFL/Maranhão, in its Article 1, suggested:

Art. 1º - Public universities shall reserve 50% (fifty percent) of their vacancies to be filled through the selection of students from high school courses, based on the Performance Coefficient - PC, obtained through the arithmetic average of grades or scores obtained during the period, considering the common curriculum to be established by the Ministry of Education and Sports. Sole paragraph - Private universities are granted the same as public universities [...] (BRASIL, 1999, our translation).

Bill 73/1999 does not address AAP as a mechanism for quotas based on ethnic-racial criteria. This bill represented one of the discourses in the National Congress, suggesting that establishing a merit-based standard would resolve inequality. However, this first article of Bill 73 did not meet the racial and social demands. The genesis of this bill perpetuates exclusion and restriction of access to higher education under the guise of legality. The bill remained stagnant in the National Congress for over a decade until it resumed the legislative process 2012.

Before materializing as Law 12.711/2012, the point of discussion and maturation was its implementation directly by institutions such as the University of Brasília (UnB), the Federal

University of Bahia (UFBA), and state universities like the University of Rio de Janeiro, University of Bahia, and University of Mato Grosso do Sul (UEMS).

The experience of the first universities to implement AAP with an ethnic-racial focus led to the initiative of proposing legal actions. The Action for the Breach of Fundamental Precept (ADPF) 186, presented by the Democratic Party against UnB, provided the national space for discussing AAP, particularly racial quotas (ANDRADE, 2021). The ADPF was judged by the Supreme Federal Court (STF) on April 26, 2012, and deemed entirely unfounded. Subsequently, the National Congress approved it in August, and President Dilma Rousseff enacted Law 12.711/2012. With its hybrid character, this Law presented in this dossier seven scientific articles depicting reality from different perspectives.

In the opening article of the Dossier titled "The performance of the General Hetero-Identification Committee (CGH) of the Federal University of Grande Dourados (UFGD) in undergraduate education", authored by Aline Anjos da Rosa, Jaqueline Machado Vieira, and Maria de Lourdes dos Santos, it highlights that Law 12.711/2012 indicates the need for the improvement of the entrance exam process, with the implementation of complementary self-declaration and Hetero-identification procedures. The authors conducted exploratory research based on the experience of UFGD's CGH, using documentary methods and accounts from researchers and active members in the CGH/UFGD, considering the Covid-19 pandemic period.

In the second article, the mechanism for refining the quota system and the establishment of Hetero-identification Committees are presented. The report titled "Law no. 12.711/2012 and racism: Strategies and controversies in the implementation of Hetero-identification committees in Federal Institutes", authored by Jacklady Dutra Nascimento, Leudjane Michelle Viegas Diniz Porto, Regyna Kleyde de Holanda Duarte, presents a systematic review of Hetero-identification over the last five years.

The third article highlights the study "Affirmative policies and the newcomers by quotas in the graduation of UFMS: Analysis of the courses of medicine and pedagogy" by Ana Paula Oliveira dos Santos and Eugenia Portela de Siqueira Marques. The research aimed to analyze quota-based admissions in the Pedagogy and Medicine courses by reserving slots in UFMS undergraduate programs from 2013 to 2020.

In the fourth article, titled "When more is less: Distortions in the Quota Law for access to higher education in the selective process", the effectiveness of the Quota Law in Higher Education is analyzed, identifying distortions in its application. The authors Reinaldo dos Santos, Alaerte Antonio Martelli Contini, and Edicleia Lima de Oliveira conducted research

involving legal and documentary analysis of vacancy offers in federal universities' entrance exams. The study aimed to analyze the vacancies offered in the announcements compared to those determined by the Quota Law.

In the penultimate article, titled "Admission, permanence and trajectory of the black population in graduation courses at UFGD: Effectiveness of Law 12.711/2012", authors Angelita da Cruz Espínola and Rogério de Andrade present two studies conducted in master's and doctoral research. Study 1 was based on Andrade's doctoral thesis (2021), aiming at the prescription, description, and analysis of Law 12.711/2012 and documentary analysis of notices for vestibular selection processes in federal universities from the five Brazilian regions, with two selection processes per region in different institutions. The analysis revealed distortions in the vestibular selection processes. In Study 2, based on Espínola's dissertation (2021), the author conducted qualitative and quantitative research to analyze the social mobility of graduates in UFGD undergraduate programs. Both studies identified the need for actions based on an anti-racist culture to overcome social tensions and correct distortions in implementing the norm.

In the sixth and final article, concluding the dossier, the study "Weavings of inclusion policies at the state University of Mato Grosso do Sul", authored by Maria José de Jesus Alves Cordeiro and Celi Corrêa Neres, presents the scope of Affirmative Action Policies (AAP) at UEMS, one of the first higher education institutions to implement quota policies, with various criteria to address diversity. The article describes inclusion mechanisms, including quotas for Black individuals, Indigenous people, individuals with disabilities, those with global developmental disorders, and individuals with high abilities or giftedness, as well as postgraduate management policies in recent years. This article is essential to enhance the perspective of education administrators in developing AAP that goes beyond the minimum legal requirements established in Law 12.711/2012.

We wish the readers a thoughtful reflection and a deepening of the accumulated knowledge in the texts and research references. Affirmative Action Policies (AAP) require constant monitoring for improvement and to achieve the principle of inclusion and the materialization of equality for historically neglected groups in their fundamental rights.

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