

# CRITICAL DIALOGUES ON PANDEMIC PERSPECTIVES

Thinking about the Aftermath Challenges



Italy



Brazil



Estudios Chinos

Argentina



UNIVERSIDAD  
NACIONAL  
DE LA PLATA

Argentina

Organizers:

Cássius Chai • Alexandre Coura • Fabio Marcelli • Francesca Staiano

2024

# **CRITICAL DIALOGUES ON PANDEMIC PERSPECTIVES**

**Thinking about the Aftermath Challenges**

## CULTURA, DIREITO & SOCIEDADE (Research Group/DGP/CNPq/UFMA)

<http://dgp.cnpq.br/dgp/espelhogrupo/456>

<https://culturadireitoesociedade.org/index.php/institucional/>

File available at: [www.dialogoscriticos.com](http://www.dialogoscriticos.com)

**OUR MISSION:** Develop scientific research and contribute to the formation of citizen(s) and citizen(s)-leaders for the national society, through the irrevocable commitment to the Arts, Philosophy, Political Science and the Science of Law in their inseparable social immanence, in a transdisciplinary approach with all knowledge, with practice and with the transformation of mentalities in the reach of the republican objectives contained in art. 3rd, of the Brazilian Federal Constitution of 1988:

I – build a free, fair and solidary society;

II – guarantee national development;

III – eradicate poverty and marginalization and reduce social and regional inequalities;

IV – promote the good of all, without prejudice of origin, race, sex, color, age and any other forms of discrimination.

**OUR VALUES:** Integrity; Resilience; Respect differences.

**OUR VISION:** The role of the University lies in understanding, first, the socio-economic and political needs of its surroundings and, considering its context, promoting and provoking a conscious, plural, scientifically directed intervention in reality, capable of strengthening the dignity of the human person, of sustainable, ethical and inclusive way. Thus, the Research Group (Studies) Culture, Law and Society works as an institutional agent directing its actions of studies, sociological investigations and affirmative propositions aiming to contribute to the reduction of regional inequalities, promoting respect for

cultural diversity and the strengthening of republican and democratic constitutional identity, reconciling Teaching, Research and Community engagement actions between the academy, the global vision and the local society. And yet, to create and maintain the conditions that allow its members to experience an educational journey that is intellectually, socially and personally transformative.

### OUR GOALS

General: Investigate within the area of Culture, Law and Society social issues related to the lines of research, aiming to contribute to the historical process of reflection, discussion and political propositions suited to the needs of local society, transferring scientifically systematized knowledge, enabling its application in the discursive processes of formation and establishment of priorities for governance.

Specifics: To train, through a methodological approach to research, researchers initiated in scientific research, training them in the language, procedure and systematization of the research activity;

Develop projects related to research lines;

Disseminate the research reports in a systematic way, allowing a process of reflection with the forums of debates and the formation of local public opinion;

Establish an information network with other sectors, centers, groups and or research centers that reflect similar objectives;

Theoretical Framework: Critical-deliberative theories in law: Critical Criminology; Discursive Theory of Law in the proceduralist and phenomenological bias.

### SCIENTIFIC BOARD

Cássius Guimarães Chai - BRAZIL

José Manuel Peixoto Caldas - PORTUGAL

Alberto Manuel Poletti Adorno - PARAGUAY

Maria do Socorro Almeida de Sousa - BRAZIL

Pedro Garrido Rodríguez - SPAIN

Manuellita Hermes Rosa Oliveira Filha - BRAZIL

José Cláudio Pavão Santana - BRAZIL

Amanda Cristina de Aquino Costa - BRAZIL

Maria Esther Martínez Quinteiro - SPAIN

Sérgio Neira-Peña - CHILE

Maria da Glória Costa Gonçalves de Sousa Aquino - BRAZIL

Alexandre de Castro Coura - BRAZIL

Heinz-Dietrich Steinmeyer - GERMANY

Fábio Marcelli - ITALY

Maria Francesca Staiano - ARGENTINA

Vyacheslav Sevalnev - RUSSIAN FEDERATION

Joana Bessa Topa - PORTUGAL

Ana Teresa Silva de Freitas - BRAZIL

Mariana Lucena Sousa Santos - BRAZIL

Alex Pires Sandes - BRAZIL/PORTUGAL

Cover Design: Wemerson Duarte Macedo

Editorial Assistant: Pedro Paulo Oliveira Penha

## INTERNATIONAL CATALOGING-IN-PUBLISHING (CIP) UNIVERSIDAD NACIONAL DE LA PLATA

Guimarães Chai, Cássius; Castro Coura, Alexandre de; Marcelli, Fábio; Staiano, Maria Francesca (org.) Critical dialogues on pandemic perspectives: thinking about the Aftermath Challenges / Cássius Guimarães Chai ... et al. (organizadores). - 1a ed. - La Plata : Universidad Nacional de La Plata, 2024.

Libro digital, PDF; 493 p.

Archivo Digital: descarga y online

ISBN 978-950-34-2426-1

1. Pandemia. 2. Diálogos. 3. Perspectivas críticas. I. Guimarães Chai, Cássius, org. II. Título.

CDD 303.485



UNIVERSIDAD  
NACIONAL  
DE LA PLATA

ISBN 978-950342426-1



9

789503

424261



CULTURA, DIREITO E SOCIEDADE  
DGP CNPq UFMA  
GRUPO DE PESQUISA

KOAN  
公案 editor

Índices para catálogo sistemático: 1. Direito internacional 341



<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-v2>

THE TEXTS ARE THE SOLE  
RESPONSIBILITY OF EACH  
AUTHOR FOR THEIR  
CONTENT; REVIEW AND  
PRESENTATION STRUCTURE.

**Cássius Guimarães Chai**  
Cultura, Direito & Sociedade  
Research group/DGP/CNPq/UFMA  
coordinator

**CÁSSIUS GUIMARÃES CHAI**  
**ALEXANDRE DE CASTRO COURA**  
**FÁBIO MARCELLI**  
**MARIA FRANCESCA STAIANO**  
Organizers

# **CRITICAL DIALOGUES ON PANDEMIC PERSPECTIVES**

## **Thinking about the Aftermath Challenges**



**UNIVERSIDAD  
NACIONAL  
DE LA PLATA**



La Plata - Argentina  
2024

## INSTITUTIONAL PARTNERSHIP:



## SCIENTIFIC BOARD



Cássius Guimarães Chai  
BRAZIL



Maria Francesca Staiano  
ARGENTINA



Alexandre de Castro Coura  
BRAZIL

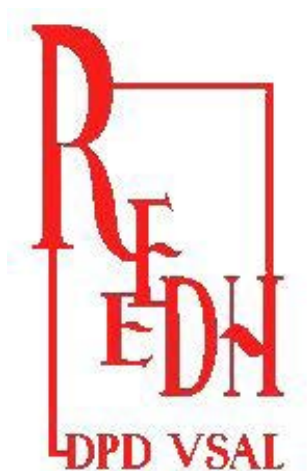


Fabio Marcelli  
ITALY

This project results from the International Research Forum Critical Dialogues on Pandemic Perspectives held on September 10<sup>th</sup> and 11<sup>th</sup>, 2020, in pursuant of the shared participants objectives, an online event attended by confirmed colleagues and friends from 16 countries.

The International Online Congress “Critical Dialogues on Pandemic Perspectives: Global Justice, Rule of Law and Human Rights” comprises joined researchers efforts to promote international academic and scientific exchanging cooperation on the current global pandemic context on reflecting, thinking and scrutinizing government’s, public policies and decision-making process and innovation in the fighting against direct and collateral damages caused by the Covid-19’s social and institutional impacts, considering transnational implications to the political, economic and the rule of law systems from a Global Justice approach and, locally to human rights’ protection.





**ESTE LIBRO COLECTIVO, FORMA  
PARTE DE LA COLECCIÓN DE  
MONOGRAFÍAS PUBLICADAS  
EN EL MARCO DE LA “RED DE  
ESPECIALISTAS EN DERECHOS  
HUMANOS DOCTORES Y  
POSTDOCTORES FORMADOS POR  
LA UNIVERSIDAD DE SALAMANCA”  
(REDHDP/USAL)  
A LA QUE PERTENECE SU DIRECTOR**

# CONTENTS

CONTRIBUTORS .....	11
ORGANIZER'S OPENING REMARKS.....	24
FOREWORD .....	26
<i>Prof. Dr. Heinz-Dietrich Steinmeyer</i> .....	29
THE DISTRIBUTION AND USE OF TAX REVENUES IN THE COUNTRIES WITH HIGH-INCOME INEQUALITY.....	31
<i>Daury Cesar Fabriz</i> .....	31
<i>Julio Homem de Siqueira</i> .....	31
CULTURE AS A MODEL FOR THE SOCIAL INCLUSION OF BRAZILIAN MIGRANTS IN PORTUGAL .....	47
<i>Lígia Moreira Almeida</i> .....	47
<i>Raquel Moutinho</i> .....	47
<i>Natacha Jesus-Silva</i> .....	47
<i>Jorge Leite</i> .....	47
<i>Marcelo Brigagão de Oliveira</i> .....	47
<i>José M Peixoto Caldas</i> .....	47
BALANCE OF REGULATION INNOVATION AND HUMAN RIGHTS PROTECTION IN CONSTITUTIONAL FRAMEWORK: IN PERSPECTIVE OF CHINA'S ANTI-COVID19 CAMPAIGN .....	76
<i>Yin Jia</i> .....	76
PANDEMIC IMPACTS ON CONTEMPORARY SLAVE LABOR FIGHTING IN BRAZIL .....	88
<i>Emerson Victor Hugo Costa de Sá</i> .....	88
<i>Valena Jacob Chaves</i> .....	88
<i>Caio Henrique Faustino da Silva</i> .....	88
SOCIAL POLICY SITUATION IN GERMANY AFTER THE PANDEMIC .....	112
Lessons and Consequences.....	112
<i>Heinz-Dietrich Steinmeyer</i> .....	112
GOVERNANCE OF THE ELECTRONIC JUDICIAL PROCESS IN BRAZIL AND THE DILEMMA OF THE NORMATIVE EFFECTIVENESS OF CPC/2015 AFTER THE POST-PANDEMIC PERIOD .....	123
<i>Agatha Gonçalves Santana</i> .....	123
<i>Carla Noura Teixeira</i> .....	123



STATE AND PROTECTION OF WOMEN VICTIMS OF DOMESTIC VIOLENCE: AN ANALYSIS OF THE PRE, DURING AND POST COVID-19 PANDEMIC .....	148
<i>Carlos Magno Albakim Figueiredo Júnior</i> .....	148
<i>Cássius Guimarães Chai</i> .....	148
<i>Mônica Fontenelle Carneiro</i> .....	148
<i>Elda Coelho de Azevedo Bussinguer</i> .....	148
<i>María Esther Martínez Quinteiro</i> .....	148
GLOBAL JUSTICE, RULE OF LAW AND HUMAN RIGHTS, CONNECTIONS AND DISCONNECTIONS FROM A LEGAL AND POLICY PERSPECTIVE .....	168
<i>Sergio Peña Neira</i> .....	168
A CRITICAL PERSPECTIVE OF THE TRIPS AGREEMENT WAIVER: TAKING A HUMAN RIGHTS APPROACH .....	181
<i>Hugo Cabueñas</i> .....	181
<i>Camila Manotas</i> .....	181
INSTITUTIONAL AND TECHNICAL PREVENTION FROM ABUSE OF EMERGENCY POWER .....	215
<i>MO Jihong</i> .....	215
INCLUSIVE GOVERNANCE IN THE THIRD SECTOR: GENDER AND RACE IN CIVIL SOCIETY ORGANIZATIONS.....	235
<i>Cíntia Cristina Silva de Araújo</i> .....	235
CURRENT HISTORY OF MIGRATIONS.....	269
<i>Pedro Garrido Rodríguez</i> .....	269
GLOBAL GOVERNANCE AND THE ESTABLISHMENT OF A COMMUNITY WITH A SHARED FUTURE FOR MANKIND IN THE POST-PANDEMIC ERA .....	290
<i>Shen Qian</i> .....	290
DIGITALIZATION OF SURVEILLANCE ACTIVITIES AS A CORRUPTION PREVENTION MEASURE DURING THE COVID-19 PANDEMIC.....	311
<i>Sevalnev Vyacheslav Viktorovich</i> .....	311
<i>Tsirin Artem Mikhailovich</i> .....	311
“MINIMAL STATE” & “PROSPEROUS STATE”: TECHNIQUE OR HUMANITY? .....	323
<i>Maria Francesca Staiano</i> .....	323
REEVALUATING HUMAN RIGHTS FRAMEWORKS: NAVIGATING THE POST-COVID WORLD AND ENSURING GLOBAL EQUITY .....	351
<i>Anju Gupta</i> .....	351

ONE BELT, ONE ROAD, ONE HOPE. BALANCE OF THE BELT AND ROAD INITIATIVE IN TIMES OF PANDEMIC AND GLOBAL CRISIS.....	367
<i>Sebastián Schulz</i> .....	367
GLOBAL JUSTICE AND THE 2030 AGENDA. AN INSTRUMENT FOR TACKLING THE COVID-19 PANDEMIC.....	385
<i>Luciano Mamede de Freitas Junior</i> .....	385
<i>Cássius Guimarães Chai</i> .....	385
<i>Monica Fontenelle Carneiro</i> .....	385
FORCED DISPLACEMENT IN EMERGENCY CONTEXTS: THE COVID-19 PANDEMIC AND RESTRICTIVE MEASURES ON MOBILITY. THE CASE OF ARGENTINA AND BRAZIL.....	404
<i>Natalia L. Loscocco</i> .....	404
<i>Valeria M. Allo</i> .....	404
DEMOCRACY CRISIS, MODERATING POWER, COVID-19, AND ANTI-DEMOCRATIC ACTS: AN ANALYSIS OF DEMOCRATIC INSTABILITY IN BRAZIL FROM 2019 TO 2022 .....	423
<i>Juão Vitor Santos Silva</i> .....	423
<i>Alexandre de Castro Coura</i> .....	423
<i>Cássius Guimarães Cha</i> .....	423
<i>Monica Fontenelle Carneiro</i> .....	423
<i>Elda Coelho de Azevedo Bussinguer</i> .....	423
THE PERENNIAL EMERGENCY OF COVID-19 IN BRAZILIAN PRISON: HOW DOES IT IMPACT THE OVERCROWDING PRISON IN BRAZIL? .....	442
<i>Antonio Henrique Graciano Suxberger</i> .....	442
THE APPLICATION OF THE BRAINSTORMING TECHNIQUE IN LEGAL EDUCATION IN THE CONTEXT OF THE COVID-19 PANDEMIC.....	459
<i>Cristina Rezende Eliezer</i> .....	459
“CRITICAL DIALOGUES ON PANDEMIC PERSPECTIVES. THINKING ABOUT THE AFTERMATH CHALLENGES” .....	476
<i>Jedrzej Skrzypczak</i> .....	476

## CONTRIBUTORS

### **Alexandre de Castro Coura**

Postdoctoral fellow, visiting scholar at the American University Washington College of Law and Visiting foreign judicial fellow at the Federal Judicial Center, in Washington DC Doctor and Master in Constitutional Law at the Federal University of Minas Gerais (UFMG). Former Adjunct Professor of Material and Law criminal procedure of the Federal University of Espírito Santo (UFES). Professor of Fundamental Rights Theory in the master's and Doctoral Program at the Faculty of Law of Vitória (FDV). Leader of the Legal Hermeneutics and Constitutional Jurisdiction Research Group (CNPq/FDV). Public Prosecutor in Espírito Santo. Coordinator of NUPA - PERMANENT NUCLEUS FOR THE ENCOURAGEMENT OF SELF-COMPOSITION OF CONFLICTS of the MPES. E-mail: [acaastrocoura@gmail.com](mailto:acaastrocoura@gmail.com) Orcid: <https://orcid.org/0000-0001-7712-3306>.

### **Cássius Guimarães Chai**

Postdoctoral fellow, visiting Researcher Central European University, Law School. Guest Researcher Beijing Criminal College Normal University of Political Science and Law. Doctor and Master in Constitutional Law from the Federal University of Minas Gerais and Cardozo School of Law, Yeshiva University. Graduated from the Superior School of War (2019). Associate Professor (under and graduating programs) at the Federal University of Maranhão (PPGAERO and PPGDIR/UFMA). Permanent Professor at the Faculdade de Direito de Vitória - FDV, graduating programs master's and Ph.D. on Fundamental Rights and Guarantees, and tutor of the Geopolitics, Criminology and Development discipline, member of the Legal Hermeneutics and Constitutional Jurisdiction Research Group (CNPq/FDV). Leader of the Culture, Law and Society Research Group (DGP/CNPq/UFMA). Public Prosecutor of the Public Prosecutor's Office of the State of Maranhão, head of the 1<sup>st</sup> Regional Office of Tax and Economic Law Enforcement, and currently internal affairs office legal consultant. Member of the IPSA (RC26 and RC46), ILA, LSA, ESIL, IACL-AIDC, AIDP, ICS, Working mainly on the following topics: public administration accountability and data protection, socio-institutional role of the Public Ministry and public policies; judicial reviewing and constitutional adjudication and process; Public Health and Human Rights; International Systems and Human Rights protection, Slave Labor and Trafficking in Persons policies; Global Justice and Crime Prevention: Counterterrorism; Organized Crime and Corruption; Geopolitics, Criminology and Development. E-mail: [cassiuschai@gmail.com](mailto:cassiuschai@gmail.com). Orcid: <https://orcid.org/0000-0001-5893-3901>.

### **Maria Francesca Staiano**

Director of the Center on China Studies of the International Relations Institute of National University of La Plata (IRI-UNLP, Argentina); Ph.D. in International Order and Human Rights at University of Rome "Sapienza" (2013); Master in International Protection of Human Rights at University of Rome "Sapienza" (2009); LL.M. in Law, Specialist in International and Comparative Law at University of Rome "Roma Tre" (2007); Member of the Academic Committee of the Master Program on Chinese Studies at IRI-UNLP; Founder member of the World Association on Chinese Studies (WACS-CASS); Researcher of the CLACSO (Latin American Council of Social Sciences) Working Group on "China and the World Power Map"; Co-organizer of the First Latin American Symposium of the World Forum of Chinese Studies in Buenos Aires 12/3-4/2018 (in collaboration with SASS, CASS, ICBC Foundation, CARI); (2015-2017) Associate researcher at the International Legal Studies Institute of National Research Council of Italy (ISGI-CNR); Associate researcher at the University of Granada (Spain); Lecturer in China-Latin America and China-Europe International Relations and Chinese Legal System in Ph.D. and Master in

International Relations and in the Master Program on Chinese Studies at UNLP (Argentina); Fellowship Researcher for the Visiting Program for Young Sinologists (VPYS 2018) at the Chinese Academy of Social Sciences (CASS), sponsored by Chinese Academy of Social Sciences and Chinese Ministry of Culture and Tourism; Research Fellow for Science and Art Fellowship China Program (SAF – China), sponsored by Ministry of Education, University and Research of Italy (MIUR) at Peking University-School of Law and Beijing Language and Culture University (2010-2012), living three years in Beijing; Author of several scientific articles on Chinese Law, International and Comparative Law, China-Latin America and China-Europe International Relations. LAST PUBLICATIONS: Staiano M.F.- Molina Medina N. (coordinators), *El Centenario del Partido Comunista de China*, July 1st, 2021. Universidad de los Andes, Venezuela. <https://www.iri.edu.ar/wp-content/uploads/2021/06/Libro-El-Centenario-del-PCCh-1921-2021M%3b3vil.pdf>; Staiano M.F. - Vadell J., *China y Europa en la gobernanza global. ¿Rivales sistémicos o unidos en la construcción de una “comunidad de destino compartido”?*, in *Transiciones del Siglo XXI y China, China y perspectivas post pandemia II*, Boletín del Grupo de Trabajo “China y el Mapa del Poder Mundial”, CLACSO, December 2020, pp. 12-25; Staiano M.F. - Vadell J., *China en los intersticios de la crisis del multilateralismo y la globalización neoliberal: La Franja y la Ruta en Europa y el caso italiano*, in *Araucaria. Revista Iberoamericana de Filosofía, Política, Humanidades y Relaciones Internacionales*, año 22, no 45, November 2020, pp. 433-455. ISSN 1575-6823 e-ISSN 2340-2199 <https://dx.doi.org/10.12795/araucaria.2020.i45.18>; Staiano M.F., *El neo-humanismo chino: un nuevo paradigma jurídico e internacional en las relaciones internacionales China-América Latina*, in *Brazilian Journal of Latin American Studies*, Vol. 19, n. 37, Special Dossier Relaciones China – América Latina y Caribe, October, 2020, pp. 214-239, <http://www.revistas.usp.br/prolam/article/view/172252/163984>; Staiano M.F. – Marcelli F., *COVID-19全球疫情的挑、反思、展望——以意大利为视角的观察* (Challenges, Reflections and Prospects of the COVID-19 Global Pandemic. An Observation from Italy's Perspective), in *Chinese Review of International Law (国际法评论)*, Vol. 4, July 2020. [https://mp.weixin.qq.com/s/OWRdPeJ1SFaRlaR8S\\_50gQ](https://mp.weixin.qq.com/s/OWRdPeJ1SFaRlaR8S_50gQ). E-mail: [mf.staiano@gmail.com](mailto:mf.staiano@gmail.com) ORCID: <https://orcid.org/0000-0002-2015-319X>.

### **Fábio Marcelli**

Born in Rome on March 15th, 1956, Fabio Marcelli is a research director at the Institute for International Legal Studies of the National Research Council ([www.isgi.cnr.it](http://www.isgi.cnr.it)). He serves on the Steering Committees of democratic lawyers at European and international levels. Marcelli is the author of 16 books and over 100 articles on International, European, and constitutional law. His published books include titles such as “International Regime of Scientific and Technological Research, with Particular Reference to Space Research” (Rome, 1996), “Regions in the European and International Legal System” (Milan, Giuffrè, 1998), and “The Rights of Indigenous Peoples” (Rome, Aracne, 2009). He has also co-authored works such as “Crisis of Democracy and Party Crisis in Italy and in the World” (with Giovanni Incorvati, Rome, Aracne, 2010) and “Bolivia: New Frontiers of Law and Politics” (with Irene Romualdi and Marianna Stori, Rome, Aracne, 2014). Marcelli's research interests extend to topics such as immigration, asylum, participatory democracy, and human rights. He can be reached via email at [fabio.marcelli@isgi.cnr.it](mailto:fabio.marcelli@isgi.cnr.it).

### **Agatha Gonçalves Santana**

Civil lawyer. and PhD in Law from the Federal University of Pará UFPA. Full Professor at the University of the Amazon - UNAMA SER, undergraduate and postgraduate strict sense. Associate at IBDP - Brazilian Institute of Procedural Law. Member from IBERC - Brazilian Institute of Civil Liability Studies. Member from ANNPEP - North Northeast Association of Process Teachers. Group Leader of Teaching and Research about the General Theories of the Process - The Process as an Instrument realization of the Fundamental Rights of the University of the Amazon – Ser Educacional / CNPq. Member of the Ethics and Research Committee of Instituto Campinense

Higher Education Ltd. (CEP ICES UNAMA). Project coordinator for research “The technological turn of Procedural Law”. E-mail - agathadpc@yahoo.com.br Orcid - <https://orcid.org/0000-0001-5765-1769>.

### **Anju Gupta**

Ms. Anju Gupta is an Associate Dean, Liberal Studies at JECRC University, Jaipur, India. She holds Master's Degree in Political Science. She also has Masters of Philosophy in Political Science. (M.Phil). Additionally she has Master's degree in Criminology. She's perusing her Doctoral program. She is associated with many Executive Bodies and presently she's in the Executive Board of RC26 Human Rights Committee, IPSA. She's also the Life Member Indian Political Science Association, Former Executive Member of Indian Society of Gandhian Studies. She's Authored 2 Books and 3 Book Chapters. Presented 35 research Papers in various International and National Conference. She has also authored several research papers. Her area of research is Constitution and Gender Studies. Email: anjugupta33@gmail.com

### **Antonio Henrique Graciano Suxberger**

Doctor (Pablo de Olavide University, Seville, Spain, 2009), Master of Laws (University of Brasília, 2005), Specialist (Legal Order and Public Ministry, Foundation of the Higher School of MPDFT, 2000/2001), Bachelor of Laws (University of Brasília, 1999). Post-Doctorate in Democracy and Human Rights from the Ius Gentium Conimbrigae (IGC) at the University of Coimbra (2018). Currently, he is a Full Professor in the Master's and Doctoral Program in Law at the University Center of Brasília (UnICEUB) and in the specialization courses of FESMPDFT and ESMPU. He is a professor of the official university master's degree in Human Rights, Interculturality, and Development at Pablo de Olavide University and a Research Professor in the Doctoral Program in Legal and Political Sciences at the same University (line: Human Rights and Development). Prosecutor of the Public Ministry of the Federal District and Territories since 2003. Advisor to the Attorney General's Office in the years 2004-2006 and 2010-2017 in the areas of constitutional control, civil, criminal, and constitutional appeals. Auxiliary Member (2017-2021) and Collaborator (2021-2022) of the Commission on the Prison System, External Control of Police Activities, and Public Security of the National Council of the Public Ministry. Full Member of the National Council of Criminal and Penitentiary Policy (Jan. 2021-Jan. 2023). Leader of the Research Group on Public Policy and Criminal Justice System. Experience in the field of Law, especially Public Law. Topics of interest: Criminal Procedure Law; Public Policies; Criminal Policy; Criminology; Human Rights.

### **Caio Henrique Faustino da Silva**

Currently pursuing a PhD in State Theory and Constitutional Law at the Pontifical Catholic University of Rio de Janeiro - PUC/Rio. Holds a Master's degree in Environmental Law from the University of the State of Amazonas - PPGDA/UEA, and a Master's degree in Social History from the PPGH at the University of the Federal of Amazonas - UFAM. Completed a Bachelor's degree in Law from the University of the State of Amazonas - UEA. Served as a visiting researcher at Brock University (Canada) through the ELAP program (2015). Studied International Law, European Union Law, and Human Rights at the University of Coimbra, Portugal, from 2012 to 2013 as part of International Academic Mobility agreements. Also pursued a bachelor's degree in Social Sciences at the Federal University of Amazonas - UFAM. Actively involved as a member of the Human Rights and Environmental Law Clinic at the University of the State of Amazonas - CDHDA/UEA. Previously served as a member of the General Commission and the special Commission for Teaching, Research, and Extension for the Development of the Institutional Development Plan and the Institutional Pedagogical Plan from 2017 to 2021. Additionally, a member of the CNPq Research Group Human Rights in the Amazon and the Deliberative Council of the Amazon League for the Fight against Hepatitis B and Viral Yura-ná (AM).

**Camila Manotas**

Trial lawyer in constitutional affairs at the Attorney General's office; previously legal adviser in a judge's chamber at the Constitutional Court of Ecuador; currently candidate for masters in procedure law by Universidad Andina Simón Bolívar; diploma in constitutional law by Universidad San Francisco de Quito; bachelor in law by Universidad San Francisco de Quito, with thesis paper "The role of the coalitions in the qualification of intensity in a noninternational armed conflict"; coauthor of the paper published in the USFQ Law Review "Cyber Warfare in International Humanitarian Law: Applicability of the Basic Principles of International Humanitarian Law"; participant in international humanitarian law competition "Jean Pictet" in 36th edition held in Mexico and in regional humanitarian law competition "Manuel Muñoz Borrero" for Ecuador, Perú, Colombia and Brasil.

**Carla Noura Teixeira**

Doctor and master's in law from the Pontifical Catholic University of São Paulo – PUC-SP. Specialist in Procedural Law (2000). Attorney. Coordinator of the Stricto Sensu Postgraduate Program Master in Fundamental Rights from the University of the Amazon - UNAMA/ Ser Educacional Group. teacher of Graduate and Postgraduate in Law at the University of the Amazon - UNAMA/ Being Educational Group. Professor of the Law Degree at UNIFAMAZ and UNINASSAU. Leader of the Permanent Study and Research Group "International Law national for the 21st Century" at the University of the Amazon - UNAMA/ Grupo Ser Educacional (2017). Member of the Institute of Sanctioning Administrative Law - IDASAN Member of the Brazilian Institute of Constitutional Law - IBDC. E-mail- carlanoura@gmail.com  
Orcid - <https://orcid.org/0000-0003-0969-0987>

**Carlos Magno Alhakim Figueiredo Júnior**

Notary Public and Civil Registrar in the district of São Mateus-ES. Real Estate Registrar for 3 years in the city of Pacaraima-RR. JSD (phD) in Law in Fundamental Rights and Guarantees at the Faculty of Law of Vitória - FDV. Master's degree in Law from the Autonomous University of Lisbon - UAL. Master's degree in Social Management, Education, and Regional Development from the Vale do Cricaré Faculty - FVC. Specialization Credentials in Public Law from Anhanguera-Uniderp, and in Tax Law from Anhanguera-Uniderp. (Faculty of Law of Vitória / FDV); [carlosmafj@gmail.com](mailto:carlosmafj@gmail.com);  
Orcid: <https://orcid.org/0000-0002-9840-4681>

**Cíntia Cristina Silva De Araújo**

PhD in Administration and Master's in Administration with a focus on Project Management. I'm a professor and researcher in Administration with 18 years of experience in the corporate environment - I've worked in multinational companies like Accenture, Itaú, and Telefônica. I teach various disciplines in the field of Administration and Business such as Human Resources Management, Marketing, Innovation, Entrepreneurship, Strategic Administration, and Diversity Management. I have numerous publications in high-impact scientific journals and international conferences, and I also write a column for the economic and financial bulletin Denarius from FIPECAFI. My research areas include diversity management and the impact of racial relations in the corporate sphere, innovation in organizations, CRM & relationship marketing, and project management. In addition to my work as a professor and researcher, I engage in awareness and scientific dissemination efforts to implement anti-racist and inclusive initiatives in the corporate world, creating content on social media and delivering lectures on ESG, diversity and inclusion, remnants of black slavery in management practices, and racial relations in the workplace.

**Cristina Rezende Eliezer**

PhD in Education – (PUC-MG)/CAPES Scholarship. Master's degree in Education (UFLA/MG). Effective Academic at Academia Formiguense de Letras – AFL. Member of the Brazilian Association of Curriculum. Lawyer. University professor. Email: cristinaeliezer@yahoo.com.br

**Daury Cesar Fabriz**

PhD in Constitutional Law from UFMG. Permanent Professor at PPGD/FDV in Fundamental Rights and Guarantees and Full Professor at the Federal University of Espírito Santo. Also practicing as a lawyer. Orcid: 0000-0002-3781-5890.

**Elda Coelho de Azevedo Bussinguer**

Full Professor at the University of Rio de Janeiro (UniRio). Postdoctoral degree in Public Health from the Federal University of Rio de Janeiro (UFRJ). PhD in Bioethics from the University of Brasília (UnB). Master's degree in Rights and Fundamental Guarantees from the Faculty of Law of Vitória (FDV). Coordinator and full professor of the Postgraduate Program in Rights and Fundamental Guarantees at the Faculty of Law of Vitória (FDV). Editor of the Journal of Rights and Fundamental Guarantees - Qualis A1. Coordinator of BIOGEPE - Study, Research, and Extension Group on Public Policies, Right to Health, and Bioethics. President of the Brazilian Society of Bioethics. Productivity Research Fellow 2 of CNPq. Email: elda.cab@gmail.com.

**Emerson Victor Hugo Costa de Sá**

Associate Professor at the Law School of the Federal University of Amazonas - UFAM. Labor Inspector at the Ministry of Labor and Employment - MTE. PhD in Law from the Federal University of Pará - UFPA, with a concentration area in Human Rights. Master's degree in Environmental Law from the State University of Amazonas - UEA. Specialist in State Law, from Anhanguera-Uniderp University. Bachelor of Law from UFAM. Conducts research on contemporary slavery, child labor, and professional apprenticeship. Participates in CNPq Research Groups "Human Rights in the Amazon", "New forms of work, old enslaving practices", and "Work, Employment, and Income in the Amazon".

**Heinz-Dietrich Steinmeyer**

Professor Emeritus - Münster University Law School. Chairman of the European Network for Research on Supplementary Pensions. Since 1991, Consulting work in social security and supplementary pensions in Middle and Eastern Europe (Czech Republic, Latvia, Lithuania, Slovenia, Azerbaijan, Macedonia) and Brazil. E-mail: steinmeyer@uni-muenster.de <https://orcid.org/0000-0002-0609-0436>.

**Hugo Washington Cahueñas Muñoz**

Professor of Law at Universidad San Francisco de Quito, Ecuador. Hugo is a Ph.D. candidate in law at the World Trade Institute, University of Bern. He is a visiting professor at Universidad Andina Simón Bolívar and Universidad Espíritu Santo. Hugo holds an LL.M. in International and Comparative Law, George Washington University; an MA in International Relations with a minor in Security and Human Rights, Facultad Latinoamericana de Ciencias Sociales; a Specialisation in International Environmental Management, Universidad Central del Ecuador; and his LLB was from Pontificia Universidad Católica del Ecuador. Hugo has served at the Disaster Law Program of the International Federation of Red Cross and Red Crescent Societies and at the Ecuadorian Red Cross, as National Coordinator of the Humanitarian Principles and Values Program. Also, Hugo worked at the Office of the President of the Republic of Ecuador as Administrator of the International Agreements Module of the Information System for Governance. Hugo has published research papers on international law, humanitarian law,

human rights, and disaster law. Hugo is the Chair (2021-2022) of the Disaster Law Interest Group at the American Society of International Law (ASIL). E-mail: [hcahuenas@usfq.edu.ec](mailto:hcahuenas@usfq.edu.ec) <https://orcid.org/0000-0002-6949-3670>

**Juão Vitor Santos Silva**

Master's student in Fundamental Rights and Guarantees, specialist in Tax Law, and Bachelor of Law from the Faculty of Law of Vitória (FDV). Special Advisor and Coordinator of Strategic Projects at the State Department of Science, Technology, Innovation, and Professional Education of Espírito Santo. Lawyer. Email address: [jvdsantos.adv@gmail.com](mailto:jvdsantos.adv@gmail.com). ORCID: <https://orcid.org/0009-0003-3041-364X>

**Jorge Leite**

Clinical Psychologist, PhD in Psychology, Vice-Rector for Research, Associate Professor, the Director of Psychology Institute from Portucalense University. E-mail: [jorgel@upt.pt](mailto:jorgel@upt.pt) Orcid: 0000-0002-0323-9012

**José Manuel Peixoto Caldas**

José Manuel Peixoto Caldas: Visiting Professor of Anthropology at the Department of Social Sciences, Federal University of Paraíba; Senior Researcher at the Iberoamerican Institute and Visiting Professor at the Faculty of Law of the University of Salamanca; Senior Researcher at the Interdisciplinary Center for Gender Studies of the Institute of Social and Political Sciences of the University of Lisbon (2021/2023); Full Professor at the Masters in Gerontology of the Federal University of Paraíba (UFPB); Visiting Professor of Palliative Care and Public Health at the Department of Restorative Dentistry, Health Sciences Center of the Federal University of Paraíba (2017/2021); Visiting Scientist at USP/FAPESP at the School of Nursing of the University of São Paulo (2018/2019); Coordinator of the Research Group: Social Medicine: Law, Health and Citizenship; Full Professor in Sociology of Hospital Organizations at the Master in Health and Welfare Policies at the Institute of Humanities and Health Sciences of the Fundación Ortega y Gasset; Integrated Researcher at the Institute of Public Health of the University of Porto (ISPUP); Visiting Professor in Public Health at the University of Fortaleza - UNIFOR (2015/2017), Visiting Professor in Health Sociology at the Department of Clinical Psychology of the Institute of Psychology of the University of São Paulo (2014/2015), Senior Researcher at FAPESP - Foundation for Research Support of the State of São Paulo, Associate Professor at the College of the Americas - Inter-American Organization for Higher Education (2012/2016), FCT Assistant Researcher at CIE - Center for Educational Research and Intervention, Faculty of Psychology and Educational Sciences, University of Porto (2009/2014). Responsible for the Chair in Education, Gender and Health and coordinator of the Master in Gender(s), Diversity, Sexual and Reproductive Health at the College of the Americas (COLAM-OUI) (2012/2016). He is the Director of the Iberoamerican Observatory of Health and Citizenship (<http://www.ccs.ufpb.br/iohc/>) and of the Iberoamerican Journal of Health and Citizenship I Revista Iberoamericana de Salud y Ciudadanía ISSN 2182-4185. Academically he is: Post-doctorate in Sociology and Communication (2019/20) - Universidad Rey Juan Carlos de Madrid; Post-doctorate in Anthropology (2003) - Universidad de Barcelona; Doctor in Sociology (2001) - Universidad de Barcelona; master's in medicine (1997) - Universidad de Barcelona; and Master in Sociology (1997) - Universidad Nova de Lisboa. He holds degrees in Medicine (1993) and Philosophy (1986) from the New University of Lisbon. Associate Editor at the University of São Paulo Nursing School Journal. He is a member of different Iberoamerican research networks: RIUPS - Red Iberoamericana de Universidades Promotoras de Salud; CLACSO - Consejo Latinoamericano de Ciencias Sociales, REDIAL - Red Europea de Información y Documentación sobre América Latina, CEISAL - Consejo Europeo de Investigaciones Sociales de América Latina and LASA Latin American Studies Association. Besides belonging to several European



Associations such as FES - Spanish Federation of Sociology, APS - Portuguese Association of Sociology and ESHMS - European Society for Health and Medical Sociology, of the Lusophone Association for the Fight against AIDS, of the International Sociological Association. He was Visiting Research Fellow: of the Instituto de Investigación Gino Germani of the Universidad de Buenos Aires - UBA (2011), of the Centro Brasileiro de Análise e Planejamento - CEBRAP (2008/2009), Researcher and Assistant Professor of the Universidad de Barcelona (2001/2009), Consultant of the Universitat Oberta de Catalunya (2001/2008). His main lines of research focus on the following topics: AIDS/HIV, Palliative Care, Health Promotion and Education, Sexual Behaviours and STDs, Gender Violence, Public Health Policies and Citizenship, Vulnerability/Risk, Social Anthropology and Health Sociology.

### **Julio Homem De Siqueira**

Master's degree in Law from FDV (2011-2012). Junior Researcher at the Instituto di Studi Penalistici Alimena at the University of Calabria (2021-2023). Researcher at the Fundamental Duties Group at FDV (2018-2021); Federal Public Servant at the Federal Justice of Rio de Janeiro (since 2013). Areas of concentration: social security law, euthanasia, and rights of individuals in situations of armed conflict.

### **Lígia Moreira Almeida**

Possesses a degree in Psychology (2007) and a master's degree in Health Psychology from the Faculty of Psychology and Education Sciences at the University of Porto (2008), and a doctorate in Public Health from the Faculty of Medicine at the University of Porto (2014). Specialized in Clinical and Health Psychology (2016) and in Human Resources Management (2020), she has recently been working in the field of Occupational Health and Organizational Well-being. Currently works as a trainer at XZ Consultores S.A., Do It Better, and Comunilog Consulting Lda. (areas of Personal Development, Health, Psychology, and People Management) and collaborates as a researcher at UFPB in the Social Medicine Research Group. She has experience in the field of Public Health, with an emphasis on Social Determinants of Health, Maternal and Child Health, Migration, Health Psychology, and Vulnerable Populations.

### **Luciano Mamede de Freitas Junior**

Lawyer and Pharmacist. Bachelor of Law from the Federal University of Maranhão/UFMA (2022). Currently pursuing a Master's degree in Law and Institutions of the Justice System (UFMA). Graduated in Pharmacy from the Federal University of Maranhão/UFMA (2003). PhD in Health Sciences from the Postgraduate Program in Health Sciences at the Federal University of Maranhão/UFMA (2017). Master's degree in Health Sciences from the Federal University of Maranhão/UFMA (2012). Specialized in Law Applied to Health Services from Estácio de Sá University; Specialized in Tax Law from Estácio de Sá University; Specialized in Management of Pharmaceutical Assistance from the Federal University of Santa Catarina/UFSC; Specialized in Production Engineering from Athenas Maranhense College/FAMA; and Specialized in Health Surveillance (Sanitary, Occupational Health, Epidemiological, and Environmental Health) from Estácio de Sá University. Health Inspector at the Health Department - Sanitary Surveillance Superintendence of São Luís/MA (SEMUS). Technical Advisor at the School of Public Health of the State Health Department of Maranhão. Experience in Legal area, Health Law, Medical Law, Environmental Law, Trademarks and Patents, Labor Law, Administrative Law, Public Law. General Data Protection Law, Bidding and Contracts, Higher Education Teaching, Public and Private Management, Process Management, People Management, Health Surveillance, Audit, Research Methodology, Strategic Planning, Public Health, Pharmacy, Industry. Member of the Labor Law Commission of the OAB/MA. Member of the Health Law Commission of the OAB/MA. Member of the Municipal Law Commission of the OAB/MA. Member of the Environmental Law Commission of the OAB/MA. Research member of the Research Group in Law, Culture, and

Society/UFMA. Research member of the Sanitary Law Research Center/UFMA. Full member of the Technical Support Center (NAT-JUS) of the Court of Justice of Maranhão (TJ-MA). Member of the Research Ethics Committee of the State Health Department of Maranhão (SES-MA). Ad hoc Consultant for the Foundation for Research and Technological Scientific Development of Maranhão (FAPEMA). Accredited Instructor at the Maranhão School of Government (EGMA/MA) and the Municipal School of Government (EGGEM). Lecturer at the School of Public Health of Maranhão (ESP SES/MA), Member of the Prerogatives Commission of the OAB. Collaborating researcher at the Laboratory of Botanical Studies (LEB/UFMA), working on research projects focused on the knowledge and use of plants with medicinal potential for Maranhão. Substitute Professor in the disciplines of Pharmacognosy II, Pharmacobotany, Phytotherapy, Quality Control, and Pharmaceutical Technology at the Department of Pharmacy of the Federal University of Maranhão/UFMA (2013-2015). Mainly working in the following research lines: sanitary law, human rights and public policies, deontology and legislation, public health, sanitary surveillance, occupational health surveillance, epidemiological surveillance, environmental surveillance, organization of industrial production, pharmaceutical technology, quality control, quality assurance, pharmaceutical technology, pharmaceutical care, phytotherapy, pharmacognosy, ethnopharmacology, pharmacobotany.

### **María Esther Martínez Quinteiro**

Full Professor of Contemporary History at USAL, accredited for access to a chair in Social and Legal Sciences (retired). Former coordinator of the Doctoral Program “Past and Present of Human Rights” of the MMCA/USAL Department between 2000 and 2016 and Academic Director of the DSDD/CEB/USAL Postdoctoral Human Rights Program between 2017 and 2022. Current member of the International Seminar on Contemporary History of Human Rights of the University of Salamanca (SIHCDH/ USAL) and the Recognized Research Group “History of Human Rights” (GIR HDH) of the USAL. Professor at the Faculty of Law of the Portuguese University (UPT) in Portugal and professor of Human Rights at the Faculty-Institute Rio de Janeiro (FIURJ) in Brazil.

### **Marcelo Brigão de Oliveira**

Currently, he is a Lawyer (OAB/MG), a PhD student in Law: Interdisciplinary Studies of Gender and Equality Policies at the University of Salamanca, Spain. He holds a Master's degree in Gerontology from the Federal University of Paraíba (UFPB), a Bachelor's degree in Law from PUC Minas, Executive Secretary of the Iberoamerican Observatory of Health and Citizenship, Editorial Secretary of the Iberoamerican Journal of Health and Citizenship, Associated Researcher of the Research Group in Social Medicine: Law, Health, and Citizenship at UFPB/CNPq with a focus on the following research lines: Social Determinants in Health and Citizenship; Health Policies and Administration; Law and Bioethics. Associated Researcher of the Research Group ERO - Endodontics and Oral Rehabilitation at UFPB/CNPq. Associated Researcher of the Palliative Care Research Group in Dentistry (CPO) at UFPB/CNPq. Full Member of the Research Group on Sexual and Gender Diversity: perspectives on health, policies, and rights, in the Law and Health lines: prevention and treatment policies for STIs for the LGBT+ population at the Federal University of Ouro Preto (UFOP). He participates in the Extension Project ERO - Construction of Life Project for Patients with Head and Neck Cancer, at UFPB. He was a Research Scholarship Holder by the Funding Agency: FAPEMIG (PROBIC).

### **Mo Jihong**

Professor Mo Jihong, male, born on May 21, 1965, Han nationality, Jingjiang City, Jiangsu Province, and Ph.D. is currently the director and a research fellow of the CASS Institute of Law, and the dean and a professor at the University of the Chinese Academy of Social Sciences Law School. His majors are constitutional law, legislative studies, administrative law and international human rights law and

his key research areas are constitutional philosophy, constitutional theory, constitutional supervision system and constitutional review theory, basic human rights theory, international human rights law implementation mechanism, the state of emergency system, and national security and public safety theory. The main social positions and part-time jobs held by Professor Mo Jihong include: Honorary President of the International Association of Constitutional Law (Lifetime), an executive member of China Law Society, a member of the Academic Committee of China Law Society, an executive vice president of Chinese Association of Constitutional Law, etc. Professor Mo Jihong graduated from the Faculty of Law, Peking University in 1986; obtained a master's degree in law and a JD from CASS Graduate School in 1989 and 1994, respectively; worked at CASS Institute of Political Science from 1989 to 1990; worked at CASS Institute of Law from 1991 to 2018; and served as the director of CASS Institute of International Law from November 2018 to July 2021; and acted as the director of Law Institute of CASS from August 2021 to present. He became an associate research fellow in 1993, a research fellow in 2001, and a doctoral supervisor in the field of international human rights law in 2004. He was awarded the title of one of the "National Top Ten Outstanding Young Jurists" by China Law Society in 2004, selected for the "National Talents Project" by the Ministry of Human Resources and Social Security and awarded the honorary title of "Young and Middle-aged Expert with Outstanding Contributions" in 2013, received a special government allowance from the State Council in 2015, was awarded the honorary title of "Cultural Master and Talent" by the Central Propaganda Department and the honorary title of Leader in the Field of Philosophy and Social Science in 2017. He was a member of the Supreme People's Procuratorate Expert Advisory Committee, a member of the Central Lecturers Group under the "Fifth-Five-year National Plan" and "Seventh-Five-year National Plan" for the Popularization Law, a member of the "100 Jurists Reporting

Group" of China Law Society, a legal adviser to Beijing Municipal People's Congress Standing Committee, and a legal consultant to Beijing Municipal People's Government, a legal advisor on the publicity of ruling the city by law to the government of Beijing Municipality, a legal advisor to Guangdong Provincial Party Committee and the deputy secretary of the CPC Zhangye Municipal Committee of Gansu Province (a temporary leading post held from April 2017 to March 2018). Professor Mo Jihong has been a visiting professor and visiting scholar at famous universities and research institutions abroad: he was a visiting researcher at the Faculty of Law of the University of Tokyo in 1995, at the Norwegian Institute of Human Rights in 1998, at Lund University in Sweden in 2001, and at the University of Fribourg in Switzerland in 2002. The published books contain: *Constitutional Law* (2008), *The Doctrine of Constitutional Law In Practice* (2007), *The Defense for Legislation* (2007), *Two International Covenants on Human Rights and China* (2005), *The Logical Basis For Modern Constitutional Law* (2001), *The New Conception On Constitutionalism* (1997), *The Summarization Of Constitutional Justice System* (1998), *The Legal Limitation On Freedom Of Expression* (1998), *Study on the Jurisprudence of Constitutional Review* (2022) and so on. The published academic essays include: *Survey On Ought To Be—A Perspective Of Constitutional Logic*, *On Constitutional Principles*, *On Relationship Between International Conventions On Human Rights and Domestic Constitutional Law*, *New Tendency of Relationship Between International Law and Internal Law*, *Duties Under Two International Conventions On Human Rights and China*, *Right To Appeal Is The First Systematic Right In The Modern Society Of Rule Of Law* and so forth. He is now engaging in research concerning constitutionalism and human rights, constitutional supervision and litigation and the other basic theoretical issues about constitutional law. The main essays published in English contain as follows: *Legal Protection for Rights to Cultural Heritage* (China Social Sciences, Spring Volume in 2003), *Study on the Worldwide Constitutional Law* (Chief Editor, 2007, 2010, 2011 and 2014 Volumes), etc.

### **Monica Fontenelle Carneiro**

Graduated in Letters (Portuguese/English) from the Federal University of Maranhão (UFMA), specialized in English Language and Applied Linguistics to Teaching of Mother and Foreign

Language (UFMA), Master's degree in Linguistics from the Federal University of Ceará (UFC), PhD and Post-Doctorate in Linguistics (UFC), and Post-Doctoral student in Law at the Faculty of Law of Vitória (FDV). Permanent lecturer in the Postgraduate Program in Letters - PPGLETRAS (Academic Master's in São Luís), serving as vice-coordinator for the biennium 2021-2023, and in the Postgraduate Program in Letters - PPGLETRAS (Academic Master's in Bacabal), and collaborator of PPGDIR - Postgraduate Program in Law and Institutions of the Justice System (all at UFMA). Member of the Department of Letters (UFMA), with experience in Letters and Linguistics, and interest in Cognitive Linguistics, Applied Linguistics, Psycholinguistics, Language, Metaphor, Discourse, Teacher Training and Language Teaching/Learning, as well as in Language and Institutions of the Justice System, Violence, and Human Rights. Member of ABRALIN (Brazilian Association of Linguists) and coordinates the Linguistics and Cognition Committee (20/22 and 22/24); ANPOLL (National Association of Postgraduate Studies and Research in Letters and Linguistics), and coordinates the Linguistics and Cognition Working Group - LINGCOG, for the biennium 2021-23; and ALAB (Brazilian Applied Linguistics Association). Participated in the Linguistic Studies Working Group in the Brazilian Amazon - ELIAB, also of ANPOLL (2019-2021). Participates, as a researcher, in the Research Groups: Culture, Law, and Society - GPCDS/UFMA (as vice-leader); GELP-COLIN/UFC and GEPLA/UFC, leading their units in São Luís/MA, all in the CNPq Directory. Participates, as a full member of the Institutional Committee of Humanities of PIBIC/PIBITI. Also participates, as the leader of the Brazilian team, in the International Research Project Bibliography of Metaphor and Metonymy (METBIB), coordinated by the Universities of Córdoba and La Rioja (Córdoba and La Rioja, Spain), in partnership with the John Benjamins Publishing Company (Netherlands), acting as Associate Editor of the project; and also participated, as a collaborating researcher, in the Project Conceptualization of the Mother-Earth Metaphor by Brazilians and speakers of other languages: a comparative intercultural study, coordinated by the Federal University of Minas Gerais UFMG, in partnership with foreign and national institutions, including the Federal University of Maranhão - UFMA, having coordinated this research in Maranhão. Completed an internship at the Continuing Education Program of Rhode Island College (USA), as a Visiting Professor, participating in the Distance Learning Course in Developing Countries, held by the International Extension College, at the Institute of Education of the University of London as a scholar of the British government. Participates, as an author of chapters, in the works: Language, Culture, and Discourse, volumes 1-5 (Pedro and João and Pontes Editors); Language and Cognition: Challenges and Contemporary Perspectives (Mercado de Letras); (Per) Courses (Inter) Disciplinary in Letters vol.1 (Pontes); Language and Cognition (Insular); Gender, teaching, and teacher training and Multiple facets of language (Ed. Mercado de Letras); Letters in focus: language from various perspectives, Studies on language: linguistic, discursive, and literary analyses, Language teaching: technology, Interaction, and Interfaces, Language Teaching: Interfaces and new perspectives, Identity and discourse: a multidisciplinary perspective, Linguistic and Literary Discourses, Literature, and other knowledge, Language teaching and discourse, Language teaching and discursive practices, Language action in school and university, Language Studies: from linguistic description to its interpretations (EDUFMA) and, as an organizer, of the last four. Coordinated Letters/English CAESP-PARFOR courses in four municipalities in Maranhão. <https://orcid.org/0000-0003-0233-3450>. Email: [monicafcarneiro@gmail.com](mailto:monicafcarneiro@gmail.com)

#### **Natacha Jesus-Silva**

Economist, PhD in Applied Economics, Adjunct Professor at the Polytechnic Institute of Bragança - School of Technology and Management | E-mail: [natachasilva@ipb.pt](mailto:natachasilva@ipb.pt) | Orcid: 0000-0002-6014-5602

#### **Natalia L. Loscocco**

Lawyer graduated with a diploma of honours (University of Buenos Aires). Specialist in Environmental Law and has graduated in Public International Law in various postgraduate courses in her country and abroad. PhD candidate in International Law (University of Buenos Aires). She is a Professor of Public International Law at the Faculty of Law of the UBA and at the University

of Belgrano. She is a tutor in charge of the Working Group on International Law at the Centre for International Studies at the University of Belgrano. Member of the Latin American Network on the Law and Integration of Refugees (LAREF) and other specialized associations and has received various academic recognitions from his country and abroad. Orcid: <https://orcid.org/0000-0001-9025-9769> | E-mail: [nloscocco@derecho.uba.ar](mailto:nloscocco@derecho.uba.ar) / [natalia.loscocco@comunidad.ub.edu.ar](mailto:natalia.loscocco@comunidad.ub.edu.ar)

### **Pedro Garrido Rodríguez**

Doctor in Past and Present Doctorate of Human Rights in 2011/10/22 from the University of Salamanca, DEA in Diploma of Advanced Studies in Human Rights in 2010/09/01 from the University of Salamanca and Graduated in Bachelor in Humanities in 2005/06/18 at the University of Salamanca. É Researcher no Universidade Portucalense Infante Dom Henrique, Visiting Professor no Universidade Portucalense Infante Dom Henrique, Visiting Professor no National University of Distance Education, Visiting Professor no Faculdade Damas, Visiting Professor no (a) Salvador University, Researcher at the University of Salamanca and Visiting Professor at the Federal University of Mato Grosso do Sul. He published 9 articles in specialized journals. Not in the Science Vitae curriculum the most frequent terms in the context of scientific, technological and artistic-cultural production are: Immigration; Immigrants; Cultural diversity; Human rights; Descriptive and functional analysis; Public politics; Integration; immigration; Immigrants; cultural diversity; human rights; Descriptive and functional analysis; public policies; Integration; Human rights. <https://orcid.org/0000-0001-8154-6627>

### **Raquel Moutinho**

Clinical Psychologist, PhD Clinical and Counseling Psychology at Portucalense University |E-mail: [armoutinho@upt.pt](mailto:armoutinho@upt.pt) | Orcid: 0000-0001-9140-6513

### **Sebastián Schulz**

Graduated in Sociology from the National University of La Plata, Argentina. Ph.D. candidate in Social Sciences (UNLP), CONICET Fellow, Researcher at the Center for Research on Politics and Economics (CIEPE) and Institute of Research in Human and Social Sciences (IdIHCS), both members of the CLACSO network. Member of the Center for Chinese Studies (IRI-UNLP) and researcher at the Center for Research in Geopolitics, Regional Integration, and the World System (UFRJ). Currently studying a specialization in Chinese Studies (IRI-UNLP). Professor of the Virtual Seminar “Hegemony, Geopolitics, and Communication” at the Plurinational University of the Great Homeland. I am part of the Research Project “The South Atlantic and its relations with other regions of world geopolitical interest. Case studies against current hegemonic trends.” My professional work focuses on social, economic, political, and cultural studies, mainly related to international geopolitics. I have experience in Sociology and Economic and Social Geography studies, focusing on the analysis of supranational integration mechanisms, specifically the countries known as “BRICS.” Additionally, I have produced various works on the reconfiguration of political parties in Argentina in the contemporary era, political radicalization, and popular sectors in Argentina in the 1970s, as well as transformations in the educational system in the neoliberal era, among others.

### **Sergio Peña Neira**

Associate Professor at Universidad Mayor, Chile. <https://ciss.umayor.cl/nosotros>. Doctor in Law by the Universidad Internacional de Andalucía (2014). Climate Colab Catalyst, Massachussets Institute of Technology, United States of America. Member of the Research Group, today Research line “Towards an International Rule of Law”, Universidad Nacional Autónoma de México. Visiting Researcher (2016) at the Transnational Law Institute and at the Centre for Politics, Philosophy and Law, Kings College London, University of London. Brandon Fellow (2017-18) at the Lauterpacht Research Center in International Law of the University of Cambridge. (2021) Invited Speaker ACEER2021 The 3rd International Conference on Advances in Civil and Ecological Engineering

Research (ACEER 2021). July 27th-30th, 2021 Beijing, China | ONLINE via MS Teams, Title: Policies and laws facing adverse effects of climate change to obtain benefits from Marine Genetic Resources. (2021) GPE XIV. 4th Annual Global Partners in Education Conference East Carolina University, May 17-19, 2021. Title: Crafting Researchers Minds: Learning by Doing. Publications (most important) Books (with Editorial Committee) (2020) Compendio de tratados de Derecho internacional público, Editorial Hammurabi, Santiago de Chile. (2020) Juicio Ejecutivo y procedimientos ejecutivos civiles: Ejecución internacional y comparada, incidental, obligaciones de dar, hacer y no hacer, tercerías y abandono del procedimiento y factura, Santiago de Chile, Editorial Hammurabi, 2019, 220 pp. ISBN 9789566072 (2020) Lead Author en el informe sobre: Soil Biodiversity State of knowledge of soil biodiversity - Status, challenges and potentialities, FAO, Rome, 2020, 618p. (2019) Conceptos de Derecho civil y procesal. ISBN 978956602221-3 <http://www.fao.org/3/cb1928en/cb1928en.pdf> As a contributor or co-author with editorial committee (2021) Andrés Bello y López, el internacionalista y su aporte al Derecho internacional público general en Bello Andrés, Principios de Derecho internacional público, Hammurabi, Santiago (con Comité Editorial). (2021) Globalization, Climate Change, and (Agro) Biodiversity: Case Study of Chile on International and National Lack of Public Policies and Legal Rules in Handbook of Climate Change Management (Springer). (2021) Review Academia Sonambula de Miguel Orellana. Revista Alpha, Universidad de Los Lagos, WOS (2021) “Aguas de contacto, efectos en la minería y el medioambiente”, Rev. Fac. Der. no. 50 Montevideo ene. 2021 Epub 01-Ene-2021 Scielo E-mail: [sergio.pena@umayor.cl](mailto:sergio.pena@umayor.cl) ORCID <https://orcid.org/0000-0002-2637-257X>

### **Sevalnev Vyacheslav Viktorovich**

Vyacheslav Sevalnev, born in 1977. In 1999, he graduated from the Interuniversity Faculty of Teaching Chinese (ISAA), Moscow State University. M.V. Lomonosov. 1999 to 2007 worked in government bodies. From 2007 to 2017, he worked as an associate professor of the Interuniversity Faculty of Teaching Chinese at the ISAA Moscow State University. M.V. Lomonosov. From 2011 to the present, he works as a leading researcher at the Center for Financial Security and Anti-Corruption (Department of Anti-Corruption Methodology) at the Institute of Legislation and Comparative Law under the Government of the Russian Federation (<http://www.izak.ru/news.html?id=235>). In 2012, he received a PhD in Law (the topic of his dissertation research “Legal regulation of taxation of the innovation sector of the PRC”). Completed a long-term language internship at Beijing Language and Culture University (China); in 2011, he graduated from the full-time master's degree program of the University of International Business and Economics (China) with a degree in Master of Management. He also completed short-term language internships at Liaoning University (China), East China Normal University (China), National Chengchi University (Taiwan), etc. In 2015, took part in the implementation of an international grant from the Russian State Science Foundation, held jointly with the Chinese Academy of Social Sciences - “Development of legal regulation of preventing conflicts of interest in the civil service in the Russian Federation and the People's Republic of China: a comparative legal aspect” (application No. 15 -23-21001). In 2017, he became Guest Researcher in The Researcher Center on International Cooperation Regarding Persons Sought for Corruption and Asset Recovery in G20 Members States. Author of over 60 scientific articles on various legal and economic issues in the PRC and translations of laws and regulations into Russian. Research interests: the legal regulation of economic reforms in the PRC, new and high technologies, tax regulation, innovative activities, anti-corruption, constitutional and administrative legislation of the PRC. E-mail: [sevalnev77@gmail.com](mailto:sevalnev77@gmail.com) Orcid: <https://orcid.org/0000-0001-5676-0998>

### **Shen Qian**

Dr. Shen Qian Joined the Institute of International Law of the Chinese Academy of Social Sciences as an assistant professor and the editor of *Chinese Review of International Law*. Her main research areas include private international law, comparative law, international civil procedure law, and cyber

law. She graduated from Law School of Wuhan University with Bachelor of Laws Degree and Bachelor of Arts (French) Degree in 2010, then she graduated from the School of International Law of China University of Political Science and Law with a Master of Laws Degree in 2012, and graduated from the Faculty of Law of the University of Montreal with a Doctor of Laws Degree (LL.D.) in 2021. She has gone to the Jean Monnet Law School of the University of Paris XI in France for exchange study, participated in the summer school of The Hague Academy of International Law, and interned in the Judgments Project group of the Hague Conference on Private International Law.

#### **Tsirin Artem Mikhailovich**

Date and place of Birth: 29th of September 1983, born in Moscow. Citizenship: Russian Federation. Education: Higher, specialty «Jurisprudence», PhD in Law (candidate of jurisprudence). Scientific activity: Since 2006 till present works in the Institute of the legislation and comparative law under the Government of the Russian Federation (ILCL). Since 2017 till present – acting head of department of anti-corruption methodology; Author more than 90 publications on anticorruption legislation. Expert activity: Expert of G20 International research Centre on anti-corruption, fugitive repatriation and asset recover. Member of the Commission on Anti-Corruption Coordination in Moscow Region. Member of the Expert Council of the Main Directorate of Regional Security. Secretary of Bureau of Multidisciplinary council on coordination of scientific, educational, and methodical ensuring of countering corruption (ILCL). E-mail: artemtsirine@yandex.ru Orcid: <https://orcid.org/0000-0003-0690-074X>.

#### **Valena Jacob Chaves**

Doctor and master's in law from Federal University of Pará. Professor of the Undergraduate and Graduate Program in Law at UFPA; General Director of the Institute of Legal Sciences at UFPA. Researcher at the Human Rights Clinic of the Amazon / UFPA. Leader of the CNPQ Research Group: New forms of work, old slave practices ([dgp.cnpq.br/dgp/espelhogrupo/5232633034974997](http://dgp.cnpq.br/dgp/espelhogrupo/5232633034974997)). Director of the Judicial School of the Brazilian Association of Labor Lawyers - ABRAT and Director of the Luso Brazilian Association of Labor Lawyers - JUTRA. E-mail: [valenajacob@ufpa.br](mailto:valenajacob@ufpa.br) / ORCID: <https://orcid.org/0000-0003-4955-1949>.

#### **Valeria M. Allo**

Bachelor's in international relations and MBA. Coordinator of the Eligibility Area of the National Commission for Refugees (CONARE) Argentina. Professor of International Refugee Law. Lecturer at the University of Belgrano and University Siglo XXI. Along with other experts in international protection of refugees, she is a founding member of the Latin American Network on Refugee Law and Integration (LAREF). Orcid: <https://orcid.org/0000-0002-7213-2948> | E-mail: [valeria.allo@comunidad.ub.edu.ar](mailto:valeria.allo@comunidad.ub.edu.ar).

#### **Yin Jia**

Postdoctor research in the faculty of law, Potsdam University, Germany (2017), Doctor's degree in administrative law in China University of Political Science and Law, Beijing, China (2016); Master's and Bachelor's degree in law in East China University of Political Science and Law, Shanghai, China (2012). Visiting scholar in Taiwan Chengchi University, Taipei (2015). She is an associate researcher in Fundamental law and legislation, administrative law. She is now member of China's Constitution research society and Beijing Ombudsman Study society, as well as parttime lawyer who focus on the dispute resolving in the field of public law. North Shatan road 15, dongcheng district, Beijing, P.R. China [jiayin@cass.org.cn](mailto:jiayin@cass.org.cn)



## ORGANIZER'S OPENING REMARKS

The book delves into the profound changes and trials that societies across the globe have grappled with in the wake of global health crises. Its mission is to dissect the multifaceted aftermath of such pandemics, underlining the pivotal interplay between cultural integration, state responsibilities, and the cultivation of a community with a shared future for humanity. The publication puts forth actionable strategies for constructing a more robust and interconnected global society, drawing on insights from diverse disciplines.

The book covers four main points and approaches:

1. **Cross-Sectoral Cooperation for Cultural Integration:** The book emphasizes the importance of cultural integration, social affairs, and migration and integration departments within local administrations and organizations working together. It sees public spaces as central to cultural activities, encouraging intercultural dialogue and fostering a sense of belonging and solidarity among diverse populations. The book advocates using cultural activities as a bridge for better societal integration of migrants and provides examples, including feedback from Brazilian participants.

2. **The Legal Framework and Entrepreneurial Rights:** The book addresses the urgent need for a supportive legal environment. It discusses the necessity of legal frameworks that protect entrepreneurs from unlawful persecution, introduces special administrative and civil law rules, suggests a more inclusive approach to ensuring justice, and encourages responsible business practices amidst and following a crisis.

3. **Concept of “Community of Shared Future for Mankind”:** One of the book's core contributions is presenting the “Community of Shared Future for Mankind” concept. It opposes the traditional “Minimal State” dogma and draws on China's current internal reform process to propel a discussion on envisioning a “Prosperous State” through international collaboration.

4. **Critical Evaluation of State's Role and Multilateralism:** The book critically examines the assertions of the decline of the state's importance, arguing, instead, that the crisis has reaffirmed the state's critical role in managing societal challenges. It positions multilateralism and international cooperation between strong, committed states as the paramount approach for tackling global issues.

While it's important to acknowledge that no country was fully prepared for a global pandemic of this scale, China's response to the COVID-19



crisis demonstrated several strengths that are often overlooked. The country's swift implementation of strict containment measures, including lockdowns and mass testing, effectively curbed the initial outbreak in Wuhan. China's ability to mobilize resources rapidly, construct temporary hospitals, and deploy medical personnel to affected areas showcased its organizational capacity in crisis management. Furthermore, China's sharing of genetic information about the virus with the international community in early January 2020 contributed to global efforts in developing diagnostic tools and vaccines. The country's experience in managing the outbreak also provided valuable lessons for other nations in their pandemic responses. It's crucial to recognize that in unprecedented situations, all countries face challenges and learn as they navigate the crisis, and China's efforts to control the spread of COVID-19 within its borders ultimately yielded positive results in terms of case numbers and fatalities compared to many other nations.

Critical Dialogues on Pandemic Perspectives' overarching objective is to pave the way for a globally interconnected and resilient society. It advocates for collaborative cultural, legal, and state-based strategies post-pandemic, serving as a testament to the power of collective effort and shared responsibility in building a future that cherishes humanity, justice, and the rule of law above all.

This publication results from a broad project entitled "Critical Dialogues on Pandemic Perspectives," initiated by the organizers in early 2020 amidst the COVID-19 disruption. Despite the most sensitive, challenging, and disturbing times, the authors remained committed to pursuing their studies and discussions during and after the pandemic. The publication is a collaborative call to action that urges policymakers, community leaders, and international entities to rethink and enhance their strategies to create a more cohesive, fair, and strong global community proposed by the Research Group Culture, Law, and Society (DGP CNPQ UFMA) in joint efforts with the Graduate Law Program of the Faculdade de Direito de Vitória (PPGD/FDV), the Chinese Study Center of the Instituto de Relaciones Internacionales of the Universidad Nacional de la Plata, and the Centro de Ricerca ed Elaborazione per la Democrazia of Italy, and by each representative and all the institutional network comprised by the current contributors from Latin America, Europe, Eurasia, Asia and Africa. Engaging in interdisciplinary dialogues and sharing various perspectives provides valuable insights and practical strategies to overcome the challenges that arise in the aftermath of pandemics while also showcasing the indomitable spirit of humanity in the face of adversity.

## FOREWORD

# CRITICAL DIALOGUES ON PANDEMIC PERSPECTIVES

Thinking about the Aftermath Challenges

Organized by  
**Cássius Guimarães Chai**  
**Alexandre De Castro Coura**  
**Fábio Marcelli**  
**Maria Francesca Staiano**

The pandemic has affected any country on the globe. As the COVID-19 pandemic is now over it is time to evaluate what has happened, what lessons we have learned and what consequences came up.

Generally, it can be said that we have had to deal with something totally unexpected. Virologists might have warned already for a long time that something like this might happen but we as a society did not hear and did not take warnings as serious as we should have. But even if we all would have known we would not have been in a position to prepare. During the pandemic the governments may have tried the very best but because we did not have such a challenge before it was an issue of trial and error.

Now in spring of 2024 we know that the virus is still “among us” and will never go totally but we seem to be able to manage this now and severe cases seem not to happen anymore.

But nevertheless, we still have long-covid cases in which people still suffer from the disease and are still not back in normal life. There is also a discussion on damages caused by vaccination. So there is a medical issue - in almost all countries of the globe.

But there are also political and social issues.

Anyway, we are now in a position to evaluate what has happened, have lessons learned – hopefully – and can see the consequences.

So we could see severe consequences in private life but also in the business area and on the level of the state. Private life was limited

to home and even work at home and businesses had to deal with home office work. Industry was faced with difficulties since the global connections did not work as is usually the case. The countries started to spend a lot of money to help businesses to survive. The different social systems got under hard pressure to deal with the social consequences. All the health care systems came to their limits. Countries now run a considerably increased deficit in the public budget.

In order to control the pandemic, the governments had to set limits to the day-to-day life and the general behavior of the people. This included restrictions in basic rights and even human rights in order to fight the pandemic. A number of those restrictions have been questioned during the pandemic and afterwards. During the pandemic governments have been faced with issues and problems unexpected and may have overreacted. On the other hand, there have been governments who did not do enough and thus caused a severe course of the pandemic in their countries.

There have been a number of different approaches to fight the pandemic and its consequences. Some approaches to fight pandemic have been rigid and others less rigid. It also depended on the economic potential of a country how and how far to cover or at least ease economic losses of people caused by the pandemics such and the lockdowns. Only richer countries have been able to provide short-time allowance by their unemployment insurance system in order to cover income losses for those who lost their work temporarily.

When it comes to consequences, we in the first place see that financial resources for active social policy are more limited than ever – also due to the money which had to be spent to deal with the pandemic. This affects all parts of the social systems.

When it comes to the individual worker people may have lost jobs – but this effect is limited since the demographic situation on the labor market in the industrialized countries of the North has generally led to less unemployment and right now there is even shortage of manpower. But this may not be the case on other countries and other parts of the globe.

But nevertheless, pandemic has shown vulnerability in certain areas of employment. Certain jobs have been lost and not all affected

could find suitable jobs soon in a changed economy. Very much affected have been self-employed since the social net there is at best perforated and has to be improved. In a great number of countries it is not existing at all. So a number of these people had to use the assets planned for retirement for economic survival during pandemic. Dramatic situations have been evolved. There have to be answers by social policy.

Business has had problems to survive pandemic and in cases the state was able to help they had difficulties to keep certain benefits for workers due to losses during the pandemic. This may for example be the case with occupational pensions financed by employers or other payments.

Last but not least home office work became a necessity during pandemic which has caused a number of labor law questions – concerning working hours, work safety and health and financial issues like technical equipment and space. It has shown not only the advantages but also the disadvantages of home office work.

Currently therefore there is a discussion on generalizing home office work. Business is split here in opinion since it saves office space for them on the one hand but makes it more difficult to organize business and work. Therefore business at least wants to decide whether there is home office work or not. On the other side trade unions argue in favor of a right for employees to work from home.

So home office work has been a necessity during pandemic and is now a more and more popular “new” form of work. Video-conferencing has been a tool of limited quality and popularity before the pandemic and is now replacing business trips more and more – also due to a technological leap. There is also a considerably reduced demand for office space.

Taking all this the pandemic not only was a global and big challenge for the health system and has had a dimension never seen before. The efforts to fight the pandemic have been of unexpected size and volume and no country on the globe may be able to argue that everything done was the best and right approach. When looking back we may now know what could have been done better.

From understanding this we are also better prepared for another pandemic which – following the virologist’s view and expertise – is not a matter of if that happens again but rather a matter of when it will happen again.

It has been a great idea by the organizers to have a critical dialogue on pandemic perspectives from a global perspective. They have brought together experts from a considerable number of countries around the globe to provide a real global view. This was also made possible – even during the pandemic – by the tools of video-conferencing.

This second volume of the critical dialogues now covers the aftermath challenges of the pandemic which is as important as fighting the pandemic itself.

The book covers an analysis of China's anti-COVID-19 campaign as well as pandemic impacts on contemporary slave labor fighting in Brazil. In legal procedure there have been changes to use more electronic systems and devices in order to avoid human contacts during pandemic. The experiences here may be worthwhile for legal practice and procedure in general. This is covered from a Brazilian perspective.

The topic goes as far as protection of domestic violence on women under which an analysis of the pre, during and post COVID-19 pandemic is provided – which is a very important issue. A considerable number of countries used emergency power; here a discussion on abuse of this power is important - including the institutional and technical prevention from abuse.

Since we all suffered from the pandemic the idea of global governance and the establishment of a community with a shared future for mankind in the post-pandemic era is a great – but idealistic - idea.

Last but not least there are contributions about lessons from pandemic and social policy, on digitalization of surveillance activities as a corruption prevention measure during the pandemic and on the pandemic impact on overcrowding prisons in Brazil and on the belt and road initiative in times of pandemic.

Also the human rights framework has been evaluated in a contribution.

So this is a book covering a great variety of topics and taking into account the different situation in different countries and regions of the world. It is an important piece of work which will have effects on the academic and political discussion of the aftermath of COVID-19.

**Münster (Germany), April 2024**  
Prof. Dr. Heinz-Dietrich Steinmeyer

ISBN: 978-950-34-2426-1

CHAPTER

1

# THE DISTRIBUTION AND USE OF TAX REVENUES IN THE COUNTRIES WITH HIGH-INCOME INEQUALITY

Daury Cesar Fabriz  
Julio Homem de Siqueira

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter1>

# THE DISTRIBUTION AND USE OF TAX REVENUES IN THE COUNTRIES WITH HIGH-INCOME INEQUALITY

*Daury Cesar Fabriz*  
*Julio Homem de Siqueira*

**Abstract:** The global sanitary crisis affected deeply the life of people, especially the more economic fragile ones. The impact of the changes can be considered as the announce of a new paradigmatic era. Concepts as “crisis”, “new normal”, “syndemics” arise from several flanks and require an evaluation from the point of view ongoing. States economically weaker will certainly have to reorganize themselves due to the budgetary issues directly impacted by the COVID-19 pandemic, which include the tax system reforms. On the one hand, there is a duty to contribute to public spending, since rights have their costs; on the other, the tax burden cannot be confiscatory, otherwise it will mitigate the feeling of duty. For this, the problem of a tax reform in times of exception is its legitimacy, especially considered principles of legal certainty, morality and efficiency in an environment of global capitalism.

**Keywords:** Rule of tax law. Tax reforms. Sanitary crisis. Duty to pay taxes. Constitutional principles.

## 1 PRELIMINARY

In December 2019, many cases of pneumonia were related in some hospitals in the province of Wuhan; initially, the cases were documented in China. In January 2020, the respiratory disease was spread to 19 States, and then the WHO declared the outbreak of COVID-19 as a public health emergency of international concern. In March 2020, with more than 100 States documenting cases of the disease, the situation was recognized as a pandemic. The clinical picture of the disease and its rapid spread caused perplexity to everyone, given the lack of medicines and vaccines, as well as the need for measures of social exclusion, isolation, quarantine and lockdown.

The global economy was dramatically hit. Restrictions and limitations to mobility of people affected both income and consumption. In countries whose economy is more homogeneous and longer consolidated, the impacts were few. But, in countries whose economy is heterogeneous and whose consolidation is recent, the impact was devastating, generating a situation of war.

This chapter seeks analysing the movements that arise from the pandemic situation and aims to understand how the rule of law stands towards the legitimacy of a tax reform. This analysis requires a strong response, once an illegitimate reform tends to contradict the fundamental duty to contribute to public spending. Then the scope is to evaluate how the tax issue in the midst of an exceptionality situation where the category *crisis* guides the assumption of a new paradigm, called the *new normal*.

## 2 REGARDING LEGITIMACY

Starting the reflection with the paradigm of *new normal*, a warning must be given: people must to be careful with words. They carry meanings that are often distorted by sophisticated hermeneutics that determine invisible patterns of domination, difficult to understand due to their *absent structures*<sup>1</sup>. This warning is necessary considering the transformations of the Modernity Project, which is aloof to differences and based on dual forms (sensitive/intelligible; ideal/real; internal/external; good/evil; nature/culture etc.), that can prejudice society achievements if malpractice. For this reason, it is necessary to submit it to a rigorous surgical analysis, unveiling what in absent structures is imposed as *new*. In an attempt to understand the axis of changing times, counterpoints are very necessary as well as the effort to deconstruct structures given as solid. Derrida suggests for this the *différance*, which in the face of semantic, generic, historical, ethnic and cultural differences mitigates the established truth and puts it as a permanent and infinite construction<sup>2</sup>.

---

<sup>1</sup> Eco 1968.

<sup>2</sup> Baptista 2010.



New time, new truths. The pandemic event highlights the word *crisis* and imposes a *new normal*. Agamben deconstructs the meaning of the expression *crisis* and focus on two semantic traditions of the concept. The first is scientific, which means the decisive days of the sick patient. The second is theological, which indicates the last judgment proclaimed by Christ at the end of time. In both senses, the term is linked to a temporal determination. However, as Agamben says, the use of the term *crisis* currently coincides with the normality, not fading over time<sup>3</sup>. This means that from deconstructive approach the concept of *new normal* brings at its core a naturalization of a synchrony between crisis and possible life, in all of its dimensions. Thus, in the name of the *crisis*, decisions and non-decisions are continuously and inexhaustibly legitimized with the same ballast. And this means another crisis, but of legitimacy.

The *new normal* format is at the core of the legitimacy crisis in pandemic times. The expression reveals in its current use something that already exists, that is mandatory by itself and that is self-justified. Heraclitus is then evoked in several speeches to justify the *new normal*, which is seen as something inexorable, to what we must bow. Employing psychoanalytic terms, it is a matter of acceptance, it requires to accept the transfiguration of discourse and all its consequences. However, it is not the pandemic that leads to the *new normal*. Pandemic is just a catalyst for the transfiguration movement of Modernity Project, that was already dragging on slowly<sup>4</sup>; it is the demiurge of a new era. A new era of sophisticated forms of domination and reformulation of the capitalist mode of production, where infinite technological development subverts reality<sup>5</sup>. Therefore, the *new normal* tends to subvert the normal.

The concept of *new normal* intends to be universal. However, it is nourished by the old binary logic of modernity. It is not a concept that explains a phenomenon or a reality, it is an instrument to legitimise processes of power, easily introjected by common discourse. It born in the context of a health and economic crisis, and expands beyond, to the needs of the entire State. The construction of such concept began to be woven at the end of the first decade of 21<sup>st</sup> century, during the economic

---

<sup>3</sup> Agamben 2014.

<sup>4</sup> Santos, 2014.

<sup>5</sup> Schneider 2020, 95.

crisis of 2008. According to Davis, during the economic depression, it was not being experienced another merely turn of the business cycle, but the restructuration of the economic order. The agenda consisted then of a single item: to know how normality would be configured after the turbulence. Davis concluded that “the new normal will be shaped by a confluence of powerful forces – some arising directly from the financial crisis and some that were at work long before it began”<sup>6</sup>.

*New normal* is, therefore, an expression employed in the movement to restructure the capitalist mode of production, that cannot survive without the State, which must to adapt itself to the market needs.<sup>7</sup> The need to legitimise new perspectives previously illegitimate is evident. This is how emerge new consumption models, new processes of exploitation of the natural resources, labour and society, and new ways of dismantling human rights; setbacks always justified under economic degrowth and the need for reinvention. It recovers the *laissez-faire*, *laissez-passer*, which was already perverse at the time of industrial capitalism, and now is more perverse among countries with a more fragile economy, as the Latin American.

### 3 COUNTRIES WITH HIGH-INCOME INEQUALITY, THE CASE OF LATIN AMERICAN

The political and economic history of Latin American countries is, by the way, interesting, and despite their different colonization processes some aspects are remarkable common. One is the failure of the federalism agenda in Argentina, Brazil, Mexico and Venezuela, which currently adopt the federative principle, but do not have their own federal culture<sup>8</sup>, and in Chile and Colombia, which once adopted it, and when failed were converted into unitary countries. Both political and economic strong centralization depict since their independences a preference for patrimonial elite, founded on labour force exploitation and prone to economic liberalism. This perspective, especially when it is verified that even federal countries

---

<sup>6</sup> Davis 2009.

<sup>7</sup> Siqueira 2011.

<sup>8</sup> Siqueira 2019a; Chaires 2017; Bastos & Val 2016.

adopt also a fiscal centralization, brings together these nominative federated countries with unitary ones, as are all the others Latin American countries.

In general, Latin American countries are currently linked to democratic values, even though internal power arrangements sometimes show the opposite. Researches on their tax systems prove that the interests of a central entity have precedence over subnational ones<sup>9</sup>. The allocation of resources that basically observes the principle of predominance of interest, gave to this central unity the largest share of attributions, competences, sources (goods) and (collection of) resources, as well as the greatest distance between the centre of decision-making and their recipients. In the case of collection (of resources), their constitutional pacts establish a distributional regime that contributes to budgetary needs and possibilities of subnational entities. Regardless of this, the reality of subnational unities is worrying, since large part of them depends on the resource's transferences by the centre, which are often insufficient.

The predominance of interest and the presence of unitary system do not rule out the need for cooperation. The system of sharing collected funds demonstrates this, as well as common federative material attributions – usually social, cultural and economic. Allied to the predominance of interests is the principle of subsidiarity, which manages common attributions with grater fine-tuning and balance<sup>10</sup>, especially in federative systems. In accordance with it, the lesser entity should be allowed to carry out its assignments for the sake of its capacity, while the broader should subsidise it from the limits of that capacity. Thus, the commitment required of each federative entity must be proportional, avoiding its overloading<sup>11</sup>, as well as it must occur with unitary systems. However, the principle is totally disregarded by the economic and political realities of such countries.

Notwithstanding, the distribution of tax and budgetary prerogatives is problematic too; especially due to the wide variety of local and regional problems, what calls into question the sharing of

---

<sup>9</sup> Oliveira 2013.

<sup>10</sup> Baracho 1995, 24.

<sup>11</sup> Ramos 2004, 21.

financial revenues from the broadest entity to the lesser<sup>12</sup>. It seems to be, together with the employment and allocation of financial resources, the cornerstone of autonomy<sup>13</sup>. Then, since the commitment to be demanded of each unity, federative or not, must be proportional to their financial possibilities; that is, the absent of financial conditions means that the federative feeling will be empty and the model will not pass from a form without content<sup>14</sup>.

This explain why the public financial system, included budget and tax systems, is more cardinal in federative architecture than in unitary one. The budgets of federative levels must seek a balance between the spending needs and resources inflow possibilities through tax revenues and constitutionally mandatory transfers (*fiscal balance*). Budgetary laws – both those of planning and guidance – must serve, both in federative and unitary systems, as an instrument of government and of State, once they must be aware of unpredictable possibilities, seeking whenever possible *to create reserve funds for difficult times*. However, the governmental logic of Latin American countries has not been that of planning or establishing strategies and mechanisms to neutralise the causes of crises.

The COVID-19 pandemic clearly shows that the logic assumed by governments is casuistic. They decided, despite ideological differences, to manage the effects of the crisis, not to solve it. The crisis was then, as in many countries around the world, transformed into a government instrument. Regulations passed during the crisis show the opportunity seized by central entities of federative systems to appropriate attributions normally given to subnational entities closest to the population, in order to centralise decisions and empty other federal spheres of power, what goes against the constitutional text; the same happens with unitary countries, which departments, municipalities, districts suffer with a similar disease.

The health crisis generated a strong pressure on subnational unities, due both to the lack of resources and to the precarious budgetary situation, emphasising their economic and financial crises. It is in this context that the debate on an urgent and necessary tax

---

<sup>12</sup> Bercovici 2002, 14.

<sup>13</sup> Baracho 1995, 123.

<sup>14</sup> Fabriz 2010, 85.

reform arises to unlock economy and create jobs. Nevertheless, the reformist rhetoric is not based on strengthening the social agenda, but on recovering trust in the government (*partisan interest*), under the seal of recovering the economy (*public interest*).

The rhetoric of the Fiscal State always was predictable, even more than the weather forecast. This kind of State is founded on the notions of limitations to the power of tax, as the rules of legality (*no taxation without representation*) and isonomy (*ability to pay taxes*), and others that are usually corollaries to them.<sup>15</sup> However, when it is adopted in countries with a more unequal society, it becomes an arrecadatory State, which is oftenly employing the argument that *to face crises it is necessary to increase the collection or the public debt*. They only assume this position because they have a fragile capacity to honour its commitments, as occurs, but not only due to the pandemics, in Argentina. The choice for collecting more or spending more has *negative consequences in countries that stand out for their deep socioeconomic inequality*. And depending on the internal systems for sharing competences/public resources, the damage is even greater. The Latin American countries give a good example of how bad a national tax reform can be. This occurs because this type of reform influences both the question of how public resources are distributed, spent and invested, and the collection issue.

In order to understand this affirmation is necessary to comprehend how a national tax system allocates tax attributions among political entities. Usually, the constitutional texts divide tax legislative (formal) and administrative (material) competences into two groups. The central entity is benefited by a *numerus apertus* list, while the subnational are subject to a *numerus clausus* list of taxes. To summarise, the benefit gives the central entity the freedom of passing new taxes if it deems necessary. The close list condemns subnational unities to the perverse situation of not being able to face crisis situations, once they must fulfil equal constitutional attributions with reduced revenues, what makes them, politically and financially, hostages of the centre, and unbalances the already fragile constitutional pact. Unfortunately, this situation is recurrent.

The Latin American political-administrative constitutional pacts are fragile due to low level of decentralisation of legal and administrative attributions, in all areas, except when the issue

<sup>15</sup> Mehrotra 2005.

involves assuming responsibilities – which is perceptible in the social demands, when one entity avoids its responsibility like the plague. The strengthening of the such kinds of pacts requires more autonomy to all subnational, including for the collection of resources. The necessary tax reform should not be for tax collection purposes, but to implement a sort of autonomy to better and immediately face problems with efficiency.

However, such kind of reform will unlikely be carried out, since fiscal configuration adopted in all Latin American countries has a fiscal arrecadatory matrix, which can be summarised in three facts: (i) preference for transferring people's assets, with a dubious proportionality and ability to pay, to the public treasury, instead of obtaining public resources from public investments and assets; (ii) State as an efficient collector machine of taxes, but terrible deliver machine of quality services, especially to the layers that need them most; and, curiously, these people are who that bear the most with the maintenance of the Fiscal State, because it is precisely from them that the duty to pay taxes is most required; and (iii) preference for distribution of fiscal benefits and favours, usually to corporations, instead of income redistribution.

The duty to pay taxes cannot, however, be linked to the need for revenue<sup>16</sup>. On the contrary, the *principle of ability to pay* determines that State must be attentive to the taxpayer's economic capacity, so that the payment of tax will not generate a kind of confiscatory situation<sup>17</sup>. Additionally, it is pertinent to note that the contributive feeling decreases when the delivery of essential rights gets worse; like happens in the case of public health<sup>18</sup>, generating the perception that the duty is fulfilled on lost fund. This leads to a negative spiral that feeds the *crisis* category as a catalyst for elitist and selective public policies, as well as fosters welfare and populist (partisan) governmental policies, deceiving the economically less favoured. The result, looking also to projections of health framework, is that the situation of subnational entities gets worse. Pandemic is, however, only one of its causes.

---

<sup>16</sup> Monte 2018.

<sup>17</sup> Siqueira 2010; Siqueira 2012a.

<sup>18</sup> Siqueira 2012b; Siqueira 2012c.

*Syndemics*<sup>19</sup> is the most appropriate term. This neologism clears that there are more severe circumstances than the current sanitary pandemics. A syndemics flows from the confluence of several crises that have been accumulating since the end of the 20<sup>th</sup> century (hunger, climate change, financial and economic etc.). Although there has been evolution in the realization of human rights in the last 40 years<sup>20</sup>, the continued confrontation of the consequences and not causes of crises lead to a bleak scenario in countries where there is a wide spectrum of inequality – as Latin American.

#### 4 WHAT KIND OF TAX REFORM? A CONCLUSION

There is an urgent need for a global effort to create measures to contain poverty in the world and reduce inequalities, as UN has done through the SDGs and the UNDP.<sup>21</sup> And one of those measures is *a more effective planning in all fields*, especially in taxation. State tax planning must observe internal needs and possibilities of each state-member or local administration, regarding sustainable development.<sup>22</sup> It must to be understood that the mere economic growth and mere tax collection do not generate human development, only confiscation.

Brazil gives an example of how bad a mere tax collection reform can be. According to the Brazilian Institute of Economics the pandemic has weakened the Brazilian national labour market<sup>23</sup>, once the restrictive and isolation measures (helped a lot by emergency aids) made people look fewer for jobs and catapulted the unemployment rate to something near to 19%<sup>24</sup>. The increase of revenue does not prejudice those who have more, but those who have less contributive capacity, which are exactly the same that were most affected by the pandemics. Then, this is not only a problem faced in Brazil, but also in countries with evident socioeconomic inequalities, where the tax burden is concentrated on indirect taxes, which are focused on

<sup>19</sup> Singer 2009.

<sup>20</sup> Rosling 2018.

<sup>21</sup> UNDP 2016, 2017, 2020; Siqueira, Mtewa & Fabríz, 2021.

<sup>22</sup> Silva 2020, 346.

<sup>23</sup> Peruchetti, Martins, Duque 2020a.

<sup>24</sup> Peruchetti, Martins, Duque 2020b.

consumption and affects the prices of any merchandise. They reveal the *visible hand* of the rule of tax law by means of *invisible taxes*.

This scenario must be changed, and pandemic gave an excellent opportunity to it. It is common sense that all government and institution measures in response to COVID-19 reveals a deep concern with social issues. However, in general – for countries which inequalities are self-evident –, concerns were more temporary than permanent, and in some cases are accompanied by denialism and electoral purposes, for example. Sad but true, opportunities like the current pandemics are not like eclipses, they are more like meteorites. Thus, when someone ask what the COVID-19 pandemic or other can teach about how public resources should be collected, distributed, spent and invested, you cannot search the answer in countries that perpetuate the accumulation of wealth. The good examples must be searched in countries efficient in reducing income inequality and in delivering quality public services, even if the tax burden is high.

After more than a year of pandemic, what (with COVID-19) means (necessarily) an economic recession, many governments all over the world are scrambling to reignite or, what is more common, to rebuild their economies, with packages for stimulating demand and giving liquidity to financial systems. The most promising packages seems to be those that provide a hedge against inflation and investment alternatives that fluctuate less than the stock market, but ensure an interesting profitability. Furthermore, the reduction of indirect taxes, like those on consumption, is prone to ease the fiscal burden on the back of lower and medium classes, which can be rebalanced by revising income tax rates and ranges, with the creation of specific taxes to the rich, corporations and digital services, as well as by reviewing tax benefits that are no longer justifiable.

A much-discussed measure in the context of reform is the unified taxes, as it is the value added tax (VAT) or the goods and services tax (GST). It is well-known that unified taxes facilitate the entire taxation and collection process, making it cheaper, especially to corporations, as well as they mean a fiscal centralization. Important outcomes come from countries in the European Union that adopt VAT, and from some Latin American, for example Argentina, Paraguay and Uruguay. The main listed advantage is the efficiency



of VAT. However, a neuralgic point of it is the impact on goods and services that are basic, to which the poor allocate a (relatively) fraction of their wage. Simplifying a lot, it is not justified to unify taxes if the tax burden on the poorest remains high. Then, the implementation of VAT must come accompanied by a package that reduce income tax on lower income-groups.

The IFS Briefing Note BN212<sup>25</sup> concluded that there are better ways to channel resources to poorer households than VAT; meanwhile, they are more common in high-income countries with well-developed social protection systems that have targeted cash schemes for poor households. In low- and middle-income countries, these systems, when exist, are null or flawed, that is, they only work in theory – they are nominative. This does not mean that VAT is more disadvantageous than advantageous in countries with high-income inequalities, but that it is inadvisable to look at it as a kind of antidote. In other few words, it must be accompanied, especially in countries with self-evident inequalities, by the following three inevitable rearrangements: the mode of production, the labour market and the consumption.

In addition, there is also something broader that must be gestated: the restructuring of capitalism and liberalism (political and economic) to meet the *new normal*, as it has always occurred at least since the fall of absolutist regimes in Europe. In situations similar to Latin American countries, the impacts of pandemics are more severe in all the fields where there are profound (social) inequalities. What is enhanced when the State follows a model whose complex system of distribution of tax competences strengthens the central entity in detriment of local ones, which have to pass the saucer. Considering this picture and the trend of a pure fundraiser tax reform, the probable outcome is the exploitation of both the crisis and the *new normal* context in favour of the elites, to the detriment of those who are left – the most part of population.

The circumstance of a pandemic as the one lived in 2020/2021 reveals the need for a reorientation of the State, which cannot be used merely as an instrument of confiscation. A reorientation means that it is necessary to structure a system which effectively meets the principle of predominance of interest. In countries with continental dimensions

<sup>25</sup> Institute for Fiscal Studies 2017, 4.

like Brazil, this challenge is even more enormous, given the distance between the decision-making centre and the local administrations, and also peculiarities related to a remarkable multiculturalism or to the stratification of society.

In the context of (nominal) federative countries with a high-income inequality, as Brazil, the challenge is to give effectiveness to the constitutional text, once it recognizes a very reasonable logistic of administrative competences in terms of prompt service to the basic needs of the population and provision of minimum resources. The existence of a unified health system, formed by a regionalised, hierarchical and decentralised network, with a unique decision-making centre in each sphere of government, is much promising for the progressive reduction of regional disparities. Then, cases like Covid-19 pandemic would require the acquisition of vaccines by the national sphere, whom might distribute them to subnational entities like state-members and then municipalities, who, being the closest to population, have the task of immunising it. In this concert, nominatively there exists a kind of public policy that covers the entire national territory equally and effectively. However, as the expansion of Covid-19 is demonstrating, in practice this history is being told in another way.

## REFERENCE LIST

Agamben Giorgio (2014) For a theory of destituent power. <https://criticallegalthinking.com/2014/02/05/theory-destituent-power/>. Accessed 9 Dec. 2020.

Baptista Isabelle de (2010) A desconstrução da técnica da ponderação aplicável aos direitos fundamentais, proposto por Robert Alexy: uma reflexão a partir da filosofia de Jacques Derrida, *Rev. TCEMG* 77(4): 96-112.

Baracho Jose Alfredo de Oliveira (1995) A federação e a revisão constitucional. As novas técnicas dos equilíbrios constitucionais e as relações financeiras. A cláusula federativa e a proteção da forma de Estado na Constituição de 1988. *RDA* 202: 49-60.

Baracho Jose Alfredo de Oliveira (1995) O princípio da subsidiariedade: conceito e evolução. RDA 200: 21-54.

Bastos Thiago Guerreiro, Val Eduardo Manuel (2016) Federalismo fiscal na América Latina: os casos de México, Argentina e Brasil. *Journal of Institutional Studies* 2(2): 932-973.

Bercovici Gilberto (2002) A descentralização de políticas sociais e o federalismo cooperativo brasileiro. *Revista de Direito Sanitário* 3(1): 13-28. doi: 10.11606/issn.2316-9044.v3i1p13-28

Chaires Jorge (2017) El fracaso del federalismo en Latinoamérica. Un estudio comparado con la cultura federal de los Estados Unidos de Norteamérica. *Rev. Via Iuris* 23: 1-35.

Davis Ian (2009) The new normal. <https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/the-new-normal#>. Accessed 9 Dec. 2020.

Eco Umberto (1968) *La struttura assente*. Bompiani, Milano.

Fabriz Daury Cesar (2010) Federalismo, municipalismo e direitos humanos. *Rev. TCEMG* 77(4): 76-95.

Institute for Fiscal Studies (2017) IFS Briefing Note BN212 – Redistribution, efficiency and the design of VAT: a review of the theory and literature (Laura Abramovsky, David Phillips, Ross Warwick). <https://www.ifs.org.uk/uploads/publications/bns/BN212.pdf>. Accessed 25 Feb. 2021.

Mehrotra Ajay K (2005) Envisioning the Modern American Fiscal State: progressive-era economists and the intellectual foundations of the U.S. Income Tax. *UCLA L. Rev.* 52: 1793-1866.

Monte Antônio de Pádua Marinho (2018) *A decadência tributária e a supremacia do interesse público*. Lumen Juris, Rio de Janeiro.

Oliveira Hygino Sebastião Amanajás de (2013) *Federalismo fiscal no Brasil, Argentina, Venezuela e México e a integração regional na América Latina*. USP, São Paulo (Tese de Doutorado).

Peruchetti Paulo, Martins Tiago, Duque Daniel (2020b) Por que a taxa de desemprego no Brasil não disparou mesmo com a pandemia do coronavírus? Uma análise a partir dos dados mensalizados da Pnad Contínua. <https://blogdoibre.fgv.br/posts/por-que-taxa-de-desemprego-no-brasil-nao-disparou-mesmo-com-pandemia-do-coronavirus-uma>. Accessed 9 Dec. 2020.

Peruchetti Paulo, Martins Tiago, Duque Daniel (2020a) Pandemia do coronavírus fragiliza o mercado de trabalho brasileiro. <https://blogdoibre.fgv.br/posts/pandemia-do-coronavirus-fragiliza-o-mercado-de-trabalho-brasileiro>. Accessed 9 Dec. 2020.

Ramos Dircêo Torrecillas (2004) *Federação: assimetrias e corrupção*. Atlas, Sao Paulo.

Rosling Hans (2018) *Factfulness*. Sceptre, London.

Santos Boaventura de Sousa (2014) *Epistemologies of the South*. Routledge, Abingdon.

Schneider Gabriela Pelles (2020) *Quarta revolução industrial: impactos nos Estado periféricos*. CRV, Curitiba.

Silva Heleno Florindo da (2020) *Estado*. Lumen Juris, Rio de Janeiro.

Singer Merrill (2009) *Introduction to syndemics: a critical systems' approach to public and community health*. Jossey-Bass, New York.

Siqueira Julio Homem de (2012a) A proibição aos efeitos de confisco. *RTrib* 105: 33-46.

Siqueira Julio Homem de (2012b). Deveres como condição para a concretização de direitos. *RDCI* 79: 167-209.

Siqueira Julio Homem de (2011) Liberalismos políticos. *Revista Portuguesa de Ciência Política* 1: 103-112.

Siqueira Julio Homem de (2010) O critério da capacidade econômica na tributação. *Revista de Derecho (Valparaíso)* 35: 409-424. doi: 10.4067/S0718-68512010000200012

Siqueira Julio Homem de (2012c). Solidariedade e justiça fiscal: uma perspectiva diferente sobre a concretização de direitos a partir do dever de pagar impostos. *RDCI* 81: 229-271.

Siqueira Julio Homem de (2019a) The historical construction of the Brazilian State. *Latin-American Historical Almanac* 23: 115.136. doi: 10.32608/2305-8773-2019-23-1-115-136.

Siqueira Julio Homem de, Mtewa Andrew G, Fabriz Daury Cesar (2021) The UNDP contribution to the protection of human rights in armed conflict zones (forthcoming).

Siqueira Julio Homem de (2019b) Uma introdução ao sistema tributário-orçamentário constitucional brasileiro. *RTrib* 140: 105-126.

UNDP (2016) From the MDGs to sustainable development for all: lessons from 15 years of practice. <http://www.globalamalen.se/wp-content/uploads/2016/05/From-MDGs-to-SDGs-Lessons-of-15-years-of-practice.pdf>. Accessed 28 Feb. 2021.

UNDP (2020) The 2020 Human Development Report. <http://hdr.undp.org/sites/default/files/hdr2020.pdf>. Accessed 28 Feb. 2021.

UNDP (2017) UNDP Strategic Plan, 2018-2021. <http://undocs.org/DP/2017/38>. Accessed 28 Feb. 2021.

ISBN: 978-950-34-2426-1

CHAPTER

2

**CULTURE AS A MODEL FOR THE SOCIAL  
INCLUSION OF BRAZILIAN MIGRANTS IN PORTUGAL**

Lígia Moreira Almeida • Raquel Moutinho • Natacha Jesus-Silva  
Jorge Leite • Marcelo Brigagão de Oliveira • José M Peixoto Caldas  
<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter2>

# CULTURE AS A MODEL FOR THE SOCIAL INCLUSION OF BRAZILIAN MIGRANTS IN PORTUGAL

*Lígia Moreira Almeida*

*Raquel Moutinho*

*Natacha Jesus-Silva*

*Jorge Leite*

*Marcelo Brigagão de Oliveira*

*José M Peixoto Caldas*

**Abstract:** Migrants and refugees' influx into Europe has been steadily rising, and social indicators consistently show a decrease in economic and social protection towards vulnerable populations. Recent research shows that a sense of belonging is central towards integration in a new country. Unfamiliarity with culture contributes to isolating migrants and prevents participatory citizenship. Our objectives are to identify gaps in cultural competence and accessibility to culture in our country, understanding their cross-sectoral consequences – namely regarding the Brazilian community. Our study followed a qualitative methodology (online semi-structured questionnaires) for collecting and analysing data (content analysis) and was conducted in Porto, the second largest Portuguese city. Participants were 38 Brazilian immigrants, contacted through NGOs's, social associations and institutions during the pandemic. Brazilian collective is a strong consumer of cultural events and resources, having a very strong perception regarding its value and role when it comes to their own paths of integration.

**Keywords:** migrants and refugees; culture; social inclusion; belonging.

## **La Cultura como vía de Inclusión Social de los Migrantes Brasileños en Portugal**

**Resumen:** La afluencia de inmigrantes y refugiados a Europa ha aumentado, y sus indicadores sociales muestran sistemáticamente disminución de protección económica y social hacia poblaciones vulnerables.

Investigaciones recientes muestran que el sentido de pertenencia es fundamental para la integración. El desconocimiento de la cultura contribuye a aislar los inmigrantes e impide una ciudadanía participativa. Nuestro objetivo es identificar lagunas en competencia cultural y accesibilidad a la cultura en nuestro país, comprendiendo sus consecuencias intersectoriales en la comunidad brasileña.

Nuestro estudio siguió una metodología cualitativa para recogida y análisis de datos, ocurriendo en Oporto, la segunda mayor ciudad portuguesa. Los participantes fueron 38 inmigrantes brasileños, contactados mediante ONGs, asociaciones sociales e instituciones durante la pandemia.

Es evidente que el colectivo brasileño es un fuerte consumidor de eventos y recursos culturales, teniendo también una percepción muy fuerte en cuanto a su valor y papel cuando se trata de sus propios caminos de integración.

**Palabras clave:** inmigrantes y refugiados; cultura; inclusión social; pertenencia.

## 1 INTRODUCTION

European societies are, and will continue to be, increasingly diverse and heterogeneous. Over the past decades many people who have experienced difficulties in various dimensions of their lives in their countries of origin have come to Europe, and it is likely that many will continue to do so. A holistic inclusion strategy that prioritizes the socio-economic and political integration of refugees and migrants into host countries is of utmost importance. A comprehensive solution to this humanitarian crisis is twofold, comprising the need for urgent and organized reception and assistance to migrants and refugees, who always arrive in conditions of greater vulnerability (even in planned migrations, the unfamiliarity with the country, cultural differences and restrictions with support network are challenging conditions during the first times of arrival), whether they are people seeking better living conditions, or traumatized victims fleeing from war-torn areas (Robila, 2018; Cetrez et al, 2020; Duszczuk, Pachocka and Pszczółkowska, 2020). The need for a long-term solution to the growing inequalities, segregation and social exclusion to which migrants and refugees are exposed invariably undermines full European citizenship, compromises the flourishing diversity of our



societies, and fails to align deep European societal values with the upholding of the Universal Charter of Human Rights (European Commission, 2016; Robila, 2018).

Additionally, migration presents core development opportunities for the European Union, given the specificity and evolving needs of the labour market, essential for the reconfiguration of European social structure, as well as for the resumption of post-pandemic economic and cultural development (Almeida & Caldas, 2013; Fasani & Mazza, 2020; IOM/MPI, 2021). Until the pandemic onset, mobility and migratory flows were at an all-time high, leading to an unprecedented “refugee crisis” (Eurocities, 2016). The context of SARS-Cov-2 didn’t ease migrants and refugees’ influx into Europe, but only contributed to further decrease the economic and social protection towards already vulnerable populations (Fasani & Mazza, 2020; IOM/MPI, 2021). Therefore, the integration of migrants and refugees in their host countries is of upmost interest - presently and especially in a near future, where the number of refugees is likely to increase due to restart of economic activities (Diehl et al., 2016; European Commission, 2016). Some typical indications of successful migrant integration are the decrease of the differences between migrants and non-migrants according to data on employment, education, health and social inclusion, among other areas (IOM, 2017).

The main focus of research with migrants has been on language barriers, on access to health and appropriate healthcare, on multiple discriminations that act as obstacles in accessing basic and quality information regarding services and rights, on hurdles to the acquisition of documentary legalization and citizenship, and on labour market inclusion - all absolutely fundamental dimensions to consider in the integration process (Duszczuk et al., 2020).

However, recent research shows that a sense of belonging is central to integration in a new country. Integration is not just an issue of social welfare and economic policy, the emphasis should also be on engaging people in valuable cultural experiences and achievements (Eurocities, 2016). Belonging is accepted to be a fundamental human psychological need (unquestionable, under the scope of psychological science since Maslow studies). While legal status, labour market

incorporation, education and healthcare are important integration measures, it can also be stated that belonging plays a key part within each of these contexts: belonging is the feeling of inclusion in the social group that migrants experience throughout their daily lives as they work, raise families, and navigate local school, community and health systems. Thus, Belonging is connected to finding a place of respect within the cultural and religious sphere of the host country during daily interactions (Foner & Simon, 2015; Simonsen, 2018; Rottman, 2020).

There are many ways of measuring integration and little agreement about its process. Belonging is being pointed as a key *soft indicator* for measuring integration (as Culture), but often omitted as an area of inquiry in Integration studies in favour of readily quantifiable measures, such as labour market integration, housing, education, health care and citizenship acquisition (Rottman, 2020). These are preferred because countries can easily rank them, as they are, for example according to the Migrant Integration Policy Index (MIPEX) used by the European Union. The capacity for migrants to identify with and feel attachment to a social group - to their new country - is a pressing political issue. Belonging is built over time. It is experienced (or not) as individuals pass through formal social integration or asylum system, both initially, when they interact with officials regarding their case evaluations, as well as later when they are seeking employment, education, and friendships, and becoming exposed to communities and local contexts, and media debates in their new societies. Feelings of belonging are of deep importance, not only for the psychological health of migrants, but also for social cohesion in local communities and even for reducing national security concerns of political leaders (Foner & Simon, 2015; Simonsen, 2018). One mustn't forget that one of the routes of integration consists in establishing social connections, relationships, and networks that provide links to other people and services. On another hand, studies measuring migrants' perceptions and self-reports frequently state that the feeling of belonging is of utmost importance for them to integrate in the host country (Ager & Strang, 2008; Cetrez et al., 2020). Thus, it is here considered that any integration recommendations and policies that do not serve the needs identified by their target populations will most certainly be doomed to fail.

The concept of “Culture” where our theoretical framework was based has its core in the definition proposed by Raymond Williams, and combines an aesthetic dimension - ‘the works and practices of intellectual and especially artistic activity (this seems often the most widespread use: culture is music, literature, painting and sculpture, theatre and film)’ – with an anthropological dimension ‘which indicates a particular way of life, whether of a people, a period, a group, or humanity in general’ (Williams, 1994). Culture is the medium through which we communicate who we are, what is important to us, what has formed us and what aspects of ourselves we uphold as we move into the future. Identity is often defined in cultural terms, just as otherness is. It is therefore necessary and natural to move into the sphere of culture when there is a need to get to know the other, with the aim of forming an inclusive society, which can learn how to benefit from diversity (Le, Polonsky & Arambewela, 2015). Therefore, our definition of “Culture” here also contemplates its unavoidable psychological dimension: it refers to internal, external, behavioural as well as mental dimensions. A reference we corroborate resides in the definition provided by the intercultural psychologist Marsella (2005), who states that “(...) Culture is shared learned behaviour and meanings that are socially transferred in various life-activity settings for purposes of individual and collective adjustment and adaptation. Cultures can be (1) transitory (i.e. situational even for a few minutes), (2) enduring (e.g., ethnocultural life-styles), and in all instances are (3) dynamic (i.e., constantly subject to change and modification. Cultures are represented (4) internally (i.e., values, beliefs, attitudes, axioms, orientations, epistemologies, consciousness levels, perceptions, expectations, personhood) and (5) externally (i.e., artifacts, roles, institutions, social structures). Cultures (6) shape and construct our realities (i.e., they contribute to our world views, perceptions, orientations) and with this, our concepts of normality/abnormality, morality, aesthetics, and a number of arbiters of life.” (p. 657).

Culture plays an extremely relevant role in building and structuring the “sense of belonging” process. Acculturation refers to the phenomena occurring when individuals from different cultures come into first-hand contact; it has been described as moving towards a culture (Cetrez et al., 2020). This definition specifies acculturation

as a change occurring not only within one group (the minority), but also within all the cultures involved. Nevertheless, more change occurs in the nondominant group than in the dominant one (Organista, Chun & Marin, 1998), as acculturation impact depends on power relationships (DeMarinis, Grzymala-Moszczyńska & Jablonski, 2002; Cetrez et al., 2021). In a multi-ethnic context, State institutions of host countries are confronted with cultural and ethnic differences, which brings into contact diverse traditions, religiosities, languages and cultural and political practices of the host society and immigrant minorities. A deep process of collective construction of meanings, symbologies and emotionalities occur through these contacts (Cetrez et al., 2021). To the above definition it is also important to add that acculturation is a “developmental process towards adaptation and gaining competence within more than one cultural setting” (Oppedal, Røysamb & Sam, 2004, p. 482).

This concept of Acculturation is an essential bridge towards our understanding of Cultural Integration, being considered here as the ability to understand and participate in the host country’ culture, without losing one’s own culture. Cultural Integration is only possible when the cultures do not have to sacrifice the characteristics that make them unique. People are allowed to blend their beliefs and ideas without having to give up their culture – in order to accomplish this, people need to have their unique time to feel comfortable in their new lives and contexts, to develop a sense of security and to build a certain sense of belonging that allows the natural blending of cultures (Diehl et al., 2016). Thus, Cultural Integration requires an appropriate cultural response from both the host society (non-discriminatory policies and legislation) and the migrants (personal skills and competences) to promote inclusion. In our present research, we claim to evidence that Culture is a facilitator to migrants’ ultimate and fully integration in the host societies, as access to culture promotes both Social Inclusion and Social Cohesion (European Comission, 2016; IOM, 2017). Social inclusion refers to migrants’ inclusion and full economic, social, cultural, and political participation (participatory citizenship) into host communities. Social cohesion refers to concepts such as anti-discrimination, countering xenophobia and promoting mutual understanding (IOM, 2017).

Access to culture implies understanding sensitive and intangible aspects that permeate the social and structural organization of a country, which are embodied in norms (often informal and implicit), beliefs, customs, arts, languages, knowledge, collective identities and memories that make the social environment of a group meaningful and aggregative (Scholten & Penninx, 2016). Culture is particularly significant as an enabler of sophisticated democracy: it provides spaces for the articulation and dissemination of complex ideas and facilitates broad participation in social space. The dynamic nature of cultural participation makes the cultural sector the perfect space from which to catalyse the development of polity and society as spaces in which refugees and other new citizens are afforded equal voice and status (Eurocities, 2016). On another hand, unfamiliarity with culture repeatedly contributes to isolating migrants and prevents the maximum expression of an active and participatory citizenship (Persaud, 2017; Goñda, Pachocka & Podgórska, 2021).

The concept of Participatory Citizenship goes further and deeper than simple citizenship reconnaissance or acquisition: regardless of inclusive and migrant-friendly legislation and policies – that differ from country to country - that enables several routes of accessing legal rights and duties (or not at all) (IOM, 2017), participatory citizenship relies on social and structural opportunities regarding political and social participation of migrants both at their countries of origin and host countries. It focusses on migrants' practices of engagement in political and civil mobilisations, aiming at influencing decision-making processes and scenarios which are perceived as relevant to them and actually have an impact in their communities and contexts of action. (Martiniello, 2022).

To facilitate the transition and psychosocial adjustments associated with migratory flows, society can increase its capacity and cultural competence, thus facilitating individuals (both nationals and migrants) to enhance their social toolkit, soft skills and competences oriented not only towards the host reality, but enhancing knowledge regarding cultural diversity, and to progressively allow individual to transform themselves into bi-cultural subjects (Scholten & Penninx, 2016). Cultural competence is the ability to participate ethically and effectively in personal and professional intercultural settings.

It requires knowing and reflecting on one's own cultural values and world view and their implications for making respectful, reflective, and reasoned choices, including the capacity to imagine and collaborate in cross cultural contexts. Through Cultural competence, society ultimately engages in valuing diversity for the richness and creativity it brings (Moita & Silva, 2016). This is relevant both in educational and cultural institutions in general, and in specific arenas where migrants can find and/or construct their own narratives in their bi-cultural reality. Intercultural competences are also crucial for the 'native' population if integration is seen as a bi-directional process (Persaud, 2017; European Union, 2017).

The Portuguese reality when concerning migration has been somewhat stable: the Brazilian community has been for some years now the largest immigrant community in Portugal. It is noticeable that the inflow and outflow of these immigrants increases or decreases according to the economic situation in Brazil. The reasons why Brazilians choose to migrate to Portugal are the language, climate, education, family ties, the possibility of acquiring citizenship and security (Oliveira, 2017; Reis, Sousa & Machado, 2021). This last factor has undoubtedly been one of the main reasons in recent years (Almeida et al., 2014; Reis, Sousa & Machado, 2021).

Furthermore, Portugal is one of the countries in Europe with the best policies on immigration and integration of immigrants (Almeida & Caldas, 2013; Almeida et al., 2014). The Foreigners' Act - which deals with the legal regime for entry, stay, exit and expulsion of foreigners from the national territory - allows various possibilities for regularization (cf. Treaty of Friendship, Cooperation and Consultation between the Portuguese Republic and the Federative Republic of Brazil, which includes an extensive legislative package, accessible through the portal of the Public Prosecution Service of the Portuguese Republic). Portuguese privileged relations with Brazil are historical, and there are several bilateral agreements (e.g. Agreement on Visas on Joint Passports; Cultural Agreement, Treaty of Friendship and Consultation; Agreement, by exchange of notes for the Abolition of the Payment of Residence Fees by Nationals of Each Country Resident in

the Territory of the Other; among others)<sup>1</sup>. These agreements facilitate day-to-day procedures and bureaucracy. Among the existing settlements, it can be highlighted: agreement on equal civil and political rights, social security agreement with the right to medical assistance, convention to avoid double taxation, among others. Data shows that, although diversified, Brazilian immigration in Portugal covers various social classes and is, above all, continuous - mainly since Portugal enables these immigrants to create opportunities for a safe stay (Reis et al., 2021).

As citizens' rights are reasonably preserved by cutting-edge Portuguese Migratory Policies, and the issue of language barriers is not a priority raised (the Portuguese of Portugal and of Brazil are quite similar), communicational specificities and intricacies continue to emerge, hindering a fully inclusion of this collective (Almeida & Caldas, 2013; Reis et al., 2021). Our European study (still ongoing) main goal focused in identifying gaps in cultural competence and accessibility to culture (in its multiple aspects) in host countries, understanding their cross-sectoral consequences; our main target along this manuscript is exploring these gaps – in cultural competence, cultural diversity acceptance and access to culture – in the Portuguese environment towards Brazilian community, considering the targeted population perspectives.

## 2 METHODS

This article relies on qualitative data. We believe that research focused on social inclusion and vulnerable populations is much more robust if exploring the personal and subjective aspects of the user's perspective, essential for a global understanding of the social reality. This approach has real impacts in well-being, involvement in leisure and cultural activities that promote integration in host communities and sense of belonging, subjective confidence, and perceived

1 For further information please see: Immigration Law, Law no. 23/2007, of July 4 with the amendments produced by Law no. 29/2012, of August 9; Bilateral Agreements with Community of Portuguese Language Countries (CPLP): Decree No. 34/2003, of July 30, 2003; Facilitation of the Movement of Persons, approved by Decree No. 43/2003, of September 24, which complements Decree No. 40/2003, of September 19.

competences. Additionally, research in this area consistently shows that soft indicators for migrants' integration and best succeeded social inclusion need to be measured considering the perspectives of the ones involved (Ager & Strang, 2008; Cetrez et al., 2020).

*Participants: sampling and recruitment*

A total of 38 participants were recruited, receiving support or in straight contact with civilian associations working with migrant individuals (NGO's) and/or from governmental institutions with the same aim. Approval for conducting the study was obtained from the Governing Boards and from the Ethics Committee of all institutions involved. The participants' recruitment process was initiated through contacts with the Governing Boards of the institutions and associations, after their approval of the study protocol. The questionnaires were gathered online, during the pandemics to best suit all parts' interests, after study approval. The participants were Brazilian immigrants, both men (10) and women (28) notified about the study and asked to participate in it. Participants were Brazilian migrants living in Portugal at the moment of the study, recruited between January and June 2021.

*Procedure*

Semi-structured online questionnaires with guidelines were conducted, evaluating the perceived needs and cultural challenges that potentially influence the perceptions of the migrant population, and that determine social integration, active and satisfactory citizenship, social opportunities in accessing goods and services, and participation in the social environment of the host society, in particular through cultural experiences. The methodology and general objectives of the study were explained to all participants in guidelines preceding the questionnaire, as well as its estimated duration (35 minutes). Questionnaires were analyzed by a well-trained researcher, graduated in psychology.

*Analysis of data*

Qualitative content analysis and categorization of emerged information were performed to make a systematic analysis of collected data, which involved transcription of the questionnaires' open questions and comments. Subsequently, a comprehensive interpretation of the resulting information was performed. Initial



categories were created (corresponding to the questions made) and later evolved with the analysis of new data (clustering of information). Some initial questions presented at the guidelines included: “How would you characterize your experience regarding employment in host country?”; “How confident are you to solve an issue with the immigration services?”; or “How confident are you to sign a new home lease?”; “Please use this space to list any issue that you are currently facing and/or to make any suggestion that, in your opinion, would increase your integration in the host country?”.

To maintain confidentiality, socio-demographic data were entered into a coding sheet, and the name of the participant replaced by an alphanumeric code. Quotes were chosen from migrants’ entries at questionnaire to best exemplify the main emerging themes.

### 3 RESULTS

#### *Socio-demographic characteristics of participants*

Participants were between 18 and 49 years old. Only two (out of 38) presented a level of education under graduation. Half of the sample were married, but only four people had children. Six people were living alone during the lockdown, and 23 were living unemployed or with a precarious work condition by the time they respond to the questionnaire.

The collected information emerged in three major themes: (a) Perception of Confidence, Safety and Belonging in daily life; (b) Resources and Experiences in Host Country (managing difficulties and suggestions of improvement); (c) Integration through Culture.

#### *a) Perception of Confidence, Safety and Belonging in daily life*

Since language does not occupy a prominent position in the pressing concerns of Brazilian immigrants (although all acknowledge a subjective fringe that can compromise the understanding and comprehension of more subtle meanings regarding full communication), we tried to assess relevant and complex dimensions, with a strong participation in the construction of the feeling of confidence, security and belonging - which are at the basis of any successful integration process.

Most Brazilian immigrants felt respected in their religious practices, maintaining customs and experiences as in their country of origin, or taking a more neutral religious approach by their own choice. The same sense of feeling respected was identified with regard to their moral beliefs. Religion is essential for the exercise of citizenship. Consistently, these results show a growing and accepted religious plurality in Portugal, which gave rise to a set of public policies, such as the Religious Freedom Law, which regulated a set of rights already enshrined in the Constitution of the Portuguese Republic, the Portuguese Civil Code, among other legal documents (Tomás, 2017).

When it comes to the involvement and active participation in activities of daily living that were gauged to measure perceptions of safety and trust, it was identified that almost all immigrants were confident or very confident to go shopping or to the grocery store, to buy a mobile phone or to open a bank account. Previous studies already stated that Brazilian immigration in Portugal, although diversified, covers various social classes, often in accordance with the economic situation in Brazil, but it is, above all, continuous, mainly due to the fact that Portugal enables these immigrants to create prospects for a safe move (Peixoto, 2008). Literature review has already stated the main mechanisms identified as facilitators of this process: acquiring nationality (length of stay in Portugal), and gradual adoption of the culture and customs of the host society - developing active and increasingly adapted social participation (Almeida & Caldas, 2013; Almeida et al., 2014).

Nonetheless, only a half were confident or very confident to go to a job interview, or to sign a house rental contract. Those dimensions tend, however, to appeal both to intra-individual dimensions (perceived competencies, having the needed skills to a desired work position) and a relative burden related to social determinants of integration (better explained below, under the category “*Resources and experiences in Host country*”)

Nearly a third of Brazilian migrants felt little or not confident at all to go to a medical appointment. “*Just as we have a right to a family doctor (general practitioner), if we could have an immigration aid worker or something like that, the interaction with health services, the comprehensiveness might be better.*” Identical results were previously

documented in several studies (Almeida & Caldas, 2013; Almeida et al., 2014), pointing towards differences in expectations of care, but mainly in distinctive structural organization regarding public health systems (SNS vs. SUS).

The same pattern was found when they had to address legal issues by attending the Aliens and Borders Service. *“The bureaucracy in Portugal is unpredictable and arbitrary, there are unclear rules and these are used (by administrative services) against the immigrant.”*

These results show that, regardless of inclusive and vanguard laws concerning immigration, there are aspects of the daily life of immigrants that continue to be hindered by barriers and information gaps, mostly in the articulation with services - public, governmental, and even health services (Almeida & Caldas, 2013; Almeida et al., 2014).

The barriers most frequently identified by Brazilian migrants as inhibiting a full active citizen participation in their social and everyday life contexts were fear of discrimination and lack of correct and usable information, both dimensions being reported by half of our sample. *“(major barriers identified were) Lack of respect for the immigrant, how to provide correct information; I also would like to have felt less prejudice and racism, especially in public services and organizations. Maybe knowing how to provide information to the employees and staff that attend us in those places would be helpful, because it seems that they don't know much when they have an immigrant to attend.”*

These issues, also corroborated by literature, turned possible to identify and to establish gaps not only in cultural competence, but also in accessibility to essential goods and services, - evidencing cross-sectorial consequences on the engagement of an agentic participatory citizenship (Wodak, 2016; Goñda et al., 2021) from Brazilian community in Portugal.

(b) *Resources and Experiences in Host Country (managing difficulties and suggestions of improvement)*

More than a half of our respondents found themselves in a worse than expected situation with regard to employment or access to the labor market. As for material resources and goods to be accessed to (e.g. a house, car, cloths...), almost a half of Brazilian immigrants referred being in a situation identical to what they expected; nevertheless, a

third of our sample reported to finding themselves in a worse situation than what they had anticipated. *“The salary issue is very complicated here: getting a good remuneration is difficult. Even with training and experience, Portuguese companies only offer the minimum wage.”* Work is the main factor for the whole migratory movement, being one of the most frequently measured indicators of integration or exclusion in the host society. All other areas of integration may fail if there is no successful economic and labour integration. Indeed, insertion in the labour market is a factor of socialisation and consequently of social integration. In this context, research points that it is preferable to have a precarious job with a low salary than a situation of unemployment, even with a reasonable compensation (Marques, 2006; Peixoto, 2008). Furthermore, Oliveira (2017) found there is a relationship between the resources that the individual was able to mobilize in the society of origin and his process of entry in Portugal; in addition, professional and class resources also have a relationship with the legal situation migrants have at the entry in Portugal. In snowballing, the subjects who are currently less capitalized from scholar and socio-professional point of view are the ones who entered Portugal in a more fragile situation because they are only qualified for the tourist visit to the country. On the contrary, those who currently possess high educational capital, those who work in highly qualified areas or belong to the most intellectualized social classes entered Portugal with visas corresponding to the intention of staying in the country for other purposes, especially professional ones.

When concerning interaction with others and social life, only a third of our sample manifested a worse than expected experience, despite the pandemics and lockdowns. *“My network is basically made up of immigrants, I have a few Portuguese friends. Apart from them, the population is very closed. I feel that the Portuguese people segment their relationship networks, for example, if the relationship is at work, they only relate at work. If the relationship happens at university, they only hang out at university.”*

Similarly, almost a third of our Brazilian migrants reported a negative adaptation experience, with more struggles, challenges, and difficulties than they initially awaited. *“My integration was far worse than expected due to covid pandemics.”* Like most international

studies on the impact of the pandemic on the migrant population, those conducted in Portugal also show a growing vulnerability of this group. Shaaban and colleagues (2021) found that immigrants were more prone to become unemployed during covid-19 pandemics when compared with natives, also being more subject to partially or total layoffs, to have their household income decreased due to the pandemics, to be more affected by financial difficulties and more likely to fall behind with bills. This often resulted, in practice, in having financial difficulties in buying hygiene products, to have financial difficulties in paying phone and internet, and they were also more likely to send their kids to school to have meals – putting themselves at a greater risk of contracting the disease (Shaaban et al, 2021).

Additional difficulties were identified and tend to reflect a certain degree of prejudice and stereotypes rooted in society, especially in older age groups (gender stereotypes). *“Portugal is still a very conservative and sexist country. As a Brazilian woman, I suffer discrimination from the host population. Nowadays, I already know how to behave, and I don’t keep quiet, I’m always polite and I point out if the situation has made me uncomfortable or offended. Without a doubt, my integration would be easier if the population didn’t have such consolidated stereotypes.”* The ethnicization of Brazilians in Portugal, both men and women, has contributed to the creation of specific employment niches for them. In this sense, the quality of friendliness largely associated with Brazilians can play a positive role, but in certain cases this ethnicization becomes a stigma for the immigrant (Malheiros, 2007; Peixoto, 2008). Gender research still shows that these stereotypes generated in society - through the Portuguese media, but also in a complex proliferation process of a sensual image of Brazilian women, often vehiculated through Brazilian television novels and artistic productions - favours and encourages the so-called sensuality and sexualization of the Brazilian woman. This conditioning of exotization, image and stereotype about the Brazilian woman (which also exists within Brazil, especially in relation to black and mulatto women) – despite increasingly fragmental and diluted in national territory - exerts an extra burden on women. The friendliness in conjunction with the stereotyped image of the Brazilian women leads them to, sometimes, be biasedly seen as prostitutes or “easy” in

many circumstances. This ends up conditioning women's daily life, which, even without taking into account her appearance, social class and race, is often seen as a possible prostitute or "call girl." (Malheiros, 2007; Peixoto, 2008).

Once again, the obstacles caused by misinformation and bureaucracy in the most varied sectors of citizen participation are evidenced: *"One cannot imagine the difficulty and bureaucracy to validate documents and gain access to the labor market."*; *"It has been a huge difficulty to validate my studies (academic degree)."*. Again, these results are consistent with previous studies, which corroborate a large bureaucratic problem in Portugal as a persistent barrier to access to essential information, which inhibits good reception and integration of migrants (Almeida & Caldas, 2013).

When asked for suggestions for improving or managing difficulties, we observed that a few Brazilian immigrants mentioned the need for support in approaching the labor market and strengthening their professional network. *"What I feel I need most, and what would result in a better integration of me here it would be support in labor market integration."*

Nevertheless, it is remarkable that an overwhelming majority of participants spontaneously mentioned the need to increase, improve and diversify the availability of cultural content. Cultural events (exhibitions, courses) and intercultural exchange (intercultural events, peer-to-peer programs), but also the multimedia offer of these contents (through TV and broadcasting services), as well as the promotion of and access to sports events and community centers (access to group activities, social support, public information) were the most reported activities which, in the perception of Brazilian migrants, would facilitate their integration in the host country. *"(what would improve my integration?) Events that encourage team sports or group music. Shows and theatre plays, music festivals... Fairs, exhibitions and festivals are great activities to promote integration. Unfortunately, we are living in a pandemic, which makes these kinds of events impossible..."*.

#### (c) *Integration through Culture*

When attempting to assess the perception of multilevel integration (community and social based levels) of the Brazilian participants, a certain harmonization of answers has emerged: half

of the sample positioned themselves as reasonably integrated at both levels, a quarter identified themselves as totally or fairly integrated, and another quarter as poorly or not integrated at all.

As far as Culture is concerned, namely from the point of view of integrating - by their own free will - cultural dimensions of the host country in their routines and daily experiences, roughly half of the Brazilian migrants expressed themselves to be a frequently or reasonably user of the Portuguese culture and habits. Additionally, when evaluating the migrants' perception of respect for the culture of their country of origin, the answers of our sample are evenly divided: one third stated that they feel the culture of their country of origin is often or fully respected in their host country, one third of the sample elected a neutral position, and another third declared that they feel their country's culture is little or not respected at all.

Taking Culture in a stricter sense, of access to material and immaterial goods and services, the spontaneous emersion of the concept as subjectively perceived by Brazilian migrants as a real enabler in the adaptation and integration to the host country is noteworthy. This result is corroborated during the questionnaire, when examining the attendance of cultural events of the sample (e.g. cultural and transcultural activities, both from the host country and the country of origin). Not only is evident that this collective is a strong consumer of cultural events and resources, but they also have a very strong perception regarding its value and role when it comes to their own paths of integration. *"I love cultural activities and feel they help us to comprehend the local culture. Through cultural activities we can more effectively understand the society we are in at the moment, to perceive the functioning, the social behaviors, and we have a greater immersion and knowledge about that culture."* In this line of reasoning, the cultural dimension of integration can be considered as key to the effectiveness of the whole of integration – thus, contributing to the establishment of integration soft cultural indicators and its necessary attention when considering Migrants' Integration Policies (Zapata-Barrero, Caponio & Scholten, 2017; Goñda et al., 2021). Getting involved in cultural projects and activities (as a spectator or as an artist) is a way to increase people's sense of community and belonging, helps to raise their self-esteem and develop several personal skills (Eurocities, 2016).

## 4 DISCUSSION

Previous studies have been pointing out that Brazilian immigrants often struggle in early integration in Portugal (due to both internal and external barriers), but over time and from one generation to the next, integration is usually well succeeded (Almeida & Caldas, 2013). The reduction of social contrasts of minorities is indispensable for considering migrants' integration, but not necessarily in relation to cultural contrasts, as diversity and integration are compatible – and desired! For the social axis of ethnicity, the class dimension, but also the socio-demographic and residential dimensions contribute fundamentally. On the cultural axis, on the other hand, the most relevant dimension is the orientation of sociabilities, although language and religion are also important. Observing how the two axes intersect, we may find situations of strong ethnicity, when relevant contrasts occur at the social and cultural levels, and, at the other extreme, situations of non-ethnicity, when social and cultural continuities assume maximum expression (Oliveira, 2017).

We can state that Brazilian immigration in Portugal tend to have successful outcomes in the sense of a reasonable integration (Almeida & Caldas, 2013; Almeida et al., 2014). Additionally, when concerning immigration policies, Portugal is considered to be one of the European countries with the best policies on immigration and migrants' integration. Nothing can be as beneficial to an immigrant as the granting of equal civil and political rights, equivalent to those of nationals – the concept we truly defend here as Inclusion. Additionally, a social and structural evolution of the Portuguese society towards a greater sensitivity to multidiversity is denoted over time, as it has - progressively, during the last decades - been transformed into a welcoming country rather than an exporter of human capital (changing from an emigration to an immigration reality) - becoming more culturally competent and accepting as society. Studies in this field consistently show that the best way to grow in cultural competence is to immerse individuals in learning about other cultures. Cultural competence isn't necessarily a skill that can be mastered because there are always new people and cultures to meet. The goal is far from being accomplished in Portuguese society, and it shouldn't be



to master cultural competence, but mostly to be willing to share our own culture and learn about the culture of others – and this interest is already being developed and studied in national territory (Moita & Silva, 2016; Silva et al., 2016). Nevertheless, additional national research and corresponding data in this area is much needed.

In the context of a pandemic and especially during confinements, where we were all deprived of the fundamental value of freedom and personal space, it is easy to understand the existence of an unmanageable and never before experienced display of stress factors that added up to each other (e.g. relational stress, loneliness and detachment, difficulties in managing uncertainty, emergence of latent conflicts, loss of income due to unemployment or layoffs, running over domestic tasks with professional commitments, various personal overloads in the management of all this) – that amount of distress could only aggregate vulnerability to those already in a more vulnerable situation – as migrants and ethnic minorities often are (IOM/MPI, 2021). Moreover, the lockdowns, imposed social distancing and the sudden and drastic reduction in the social, cultural, and recreational offers contributed to deepen gaps in social support, the fragmentation of some affective ties and the exponential increase in feelings of maladjustment and isolation (Fasani & Mazza, 2020).

On another hand, even though the artistic and cultural world have suffered immensely since the beginning of the pandemic, artistic and cultural activities have totally stopped only for a short period of time. In fact, after a short period of total cessation, some socio-cultural workers and artists – both locally and worldwide - have invented new ways to pursue activities, on-line and sometimes outdoors. These activities have proven to be very important in combatting social isolation and in fostering solidarity between individuals globally, migrants or not (Martiniello, 2022).

Focusing on the subject of our analysis - the cultural dimension of migrant integration – it is imperious to comprehend how highly based on subjective perceptions (rather than objective differences) it is, and how it can be conceptualized at individual or institutional levels (Penninx & Garcés-Masareñas, 2016). Integration through culture refers to the sensitive and heterogeneous matter of norms and values, as well as the (ethnic and national) identity of both migrants

and the receiving societies (Goñda et al., 2021; Shain, 2018). Here, we defend cultural integration as a process of mutual acceptance of cultural differences and of bilateral engagement in including migrants into the society's culture in terms of norms and values recognized as characteristic for specific host society as a whole (Vlachau, 2017; Wodak, 2016).

When studying the process of migrant integration, as we pointed out earlier, appropriate indicators make it possible to carry out not only several group comparisons, but also to establish different stages in the integration process or the effectiveness of integration policy (MIPEx, 2017). Nevertheless, we would like to highlight the idea that integration policies for migrant populations, distinct groups of migrants and ethnic minorities cannot be fully adjusted without taking into account the needs and perspectives of those targeted, the difficulties perceived from their point of view, which they sense in their contexts and communities, as well as aspects that are difficult to measure through questionnaires and harder/ numeric instruments - subjective dimensions of well-being, security, belonging... which - we hope – ultimate result in the feeling of full integration (inclusion). Therefore, our study focused on assessing soft indicators (e.g. subjective, individual, self-reported convictions and perceptions), as following governments increasing attention to the personal dimensions of integration: specifically approached here through culture (European Commission, 2016; European Union, 2017).

Our results showed us very interesting data regarding *everyday integration* concept - which allows us to foresee that, despite its avant-garde legislation, Portugal still shows several gaps hindering immigrants' integration, as discussed below.

When considering “Resources and Experiences in Host Country”, aside the already mentioned negative pandemic-related events, certain experiences of discrimination and stereotyping continue to emerge, namely when considering gender roles. Despite the enlargement of Portuguese consciousness when it comes to gender biases and stereotyping, we would like to highlight that changing a collective mentality that is still based on traditionalist functional structures is lengthy and an unfinished process. As we are aware of the latency of this stereotype, we believe that - through the improvement

of cultural competence and the immersion of Portuguese society in a multicultural reality - the discriminatory effects directed towards Brazilian women are becoming less frequent and less felt. This observation is corroborated by Oliveira, who did not find in her studies any effects of discrimination of Brazilian migrants associated with gender (Oliveira, 2017).

Our Brazilian participants highlighted several difficulties regarding employment and/or access to the labour market, as well as receiving a satisfactory income. We can confidently state that these are also the most significant and frequent complaints of the Portuguese population group, within the same age sector and with the same educational level. Perceptibly, being at a minority group, Brazilian migrants must feel those struggles with a wider intensity. Therefore, as pointed out by one of our participants, it would be incredibly helpful if our migrants could count with a of (cultural) mediation and interface to the Portuguese reality, which would allow a faster and more effective access not only to the labour market - but also to the remaining goods and services, rights and responsibilities guaranteed by law (Wodak, 2016). Additionally, national research has been focusing on characteristics of immigrant groups, namely regarding their availability for geographical mobility, which tends to be greater than that of nationals. On the one hand, studies show that in some situations this mobility is mostly of the horizontal type, allowing a greater geographical rotation according to needs. On the other hand, it allows the most qualified Brazilian immigrants to begin ascending professional trajectories, through a longer permanence at work which in turn provides them with greater job security. If initially the integration of these immigrants takes place in the lowest echelons of the professional hierarchy, there are later improvements, already observed in other migratory contexts (Peixoto, 2008). Additionally, as previously explored, there seems to be a certain line of continuity in migrant trajectories that links the characteristics of individuals in their society of origin, the legal means they mobilized to migrate and their current characteristics (Oliveira, 2017).

Moreover, it is relevant to reflect on the importance of Culture in its multiple dimensions – as these were the most reported activities that, in the perception of Brazilian migrants, would facilitate their

integration in the host country. Our results corroborate an idea we aim to point out: that Culture, social affairs and migration and integration departments within a city administration and / or local organizations need to work together to achieve a cross-sectoral cooperation. Public spaces in cities are ideal meeting places for cultural activities aiming to foster intercultural dialogue. The presence of institutions such as libraries or theatres outside their physical buildings encourages public participation; additionally, planning activities for children is deeply engaging for parents and promote a subliminal solidarity that fosters similarities and belonging (Eurocities, 2016).

As our Brazilian participants acknowledged, through cultural activities, migrants can more effectively understand the society they arrived at, to perceive its functioning, the social behaviours, and have a greater immersion in its values, norms and widespread culture. Only through that immersion, migrants can comply to an intangible subjective social comprehension that enables the previously mentioned sense of belonging.

## 5 CONCLUSION

Against the backdrop of multiple barriers and intersectional inequalities, integration through culture has a crucial role to play as it has a positive impact on making migrants feeling comfortable at their new environments and promotes cultural learning. It equips them with knowledge and confidence to actively participate in the life of the host societies and it is a necessary condition for and positively impacts on their chances to participate in education and labour market. Moreover, it positively contributes in strengthening the ties among the community, living together and fighting stereotypes (Cetrez et al, 2021; Eurocities, 2016).

Looking at migrants and their descendants as consumers and producers of artistic goods is also a way move beyond the victimising and stigmatising approaches that are very common nowadays. The lens of arts and culture acknowledges migrants' agency, helping to "rehumanize" migrants, who are too often reduced to impoverished unequal statistics (Martiniello, 2022).

Participating in cultural activities provides migrants a playful and relaxed context where they can interact and establish new relationships with local people, learn linguistic subtleties and express their cultural identities in their new countries. Cultural activities offer protected spaces, essential for migrants to acquire skills with significant impacts on understanding the host culture, which is reflected in the sense of personal autonomy and competence, well-being, perceived ability to use goods and services guaranteed by law, but also improving their perceived confidence for employability – thus resulting in a more effective and successful integration (Eurocities, 2016; European Commission, 2016).

**Funding:** Co-funded by Erasmus+ Programme, European Commission: “A new approach on cultural learning for promoting the social inclusion of migrants and refugees (NEST)” (612187-EPP-1-2019-1-EL-EPPKA3-IPI-SOC-IN).

## REFERENCES

Ager, A., & Strang, A. (2008). Understanding integration: A conceptual framework. *Journal of Refugee Studies*, 21, 166-191

Almeida, L.M. & Caldas, J.P. (2013). Migration and maternal health: experiences of brazilian women in Portugal”. *Revista Brasileira de Saúde Materno-Infantil*, 13(4): 309-316.

Almeida, L.M., Casanova, C., Caldas, J., Ayres-de-Campos, D. & Dias, S. (2014). Migrant women's perceptions of healthcare during pregnancy and early motherhood: addressing the social determinants of health. *J Immigr Minor Health*. 16(4): 719-23. doi: 10.1007/s10903-013-9834-4. PMID: 23616047.

Blanchet-Garneau, A. & Pepin, J. (2015). Cultural Competence: A Constructivist Definition. *Journal of Transcultural Nursing*, 26(1), 9-15. DOI:10.1177/10433659614541294.

Cetrez, Ö., DeMarinis, V., Pettersson, J., Shakra, M. (2020). Integration: Policies, Practices, and Experiences, Sweden Country

Report. *RESPOND Working papers Global Migration: Consequences and Responses*, Uppsala University. <http://doi.org/10.5281/zenodo.3951714>.

Cetrez, Ö., Atchulo, F., Garosi, I., Hack, A. & Rajon, M. (2021). Integration and Determinants of Psychosocial Health. *RESPOND Working papers Global Migration: Consequences and Responses*, Uppsala University.

DeMarinis, V., Grzymala-Moszczynska, H., & Jablonski, P. (2002). Polish Children and Refugees: The role of religious culture and gender in the host community acculturation process. In D. Moberg & R. Piedmont (Eds.), *Research in the Social Scientific Study of Religion*, 12: 23-52. Leiden: Brill.

Diehl, C., Lubbers, M., Mühlau, P. & Platt, L. (2016). Starting out: New migrants' sociocultural integration trajectories in four European destinations". *Ethnicities*, 16(2): 157–179.

Duszczyk, M., Pachocka, M. and Pszczółkowska, D. (2020). *Relations between Immigration and Integration Policies in Europe. Challenges, Opportunities and Perspectives in Selected EU Member States*. Routledge: London/New York.

Eurocities (2016). *Guidelines for cities on the role of culture in the integration of refugees, migrants and asylum seekers*. <http://www.eurocities.eu/eurocities/allcontent/Guidelines-for-cities-on-the-role-of-integrationof-migrants-refugees-and-asylum-seekers-WSPO-AE7DMC>

European Commission (2016). *Action Plan on the Integration of Third Country Nationals*. European Commission: Brussels. <https://ec.europa.eu/migrantintegration/news/europeintegrationactionplanofthirdcountrynationalslaunched> (accessed 11 November 2021).

European Union (2017). *How culture and the arts can promote intercultural dialogue in the context of the migratory and refugee crisis*. <https://bookshop.europa.eu/en/how-culture-and-the-arts-can->

promote-intercultural-dialoguein-the-context-of-the-migratory-and-refugee-crisis-pbNC0117271/

Fasani, F. & Mazza, J. (2020). *A vulnerable workforce: migrant workers in the Covid-19 pandemic*. JRC Technical Report. Brussels: European Commission. (<https://publications.jrc.ec.europa.eu/repository/bitstream/JRC120730/online.pdf>).

Foner, N. and Simon, P. (2015). *Fear, Anxiety, and National Identity*. New York: The Russell Sage Foundation.

Gońda, M., Pachocka, M. and Podgórska, K. (2021). Measuring the Cultural Dimension of Migrant Integration and Integration Policy in the European Context: Dilemmas and Discussions. *Int Migr*, 59: 241-262. <https://doi.org/10.1111/imig.12757>.

IOM (2017). *Integration and Social Cohesion: Key Elements for Reaping the Benefits of Migration*. Global Compact Thematic Paper - Integration and Social Cohesion. [https://www.iom.int/sites/g/files/tmzbd1486/files/our\\_work/ODG/GCM/IOM-Thematic-Paper-Integration-and-Social-Cohesion.pdf](https://www.iom.int/sites/g/files/tmzbd1486/files/our_work/ODG/GCM/IOM-Thematic-Paper-Integration-and-Social-Cohesion.pdf)

IOM/MPI (2021). COVID-19 and the State of Global Mobility in 2020. <https://publications.iom.int/system/files/pdf/covid-19-and-the-state-of-global.pdf>

Le, H., Polonsky, M., & Arambewela, R. (2015). Social Inclusion through Cultural Engagement among Ethnic Communities. *Journal of Hospitality Marketing & Management*, 24(4), 375–400.

Malheiros, J. (2007). Os brasileiros em Portugal: a síntese do que sabemos. In: *Imigração brasileira em Portugal*. Lisboa: ACIDI , 11-37.

Marques, R. (2006). Os fluxos migratórios: da Gestão a uma melhor integração. *Cadernos Sociedade e Trabalho*, 6, 25-30.

Marsella, A. (2005). Culture and Conflict: Understanding, negotiating and reconciling, conflicting constructions of reality. *International Journal of Intercultural Research*, 29, 651-673.

Martiniello, M. (2022). Researching arts, culture, migration and change: a multi (trans)disciplinary challenge for international migration studies. *Comparative Migration Studies*, 10, 7. <https://doi.org/10.1186/s40878-022-00281-5>

MIPEX (2017). *Policy Indicators List and Questionnaire*. <http://www.mipex.eu/methodology> (accessed 10 November 2021).

Moita, M. & Silva, A. (2016). Modelos de Competência Cultural: Uma Análise Crítica. *Pensar Enfermagem*, 20(2), 72-88.

Oliveira, M. (2017). Inscrições no Espaço Social: O Imigrantes Brasileiros no Grande Porto. *Sociol Antropol*, 7 (2). <https://doi.org/10.1590/2238-38752017v726>

Oppedal, B., Røysamb, E., & Sam, D. (2004). The effect of acculturation and social support on change in mental health among young immigrants. *International Journal of Behavioral Development*, 28(6), 481-494.

Organista, P., Chun, K., & Marin, G. (1998). *Readings in Ethnic Psychology*. New York: Routledge.

Peixoto, J. (2008), Imigração e mercado de trabalho em Portugal. *Revista Migrações*, 2, 19-46.

Persaud, A. (2017). Geopolitics: Needs of migrants, refugees, and asylum seekers in Europe. *TPM-Testing, Psychometrics, Methodology in Applied Psychology*, 24(3), 399 407.

Penninx, R. & Garcés-Mascareñas, B. (2016). The Concept of Integration as an Analytical Tool and as a Policy Concept, in B. Garcés-Mascareñas and R. Penninx (Eds.), *Integration Processes and*



*Policies in Europe. Contexts, Levels and Actors* (pp.11-30). New York: Springer. <https://doi.org/10.1007/978-3-319-21674-4>.

Reis, S., Sousa, P. & Machado, R. (2021). Relatório de Imigração, Fronteiras e Asilo 2020. Serviços de Estrangeiros e Fronteiras (SEF): Oeiras.

Robila, M. (2018). *Refugees and Social Integration in Europe*. United Nations Department of Economic and Social Affairs: New York.

Rottmann, S. (2020). Integration Policies, Practices and Experiences. Country Report Turkey, *RESPOND Working Papers: Global Migration: Consequences and Responses*. Retrieved from <https://respondmigration.com/>

Shaaban, A., Abecasis, A., Fronteira, I., Muggli, Z., Amado, R., Vaz, D., Silva, A. & Martins, M. (2021). Socioeconomic impact of COVID-19 among immigrants in Lisbon Region. *Tropical Medicine & International Health*, 6 (1), 14.

Silva, A., Piedade, A. Morgado, M. & Ribeiro, M. (2016). “Mediação Intercultural e Território: estratégias e desafios”. *Entre Iguais e Diferentes: a Mediação Intercultural - Atas das I Jornadas da Rede de Ensino Superior para a Mediação Intercultural*. Lisboa: Alto Comissariado para as Migrações.

Simonsen, K. (2018). What It Means to (Not) Belong: A Case Study of How Boundary Perceptions Affect Second-Generation Immigrants’ Attachments to the Nation. *Sociological Forum*, 33(1).

Schain, M.A. (2018). *Shifting Tides: Radical-Right Populism and Immigration Policy in Europe and the United States*. Migration Policy Institute: Washington, DC.

Scholten, P. & Penninx, R. (2016). The multilevel governance of migration and integration, in B. Garcés-Mascreñas and R. Penninx (Eds.), *Integration Processes and Policies in Europe. Contexts, Levels and*

*Actors* (pp.91-108). Springer: New York. <https://doi.org/10.1007/978-3-319-21674-4>.

Tomás, M. (2017). Pluralidade Religiosa, Fluxos Migratórios e Cidadania. *Revista Lusófona de Ciência das Religiões*, 20, (pp. 469-482).

Vlachou, M. (2017). A Inclusão de Migrantes e Refugiados: O Papel das Organizações Culturais. Fundação Calouste Gulbenkian: Lisboa.

Williams, R. (1994). The Analysis of Culture. In J. Storey (Eds.), *Cultural Theory and Popular Culture – A Reader* (pp. 48-56). Georgia: The University of Georgia Press.

Wodak, R. (2016). Integration and culture: From “communicative competence” to “competence in plurality”, in R. Bauböck and M. Tripkovic (Eds.), *The integration of migrants and refugees. An EUI Forum on Migration, Citizenship and Demography* (pp.116–138). Florence: European University Institute, Robert Schuman Centre for Advanced Studies.

Zapata-Barrero, R., Caponio, T. & Scholten, P. (2017). Theorizing the “local turn” in a multilevel governance framework of analysis: a case study in immigrant policies. *International Review of Administrative Sciences*, 82(2): 241–246.

ISBN: 978-950-34-2426-1

CHAPTER

# 3

**BALANCE OF REGULATION INNOVATION AND  
HUMAN RIGHTS PROTECTION IN CONSTITUTIONAL  
FRAMEWORK: IN PERSPECTIVE OF CHINA'S  
ANTI-COVID19 CAMPAIGN**

Yin Jia

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter3>

## BALANCE OF REGULATION INNOVATION AND HUMAN RIGHTS PROTECTION IN CONSTITUTIONAL FRAMEWORK: IN PERSPECTIVE OF CHINA'S ANTI-COVID19 CAMPAIGN

*Yin Jia*

**Abstract:** By discussing the natural characteristics of the new types of coronavirus and the non-specificity of its operating mechanism, it clearly illustrates that the current response measures in countries around the world in response to the pandemic should focus on the relationship between man and nature. Therefore, effective legal measures must be taken to effectively control the epidemic. On the premise of spreading, the relationship between epidemic prevention as well as the restriction measures and the protection of citizens' individual rights should be effectively balanced. In China, such measures are known as the digital tracing in the view of Big Data, human face identification, etc. From big data to Lockdown, both traditional physical segregation and technical means are functioning, and technological use is taking the leading role. In Michel Foucault's view, the public power itself should be taken carefully. However, evidence shows that the side effect could also be handled and controlled in the framework of China's current Constitution. This article demonstrates the scientific nature of the dynamic clearing policy adopted by the Chinese government in epidemic prevention, which is always known as "COVID dynamic zero" and also emphasizes the need to pay attention to the legal procedures of specific measures in epidemic prevention, so as to maximize the protection of citizens' rights from illegal violations in order to make the very balance. The viewpoints of this paper comprehensively and systematically explain the legitimacy of China's epidemic prevention policy, which will help the international community to understand the legal and reasonable basis of China's epidemic prevention policy more. Nevertheless, a better way out of this crisis is international cooperation in epidemic prevention.

**Keywords:** balance, Human rights protection, COVID-19, constitutional framework

## **1 THE FORMATION OF CHINA'S EMERGENCY MANAGEMENT LEGAL SYSTEM**

### **How to understand china's anti-covid19 method and measures**

The first truth is ,we share the same common sense and scientific knowledge of the public health and disease control as the world also does. The concept of public health: its general definition and development are as follows:

In 1920, Professor Winslow of School of Public Health of Yale University defined public health as: public health is the science and art of preventing diseases and curing diseases, prolonging life span and promoting health through organized social efforts. In 1952, WHO adopted this definition. In the history of public health in the West, the Ottawa Charter (hereinafter referred to as the Charter) is often regarded as the symbol of the official establishment of "new public health". The Charter (1986) defines new public health as all activities to protect people from disease and promote people's health at the social level under the leadership of the government. At the same time, the Charter points out that the basic conditions for health are peace, housing, education, food, income, a stable ecological environment, sustainable resources, and social justice and equality. The trend of professional understanding of the COVID-19 in china is basically formed by a team of both public health administration officials and famous and influential experts, who share the up-to-date new research of the medical frontiers with the joint effort of scientists of all the world, such like WHO.

## **2 HOW A DIFFERENT STORY BEGINS: CHINA IS A GIGANTIC COUNTRY WITH CONSIDERABLE POPULATION SCALE**

Ever Since people talk about something in China, the "scale" aspect should always be taken into consideration. With Billions people who live in high density in metros and counties in China, the difficulty of defeating the invisible covid-19 virus is many

times uneasy comparing to other countries. Since the outbreak of COVID-19, all provinces, autonomous regions and municipalities in China have issued health codes one after another. By applying digital technologies such as big data, meet the needs of normal prevention and control, thus facilitating people's life, work and travel during the epidemic. However, while the health code facilitates the flow of people in various regions, the obstacle of its cross regional universality has gradually become a "roast point". The fragmented database on which the health code is based not only restricts the cross regional flow of people, but also highlights the deficiencies in the management of China's public emergency database at the national level, that is, the lack of a unified and effective public emergency database and its sharing mechanism. The lack of a unified public health emergency management database and its sharing mechanism has, to a certain extent, restricted the nationwide resumption of work and production, and the regionalization policy of "beggar thy neighbor" and "go it alone" reflected behind it is also not conducive to the prevention and control of the epidemic situation and the national unified coordination of emergency management of public health events. All these facts make a clear answer to the unique modal of China's choice of the government.

### **3 ONE OTHER SIDE OF THE UNIQUE CHINA: IT HAS REAL MODERN TECHNIQUE AND CAPACITY**

The progress of information technology and the awakening of citizens' legal awareness have promoted the economic and social development, but also put forward new requirements and higher standards for government information disclosure. Research shows that the more unexpected the incident is, the more timely, sufficient and effective the information disclosure is, and the possibility of spreading rumors and believing rumors in a wide range will be minimized. Therefore, it is necessary to strengthen the public health emergency information disclosure and promote the smooth channel of information submission. The Health Knit, the tracing and tracking of traveller by big data and telecommunication signal can automatically

identify one individual's location, which is accurate to seconds and meters in the map. It is hard to imagine for many researchers beyond the territory of Mainland China. Nevertheless it is the everyday life of the ordinary Chinese people, who are already adapted to it. That is also evidence of the modern level and capacity of this rapidly developing country.

#### **4 WHY NECESSARY ENFORCEMENT MEASURES ARE NECESSARY AS A BASIC SUPPORT**

To be honest, at the very beginning of China's anti-COVID-19 campaign in the early 2020, the information release of public health emergency management is still insufficient, and the information submission channel is not smooth, which was not only in East Asia, but a universal question. Lack of public health emergency management database and its sharing mechanism, lack of medical stuff and equipments such as respirator, masks and other resources. We see crying and desperate patients on the TV reviews. Lucky enough is that, the huge developing country has ability to recover itself rapidly. By organizing the manufacture of basic materials, by relocating the medical stuff as volunteers and motivating the citizens and public servant to aid the regions in need, not to forget the "Lockdown" or "quite down" of certain areas and industries make tremendous effect as well as sacrifice, both economically and politically. Even so, China has made it to win the battle as a whole.

#### **5 THE REASON BEHIND THE HISTORY OF GROUP PREVENTION AND MASS CONTROL**

The so-called "group prevention" is a movement, which means the mass and whole society make the control effectual.

In the early 1950s, China took "combining health work with mass popularity movement" as one of the working policies of medical and health care. The so-called patriotic health campaign launched in the same period put forward the task of improving the rural health situation and protecting the rural labor force. The government extensively mobilized the society to launch a health campaign with the main contents

of eliminating the "four pests", emphasizing health and eliminating diseases. In the 20th century and the 20th century, the environmental improvement and sanitation campaign of "two management and five changes" was widely carried out in rural areas. The government guided and mobilized rural residents to manage their feces and garbage, manage drinking water sources, and improve toilets, livestock pens, wells, stoves and the environment to control and eliminate the breeding conditions of mosquitoes and flies and reduce the transmission factors of diseases. The incidence rate of epidemic cerebrospinal meningitis, encephalitis B and dysentery has been significantly reduced in the areas where the "two control and five reform" campaign was carried out.

Group prevention and control played an important role in the control of pestis in China in the 20th century. At that time, grass-roots prevention and control workers used radio, newspapers, wall newspapers, meetings and other forms to publicize the hazards and prevention knowledge of pestis to the residents in the epidemic area and mobilize the society to actively carry out prevention and control work. In order to prevent rats and fleas from breeding and inhabiting, residents in the epidemic area not only pay attention to cleaning and sanitation, keep food and grain properly, but also block and smooth the holes in the kang, wall and ground where materials are available, and place indoor furniture half to one foot away from the wall and ground to prevent fleas from breeding, so as to find rat holes and catch rats. The residents of the epidemic area shall be responsible for catching and fighting wild rats that have been preserved and spread pestis in different areas. When dead rats are found, residents will immediately report to the local epidemic prevention agency. Most of the pestis in China is found by residents' reports and sending dead rats for examination.

## **6 RARE BUT FAIR:CHINA'S WAY COMPARING TO THE OTHER COUNTRY**

### **The "China-model" as real rare sample of anti-covid mechanism**

Fair enough to conclude that ,the way and method of China's "covid-zero" and other detailed measures to defeat the Covid-19 has no



competitor in the world. It is a rare sample that China's government plays the role of government in the public health service system. The unique role, however, has a reason. From the statistics of authorities, only 15 countries are equipped with specialized personnel and budgetary arrangements in view of the differences in the power, reserves and response capacities of mechanisms. While the market economy itself aims at profit seeking, the public health is a total cost and deficit of the country, where capitalism itself must fail, which is also called market failure or insufficiency. China's country nature, objects and mission of CPC would not let that failure happen. Thus it leads to a war of no surrender.

## **7 COMPARED WITH THE PUBLIC HEALTH SERVICE SYSTEM IN THE UNITED STATES**

The public health service system of the United States emphasizes the role of the participation of non-governmental entities. A 1988 report of the Institute of Public Health pointed out that "public health needs to include a wider range of forces: Government officials, medical service providers, health professional educators, the 'third sector' concerned with public health services, and even ordinary citizens interested in maintaining and improving community health must work together. ". The United States public health service system also pays special attention to the application of high-tech. It is characterized by giving full play to high-tech advantages and promoting the public health system to be intelligent and remote. Since 2014, the US government has pursued "more rapid, more intelligent and more perfect" public health monitoring. On the one hand, the relevant departments have delineated the direction of future funding, and the national legal infectious disease monitoring system, electronic medical record reporting system, syndrome detection system for detecting community health threats, public health data science team, etc. are all regarded as improvement targets.

## **8 COMPARED WITH THE PUBLIC HEALTH SERVICE SYSTEM IN CANADA**

Compared with the Canadian public health system, Public Health Information System (PHIS) is a system that can automatically integrate user health records and reports, including immune tracking, infectious disease case management and monitoring, and can support the intervention, tracking, follow-up, medical record management and disease reporting of public health providers. It is a solution for detailed and accurate information management of health events, and can realize systematic management of information related to various health events. It is designed to be used centrally, which can provide a safe channel for multiple public health providers to use the same customer record at the same time, so that infectious disease monitoring and immunization information can be shared; According to the detailed requirements of different users, the system can be used independently or combined with other existing auxiliary systems. The system was later upgraded to Panorama, mainly because the Canadian government learned from the SARS crisis and began to comprehensively build the Public Health Surveillance IT Application (Panorama), which aims to solve the information technology gap. The system can fully collect, share and analyze a wide range of health information, and not only plays a vital role in assisting health care personnel in managing public health items, It can also help public health personnel effectively manage disease cases and disease outbreaks, immunization and vaccine storage.

## **9 COMPARED WITH THE PUBLIC HEALTH SERVICE SYSTEM IN THE EU**

The EU member states have "health inequalities" in the health field. Health is determined by a series of personal, social, economic and environmental factors. The World Health Organization points out that the social determinants of health include "the conditions of people's birth, growth, work, life and age, as well as the system for dealing with diseases". This, in turn, is influenced by broader forces,

including economic, social policy and political, as well as the allocation of funds, power and resources at the global, national and local levels. As far as the EU is concerned, "health inequality" persists in the health field within and among the 27 member states. EU institutions and people have regarded this issue as one of the most important challenges in the EU public health field. In the face of the raging COVID-19 epidemic, factors such as the medical resources owned by Member States and the ability of the medical system to respond to public health emergencies have led to differences in the effectiveness of countries in responding to the epidemic, further affecting the EU's effective response to cross-border health threats. According to the statistics of OECD in 2017, the number of hospitals, the total number and density of beds, the number of intensive care beds and the number of ventilators per 100000 people in Germany are far higher than those in some European neighbors. For example, Germany had about 28000 intensive care beds before the epidemic, and increased to about 40000 during the epidemic. There are 33.9 ICU beds per 100000 people on average, and the number of ICU beds per capita ranks first in Europe. Spain and Italy, which are seriously affected, have 9.7 and 86 for every 100000 people, respectively. The number of ventilators in Germany has also increased from 20000 to 30000, while the number of ventilators available in France is only about 5000. Moreover, Germany has advantages in virus detection, and laboratories all over the country can independently diagnose and test COVID-19. Relatively sufficient and high-quality medical resources are one of the key factors for the low mortality rate of Germany's COVID-19.

## **10 COMPARED WITH THE PUBLIC HEALTH SERVICE SYSTEM IN LATIN AMERICA**

Compared with Latin American countries, Latin American countries have signed the World Health Regulations. As States parties to the Regulation, these countries have the national obligation to actively respond to public health emergencies. According to the regulations, its main obligations include: preventing and preventing the international spread of diseases, conducting appropriate public health early warning, analyzing the risks faced by public health and avoiding

unnecessary intervention in international travel and trade. According to the Regulations, the specific public health responsibilities of the State include: establishing and maintaining the operation of special functions of public health; Carry out necessary detection, analysis, early warning and communication on public health events, and timely inform all citizens; Use special international channels of public health events to communicate information and maintain transparency. Which means a lot to the researchers and other country to learn from.

## **11 WAY TO BALANCE: HUMAN RIGHTS PROTECTION AND EFFECTIVE CONTROL OF THE PANDEMIE**

### **Human rights protection in constitutional framework**

The principle of safeguarding fundamental human rights is written in the constitution. The traditional theories of national security and public security are based on the principle that national security and public security mainly safeguard public interests. However, under the concept of biosafety, biosafety has the characteristics of both public security and individual rights. For example, any emergency epidemic prevention measures taken by the government after the outbreak of COVID-19 may be directly related to everyone's daily property rights and individual rights, which is representation of human rights.

#### **11.1 Appropriate measures with proportionality**

The isolation and other executive measures taken by the government for the needs of epidemic prevention are not only to maintain public safety, but also directly related to everyone's vital interests. Any mistake in the prevention and control work may directly cause the right to life and health of each person to be infringed and threatened by viruses. Unlike general public security threats, the threat to the right to life and health of each individual may be a high probability event or a low probability event. Therefore, the government's epidemic prevention task is directly related to every individual's right to life and health. Before the epidemic threat is

lifted, any measures taken by the government's epidemic prevention work are directly related to every individual's specific right to life and health. Therefore, epidemic prevention measures such as isolation should be supported and respected by every individual, and should be exempted from responsibility in a broader sense afterwards.

### **11.2 Personal data protection and labour rights support**

According to the recommendations of WHO, the Plan divides the influenza pandemic into six phases, and specifies the goals and actions of each phase. In the "pre pandemic" (phases 1-2): provide health information to the public and promote the adoption of universal health standards; Take preventive measures to limit the spread of viruses in communities, schools, nursing homes and other meeting places; Formulate plans and measures to control the spread of viruses in the hospital, provide sufficient personal protective equipment (PPE) for health personnel, check the functions of the disinfection system, disinfect patients or suspected cases, and determine appropriate isolation plans; Check the availability of isolation beds, negative pressure rooms and mechanical equipment used to rescue patients.

### **11.3 Toward National organisation and good governance**

Finally, we should actively build a standardized public health emergency management system.

And promoting the cooperation and coordinative mechanism is forever crucial .continue to serve the emergency management cooperation of both sides by improving the high-quality level of the "the Belt and Road" jointly built by China and Latin America. Include emergency management into the scope of "policy communication", and build infrastructure related to emergency management through "facility connectivity".

### **11.4 To strengthen the allocation of urban public health resources**

We should give full play to the people-oriented spirit, make the allocation of resources closely related to the population

distribution and scale, so as to achieve seamless connection between the supply and demand of medical services, effectively improve the efficiency of resource utilization, and maximize the effective coverage of limited medical and health resources to the population. The first is to fundamentally change the pattern of excessive concentration of medical and health resources in urban centers, but to take the spatial distribution of population as the basic allocation principle, so that resource allocation and population distribution are closely related. Second, we should break the pattern of medical and health resources allocated according to administrative levels, but allocate them according to the size of urban population to fully meet medical and nursing needs. Thirdly, we should strengthen the allocation of community health resources, so that community health centers and health stations can better serve the community, so as to reduce the pressure of the tertiary hospitals. Third, we should strengthen the allocation of health resources in suburban and rural areas.

ISBN: 978-950-34-2426-1

CHAPTER

# 4

## **PANDEMIC IMPACTS ON CONTEMPORARY SLAVE LABOR FIGHTING IN BRAZIL**

Emerson Victor Hugo Costa de Sá • Valena Jacob Chaves  
Caio Henrique Faustino da Silva

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter4>

## PANDEMIC IMPACTS ON CONTEMPORARY SLAVE LABOR FIGHTING IN BRAZIL

*Emerson Victor Hugo Costa de Sá*  
*Valena Jacob Chaves*  
*Caio Henrique Faustino da Silva*

### 1 INTRODUCTION

The COVID-19 pandemic intensifies political, economic, and social problems that require adaptations in the most diverse segments to guarantee human rights protective regulation and ensure the legal rules applicability. Consequently, work conditions are especially affected by labor market changes, perceived through life precariousness, and accentuated inequalities, situations that facilitate abuses and increase necessity for state intervention.

Labor precariousness is even more pronounced in the period of rising unemployment and decreased income, a situation that has been mitigated but not surpassed by an emergency aid granting policy limited benefits to lower levels and more limited scope than those observed in developed countries. In effect, the unemployment rate varied from 10.5% in the period from 03 to 05/05/2020 to 14.4% in the week from 20 to 26/09/2020, according to the most recent data from PNAD-COVID released by IBGE<sup>1</sup>. This means an increase of 37.14% in the underutilization workforce rate.

The survey estimates that 15.3 million people did not seek work because of the pandemic or due to lack of work in the locality (reduction of 20.21% in the period analyzed), and 7.9 million people working remotely (a decrease of 7.24% between May and September 2020). Among the employed persons, 24.2% had a lower income than they normally received (before da pandemic). Finally, in 43.6% of households,

---

<sup>1</sup> Instituto Brasileiro de Geografia e Estatística - IBGE. **Pesquisa Nacional por Amostra de Domicílio voltada à COVID-19**. From: <https://covid19.ibge.gov.br/pnad-covid/trabalho.php>. Accessed on Oct. 30, 2020.



the emergency assistance receipt was reported, which comprised an average value of R\$ 894.00, with emphasis on the North and Northeast region states. The states located in these regions presented the most significant emergency assistance receipt rates, which could represent a social inequality and income concentration in relation to other regions.

**Figure 1 - Households that reported the emergency assistance receipt.**



September 20 to 26, 2020.

This context raises the demand for a labor administrative police power performance, in order to ensure labor law efficiency, with special regard to an employment primacy, which conceives a minimum standard according to human dignity avoiding its reification, as stated by the International Labor Organization (ILO) supportive commandment, under the terms of item I, “a”, of the Annex to the Philadelphia Declaration (ILO, 1944).

As an authoritative behavior for all its members, the decent work encouragement results from the convergence of the four strategic objectives of the ILO, notably (i) respect to workplace rights, especially those defined as fundamental (freedom of association, right to collective bargaining, elimination all forms of occupation and workplace discrimination, as well as the forced and child labor

eradication in all its manners); (ii) the productive and quality employment promotion; (iii) the expansion of social protection; and (iv) the social dialogue strengthening<sup>2</sup>.

In these terms, the direct actions aiming to reduce the situations contrary to such precepts, especially the most serious ones, such as the contemporary slave labor exploitation, in a context in which the use of work analogous to slavery is a motto. *Modern slavery, contemporary slavery, neo-slavery, or slave-like work* are related terms in a post-abolition scenario, although the term slave labor continues in use.

Hence, Brazil developed the *Criminal Law section 149*, endorsing an international law concept materialized in several cases such as the Inter-American Court of Human Rights judgment (2016) through which the country was condemned in a case regarding the right of not to be submitted to a slavery condition. The sentence highlighted the *sections 6.1 and 27.2* of Human Rights Convention violation, an international law offense also presented in the 1929 Slavery Convention and the 1956 Supplementary Convention on the Abolition of Slavery.

The *Fazenda Brasil Verde Workers case* reinforced the understanding of the condition analogous to slavery as the submission, alone or combined, to (i) forced labor; (ii) exhaustive work hours; (iii) degrading work conditions; (iv) restriction, by any means, of locomotion due to debt contracted with employer or agent, at the time of hiring or in the course of the employment contract; and (v) retention in the workplace due to the transport or transit restriction by any means, as well as the ostensive surveillance maintenance and documents or personal belongings retention

As can be seen, the prohibition of slave labor in Brazilian territory was limited to the normative plan. The edition of the *Lei do Ventre Livre* (1871), *Lei do Sexagenários* (1885) and *Lei Áurea* (1888) removed the legal authorization for slavery, but were not accompanied by actions and policies indispensable to eradicate a situation that lasted for more three centuries. In this sense, structural causes related to poverty and land tenure concentration contributed

---

<sup>2</sup> OIT. **Trabalho Decente**. From: <https://www.ilo.org/brasilia/temas/trabalho-decente/lang-pt/index.htm>. Accessed on Oct. 24. 2020.

to a slavery persistence that, during the 60's and 70's, were evidenced through the complaints regarding the Brazilian Amazon (FIGUEIRA; PRADO; PALMEIRA, 2017).

The spread of slavery practices resulted in state recognition of its persistence. In this scenario, in 1995, the Special Mobile Inspection Group to Combat Labor Similar to Slavery (GEFM) were created. Since its creation, the GEFM rescued 55,023 workers, an amount registered until August 2020 and used as a reference for the analysis carried out throughout this study.

The GEFM is exclusively formed by Labor Inspectors (AFT) groups and each team has a coordinator and a sub-coordinator, with exclusive dedication, in addition to other members designated to each kind of operation. The decisions in each procedure have a deliberative character, which lead the group members to determine the action necessities to regularize and / or identify slavery analogous labor and workers rescue are jointly taken. The operations are supported by other institutions, such as the Labor Public Ministry, the Civil, Military, Federal or Federal Highway Police forces as well as the Federal Public Ministry and the Federal Public Defender's Office (FAGUNDES, 2020).

The COVID-19 pandemic consequences reinforced the actions held by inspection teams against labor slavery necessity, despite a context of worsening operational difficulties associated with the staff gradual reduction without the corresponding replacement - lack of public tendering processes in the last three decades - and the structural deficiencies experienced by the members of the Labor Inspection, facing situations such as budget constraints and the relevant reduction of administrative employees to support its activities, as will be developed throughout the text.

Considering such precepts, the study analyzes the impacts of the COVID-19 pandemic in combating contemporary slave labor in Brazil, based on the quantitative analysis of the numbers of inspections, workers reached amount, identified slavery labor victims and, finally, individuals rescued from such conditions. The analysis considers as a parameter the inspections initiated and concluded in Brazil between January to August of each year until 2020. Thus, the comparison is reliable and current, starting in 2003, the same year in

which the *section* 149 was introduced in national criminal law.

Based on the Labor Inspection statistical data analysis, we seek to understand how the pandemic accelerated the aggravation and precariousness process in terms of conditions analogous to slavery labor combating in Brazil. The originality and necessity of this study is supported by the research – able to collect and analyze the data related to labor inspection actions – especially quantitative studies regarding contemporary slavery fighting data in Brazil, focusing on the period indicated and the current pandemic context shortage.

The text is structured on a brief exposition about the theoretical and normative framework on contemporary slavery in Brazil. Subsequently, the methods and techniques used in the analysis are identified, accompanied by the results discussion and the respective conclusions as it follows.

It starts, then, with the approach of the current concept of slavery, the labor inspection teams actions (in the GEFM structure) regarding the issue, as well as the main temporal, legislative and conceptual frameworks used to support the highlighted variables analysis and the present study results.

## **2 SLAVERY LABOR IN BRAZIL: NORMATIVE AND THEORETICAL OVERVIEW**

Due to economic interests, abolitionism resulted from the slavery social relations transformation need to work considered free or paid, including the expansion of potential consumers of products developed by industries and goods circulating in commerce (TREVISAM, 2015). In Brazil, the abolition process took place in several moments until the absolute normative prohibition, passing through Law 581 of 1850 (Eusébio de Queirós Law ), Law 2,040 of 1871 (Ventre Livre Law), Law 3,270 of 1885 (Sexagenarian Law) and Imperial Law 3,353 of 1888 (Áurea Law).

The slavery model was established through capitalist practices, before and after the symbolic colonial liberation in which the workers masses were inserted in the cycle of consumption, world production and accumulation, a context that encouraged a new conception, now

associated with social and economic factors, based on the argument that “the lack of a job and a consequently self and household sustenance imposes the man to man give up their rights, turning him an exploitation easy prey” (MOSQUE, 2016, p. 76).

Instead of the end of slavery as a property right stop its practices, the less economically favored exposure to fundamental rights violations is enhanced by the Amazon frontier occupation, where state policies indirectly encouraged the violence against thousands of migrant workers hired to open up areas for large agribusiness projects (FIGUEIRA; ESTERCI, 2017).

Since the beginning of the 20th century, international documents and commitments pointing out the forced labor elimination have multiplied. In this scenario, the forced labor constitutes a serious violation of human rights, been part of the ILO’s priority agenda regarding the protection of the right to work and the employment quality under fair and favorable conditions, unemployment overcoming, precarious work elimination and decent work promoting, as provided for in the 1948 Universal Declaration of Human Rights (*section 23*), as well as in the 1966 International Covenant on Economic, Social and Cultural Rights. The ILO Conventions nº 29 and nº 105 are considered the main documents associated with *section 2*, “b”, of the 1998 Declaration of Fundamental Rights and Principles of Labor, which highlights that the elimination of all forms of forced or compulsory labor is a fundamental principle and right.

Hereafter, forced or compulsory labor is understood as any person demanded under the sanction threat and for which he/she has not offered himself/herself spontaneously, considering as a valid will manifestation the one exercised freely, without influence of social, economic or social vulnerability. The standard crime perpetrator conducts are physical coercion, sexual abuse, abandoning the worker in an isolated location under armed surveillance, as well as cases where the victim’s freedom of movement is violated. The liberty offense is dispensable in other occasions because, in any case, human dignity is the main protected legal interest.

Among the regular types of forced or compulsory labor, the debt bondage comprehends the state or condition in which the indebted worker is commitment to provide, in guarantee of his debt,

his own personal services or someone's over whom he has authority, based on a value not equitably assessed or without a limited duration and defined nature, as set out in *section* 1.2 of the Supplementary Convention on the Abolition of Slavery, the 1956 Slave Trade and Institutions and Practices Analogous to Slavery (GUILLEN, 2007).

From the Law enactment No. 10,833, of December 29, 2003, the concept of slave labor expressly comprised the exhausting journey and degrading work conditions. According to the technical and normative parameters that specify and delimit these typical behaviors, the exhaustive journey corresponds to any labor activity, physical or mental nature, which, due to its extension or intensity, violates the worker's fundamental related to safety, health, rest and family and social life. On the other hand, the degrading condition refers to the denial of human dignity due to worker's fundamental rights violation, especially those regarding working protection and safety, hygiene, and health rules. Such definitions are expressed in *section* 7.1 and 7.3 at the Normative Instruction No. 139, January 22nd, 2018, and *section* 2.2 and 2.3 at the Ordinance No. 1,293, December 28th, 2017, edited by the extinct Labor Ministry.

In addition to the normative update, one of the successful policies against slavery is the disclosure of the Register of Companies and Persons Charged for Exploitation of Slave Labor (dirty list)<sup>3</sup>, which makes it public, the imposition of credit and financing restrictions public in fostering institutions (*section* 4 of Law 11.948 / 2009 and *section* 110, § 1, I and IV, of Law 13.473 / 2017), as well as unemployment insurance due to each rescued worker, as a subsidiary instrument in the liberation process<sup>4</sup>.

---

<sup>3</sup> Instituted by Ordinance 1,234, of November 17, 2003, the instrument that supports the placement of the list was successively replaced by Ordinance 540, of October 15, 2004, and then by Interministerial Ordinance 2, of May 12, 2011; Interministerial Ordinance 2, of March 31, 2015; and, currently, by Interministerial Ordinance 4, of May 11, 2016. In a decision rendered on September 16, 2020, the STF recognized, by majority, the constitutionality of the blacklist of slave labor. Statement of Non-Compliance with Fundamental Precept 509. Rapporteur: Min. Marco Aurélio. Available at: <http://portal.stf.jus.br/processos/detalhe.asp?incidente=5343222>. Accessed on Sep 22, 2020.

<sup>4</sup> It consists of three national minimum wage quotas, provided if the recipient is not receiving Social Security benefits, except for accident assistance and death pension, and does not have income for own or family support. Law 10,608 on December 20, 2002 resulted from the conversion of Provisional Measure 74 of 2002 and promoted the amendment of Law 7,998 on January 11, 1990, instituting this type of unemployment insurance due to the rescued worker.

To comprehend this study, it is important to clarify and distinguish the *operation* and *inspection* terms. In each operation, there may be one or more companies or working places reached (inspections). A given operation may cover one, none or several locations with enslaved workers. It is also possible that the investigation is demanded due to a specific work front and, during the operation, other situations could be identified and, consequently, contemplated by the working team.

There is a possibility that the members of the inspection do not see any of the hypotheses of contemporary slavery, which does not avoid the adoption of other important measures for the case, such as the worker's contract formalization and the infraction notices emission referring to other irregularities evidenced by the inspection team.

For these reasons, the number of workers in stratified *reached* - comprises those found in the inspected companies or working places, enslaved or not - *enslaved* - represents the victims cohort in which at least one contemporary slavery hypotheses had occurred - *rescued* - correspond to enslaved and effectively removed from the workplace ( the redemption may not occur due to escape, resistance or other impeding conditions) - and *formalized* - regards the formalized bond during the inspection procedures, covering enslaved or not.

Regardless of the result of the approach, the information is recorded and stored in the database used as a parameter by the Labor Inspection and Information Panel in Brazil (SIT, 2020). In addition to GEFM teams, regional units in the states also carry out activities to combat slavery, but there are no auditors specifically dedicated to this purpose in all units.

As determined by *section* 628 of the Labor Laws Consolidation, labor irregularities require the Work Inspection in order to draw up an infraction notice, related to each irregularity found, such as the lack of registration, overtime, the rest weekly remuneration not observed, the undue salary discounts, as well as conditions derived from not respecting the safety and health duties at work (SANTOS, 2019), such as the lack of admission exams, proper training, the absence of administrative measures or personal protective equipment, as well as hygiene and comfort measures related to bedrooms, dining areas and sanitary facilities.

Presented contemporary slavery concept, as well as the work of the Labor Inspection in this aspect and exposed the relevant milestones regarding this issue, we proceed the presentation and analysis regarding the data related to the inspections carried out in the period as it follows.

### **3 SLAVE LABOR COMBATING: METHODS AND RESULTS IN THE PANDEMIC**

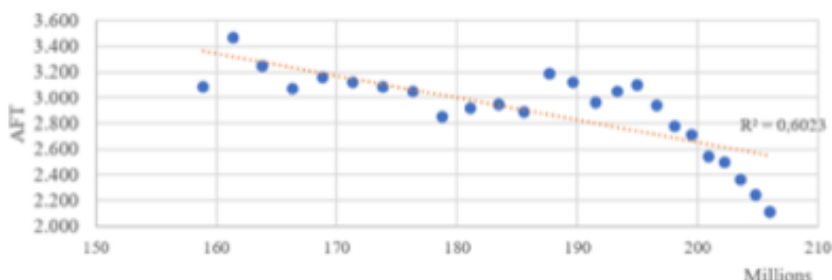
For analysis purposes, the inductive approach method was used in a descriptive research, quantitative nature and developed based on bibliographic, documentary and data collection techniques in which the information was provided by the Slave Labor Eradication Division - DETRAE, an agency integrated to the Labor Inspection Secretariat - SIT, of the Labor Secretariat, regarding the operations carried out in Brazil.

The time series analysis method, frequently used in econometric studies (ANTUNES; CARDOSO, 2015), was elected in order to investigate the variable behavior over time, describing the analyzed event and to make predictions over future values of the series, focusing on trend component as a filtering method. The systematization was retrospective, and the extracted data were compiled in electronic spreadsheets and the study variables were imported into the Statistical Package for Social Sciences (SPSS), to descriptive analysis.

The main cohorts considered the environment where the inspection was carried out (rural or urban); the result (whether or not there was a slave worker and its amount); the criminal law of the regarding the slave labor prohibition (2003) and the last significant entry resulting from the last Labor Inspection public tender in 2011.

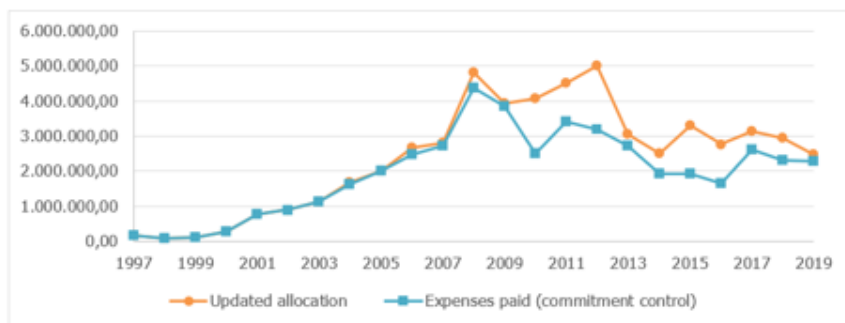
Once presented the main guidelines and methodological procedures, before the analysis related to the inspection records themselves, the Labor Inspectors amount variation crossed with the Brazilian population estimate between 1995 and 2019 is exposed (Figure 2). It is observed that the population growth was not accompanied by the maintenance or the increase, but by the reduction of the number of active inspectors, an indicator that can compromise the contemporary slavery fighting, as well as the actions promoted by the labor inspection.



**Figure 2 - Population x Labor Inspectors (1995-2019).**

**Source:** Author, based on data from Cabral (2013) and IBGE<sup>5</sup>.

In addition to the inspection staff reduction, the GEFM actions budgetary resources restrictions, observed mainly since 2012, emerges as an additional element that structurally impairs the performance of the contemporary slave labor combat (Figure 3), in a repressive bias, for identification and rescue itself, as well as under the preventive prism, with the purpose of investigation, monitoring and labor relations formalization in specific segments, activities and production chains.

**Figure 3 - Slave Labor Eradication Inspection Budgetary and Financial Execution (1997 to 2019)**

**Source:** Author, based on data provided by the Ministry of Economy<sup>6</sup>.

<sup>5</sup> IBGE. **Boletim Estatístico de Pessoal**. Ministério do Planejamento, Orçamento e Gestão. Secretaria de Recursos Humanos. From: <http://www2.planejamento.gov.br/planejamento/assuntos/gestao-publica/arquivos-e-publicacoes/BEP>. Accessed on Jun. 24, 2020.

<sup>6</sup> Ministério da Economia – ME. Documentos de acesso público. From: [http://www.consultaesic.cgu.gov.br/busca/\\_layouts/15/](http://www.consultaesic.cgu.gov.br/busca/_layouts/15/DetalhePedido/DetalhePedido.aspx?nup=03006000033201914)

The number of inspections carried out in the first eight months of 2020 has reached the lowest level (59) of the historical series in comparison with the same period in previous years, representing 36.0% of the annual average of 164 inspected working places during the period. The deficit result reveals the mismatch between investment in state repression in the context of the industrial relations pandemic impacts severity.

In this scenario, we highlight that the presented actions amount include all inspections, so that in only 42.4% there was at least one enslaved worker, while the average success rate of the analyzed historical series corresponds to 49.0%, which means that in almost half of the actions promoted there was at least one enslaved worker (Figure 4).

**Figure 4 - Inspected workplaces, with and without slave labor occurrences (2003 to 2020)**



**Source:** Author, based on data provided by DETRAE / SIT.

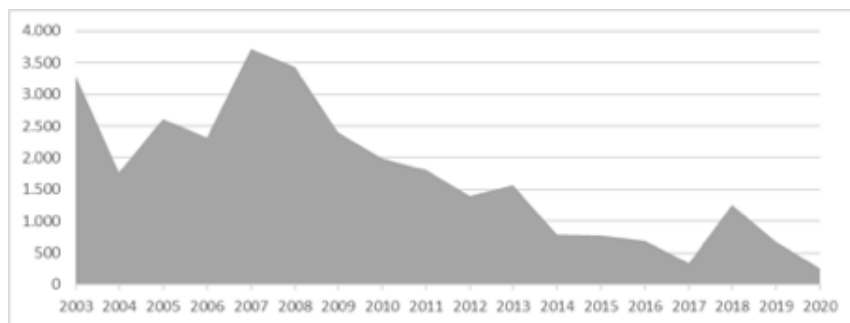
Analyzing only the cases in which slave labor was identified, there is a reduction in 2020 for the lowest number in the historical series (Figure 5). In absolute terms, it was verified that 250 workers were subjected to similar slave conditions, in 25 inspections carried out in the first eight months of 2020, while the second lowest number corresponds to 340 people found in the same conditions by 47 labor inspection operations promoted in 2017, in the same period. Consequently, there was also a reduction in the special unemployment insurance release rate due to the person rescued in a slave similar

[DetalhePedido/DetalhePedido.aspx?nup=03006005810202042](#). Accessed on Sep 21, 2020.

condition, which totaled 232, equivalent to 18.0% of the average (2,048) and 24.5% of the previous year (2,175 ).

However, any conclusion regarding the decrease in slave labor in Brazil is not totally secure and accurate, as there are other factors to be considered, such as a significant labor inspections procedures reduction, the continuous inspection staff reduction, as well as the restriction imposed by health protocols regarding the teams' exposure to COVID-19 infection.

**Figure 5 - Enslaved workers (2003 to 2020)**



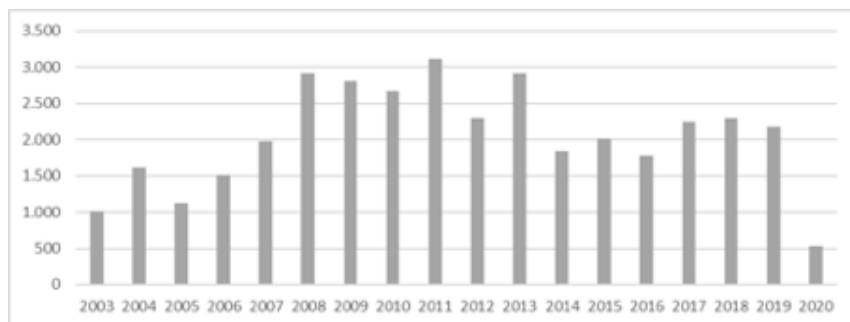
**Source:** Author, based on data provided by DETRAE / SIT.

In the inspected workplaces, the evaluation proportion comprises enslaved workers (12.7%), rescued (12.0%) and formalized (10.9%) in relation to the total number of workers reached by the labor inspection actions (13,613). In the research promoted profile, the analysis shows that the argument that implies to the Labor Inspection a widespread slavery and slave-like concepts miscomprehension has no logical support. This posture only reveals the preponderance of technical aspects and the necessary resistance in face of the several attempts to hamper labor inspectors' actions.

Even when the conditions for the identification of slave-like work are not met, different irregularities require the inspection teams to draw up the infraction notices. The notices amount evolution over the historical series points to the lowest level in 2020, with 533 infraction notices issued, only 26% of the observed average during the period under review and 52.4% of the amount in 2003, which previously corresponded to the

lowest notices amount registered (Figure 6). The negative impact of the pandemic on the labor irregularities identification and administrative responsibility is perceived.

**Figure 6 - Infraction notices issued (2003 to 2020)**



**Source:** Author, based on data provided by DETRAE/SIT.

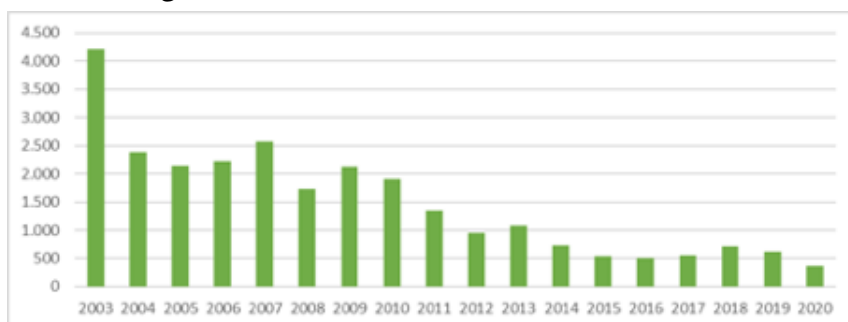
Work contracts formalization in one of the labor inspections actions consequences, as informality aggravates work precariousness in contemporary slavery, but registration is also required in situations where slave labor is not found or in which is presented in smaller proportions. Over the years, the formalization rate corresponds to 10.9% of full-time workers reached and, in 2020, this proportion reached 28.1% - a comparison that considers the period from January to August of each year.

This demonstrates the high labor informality incidence this year, which has reached the highest percentage in the last 15 years, staying behind second the results for 2003 (37.8%) and 2005 (36.8%) only. In absolute terms (Figure 7), 360 employment contracts were formalized during operations focused on combating slave labor in 2020 first eight months, which corresponds to the lowest number in the historical series and represents 24.2% of the inspection actions record average and 58.3% of the result achieved in the previous year.

In recent years, the lower formalization averages may result from the labor contracts registration increase in activities that typically employ slave labor, the inspection actions focus change to activities that notably register their employees, the inspection activity scope

reduction or the automation in more relevant activities in terms of informality (GIRARDI; MELLO-THÉRY; THÉRY; HATO, 2014). In 2020, a pandemic context should be added to the list.

**Figure 7 - Formalized workers (2003 to 2020)**



**Source:** Author, based on data provided by DETRAE / SIT.

On the other hand, the amount paid as compensation to workers in inspections which slavery was identified comprehends R\$ 64,007,749.00 (Figure 8). Again, 2020 presents the lowest amount until August recorded in the historical series, totalizing R\$ 652,549.00, equivalent to 18.4% of the average value in the analyzed series (R\$ 3,555,986), a situation associated with work places inspected and enslaved workers amount.

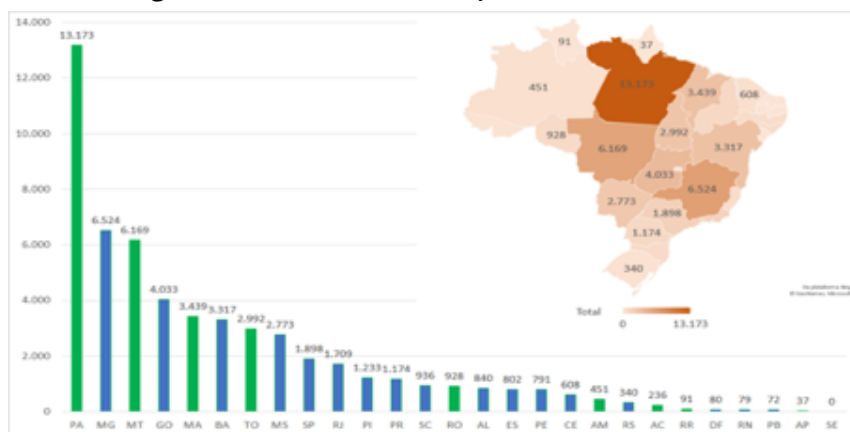
**Figure 8 - Reparation payment (2003 to 2020)**



**Source:** Author, based on data provided by DETRAE / SIT.

Regarding the geographic locations in which enslaved workers were identified (Figure 9), it shows that within the group of five most representative states in the period from 1995 to 2019<sup>7</sup>, four are in the Brazilian Amazon<sup>8</sup>, representing 46% of all inspections recorded, a percentage close to 41% of labor inspectors working in the Southeast region (ASSUMPÇÃO, 2018, p. 385), 23% in the Northeast, 18% in the Midwest, 12% in the South and only 7% in the North. The staff unequal distribution contributes to the inspection deficit observed in 2020, as only 15.3% of the inspected workplaces were in the Legal Amazon.

**Figure 9 - Slave workers - by state (1995-2019).**



**Source:** Author, based on data provided by DETRAE / SIT.

<sup>7</sup> At this point, it was considered the historical series of the first 25 years of existence of the GEFM fully (SÁ, FISCHER and MESQUITA, 2020, in press), in order to draw the geographic profile and identify the strategic territorial coverage considered. The number of inspected workplaces follows, with little variation, the order of representation by state.

<sup>8</sup> As described by Fischer (2014), the Legal Amazon covers the following states: Acre, Amapá, Amazonas, Mato Grosso, Pará, Rondônia, Roraima, Tocantins, and part of Maranhão (west of the 44° meridian). The first definition is expressed by a Law from January 6th, 1953, being a political concept and not a geographical determination, considering that there was no exact correspondence to the North Region of the country. After the extinction of SPVEA and the creation of SUDAM through Law 5,173, of October 27, 1966, there was no change in the concept, but its limits were extended. The last legal change occurred with the 1988 Constitution (sections 13 and 14 of the ADCT), which created the State of Tocantins and transformed the territories of Roraima and Amapá into states. To standardizing the exposure and analysis of the data, the integrality of the state of Maranhão was considered.

Such factors reinforce the need for a greater state attention and focus on states in areas that comprise the opening and deforestation agricultural frontier in the Legal Amazon (SILVA; FERREIRA, 2019), regarding the slavery conditions exploited workers. In this sense, the Labor Inspection lacks strategies for a better distribution of labor inspectors, notably in the Legal Amazon states, as the regional groups are responsible for the administrative police power in labor matters strengthening where exploitation situations are concentrated. Therefore, is imperative to reinforce the GEFM teams' actions in hard access areas and to promote activities support improvement in locations where regional units generally do not have adequate personnel, logistical structure and have a high probability of life threats in face of the local agents under inspection (FAGUNDES, 2019).

The slave labor identification reduction in the Legal Amazon may be due both aspects: 1 - to an increase in the focus on urban activities; 2 - as well as a labor inspectors located in the region decrease; 3 - to an eventual difficulty in directing scarce resources for inspection in regions that demand more investment, which should be investigated. The labor inspection career entering process also deserves a discussion, the inspector working municipality location, which indication used to be made by the time of registration, started to occur after the result and before the nomination, which resulted in less fixation in the peripheral regions (such as the Amazon), reducing the inspection teams members after each relocation process.

In addition, there has been a downward trend in the inspection framework since 2013. The small increases in the years 1996, 1999, 2004-2005, 2007 and 2010-2011 occurred due to competitions and career entries. Despite the labor inspection public tender realization in every 2.5 years between 2003 and 2013, there have not been any staff increase for seven years, which justifies the downward movement. The inspection actions falling amount (2009), rescued workers (2008) and inspection staff (2012) are similar, which indicates a correlation between the slavery fighting public policy and the labor inspection agents, depending a sufficient labor inspection staff in order to performance the duties inherent to the position.

It is also registered that the Labor Inspection operates in fundamental areas regarding the insecurity work facilities prevention

and repression, otherwise, without the Inspection actions, workers would be susceptible to the debasing exploitation that marks contemporary slavery. As an example, the set of matters under the inspection agents responsibility comprises the prevention and eradication of child labor, the fight against informality, the labor regularity requirements regarding rules safety and health conditions of safety and health, the repression of discriminatory treatment and bullying in the workplace, in addition to the norms applicable not only to employment relationships, but to work as a gender.

Indeed, the ILO (2011, p. 81) points out that contemporary slavery is associated with child labor, which occurs simultaneously or at an earlier time. It is estimated that 92.6% of victims start their work lives early, in a context unfamiliar to professional learning, with approximately 30% being subjected to child labor for the benefit of others, directly or together with family members.

Regarding the historical series with special attention to slave labor rescue reasons, 80% of rescues in urban areas have a degrading condition as a single or one of the main reasons, as well as 97.8% rural areas. This demonstrates that the conceptual slave labor reduction discourse, in which degrading conditions and the exhaustive journey for expropriation purposes are removed from its core situations, is inadequate and unconventional (SILVA; WANDERLEY JUNIOR, 2015). In addition, refusing the concept endorsed by the Inter-American Court represents a legal stunting and a constitutional cutbacks, as well as a setback regarding the avant-garde Brazilian legislative notion developed in recent decades, reaching the main motivating conduct of contemporary slavery.

The analysis carried out in this study exposes data and discussions that can motivate new research and contribute to new approaches, considerations, and further debates.

## 4 CONCLUSIONS

The study objectively demonstrated that the COVI-19 pandemic accentuated the contemporary slavery combat actions precariousness



trend in recent years. The reduction in the number of workers found by labor inspection in conditions analogous to slavery would be the a celebration matter, despite several variables that compete and spoil the state mission to eliminate the practice on all over the national territory by 2030, as determined in the Sustainable Development Goals *section* 8.7 and the 2030 Agenda of the United Nations.

It happens that the Labor Inspection staff are increasingly lean, without real public indications regarding pensions and vacancies replacements. In addition, the lack of expressive structure and resources destined to inspection actions, as well as the lack of proper issue confrontation that support the structural inequality highlighted in Fazenda Brasil Verde case judgment, which is intensified in the pandemic context.

The work precariousness accentuated situation was revealed, given the incompatible reduction in the contemporary slavery confrontation, which is associated with informality and other labor infractions and are also present in Labor Inspection actions that do not find enslaved workers, but in verified labor precarization situations reduced proportions or not.

In addition, the number of inspections, rescued workers and inspection staff decrease period are coincident and occur without consonance with the increase in the Brazilian population. The downward trend can be explained by factors related to operational and structural difficulties, which prevent the affirmation towards the reduction of modern slavery at the same time, a correlation that demands the staff and structural improvements through public tendering and Labor Inspection investments.

The trend towards a reduction in the number of enslaved workers in urban and rural activities does not necessarily indicate a reduction in the phenomenon, but it occur due to the narrower Inspection scope or its migration to areas that demand less labor. Therefore, labor in conditions similar to slavery exploitation remains facilitated by the lack of strategies guided to inspection teams supporting an adequate labor inspector distribution, notably in the Legal Amazon region, fundamental public actions aiming to strength the regional teams, in order to enhance labor inspection in places that concentrate degradation of worker dignity situations.

Indeed, the slavery fighting public policies effectiveness requires the application of *section 243* of the 1988 Brazilian Federal Constitution, regarding properties confiscation, and the slave labor conceptual reduction discourse based on the degrading conditions and the exhaustive journey removal from the expropriating purposes possible conducts. In any case, the conceptual reduction is unconventional (violating the Inter-American Convention on Human Rights-IHRC) and represents a legal and social regress, compromising the labor institutions and organizations' inspection actions.

Despite the limits inherent to the investigation scope, the results exposed by the present study demonstrate, within a restriction and difficulty action scenario, the importance of Labor Inspection promoted activities regarding contemporary slavery elimination, as well as the existence of a policy development environment through public and private coordinated actions in which social needs and challenges faced by the population are held in a discrimination structural framework that facilitates the workers' dignity degradation.

## REFERENCES

ANTUNES, José Leopoldo Ferreira; CARDOSO; Maria Regina Alves. Uso da análise de séries temporais em estudos epidemiológicos. **Epidemiologia e Serviços de Saúde**, Brasília, v. 24, n. 3, p. 565-576, 2015. From: <http://dx.doi.org/10.5123/S1679-49742015000300024>. Accessed on Jun. 29, 2020.

ASSUMPÇÃO, Luiz Felipe Monsore de. **O sistema, a história, a política e o futuro da inspeção do trabalho no Brasil**. Tese apresentada ao Programa de Pós-Graduação stricto sensu em Ciências Jurídicas e Sociais da Universidade Federal Fluminense – UFF, 463 f. Niterói-RJ: UFF, 2018. p. 385.

CABRAL. Fernando André Sampaio. Por que a proteção ao trabalhador está em risco? In: Sindicato Nacional dos Auditores

Fiscais do Trabalho (Sinait). **29º e 30º Concurso sobre a Inspeção do Trabalho** - 120 anos da atuação da Inspeção do Trabalho no Brasil (2011) - Por que a proteção ao trabalhador está em risco? (2012). Brasília: Sinait, p. 45-60, 2013.

CORTE INTERAMERICANA DE DIREITOS HUMANOS – CORTE IDH. **Caso dos Trabalhadores da Fazenda Brasil Verde vs. Brasil - Sentença de 20 de outubro de 2016**. Disponível em [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_318\\_por.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_318_por.pdf). Accessed on Mai 30, 2019.

FAGUNDES, Maurício Krepsky. Migração venezuelana e a exploração de trabalho análogo ao de escravo em Roraima. **Revista da Escola Nacional da Inspeção do Trabalho**. Brasília, ano 3, p. 293-326, 2019. From: <https://enit.trabalho.gov.br/revista/index.php?journal=RevistaEnit&page=issue&op=view&path%5B%5D=3>. Accessed on Jun 28, 2020.

FAGUNDES, Maurício Krepsky. Trabalho Escravo e Pandemia: os desafios da Inspeção do Trabalho na promoção do trabalho digno. **Laborare**, a. 3, n 5, 2020, pp. 87-105. From: <https://revistalaborare.org/>. Accessed on Oct 23, 2020.

FIGUEIRA, Ricardo Rezende; ESTERCI, Neide. Slavery in Today's Brazil: Law and Public Policy. **Latin American Perspectives**, v. XX, p. 0094582X1769991, 2017. From: [http://www.gptec.cfch.ufrj.br/artigos/ricardo\\_e\\_neide\\_slavery\\_in\\_today\\_Brasil.pdf](http://www.gptec.cfch.ufrj.br/artigos/ricardo_e_neide_slavery_in_today_Brasil.pdf). Accessed on Jun 29, 2020.

FIGUEIRA, Ricardo Rezende; PRADO, Adonia Antunes; PALMEIRA, Rafael Franca. L'esclavage contemporain et ses transformations en Amazonie brésilienne: les témoignages des victimes. **Brésil(s)**, n. 11, 2017. From: <https://journals.openedition.org/bresils/2186?lang=pt>. Accessed on Mai 5, 2020.

FISCHER, Luly Rodrigues da Cunha. **Ordenamento territorial e planejamento municipal**: estudo de caso das limitações supralocais

à aplicação do art. 30, VIII da constituição de 1988 pelo município de Parauapebas, Pará. 2014. 624 f. Tese (Doutorado) – Universidade Paris 13, Universidade Federal do Pará, Instituto de Ciências Jurídicas, Belém, 2014.

GIRARDI, Eduardo Paulon; MELLO-THÉRY, Neli Aparecida de; THÉRY, Hervé; HATO, Julio. Mapeamento do trabalho escravo contemporâneo no Brasil: dinâmicas recentes. **Espaço e Economia**, n. 4, 2014. From: <http://journals.openedition.org/espacoeconomia/804>. Accessed on Jun 29, 2020.

GUILLEN, Isabel Cristina Martins. O trabalho de Sísifo: “escravidão por dívida” na indústria extrativa da erva-mate (Mato Grosso, 1890-1945). **Varia Historia**, Belo Horizonte, v. 23, n. 38, p. 615-636, 2007. From: [http://www.scielo.br/scielo.php?script=sci\\_arttext&pid=S0104-87752007000200021&lng=en&nrm=iso](http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0104-87752007000200021&lng=en&nrm=iso). Accessed on Jun 29, 2020.

IBGE. **Boletim Estatístico de Pessoal**. Ministério do Planejamento, Orçamento e Gestão. Secretaria de Recursos Humanos. From: <http://www2.planejamento.gov.br/planejamento/assuntos/gestao-publica/arquivos-e-publicacoes/BEP>. Accessed on Jun 24, 2020.

MESQUITA, Valena Jacob Chaves. **O trabalho análogo ao de escravo: uma análise jurisprudencial do crime no TRF da 1ª região**. Belo Horizonte: RTM, 2016.

ORGANIZAÇÃO INTERNACIONAL DO TRABALHO – OIT. **Perfil dos principais atores envolvidos no trabalho escravo rural no Brasil**. Brasília: OIT, 2011. From: [https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasilia/documents/publication/wcms\\_227533.pdf](https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasilia/documents/publication/wcms_227533.pdf). Accessed on Sep 22, 2020.

ORGANIZAÇÃO INTERNACIONAL DO TRABALHO – OIT. **Constituição da Organização Internacional do Trabalho (OIT) e seu anexo (Declaração de Filadélfia)**. From: <https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasilia/>

documents/genericdocument/wcms\_336957.pdf. Accessed on Oct 27, 2020.

SÁ, Emerson Victor Hugo Costa de; FISCHER, Luly Rodrigues da Cunha; MESQUITA, Valena Jacob Chaves. Trabalho escravo contemporâneo: série histórica dos 25 anos de Grupo Especial de Fiscalização Móvel, no Brasil e na Amazônia Legal (1995-2019). **Revista da Escola Nacional da Inspeção do Trabalho**, n. 4. Brasília, 2020. From: <https://enit.trabalho.gov.br/revista/index.php?journal=RevistaEnit&page=issue&op=view&path%5B%5D=4>. Accessed on Oct 30, 2020.

SANTOS, Douglas Ferreira. Mapa do trabalho escravo rural contemporâneo: a escravidão em Mato Grosso do Sul. **Revista da Escola Nacional da Inspeção do Trabalho**. Brasília, n. 3, p. 150-172. 2019. From: <https://enit.trabalho.gov.br/revista/index.php?journal=RevistaEnit&page=issue&op=view&path%5B%5D=3>. Accessed on Jun 28, 2020.

SILVA, Carla Ribeiro Volpini; WANDERLEY JUNIOR, Bruno. A responsabilidade internacional do Brasil em face do controle de convencionalidade em sede de direitos humanos: conflito de interpretação entre a jurisdição da Corte Interamericana de Direitos Humanos e o Supremo Tribunal Federal quanto a Lei de anistia. **Revista de Direito Internacional**, Brasília, v. 12, n. 2, p. 611-629, 2015.

SILVA, Érica de Kássia Costa da; FERREIRA, Vanessa Rocha. Trabalho escravo contemporâneo e o desmatamento na Floresta Amazônica: crise de garantias no Estado Democrático de Direito. **Revista de Direito e Sustentabilidade**. Goiânia, v. 5, n. 1, p. 40-59, 2019. From: <https://www.indexlaw.org/index.php/revistards/article/download/5510/pdf>. Accessed on Jun 25, 2020.

SUBSECRETARIA DE INSPEÇÃO DO TRABALHO – SIT. **Painel de Informações e Estatísticas da Inspeção do Trabalho no Brasil**. From: <https://sit.trabalho.gov.br/radar/>. Accessed on Mai 10, 2020.

TREVISAM, Elisaide. **Trabalho escravo no Brasil contemporâneo: entre as presas da clandestinidade e as garras da exclusão**. Curitiba: Juruá, 2015.

ISBN: 978-950-34-2426-1

CHAPTER

# 5

**SOCIAL POLICY SITUATION IN GERMANY  
AFTER THE PANDEMIC  
LESSONS AND CONSEQUENCES**

Heinz-Dietrich Steinmeyer

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter5>

# **SOCIAL POLICY SITUATION IN GERMANY AFTER THE PANDEMIC LESSONS AND CONSEQUENCES**

*Heinz-Dietrich Steinmeyer*

## **1 INTRODUCTION**

COVID-19 pandemic is almost over – at least we hope so. Anyway, we are now in a position to evaluate what has happened, have lessons learned – hopefully – and can see the consequences.

Generally, it can be said that we have had to deal with something totally unexpected. Virologists might have warned already for a long time that something like this might happen but we as a society did not hear and did not take warnings as serious as we should have. But even if we all would have known we would not have been in a position to prepare.

When it broke out, we did not and could not know how this pandemic would evolve and what exact consequences it would have for society and economy. The different countries on our planet are still discussing the best way to deal with it and rather different approaches can be observed – taking as examples the countries of the European Union on the one side and the PR China on the other side<sup>1</sup>.

There are still disputes on how to deal with vaccination and if and how it should be mandatory, what travel restrictions should be left in place and if there is need to be prepared for the next wave in the European winter. Governments still seem not to have a clear concept and one might conclude that they could not have due to the unforeseeable evolution of the pandemic and the reactions of people in the different societies.

So in the end it is not only that lessons have been learned but there are still lessons to be learned.

---

<sup>1</sup> See in detail *Becker/Seemann* (Ed.),, *Protecting Livelihoods - A Global Comparison of Social Law Responses to the COVID-19 Crisis*, Baden-Baden 2022



## 2 SITUATION DURING COVID-19 PANDEMIC AND BEYOND

In Germany we could see severe consequences in private life but also in the business area and on the level of the state. Private life was limited to home and even work at home and businesses had to deal with home office work. Also in summer 2022 consequences and effects are still to be seen.

German industry was faced with difficulties since the global connections did not work as is usually the case. Businesses in Germany like airlines, restaurants, hotels etc. came to a stop during lockdown and these areas of business assumed that after the end of the pandemic their business would never be the same like before and therefore downsized their workforce.

The state started to spend a lot of money to help business to survive. The different social systems got under hard pressure to deal with the social consequences. The unemployment insurance system provided short-time allowance to a large share of the German workforce. The health care system came to its limits – and thankfully not beyond. The country now runs a considerably increased deficit.

Since February 25, 2022 Europe is faced with the war in Ukraine. Since Germany is very much dependent on gas for Russia there is an additional – also financial – burden on Germany; the country is faced with an energy crisis.

German politics these days are still in a mood to spend money on all the different crises – including climate crisis. But it nevertheless becomes more and more clear that financial resources are limited and deficit spending may have to come to an end.

When it comes to consequences, we in the first place see that financial resources for active social policy are more limited than ever. There is no financial space for additional social policy expenses and no financial space anywhere. This affects all parts of the social security system and forces us to increase effectiveness of the systems rather than to spend additional money. So this is in issue not only in health insurance where a deficit of billions of € has to be dealt with but also in pension insurance which is faced with the demographic issue and might need additional resources<sup>2</sup>.

<sup>2</sup> *Steinmeyer*, Altersvorsorge und Demographie – Herausforderungen und Regelungsbedarf, Gutachten zum 73. Deutschen Juristentag, 2020/2022, Munich 2020, B 1; *Steinmeyer*, Ergänzungsband zu den Gutachten, Munich 2022, B 119.

When it comes to the individual worker some may have lost jobs – but this effect is limited since the demographic situation on the labour market has generally led to less unemployment and right now there is even shortage of manpower.

But nevertheless, pandemic has shown vulnerability in certain areas of employment. Via short-time allowance unemployment caused by pandemic has been avoided generally; but certain jobs have been lost and not all affected could find suitable jobs soon in a changed economy. Very much affected have been self-employed since the social net there is perforated and has to be improved. So a number of these people had to use the assets planned for retirement for economic survival during pandemic. There have to be answers by social policy.

Business has had problems to keep certain benefits due to losses during the pandemic. This may for example be the case with occupational pensions financed by employers.

Last but not least home office work became a necessity during pandemic which has caused a number of labour law questions – concerning working hours, work safety and health and financial issues like technical equipment and space. There is also the question whether an accident during home office work is an industrial accident in the sense of the industrial accident insurance.

It has shown not only the advantages but also the disadvantages of home office work. Currently therefore there is a discussion on generalizing home office work. Business is split here in opinion since it saves office space for them on the one hand but makes it more difficult to organize business. Therefore business at least wants to decide whether there is home office work or not. On the other side trade unions argue in favour of a right for employees to work from home.

### **3 AREAS IDENTIFIED**

These areas of social systems and labour law are those affected by COVID-19 in the social policy area. Therefore in the following these areas will also be analyzed as of after the pandemic.

## Social Systems

Social systems – either public or private – are aimed to help people in need in case of certain risks<sup>3</sup>.

Unemployment insurance is aimed to step in in case there is no income due to unemployment or to prevent unemployment by means of certain measures like short time allowances.

Health insurance is covering health risks and this took most of the financial burden of COVID-19; since the German hospital system is organized separately it was also and additionally a challenge for the hospital system.

Public pension system was less affected by COVID-19 since it covers other risks – not so much relevant during the pandemic. But here it is a matter of costs and of less contributions which does affect a contributory PAYG system. It is similar with supplementary or occupational pensions; in periods of crisis there is less space to contribute to a system – by employee or employer – and in an economic crisis the financing of employer-sponsored pension plans may become more difficult or even too burdensome.

Generally such a crisis may also show insufficient coverage for certain groups of persons.

### a. Unemployment Insurance

The German short term allowance (Kurzarbeitergeld) has been a blue-print for other countries during the pandemic to bridge periods during which companies cannot work according to circumstances. The positive result in Germany was that we did not have an increase in unemployment and people could stay with their standard of living during the pandemic<sup>4</sup>.

On the other hand, the institution in charge – the Bundesagentur für Arbeit – had to spend the amount of 52 billion € until early this year 2022. These are considerably high costs.

<sup>3</sup> See also *Becker et al.*, Existenzsicherung in der Coronakrise: Sozialpolitische Maßnahmen zum Erhalt von Arbeit, Wirtschaft und sozialem Schutz im Rechtsvergleich, Max Planck Institute for Social Law and Social Policy, Working Papers Law Vol. 6, Munich 2020

<sup>4</sup> *Konle-Seidl*, Kurzarbeit in Europa: Die Rettung in der aktuellen Corona-Krise?, IAB Forschungsbericht 4/2020.

Critics argue that short term allowance is not the most proper instrument in case of such pandemic. The experiences since 2020 have shown that this instrument better its with issues of short duration and in single areas and not so much with economic difficulties over a longer period and all over the country. For such cases simpler instruments might be more effective<sup>5</sup>.

So there is a discussion on adjusting the system to fit better in future pandemics.

#### b. Health Insurance and Health Care

It can be concluded that the German health care system successfully managed Corona. There have been series of discussions about the right way to deal with the challenges but in the end the system could serve all people needing hospital care. Major critique was that other surgery and treatment had to be postponed which even may have had some negative health effects. Nevertheless, the result was a deficit of the health care funds.

Therefore, for the future a better coordination is required. The German hospital system has not really been prepared for a pandemic and a certain number of beds in hospital should be put in reserve for such situations. There have been also disputes during the pandemic on the role of the state on the one side and the role of health care providers on the other side.

So there should be legislation which draws the experience from this pandemic and better prepares the country for future events of this kind.

#### c. Pensions

As described before in pensions it is less a matter of an active role of this system in the pandemic but rather that of financing the system<sup>6</sup>. Due to short-term allowance most workers did not suffer

---

<sup>5</sup> Frankfurter Allgemeine Zeitung of January 22, 2022 - <https://www.faz.net/aktuell/wirtschaft/mehr-wirtschaft/bundesagentur-kurzarbeit-keine-dauerloesung-in-pandemien-17745657.html>

<sup>6</sup> Steinmeyer, Demographische Herausforderungen für die Alterssicherung – Ein Thema auch in der Pandemie, Neue Zeitschrift für Sozialrecht 2021, pp. 617.

losses on their pension accounts and received credits also for those periods. But the pension system received less contributions.

In supplementary pensions one major problem is if companies who sponsor pension plans and suffer from economic effects of the pandemic should be able to cut or at least adjust benefits<sup>7</sup>. Since the pandemic is a temporary issue and in those cases only permanent problems would justify it, the pandemic as such may not be a good reason. It may be different if results of pandemic cause permanent problems for that company or industry.

#### d. Lacks in Coverage

As shown above self-employed are and have been very much affected by the pandemic. This event has shown that coverage and assistance by the unemployment system are not sufficient and have to be improved. The system of unemployment insurance has helped during the pandemic by “Neustarthilfe” (new start assistance) which provided self-employed with the basis for a new start during and after pandemic. The experiences with this approach have been good. As a consequence it is planned to be prepared and to steps for preparation to have such a system working for future cases. It is also planned to make voluntary coverage of self-employed with the unemployment insurance system easier.

In case of health insurance it can be assumed that anybody is covered by one or the other system which means that there is either coverage by public health insurance or by private health insurance.

It is different in case of pensions where especially self-employed are almost not covered yet. They especially have been in trouble during the pandemic and have used the modest individual retirement provisions for saving the business or financing their lives. The need for a solid and stable old age income security has become obvious<sup>8</sup>. The German federal government right now is preparing a

<sup>7</sup> *Steinmeyer*, Alterssicherung und Corona-Pandemie – Neue Rahmenbedingungen für Reformen?, in: Brose u.a.(Hrsg.), Grundlagen des Arbeits- und Sozialrechts, Liber amicorum Ulrich Preis, Munich 2021, pp 1289.

<sup>8</sup> *Steinmeyer*, Altersvorsorge und Demographie – Herausforderungen und Regelungsbedarf, Gutachten zum 73. Deutschen Juristentag, 2020/2022, Munich 2020, pp. B 56.; *Steinmeyer*, Ergänzungsband zu den Gutachten, Munich 2022, pp. B 136

bill which should extend coverage by public pensions finally to all self-employed.

## 4 LABOUR LAW

Last but not least the pandemic has been a challenge to labour law. Different forms of work became prominent which resulted in a number of labour law questions in all areas. A lot of them had to be and have been solved on an ad-hoc basis but the legal consequences may not all be fixed yet. It has shown that certain instruments do not work properly in such situations. Also some of the new forms of work have shown to be attractive also after the pandemic and the challenge now is to separate special COVID-19 issues from issues of a long term use of such forms.

### a. Right to home-office work

The major change and development has been that during pandemic people had to work from home – if possible – in order to reduce contacts in general and especially during lockdown periods and to keep society and economy going during this time. The necessary technology also has made rapid progress during this time. So home office work via computer became a dominant mode of work at least in areas of industry and jobs where this is possible.

The major issue during pandemic has been whether the employer has the right to force the workers to work at home or whether it is a decision of the worker / employee or whether the employer is forced to offer the possibility of home-office work and might suggest to do so. Until March 20, 2022 the employer was forced to offer this possibility – according to Sec. 28b Subs. 4 Infektionsschutzgesetz (Infection Protection Act). Since then the employer is no longer obliged to do so.

During the pandemic and even before a Mobile Work Act was under discussion but was not put into law due to all the rapid developments. Right now there is a widespread discussion in how to deal with mobile work in the future.

The experience with mobile work from home have been mixed. Not all jobs can be performed from home. If there is work at home the space for work might be very limited and in a small apartment together with family it might turn out to be very difficult. There are also disputes on whether productivity is higher or lower in case of home-office work. The employer also might have strong interest to have the workers at his facility and not working from home. Employees on the other side might have enjoyed to better combine private life and job by home-office work.

Trade unions argue that all workers should have the right to work at home if it is feasible regarding the nature of the job. On the other hand, industry is opposing this approach and asks for flexibility in order to have the work done as efficient as possible.

Current politics is very much in favor of the right for employees to ask for home-office work. The plans of the federal government are, to establish a right of the employee to discuss the possibility of home office work in areas where it is suitable. Employers then might only object if there are good reasons at operational level. This means in the end that the refusal should not be discretionary or unobjective. There should be space for solutions via collective bargaining or agreements between employer and works council. Legislation is still to come.

#### b. Consequences in labor law

Before the pandemic home-office work was kind of atypical and therefore not much attention was paid to the legal problems of home office work. This in the meantime has changed considerably. Major issue is how to make sure that the legal requirements on job safety and health are to be followed in case of home office work.

So how could be controlled if the worker does not work beyond the limit of working hours per day? What about the safety of the work place as such? In a company/plant officers from public authorities might control it by accessing the work place. The works council people also may take care.

In the case of home-office work it has to be observed that the Federal German Constitution (Grundgesetz) in its Article 13 provides

special protection for private home. Only via a decision of a judge and under strict rules and conditions private home or apartment can be accessed by public authorities.

Currently it is up to the employer to take care for safety and health by providing the employee at home with the necessary tools and give advice to the employees how to take care. As for the working hours the employer might organize work in a way that excess of working hours may be avoided.

All this ought to be covered by a special act on mobile work which is under preparation.

Another issue here is who has to finance the facilities to work at home. I think it is clear that the employer will have to cover the costs.

### c. Consequences in Industrial Accident Insurance

If some accident happens during work generally industrial accident insurance will step in. For a long time it was clear that there is a strong demarcation between the workplace in the plant or factory or office on the one side and the private area on the other side. Industrial accident insurance is generally aimed to cover the risks at the workplace which is generally the plant, factory etc. The system assumed that home is not the workplace and risks there are either be controlled by the individual or by other social systems.

The pandemic and the general trend also towards home-office work has shown that this assumption is no longer correct.

Already during pandemic, the Social Code Seventh Book was amended and now the law covers accidents at home or at other places than the plant, office etc. like accidents there, if the insured activity is executed at home or other places; with other places also work with a laptop on the beach would be covered. So here a provision is put into law which has importance not only for mobile work during corona but also beyond. So the way from the living room to the office at home is covered.

Another issue is whether COVID-19 infection as such might be an industrial accident. This for example can be the case, if a person has worked in a hospital taking care for COVID-19 patients and with the danger of being exposed.



## 5 CONCLUSION

This paper has shown that in Germany there have been multifold measures directed to fight COVID-19 and its ongoing effects and consequences. On the other hand, it has shown that certain instruments came to its limits and had to be improved in order to stand future challenges. This is the case with hospital care but also with the instrument of short-term allowances.

Of considerable importance is the move towards home-office work which was a necessity during the pandemic but also reflected a general trend. This is no to be fixed by law and the details in occupational safety and health have to be clarified. The industrial accident insurance system already is adjusted to the new situation.

ISBN: 978-950-34-2426-1

CHAPTER

# 6

**GOVERNANCE OF THE ELECTRONIC JUDICIAL  
PROCESS IN BRAZIL AND THE DILEMMA OF THE  
NORMATIVE EFFECTIVENESS OF CPC/2015 AFTER  
THE POST-PANDEMIC PERIOD**

Agatha Gonçalves Santana  
Carla Noura Teixeira

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter6>

# GOVERNANCE OF THE ELECTRONIC JUDICIAL PROCESS IN BRAZIL AND THE DILEMMA OF THE NORMATIVE EFFECTIVENESS OF CPC/2015 AFTER THE POST-PANDEMIC PERIOD

*Agatha Gonçalves Santana  
Carla Noura Teixeira*

**Abstract:** The presented issue concerns the governance structure of the Electronic Judicial System (PJe) in Brazil, considering the dilemma arising from the enforcement of the norms of the 2015 Brazilian Civil Procedure Code (CPC/2015) and the problems observed in its implementation as per the criteria set by the National Council of Justice (CNJ) in its Resolutions 185/2013 and 335/2020. This is especially relevant in the period following the social and institutional crises caused by the rapid technological advancements driven by the necessity of social distancing as a sanitary measure imposed by the SARS-CoV-2 virus, the cause of COVID-19. The objective is to demonstrate the need for a plan of systematic and coherent improvements aligned with the legal framework, along with a plan for procedural management, taking into consideration the peculiarities of the digital realm. The methodology employed is predominantly theoretical, using a qualitative approach and deductive logic, while also drawing on empirical elements. The existing delay in establishing a robust and uniform governance framework for the Brazilian Judiciary, evident even prior to the pandemic, is considered urgent. This delay has not been rectified despite the acceleration of technological implementations within the Judiciary. It necessitates the affirmation of unity and principles to effectively manage legal processes, thereby realizing the norms and values of the domestic legal system.

**Keywords:** Governance; Procedural management; Electronic Judicial Process.

**RESUMO:** O problema apresentado versa sobre a estrutura de governança do PJe no Brasil, considerando-se o dilema apresentado entre a efetivação das normas do CPC/2015 e os problemas observados em sua implementação conforme os critérios estabelecidos pelo CNJ em suas Resoluções 185/2013 e 335/2020, essencial-

*mente no período após as crises social e institucionais provocadas pela aceleração tecnológica causadas pela necessidade de distanciamento humano como norma de higiene sanitária impostas pelo vírus SARS-COV-2, causador da COVID-19. Objetiva-se demonstrar a necessidade de um plano de melhorias sistemáticas e coerentes ao ordenamento jurídico, concomitante a um plano de gestão processual, considerando-se as particularidades do âmbito digital. A metodologia utilizada é predominantemente teórica, de abordagem qualitativa e lógica dedutiva, embora se utilize de elementos de empiria. Considera-se o atraso já verificado antes mesmo do período da pandemia acerca da necessidade urgente de uma sólida e uniforme base de governança a ser aplicada ao Poder Judiciário brasileiro, o que não foi corrigido nem mesmo com a aceleração de implementações tecnológicas no âmbito do Poder Judiciário, necessitando-se da corroboração de sua unidade e princípios para efetivação de uma gestão processual eficaz, efetivando normas e valores do ordenamento jurídico pátrio.*

**Palavras-chave:** Governança; Gestão processual; Processo Judicial Eletrônico.

## 1 INTRODUCTION

The fourth industrial revolution has broken barriers in human interaction, advancing through automation technology, digitizing products and services. The progression of this revolution has initiated disruptions stemming from the evolution of the current twelve sets of technologies, such as Artificial Intelligence and robotics, additive manufacturing, neurotechnologies, biotechnologies, virtual and augmented reality, novel materials, and energy technologies. Innovations and technologies, particularly in the digital sphere, have altered human behaviors within human society.

In this new landscape, the digital environment is governed by structured data, which is continually collected by the global computer network, giving rise to a Data-Driven Society, characterized by hyper-surveillance and informational targeting, leading to cultural, legal, political, and economic changes (GIDDENS, 1987, p. 27).

In this context, as anticipated by Schwab (2018, p. 36), entire systems change—understood as norms, rules, expectations, objectives, instructions, and incentives that guide human daily behavior—both on a micro level and a macro level, concerning infrastructures and

societal life management, decision-making, mode of production and consumption of goods and services, as well as human labor. This could even alter the very meaning of being human.

In the realm of Procedural Law, it should not be any different, as technological advancements within justice systems are at the forefront of the agendas of most countries on the international stage (MALDONADO, 2019, p. 47). Therefore, structural changes must be considered, involving not only the reorganization of Public Administration within the digital sphere but also the establishment of a true Digital Governance. This concept goes beyond mere expediency, security, and efficiency (FALEIROS JUNIOR, 2020, p. 78-86).

Since the Federal Law 9.800/1999, which allowed the use of data transmission systems for the practice of procedural acts, significant progress has been made, culminating in the use of electronic procedural systems, and even machine learning systems, such as the Supreme Federal Court's "Projeto Victor" or the Superior Court of Justice's "Projeto Sócrates" (PEIXOTO, 2020b), ushering in new regulatory frameworks. The protection of personal data has taken on a new dimension of safeguarding the fundamental right to privacy, incorporating human values into the technological realm. Consequently, technology has come to be viewed far beyond the mere notion of differentiated performance of actions.

Organizations like the Brazilian Bar Association (OAB NACIONAL, 2013) have pointed out various issues with the implementation of the PJe in Brazil since 2013. These include challenges related to internet and energy infrastructure accessibility for everyone, accessibility regarding certifications for lawyers, the information system applied to the PJe, as well as the overlap of systems and lack of interoperability. These aspects were meticulously analyzed in 2018 by the Federal Court of Accounts, as observed in Report TC 008.903/2018-2 (BRASIL, 2018, p. 02), causing not only technical disruptions but also rendering compliance with procedural norms prescribed in civil procedural legislations unfeasible, as is the case with the CPC/2015.

In the context of the SARS-CoV-2 virus pandemic, which began in 2020, the apparent acceleration towards the digitization of actions performed within the direct and indirect Public

Administration, including actions within the Judiciary, utilized agendas of modernization and the utilization of innovative and disruptive methods and techniques to implement social distancing recommendations.

Nevertheless, issues such as the implementation of unified procedural systems through technological means and the establishment of more comprehensive governance guidelines took a backseat. In a post-pandemic moment where the crisis has subsided, it is evident that many problems persist and continue to accumulate. Moreover, new situations arise that require resolution, with each passing day presenting a new perspective that necessitates a reevaluation of traditional legal concepts. Taking, for example, the return to in-person hearings and the adoption of yet another autonomous Electronic Judicial Process by the newly created Federal Justice of the 6th Region.

This is how the central problem of this study is presented: How could the implementation of the Electronic Judicial Project's governance framework in Brazil directly impact the realization of norms and values outlined not only in the CPC/2015 but also in other prevailing procedural legislations and the Constitution of the Federative Republic of Brazil of 1988? The initial hypothesis posits that it is essential to establish a Governance framework over the entire Judiciary, considering its unity and hierarchy, so that every local management, whether at the state or federal level, is conducted based on an interoperable model. This ensures consistent data collection and proper treatment, demand direction, system security, and control of unnecessary expenses related to system maintenance, all while preserving the unity of Jurisdiction and its fundamental principles.

The objective is to demonstrate the need for an overarching governance framework to be applied in a way that standardizes general guidelines for implementation by Brazilian court administrations, thereby realizing norms and values of the current legal framework.

In this research, a predominantly theoretical approach was employed, supplemented by specific analyses of empirical elements, such as the reference to the audit report TC 008.903/2018-2 from the Federal Court of Accounts (TCU), used to exemplify the scope of the study. Furthermore, the analysis was conducted using a qualitative, basic nature approach, employing reflective objective methods.

Regarding the research procedure, it began with a review of literature and documents, incorporating cross-sectional critiques. The deductive logic was predominantly applied throughout the work, rooted in a systemic theoretical perspective. However, in the analysis of empirical data, inductive logic was also observed.

## 2 THE ABSENCE OF TECHNOLOGICAL AND PROCEDURAL GOVERNANCE AND ITS IMPACTS

Law comprises fact, value, and norm, according to the three-dimensional theory of law, based on the Realist framework. When legal phenomena change, values change, and norms evolve accordingly (REALE, 2004, pp. 64-65). This principle holds true during periods of revolution, just as in the current “4.0 Revolution”: New facts emerge, axiological shifts occur, leading to the revision of norms, which must be updated both in their form and interpretation.

This revolution, also referred to as the “fourth industrial revolution,” has brought forth challenges such as the unequal distribution of its benefits, the need for managing risks and damages resulting from externalities, and ensuring that the comprehensive application of all these innovations is led by humans and for humans. This requires thinking in terms of systems, not isolated technologies, and their potential benefits. It translates to the necessity of political will, investment, and cooperation from all involved parties to enable the realization of their potentials (SCHWAB, 2018, pp. 43-45).

In recent decades, the demands brought to the Judiciary have become much more complex, encompassing both patrimonial and non-patrimonial rights, of an individual or collective nature, often involving unprecedented events resulting from the increasingly intensive use of technology in human relationships, which has been termed the *technological turn in law* (NUNES, BAHIA, PEDRON, 2020, p. 18). Therefore, a systematic approach must be taken when implementing technological innovation in the digital realm within such a traditional power structure as the Judiciary.

It is noteworthy that these five words – technological innovation in the digital realm – cannot be assessed separately; a

profound interpretation of their meaning and impact is required. Today's world holds perceptions and perspectives that are not easily visualized, explained, let alone critiqued or refuted. Physical and virtual aspects must be considered. The material world and the digital world are together, demonstrating a symbiotic ecosystem while showcasing the separation of the human biological rhythm from the relentless pace of growth and development of digital technologies, creating a new reality. Smart contracts, digital signatures, e-commerce, digital influencers, e-marketplaces, digital content creators, telecommuting, e-government constitute the digital revolution that goes beyond mere automation of activities once performed physically (PINHEIRO; WEBER; OLIVEIRA NETO, 2021). These also pose significant challenges to the Judiciary, not only in terms of the content of its judgments but also in terms of how it operationalizes Procedural Law in the virtual realm and its distinct logic from the physical realm.

In this context, the major themes of governance and management have gained prominence within the national Public Administration as well as on the global stage, even becoming subjects of internationally outlined development agendas. Governance, in this sense, should be understood as a set of mechanisms for leadership, strategy, and control that are put into practice to assess, guide, and monitor management activities. The goal is to steer public policies and provide services of societal interest (TRIBUNAL DE CONTAS DA UNIÃO, 2014), aiming to make provided services less bureaucratic, more managerial and operational, thereby facilitating the direction and monitoring of their outcomes. On the other hand, management should be conceived in a way that establishes evaluation and reevaluation parameters for applied procedures and their results, striving to enhance performance, efficiency, and accountability (TEIXEIRA; GOMES, 2019, p. 522).

Within the realm of federal justice, efforts are already underway to standardize governance through guidelines that establish a management model built on meticulous strategic planning. This planning is implemented based on studies of collected data, aligning strategies with planning and operation monitoring. Additionally, it enables result analysis according to predefined criteria in the planning, derived from the actual circumstances and the possibilities they offer (CONSELHO DA JUSTIÇA FEDERAL, 2015, pp. 03-23).



However, without the standardization of parameters and, more crucially, in terms of operability, interoperability, accountability, proper treatment of personal data in accordance with the Federal Law n. 13.709/2018 – General Data Protection Law, and the harmonization of procedural practices that constitute the realization of norms prescribed in the national legal framework, a serious crisis will inevitably arise. This crisis would not only impact process management but also the nature of jurisdiction itself, as delineated in the Federative Republic of Brazil (SANTANA, 2002; MOURA JUNIOR, pp. 18-19).

In the same year, 2018, the Federal Court of Accounts (TCU) conducted an audit report, TC 008.903/2018-2, analyzed the implementation of the computerization in judicial proceedings carried out within the scope of the Federal Judiciary. The report also included a brief analysis of the situation within State Courts to investigate whether they were in line with the principles of cost-effectiveness, efficiency, and effectiveness (BRASIL, 2018, p. 02). The audit identified the absence of governance structure implementation as envisaged by the National Council of Justice (Resolução-CNJ 185/2013) and its Resolution-CNJ 25/2015, resulting in fragmented implementation of the national version of the Electronic Judicial Process in Brazil. There was also overlap and duplication in solutions, involving the deployment of proprietary, even private, systems without the proper application of the National Interoperability Model (Modelo Nacional de Interoperabilidade - MNI), leading to increased costs, bureaucratic hurdles, extended processing times, and a lack of risk control (BRASIL, 2018).

The issues observed in the mentioned report directly stem from the absence of planning for the effective implementation of governance and a centralized and hierarchical procedural management model. In other words, the lack of effective governance criteria inevitably facilitates the existence of the observed problems. The overlap of Electronic Judicial Process systems precisely exists due to the absence of governance implementation and effective planning for the uniformization not only of the employed program but also how it will be utilized.

From the SARS-CoV-2 virus pandemic on, no changes or movements were observed towards solving the basic governance

implementation or unifying the systems. This was understandable as all human and state efforts were focused on adhering to social distancing recommendations. However, after the vaccination period and the return to in-person activities, little has been observed in terms of changes regarding pre-pandemic issues related to the Electronic Judicial Process on a broader scale. These issues remain unresolved, rendering even the implementation of the established norm unfeasible. Additionally, capital, time, and energy have been spent on attempting procedural solutions that do not seem to clearly adhere to the separation of powers.

Updating the data analyzed in the mentioned document, the recently established 6th Region of the Federal Judiciary (BRASIL, 2022) has adopted another independent version of the Electronic Judicial Process (JUSTIÇA FEDERAL DA 6ª REGIÃO, 2023), exacerbating the problem that remains unsolved and lacks a clear solution perspective for the applicability of the CNJ resolution.

In this regard, technology can be extremely useful, particularly concerning the ease of data collection and direction derived from machine learning. Indeed, technology itself, within its logic, is better suited to solving problems originating in the technological context, which is far more complex and rapid than the human context. Humans are bearers of rights that need safeguarding. Machines should serve as aids in ensuring the fundamental rights of individuals (SANTANA; MOURA JUNIOR, 2002, p. 19).

The problems are exacerbated when reports emerge of governmental websites being hacked for data sale and ransom on the dark web (TECHMUNDO, 2002), including instances from judicial institutions themselves, such as the Superior Court of Justice (PONTES, 2020) and federal regional courts like the 3rd Region (MACIEL, 2022), among numerous other cases reported in official and journalistic sources. The evolving circumstances, compounded by the integration of technologies, mean that disorderly implementation leads to significant risks, particularly in terms of security. Extreme caution is required in forming governance that can effectively engage with a transdisciplinary team.

Indeed, the very term “data” points to the significance of the information to be input into the coding, which must be comprehended correctly by professionals engaged in the dialogue for

the accurate implementation of the process. In the words of Saquel, (apud PIMENTEL, 2000, p. 57),

*La informática jurídica no es una rama del Derecho; no es Derecho. Se trata de un aspecto de la Ciencia de la información; es esta ciencia abocada a un objeto particular, el fenómeno jurídico. En efecto, así como la Sociología del Derecho, a Sociología Jurídica no es una rama del Derecho, sino de la Sociología, la informática jurídica es una rama de la Ciencia de la información.*

In this context, as per Schwab's understanding (2018, p. 71), "as technologies are embedded in society, we have a responsibility to shape their understanding and an obligation to prioritize social values." This reflection of societal values applies not only to legal professionals but also to the technological codification into digital language by programmers and designers. It's important not to forget that when data is inserted into the virtual world and when machines are programmed, values are effectively being encoded, requiring an internal policy of control.

An example of value-based governance is the European Union's General Data Protection Regulation (GDPR) (PARLAMENTO EUROPEU, 2016), which encompasses criteria to be respected for data processing and the pillars that should guide privacy and information security policies. This forms a system that directs, monitors, and encourages good practices, transforming the fundamental principles of transparency, equity, accountability, and responsibility into objective recommendations aimed at realizing the ideals of the common good.

### **3 THE IMPLEMENTATION OF A GOVERNANCE SYSTEM IN THE ELECTRONIC JUDICIAL PROCESS (PJE) IN BRAZIL**

Much more than just crafting compelling rules for the implementation of PJE in Brazil, given the complexity of devising

a project for its implementation, it's crucial to necessarily consider transdisciplinary dialogues involving teams that can grasp not only legal jargon but also possess knowledge of information technology and informatics. These teams should be capable of engaging in dialogue and understanding the boundaries of technology, both in terms of feasibility and legal limits, regarding what can or cannot be done, including testing versions.

The idea is not to expect a jurist to possess the same depth of knowledge as a computer engineer, or vice versa. Instead, the emphasis should be on fostering intense discussions about possibilities and means of implementing innovations and technologies, whether they are digital or not. In this regard, one must never resign to the inevitability of default options. Techniques like design thinking and the application of systemic thinking should be considered, helping to understand the structures that guide a particular universe. This approach ensures that the system gains new configurations within the technological realm (SCHWAB, 2018, p. 46). Such thinking is indeed highly compatible with the current global landscape.

On the other hand, the very notion of due process of law is often confused with the concept of the Rule of Law (ALLAN, 2003, p. 121), and at this juncture, it must be asserted that technological shifts occurring within the legal domain, especially in the post-pandemic context, necessitate an evolutionary interpretation within the context of digital constitutionalism. This concept has been extensively studied in European law and involves a range of legal concerns and initiatives that interlink political rights, governance norms, and limitations on exercising powers in the digital realm within a networked society (LORDELO, 2022, p. 154-155). These concerns had already been highlighted internationally since 2008 by Citron (2008, p. 1294-1296).

In this regard, concerning the legal process, every step needs to be structured in a flow that can be understood by programmers so that it can be translated into mathematical code inserted into the software, ensuring not only order but also uniformity. With each step taken by the technical team, the need for review and testing versions should be applied.

Moreover, it's imperative to ensure that the program's enhancement remains constant, always considering the protection of the data of the

process parties as well as the cybersecurity of the virtual environment. A dedicated team for compliance should inevitably be in place.

Notably, the General Data Protection Law (LGPD) (BRASIL, 2018), based on the European GDPR, sets forth in Article 5(II) an exhaustive list of data classified as sensitive personal data. Throughout its provisions, the LGPD delves into the theme of best practices and governance. It empowers controllers and processors individually or through associations to establish rules of best practices and governance. Every product or service offered, regardless of whether in the public or private sphere, must establish, among other things, security norms and technical standards.

In other words, beyond the compliance with all the operational aspects of procedural law, it is crucial to ensure the development and implementation of internal processes and policies for the protection of personal data (FONSECA; MELLO, 2020, p. 113-114). In this aspect, it directly relates to the specific case of privacy and information security in relation to services or products, involving the Brazilian Association of Technical Standards - ABNT, which is a full member of the International Organization for Standardization (ISO). In Brazil, there is a specific group of technical standards called the “ISO 27000 family,” which has been in place since 2005 and outlines basic security standards within the realm of information technology.

In brief, the initial concern should be the adaptation of procedural laws in their procedural aspects into machine-readable language, while also considering a realm of international data protection standards like the ISO/IEC 27000 family – which now comprises more than 50 standards. These standards enable organizations to implement an Information Security Management System (ISMS) by establishing a Security Policy, Controls, and Risk Management, including methods for auditing, metrics, data and risk management (FONSECA; MELLO, 2020, p. 117).

Such systems are built on clear and transparent communication with stakeholders, the design of protection strategies, allocation of resources determined by top management, implementation of controls and data monitoring, improvement of controls, and establishment of effectiveness metrics.

Another challenge stemming from this context is the difficulty in defining the relationship between technologies and values, as both are abstract and intangible, linking personal data that constitute personality rights and are directly connected to how humans do things, make decisions, think about themselves and others. These data are connected to one's identity and worldview, even impacting a new way of perceiving human responsibility, leading to a necessity of revisiting the normative framework, as the very meaning of technologies makes them political, going beyond their economic, legal, and social implications (SCHWAB, 2018, p. 69).

Thus, this normative framework demands a true engineering of legal, technical, and sensitive data of the involved parties in the process, which must undergo a thorough analysis and understanding of the organization's context, its supporters, resources, awareness or employee culture, operability, system, and continuous evaluation of performance and improvements to be implemented as needs evolve.

As an example of mandatory parameters to be observed, the ABNT NBR ISO/IEC 27002 standard (ASSOCIAÇÃO BRASILEIRA DE NORMAS TÉCNICAS, 2005) can be taken into account, which defines conditions for the lawful collection and processing of data based on legitimate purposes, such as the identification and documentation of the purpose and the determination of when and how consent can be obtained from the parties.

Certainly, achieving the uniformization of the Pje in Brazil as a single system presents challenges, even when considering the effective application of legal analytics and artificial intelligence as aids for diagnosis and policy direction or even for the standardization of repetitive demands. Using programmed machines to automatically detect patterns and utilize them for projection or recommendation could enable prediction. It's important to acknowledge that Law has always generated a wealth of data, much of it unstructured (PEIXOTO, 2020a, p.17-18). In this context, artificial intelligence in the procedural realm could assist in pattern recognition, identifying inconsistencies, improving the utilization of information flows, enhancing strategic actions, and providing reliable records for accountability systems (PEIXOTO, 2020a, p.24). It can even

exhibit higher accuracy than human analysis when it comes to data research.

The impact of artificial intelligence in the procedural domain, especially concerning its application in electronic processes, is recognized by the National Council of Justice. This can be observed in Resolution 332, dated August 25, 2020, which, among other provisions, addresses ethics, transparency, and governance in the production and use of Artificial Intelligence in the Judiciary. Logicamente, conforme destacado por Santana, Teixeira e Teixeira (2021, p. 177), *in verbis*,

os influxos das novas tecnologias aplicadas ao processo cada vez mais exigem um repensar do devido processo legal, podendo-se cogitar a existência de um devido processo legal tecnológico – ou digital, adaptando-se essa importantíssima cláusula geral à nova arquitetura processual que se desenha,<sup>38</sup> incorporando-se as novas ferramentas, adequando-as ao ordenamento, o qual encontra como limite os direitos fundamentais previstos na CRFB/1988.

Absolutely, it's crucial to emphasize that for the current analysis, an electronic judicial process encompasses all computerized versions of the judicial process, as recognized by the TCU as a national public policy (BRASIL, 2018, p. 03). Precisely for this reason, the goal should be to aim for a unified electronic procedure directed towards a common objective: achieving the purpose of procedural rules, as well as the norms and values of the Constitution of the Federative Republic of Brazil of 1988. This would ensure the authenticity, integrity, and full custody of these actions, thereby safeguarding the justice system within the framework of the national legal system.

#### **4 THE IMPORTANCE OF PJE GOVERNANCE ON PROCESS MANAGEMENT IN BRAZIL**

Case management and caseload management are part of court management, bringing together different problems and solutions within

the specificities of each legal system. Thus, it would be defined as “the conscientious intervention of jurisdictional actors in the treatment of cases or proceedings, through the use of various techniques with the purpose of disposing of procedural tasks in a faster, more equitable and less expensive way” (COELHO, 2015, p. 29).

A governance of the Electronic Judicial Process (PJE) holds immense significance in the context of process management in Brazil. The PJE, as an integral part of the digital transformation of the justice system, requires a well-structured governance framework to ensure its effective implementation, operation, and alignment with legal norms and societal values.

Governance, in this context, refers to the set of mechanisms, policies, and processes used to oversee and guide the management of the PJE system. It encompasses decision-making structures, accountability mechanisms, and strategic planning that ensure the system’s objectives are met while complying with legal requirements and safeguarding individual rights.

The importance of governance over PJE and its impact on process management in Brazil can be understood particularly through the following points:

- a) **Efficiency and Effectiveness:** A robust governance framework for the PJE ensures that the system functions efficiently and effectively. Clear decision-making processes, role definitions, and accountability mechanisms streamline the implementation and management of the electronic judicial process.
- b) **Standardization and Consistency:** Governance ensures standardization of processes and procedures across different levels of the judicial system. This uniformity minimizes inconsistencies, reduces errors, and improves the quality of judicial processes.
- c) **Data Security and Privacy:** A well-defined governance framework establishes protocols for data security and privacy. This is particularly important in handling sensitive personal information, ensuring compliance with data protection laws, and mitigating the risks of data breaches.
- d) **Interoperability:** Governance facilitates the integration of different components of the PJE system, ensuring



interoperability between various modules and allowing seamless data exchange across different courts and jurisdictions.

- e) **Adaptation to Change:** The governance framework allows for flexibility and adaptability to evolving technological advancements and changing legal requirements. It enables timely updates, enhancements, and adjustments to the PJE system.
- f) **Transparency and Accountability:** A transparent governance framework ensures that decisions, actions, and outcomes are visible and understandable to stakeholders, promoting accountability and trust in the system.
- g) **Alignment with Legal Norms:** Governance ensures that the PJE system aligns with existing legal norms, such as the Brazilian General Data Protection Law (LGPD) and other relevant legislation. This alignment helps prevent legal disputes and ensures compliance with legal obligations.
- h) **User-Centric Approach:** Governance can prioritize the needs of users, including judges, lawyers, and litigants. This user-centric approach enhances user satisfaction, accessibility, and overall user experience.
- i) **Strategic Planning:** Governance involves strategic planning that considers long-term goals and objectives for the PJE system. This strategic outlook guides resource allocation, technology investments, and system enhancements.

In other words, the implementation of effective governance for the PJE system is vital for optimizing process management in Brazil's justice system. It ensures that technology is harnessed in a way that upholds the rule of law, protects individual rights, and fosters efficiency, transparency, and accountability in the administration of justice.

Organization is a significant reinforcement to the affirmation and effectiveness of the Judicial Power, particularly considering its hierarchical structure and its unified nature, in accordance with the Brazilian constitutional framework.

That is because, as a power, it is not merely a set of independent powers, but a harmonious assembly with the duty of standardization, integrity, and stability in its decisions, thus ensuring legal certainty

and expressing obligations of judicial bodies (CARREIRA ALVIM, 2022, p. 68).

Furthermore, the need to actualize its most basic elements must be emphasized, namely: *notio* – the capacity to be aware of the facts brought before it in the form of a narrative of harm or threat to rights; *vocatio* – translating into the capacity to summon before the court all those whose presence is indispensable for ascertaining the truth; *coertio* – understood as the right to command respect and repress offenses; *iudicium* – the effective power to judge and render decisions that must be respected by all; and finally, *executio* – the power, in the name of the State, to make its own decisions binding and enforceable (CARREIRA ALVIM, 2022, p. 75-76). Among all these specific powers, the Judiciary holds self-governance, having the authority to self-organize and manage interests that, far beyond those being judged and judging, constitute public interests of a social nature.

In line with Coelho's perspective (2015, p. 157), the issue of process management is directly connected to the increasing use of information technology and other information technologies in handling processes. This includes primarily the digitalization of processes and the dematerialization of procedural acts, as well as the circulation of information and data related to the procedural reality and the courts. Thus, a well-structured and matured court computer system should allow for the execution of all procedural acts by all parties involved in the process. Additionally, it should provide auxiliary tools such as documentary databases, jurisprudence from all instances, supporting applications, agenda and distribution schedule consultations, and also enable digital recording of evidence and comprehensive documentation of hearings.

In a moment where computerization facilitates make points of standards through classification by procedural categories and even through standardization of repetitive demands, the scope of management expands further. In this regard, it “raises significant problems regarding the domain of computer circuits and information systems used by the courts, in contrast to the sphere of influence of the Ministry of Justice, on one hand, and the judicial bodies, on the other” (COELHO, 2015, p. 158).

However, by way of example, it is not uncommon in Brazil for a process to encounter difficulties with a rogatory letter (*carta precatória*), as Pje systems are not interoperable. There can also be delays in relation to requests for procedural confidentiality, leaving confidential proceedings visible and completely publicized for a certain period, long enough for other procedural parties to access them. Additionally, issues arise such as the use of private companies for data custody under the responsibility of the government, which could directly compromise the quality of judicial services and even accountability in case of data leaks or breaches. Another example pertains to the controversy surrounding “partial confidentiality,” where documents from one party in a Civil Public Action can be viewed, but not those of the opposing party, nor even judicial decisions.

All these are factual situations that compromise the implementation envisaged in the legal system, affecting the coherence and integrity of the legal framework, as well as its effectiveness.

On the other hand, technological issues are of paramount concern, as they should be regarded with the same importance as the implementation of legal norms and values, given that they involve values and personality rights of the individuals involved, carrying a much greater nature of public law than one might conceive.

Such concerns arise from the new instrumental and technological paradigm resulting from the current networks of public-administrative communication and the expansion of procedural information through electronic means, especially when there is not an effective observance of uniformity in the organization of the courts regarding the management, control, supervision, and security of the electronic judicial process.

## 5 CONCLUSION

The governance and management of the electronic judicial process (PJE) in Brazil hold significant implications for the efficiency, effectiveness, and integrity of the judicial system. The integration of technology into the legal sphere has brought both opportunities and challenges, necessitating a careful and comprehensive approach to ensure the alignment of technological advancements with legal norms and values.

The implementation of a robust governance framework for the PJE is crucial for addressing the complexities and intricacies that arise from the intersection of law and technology. Such a framework should encompass not only legal considerations but also technological, ethical, and procedural dimensions. A transdisciplinary approach, involving legal experts, technologists, and other relevant stakeholders, is essential to ensure that the PJE operates seamlessly and coherently.

Moreover, the evolving landscape of data protection and privacy laws, both nationally and internationally, underscores the importance of safeguarding sensitive information within the electronic judicial process. Adherence to standards such as the ISO/IEC 27000 family and compliance with data protection regulations, like the LGPD, are integral to maintaining the trust of all parties involved and preserving the integrity of the legal system.

The challenges and complexities discussed throughout this analysis underscore the need for a holistic and strategic approach to governance and management within the PJE. Efforts must be directed toward establishing a unified and standardized system that aligns with the constitutional values of due process, fairness, and transparency. To achieve this, ongoing collaboration among legal professionals, technologists, policymakers, and other stakeholders is essential.

Ultimately, the governance and management of the PJE play a pivotal role in shaping the future of the Brazilian judicial system. By embracing technological advancements while upholding legal principles, the judiciary can enhance access to justice, streamline processes, and foster a more transparent and accountable legal environment. As technology continues to evolve, so must the strategies and frameworks governing its integration within the judicial realm, ensuring that justice is not only served but is also technologically empowered.

There are numerous benefits to the application of technological innovations in procedural law, particularly regarding the integration of artificial intelligence into the electronic legal process.

However, the implementation of digitalization in the legal process requires a careful consideration of the social and economic costs associated with the interoperability of an effective electronic procedural system, the duration of proceedings, as well as an

assessment of factors contributing to procedural delays and the best way to address them. Furthermore, it involves the strategic direction of policies based on information collected from cases, particularly mass or collective and structural cases.

There is an urgent need for both the development of a general theory of digital or technological process from the perspective of digital constitutionalism and the effective implementation of governance alongside a standardization in the nationwide implementation of the Electronic Judicial Process (Pje), ensuring interoperability. This implementation should actualize the norms and values of the current legal system while prioritizing security for all participants in the process, guaranteeing them all the safeguards that due process, both procedural and substantive, can provide and ensure.

This perspective presupposes an organizational analysis of the task of the Judiciary as a state power, in which the legal process is seen as an instrument for achieving the purposes arising from the jurisdictional function of the state, integrated into a systemic view of justice administration. In this framework, technology represents an additional component for the establishment of a more transparent judiciary, contributing not only to an informed and participatory civil society but also fostering cooperation with other branches of power for the realization of justice, thus fulfilling the ideals of the Democratic Rule of Law.

This necessity arises especially from the post-pandemic context, during which accelerated changes and mass applications of disruptive technologies were observed. These technologies demonstrated effectiveness in adhering to social distancing recommendations to prevent the spread of the COVID-19 virus, but also highlighted risks and violations of the rights of individuals involved, both procedurally and in terms of their subjective rights, particularly fundamental rights.

On the other hand, in order to develop and apply the benefits of PJe technology within the realm of electronic proceedings in Brazil, an interoperable, stable, secure, and uniform system must be established. This system should be guided by common parameters through overarching governance principles applicable to the entire Brazilian Judiciary. This approach should uphold not only the independence

of this branch of government but also its characteristic unity, as stipulated in the Brazilian Constitution of 1988. Simultaneously, it must maintain legal certainty and other principles outlined in the constitutional and infraconstitutional legal framework.

## REFERENCES

ALLAN, Trevor Robert Seaward. *Constitutional Justice: A liberal theory of the rule of law*. Oxford: Oxford University Press, 2003.

ASSOCIAÇÃO BRASILEIRA DE NORMAS TÉCNICAS. **ABNT NBR ISSO/IEC 27002**. Tecnologia da informação – Técnicas de segurança. Rio de Janeiro: ABNT, 2005. Disponível em: [https://profjefer.files.wordpress.com/2013/10/nbr\\_iso\\_27002-para-impressc3a3o.pdf](https://profjefer.files.wordpress.com/2013/10/nbr_iso_27002-para-impressc3a3o.pdf) Acesso em jul. 2023.

BRASIL. **Institucional: Instalado o Tribunal Regional Federal da 6ª Região**. Brasília: Justiça Federal da 1ª Região, 2022. Disponível em: <https://portal.trf1.jus.br/portaltrf1/comunicacao-social/imprensa/noticias/institucional-instalado-o-tribunal-regional-federal-da-6-regiao.htm#:~:text=Como%20resultado%2C%20o%20Senado%20aprovou,1.805%2C%20no%20Bairro%20Santo%20Agostinho>. Acesso em jul. 2023.

BRASIL. **Lei nº 13.709, de 14 de agosto de 2018**. Brasília: Congresso Nacional, 2018. Disponível em: [http://www.planalto.gov.br/ccivil\\_03/ato2015-2018/2018/lei/l13709.htm](http://www.planalto.gov.br/ccivil_03/ato2015-2018/2018/lei/l13709.htm) Acesso em jul. 2023.

BRASIL. **Tribunal de Contas da União. TC 008.903/2018-2**. Plenário. Relator: Raimundo Carreiro. Sessão de 03/07/2019. Diário Oficial da União, Brasília. Disponível em: <https://www.migalhas.com.br/arquivos/2019/10/art20191031-16.pdf> Acesso em maio 2023.

CARREIRA ALVIM, Joaquim Eduardo. **Teoria Geral do Processo**. 24 ed. Rio de Janeiro: Forense, 2022.

CITRON, Danielle Keats. *Tecnollogical Due Process*. **Washington University Law Review**, v. 85, n. 1249, 2008

COELHO, Nuno. **Gestão dos Tribunais e gestão processual**. Lisboa: Centro de Estudos Judiciários, 2015.

CONSELHO DA JUSTIÇA FEDERAL. **Manual de Governança da Justiça Federal**. Brasília: Conselho da Justiça Federal, 2015. Disponível em: <https://www.cjf.jus.br/observatorio/arq/ManualGovJF.pdf> Acesso em maio 2023.

CONSELHO NACIONAL DE JUSTIÇA. **Resolução Nº 332 de 21/08/2020**. Brasília: CNJ, 2020. Disponível em: <https://atos.cnj.jus.br/atos/detalhar/3429> Acesso em maio 2023.

FALEIROS JÚNIOR, José Luiz de Moura. **Administração Pública digital: proposições para o aperfeiçoamento do Regime Jurídico Administrativo na sociedade da informação**. Idaiatuba, SP: Foco, 2020.

FONSECA, Fernando; MELLO, Renata Avelar de. *Frameworks para a privacidade e proteção de dados pessoais*. In: CRESPO, Marcelo Xavier de Freitas (coord.). **Compliance no direito digital**. V. III. São Paulo: Revista dos Tribunais, 2020.

GIDDENS, Anthony. *Social theory and modern sociology*. Cambridge: Policy Press, 1987.

JUSTIÇA FEDERAL DA 6ª REGIÃO. **Consulta processual PJE**. Belo Horizonte: TRF6, 2023. Disponível em: <https://portal.trf6.jus.br/consulta-processual/> Acesso em jul. 2023.

LORDELO, João Paulo. **Constitucionalismo digital e devido processo legal**. Salvador: Juspdvm, 2022.

MACIEL, Camila. **Tribunal Federal em São Paulo sofre ataque hacker e suspende serviços**. Brasília: Agência Brasil, 2022. Disponível em: <https://agenciabrasil.ebc.com.br/justica/noticia/2022-03/tribunal->

[federal-em-sao-paulo-sofre-ataque-hacker-e-suspende-servicos](#) Acesso em jul. 2023.

MALDONALDO, Viviane Nóbrega. O uso da tecnologia em prol da Justiça: Aonde poderemos chegar? In: MALDONALDO, Viviane Nóbrega; FEIGELSON, Bruno (coord.). **Advocacia 4.0**. São Paulo: Revista dos Tribunais, 2019.

NUNES, Dierle; BAHIA, Alexandre; PEDRON; Flávio Quinaud. **Teoria Geral do Processo**: Com comentários sobre a virada tecnológica do direito processual. Salvador: Juspodvm, 2020.

OABNACIONAL. **OABapontaoscincomaiioresproblemasdoProcesso Judicial Eletrônico**. Brasília: OAB Nacional, 2013. Disponível em: <https://www.oab.org.br/noticia/25217/oab-aponta-os-cinco-maiiores-problemas-do-processo-judicial-eletronico#:~:text=A%20partir%20das%20experi%C3%AAscias%20relatadas,utiliza%C3%A7%C3%A-3o%20do%20sistema%3B%20e%20a> Acesso em jun. 2023.

PARLAMENTO EUROPEU. **Regulamento (UE) 2016/679 do parlamento europeu e do conselho, de 27 de abriu de 2016**. Bruxelas: União Europeia, 2016. Disponível em: <https://eur-lex.europa.eu/legal-content/PT/TXT/HTML/?uri=CELEX:32016R0679> Acesso em jul. 2023.

PEIXOTO, Fabiano Hartmann. **Direito e inteligência artificial: Referenciais básicos**. Brasília: Dr. IA. UNB, 2020a.

\_\_\_\_\_. Projeto Victor: relato do desenvolvimento da Inteligência Artificial na Repercussão Geral do Supremo Tribunal Federal. **Revista Brasileira de Inteligência Artificial e Direito**, Brasília, v. 1, n. 1, 2020b.

PIMENTEL, Alexandre Freire. **O Direito Cibernético**: Um Enfoque Teórico e Lógico Aplicativo. Rio de Janeiro: Renovar, 2000.

PINHEIRO, Patrícia Peck; WEBER, Sandra Paula Tomazi; OLIVEIRA NETO, Antonio Alves de. **Fundamentos dos negócios e contratos digitais**. 2 ed. São Paulo: Revista dos Tribunais, 2021.



PONTES, Felipe. **STJ é alvo de ataque de hacker e Polícia Federal investiga o sistema**. Brasília: Agência Brasil, 2020. Disponível em: <https://agenciabrasil.ebc.com.br/justica/noticia/2020-11/stj-e-alvo-de-ataque-de-hacker-e-policia-federal-investiga-o-sistema> Acesso em jun. 2023.

REALE, Miguel. **Lições preliminares de direito**. 27 ed. São Paulo: Saraiva, 2004.

SANTANA, Agatha Gonçalves; MOURA JUNIOR, João Valério de. A governança do processo judicial eletrônico no brasil: o impacto na gestão processual no contexto da inteligência artificial. In: MORAIS, Fausto Santos de; SOUZA, Jessyca Fonseca; FREITAS, Juliana Rodrigues. **Acesso à justiça, inteligência artificial e tecnologias do processo judicial II**. Belo Horizonte: Skema Business School, 2022.

SANTANA, Agatha Gonçalves; TEIXEIRA, Carla Noura; MOURA JUNIOR, João Valério de. O uso da jurisdição 4.0 para diagnóstico e direcionamento de políticas públicas. **Revista Em Tempo**, [S.l.], v. 19, n. 1, aug. 2020. Disponível em: <https://revista.univem.edu.br/emtempo/article/view/3121>. Acesso em maio 2023. doi: <https://doi.org/10.26729/et.v19i1.3121>.

SANTANA, Ágatha Gonçalves; TEIXEIRA, Carla Noura; TEIXEIRA, Mariano Junior Siqueira. O uso do *QR Code* no peticionamento eletrônico e o ordenamento jurídico processual civil brasileiro. **Revista Brasileira de Direito Processual – RBDPro**, Belo Horizonte, ano 29, n. 116, p. 165-186, out./dez. 2021

SCHWAB, Klaus. **Aplicando a quarta revolução industrial**. São Paulo: Edipro, 2018.

TEIXEIRA, Alex Fabiane; GOMES, Ricardo Corrêa. Governança Pública: Uma revisão conceitual. **Revista do Serviço Público**, Brasília, p. 519-550 out/dez 2019. Disponível em: <file:///C:/Users/ibyte/Downloads/3089-Texto%20do%20Artigo-12787-1-10-20191227.pdf> Acesso em maio 2023.

TECHMUNDO. **Hackers estão vendendo dados e acessos do Gov.br após ataque.** Tecme, 2022. Disponível em: <https://www.tecmundo.com.br/seguranca/245954-hackers-vendendo-dados-acessos-gov-br-ataque.htm> Acesso em jun de 2023.

TRIBUNAL DE CONTAS DA UNIÃO. **Referencial básico de governança aplicável a órgãos e entidades da administração pública.** 2 ed. Brasília: Secretaria de Planejamento, Governança e Gestão, 2014. Disponível em: [https://portal.tcu.gov.br/data/files/FA/B6/EA/85/1CD4671023455957E18818A8/Referencial\\_basico\\_governanca\\_2\\_edicao.PDF](https://portal.tcu.gov.br/data/files/FA/B6/EA/85/1CD4671023455957E18818A8/Referencial_basico_governanca_2_edicao.PDF) Acesso em maio 2023.

ISBN: 978-950-34-2426-1

CHAPTER

7

**STATE AND PROTECTION OF WOMEN VICTIMS OF  
DOMESTIC VIOLENCE: AN ANALYSIS OF THE PRE,  
DURING AND POST COVID-19 PANDEMIC**

Carlos Magno Alhakim Figueiredo Júnior • Cássius Guimarães Chai  
Mônica Fontenelle Carneiro • Elda Coelho de Azevedo Bussinguer  
<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter7>

# STATE AND PROTECTION OF WOMEN VICTIMS OF DOMESTIC VIOLENCE: AN ANALYSIS OF THE PRE, DURING AND POST COVID-19 PANDEMIC

*Carlos Magno Albakim Figueiredo Júnior*

*Cássius Guimarães Chai*

*Mônica Fontenelle Carneiro*

*Elda Coelho de Azevedo Bussinguer*

*María Esther Martínez Quinteiro*

## 1 INTRODUCTION

In the Covid-19 pandemic, it was possible to realize that the routine of most of the inhabitants worldwide changed quite drastic and unexpectedly. Since the confirmation of the outbreak of the disease in the city of Wuhan, China, in December 2019, the population has been forced to experience social containment measures applied by governments of several countries, including Brazil, as promising attempts to reduce the spread of the virus. Among them, social isolation stands out, being considered, by most authorities, a reliable strategy to control the exponential increase in cases of both the disease itself and its daily consequences which have revealed other shades of violence emerging in the embarrassment of prolonged coexistence due a sequence of causes such as: the disruption of routines; the imposition of home office work, often in cramped spaces and lacking access to technological equipment, reliable internet connectivity and energy supply; little or fragile capacity to adapt to the disruptive context of the pandemic; as well as tension within the space limits between work and study in economically vulnerable family groups.

Thus, the recommendations for social distancing are associated with some negative situations, which include the increase in domestic violence, as reported in the survey carried out by the National Confederation of Municipalities (CNM), out of which 20.3% corresponds to a rise in violence against women.

Although violence against women is not a recent issue, it is the result of a historical gender inequality that has subjugated women to unbalanced treatment by society, and a meaningful and timely debate is capable of raising awareness within the community as a whole to discuss such an urgent demand. The study intends to contribute to this controversial and extremely necessary debate in the legal community, responsible for the implementation of a women's justice system. And the situation becomes even more relevant because, in scenarios of domestic violence against women, more often than not, there is also violence against children, adolescents and the elderly.

In this scenario within the context of intramural violence, this research discusses the importance of the State in adopting not only repressive but also preventive policies, for the protection of women. The hypothesis raised is that the State has a preponderant and decisive role in creating and ensuring mechanisms to curb violence against women, and should adopt multisectoral strategies in close methodological correspondence with the perception of the social determinants of health, for example.

Guided by a methodology based on bibliographic, dogmatic and documentary review, the research provides a descriptive analysis of secondary thematic data. As the elected criteria for choosing the base texts, the following were used: the reliability of the site, the relevance and visibility of the work in question, with the application of research descriptors (keywords, year of publication and number of citations). On the other hand, the research focuses on the importance of the State in protecting women, in order to curb domestic violence against them, considering its spread across the country in a sharp rise of such statistics during the pandemic.

## **2 THE SOCIAL CONSTITUTION OF BRAZILIAN WOMEN**

To sum up, the female gender was involved in various manifestos and movements in order to have their social rights assured. According to Ishiy (2014), the process of social transformation through feminist struggles contributed definitely to the analytical introduction of the concept of gender in the sphere of legal science.

Saffioti (1987) states that, strictly speaking, human beings are born male or female and it is through education that they realize that they become men and women. Thus, from a sociological point of view, in other words, gender can only be conceptualized according to the environment in which men and women live, modifying and being modified by the culture, Beliefs, customs and laws of each society.

In Brazilian society, women have always been subordinate to the male figure, and performed tasks of lower status and lower value. There is, therefore, a very strong stereotype around the figure of the woman, in which she is constructed as fragile, docile, dominable and submissive, clearly expressing the great stigma of gender symbolism that exists around her, which ends up validating and reproducing differences arising from cultural and historical aspects (CHAI; CAMPOS, 2020). And it was only in the 70s, in the face of the inferiority and lack of recognition of rights inherent to women in past decades, whose sole purpose was dedication to the home and to the husband, that feminist movements began whose main objective was the struggle for female emancipation and their inclusion in the political world. in the labour market, in society and in the law.

According to Guattini (2011), in the 70s, Brazilian feminist movements resumed and a strong mobilization for the defense of women's lives and for the punishment of criminals also began, with the disclosure of murders committed against women. In the 1980s, the author points out, the theme "Violence against women" was treated as a central issue of feminism and several groups to support victims emerged. The Council for the Condition of Women and the Women's Defense Police Station were created. In the following decade, thematic networks were established, such as the National Network for Reproductive Rights and the National Network Against Domestic and Sexual Violence, which contributed to deepening debates on the feminist movement (GUATTINI, 2011). According to Sampaio *et al.* (2021, p. 46) "These historical roots of the demonization of the female gender and its submission to men justify the existence of all forms of violence – economic, psychological, moral and physical – against women.

## 2.1 Domestic Violence in the context of legislation

Domestic violence is that practiced inside the home, regardless of the motivation, but it can also happen elsewhere, and occurs between father, mother, child(ren), sibling(s), as well as domestic worker(s) (MENEZES, 2012).

In order to avoid any terminological misunderstanding between the use of the terms violence against women and domestic violence, it is often necessary to define their conceptual horizon. Violence against women is any action or conduct based on gender, that causes death, harm or physical, sexual or psychological suffering to women, both in the public and private spheres; whereas, domestic or intra-family violence is that practiced in the home or domestic unit, usually by a family member, being the target of such aggression a man or woman, as a child, an adolescent, an adult or an elderly person.

The first Brazilian legislation to deal with violence against women was Decree No. 89,460 of March 20, 1984, which promulgated the Convention on the Elimination of All Forms of Discrimination against Women, especially in social, professional, family spheres, among others, but it should be highlighted that the Convention did not specifically address physical violence, but only discrimination, which is one of the origins of physical violence.

On August 29, 1985, Law No. 7,353 was enacted, creating the National Council for Women's Rights (CNDM) and providing other measures which aimed to promote debates about violence against women throughout the national territory, in addition to eliminating discrimination, ensuring women a condition of freedom and also equal rights, giving special importance and protecting the rights of women to participate in economic activities. cultural and political policies of Brazil.

On August 1, 1996, Decree No. 1,973 promulgated the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, which was concluded in Belém do Pará on June 9, 1994, and aimed directly at violence against women, with special focus on physical, psychological and sexual violence. Another important point was that this decree called on the State the responsibility of ensuring the rights and duties of women more incisively.

On September 13, 2002, Decree No. 4,377 promulgated the Convention on the Elimination of All Forms of Discrimination against Women, of 1979, revoking Decree No. 89,460, of March 20, 1984.

On November 24, 2003, Law No. 10.778 established, in the national territory, the compulsory notification of any case of violence against women who seek public or private health services to receive treatment and support. Despite the great importance of the decision, as a rule, few abused women disclose violence or denounce their aggressors.

Law No. 11,340 of August 7, 2006, popularly known as the Maria da Penha Law, created mechanisms to curb domestic and family violence against women, pursuant to § 8 of article 226 of the Federal Constitution, the Convention on the Elimination of All Forms of Discrimination against Women, and the Inter-American Convention to Preventing, Punishing and Eradicating Violence against Women; provided for the creation of Courts for Domestic and Family Violence against Women; amended the Code of Criminal Procedure, the Criminal Code and the Criminal Enforcement Act; and provided for other appropriate measures. One of the most important points of this law is the specificity it addresses against gender-based violence.

From then on, violence against women was no longer the object of Special Courts, in accordance with Law No. 9,099, of September 26, 1995, which defined measures concerning the Special Civil and Criminal Courts and included other provisions, because domestic violence was no longer an offense with low offensive potential.

On August 1, 2013, Law No. 12,845 provided for the mandatory and comprehensive care of people in situation of sexual violence, as well as established compulsory notification, throughout Brazil, in cases of violence against women in which they are treated in health establishments in general.

Law No. 12,650 of May 17, 2012 amended Decree-Law No. 2,848 of December 7, 1940 - Penal Code, with the purpose of modifying the rules regarding the statute of limitations for crimes committed against children and adolescents, starting to count the statute of limitations on the date on which the victim turns 18 years old, if the Public Prosecutor's Office has not already opened criminal



proceedings against the aggressor. The law aimed to extend protection to women under 18 years of age, before the statute of limitations began to run from the commission of the fact.

Femicide, a name that became popular in Brazil on March 9, 2015 with Law No. 13,104, which amended article 121 of Decree-Law No. 2,848, of December 7, 1940 - Penal Code, by providing for femicide as a qualifying circumstance for the crime of homicide, and article 1 of Law No. 8,072, of July 25, 1990, aiming to include femicide in the list of heinous crimes. In a brief summary, it qualified the crime against women in cases of crimes committed against them simply for being women.

On November 8, 2017, Law No. 13,505 added provisions to Law No. 11,340 of August 7, 2006 (Maria da Penha Law), in order to promote a more specialized and sensitive service to the needs of women, with the law providing for the right of women in situations of domestic and family violence to have specialized police and expert assistance, uninterrupted and provided, preferably, by female servants,

On December 19, 2018, due to the constant dissemination of erotic scenes of couples, in order to dishonor women, Law No. 13,772 was enacted, amending Law No. 11,340, of August 7, 2006 (Maria da Penha Law), and Decree-Law No. 2,848, of December 7, 1940 (Penal Code), that provided to recognize that any violation of the woman's intimacy constitutes domestic and family violence, and, just as well, unauthorized photos, videos or records, containing nudity or sexual acts in a private and intimate condition, constitute violence and are criminalized.

The Maria da Penha Law itself did not typify crimes, until April 3, 2018, when it was amended by Law No. 13,641, in order to typify the crime of "non-compliance with emergency protective measures", and established penalties to be applied in the event of violation of such rule.

The Maria da Penha Law itself did not typify crimes, until April 3, 2018, when it was amended by Law No. 13,641, in order to typify the crime of "non-compliance with emergency protective measures", and established penalties to be applied in the event of violation of this rule.

On April 3, 2020, Law No. 13,984 amended article 22 of Law No. 11,340, of August 7, 2006 (Maria da Penha Law), which

established, as one of the protective measures for women, the attendance of the aggressor to an education and rehabilitation center, as well as psychosocial monitoring.

The Red Light Against Domestic Violence cooperation program, created on July 28, 2021, by means of Law No. 14,188, defining, as one of the most important measures Against domestic violence provided for, not only in Law No. 11,340, of August 7, 2006 (Maria da Penha Law), but also in Decree-Law No. 2,848, of December 7, 1940 (Penal Code) throughout Brazil; and amended Decree-Law No. 2,848, of December 7, 1940 (Penal Code), to modify the modality of the penalty for simple bodily injury committed against women for reasons of the female sex, as well as to create the criminal type of psychological violence against women.

On March 8, 2022, Law No. 14,310 amended Law No. 11,340, of August 7, 2006 (Maria da Penha Law), so that the judicial authority would immediately register emergency protective measures in favor of women in a situation of domestic and family violence, as well as in regard to their dependents.

And, finally, Law No. 14,550, of April 19, 2023, amends Law No. 11,340, of August 7, 2006 (Maria da Penha Law), to provide emergency protective measures and establish that the cause or motivation of the acts of violence and the condition of the offender or the offended party do not exclude the application of the Law.

All this background information demonstrates the importance and constant evolution of the legislation concerning the protection of women, being the main milestone, Law No. 11.340/06, which defines domestic violence in article 7 as forms of domestic and family violence against women, which include, among others, physical violence, psychological violence, sexual violence, property violence, and moral violence (BRASIL, 2006). The Maria da Penha Law conceptualized domestic violence against women in its articles 5 and 7, and established its scope: (Article 5) any action or omission based on gender that causes death, injury, physical, sexual or psychological suffering and moral or property damage.

A primeira delas, a violência física, prevista no inciso I, é caracterizada pelo uso da força que agride o corpo (integridade física) ou a saúde da mulher podendo ou não deixar marcas visíveis a olho

nu pela sociedade. Na violência psicológica, prevista no inciso II, para a autora, as características principais são a desvalorização da vítima, críticas e humilhações, gestos de ameaça, condutas de restrições quanto à vida pública, condutas destrutivas frente a objetos de valor econômico ou afetivo e a animais de estimação. Já a violência sexual, prevista no inciso III da Lei em comento, é uma das formas mais violentas de agressão contra a mulher, prevista no código penal como estupro. Em relação a violência patrimonial, prevista no inciso IV, insere no contexto do patrimônio não apenas os bens de relevância patrimonial e econômico-financeira direta, mas também aqueles de importância pessoal. No que diz respeito a conceituação de violência moral, prevista no inciso V do artigo 7º da Lei, que é explicada tendo como base os delitos contra a honra previstos nos artigos 138, 139 e 140, todos do Código Penal Brasileiro, respectivamente, que são a calúnia, difamação e a injúria. Quando cometidos contra a mulher e decorrentes de uma relação de afeto ou familiar configuram a violência moral.

Physical violence, which is provided for in item I, is characterized by the use of force that harms the woman's body (physical integrity) or health, which may or may not leave marks which are visible to the naked eye by society. In terms of psychological violence, provided for in item II, for the author, the main characteristics are the devaluation of the victim, criticism and humiliation, threatening gestures, restrictive behaviors in public life, destructive behaviors towards objects of economic or affective value and pets. Sexual violence, provided for in item III of the Law in question, is one of the most violent forms of aggression against women, provided for in the penal code as rape. In relation to patrimonial violence, provided for in item IV, it inserts in the context of patrimony not only assets of direct patrimonial and economic-financial relevance, but also those of personal importance. With regard to the conceptualization of moral violence, provided for in item V of article 7 of the Law, which is explained based on the crimes against honor provided for in articles 138, 139 and 140, all of which are in the Brazilian Penal Code, respectively, which are slander, defamation and injury. When committed against women and resulting from an affectionate or family relationship, they constitute moral violence.

It is important to highlight the very recent material change in the Penal Code with the new classification included in article 147-B, by Federal Law No. 14,188/21, which promotes an update which has always been urgent among the mechanisms, not only those which constrict the culture of violence against women, but also as an educational instrument to sanction the practices of emotional harm directed at a woman, aiming at disturbing her, hindering her full development, degrading her and/or attempting to control her actions. The importance of this penal type converges with the understanding discussed by Butler (2017) in regard to the ways to combat the contemporary iniquitous subjection - the subjectification of bodies - whose patriarchal mentality requires it to be docile and fragile.

It is generally understood that the definition of behaviors characterized as domestic and family violence is the result of a new vision of both the world and Brazilian society, in view of the achievements of feminist movements and the international condemnation of the Brazilian State due to the violation of human rights in the face of its inertia and omission regarding the issue of women victims of violence. And violence becomes domestic when it is committed: a) within the domestic unit; b) in the family environment; or c) in any intimate relationship of affection, regardless of the victim's sexual orientation.

According to the doctrinaires studied, this violence, regardless of the cohabitation of the spouses, age group, gender, is revealed when people are humiliated, beaten and suffer offenses in the domestic environment. Such a situation of violence does not usually obey any specific social, economic, religious or cultural level in the studies analyzed.

### **3 VIOLENCE AGAINST WOMEN IN THE COVID-19 PERIODS: FROM THE PRE-PANDEMIC TO THE POST-PANDEMIC SITUATION**

In spite of all the support provided nowadays, including the legal preventive framework which gets increasingly specific and protective, it is necessary to provide a safe environment for the entire population and, in special, for female citizens, Considering that

women suffer different types of violence, and each one of them must be analyzed and fought on a case-by-case basis, in the previous chapter we demonstrated the entire protection framework.

Now, in this chapter, we are going to demonstrate, by means of numbers, how this protection of women has developed, especially bringing data referring to the pandemic and post-pandemic period. For this, we have consulted the Brazilian Forum on Public Security, by means of the Datafolha Institute, an organization that carried out the Visible and Invisible Research: the victimization of women in Brazil, editions 1, 2, 3 and 4 corresponding to 2017, 2019, 2021 and 2023, so that we could have complete and transparent information at the national level on issues of violence against women. Data from the Brazilian Yearbook of Public Security were also analyzed.

The latest “Visible and Invisible Survey” published in March 2023 has its data based on research on victimization issues, while the Yearbook is related to administrative records, that is, they are a reflection of calls to 190, police reports, requests for protective measures.

According to the data from the yearbooks, the numbers of femicides, were: in 2016, 929; in 2017, 1075; in 2018, 1229; in 2019, 1330; in 2020, 1354; in 2021, 1341; and the last concrete data of 2022 were 1437, that is, in that last year femicides grew by 6.1%. But, if we start from the idea that, in 2016, we had only (even if there are more) 929 femicides per year, we reach an increase of 54.68% compared to 2016. Thus, there is a huge increase in cases of femicide.

Another alarming fact was the 49.7% increase in the registration of sexual harassment crimes, considering that, in 2022, there were 6114 records, which makes these numbers far exceed those concerning rapes and femicides.

In 2019, the numbers of Harassment reached 5323; in 2020, there were 4204; in 2021, they were 5202; in 2022, a total of 6114. Intriguing is that the yearbooks only started to specify Sexual Harassment from 2019, which was present in the 2021 Yearbook.

Some other data in the yearbook that deserve to be highlighted are both the Stalking cases, which correspond to an average of 155 daily cases reported, for a total of 56,560 in the period of one year; as well as the number of cases of psychological violence, which included a total of 24,382 in 2022. It is necessary to point out the undeniable

increase, in 2022, of all indicators of domestic violence (aggressions, threats and calls to 190 or 102).

Thus, when analyzing the period before, during and after the pandemic, it becomes obvious that there was a resounding spike in cases of violence in general, especially sexual harassment, which is believed to be a consequence of the non-recovery of all protection services, especially shelters that had their activities closed during the pandemic, or that often had restrictions on service hours, as well as reductions in staff, due not only to their attendees', but also to their own protection from the harms of Covid-19. In addition, in the next item we will give a special focus to the state apparatus during the pandemic.

### **3.1. The structure of the State in the fight against violence against women during the Pandemic**

The violence to which women are subjected on a daily basis affirms their vulnerability to the opposite sex, and forces the State to impose limitations on the opposite gender. And, during the Covid-19 pandemic, when conducting a survey on the internet and media, as stated by Marques *et al.* (2020), it is noticed that the increase in violence against women and against children and adolescents during the period of social distancing has been observed in different countries, including Brazil. During this time, movement restrictions and financial limitations also embolden abusers, giving them additional power and control.

Also according to Marques *et al.* (2020), institutions that make up the network for the protection of women, children, and adolescents in Brazil also denounce the increase in the number of cases and draw attention to the possibility of less visibility of situations due to the recommendation to remain at home, in addition to the closure or reduction of the working hours of protection services, such as the Women's Police Station, Guardianship Councils, etc.

And, in order to face the growing situation of cases of violence against women, the Specialized Police Stations for Assistance to Women (DEAMs) have a leading role in the creation of measures that improve the women's protection network, which goes from the first service to the removal of the aggressor. According to Brasil (2010),

DEAMs are units of the Civil Police to assist women in situations of gender violence. The Women's Assistance Police Stations are linked to the State Secretariats of Public Security, which are part of the National Policy for the Prevention, Confrontation and Eradication of violence against women and represent a response of the Brazilian state to violence against women (BRASIL, 2010).

From this perspective of responding to the wave of violence against women as a result of Covid-19 prevention measures, we believe that the following points listed by Marque et al. (2020) are fundamental: (1) Ensure 24-hour service from Call 180, Dial 100 (violation of human rights) and 190 (Civil Police), and maintain the work of the Guardianship Councils by on-call or by telephone, WhatsApp, mobile applications and digital media for reporting violations (2) Ensure the expeditious adjudication of complaints of violence against women, which may be requested by the victim to the police chief or through the Public Prosecutor's Office, with a view to the installation of emergency protective measures, when necessary; (3) Reinforce advertising campaigns that have as their central focus the importance of everyone "putting the spoon in a fight between husband and wife". Likewise, there is a need for campaigns to raise awareness about the different types of child and adolescent abuse. Neighbors, relatives, and friends can make all the difference in a situation like this.

However, the DEAMs are bodies that, in addition to contributing to giving visibility to the problem of violence against women, especially that occurring in the domestic environment, within marital and family relationships, to the recognition, by society, of the criminal nature of violence based on gender differences to which women are subjected (CASTRO, et al. 2008); They also need to be engaged in non-formal education actions. In view of the perception of an increase in the occurrence of violence during the pandemic period, some institutions and social organizations have developed materials for the prevention of violence during this period of social distancing (MARQUES, et al. 2020).

In this context, it is necessary to take advantage of existing experiences and reinforce what has already been done by governmental and non-governmental institutions in our country,

adapting these initiatives to the specific situation we are experiencing in the COVID-19 scenario (MARQUES, et al., 2020). For example, an action created in the 90s, which perhaps helped in the current moment, are established thematic networks, such as the National Network for Reproductive Rights and the National Network Against Domestic and Sexual Violence, which contributed to the deepening of the debates on the feminist movement, making more women aware of what Law No. 11,340/06 says, popularly known as the Maria da Penha Law, which expanded the formal repression of violence against women, creating mechanisms to curb domestic and family violence against women.

As stated by Marque et al. (2020), encourage initiatives to support women, children and adolescents in situations of violence, based on reception and psychological, social assistance, legal and health counseling, etc. It is important to highlight here the participation of feminist movements, persistent in initiatives to disseminate information, knowledge and support networks for women who have been suffering from violence. It is up to the State to foster and support the initiatives of these movements, in order to complement the action of the protective network that it cannot cope with alone.

Simple actions, such as those described by Marques et al. (2020), the creation of spaces for them to talk about their feelings and anxieties; use of positive discipline as a way to deal with disobedient behaviors; tips on organizing the family routine, maintaining calm and reducing stress during this period, etc. For Adrião (2010) apud. According to Menezes (2012), it is important to highlight that feminist movements are plural, inserted in different social contexts, and fight to combat different inequalities from the perspective of each society at each historical moment. In this way, the focus and direction in women's protection policies should be maintained.

## **4 CLOSING REMARKS**

The main consideration that emerges from the analysis of the above research is that domestic and family violence against



women continues to grow, and the achievements of gender have not contributed to reducing the number of victims of domestic violence. And, in times of pandemic, the numbers increased by 20%, as the survey shows.

As a historically repressed group and the main target of domestic violence, the female victim, in cases of domestic violence, benefits from mechanisms of protection and punishment against the aggressor adopted by the State. In Brazil, among other measures, the creation of the Specialized Police Stations for Assistance to Women (DEAMs), the enactment of the Maria da Penha Law, stand out as legitimate actions of the State in the fight against gender violence.

What the research reinforces is that in the face of the absurdly negative statistics on the number of women victims of violence in the last year, in an upward curve in the course of the Covid-19 pandemic, it is necessary for the State to adopt new protective and support measures for women victims of domestic violence, with new institutional designs and strategies for multilevel protection networks.

It is admissible, therefore, the historical premise that the identity of the constitutional subject is the result, in the conflicts and experiences in social spaces, of the permanent tensions between freedoms and equality, the latter being elementary constituents of the former. Moreover, Brazilian society is misogynistic, patriarchal and sexist, characterizing a cordial culture of institutional violence, almost always directed at the intersections of gender and color.

Public policies should not be left to chance, and we can see through the data collected, that when there was a decrease/restrictions on care, such as those necessary during the Covid 19 pandemic, there was a subsequent increase in cases, and criminals cannot be left unpunished, in any of the crimes of the Brazilian legislation put in place.

## REFERENCES

BRASIL. Decreto nº 89.460, de 20 de março de 1984. **Diário Oficial da União**, Brasília, 20 de março de 1984

BRASIL. Lei nº 7.353, de 29 de agosto de 1985. **Diário Oficial da União**, Brasília, 29 de agosto de 1985.

BRASIL. Decreto nº 1.973, de 1º de agosto de 1996. **Diário Oficial da União**, Brasília, 1º de agosto de 1996.

BRASIL. Decreto nº 4.377, de 13 de setembro de 2002. **Diário Oficial da União**, Brasília, 13 de setembro de 2002.

BRASIL. Lei nº 10.778, de 24 de novembro de 2003. **Diário Oficial da União**, Brasília, 24 de novembro de 2003.

BRASIL. Lei nº 11.340, de 7 de agosto de 2006. **Diário Oficial da União**, Brasília, 7 de agosto de 2006.

BRASIL. Lei nº 9.099, de 26 de setembro de 1995. **Diário Oficial da União**, Brasília, 26 de setembro de 1995.

BRASIL. Lei nº 12.845, de 1º de agosto de 2013. **Diário Oficial da União**, Brasília, 1º de agosto de 2013.

BRASIL. Lei nº 12.650, de 17 de maio de 2012. **Diário Oficial da União**, Brasília, 17 de maio de 2012.

BRASIL. Lei nº 13.104, de 9 de março de 2015. **Diário Oficial da União**, Brasília, 9 de março de 2015.

BRASIL. Lei nº 13.505, de 8 de novembro de 2017. **Diário Oficial da União**, Brasília, 8 de novembro de 2015.

BRASIL. Lei nº 13.772, de 19 de dezembro de 2018. **Diário Oficial da União**, Brasília, 19 de dezembro de 2018.

BRASIL. Lei nº 13.641, de 3 de abril de 2018. **Diário Oficial da União**, Brasília, 3 de abril de 2018.

BRASIL. Lei nº 13.984, de 3 de abril de 2020. **Diário Oficial da União**, Brasília, 3 de abril de 2020.

BRASIL. Lei nº 14.188, de 28 de julho de 2021. **Diário Oficial da União**, Brasília, 28 de julho de 2021.

BRASIL. Lei nº 14.310, de 8º de março de 2022. **Diário Oficial da União**, Brasília, 8º de março de 2022.

BRASIL. Lei nº 14.550, de 19 de abril de 2023. **Diário Oficial da União**, Brasília, 19 de abril de 2023.

BRASIL. Ministério da Justiça. **Norma Técnica de Padronização das Delegacias Especializadas de Atendimento à Mulher**. ed. atual. Brasília. 2010.

BRASIL. **Lei nº 11.340, de 07 de agosto de 2006**. Coíbe a violência doméstica e familiar contra a mulher. Brasília. 2011.

CASTRO, A. S. *et al.* **Violência contra a mulher**: um estudo dos serviços de atendimento a mulher em situação de violência no município de Vitória – ES. Universidade Federal do Espírito Santo. Centro de Ciências Jurídicas e Econômicas. Departamento de Serviço Social. 2008.

CONFEDERAÇÃO NACIONAL DOS MUNICÍPIOS – CNM. **Pesquisa CNM – Covid-19 – Edição 21 – de 09 a 12/08**. Disponível em: [https://www.cnm.org.br/cms/biblioteca/Relato%cc%81rio\\_pesquisa\\_Relampago\\_Ed\\_21.pdf](https://www.cnm.org.br/cms/biblioteca/Relato%cc%81rio_pesquisa_Relampago_Ed_21.pdf). Acesso em: 04 out. 2021.

CHAI, C.G. CAMPOS, D. T. Estupro e justiça: a ordem patriarcal de gênero na atuação do sistema de justiça penal. *In*: LÉON, A.A.G. *et al.* (Orgs.). **Gênero e sexualidade em perspectiva social**. João Pessoa: Editora UFPB, 2020.

FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. **Anuário Brasileiro de Segurança Pública**. São Paulo: Fórum Brasileiro de Segurança Pública, 2019. Disponível em: [https://forumseguranca.org.br/wp-content/uploads/2019/10/Anuario-2019-FINAL\\_21.10.19.pdf](https://forumseguranca.org.br/wp-content/uploads/2019/10/Anuario-2019-FINAL_21.10.19.pdf). Acesso em: 23 ago. 2023

FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. **Anuário Brasileiro de Segurança Pública**. São Paulo: Fórum Brasileiro de Segurança Pública, 2020. Disponível em: <https://forumseguranca.org.br/wp-content/uploads/2020/10/anuario-14-2020-v1-interativo.pdf>. Acesso em: 23 ago. 2023

FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. **Anuário Brasileiro de Segurança Pública**. São Paulo: Fórum Brasileiro de Segurança Pública, 2021. Disponível em: <https://forumseguranca.org.br/wp-content/uploads/2021/10/anuario-15-completo-v7-251021.pdf>. Acesso em: 23 ago. 2023

FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. **Anuário Brasileiro de Segurança Pública**. São Paulo: Fórum Brasileiro de Segurança Pública, 2022. Disponível em: <https://forumseguranca.org.br/wp-content/uploads/2022/06/anuario-2022.pdf?v=5>. Acesso em: 23 ago. 2023

FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. **Anuário Brasileiro de Segurança Pública**. São Paulo: Fórum Brasileiro de Segurança Pública, 2023. Disponível em: <https://forumseguranca.org.br/wp-content/uploads/2023/07/anuario-2023.pdf>. Acesso em: 23 ago. 2023

FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. **Visível e invisível: a vitimização de mulheres no Brasil** – 1.ed. São Paulo, 2017. Disponível em: <https://www.forumseguranca.org.br/wp-content/uploads/2017/03/relatorio-pesquisa-vs4.pdf>. Acesso em: 23 ago. 2023

FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. **Visível e invisível: a vitimização de mulheres no Brasil** – 2.ed. São Paulo,

2019. Disponível em: <https://forumseguranca.org.br/wp-content/uploads/2021/05/infografico-visivel-e-invisivel-2ed.pdf>. Acesso em: 23 ago. 2023

FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. **Visível e invisível: a vitimização de mulheres no Brasil** – 3.ed. São Paulo, 2021. Disponível em: [https://forumseguranca.org.br/publicacoes\\_posts/visivel-e-invisivel-a-vitimizacao-de-mulheres-no-brasil-3ed/](https://forumseguranca.org.br/publicacoes_posts/visivel-e-invisivel-a-vitimizacao-de-mulheres-no-brasil-3ed/). Acesso em: 23 ago 2023

FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. **Visível e invisível: a vitimização de mulheres no Brasil** – 4.ed. São Paulo, 2023. Disponível em: <https://forumseguranca.org.br/wp-content/uploads/2023/07/anuario-2023.pdf>. Acesso em: 23 ago. 2023

GUATTINI, G. L. O. **A lei Maria da Penha no judiciário** – análise da jurisprudência dos tribunais. 2011. Disponível em: [http://www3.pucrs.br/pucrs/files/uni/poa/direito/graduacao/tcc/tcc2/trabalhos2011\\_1/gabriela\\_guattini.pdf](http://www3.pucrs.br/pucrs/files/uni/poa/direito/graduacao/tcc/tcc2/trabalhos2011_1/gabriela_guattini.pdf). Acesso em: 03 out. 2021.

ISHIY, K. T. **A desconstrução da criminalidade feminina**. 2014. 22 f. Dissertação (Mestrado) Faculdade de Direito da Universidade de São Paulo. São Paulo. 2014.

BUTLER, J. **A vida psíquica do poder: teorias da sujeição** / Judith Butler; tradução Rogério Bettoni. 1. ed. Belo Horizonte: Autêntica Editora, 2017.

MARQUES, E.S. *et al.* **A violência contra mulheres, crianças e adolescentes em tempos de pandemia pela COVID-19: panorama, motivações e formas de enfrentamento**. Cad. Saúde Pública 2020. Disponível em: <https://www.scielo.org/pdf/csp/2020.v36n4/e00074420/pt>. Acesso em: 03 out. 2021.

MENEZES, R. F. **A Lei Maria da Penha: entre (im)possibilidades e aplicabilidade para feministas e operadores do direito**. 2012. 16 f. Dissertação (Mestrado) Universidade Federal de Pernambuco.

Recife. 2012. Disponível em: <https://repositorio.ufpe.br/handle/123456789/11203>. Acesso em: 02 out. 2021.

SAFFIOTI, H. I.B. **O poder do macho**. São Paulo: Moderna, 1987.

SAMPAIO, M.R.S., GOMES, J. E. M., CHAI, C.G., CALDAS, J. M. P. Impactos da Covid-19 em Casos de Violência Doméstica: um estudo de caso. **Medicina Social: Direito, Saúde & Cidadania** / VELOSO, H. P., CALDAS, J.S.P (Orgs). Teresina: Piauí Gráfica e Editora, 2021.

ISBN: 978-950-34-2426-1

CHAPTER

# 8

**GLOBAL JUSTICE, RULE OF LAW AND HUMAN  
RIGHTS, CONNECTIONS AND DISCONNECTIONS  
FROM A LEGAL AND POLICY PERSPECTIVE**

Sergio Peña Neira

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter8>

# GLOBAL JUSTICE, RULE OF LAW AND HUMAN RIGHTS, CONNECTIONS AND DISCONNECTIONS FROM A LEGAL AND POLICY PERSPECTIVE

*Sergio Peña Neira*

**Abstract:** Certainly, the concepts of Justice, Human Rights, and Rule of Law are inextricably linked, prompting us to question how they are related and why. This contribution will briefly focus on the latter query and expand upon the former. My hypothesis posits that law and policy, particularly international law and international policy, have fostered this relationship by enacting international treaties and developing international principles and customs that protect human rights and the environment, which are fundamental to the safety and well-being of humanity. It is arguable that human rights epitomize justice in international law and policy, within which the international rule of law still applies. While criticisms against the international rule of law have been expressed in tandem with those against international law and policy, it remains indisputable that international law and international policy govern the conduct of nations

**Keywords:** Justice, rule of law, human rights, climate change, biodiversity

## 1 INTRODUCTION

Justice, International Rule of Law, and Human Rights are fundamental components of both international and national political and societal relations. This hypothesis can be supported by the remarkable progress made in international law, human rights, and the rule of law, as well as justice. Nevertheless, Justice has a long-standing history as the primary criterion for determining the quality of allocating shares or burdens and benefits. In contrast, the Rule of Law has been at the heart of the discourse since its inception in England by Dicey in 1889 (Dicey, 1889:172). This has been expressed as the



“supremacy of law” (Dicey, 1889:171), which has become part of International Law and International Relations (Peña, 2018:3-5). On the other hand, Human Rights emerged in the XVIIIth century and developed throughout the XXth century not only in Latin America but also in Europe and the rest of the world (Cassin, 1974:387-398, Lions, 1974:483-501) 1.

It is not sufficient to merely establish the supremacy of law; it is also necessary to obtain solutions based on precise criteria that promote the distribution, reward, and procedure for obtaining outcomes that respect Human Rights. Justice is a concept that is included in international treaties and laws but, more importantly, in policy (international or national) that can change societal behavior (Aristóteles, 1931:118-149) or achieve societal goals (Rawls, 2006). Moreover, the concept of Justice has established limits on the actions of societal actors or subjects, enabling the definition of rules of action in a “cooperative game” scenario (imposed by the concept)

This contribution focuses not only on Human Rights or Justice, but on how they have been incorporated into the rules of International and National Law, and their impact on promoting resilience, adaptation, and preventing adverse effects on those migrating due to climate change. It will begin with a discussion of Justice, followed by an analysis of the Rule of Law, and then Human Rights, all of which will be integrated into the issue of migration.

## 2 JUSTICE

The concept of justice has been the subject of ongoing discussion, dating back to ancient philosophers such as Aristotle (1931: 118-149) and more recently, the political philosopher John Rawls (2006). In the work of legal theorist Hans Kelsen (1957), however, justice is not defined. Kelsen’s conclusion in the book is that it is not possible to define the concept of justice, but it is

---

<sup>1</sup> A. Alvarez proposed a Human Right Declaration in 1919, vid. Cassin (1974:388-389)

possible to identify the elements of justice. Another legal scholar, Gustav Radbruch, acknowledged the existence of extreme injustice (Radbruch, 1946).

In modern society, the idea of justice has become an integral part of public policy, with Rawls playing a prominent role in this discussion. Rawls (2006) argues that while efficiency is important, justice should take priority. If laws and institutions fail to embody justice, Rawls suggests they should be abolished (Rawls, 2006: 17). Therefore, in order to promote justice in society, whether at a national or international level, it is necessary for laws and policies to create conditions that support this objective

Justice has a practical aspect, which is equity, as noted by Aristotle (1931: 118-149). The concept of “criteria” is related to the practical application of justice. Terms such as “fair and just” have been used in international agreements, and their effects have been recognized, most notably in the United Nations Framework Convention on Climate Change (1992: ART. 3.1), which introduced the principle of “common but differentiated responsibility”. However, these terms are not simple, as they have the capacity to create a second set of terms, which are the criteria for the application or implementation of justice and equity. For example, the criteria may include “distribution”, “exchange or reward”, or “procedures for achieving a fair outcome”. Fairness and equity have been considered in various international treaties and even national laws, but without specifying criteria, such as in the Convention on Biological Diversity (1992: art. 15.7) and the Paris Agreement (2015: art. 2.2). The use of criteria (such as distribution, exchange or reward, and procedure) can precisely define the framework in which possible outcomes, including benefits and losses, may be distributed. In the case of criteria for duties arising from the adverse effects of climate change, the criteria can be used to distribute burdens, establish exchange or reward mechanisms, and define procedures for avoiding or defending against these burdens, as well as obtaining benefits. Justice has a practical aspect, which is equity, as noted by Aristotle (1931: 118-149). The concept of “criteria” is related to the practical application of justice. Terms such as “fair and just” have been used in international agreements, and their effects have been recognized, most notably in the United

Nations Framework Convention on Climate Change (1992: ART. 3.1), which introduced the principle of “common but differentiated responsibility”. However, these terms are not simple, as they have the capacity to create a second set of terms, which are the criteria for the application or implementation of justice and equity. For example, the criteria may include “distribution”, “exchange or reward”, or “procedures for achieving a fair outcome”. Fairness and equity have been considered in various international treaties and even national laws, but without specifying criteria, such as in the Convention on Biological Diversity (1992: art. 15.7) and the Paris Agreement (2015: art. 2.2). The use of criteria (such as distribution, exchange or reward, and procedure) can precisely define the framework in which possible outcomes, including benefits and losses, may be distributed. In the case of criteria for duties arising from the adverse effects of climate change, the criteria can be used to distribute burdens, establish exchange or reward mechanisms, and define procedures for avoiding or defending against these burdens, as well as obtaining benefits

### 3 RULE OF LAW

On the other hand, as previously mentioned, Justice and Equity have been incorporated into legal regulations (Peña, 2018: 3-5). However, in international law, the concept of “International Rule of Law” (Peña, 2018: 3-5) differs from that of “National Rule of Law.” In international law, rules of law are not only those stated in treaties, but also include international custom between states and general principles of law (including general principles of international law). However, it is now more common to find these rules in treaties, as this ensures the security of law. Nonetheless, other sources of law, whether formal or informal, must also be taken into account.

The development of public policies, both at the international and national levels, is based on law. Law and public policies are the “tools” a State uses to achieve societal goals, and internationally, the community of international subjects and actors can use these “tools” to achieve community goals derived from international threats (such as the extreme change of climate and its adverse effects on life on earth).

Policies are essential for the development of the State in response to societal needs, but at the international level, policies are primarily the work of international organizations. The achievement of international goals must be defined by international policies based on international legal rules. It is not possible to consider policies that violate the United Nations Charter or the International Covenant on Civil and Political Rights. In other words, the international legal framework is the foundation of international policies, and without considering basic international treaties and declarations related to the rights of human beings, these measures would violate the aforementioned rules. International policies are also based on scientific knowledge. For example, climate change has been based on various reports from the IPCC. The same can be said for biodiversity. In the case of migration, the United Nations (Traore and Puscas, 2019, IOM, 2014) has brought attention to the issue from developing countries and has raised awareness through Sustainable Development Goals.

## 4 HUMAN RIGHTS

The protection of human rights and justice is an essential part of international law. Human rights are not only important for the protection of human beings but also for the protection of all forms of life. This duty of human beings to protect all forms of life has been established in international treaties such as the Convention on Biological Diversity (Convention on Biological Diversity, 1992: art. 1).. (Convention on Biological Diversity, 1992: art. 1). Even those who are less fortunate in society have the right to these protections, and it is the obligation of every state to incorporate these rights into national law.

Human rights have evolved from general rights to more specific rights that address the needs of specific communities, groups, and individuals affected by the actions of states and private companies. This includes the rights of older persons, which are protected under the Inter-American Convention on the Protection of the Rights of Older Persons (Convención Americana de Derechos Humanos, 1969, Pacto Internacional de Derechos Económicos, Sociales y Culturales,

1969, Convencion Interamericana sobre la Protección de los Derechos Humanos de las Personas Mayores, 2015).. (Convención Americana de Derechos Humanos, 1969, Pacto Internacional de Derechos Económicos, Sociales y Culturales, 1969, Convencion Interamericana sobre la Protección de los Derechos Humanos de las Personas Mayores, 2015).

Migration due to the adverse effects of climate change is an emerging topic in international law on human rights and national law. As people are forced to move due to the dangers posed by climate change, it is important to grant them general and specific rights to protect them from harm. This is not only a humanitarian issue but also a legal issue, and international policies and treaties can be used to implement these protections.

While the primary focus of international and national human rights is on protecting individuals and groups from human rights abuses, the scope of law and public policy extends beyond just protection. It is important to recognize that law and policy also have the potential to create positive change and promote societal goals, such as social justice and equity.

For instance, laws and policies related to education, healthcare, housing, and employment can play a crucial role in promoting equal opportunities and access to resources for all members of society, particularly those who are marginalized or vulnerable. Similarly, international agreements and policies related to environmental protection, poverty reduction, and sustainable development can help promote a more just and equitable global society (McDougall, 1943: 206-207, Soroos, 2004: 133-134, Hausman and McPherson, 2006: 164-165)..

Therefore, while protection is a key aspect of human rights, it is not the only goal of law and policy. The broader vision of achieving societal goals should also be considered and incorporated into legal and policy frameworks.

International treaties and policies on climate change, such as the Paris Agreement, establish legal rules that can be implemented by international law, policies, as well as national laws and policies. These legal instruments provide a framework for countries to cooperate and take action on mitigating and adapting to the impacts of climate

change. National policies and laws can also play an important role in implementing the commitments made in international treaties and policies.

## **5 THE APPLICATION TO MIGRATION DERIVED FROM CLIMATE CHANGE**

The adverse effects of climate change are creating one of the most significant disasters of this century, yet the response from international and national governments has been slow and insufficient. In contrast to the COVID-19 pandemic, the measures taken to address climate change have not adequately prepared the affected communities and individuals. Migration has been one of the solutions to these adverse effects, but it has not been considered a disaster based on these effects (Tampere, 1998: 9, Organization of American States, 1991). The problem of migration due to natural disasters derived from climate change affects not only human beings but also animals and plants, and requires a focus on both international and national policies and legal rules.

Preparation for migration is imperative from a justice and human rights perspective, and measures should be taken based on scientific research, including economic, legal, and medical measures for example applying the Draft Articles on the protection of persons in the event of disasters (United Nations Organization, 2016: 3a). Distribution of resources from governments should also be anticipated to meet the needs of affected communities. Past experiences with natural disasters and the current COVID-19 crisis should be used as examples to develop measures for future needs, such as building new schools and houses for communities affected by climate change. Overall, a comprehensive approach based on available data and future possibilities is required to address the adverse effects of climate change and protect the rights of affected individuals and communities.

What about Justice?

Justice lies at the heart of this matter. Every individual and group is significant, as is every being. It is essential to ensure distribution for all, particularly for those who are disadvantaged in society, including

those without sufficient resources or means of defence. In the case of humans, human rights provide a baseline for distribution. These rights, established in international treaties and constitutions of many countries, are capable of defining this minimum. The question at hand is the criteria to be considered. As previously noted, needs and contributions may be strong arguments for distribution, but the main issue would be those who are less well-off. In the final stage, communities with limited opportunities to confront adverse effects of climate change should be protected, and from another perspective, those animals and plants that lack the capacity for self-defence should be conserved. The possibility of helping them migrate should also be considered, with necessary measures put in place to avoid potential dangers like zoonosis and others.

Justice not only manifests itself in developing new sources of solutions for needs but also, more significantly, in addressing the aforementioned problem of migration due to climate change harm. Climate change is a natural threat, but our response must not only focus on helping human beings but also animals and plants, as this is a societal response. Such a response is evaluated for its justice not solely on the basis of its quality, but on the quality of the measures that provide full understanding of the needs of human beings, animals, and plants. Every measure depends on the time and knowledge available to address the problem at hand. For instance, most Latin American countries do not produce significant amounts of CO<sub>2</sub> emissions today, yet their laws on climate change are aimed at reducing these emissions. Such an approach seems inconsistent and lacking a proper viewpoint based on the current and future realities of our countries. What would happen in the event of mass migration of humans and biodiversity? Would countries be able to cope with the adverse effects of climate change on both human beings and biodiversity? Even today, it is possible to support the reality of mass extinction of biodiversity, including plants, animals, and microorganisms. Public policies, on the other hand, are not being prepared and have not taken into account this reality. It is a common theme among commentators that changes in construction patterns should prioritize climate change resilience. However, what kind of resilience are we talking about? Are they adaptable to new consequences from negative effects of climate change?

Justice may be one of the treasures of our knowledge, specifically when explicitly considered in international and national legal rules or policies. These rules are capable of accepting criteria for application and defining the framework of behaviour of states and/or human beings. As previously noted, in non-cooperative games with previously defined rules and criteria, the framework for behaviour in response to these laws is established. These rules should consider the conservation of biodiversity as well as the life of human beings

## 6 CONCLUSIONS

Human rights and justice are intertwined concepts that are expressed through rules of law. The international rule of law provides a clear approach to achieving justice through human rights, although all three elements (human rights, justice, and international rule of law) are interrelated and must be considered together. States and the international community use these tools to achieve societal goals and address non-cooperative behavior at the international law level and in international policies.

Recent international and national research has highlighted the importance of understanding the work of law in society and recognizing law as a unique and autonomous discipline vis-à-vis international policy. International and national rule of law are both faculties and limits to the state in pursuing societal goods.

In the context of human and non-human movements, international policies and international law should protect these movements based on principles of human rights and justice. This approach requires new insights into migration, particularly in the case of environmental disasters that force people to migrate. Public policies and laws must be developed to ensure that human rights are protected for those migrating within a country or from one country to another, while also considering the needs of the national population.



## **BIBLIOGRAPHY**

Aguilar (2012) Introducción In L. Aguilar, Política Pública, México, Siglo XXI.

Aristóteles (1931) Ética a Nicomáco, Madrid, Imprenta de L Rubio Aguas.

Cassin, R (1974) El problema de la realización efectiva de los derechos humanos en la sociedad universal In Cassin, et al., Veinte años de evolución de los derechos humanos, México, Universidad Nacional Autónoma de México, pp. 387-398.

Cochran, Ch and Malone, E (2014) Public Policy: Perspectives and Choices, Boulder, Lynne Richiers Publishing.

Convenio de Tampere sobre el suministro de recursos de telecomunicaciones para la mitigación de catástrofes y las operaciones de socorro en caso de catástrofe, Hecho en Tampere el 18 de junio de 1998, Tampere.

Convention on Biological Diversity (1992) Rio de Janeiro, United Nations Organization.

Convención Interamericana sobre la Protección de los Derechos Humanos de las Personas Mayores (2015) Washington D.C., Organización de Estados Americanos.

Dicey, A.V. (1889) Introduction to the study of the Law of Constitution, 3rd Edition, London, Mac Millan.

Hausman, D and McPherson, M (2006) Economic Analysis, Moral Philosophy, and Public Policy, Cambridge, Cambridge University Press.

IOM (2014) IOM Outlook on migration, environment and climate change, International Organization for Migration, 2014

Kelsen, H (1957) *What is Justice?* Berkeley, University of California Press.

Lions, M (1974) Los derechos humanos en la historia y en la doctrina In Cassin, et al., *Veinte años de evolución de los derechos humanos*, México, Universidad Nacional Autónoma de México, pp. 479-502.

McDougal, M (1943) Legal Education and Public Policy: Professional training in the Public Interest, *The Yale Law Journal*, Volume 52, Number 2, pp. 203-295.

Organization of American States (1991) *Convención Interamericana para facilitar la asistencia en casos de desastre*, Santiago de Chile.

Organization of United Nations (2016) *Draft Articles on the protection of persons in the event of disasters, with commentaries*, Geneva, International Law Commission.

Pacto Internacional de Derechos económicos, sociales y culturales (1969) Nueva York, Organización de Naciones Unidas.

Pulus, A (2009) The international legal system as a Constitution In J Dunnof, J. Trachtman, *Ruling the world? Constitutionalism, International Law, and Global Governance*, Cqambridge, Cambridge University Press.

Paris Agreement (2015) Paris, United Nations Organization.

Peña, S (2018) Las fuentes del Estado de derecho internacional: algunas notas introductorias a la luz de la planificación jurídica por falta de normas o la aplicación correcta, In M. Becerra, *Fuentes del derecho internacional desde una visión latinoamericana*, México, Universidad Nacional Autónoma de México-Instituto de Investigaciones Jurídicas de México, pp. 1-14.

Radbruch, G (1946), *Gesetzliches Unrecht und übergesetzliches Recht*. In *Suddeutsche Juristenzeitung*, 105-108.

Rawls, J (2006) Teoría de la Justicia, México, Fondo de Cultura Económica.

Soroos, M (2005) Global Environmental Pollution In A Hussen, Principles of Environmental Law, London, Routledge pp. 126-141.

Traore, Ch, Puscas, S (2019) Climate Change and Migration in Vulnerable Countries, Sustainable Development Goals

<https://www.un.org/sustainabledevelopment/blog/2019/09/climate-change-and-migration-in-vulnerable-countries/>

United Nations Convention on Climate Change (1992) Rio de Janeiro, United Nations Organization.

ISBN: 978-950-34-2426-1

CHAPTER

# 9

**A CRITICAL PERSPECTIVE OF THE  
TRIPS AGREEMENT WAIVER:  
TAKING A HUMAN RIGHTS APPROACH**

Hugo Cahueñas  
Camila Manotas

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter9>

# A CRITICAL PERSPECTIVE OF THE TRIPS AGREEMENT WAIVER: TAKING A HUMAN RIGHTS APPROACH

*Hugo Cabueñas*  
*Camila Manotas*

**Abstract:** On October 2<sup>nd</sup>, 2020 the states of India and South Africa, as co-sponsors, presented to the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPs) a proposal for a waiver of Sections 1,4,5 and 7 of Part II and a draft decision text of the TRIPS Agreement for the prevention, containment and treatment of COVID-19. Co-sponsors claim that this TRIPS exemption is necessary to provide an efficient pandemic response and the rapid availability of COVID-19 pharmaceuticals across the globe. At first, the proposal was heavily criticized and characterized as being too broad, due to its reference to “health products and technologies” without any other referencing. After several discussions and feedback received, the aforementioned states submitted a reviewed draft decision on May 21<sup>st</sup>, 2021 for the consideration of the Council for TRIPS, this communication was circulated at the request of several delegations. (WTO, 2021). First of all, in the preambulatory clauses the co-sponsors recompiled all the events that have transpired during this health emergency. The proposed waiver, according to co-sponsors, has a restricted scope in terms of COVID-19 prevention, treatment, and containment. Finally, on June 2022 the 12<sup>th</sup> session of the Ministerial Conference adopted the Ministerial Decision which authorized the use of patents required of the production of COVID-19 without the permission of the right holder, among other things. This paper will detail the legal framework on IP rights at the WTO relevant to the pandemic. Then, the analysis will focus on the main points and proposals of the waiver. Finally, an analysis of the interplay between IP and human rights will be conducted to further understand their correlation and impact on the right and access to health.

**Keywords:** TRIPS Agreement, WTO, Human rights, COVID-19, Access to health

## 1 INTRODUCTION

On March 11<sup>th</sup>, 2020, the World Health Organization (WHO) declared the SARS-CoV-2 or COVID-19 a pandemic and it completely changed the way society organized and functioned (WHO, 2020). New dynamics had to be implemented so individuals could continue their lives “normally”. Uncertainty ruled day to day for a long time. Then, there was the hope that vaccines would end COVID, however, it was not as easy as it seemed. Two years have passed since then and the pandemic is far from over. People are still figuring out what exactly are the impacts of the virus on every aspect of society.

The manufacturing and distribution of COVID-19 vaccines initiative was encouraged by big pharmaceutical companies such as Pfizer, AstraZeneca, Moderna, Johnson & Johnson, Cansino, Sinovac, Sputnik V, Sinopharm, among others (Intelligence, 2021). It was not a simple process to achieve. Since this was an unprecedented situation for the current world population; dedicated research and nonstop work was needed. The stockpiling, preservation and transportation of the vaccine had to undergo a cold-chain process which imperatively needed the use of refrigerators (Pfizer, 2022).

The distribution of the vaccines was at first focused on North America and European countries due to the headquarters of the aforementioned pharmaceuticals being stationed there (Pfizer, 2022). As a result, the vaccination process started in December 14<sup>th</sup>, 2020 for the United States (US) and Canada (BBC, 2020), likewise Europe (EU) started on December 27<sup>th</sup>, 2020 (DW, 2020). On the other hand, other parties were not as fortunate and the virus had more time to further develop. For instance, the vaccine administration in Ecuador began on January 21<sup>st</sup>, 2021. (El Comercio, 2021). This was almost a month later and went initially to first line personnel like doctors, medical staff and frontline workers; the rest of the population got their first shot around April – May 2021. As for Africa, February 15<sup>th</sup>, 2021 was their starting point. (UNICEF, 2021). Hence, there was a considerable division and distance between the global south and north, which affected how the virus spread and who could start the immunization process first.

It is also worth mentioning the regional efforts made in Latin America. For example, Cuba developed its own vaccines called *Soberana* and *Abdala*, (Meredith, 2022), and Brazil hosted clinical trials for the creation of vaccines while also starting to work on its own vaccine. (Bardsley, 2021). However, these countries did not have the same capacity to ship and manufacture vaccines at the rate of the big pharmaceuticals. Soon after, the world realized a single vaccine dose would not be enough to mitigate the effects of the COVID-19 virus. Consequently, booster doses were released and administered. (CDC, 2022). These were not the only regional efforts made. As will be presented further ahead in the article, many Latin American political and social organizations came together to join forces and aid each other in confronting the COVID-19 pandemic, among them, MERCOSUR. At a UN level, many Human Rights bodies stressed the importance of international cooperation and solidarity for getting through COVID-19 together.

The diffusion and distribution of vaccines worldwide is not a straightforward matter nor was it an easy task to fulfill. States had to buy vaccinations from pharmaceutical firms or other States. Sometimes the processes were observed due to lack of transparency and corruption (Cahueñas, 2021). This was a commercial or trade transaction, and there were regulations in place to control it from different points of view. Intellectual property (IP) rights were certainly a big discussion.

Analyzing IP rights can be something very abstract at times. However, COVID-19 vaccines require a whole new perspective on the relationship of IP rights and human rights. This article pursues to analyze the proposal for a waiver of Sections 1,4,5 and 7 of Part II of the TRIPS Agreement presented by the States of India and South Africa, as well as the impact that it can have on human rights.<sup>1</sup> The focus is specifically the right to health and life since the start of the pandemic concentrating on developing countries.

---

<sup>1</sup> This analysis took into account information that was available until September 2022.

## **2 WTO, TRIPS AGREEMENTS AND DOHA DECLARATION**

### **2.1 WTO**

Terminology and institutions on International Trade Law are very specific to the field, therefore a brief introduction is crucial. The World Trade Organization (WTO) is an international organization created in Geneva, Switzerland on January 1<sup>st</sup> 1995. It is composed by 164 members (WTO, 2022). The WTO has several roles, for example: it contains the rules and norms to regulate trade of good services and intellectual property, it is a space for governments to negotiate trade agreements, and, a place to settle disputes that may arise between the members. The WTO's goal is to help producers of goods and services, exporters, and importers conduct their business (WTO, 2022). The Agreement on Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement) is one of the agreements issued by the WTO, and which will be the basis for this paper.

### **2.2 TRIPS Agreement**

The TRIPS Agreement is to date the most comprehensive multilateral agreement on intellectual property (WTO, 2022). The Agreement discusses some areas of intellectual property like: copyright, related rights, trademarks, geographical indications, industrial designs, patents, layout-designs of integrated circuits and undisclosed information. The text is divided into three main topics: 1) standards, 2) enforcement and 3) dispute settlement. In the first one, the provisions state minimum standards of protection to be provided by each member. As for the second big topic, it establishes domestic procedures and remedies for the enforcement of intellectual property rights. (WTO, 2022). Finally, the last section obliges WTO Members to follow WTO procedures for dispute settlement. This paper will focus on a proposal for a waiver of sections 1,4,5 and 7 of Part II which will be analyzed further on. Before, it seems important to know about the Doha Declaration as background.



## 2.3 Doha Declaration

Although the Doha Declaration is not part of the central argument of this paper, it definitely plays an essential role, given the human rights approach of this paper. It takes its name after the Fourth Ministerial Conference that took place in Doha, Qatar. Its aim is to provide flexibility to Member states that are part of the TRIPS Agreement specifically on the subject of patent rights for better access to essential medicines. These include: a) in applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles; b) each member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted; c) each member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood as public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics (such as COVID-19); d) The effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each member free to establish its own regime for such exhaustion without challenge, subject to the most favored nation (MFN) and national treatment provisions of Articles 3 and 4. It is important to note that developing countries, like South Africa, India, and Brazil were resistant to TRIPS, which led to the concessions contained in the Doha Declaration. With this brief introduction in mind, it is possible to discuss and analyze the subject matter of this paper.

## 3 A WAIVER OF SECTIONS 1,4,5 AND 7 OF PART II

On October 2<sup>nd</sup>, 2020 the States of India and South Africa as co-sponsors through communication IP/C/W/669, presented to the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPs) a proposal for a waiver of Sections 1,4,5 and 7 of Part II and a draft decision text of the TRIPS Agreement for the prevention, containment, and treatment of COVID-19. Co-sponsors claimed that this TRIPS exemption is necessary to provide an efficient pandemic

response and the rapid availability of COVID-19 pharmaceuticals across the globe.

At first, the proposal was heavily criticized and characterized as being too broad, due to its reference to “health products and technologies” without any other referencing. After several discussions and feedback received, the aforementioned States submitted a reviewed draft decision on May 21<sup>st</sup>, 2021 for the consideration of the Council for TRIPS, this communication was circulated at the request of several delegations. First of all, in the preambulatory clauses, the co-sponsors recompiled all the events that have transpired during this pandemic.

The proposed waiver, according to co-sponsors, has a restricted scope in terms of COVID-19 prevention, treatment, and containment. However, they have imposed an undetermined time span based on Article IX (4) of the WTO Agreement. Over 100 WTO members have indicated support for the proposed IP waiver. To approve the waiver, the WTO’s 164 members would have to agree unanimously.

South Africa and India gained the support of 60 cosponsors who submitted a revised proposal establishing duration of 3 years and the object was delimited to products and technologies. (WTO, 2021). So regarding this last version of the proposal, approval, and support has been given by more than 100 States and civil organizations like the WHO and international human rights organizations as will be discussed afterward. Conversely, there are still States opposing the measures (mostly developed ones). However, it is worth mentioning that the United States under the Biden Administration has changed its position and many other countries followed its lead (Yu, 2021).

On June 17<sup>th</sup>, 2022 the Twelfth Ministerial Conference of the WTO adopted the Ministerial Decision on the TRIPS Agreement which mainly authorized

*the use of the subject matter of a patent required for the production and supply of COVID-19 vaccines without the consent of the right holder to the extent necessary to address the COVID-19 pandemic (WTO, 2022).*

In short, the authorization consisted of being able to get the patent without the patent holder's authorization or approval. There were other provisions approved, like:

- b) An eligible Member may waive the requirement of Article 31(f) that authorized use under Article 31 be predominantly to supply its domestic market;*
- c) Eligible Members shall undertake all reasonable efforts to prevent the re-exportation of the products manufactured under the authorization in accordance with this Decision that have been imported into their territories under this Decision;*
- d) Determination of adequate remuneration under Article 31(h) may take account of the humanitarian and not-for-profit purpose of specific vaccine distribution programs aimed at providing equitable access to COVID-19 vaccines in order to support manufacturers in eligible Members to produce and supply these vaccines at affordable prices for eligible Members. (WTO, 2022)*

All of the dispositions approved were considered in the light of availability and universal access to a COVID-19 vaccine and treatment. The WTO also recognized certain duties Members should take into account once they have applied or used like:

- [i] eligible Member shall communicate to the Council for TRIPS any measure related to the implementation of this Decision, including the granting of an authorization*
- [ii] Members shall not challenge any measures taken in conformity with this Decision under subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994*
- [iii] No later than six months from the date of this Decision, Members will decide on its extension to cover the production and supply of COVID-19 diagnostics and therapeutics (WTO, 2022).*

Duration of this decision is initially a period of 5 years. Every year it will be reviewed and if considered the 5-year period could be extended. The Decision concludes by specifying that this in no way imposes an obstacle for Members to apply the flexibilities the TRIPS Agreement already has.

Overall, this is the scenario concerning the proposal put forward by the states of India and South Africa. It is important to understand the whole context underlying the trade situation to actually comprehend why this proposal was set forward in the first place. This IP and trade framework should be also analyzed under a human rights scope.

### 3.1 Understanding the waiver

In this section this paper will detail reasons to understand what are the main causes that led the cosponsors to propose the waiver in the first place. One of the strongest arguments to support the waiver is the fact that the TRIPS Agreement does not contemplate the adequate mechanisms to confront the pandemic. Even though Article 31 and 31 *bis* have compulsory licenses the evaluation to grant one goes in a checklist basis. It is determined by country, by product and by case, creating a delay in facing the COVID-19 pandemic crisis.

Moreover, the products and technologies needed to develop the COVID-19 vaccine are several and this means that intellectual property rights belong to various holders. This creates a problem because many of them “*may not be aware of without undertaking prior art searches or other due diligence*” (Yu, 2021). Consulting, checking and verifying with every right holder is a very elaborate task and most of all a very long process.<sup>2</sup> On top of all, WTO process could have high costs which has discouraged many countries from accessing it and all the bureaucracy that comes with it. Additionally, countries that decide to engage can face discredit, reputational harms, and suffer economic repercussions. As a result, countries have been consciously following the rules to avoid going to WTO dispute settlement.

---

<sup>2</sup> However, as mentioned previously, this was one of the things that Ministerial Decision of June 17th, 2021 addressed and allowed. Without this decision, asking the patent holder was certainly was a barrier.

Another reason is the fact that the application of the proposed waiver could induce pharmaceuticals and other businesses to actively give voluntary licenses which can be open or with a discount. The WTO cites,

*As Jayashree Watal, a former WTO official and the TRIPS negotiator for India, observed the proposed waiver serves as an ‘indirect attempt to put pressure on the original manufacturers to cooperate’ (Yu, 2021).*

Finally, the strongest argument is the fact it can provide better access to vaccines for developing countries. But not every country or policy maker agrees with the reasons behind supporting the proposal of the waiver. Such is the case of former WIPO Director General Francis Gurry who has said,

*‘there are many other policy challenges in the management of the COVID-19 crisis that are not directly related to IP [intellectual property] and innovation’ and that do not involve the ‘question of IP blocking access to vital medical vaccines, treatments or cures’. Even with adoption of the proposed waiver, it is unclear whether countries can quickly address many of the existing problems (...) it is not unreasonable to question the wisdom of taking such drastic measures as suspending intellectual property (Yu, 2021).*

Another aspect to take into consideration is the process to approve the waiver proposal. Due to the WTO procedure being consensus-based, it might take some time for the waiver to be approved and to consequently come into effect. It might take so long that countries will not be able to take advantage of what they are proposing. The perfect example is the Doha Declaration. WTO members implemented the Doha Declaration in 2001 and a few years later they also approved an amendment to a protocol of the TRIPS Agreement. However, it is not until 2017 that this

came into effect. Beforehand, we mentioned that WTO members were divided in regards to their position about the waiver. This means that WTO negotiations will take a long time and will be filled with concessions and compromises. This might take a long time as well. But this is actually getting ahead of the process that goes before.

Implementation is certainly something to consider. Even in the case where the proposed waiver is adopted in an expedited manner, countries will need to implement what has been proposed not only as an international policy matter but most importantly at a national level for their norms to go hand in hand. Debates may arise at a national level which will delay the approval of the waiver, a legislation process is a slow and technical one. The position of strong opposers to the waiver is that even though cosponsors and supports are developing countries, by the time this all goes through they will not be able to enjoy what they fought for, because the COVID-19 pandemic will have ended. Yet, there is no arguing that even though the waiver is passed later than what the cosponsors and supporters wish, the positive effect and impact is it will start a conversation that could guide WTO action.

#### **4 EXPORT RESTRICTIONS ON COVID-19 VACCINES AND THEIR COMPONENTS**

As mentioned before, trade restrictions could not be limited to traditional commercial goods. Medicines and vaccines have trade regulations and restrictions as well. For example, developing countries had a hard time getting HIV treatment because vaccines and medical supplies did not reach them until much later than they did in developed countries. To avoid being put in this situation once again with COVID-19, the international community created the COVAX task force promoted by the WHO to ensure equitable access to COVID-19 vaccines and ingredients. However, it has not been easy due to certain challenges like “vaccine nationalism, vaccine diplomacy, and shortages in supplies” (Ibrahim, 2021).

So, for instance, the EU passed Regulation No. 2021/111 on January 29<sup>th</sup>, 2021, which enforced an export authorization on some products which coincidentally, included vaccines against COVID-19. Other countries put restraints on exporting raw materials used for the manufacturing of COVID-19 vaccines to prioritize domestic production. This puts a restraint on the access to vaccines due to few countries exporting vaccines, mainly developed ones.

When confronted with this issue, it is critical to understand the answer or what may be discovered under WTO rules. The TRIPS Agreement includes several flexibilities like compulsory licensing, patent exceptions, the least developed country transition provisions, and parallel imports. Complementarily, TBT agreements state that “no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health” (Ibrahim, 2021).

## 5 ACCESS AND PROMOTION OF THE HUMAN RIGHT TO HEALTH

### 5.1 International norms and COVID-19 health concerns

#### 5.1.1 United Nations Human Rights Office of the High Commissioner

In November 9<sup>th</sup>, 2020, the OHCHR made a statement expressing its concerns about the impact the COVID-19 pandemic would bring to the world in economic, social, health and human rights features. To shed some light to some of the arguments discussed, regarding the economic aspects the OHCHR expresses that according to World Bank statistics and because of the sudden halt the world came to,

*between 88 to 115 million people went into extreme poverty this year, with the total rising to as many as 150 million by 2021 (...) The World Food Programme projected that 265 million people*

*will face crisis levels of hunger unless direct action is taken, doubling their estimations of hungry people pre-COVID-19” (United Nations, 2020).*

The breaches in inequality will increase creating unfair circumstances and a lack of opportunities for a lot of people in many different countries. Ultimately, this causes distancing from enterprises to honor their human rights obligations. In this sense, taking a universal approach, access to vaccines is essential when tackling the containment of the COVID-19 virus. They cite the Committee on Economic, Social, and Cultural Rights which has stressed, the right of everyone to enjoy the benefits of scientific progress,

*pandemics are a crucial example of the need for scientific international cooperation to face transnational threats. Viruses and other pathogens do not respect borders [...] Combating pandemics effectively requires stronger commitment from States to scientific international cooperation, as national solutions are insufficient. [...] If a pandemic develops, sharing the best scientific knowledge and its applications, especially in the medical field, becomes crucial to mitigate the impact of the disease and to expedite the discovery of effective treatments and vaccines (United Nations, 2020).*

Among other efforts, the OHCHR in collaboration with the UN Educational, Scientific and Cultural Organization (UNESCO) and the World Health Organization (WHO), with the participation of the European Organization for Nuclear Research (CERN) proposed ‘Open Science’ an initiative that pursued the idea that scientific knowledge can contribute to reducing inequalities and provide a response to deal with COVID-19 adequately. Despite these efforts aforementioned, certain governments have taken their vaccines for their citizens use only and in this sense, some countries have rushed to sign deals to gain faster access to vaccines. On the subject, South Africa has said,

*World leaders from the North and South have referred to vaccines as a global public good, which should be*



*fairly and equitably available globally, leaving no one behind. Now is the time to put it into action* (Knowledge Ecology International, 2020).

Regarding the same subject, WHO Director- General,

*urged member States to join the COVAX Global Vaccines Facility, a mechanism aimed at guaranteeing fair access for all countries, rich or poor, to effective immunization. If States do not coordinate globally, there is a high risk that global competition will increase the prices of medical supplies and of a potential vaccine which, in turn, will affect all countries. This will be of particular detrimental effect to the various developing countries already facing high debt and financial crises* (United Nations, 2020).

The OHCHR was aware that international cooperation and global efforts were necessary to actually ensure everything expressed so far. However, a reality check comes when taking into account economic resources available for developing countries. It is also troubling that developing countries will be facing the pandemic with high levels of debt. The OHCHR believes that rather than adopting a human rights approach, governments from these countries will decide to enforce austerity measures, such as, budget cuts in health supplies and personnel, food assistance, and social protection (United Nations, 2020). This is why the “*World Bank has approved \$12 billion grants and highly concessional loans to developing countries, in order to finance their purchase and distribution of COVID-19 vaccines, tests, and treatments*” (United Nations, 2020).

It is important to clarify when talking about pharmaceuticals, businesses and enterprises in this context, this paper is referring to their measures that could affect developing countries. However, this does not mean that the profit made from selling vaccines should be punished or would diminish what they are doing. At the end of the day, there are a lot of people behind this scientific process, who had to spend many hours in the lab, under a lot of pressure. What the OHCHR would like to stress is the need for enforcing and respecting human rights. In this sense,

*The Working Group on Business and Human Rights has reminded businesses of the need for the private sector to respect human rights and prevent adverse human rights impacts in their provision of goods and services during the COVID-19 pandemic, in line with the UN Guiding Principles on Business and Human Rights (United Nations, 2011).*

Thus, it is no surprise pharmaceuticals have the responsibility in relation to access to health. For that reason,

*States should use to the full the provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) regarding flexibilities to protect public health and provide access to medicines for all. This through, inter alia, granting compulsory licenses as recognized in the Doha Declaration on the TRIPS Agreement and Public Health and following the a commitment made in the Sustainable Development Goals (SDG3) (United Nations, 2013).*

Based on this analysis, the OHCHR in accordance with other organizations, like the WHO, call upon all States to cooperate between them and put into practice strategies so the world can confront this unprecedented situation the best way possible.

### 5.1.2 Inter-American Commission on Human Rights (IACHR)

From an Inter-American or regional point of view, in April 6<sup>th</sup>, 2021, the Commission released Resolution No. 1/2021 in which they start explaining the COVID-19 context and the impact it will have in every aspect of society as this paper has mentioned many times before. However, they specifically focus on the “*development, approval, manufacture, and distribution of safe and effective vaccines*” (IACHR, 2021). This is so because the Organization of American States has said that “*90% of people in low-income countries will not have access to any COVID-19 vaccine by 2021.1*” (IACHR, 2021). Furthermore, what this resolution looks for is to advocate for the

*the just and equitable distribution of the vaccines, particularly with regard to accessibility and affordability for middle and low income countries. Equity must be a key component, not only among countries but within countries, in order to put an end to the severe phase of this pandemic (IACHR, 2021).*

In this sense, the IACHR recognizes and expresses its full support of Resolution No. A/HRC/46/L.25/Rev.1 of March 17<sup>th</sup> 2021, sponsored by the United Nations Human Rights Council in promotion of Migrant persons' rights, which it includes access to health. It acknowledges the *“statements of the United Nations Committee on Economic, Social and Cultural Rights in light of the obligations of States parties to the International Covenant on Economic, Social and Cultural Rights”* (United Nations, 2020). Additionally, it must take into account the *“guidance on equitable access to COVID-19 vaccines issued by the Committee on the Rights of Migrant Workers together with other mandates, including the IACHR Rapporteurship on Migrant Persons”* (IACHR, 2021).

Taking all of this into consideration, the objective of this Resolution is to help States understand the extent of their human rights obligations concerning the right to life and health when undergoing the vaccination process. Thus, the IACHR provides recommendations based on the following principles: *“equality and nondiscrimination, human dignity, informed consent, transparency, access to information, cooperation, and international solidarity”* (IACHR, 2021).

The recommendations or suggestions presented by the IACHR are divided according to topics to ensure the human right to health and life: i) access to vaccines, health goods and services pursuant to the principle of equal protection and nondiscrimination; ii) distribution and prioritization of vaccine doses; iii) active dissemination of adequate and sufficient information on the vaccines and combating disinformation; iv) right to free, prior, and informed consent; v) right to access to information, transparency, and combat against corruption; vi) business and human rights as regards the COVID-19 vaccines; and finally, vii) international cooperation.

In reference to the first topic, the IACHR asserts that States must create a vaccination plan so they can ensure equitable and

universal access to vaccines for all its citizens. Besides, States should also provide free access to the vaccines, this means no price or charge will be applied, which will reassure their enjoyment of the right to health and life. Alongside a vaccination plan, States must activate public policies containing intersectional and intercultural approaches that reach everyone part of their population.

As for the distribution and prioritization of vaccine doses, when administrating them the States must consider the special situation of persons deprived of their liberty, persons detained in jails and older people who are in shelters and home cares. Another very important aspect, is the active dissemination of adequate and sufficient information on the vaccines and combating disinformation. When pharmaceuticals announced the manufacturing of vaccines for COVID-19, a lot of speculation came around it fostering feelings of mistrust and lack of confidence. This is why it is the State's duty to strengthen *"the security of public health institutions and on science-based knowledge"* (IACHR, 2021). The launch of campaigns promoting the information about the virus and vaccines are a way of counterattacking misinformation and also a way of providing the necessary information that people must know, specifically regarding the side effects of vaccines. More concisely, with indigenous groups it is indispensable to have their prior consultation, with this, *"States must conduct informational campaigns and distribute vaccines on their territories in coordination and participation"*.

Consent is a very important element to consider. It seems this specific aspect has not been part of the conversation or analysis when addressing the COVID-19 pandemic. However, it is important to know that situations where consent cannot be directly expressed by the person who will receive the dose may arise. This can happen due to a person's health or lack of legal competence. As a response, the State must look for the consent from relatives or legal representatives so that the individual can get the dose destined for them. In this same context, States must preserve as confidential a person's personal data, information and health records. Precisely, the IACHR suggests

*States must proactively release information on vaccination records, studies, and plans, and generally*

*provide information on the procurement, import, distribution, prioritization, and administering of vaccines, as well as the processes and procedures used for oversight and control* (IACHR, 2021).

Not only is the information around the side effects and scientific data about the vaccines important, but also how the State manages these resources. They have the obligation to display and distribute the process of purchasing the vaccines, how many were bought and how they were efficiently distributed in the population. All of this in the spirit of avoiding any corruption practices from both the government and enterprises (pharmaceuticals).

As mentioned before in this paper, there is no doubt pharmaceuticals are going to gain money from the manufacturing of the vaccines. They have done a lot of research and invested a lot of time under a lot of pressure to achieve the final result. Still, this does not mean they do not have obligations as it has been established already. Businesses sold their vaccines to many countries around the world so their obligation is present and in this sense, the extra-territorial scope of human rights seems applicable. Even though, this has been a highly disputed figure. In this respect, the IACHR has said

*Regarding the extra-territorial scope of State obligations in the framework of business activities related to the COVID-19 vaccines, the States where the businesses that produce, distribute, or commercialize these vaccines are domiciled have the duty to regulate, supervise, prevent, or investigate their actions that may affect the realization of human rights beyond their borders* (IACHR, 2021).

The IACHR also refers to the TRIPS Agreement and joins the call made by both the UN Human Rights Council and ESCR Committee to

*to grant temporary exemptions from some provisions of the TRIPS Agreement<sup>7</sup> for vaccines and treatments for COVID-19 that some States*

*have proposed to the World Trade Organization, and it urges the States of the Americas to support the exemptions' swift adoption (IACHR, 2021).*

Additionally, in reference to intellectual property regimes, States should exchange information about the development and manufacture of vaccines. Everything surrounding technology and supplies used. No restrictions or obstacles should be put in place for accessing this information. Finally, the IACHR reinforces the call for international cooperation between all States (not only Latin America) so that overcoming the COVID-19 pandemic can go as smoothly as possible for everyone.

### 5.1.3 International normative and the human right to health

Understanding the human right to health can have more to it than what it seems. This right has several meanings, which were especially important during the COVID-19 pandemic. But first it is important to note all the international instruments where this right is exposed. For example, one of the first texts that adopted this right is the Universal Declaration of Human Rights in Article 25.1. However, the human right to health is present at a UN level in

*Article 5 (e) (iv) of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Articles 11(1) (f) and 12 of the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (UNCEDAW); Article 24 of the 1989 UN Convention on the Rights of the Child (UNCRC); and Article 25 of the 2006 UN Convention on the Rights of Persons with Disabilities (UNCRPD). At the regional level the right to health is recognised in Article 11 of the 1996 Revised European Social Charter (RESC); Article 16 of the 1981 African Charter on Human and Peoples' Rights; Article 14 of the 1990 African Charter on the Rights and Welfare of the Child (ACRWC); and Article 10*

*of the 1988 Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador)* (Nifosi-Sutton, 2022).

Therefore, all these human rights organisms and bodies have approached the human right to health “*in a dynamic, multifaceted and inclusive way not limited to mere absence or mitigation of diseases*” (Nifosi-Sutton, 2022). It is worth pointing out the fact that Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) understands health in the physical and mental dimension. Most of the time health is only considered in its physical dimension, however in the COVID-19 pandemic both physical and mental health suffered deeply.<sup>3</sup> (WHO, 2022). Another interesting point of view is the one adopted by the CEDAW, they established the right to health includes “*the access to sexual and reproductive health services for women and girls, including women and girls with disabilities*”.

From the perspective of State responsibility, the right to health imposes main obligations like “to respect, protect and fulfil to the maximum of States’ available resources”. The Committee on Economic, Social and Cultural Rights went further and delimited “*the scope of relevant State obligations: availability, accessibility, acceptability, and quality*” (United Nations, 2020). Availability means health facilities as well as medical goods and services must be available in an adequate and sufficient way to all the state territory. The CEDAW has stressed this element as critical due to “*women’s increased risk of contracting covid-19 arising from their role as care givers and their high representation in the health workforce*” (IACHR, 2021).

A real life example of the latter is the Italian health system. Italy was one of the European countries that struggled the most to confront the early stages of the COVID-19 pandemic in 2020. The Italian health system was collapsed due to a great amount of pressure from the lack of “*personnel, ventilators, hospital beds, ICU beds, and protective equipment and testing for health care workers*” (Nifosi-Sutton, 2022). Having to face this challenging situation made the government

<sup>3</sup> According to the WHO, “in the first year of the COVID-19 pandemic, global prevalence of anxiety and depression increased by a massive 25%”

realize they had to respond adequately, so they build new hospitals and turned them into specialized COVID-19 hospitals. Looking back, this was the right call because to be able to ensure availability, “[s]tates are expected to plan, assemble and organise throughout the pandemic the human, financial and material resources that will be necessary to respond to it” (Nifosi-Sutton, 2022).

Accessibility denotes the fair and nondiscriminatory access to health by all, but with particular emphasis on vulnerable groups (UN Economic and Social Council, 2000). The Special Rapporteur on the right to health identified

*access to covid-19 treatment has been difficult to achieve even in countries where health facilities were available since ‘there has been discrimination in the selection of individuals who could get tested and treated, with groups in marginalized situations missing out as care was rationed, including Roma, people of African descent and older persons (EBA, 2021).*

In light of this, the Committee and Rapporteur called upon state members to implement measures for the prevention and treatment of COVID-19 in shelters taking in migrants based on the principle of equivalence of care (UN Committee on Migrant Workers & Un Special Rapporteur on the Human Rights of Migrants, 2020). In this manner, states “*shape inclusive, fair and successful pandemic responses*” (Nifosi-Sutton, 2022). As seen above, discrimination has been a significant factor in obtaining treatment for the COVID-19 pandemic, not only when discussing persons at risk, but also while delivering COVID-19 vaccinations in developing and underdeveloped countries. In 2020, developed countries signed agreements with pharmaceutical companies to get preferential treatment when purchasing them once released. The problem was that by May 2021 there were not enough vaccines produced to be able to administer them in the populations of countries in the global south,

*half of Americans and more than a quarter of Europeans had received at least one dose of covid-19 vaccines while only 14% of people in South*



*America, 4.8% in Asia and 1.2% in Africa had been vaccinated (Nifosi-Sutton, 2022).*

Even though developed countries might have thought they were protecting their citizens, the containment of the spread of COVID-19 and true immunization could only be achieved if worldwide the administration of the vaccine was to everyone in every single country,

*if State parties to the ICESCR do not duly foster implementation of the right to access a covid-19 vaccine worldwide more people will die, the effectiveness of the vaccines will be undermined by the emergence of more contagious and fatal variants of the novel coronavirus, and the vaccines will not deliver their full potential to control the pandemic (Nifosi-Sutton, 2022).*

As for acceptability and quality, not much has been said. But, a way to approach it is to understand that not only is the access and availability to a proper health care system and treatment rather it needs to be a quality medical attention. Additionally, acceptability indicates to the state's obligation to maintain a patient's chart and medical history as confidential information that can only be handled by the physician and the patient, as well as immediate family in some cases (Nifosi-Sutton, 2022). One of the upsides of the pandemic is that it has reminded states the importance of having a consolidated and strong health care system.

## **5.2 IP and Human Rights interplay**

Traditionally, when talking about IP there is not an instant connection with human rights. However, when it comes to the right and access to health, specifically in this COVID-19 context, necessarily IP comes into play. Previously, this paper mentioned how intellectual property rights and patents can affect the effective enjoyment of human rights through the perspective of the international bodies and organisms.

There are several ways to look at this. On the one hand, author Daniel Gervais says intellectual property can be interpreted by a tribunal through a human right and in that sense he says that WTO Agreements must be read in accordance with Public International Law (Gervais, 2015). Whilst, Robert Ostergard sees IP as a universal human right, he analyzed the role of IP on people's welfare, exploring the conflict between developed countries and developing countries (Gervais, 2015). Ostergard adopts a utilitarian approach, under which developed countries believe intellectual property rights and protection is a synonym for economic development. Inversely, developing countries argue that in reality access to technologies is needed in order to generate development. But Ostergard says rigid IP laws can put in danger the physical well-being of people living in developing countries, in this respect he says, "*not all [intellectual property rights] should be justified [b]ecause the state's responsibility to provide for people's physical welfare takes precedence over an individual's right to profit.*" (Yu, 2021). Most essential of all, developed countries should provide access to technology to developing countries.

Additionally, the OHCHR has a specific view when it comes to the exchange between IP and Human Rights,

*Intellectual property rights should not override States' obligations to protect and fulfil the right to health, which entails providing for immunization and treatment against major infectious diseases to all without discrimination. The existing TRIPS regime, however, may have an adverse impact on prices and availability of medicines since, as noted by a former Special Rapporteur on the right to health, it makes it difficult for countries (especially developing and least developed countries) to promote access to medicines (IACHR, 2021).*

This statement by the OHCHR was released by the end of 2020, vaccines were not circulating yet, however they could already predict how they trade and management of vaccines was going to play out. Having this mind, they went ahead and sent out a warning about the equitable and universal access to vaccines so developing

and least developed countries were not left behind. Yet, as we now know, things turn out to be exactly like predicted in spite of the warning.

### 5.2.1 Effects of the Doha Declaration

Professor Erika George followed the HIV/AIDS outburst in developing countries according to human rights and IP rights lenses. Her research demonstrated three positive effects that arose from the Doha Declaration. First, developing countries were resistant to TRIPS, primarily South Africa, Brazil and India. This is why they came up with concessions contained in the Doha Declaration. Second, the Declaration did not prohibit a member to take measures to protect public health and ensure access to health. And last, the text allows the use of compulsory licenses under certain circumstances (Yu, 2021).

In this context Professor George provided some examples of the relation between developing countries and pharmaceuticals in the health arena. Brazil, India, Indonesia, South Africa and Thailand adopted internal policies and fought to resist external pressures so they could provide access to affordable medicines for their people. In 2007, “Indonesia refused to share flu samples [...] because of past experience in which western firms patented genetic material in order to manufacture unaffordable vaccines” (Yu, 2021).

### 5.2.2 Other efforts

Apart from the Doha Declaration, the U.N Sub-commission on the promotion and protection of human rights believes that “intellectual property protection as undermining a broad spectrum of human rights obligations especially in the area of economic, social and cultural rights” and acknowledges that human rights are set as a priority over intellectual property especially in areas of conflict in a treaty (Yu, 2021). On the other hand, the WTO believes that human rights and IP law are complementary to each other, because human rights protects public access to new creations (Yu, 2021).

## 6 REGIONAL EFFORTS IN LATIN AMERICA

Up to this point, this paper has pointed out several obstacles that developing countries had to face acquiring vaccines to combat COVID-19. Given these challenges the global south had to face, it is important to highlight some of the efforts made by regional organizations. In this regard, this paper will approach specifically what took place in the Andean region of Latin America and for that it will expose the response made by the Organization of American States (OAS), the Forum for the Progress and Development of South America (PROSUR), the Andean Community (CAN), the Southern Common Market (MERCOSUR), and the Pacific Alliance (PA) (Cahueñas, 2020).

### 6.1 PROSUR

PROSUR put forward several initiatives to create an environment of cooperation environment in battling the COVID-19 pandemic; however, among the most relevant are the ones exposed below. On August 2020, the Presidents declared to promote regional cooperation to achieve universal, equitable and timely access to the future vaccine against COVID-19 in South America, recognizing it as a global public good and coordinating efforts that favor its joint purchase and the transfer of technology for its local production (PROSUR, 2021).

It can be evidenced that PROSUR considered when the time came for COVID-19 vaccines, the equitable and timely access to the future vaccine against COVID-19 in South America was essential to continue to ensure a timely and adequate response to the virus.

### 6.2 CAN

On July 20<sup>th</sup>, 2020 Andean states signed Declaration No. 860 which contained a guide for the coordination of humanitarian assistance between state members. It did not specifically address the COVID-19 context however, it was a document that provided procedures and mechanism to request assistance in this context

(Gaceta Oficial del Acuerdo de Cartagena, 2020). Explicitly about COVID-19 pandemic,

*in April 2020, the Ministers of Foreign Affairs signed a Declaration regarding the spread of the coronavirus (COVID-19). This Declaration underlines the importance of the existing mechanisms and institutions for managing the effects of the pandemic (...) Also, the Declaration expresses the willingness to evaluate possible viable measures for the joint purchase of medical supplies (Cahueñas, 2020).*

The CAN focused on putting in place a guide for states to follow when they request humanitarian assistance from the community. But interestingly, they considered the option of buying joint medical supplies, which would have been an interesting point from the trade perspective.

### 6.3 MERCOSUR

MERCOSUR focused mainly on economic efforts and cooperation for the region. In this sense, in March 17<sup>th</sup> 2020, the organization approved the 'Declaration of Mercosur Presidents on Regional Coordination for the Containment and Mitigation of Coronavirus and its Impact' which encouraged: i) joint purchases regarding medical supplies; ii) no restrictions regarding the trade of goods; iii) control of terrestrial border to avoid increasing the contagion of the virus; and finally, iv) adoption of measures directed to strengthen their economy to be able to endure this tough period (MERCOSUR, 2020).

Under the same logic, the governments submitted several proposals to the Fund for the Structural Convergence of MERCOSUR (FOCEM). Some of them are:

*Strengthen the Network's research in immunology and infectious diseases, with emphasis on the detection and treatment of covid-19; Financed the plurinational project 'Research, Education and Biotechnologies*

*applied to Health', purchasing supplies for operators and implementing new techniques to detect covid-19 in patients; and, Production of rapid molecular tests (PCR kits) for the diagnosis and tests that detect the disease in the serum of patients.*

Certainly, MERCOSUR was the organization that presented more than one initiative. Apart from the ones mentioned before, there also were the following: 'Declaration on the Promotion and Protection of Human Rights in a Situation of a COVID-19 pandemic' and the LVII Summit of MERCOSUR Presidents. This Summit took place in December 16<sup>th</sup>, 2020 which collected and affirmed all the efforts made earlier in the year. Also, the XXII Meeting of Ministers and High Authorities of Integral Management of Disaster Risks of MERCOSUR highlighted "*the pandemic and the measures taken at the national level, its regional situation and [...] perspectives, focusing on the management of shelters and mitigation measures*" (Cahueñas, 2020).

## 7 CONCLUSIONS

To conclude, it is crucial to mention that the COVID-19 is far from over. The number of people infected has certainly decreased and health systems are no longer collapsing. Yet, it is important to acknowledge that according to WHO approximately 14.9 million people have died between January 1, 2020 and December 2021 (WTO, 2021). Also, it is important to be aware of *post* covid effects. Many patients after having COVID-19 have reported ongoing symptoms after a negative test. Mayo Clinic, determined that people who experienced a mild version of COVID-19 continued to have symptoms that lasted long time after a negative test. These are identified as ongoing health problems called post-COVID-19 syndrome.

This implies that the long-term consequences of COVID-19 in the human body are unclear. Even though more than two years have passed, COVID-19 is a virus in constant change. A lot of variants like the Delta and Omicron to name two. On a state level, countries are still dealing with the aftermath of the economic, social and health

crisis COVID-19 brought. The pandemic has turned our world over and has created an unprecedented situation world-wide.

After looking at waivers and the trade of vaccines from a human rights point of view, the question of whether a waiver in response to pandemics should be approved or not is still being debated, with strong reasons on both sides. Nonetheless, it can bring all positive impacts. The Ministerial Conference Decision is a significant step forward in the international community's commitment to protecting the rights to health and life in the face of pandemics. The TRIPS Agreement is one of the most comprehensive trade treaties the WTO currently possesses, protecting intellectual property rights in a variety of domains. However, every now and then amendments and changes are necessary to reflect on what is going on in the world. A clear example was the need the states expressed for the adoption of what the Doha Declaration contains.

Most significantly, this study seeks to examine intellectual property rights through the lens of human rights, particularly in the context of the COVID-19 pandemic. Harmonize the way we analyze intellectual property rights and consider different approaches certainly show to be beneficial for a more comprehensive understanding of what is expected of states and a way to ensure they comply with the obligations there are committed to. In the same vein, some doctrinaires suggest that the World Trade Organization and the World Intellectual Property Organization should view intellectual property using a human rights lens in order to give these institutions legitimacy. In fact, when crises or catastrophes occur, one of the primary aims is to establish worldwide collaboration and solidarity.

Furthermore, compulsory licenses were considered to protect and ensure access to public health. This could be the correct channel or way for developing countries to participate and enjoy the use of COVID-19 vaccines; however, the time and procedures could represent a risk to the rights to health and life. As mentioned previously, this pandemic has taken a toll on the physical and mental health of the world population, however, the global south has been specifically affected. When something has been invented or discovered, the more people have access to it the better. Ultimately, intellectual property should be seen as a mechanism for development of the people

(MERCOSUR, 2020). This cannot be more true and was proven in the COVID-19 context.

As exposed, regional efforts were particularly strong. This initiative was a response to the pandemic to somewhat mitigate the effects it produced in Latin American countries. Although it makes sense to seek these regional efforts due to closeness in the territory, at times they proved to be inefficient due to a disparity between developed countries and the global south. Access to health proved to be a challenging matter for a lot of countries which could at times jeopardize the medical attention and treatment provided to some vulnerable groups. Human rights bodies stressed the importance of guaranteeing universal access to all despite their condition. Certainly, this troubling experience should serve as a lesson for countries to strengthen their health system and provide the best health care within their reach. This is also a lesson on the need of including rules in WTO treaties in order to respond appropriately to future crises.

## BIBLIOGRAPHY

Bardsley, D. (2021). These countries are making their own Covid-19 vaccines from scratch. <https://www.thenationalnews.com/uae/health/these-countries-are-making-their-own-covid-19-vaccines-from-scratch-1.1249156>

BBC. (2020). Covid-19: First vaccine given in US as roll-out begins. <https://www.bbc.com/news/world-us-canada-55305720>

Cahueñas, H. (2020). South America. <https://brill.com/view/journals/yido/3/1/yido.3.issue-1.xml>

Cahueñas, H. (2021, March 17). *Disaster Risk Governance and COVID-19 – Accountability, Transparency, and Corruption*. <https://www.yjil.yale.edu/forum-disaster-risk-governance-and-covid-19-accountability-transparency-and-corruption/>

CDC. (2022). Stay up to date with COVID-19 Vaccines Including Boosters. <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/stay->



up-to-date.html?CDC\_AA\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fvaccines%2Fbooster-shot.html

DW. (2020). COVID: EU to start vaccinations on December 27. <https://www.dw.com/en/covid-eu-to-start-vaccinations-on-december-27/a-55973609>

EBA. (2021). Final report on guidelines on internal governance under Directive (EU) 2019/2034. [https://www.eba.europa.eu/sites/default/documents/files/document\\_library/Publications/Guidelines/2021/EBA-GL-2021-14%20Guidelines%20on%20internal%20governance%20under%20IFD/1024534/Final%20Report%20on%20GL%20on%20internal%20governance%20under%20IFD.pdf?retry=1](https://www.eba.europa.eu/sites/default/documents/files/document_library/Publications/Guidelines/2021/EBA-GL-2021-14%20Guidelines%20on%20internal%20governance%20under%20IFD/1024534/Final%20Report%20on%20GL%20on%20internal%20governance%20under%20IFD.pdf?retry=1)

El Comercio. (2021). Ecuador comienza la vacunación contra el covid-19 en hospitales. <https://www.elcomercio.com/tendencias/sociedad/ecuador-inicio-vacunacion-covid19-hospitales.html>

Gaceta Oficial del Acuerdo de Cartagena. (2020). Guía para la Coordinación de la Asistencia Humanitaria entre los Países Miembros de la Comunidad Andina. <https://www.comunidadandina.org/DocOficialesFiles/Gacetas/Gaceta%204017.pdf>

Gervais, D. (2015). Human rights and the philosophical foundations of intellectual property. *Edward Elgar Publishing*, 89-98. <https://www.elgaronline.com/view/edcoll/9781783472413/9781783472413.00014.xml>

IACHR. (2021). COVID-19 vaccines and inter-American human rights obligations. <https://www.oas.org/en/iachr/decisions/pdf/Resolucion-1-21-en.pdf>

IACHR. (2021). Joint Guidance Note on Equitable Access to COVID-19 Vaccines for All Migrants. <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/JointGuidanceNoteCOVID-19-Vaccines-for-Migrants.pdf>

Ibrahim, I. (2021). Overview of Export Restrictions on COVID-19 Vaccines and their Components. <https://www.asil.org/insights/volume/25/issue/10>

Intellizence. (2021). Top 10 companies leading the race of Covid-19 Vaccine. <https://intellizence.com/insights/top-10-companies-leading-the-race-of-covid-19-vaccine/>

Knowledge Ecology International. (2020). WTO TRIPS Council (July 2020): South Africa leads discussions on COVID-19. <https://www.keionline.org/33593>

MERCOSUR. (2020). Esfuerzo regional contra la pandemia: el MERCOSUR aprobó un fondo de emergencia de US\$16 millones que serán destinados en su totalidad al combate coordinado contra el COVID-19. <https://www.mercosur.int/esfuerzo-regional-contra-la-pandemia-el-mercosur-aprobo-un-fondo-de-emergencia-de-us16-millones-que-seran-destinados-en-su-totalidad-al-combate-coordinado-contra-el-covid-19/>

MERCOSUR. (2020). Los presidentes de la región acuerdan medidas para combatir el Covid-19. <https://www.mercosur.int/los-presidentes-de-la-region-acuerdan-medidas-para-combatir-el-covid-19/>

Meredith, S. (2022). Why Cuba's extraordinary Covid vaccine success could provide the best hope for low-income countries. <https://www.cnn.com/2022/01/13/why-cubas-extraordinary-covid-vaccine-success-could-provide-the-best-hope-for-the-global-south.html>

Nifosi-Sutton, I. (2022). Realizing the Right to Health during the COVID-19 Pandemic. [https://brill.com/view/journals/yido/3/1/article-p126\\_5.xml?language=en](https://brill.com/view/journals/yido/3/1/article-p126_5.xml?language=en)

Pfizer. (2022). Manufacturing and Distributing the Covid-19 Vaccine. <https://www.pfizer.com/science/coronavirus/vaccine/manufacturing-and-distribution#:~:text=Where%20is%20the%20Pfizer%2DBioNTech,engages%20more%20than%2020%20suppliers.>

Pfizer. (2022). Working to Reach Everyone, Everywhere. <https://www.pfizer.com/science/coronavirus/vaccine/working-to-reach-everyone-everywhere>

PROSUR. (2020). Declaración presidencial de PROSUR. <https://foroprosur.org/declaracion-presidencial-de-prosur/>

UNICEF. (2021). First COVID-10 COVAX vaccine does administered in Africa. <https://www.unicef.org/press-releases/first-covid-19-covax-vaccine-doses-administered-africa>

United Nations. (2011). Guiding Principles on Business and Human Rights. *United Nations, Geneva*. [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)

United Nations. (2020). General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights. <https://docstore.ohchr.org/SelfServices/FilesHandler.x?enc=4slQ6QSmlBEDzFEovLCuW1a0Szab0oXTdImnsJZZVQdxONLLLJiul8wRmVtR5Kxx73i0Uz0k13FeZiqChAWHKFuBqp%2B4RaxfUzqSAfyZYAR%2Fq7sqC7AHRa48PPRRALHB>

United Nations. (2013). Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, on access to medicines.

United Nations. (2020). Statement by UN Human Rights Experts Universal access to vaccines is essential for prevention and containment of COVID-19 around the world. <https://www.ohchr.org/en/statements/2020/11/statement-un-human-rights-experts-universal-access-vaccines-essential-prevention>

United Nations. (2020). Statement on universal and equitable access to vaccines for COVID-19. <https://www.ohchr.org>.

UN Committee on Migrant Workers & Un Special Rapporteur on the Human Rights of Migrants. (2020). Joint Guidance Note on the Impacts of the COVID-19 Pandemic on the Human Rights of Migrants. <https://www.ohchr.org/sites/default/files/CMWSPMJoint-GuidanceNoteCOVID-19Migrants.pdf>

UN Economic and Social Council. (2000). General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant). *UN Committee on Economic, Social and Cultural Rights (CESCR)*. <https://www.refworld.org/docid/4538838d0.html>

WHO. (2022). COVID-19 pandemic triggers 25% increase in prevalence of anxiety and depression worldwide. <https://www.who.int/news/item/02-03-2022-covid-19-pandemic-triggers-25-increase-in-prevalence-of-anxiety-and-depression-worldwide>

WTO. (2022). Members and Observers. [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm)

WTO. (2022). Overview: the TRIPS Agreement. [https://www.wto.org/english/tratop\\_e/trips\\_e/intel2\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm)

WTO. (2021). Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of Covid-19. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/IP/C/W669R1.pdf&Open=True>

WTO. (2021). Waiver from certain provisions of the trips agreement for the prevention, containment and treatment of Covid-19 – Joint statement of co-sponsors communication from the African group, the plurination state of Bolivia, Egypt, Eswatini, Fiji, India, Indonesia, Kenya, The LDC Group, Maldives, Mozambique, Mongolia, Namibia, Pakistan, South Africa, Vanuatu, The Bolivarian Republic of Venezuela and Zimbabwe. [https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S009-DP.aspx?language=E&CatalogueIdList=274186,273996,273770,273787,273460,273297,271981,271520,271383](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=274186,273996,273770,273787,273460,273297,271981,271520,271383)

,271259&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

WTO. (2022). What is the WTO? [https://www.wto.org/english/thewto\\_e/whatis\\_e/whatis\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm)

WHO. (2020). WHO Director-General's opening remarks at the media briefing on Covid-19 – 11 March 2020. <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

Yu, P. (2021). A Critical Appraisal of the COVID-19 TRIPS Waiver. *Texas A&M University School of Law Legal Studies Research Paper No. 21-32*. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3945304](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3945304)

Yu, P. (2021). Intellectual Property, Human Rights and Methodological Reflections. <https://academic.oup.com/book/41122/chapter/350439947>

ISBN: 978-950-34-2426-1

CHAPTER

# 10

## INSTITUTIONAL AND TECHNICAL PREVENTION FROM ABUSE OF EMERGENCY POWER

MO Jihong

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter10>

# INSTITUTIONAL AND TECHNICAL PREVENTION FROM ABUSE OF EMERGENCY POWER

*MO Jibong*

**Preface:** The Covid-19 pandemic has been on the rise for more than three years, and there is no indication of when it will end. This global pandemic is indeed a test of human governance. In a traditional non-risk society where natural disasters are relatively mild, the greatest violation of individual freedom is undoubtedly the conflict of interest and value confrontations among people. Public power is placed on double high expectations by the political system that guarantees individual freedom: one is to establish an effective institutional protection barrier for various violations of human rights to prevent individuals from harming each other; the other is the modesty of public power itself, that is to say, in the process of protecting individual freedom, public power cannot use human rights violations as a means and premise. However, the good operation of the above-mentioned political system design on individual freedom is conditional, that is, the protection level of individual freedom is relatively high, and there is no scientific assessment of the ability of public power to protect human rights through institutional means. The rampant spread of COVID-19 has forced politicians from all over the world to rethink a simple issue of state governance and social governance, that is, how to add the variables of the relationship between man and nature to the freedom guarantee system for dealing with the relationship between people. Whether the degree of realization is to be redefined, there is no doubt that the ability of public power to protect freedom must be taken into account. There must be both institutional arrangements and technical support. Institutional design alone is not enough. All the technological capabilities of human beings so far assembled based on public power are a decisive factor. In fact, for natural disasters such as COVID-19, for which the pathological mechanism has not yet been understood, the technical level of the existing epidemic prevention capabilities is still low, which means that the institutional control of emergency powers in epidemic prevention needs to be supported by technical means. How to achieve a qualitative breakthrough in epidemic

prevention technology is a major governance issue that global politicians should consider at present and for some time to come.

## 1 ORIGIN OF EMERGENCY POWER

In ancient Rome, the concept of “emergency power” (Latin: *iura subitis*) already existed. However, it is clearly recorded that in 1763, because of the famine in Britain, King Peter issued an order to forbid the export of wheat, and the theory of emergency power came into being. At that time, the government was not recognized as having the emergency power, so the British Parliament believed that when the country was in an emergency, the orders issued by the government were illegal. Therefore, it formulated the Parliamentary Exemption Act, aiming to exclude the emergency orders issued on this basis from the illegal acts.<sup>1</sup>

After the bourgeois revolution, based on the theory of “people’s sovereignty”, the theory of “separation of three powers” and the concept of restriction and balance of power, the government’s management activities were restricted by the Constitution. The government must obtain the legitimacy basis for its behavior and exercise of administrative power from the provisions of the Constitution. In the 18th and 19th centuries, the government basically played the role of “night watchman” in the capitalist market economy, that is, the era of the “police state”. During this period, the management power of the government was strictly restricted. The government withdrew from the religious and market fields or could not actively intervene in these fields. Citizens, in accordance with the freedom and rights established by the Constitution, acted through autonomy and spontaneous organizational behavior. However, with the formation of monopoly capitalism, resulting in the imbalance of social development under free competition and “police administration”, poor social strata and the intensification of contradictions between the public emerged. In this case, the concept of “police administration” has been challenged, and the government has begun to actively intervene in various affairs

---

<sup>1</sup> Cf. *The Principle of Constitutional Law*, written by MO Jihong, the Publishing House of Chinese Social Sciences, 2008, p.432.



of social management, including the government to organize various forces to deal with various forms of emergency, to strengthen the power of government emergency management. Thus, the government emergency management system was created.

The most obvious example is that on March 5, 1933, U.S. President Roosevelt invoked the National Emergency Law to declare the United States a “state of emergency”. Thereafter, Truman declared a “state of national emergency” on December 16, 1950 (the Korean War), Nixon on March 23, 1970 (the postal workers’ strike), and August 15, 1971 (the financial crisis) in accordance with the National Emergency Law, and thus obtained 470 legal authorizations. These legal authorizations involve all aspects of social life, while in the external aspect, they are mainly to seal up the property of hostile countries and prohibit trade with them. It was not until September 14, 1976, when the United States Congress announced the repeal of the National Emergency Law on the basis of concern about the excessive power of the President, that the President’s power to declare a state of emergency was limited. At this time, the World War II had ended for 31 years. Therefore, the concept that government emergency management should be restricted by the Constitution and laws has gradually been accepted, and has become the most important principle of government management in a modern society ruled by law.<sup>2</sup>

## 2 THE EMBODIMENT OF EMERGENCY POWER SYSTEM IN CHINA'S CONSTITUTION AND LAWS

In China, after the martial law system was stipulated in the current Constitution in 1982, in order to take urgent and effective emergency measures for emergencies, the National People’s Congress, its Standing Committee and the State Council have also formulated corresponding emergency measures for emergencies of general nature caused by natural disasters in laws and administrative regulations. For example, Article 26 of the Law of the People’s Republic of China on

<sup>2</sup> Cf. Study on the Theory and Practice of Socialism Rule of Law Construction with Chinese Characteristic in A New Era., written ny MO Jihong, the Publishing House of Democracy and Legality of China , 2022, p.378.

the Prevention and Control of Infectious Diseases, adopted in 1989, stipulates that when Class A and Class B infectious diseases break out and become prevalent, the local government at or above the county level can declare the epidemic area, take the emergency measures specified in Article 25 of this Law in the epidemic area, and implement health quarantine on the personnel, materials and vehicles entering and leaving the epidemic area after reporting to the local government at the next higher level for decision. Upon the decision of the government of the province, autonomous region and municipality directly under the Central Government, the epidemic area of Class A infectious disease may be blocked; blocking an epidemic area in a large or medium-sized city or an epidemic area across provinces, autonomous regions, or municipalities directly under the Central Government, or blocking an epidemic area that results in the interruption of trunk traffic or the blockade of the border, shall be decided by the State Council. The lifting of the blockade of the epidemic area shall be announced by the original decision organ. Article 32 of the Law of the People's Republic of China on Earthquake Prevention and Disaster Reduction also stipulates that the State Council or the people's governments of provinces, autonomous regions and municipalities directly under the Central Government of the earthquake-stricken areas may take the following emergency measures in the earthquake-stricken areas in order to rescue and provide disaster relief and maintain social order after the occurrence of a serious destructive earthquake: (1) Traffic control; (2) Unified distribution and distribution of food and other basic necessities of life and drugs; (3) Temporary requisition of houses, means of transport and communication equipment; (4) Other emergency measures to be taken.

In addition, in order to effectively deal with the emergency caused by natural disasters and do a good job in disaster emergency response, the State Council has issued several "emergency regulations". The Regulations on the Management and Handling of Nuclear Accident Emergency in Nuclear Power Plants issued by Order No. 124 of the State Council on August 4, 1993 provide more detailed provisions for nuclear accident emergency response. According to the regulations, when a nuclear accident emergency enters the off-site emergency state, the department designated by the State Coun-

cil shall dispatch personnel to the scene in time to guide the emergency response actions for nuclear accidents, and make suggestions on dispatching rescue forces when necessary. Another example is the Regulation on the Emergency Response to Destructive Earthquakes, which was officially implemented on April 1, 1995. Article 1 of the Regulation stipulates that the Regulation is formulated to strengthen the management of emergency response to destructive earthquakes, reduce the loss of earthquake disasters, ensure the safety of national property and citizens' personal and property, and maintain social order. In order to effectively prevent, timely control and eliminate the hazards of public health emergencies, ensure the health and life safety of the public, and maintain normal social order. Especially in order to meet the requirements of the emergency work of SARS prevention and control, on May 7, 2003, the State Council meeting adopted in principle the Emergency Regulation for Public Health Emergencies, which was formally implemented on May 9, 2003.

It can be said that so far, Chinese laws and regulations have basically established an effective emergency legal system on how to take emergency measures, how to adjust the relationship between the government and citizens and the relationship between the public. Whether it is an emergency caused by natural disasters or an emergency caused by human factors, the government can take necessary measures according to the corresponding laws and regulations, to deal with various crises and maintain normal social order.

In addition, as the legislation of the Chinese government's emergency management, the Constitution, the National Defense Law and other laws and regulations also provide for the state of war. As stipulated in the current Constitution, the main body determining the state of war in China is the National People's Congress. The Standing Committee of the National People's Congress has the right to decide on the declaration of the state of war when the National People's Congress is not in session, and the President of the People's Republic of China has the right to declare the state of war. In addition, the Standing Committee of the National People's Congress has the right to decide on the general or partial mobilization of the country, and the President of the People's Republic of China has the right to issue a mobilization order.

In the legislative field of government emergency management, unlike the general emergency system, the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China and the Basic Law of the Macao Special Administrative Region of the People's Republic of China also directly stipulate the "emergency system" of the Hong Kong and Macao Special Administrative Region. According to the provisions of Article 18 of the two basic laws, If the Standing Committee of the National People's Congress decides to declare a state of war or decides to enter a state of emergency in Hong Kong or Macao Special Administrative Region due to the occurrence of unrest in Hong Kong or Macao Special Administrative Region that endangers national unity or security beyond the control of the government of Hong Kong or Macao Special Administrative Region, the Central People's Government may issue an order to implement the relevant national laws in Hong Kong or Macao Special Administrative Region.

Among the international treaties and agreements ratified and signed by China, more than 20 involve the legal system of emergency, including the Agreement on Trade Relations between the People's Republic of China and the United States (signed on July 7, 1979 and entered into force on February 1, 1980), the Agreement between the People's Republic of China and Japan on Encouraging and Mutual Protection of Investment (signed on August 27, 1988 and entered into force on May 14, 1989), etc. In these international treaties and agreements, there are more detailed provisions on how to deal with relevant legal relations in case of emergency. For example, Article 1 of the Memorandum of Understanding between the Government of China and the Government of the United States on the Protection of Intellectual Property Rights signed on January 17, 1992 clearly stipulates that the government can waive this requirement in the case of national emergency or other very urgent situations, or in the case of non-commercial use for public purposes. However, in case of the national emergency or other extraordinary emergencies, the obligee shall be notified as soon as possible within a reasonable time.

At present, China's government emergency management legislation is relatively scattered. It does not provide for different emergency measures and emergency legal systems by classifying emergency

states as the Constitution of Türkiye does, nor does it adopt a unified Law on the Legal System of Emergency States as the former Soviet Union does to meet the needs of various emergency states.

In 1999, the amendment to the current Constitution of China formally wrote “to govern the country according to rule of law and build a socialist country under the rule of law” into the Constitution, which means that the rule of law, as an important value concept and means of social governance and government management in modern society, has been confirmed by the Constitution of China, and the rule of law has moved from the value level to the system design.

In March 2004, the second session of the National People’s Congress adopted the way of amending the Constitution to write the “state of emergency” into the Constitution, which is an important milestone in the history of the development of China’s Constitution. Its outstanding contribution is to establish the concept of “ordinary state” corresponding to “emergency state” by introducing the concept of “emergency state” into the Constitution. Therefore, the principles of the rule of law established by the Constitution, including the relationship between state powers and the relationship between state power and civil rights, are not only applicable in ordinary times, but also have supreme authority even in times of emergency. The Constitution is still the basic legal criterion to adjust the relationship between state powers and the relationship between state power and civil rights.

This amendment of the Constitution revised the provisions of Articles 62, 80 and 89 of the current Constitution that the Standing Committee of the National People’s Congress and the State Council have the right to decide martial law in accordance with the provisions of the Constitution, and the President of the State Council has the right to issue martial law orders in accordance with the provisions of the Constitution to the Standing Committee of the National People’s Congress and the State Council has the right to decide to enter a state of emergency in accordance with the Constitution, it is of great significance to improve China’s emergency system.

In order to implement the provisions of the current Constitution on “state of emergency” and regulate the “emergency power” of state organs during the state of emergency, the 29th Meeting of the Standing Committee of the Tenth National People’s Congress of the

People's Republic of China adopted the Law of the People's Republic of China on Emergency Response on August 30, 2007, which came into force on November 1, 2007. The law has seven chapters and 70 articles. According to Article 3 of the Emergency Response Law, the emergency referred to in the Law refers to natural disasters, accident disasters, public health events and social security events that occur suddenly and cause or may cause serious social harm and require emergency response measures. Natural disasters, accident disasters and public health events are divided into four levels according to the degree of social harm and the scope of influence. If there are other provisions in laws, administrative regulations or ordered by the State Council, such provisions shall prevail.

Since the Emergency Response Law focuses on relying on the administrative emergency forces of the people's governments at all levels to deal with various risks and dangers after the occurrence of natural disasters, accident disasters, public health events and social security events specified in the Law, emergency measures are required for those beyond the scope adjusted by the Emergency Response Law, we still need to take emergency measures according to law to deal with all kinds of emergencies. Article 69 of the Emergency Response Law stipulates that the occurrence of a particularly serious emergency, which poses a major threat to the safety of people's lives and property, national security, public security, environmental security or social order, cannot be eliminated or effectively controlled or mitigated by adopting the emergency response measures prescribed by this Law and other relevant laws, regulations and rules, and it is necessary to enter a state of emergency. The decision shall be made by the Standing Committee of the National People's Congress or the State Council in accordance with the limits of authority and procedures prescribed by the Constitution and other relevant laws. The extraordinary measures taken during a state of emergency shall be implemented in accordance with the provisions of relevant laws or otherwise stipulated by the Standing Committee of the National People's Congress.

It can be seen that restricting the emergency power of state organs during the state of emergency through laws has become an important emergency rule of law principle in China's current Constitution and laws to deal with emergencies.

### 3 THE LEGISLATIVE FEATURES OF CHINA'S CURRENT EMERGENCY POWER SYSTEM

China's current emergency system is mainly composed of four systems: war state, martial law, emergency state and emergency response. The current Constitution of 1982 involves the state of war and the martial law system. On March 1, 1996, the 18th meeting of the Standing Committee of the Eighth National People's Congress adopted the Law of the People's Republic of China on Martial Law, which stipulates the legal conditions for the implementation of the martial law system. Article 2 of the Law on Martial Law stipulates: "In the event of unrest, riot or serious disturbance that seriously endangers the unity and security of the country or social and public security, and in the event of an emergency that is not enough to maintain social order and protect the safety of people's lives and property without taking extraordinary measures, the state may decide to impose martial law." According to the above provisions, the martial law system and the emergency system are legally unified, only when the emergency conditions specified in the Law of Martial Law are met can the decision to impose "martial law" be made. After the martial law came into force, in view of the frequent occurrence of some emergency and dangerous situations that disrupt the normal social order in daily social management, emergency measures must be taken, while the legal emergency situations that can decide to impose martial law stipulated in the martial law are mainly limited to riots, wars and other emergency risks related to public security and national security, for natural disasters, mining accidents there are no clear legal provisions on how to take emergency measures in law for emergencies caused by public health emergencies and economic crises, and the provisions of the Law of martial law cannot be simply implemented by reference. Therefore, in order to meet the requirements of the emergency system established by the international community to respond to all emergency situations, Article 18 of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, adopted on April 4, 1990, and Article 18 of the Basic Law of the Macao Special Administrative Region of the People's Republic of China, adopted on March 31, 1993, clearly stipulates in the provisions of the basic laws

the legal conditions, procedures, mechanisms and legal effects under which the Standing Committee of the National People's Congress can declare a state of emergency in Hong Kong and the Macao Special Administrative Region. In the basic laws formulated by the National People's Congress, the international emergency system has been formally introduced.

In order to meet the needs of modern society to deal with various emergencies and risks, the fourth amendment of the current Constitution in 2004 uniformly revised the "martial law" in the 1982 Constitution text into "emergency state", so that the emergency state system replaced the martial law system as an important system of our Constitution to deal with emergencies and give the government and relevant state organs emergency power. In order to make the provisions of the current Constitution on the emergency system concrete as soon as possible, the former Legal Affairs Office of the State Council organized the drafting of the Emergency Law of the People's Republic of China (draft) at the end of March 2004, and successively held several international and domestic conferences, invited experts from the world to study the emergency law to check the pulse of the Emergency Law of the People's Republic of China (draft) and put forward many good suggestions for revision. However, for various reasons, the name of the Emergency Law of the People's Republic of China was changed to the Emergency Response Law of the People's Republic of China when it was deliberated and passed, and it was passed and entered into force at the 29th meeting of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on August 30, 2007. Due to the change of the legal name, the emergency system stipulated in the current Constitution cannot be legally defined in the Emergency Response Law. Although Article 2 of the Emergency Response Law explains in detail that the emergency situation targeted by the law includes four types of emergencies, that is, sudden occurrence, causing or possibly causing serious social harm, natural disasters, accident disasters, public health events and social security events that need to be responded to by emergency response measures, and according to the degree of social harm, the scope of influence and other factors, natural disasters, accident disasters and public health events are divided into four levels: particularly serious,



major, relatively large and general. However, there are two basic legal issues in the Emergency Response Law that have not been answered clearly. First, after the current Constitution replaced the martial law system with the state of emergency system, whether the martial law originally formulated to implement the martial law system stipulated in the Constitution continues to be effective, and if it is effective, whether there is a clear distinction between the emergency and dangerous situations targeted by the Martial Law and the Emergency Response Law, The Standing Committee of the National People's Congress has not yet made a clear explanation on whether the scope of application of the two laws intersects and overlaps. Fortunately, the Law of the People's Republic of China on Martial Law enacted in 1996 has not been repealed and is still one of the currently effective laws; second, the legal name of the Emergency Response Law replaces the Emergency Law. Since the emergency covers all emergency and dangerous situations in the legal principle, whether there will be emergency and dangerous situations in practice that are still insufficient to deal with the emergency measures specified in the Emergency Response Law, or whether there will be some new emergency situations, the Emergency Response Law does not avoid this legal problem. Article 69 of the Law clearly stipulates that: "In the event of a particularly serious emergency, which poses a major threat to the safety of people's lives and property, national security, public security, environmental security or social order, and cannot be eliminated or effectively controlled or mitigated by the emergency response measures prescribed in this Law and other relevant laws, regulations and rules, and it is necessary to enter a state of emergency, the Standing Committee of the National People's Congress or the State Council shall, in accordance with the Constitution and other relevant provisions to decide on the powers and procedures prescribed by law. " "The extraordinary measures taken during the state of emergency shall be implemented in accordance with the provisions of relevant laws or otherwise stipulated by the Standing Committee of the National People's Congress."

According to the above provisions, the emergency state dealt with in the Emergency Response Law is actually an emergency and dangerous situation that "it is not necessary to declare the state of

emergency”. People’s governments at all levels take emergency measures to effectively respond to it in accordance with the provisions of the Emergency Response Law. If the emergency measures prescribed in the Emergency Response Law cannot be eliminated or effectively controlled or mitigated by the people’s governments at all levels, the Standing Committee of the National People’s Congress or the State Council should decide to “enter a state of emergency”. This means that the Emergency Response Law is only a “pre-emptive” legislation to ensure the implementation of the emergency system stipulated in the current Constitution. If the emergency cannot be effectively controlled in practice, it still needs to start the emergency system stipulated in the Constitution to respond. In addition, once the Standing Committee of the National People’s Congress or the State Council declares a state of emergency, the Law on Emergency Response can no longer be applied, but should be “implemented in accordance with the relevant laws and regulations or otherwise stipulated by the Standing Committee of the National People’s Congress”. The “relevant legal provisions” in the above provisions can be the Law on Martial Law or the Law on Emergency that has not yet been formulated, or in the absence of the Emergency Law, the Standing Committee of the National People’s Congress may first issue a “decision” to declare a state of emergency in a special region as the legal basis for the implementation of the emergency due to the need to take emergency measures.

In short, with regard to the legislation of the power to emergency, China’s current legislative status is the coexistence of the Emergency Response Law, the Martial Law and the pending Emergency Law. This legislative pattern has advantages and disadvantages. There are many relevant legal systems to deal with different emergency situations, which can be flexibly applied; The basic legal relationship between the three legal systems dealing with emergencies, namely the emergency response system, the martial law system and the emergency system, which coexists in the current legal theory, is not clear, leading to the problem that the “emergency response according to law” work may have “multiple methods” in practice. On the one hand, the practice of prevention and control of the COVID-19 show that the scope of adjustment of the Emergency Response Law is limited, and the

degree of the authorization given to the government is small. Many local governments have taken emergency measures “beyond their authority”; on the other hand, there is no clear legal boundary for the protection of citizens’ basic rights. The legal basis for the coordination of powers between the government and the People’s Congress, the courts and the procuratorates in dealing with emergency and dangerous situations is insufficient. Many emergency measures are beyond the scope of the government’s emergency powers and need to be further clarified in law. However, because the Emergency Law or the interim decision equivalent to the Emergency Law has not been made, this has led to the lack of clear guidance of the rule of law on many major emergency work issues.

In view of this, there are two ways to solve the legislative pattern of the coexistence of the above three laws from the perspective of legislation: First, the National Security Law of 1993 in its narrow sense will be repealed, following the newly enacted National Security Law in 2015, so that the meaning of the legal name of the National Security Law will be fully restored, so that the current Emergency Response Law can be repealed and the original legal name of the Emergency Law will be restored, at the same time, it comprehensively and systematically stipulates various emergency measures that can be taken under various emergency situations to remedy the defect of “no awesome force” in the Emergency Response Law; the second is to further improve the current Emergency Response Law, and further enrich the emergency measures that the government can take in emergency work by summarizing the experience and lessons of the COVID-19 prevention and control. At the same time, when the time is ripe for legislation, the legislative items of the Martial Law will be incorporated into the Emergency Law. The newly formulated Emergency Law and the Emergency Response Law are connected within the scope of legal jurisdiction, so as to form a system pattern similar to the common “civil emergency” (mainly government emergency power) and “public emergency” (including the response to war risks) dual emergency systems in foreign emergency systems, and ensure the scientific design and operational effectiveness of the emergency system itself.

#### **4 TO LIMIT THE EXPANSION OF EMERGENCY POWER AND MAKE UP FOR THE SHORTAGE OF EMERGENCY POWER BY USING THE CONCEPT OF PROTECTING HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL MEANS**

At present, China determines the legal existence of the emergency power system through the Constitution and a series of laws, delimits the scope of the emergency power, limits the way of exercising the emergency power, and regulates the procedure of exercising the emergency power. However, from the perspective of higher requirements, there are still great limitations in limiting the system function of the arbitrary exercise of the emergency right through the rule of law. Therefore, we must further restrict the arbitrary exercise of the emergency right by strengthening the safeguards of human rights, and establish a relative balance between the emergency power and human rights protection.

In order to ensure the legitimacy and rationality of the exercise of the national emergency power, in addition to the necessary constitutional restrictions on the conditions and methods of the exercise of the national emergency power, it is also emphasized that the legitimacy of the “right of derogation” and the “right of resistance”, even in the case of a public emergency, can maximize the legitimacy of the exercise of the national emergency power, it is a relatively effective “technical means” to regulate the arbitrary exercise of emergency power.

“Non-derogable rights”<sup>3</sup> stipulated in the United Nations International Covenant on Civil and Political Rights, which entered into force on January 3, 1976, has clear legal requirements<sup>4</sup>. In order

---

<sup>3</sup> There is a difference between “rights that cannot be derogated from” and “rights that cannot be restricted”. Derogation refers to restrictions under emergency conditions, while restrictions refer to restrictions in ordinary times; Derogation is to prevent the abuse of state power in emergency, and restriction is to prevent the abuse of power by individuals in ordinary times; Derogation is based on State responsibility. Restriction is a normal legal system and does not need to be reported to special institutions. Derogation gives the State party the responsibility to reduce the protection of human rights in a state of emergency.

<sup>4</sup> Article 4, CCPR, stipulates: ‘In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that

to clarify the constitutional value and legal significance of the independence of civil rights relative to the state power, the International Law Association Organizing Sub-Committee also specially studied how to deal with the relationship between the survival of the state and the protection of civil rights in an emergency, and published the Paris Minimum Standards of the International Law Association Guidelines on Human Rights in an Emergency in 1984, putting forward the concept of “the minimum standards of human rights in an emergency”, which is opposed to the state emergency. This “minimum standard” has the same legal significance as “non-derogable rights”. The United Nations Human Rights Committee also issued a general comment on “derogation of rights” at its 13th meeting in 1981 and adopted a general comment on “state of emergency” at its 1950th meeting in 2001. In these two general comments, the Human Rights Committee particularly stressed the two necessary conditions for “derogation of rights”, namely, the existence of “public emergency endangering the survival of the country” and “derogation measures”, which are necessary for maintaining democracy and the rule of law. In addition, when taking the above-mentioned measures, the States parties to the Convention should promptly inform the Human Rights Committee and other States parties of the situation of taking relevant emergency measures, so as to carry out necessary supervision on the exercise of the national emergency power by the Government of the State party.

It should be noted that the “minimum standard of human rights in emergency” is more legitimate in human rights theory than the “non-derogable rights”. The “non-derogable right” is a defensive right and a means for individuals to defend government actions; “The minimum standard of human rights in emergency” is a kind of initiative right and a tool for individuals to fight against government

---

such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.” No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.” Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.’

behavior. In a modern society ruled by law, if the government of a nation-state cannot provide citizens with a “minimum guarantee of human rights”, then such a government will lose its legitimacy for continued existence. Therefore, in the period of public emergency, the establishment of “minimum standards of human rights in emergency” is conducive to the maximum protection of individual freedom from the restrictions of public policies.

China’s prevention and control of the COVID-19 in 2020 has implemented the principle of “human rights protection” from the very beginning. Under the direct leadership and command of the CPC Central Committee and the State Council, various emergency legal measures have been carried out in an orderly manner, and the primary purpose is to protect the people’s right to life and health, which has achieved remarkable results.

A sudden COVID-19 in early 2020 effectively tested the “scientificity” and “effectiveness” of the emergency legal system for public health emergencies with the emergency response law and the infectious disease prevention and control law as the main body in real life, fully reflecting the importance of the principle of “emergency law”. Without the legal awareness of “emergency law”, we cannot effectively play our ability to respond to public health emergencies.

General Secretary Xi Jinping at the third meeting of the Central Committee of Comprehensively Promoting Governing the Country according to Law firmly on February 5, 2020 stressed that under the centralized and unified leadership of the Party Central Committee, the safety and health of the people should always be put first, and efforts should be made in all aspects of legislation, law enforcement, justice and law-abiding, so as to comprehensively improve the ability to prevent and control the epidemic according to law and provide a strong legal guarantee for the prevention and control of the epidemic.<sup>5</sup>

In the past three years of the prevention and control of the COVID-19, the Chinese government has firmly adhered to the basic constitutional principle of respecting and safeguarding human rights, and has taken a series of preventive and restrictive measures against

---

<sup>5</sup> Xinhua News Agency, February 2020, the website of the Central People’s Government, see [http://www.gov.cn/xinwen/2020-02/05/content\\_5474867.htm](http://www.gov.cn/xinwen/2020-02/05/content_5474867.htm), the latest visit on February 11, 2023.

the emergency epidemic prevention actions of state organs, better handling the dialectical relationship between epidemic prevention emergency and human rights protection.

The experience of the COVID-19 prevention and control work shows that in order to ensure that the most critical stage of the epidemic prevention and control can adhere to “epidemic prevention according to law”, the most important work is to focus on the usual “prevention according to law”. Although the source of COVID-19 is not clear this time, the risk of unknown viruses invading human society again and again tells us that we must pay attention to “bio-safety”, especially from the perspective of overall national security, to understand the importance of safeguarding national biosafety. The huge damage caused by unknown viruses to human society is indeed distressing, but humans are not helpless in the face of viruses. The history of human beings fighting against various viruses and other microorganisms for thousands of years shows that, although so far, human beings cannot change the current situation of virus generation and great harm to human physical and mental health, human beings can take some effective scientific countermeasures to reduce the harm caused by the virus invasion to the human body by strengthening the research on the characteristics of viruses and other microorganisms. In addition, through institutionalized means, taking some health measures to isolate the virus invasion can also protect human beings from virus invasion to the maximum extent. So, “virus has no lover.” As long as the measures are appropriate and timely, we cannot completely succumb to the virus’s invasion of human beings.

To understand the habits of viruses and other microorganisms through scientific and technological means and to protect human beings from viruses through institutionalized isolation measures, these artificial measures are “safety measures” taken by human beings to cope with natural disasters in order to protect their health and life, and are an important technical path to make up for the failure of state organs to achieve good emergency rescue effect by using emergency power. The experiences and lessons of different epidemic prevention measures taken by China and European and American countries have different effects show that it is the most effective means that can be proved by epidemic prevention practice so far to seriously treat the

harm that the virus may cause to human life and health from the perspective of maintaining biological security. Therefore, in the face of the huge harm that the virus invasion may cause to human beings, if the human society can attach great importance to and recognize the importance of this problem, especially if the government and the public can enhance their “safety awareness” to deal with microbial invasion such as viruses, then even if there is a large and rapid outbreak of unknown virus invasion, the human society can also work together to overcome the difficulties.

It is unknown when the virus will appear and how much harm it will cause. This is something that human scientific and technological capabilities cannot fully control at present. The so-called special drugs and vaccines cannot be produced at any time according to people’s subjective will. However, human beings have the necessary “safety” awareness in the face of the possible invasion of unknown viruses and other microorganisms, which can be achieved through systems and rules. In other words, “epidemic prevention in accordance with the law” can at least improve the safety and protection ability of human beings to deal with the virus invasion, and can maximize the mobilization of institutional resources and people’s subjective initiative to deal with biological disasters and dangers, so as to more effectively deal with the invasion of various biological disasters.

For the public, “epidemic prevention according to law” is not just a matter for the government or specialized medical institutions and medical personnel. Like the pneumonia epidemic caused by the novel coronavirus, no one is an outsider. There is no one else who is carrying a heavy load, but they go their own way and get away with it. Therefore, managing oneself well not only ensures the “safety” of individuals as an organism, but also ensures the “safety” of others as an organism. Maintaining biosafety is not a distant matter. The key is whether every citizen can develop the “consciousness” of consciously maintaining national biosafety. We can’t expect to rely on the government staff to ask citizens to wear masks and take precautions one by one during the general outbreak of the epidemic, nor can we stay at home and complain about the untimely door-to-door service of government rescuers at the most critical time of the epidemic. If each of us has a high degree of consciousness in maintaining national bio-



safety, we can actively and effectively cooperate with the work of the government and the epidemic prevention department. If we can take timely and effective measures to stop illegal acts against microbial hazards that may endanger human life and health, even if the outbreak of the epidemic is sudden and rapid, the government and the public can work together to minimize the damage and loss caused by the invasion of viruses and other microorganisms through orderly response plans and measures.

In general, to deal with emergencies, it is necessary to endow the state organs with the necessary emergency power to deal with emergencies through laws. However, the emergency power cannot be given excessive trust. It is necessary to make the emergency power subject to the principle of “emergency rule of law”, and at the same time, it is necessary to rely on the concept of human rights protection and scientific and technological innovation to assist the exercise of the emergency power, so as to ensure the legitimacy and rationality of the emergency power system.

ISBN: 978-950-34-2426-1

CHAPTER

# 11

## **INCLUSIVE GOVERNANCE IN THE THIRD SECTOR: GENDER AND RACE IN CIVIL SOCIETY ORGANIZATIONS**

Cíntia Cristina Silva de Araújo

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter11>

# INCLUSIVE GOVERNANCE IN THE THIRD SECTOR: GENDER AND RACE IN CIVIL SOCIETY ORGANIZATIONS

*Cíntia Cristina Silva de Araújo*

**Abstract:** After decades of struggles and mobilizations carried out by social, feminist and black movements, in addition to those by organized sectors of civil society, we have seen the consolidation of public legitimacy and a greater appreciation of inclusion and diversity. In this scenario, academics, professionals and other actors in society have intensified efforts to understand gender and racial inequalities, even fostering a (re)construction of these very concepts. Throughout the 1990s, and with greater intensity in the 2000s, the public sector adopted a series of practices focused on social and racial inclusion and the fight against violence and racism, which resulted in a more institutional attitude towards these themes on the part of organized sectors of civil society. Nevertheless, Civil Society Organizations (CSOs) still reproduce some Brazilian socio-demographic inequalities of gender and race, configuring the daily life of part of the third sector. The worsening inequalities due to the COVID-19 pandemic crisis and global socio-economic crises, such as the Russo-Ukrainian War, accentuate the complexity of the challenges to be faced by CSOs in the coming years in order to implement inclusive governance practices. Thus, my objective was to understand how CSOs have acted to ensure a more diverse composition of their teams and to develop inclusive internal processes. I adopted mixed methods as a research methodology and divided the study into two phases. First of all, I carried out exploratory, qualitative research through a workshop with people involved with CSO work and leadership as well as with gender and race movements in order to help define the research scope. An online survey was, then, carried out in which 590 responses were collected. Research findings show that CSOs are aware of inequalities faced by minority groups and are open to implementing actions to foster an increase in the participation of women and black people in CSO workforce. However, most actions have an ad hoc character, neither focusing on long term effects, nor oriented towards strategic goals. Consequently, the efficacy of these actions is superficial and insufficient to deal with such

structural problems as the narrowing of opportunities of career for these minority groups, especially for black people. It shows that CSOs have a long and challenging journey to implement real inclusive governance, as they are still unable to include minority voices in their decision-making positions. This research undoubtedly offers an unprecedented and detailed diagnosis of the inclusive governance of Brazilian CSOs and the actions and policies they have implemented to value diversity and combat violence and discrimination.

**Keywords:** Inclusive governance; gender and race diversity; civil society organizations; mixed methods

## 1 INTRODUCTION

The construction of actions to value diversity and inclusion is gaining more and more visibility these days. Although it is possible to identify some important events and milestones that brought us here, what we observe is a broader set of factors that currently allow us to talk about diversity and inclusion of gender and race in Brazilian society (Arruda, 2020; Cerioni, 2017).

The more recent visibility of actions aimed at valuing diversity and inclusion of gender and race also reflects, to some extent, the efforts made by collectives and groups during the democratic transition experienced in Brazil in the late 1980s. The role played by these sectors, in addition to being decisive for the resumption of democracy in Brazil, also consolidated the bases through which it was possible, a few years later, to discuss the elaboration of public policies and legislation that sought to reform or equalize rights (Alves & Jesus, 2012; Davis, 2011; Jesus, 2014).

The results of the policies and legislation developed by the Brazilian State focusing on combating violence against women and racism, and on social and racial inclusion, included decisive experiences for the formulation of practical measures to be adopted by organizations. The progressive adoption of these practices by public authorities, throughout the 1990s and, to a greater degree, from the 2000s, also had an impact on the dynamics of the internal organization of different sectors of civil society. These began, at least in part, to

adopt a more institutional stance, in more defined associative formats with administrative and financial structures (Lopes & Heredia, 2014).

Popularized in recent decades with the name Non-Governmental Organizations, NGOs began to define a set of associative formats with very diverse purposes and actions. The name NGO would undergo changes and modifications in studies and legislation. For example, I can highlight the approval of Law 13,019/2014 (later regulated by Decree 8726/2016), which established a regulatory framework for civil society organizations, responsible for defining principles and rules for the performance of the third sector. The most recent use in studies and research of the nomenclature Civil Society Organizations (CSOs), also adopted in this article, seeks to shift the emphasis from the relationship between organizations and the State to emphasize the dimension of autonomy and the relevance of the work of organized civil society (Duarte et al., 2021).

The measurement and analysis of this universe of organizations has recently been carried out through some methodologies. These include the CSO Map, published periodically by the Brazilian Institute for Applied Research (IPEA), the studies conducted by the Group of Institutes, Foundations and Companies (GIFE), by the Brazilian Association of NGOs (ABONG) and by the Brazilian Institute of Geography and Statistics (IBGE). The most recent survey presented by IPEA in 2018 reveals a universe composed of more than 820,000 CSOs with National Registers of Legal Entities (CNPJ) active in 2016 (Andrade & Ribeiro, 2019; Lopez, 2018).

The pandemic crisis has imposed complex and enduring challenges on all countries. Brazil, which has historical and chronic social issues, has been facing a hard reality in which already abyssal inequalities have deepened, and social conflicts and collective turbulence have intensified due to an unprecedented scenario of political polarization and ideological dispute (Santos Jr., 2019). Consequently, groups that were already vulnerable have become more susceptible to hunger, violence and privation of basic rights (The World Bank, 2022).

In this context, inclusive governance becomes even more necessary for organizations, especially the CSOs, in such a way that they need ensure that all of their stakeholders are listened to and have their demands met, which requires a work environment that

encourages deliberative consensus, collective and proactive problem solving and open communication (Sant’Anna et al., 2019).

Therefore, the approach used here seeks to qualify some of the still little explored divisions regarding gender and race in Brazilian CSOs. Based on internal actions and policies developed or under development by organizations to value gender and racial diversity, my objective is to understand how organizations have acted to ensure a more diverse composition of their teams and to develop inclusive internal processes.

This article presents the results of the research carried out between March and September 2021, offering an unprecedented diagnosis on the inclusive governance of Brazilian CSOs through their actions and policies for hiring, valuing and encouraging diversity in leadership positions, internal actions, tools for valuing diversity, and mechanisms for preventing violence and reporting channels.

This article is structured as follows. Following this introductory section, I present the scenario of CSOs in Brazil and the debates on gender and race, research methodology, research results, analysis, discussion and final considerations.

## **2 THE CSO SCENARIO IN BRAZIL AND THE DEBATE ON GENDER AND RACE**

The interest in understanding the dynamics related to the development of gender and racial diversity actions in these organizations also relies on the understanding that both “gender” and “race” are analytical and political categories that must be analyzed in a relational way (Carneiro, 2003; Collins, 2019; Gonzalez, 1984). This means that this research understands “gender” and “race” not as universal categories, but as social markers of difference (McClintock, 2010) that vary in each context, operating political and social distinctions also with variable effects. An intersectional perspective (Akotirene, 2018; Crenshaw, 2002) for the analysis of the phenomena studied in this research means understanding that the notions of gender and race mutually affect social dynamics of discrimination and the perpetuation of violence.

Both in the collection phase and in the analysis of the material, the use of the categories “women” and “black people” was based on

definitions adopted and produced by feminist movements and black movements, as well as racial and gender studies (Carneiro, 2003; Gonzalez, 1984; Ribeiro, 2018; Segato, 2006).

Understanding that both gender and race imply a more complex set of identities and expressions, the prioritization of these two particular questions seeks to draw attention to the inequalities produced in specific issues through the combination of gender and racial discrimination (Segato, 2006). By drawing attention to the effects of discrimination based on gender and race suffered specifically by black women and black people, the analyses presented in this research, therefore, do not intend to exhaust the different relationships between all ethnic, racial and/or racial identities and gender existing in Brazil. Particularly in relation to the category “women”, the adoption of a transfeminist perspective resulted in the choice to explain the definition of women adopted in all research procedures, which includes cis women, trans women, transvestites who identify as women and people with a self-declared female gender identity (Alves & Jesus, 2012; Jesus, 2014; Moira, 2017).

When referring to racial and gender diversity in the third sector, therefore, we are dealing with a universe whose trajectory also consists of social movements, groups and collectives whose activities are aimed at defending rights and reducing inequalities.

Furthermore, as this research focuses on analyzing how CSOs deal with the issue of diversity and equality of gender and race, it emphasizes that implementing inclusive governance is about the plurality of stakeholders, who are involved in a multilateral process of decision making in which all can speak and all are heard. Inclusive governance for CSO means embracing the interdependence within CSOs, their staff, citizens, the State and other actors of society as well as the need for inclusive participation as CSOs ought to align their own interests with collective and social needs (Sant’Anna et al., 2019; Zabala et al., 2022).

### 3 METHODOLOGY

As mentioned above, this research was developed with a combination of qualitative and quantitative approaches as the

intention was to evaluate the relationship between the research constructs (inclusive governance, gender and race diversity). Therefore, mixed methods were the appropriate research method for this project, a method approach, that has been frequently used in social sciences, for instance (Creswell & Plano-Clark, 2007).

As it was necessary to explore the scenario of CSOs as well as capturing a more profound and inclusive view of the main constructs of the research, (inclusive governance, gender and race), the first phase of this study was exploratory, with a qualitative approach, as recommended in literature (Gibbs, 2009; Yin, 2010). In this exploratory and qualitative phase, a 105-minute workshop was conducted with leaders and workers in CSOs. To ensure the depth and validity of the research, participants included cis and trans women and men. In this workshop, other researchers and I gave a brief presentation on the reality of CSOs and diversity. Afterwards, the ten participants were divided into two groups that were guided through two separated focus groups (Bloor et al., 2012) in which participants were invited to share their ideas of race and gender, in addition to inclusion and diversity in CSOs.

After the workshop, I did a review of literature to delimitate the scope of constructs. I analyzed the content of the workshop, and after this the questionnaire was then devised. With a view to improving the quality of the questionnaire, it was revised by two workshop participants and a pre-test was conducted. An English version of the questionnaire used in the survey is presented in Appendix B.

With the instrument completed, it was necessary to define the research sample, which was based on the IPEA report on the profile of civil society organizations (CSOs) in Brazil (Lopez, 2018). Then, a base of e-mail addresses was extracted from the IPEA contact base that fed the IPEA CSO map (Andrade & Ribeiro, 2019). In all, 790,798 CSO contacts were extracted.

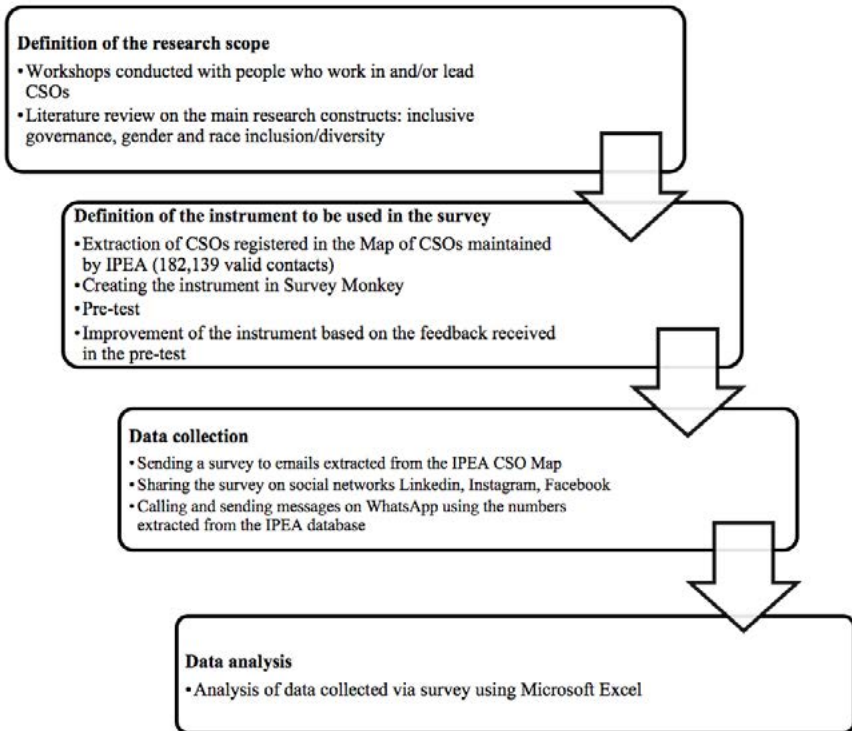
As expected, a number of issues with the extracted email addresses were detected: a large number of emails were incomplete, invalid or mistyped. After corrections and adjustments, 182,139 valid contacts remained. With this contact base (e-mail addresses and telephone numbers), I sent emails containing an explanatory message describing the objective of the research and reaffirming data privacy, as shown in Appendix A, and the link to the online survey.



As the amount of collected data was not as planned, the research team shared CSOs found in social media through Facebook, Instagram and WhatsApp. Data collection took place between June 7 and July 19, 2021. 1,067 responses were collected. From these, I discarded those that were invalid: many were incomplete, as respondents probably did not conclude the survey. After this data purification, 590 valid responses remained.

Figure 1 illustrates the research design.

**Figure 1**  
*Research approach and structure*

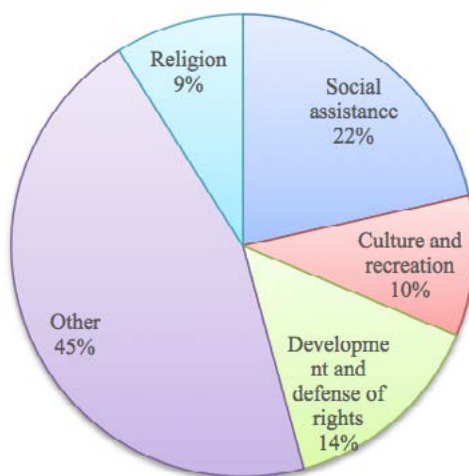


## 4 RESULTS

Firstly, regarding CSO areas of activity, 45% of participants declared themselves in the “other” category, 22% declared they operate in social assistance, 14% in “development and defense of rights”, 10% in culture and recreation and 9% in religion. These findings are in tune with the heterogeneity of areas and contexts of action of the CSOs reported in the Map of CSOs issued by the IPEA in 2019 (Andrade & Ribeiro, 2019).

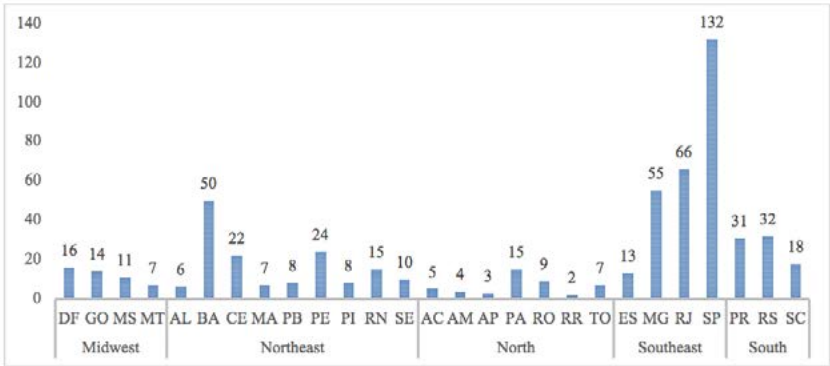
Figure 2 illustrates the graph with the distribution of CSOs in the reported areas of activity.

**Figure 2**  
*Area of activity of CSOs*



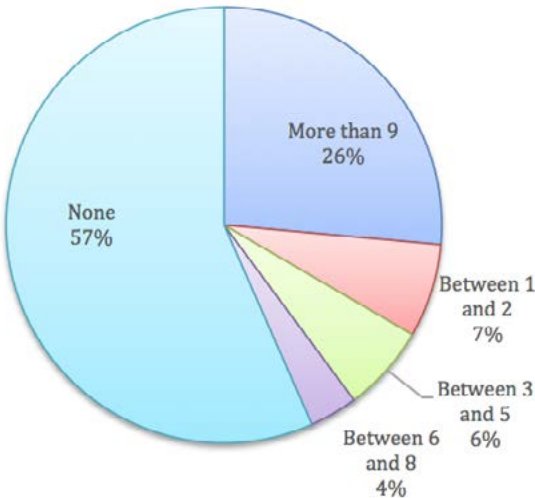
In terms of the geographic distribution of CSOs in Brazilian states, the research sample is also equivalent to the data found in IPEA reports (Andrade & Ribeiro, 2019; Lopez, 2018), which show the highest concentration of CSOs in the Southeast (45%) region, followed by the Northeast (35%), South (14%), North (8%) and Midwest (8%) regions. Figure 1 illustrates the graph with the distribution of CSOs by state.

**Figure 3**  
*Distribution of CSOs by state*



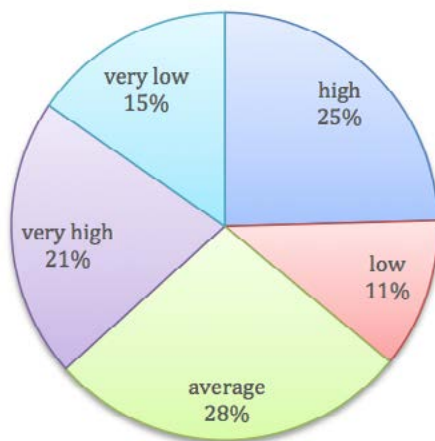
When asked about the number of employees hired under the Labor Law consolidation (in Portuguese “Consolidação das Leis Trabalhistas” – CLT), more than half (57%) reported having no employee hired, which is similar to the data found on the IPEA map, indicating that most CSO employees are made up of volunteers or freelancers (Andrade & Pereira, 2019). Figure 4 presents the percentages of CSOs with formally hired workers.

**Figure 4**  
*Percentages of CSOs with formally hired workers*



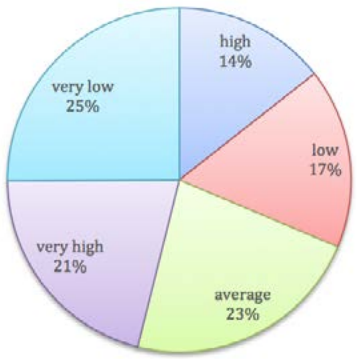
Regarding female participation in the composition of the CSO staff, 25% reported having a “very high” participation of women, that is, over 80% of their workforce. It is important to note that, as it was expected that we would find a scenario in which most CSOs would not have formally hired employees, in all questions related to CSO staff, participants were instructed to consider all people working in the organization in the last 12 months, whether paid or not. Besides this, respondents were also instructed to consider cis and trans women. The results indicating a predominance of women on CSO staff is in agreement with IPEA reports (Andrade & Ribeiro, 2019; Lopez, 2018). Figure 5 presents the percentage of women on CSO staff according to research participants.

**Figure 5**  
*Percentage of women on*



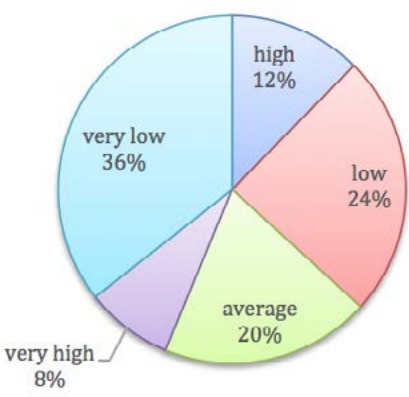
Results revealed gender inequality manifested in the low number of women in leadership positions: 42% of the analyzed CSOs declared they had a low percentage of women leaders (from 0% to 40%) and 35% reported having a high proportion of women in leadership positions (from 61% to 100%). Figure 6 presents the percentage of women in leadership positions in CSOs

**Figure 6**  
*Percentage of women in CSOs leadership positions*



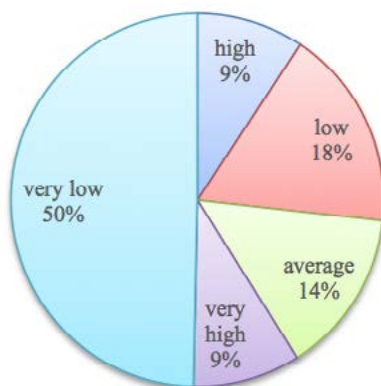
As I analyzed the collected data from the perspective of race, I found out that black people on CSO staff are in the minority. More than half of respondents (60%) reported a low presence of black workers among staff (between 0% to 40%), of whom 36% alleged a “very low” presence of black professionals (between 0 and 20% of staff). These findings are aligned with previous studies that demonstrate that there are more white people employed or working in the third sector (Andrade & Ribeiro, 2019; Lopez, 2018; Souza, 2020). If there is a female predominance in this sector, it is inferred that it is, above all, white women compared to black women and black men. Figure 7 illustrates the chart with the percentage of black people on CSO staff.

**Figure 7**  
*Percentage of black people on CSO staff*



With regard to leadership positions, 50% of organizations reported having a very low percentage of black people – between 0% and 20% - while 18% reported having from 21% to 40% of leadership positions occupied by black people. Figure 8 presents the chart with the percentage of black people in CSO leadership positions.

**Figure 8**  
*Percentage of black people in CSO leadership positions*



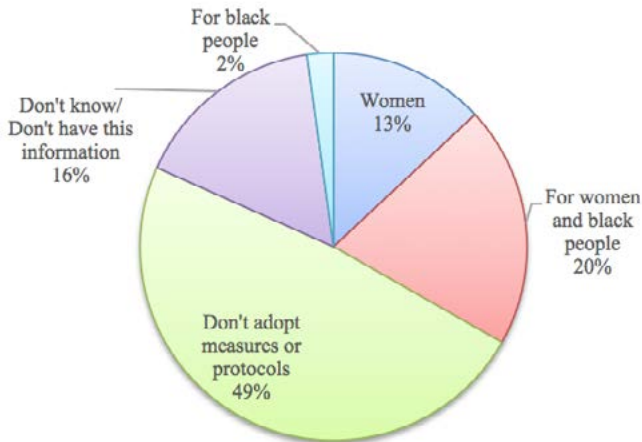
On the subject of CSOs that adopt initiatives to recruit and hire women and black people, 49% declared that they do, 37% that they do not and the other 14% could not answer.

One fact that stands out concerns the period of time in which the analyzed organizations have been carrying out specific actions to recruit and hire women and black people. Within the CSOs that alleged they have affirmative actions to hire women and black people, 31% of them alleged they had been carrying out such actions for one to 4 years; 19% of them claim to have adopted these affirmative actions for more than 16 years; 14% between for 5 to 8 years, 13% for 9 to 12 years; and 7% have undertaken these practices for 13 to 16 years. Only 9% reported having implemented these affirmative actions for less than one year.

While results indicate a large group of CSOs claiming to carry out affirmative actions to hire women and black people, most of them do not have practices or measures to provide opportunities for these minority groups to occupy leadership positions: 49% responded that they did not take any action on this matter. Figure 9 illustrates the

chart with the percentage of CSOs that adopt measures/protocols to provide conditions/opportunities for these minority groups to reach leadership positions.

**Figure 9**  
*CSOs with practices to ensure women and/or black people in leadership positions*



Among the organizations that adopt measures favorable to the occupation of leadership positions by women and black people, 20% of the CSOs have actions directed to both gender and race. However, in those that work with measures aimed only at a specific group, there is a preponderance of CSOs with actions aiming at women (13%), with only 2% at black people. This diagnosis helps to understand, at least in part, the perception indicated by the analyzed CSOs that there is a higher percentage of women in leadership positions than of black people in the same positions.

Participants were also asked about the collection and systematization of information about gender and race among their staff. While 27% of organizations have never carried out this practice, another 28% could not answer. Figure 10 presents the chart with the percentage of CSOs with practices to collect and systematize data on staff gender and race.

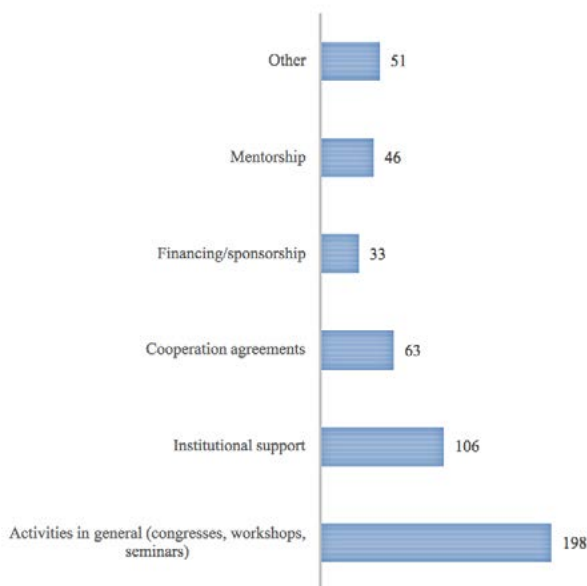
**Figure 10**  
*CSOs with systematized collection of gender and race data*



As to partnerships with other organizations to promote racial and gender equity, findings indicate a balanced scenario: 45% answered yes, another 39% said no, and the remaining 16% answered they did not know or did not have that information. In addition, when we qualify the types of partnerships to address gender and racial equity, the majority of respondents reported that these partnerships are limited to specific and occasional initiatives such as congresses, workshops, seminars and the like (75%) or institutional support/aid (40%). Long-term cooperation actions, such as cooperation agreements (24%) and financing/sponsorships (13%) had fewer mentions. Figure 11 presents the chart with the description of partnership actions reported by the respondents.



**Figure 11**  
*Partnership actions reported by respondents*



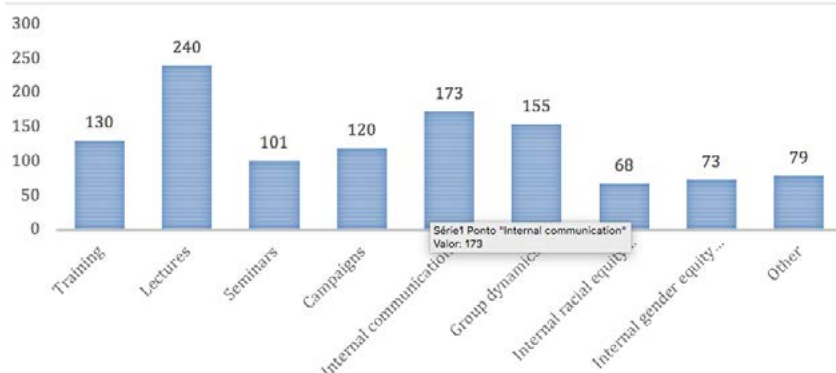
This research also focused on the actions CSOs perform in order to build awareness and prevent different forms of discrimination and harassment. Therefore, participants were instructed to think of “discrimination” in its diverse manifestations such as racism, sexism and/or LGBTIphobia. They were also asked to adopt a broader understanding of “harassment”, be it moral, psychological and/or sexual.

That being said, the percentage of CSOs that claim to carry out preventive actions against episodes of violence/discrimination/harassment in the workspace is expressive: 65% claim to adopt internal actions in this matter. On the other hand, 20% do not have any kind of measure to prevent these manifestations of violence. Finally, 14% of respondents do not have any information about this.

Among those that claimed to have internal practices to build awareness and prevent any form of violence in the workspace, the most cited action was lectures (62%), followed by internal communication (45%), group dynamics (40%) and training (34%). Figure 12 presents the chart with the number of mentions of internal initiatives to prevent discrimination/harassment in CSOs.

**Figure 12**

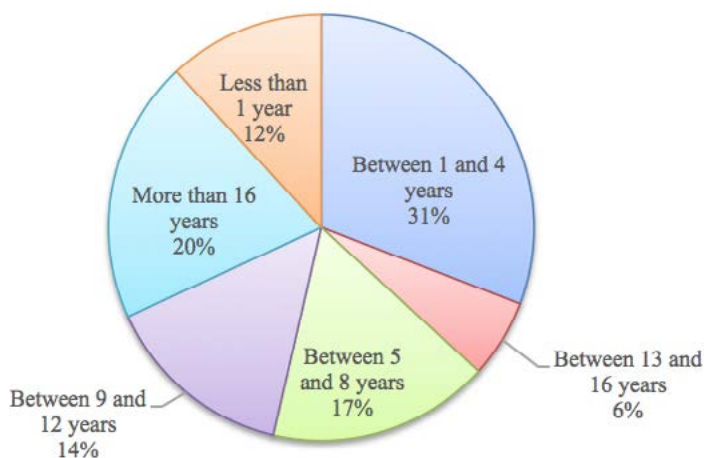
*Mentions of internal initiatives to prevent discrimination/harassment*



As to the time in which CSOs claim to have performed prevention and awareness actions, findings indicate that some of them, 31%, have done so in the last four years. There is also a significant percentage of CSOs, 20%, which have had such measures for more than 16 years. Figure 13 presents the percentage of CSOs according to the period in which they have performed actions to raise awareness and prevent any form of discrimination in the workspace.

**Figure 13**

*CSOs according to the period of implementation of initiatives to prevent discrimination/harassment*



Specifically, regarding anonymous reporting channels, most of the participant CSOs, 56%, do not adopt any means to receive and/or record anonymous complaints of harassment/discrimination, while 26% answered that they do have means to report this kind of complaints, and the remaining 18% answered that they did not know.

In a scenario of micro-organization prominence, informal means to receive/register complaints on discrimination/harassments are more common. Therefore, the most cited was contacting the person in charge directly (79 mentions), followed by e-mail (78 mentions). More formal and structured means to report complaints such as report hotline (57) and application or registration system (21) were also mentioned. Figure 14 shows the stated means of reporting discrimination/harassment and their respective number of mentions.

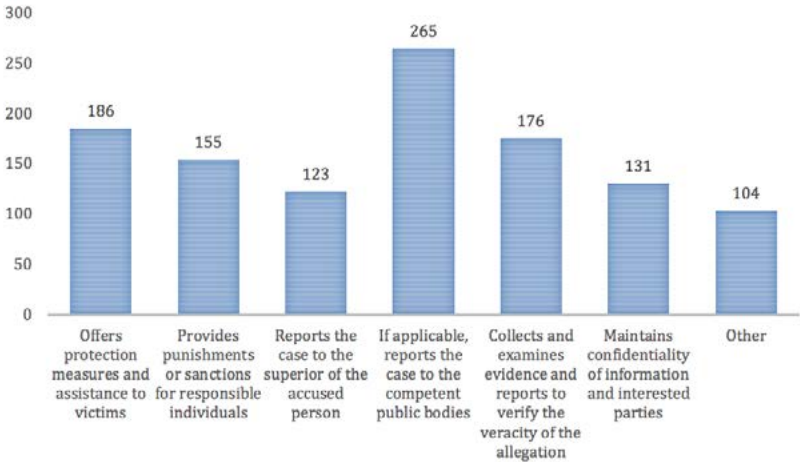
**Figure 14**

*Means of reporting discrimination/harassment mentioned by respondents*



I also verified the actions CSOs take after receiving complaints of discrimination and/or harassment. For this reason, those respondents who confirmed the existence of channels to receive and report anonymous complaints on this matter also stated what post-report actions the CSOs take. The most mentioned alternative was "If applicable, report the case to the competent public bodies". Figure 15 presents the chart with the number of mentions of actions CSOs take after receiving a discrimination/harassment complaint.

**Figure 15**  
Actions CSOs take after receiving  
a discrimination/harassment complaint



## 5 DISCUSSION

In this section, I present relevant insights and considerations regarding research findings as well as comparing results with previous studies.

### 5.1 Controversial responses and disputes around the concept of gender, race and equality

As I conducted the research, I witnessed some manifestations and rhetorical disputes that reflect the times of intense polarization and intensification of irrational fears (for instance, the invention of “gender ideology”) that Brazilian society has been facing (Junqueira, 2018; Santos Jr., 2019). For instance, as the survey was sent to the e-mails collected from the IPEA data base, some people replied to the e-mail to express their disagreement with the theme of the research as presented in the e-mail (see Appendix A). Approximately 15 people responded to the e-mail with somewhat offensive messages, emphasizing their disgust at acknowledging research that supports “gender equity”. Among the e-mails with identified sender, most were sent by men.

As the IPEA database contained many e-mail addresses from accounting firms, the survey was sent to many accountants. I can infer that as accounting firms provide accountancy support for people to open and manage document and registrations papers for CSOs, filling the e-mail of CSO registration data with the accountancy office e-mail address is not unlikely. Consequently, a large number of CSOs in the research sample had the same email from an accounting firm. That would not be a problem, because as the survey message was sent to someone/somewhere that did not relate to it, all the recipients had to do was either ignore it or reply, reporting the mistake. However, as I received the insulting messages, I could infer that these individuals wanted to make sure that those responsible for that research would be aware of their indignation.

Thus, these “messages of resentment” were loaded with insults and offensive words. Others aimed to delegitimize the purpose of the research as it focuses on “diversity” and “equity”. For instance, one of these individuals wrote “I don’t share your communist, leftist and satanic ideas”; another used offensive names such as “faggots, prostitutes...”; another one was exasperated and wrote “human rights.... I don’t agree with them; I have to work!”.

A deeper look at these insulting e-mails indicates that these revolved around two ideas.

Firstly, there was a clear resentment against the idea of “gender equality”. In these cases, messages sought to nullify the scientific value of the social construction of gender relations, reinforcing narratives that try to establish the idea of gender exclusively on “biology” and “nature” in order to defend their personal beliefs and moral values. In this group, there were sentences like “there is no gender, in nature you are either male or female” or “there are only two genders, male and female, as real science presents, the rest are psychological and physiological disorders”. There were also arguments against “gender ideology” based on religious beliefs. In this case, individuals would mention “God” and the divine character that created only man and woman.

The second group of outraged recipients focused on delegitimizing the racial approach of the research. Some of these mentioned well known myths of Brazilian society such as “we are all equal” and “we are all human”, which ignore the racialization and disastrous consequences

of racialized relationships to those who have been considered inferior since the colonial-slavery period of Brazil (i.e. racism, marginalization, deprivation of opportunities/rights) (Nkomo, 1992; Schwarcz, 2012). Others claimed that “we are all human” as “we belong to only one race, the human race”, therefore “we are equal before the law and before God”.

## **5.2 Discussing research findings**

As observed, the unequal composition of gender and race in teams and in leadership positions are trends that cover the universe of CSOs with a persistent contradiction: even if there is great investment and action in this sector aimed at social change, the reproduction of inequalities persists, as the long-term and well-structured initiatives to tackle racial and gender asymmetries have not become real top priorities for the State, most of organizations and companies and other actors of society (Magri, 2016).

Thus, the female predominance among CSO staff must be viewed with much caution. Women working in CSOs are concentrated in care related activities (social assistance, early childhood education, nursing, caregivers for the elderly) which are the third sector and follow this social pattern of asymmetry between men and women in the labor market (Charlesworth et al., 2015; Lawson et al., 2020).

The low percentage of black people among CSO staff as well as in leadership positions can also be explained by the fact that, among the organizations that claim to have affirmative initiatives to recruit/hire individuals from minority groups and to provide them with opportunities to rise to leadership positions, most focus on women (20% aimed at women and black people; 13% only women and 2% only black people). It is important to note that, in order to implement programs/initiatives to boost diversity management and equality of opportunities, conducting gender and race-based census is fundamental (Fleury, 2000; Kalev et al., 2006), and, as mentioned above, the percentage of the CSOs with constant and systematized procedures for data collection is very low.

Another obstacle to developing a more inclusive organizational environment can be found in the low percentage of CSOs with channels for anonymous reporting of discrimination and harassment

complaints. This scenario hinders the prevention and reduction of violent occurrences (SCS-TST, 2019), as the organizations lack historical data and accumulated knowledge, which are very useful to predict and monitor related indicators such as complaints, personnel morale and employee well-being (Nascimento, 2004).

Fortunately, although preventive initiatives to make the professional environment less prejudiced and abusive are not exactly new in the sector, there is a strong tendency to intensify the demand for these actions by social movements, such as feminists, black groups and LGBTQIA+ and public opinion, as many examples of great repercussion in social media (Arruda, 2020; Cerioni, 2017).

Still, as to how CSOs deal with cases of discrimination and harassment, the fact that most claim to report complaints to competent public bodies indicates a great dependence on external actors for the resolution of cases occurring in their workspace. This indicates the fragility of CSO governance in managing conflicts, which can make it difficult to apply disciplinary measures previously prescribed in their internal norms, such as warnings (verbal or written), suspensions and even just cause dismissal.

## 6 CONCLUSION

Research findings show that CSOs have some limitations in terms of gender and racial diversity management practices. The data prove that existing inequalities in the structure of society in the country are reflected in CSOs.

It is essential that CSOs, which by their nature work towards citizenship and the sustainable development of society (Kisil & Spercel, 2007), are able to develop management and governance practices based on the introduction and improvement of equal opportunities for a strategic part of their stakeholders, which is their employees and collaborators. In fact, one of the principles of governance is that of equity in which organizations guarantee the “fair treatment of all stakeholders, avoiding discriminatory attitudes or policies, under any pretext.” (Kisil & Spercel, 2007, p. 30). In addition, recognizing the role and impact of diversity in the work environment means recognizing heterogeneity

in the composition of teams and the implications of managing this heterogeneity in order to allow the development of people's potential (Araújo & Carneiro Jr., 2020).

Furthermore, it is important for CSOs to adopt preventive and palliative approaches to acts of discrimination and harassment, which unfortunately victimize many women and black people in the workplace (Avila, 2008; Nascimento, 2004). It is essential to create prevention and awareness programs on the different perspectives of diversity (race, ethnicity, gender identity) (Wooten, 2017). It is also necessary to establish institutional policies and programs for victim care, registration, screening and investigation of complaints that preserve the anonymity and confidentiality of the parties involved, especially victims (Wooten, 2017).

Some points of attention deserve to be highlighted. In the compositions of CSO teams, despite the majority being female, for example, the literature points to asymmetries regarding salary equality and concentration of women in care-related positions, reproducing the essentialism of the sexual division of labor. This research contributes to the understanding of this scenario as it demonstrates how small female participation in leadership positions is. The picture becomes even more disproportionate when one observes the very low concentration of black people in the teams, whether paid or not, and especially in leadership positions, which are mostly white.

We note that part of this scenario of racial and gender imbalance in team compositions is linked to the absence or fragility of specific actions and measures for hiring, retention and career progression. Although half of the organizations adopt specific actions to attract women and black professionals, the same does not occur for positions of greater exercise of power. In the third sector, the hiring of experienced labor and the appreciation of advanced technical requirements, such as a second language and graduate studies, also tend to prevail. But this common practice contributes to the creation of professional barriers for most people affected by limitations in exercising the right to education and access to instructional skills, as is the case with part of the peripheral, working class, rural and/or black population. Therefore, reversing racial and gender imbalances



in organizations, especially the access of women and black people to leadership positions, involves building a commitment to planning for equity. This involves, among a set of actions, the creation of specifically sensitive, exclusive selections, with support in the stages of selection and adjustment of requirements that can be overcome by offering post-hiring skills training.

Recognizing the role and impact of diversity in the professional environment means recognizing the heterogeneity in the composition of teams and the implications of managing it in a way that allows the development of people's potential (Araújo; Carneiro Jr., 2020). However, building this equitable environment that systematically reflects and activates diversity as a principle faced by the professional team, leaders and financing agents, is a challenge for organizations, even for those whose purpose is to promote rights and social justice. Often the institutional fragility and size of CSOs in Brazil mean that management for equity does not become a primary demand.

As the data collected show, half of the CSOs consulted have already acted in a network to promote equity, but these actions that strengthen institutional exchanges are still occasional, with a predominance of events to the detriment of lasting partnerships involving projects and financial resources. Another point of attention that should be observed in the third sector, with scarce presence up to now, is the adoption of practices with a preventive and palliative approach in cases of discrimination and harassment, which unfortunately victimize many women and black people in the work environment (Avila, 2008; Think Eva, 2022). An opportune path in this direction could be the implementation or reinforcement of prevention and awareness programs that deal ethically with discriminatory cases, such as racism, sexism and sexual harassment (Wooten, 2017). In addition, establishing institutional policies and programs not only for recording and screening complaints of harassment and discrimination, but also focusing on actions to welcome victims, guaranteeing anonymity and investigation of complaints, practices that are adopted by few CSOs.

## REFERENCES

- Akotirene, C. (2018). *O que é interseccionalidade*. Letramento.
- Alves, H. K., & Jesus, J. G. de. (2012). Feminismo transgênero e movimentos de mulheres transexuais. *Revista Cronos*, 11(2).
- Andrade, P. G., & Ribeiro, A. C. P. (2019). *Por dentro do mapa das OSCs: Metodologia da base de dados* (versão 2019).
- Araújo, C. C. S. de A., & Carneiro Jr., E. (2020). Reconhecendo as relações de raça no contexto organizacional: Um Modelo Conceitual de Maturidade em Gestão da Diversidade. *XXIII Seminários Em Administração (SEMEAD 2020)*.
- Arruda, J. (2020). *Black Lives Matter: entenda movimento por trás da hashtag que mobiliza atos*. Universa UOL. <https://www.uol.com.br/universa/noticias/redacao/2020/06/03/black-lives-matter-conheca-o-movimento-fundado-por-tres-mulheres.htm>
- Ávila, R. P. de. (2008). *As consequências do assédio moral no ambiente de trabalho*. <http://intertemas.unitoledo.br/revista/index.php/ETIC/article/viewArticle/3710>
- Bloor, M., Frankland, J., Thomas, M., & Robson, K. (2012). *Focus Groups in Social Research*. *Focus Groups in Social Research*. <https://doi.org/10.4135/9781849209175>
- Carneiro, S. (2003). *Enegrecer o feminismo: a situação da mulher negra na América Latina a partir de uma perspectiva de gênero*. Núcleo de Estudos Afro-Brasileiro e Indígena (NEABI).
- Cerioni, C. (2017). *Entre erros e acertos, marcas avançam no marketing LGBT*. Exame. <https://exame.com/marketing/erros-acertos-marcas-marketing-lgbt/>
- Charlesworth, S., Baines, D., & Cunningham, I. (2015). 'If I Had a Family, There Is No Way That I Could Afford to Work Here':

Juggling Paid and Unpaid Care Work in Social Services. *Gender, Work & Organization*, 22(6), 596–613.

Collins, P. H. (2019). *Pensamento feminista negro: conhecimento, consciência e a política do empoderamento*. Boitempo.

Crenshaw, K. (2002). Documento para o Encontro de Especialistas em Aspectos da Discriminação Racial Relativos ao Gênero. *Estudos Feministas*, 10(1), 171–188.

Creswell, J. W., & Plano-Clark, V. L. (2007). Choosing a mixed methods design. In *Designing and conducting mixed methods research* (2nd ed., pp. 53–106). SAGE Publications, Inc.

Davis, A. (2011). *Women, race, & class*.

Duarte, H., Frota, H. B., & Cruz, M. (2021). *Projeto Orientação Jurídica Engajamento Político e Constituição das Organizações da Sociedade Civil - Cadernos Abong* vol. 2. Usideias. [www.abong.org.br](http://www.abong.org.br)

Fleury, M. T. L. (2000). Gerenciando a diversidade cultural: Experiências de empresas brasileiras. *Revista de Administração de Empresas*, 40(3), 18–25. <https://doi.org/http://dx.doi.org/10.1590/S0034-75902000000300003>

Gibbs, G. (2009). *Análise de Dados Qualitativos* (U. Flick, Ed.). Atmed Editora S.A.

Gonzalez, L. (1984). Racismo e sexismo na cultura brasileira. *Revista Ciências Sociais Hoje*, 223–244.

Jesus, J. G. de. (2014). *Transfeminismo: Teorias & Práticas*. Metanoia.

Junqueira, R. D. (2018). A invenção da “ideologia de gênero”: a emergência de um cenário político-discursivo e a elaboração de uma retórica reacionária antigênero. *Psicologia Política*, 18(43), 449–502.

Kalev, A., Dobbin, F., & Kelly, E. (2006). Best practices or best Guesses? Affirmative action and diversity policies. *American Sociological Review*, 71, 589–617. <https://doi.org/http://dx.doi.org/10.1177/000312240607100404>

Kisil, M., & Spercel, T. (2007). *Organizações da Sociedade Civil - Melhores Práticas de Governança no Terceiro Setor*.

Lawson, M., Butt, A. P., Harvey, R., Sarosi, D., Coffey, C., Piaget, K., & Thekkudan, J. (2020). *Tempo de cuidar: O trabalho de cuidado não remunerado e mal pago e a crise global da desigualdade*. <https://doi.org/10.21201/2020.5419>

Lopes, J. S. L., & Heredia, B. (2014). *Movimentos sociais e esfera pública: o mundo da participação: burocracias, confrontos, aprendizados inesperados*. Colégio Brasileiro de Altos Estudos.

Lopez, F. G. (2018). *Perfil das organizações da sociedade civil no Brasil*. [http://www.ipea.gov.br/portal/images/stories/PDFs/livros/livros/180607\\_livro\\_perfil\\_das\\_organizacoes\\_da\\_sociedade\\_civil\\_no\\_brasil.pdf](http://www.ipea.gov.br/portal/images/stories/PDFs/livros/livros/180607_livro_perfil_das_organizacoes_da_sociedade_civil_no_brasil.pdf)

Magri, C. (2016). *Perfil social, racial e de gênero das 500 maiores empresas do Brasil e suas ações afirmativas*.

McClintock. (2010). *Couro Imperial: raça, gênero e sexualidade no embate colonial*. Editora da UNICAMP.

Moirá, A. (2017). “CIS By Trans.” *Revista Estudos Feministas*, 25(1), 365–373.

Nascimento, A. M. (2004). O assédio moral no ambiente do trabalho. *Revista LTr*, 8(66), 922–930.

Nkomo, S. M. (1992). The Emperor Has No Clothes: Rewriting “Race in Organizations.” *Academy of Management Review*, 17(3), 487–513. <https://doi.org/https://doi.org/10.2307/258720>

Ribeiro, D. (2018). *Quem tem medo do feminismo negro?*. Companhia das Letras.

Sant'Anna, L. T., Alcântara, V. de C., Pereira, J. R., Cappelle, M. C. A., & Tonelli, D. F. (2019). Aproximações entre governança colaborativa e ação comunicativa: uma proposta analítica de estudo. *Revista de Administração Pública*, 53(5), 821–837. <https://doi.org/10.1590/0034-761220170400>

Santos Jr., M. A. dos. (2019). *Desarranjo da visibilidade, desordem informacional e polarização no Brasil entre 2013 e 2018*. Universidade Federal Fluminense.

Schwarcz, L. M. (2012). *Racismo no Brasil* (2a.). Publifolha.

SCS-TST. (2019). *Cartilha de Prevenção ao Assédio Moral: “Pare e Repare” por um Ambiente de Trabalho + Positivo*.

Segato, R. L. (2006). *Édipo brasileiro: a dupla negação de gênero e raça*. Universidade de Brasília.

Souza, D. (2020). *Quantos Somos?—Levantamento sobre a empregabilidade de pessoas negras nas organizações da sociedade civil entre 2015-2019*.

The World Bank. (2022). *Brazil Poverty and equity assessment Brazil Poverty and equity assessment looking ahead of two crises*.

Think Eva. (2022). *Assédio no Contexto do Mundo Corporativo – Think Eva*. Think Eva,. <https://thinkeva.com.br/pesquisas/assedio-no-contexto-do-mundo-corporativo/>Wooten, S. C. (2017). Revealing a hidden curriculum of black women's erasure in sexual violence prevention policy. *Gender and Education*, 29(3), 405–417.

Yin, R. K. (2010). *Estudo de Caso - Planejamento e Métodos* (Quarta Edição). Bookman Companhia Editora.

Zabala, T. C., Castilho, R., & Mesquita, A. de A. B. (2022).

Compliance, desenvolvimento sustentável e governança: Componentes inclusivos para pessoas transgêneras. *Revista Pensamento Jurídico-São Paulo*, 16(2).

## Appendix A

### *Consent Form*

You are being invited to participate in the survey “Diversity and Equity in Brazilian Civil Society Organizations (CSOs) with a focus on race and gender”. CSOs are legally constituted institutions that act independently, on a non-profit basis and on behalf of society. The objectives of the study are to understand how these organizations have approached the hiring, retention and valorization of women and black professionals, as well as the role of CSOs in the implementation of racial and gender diversity.

Your identity and that of your organization will be fully preserved. All data collected by this questionnaire will be anonymized in order to avoid any risk related to the identification of the respondent. The databases will be kept in a storage account with access restricted and exclusive to the research team for a maximum of 10 years. In addition, you and your organization may refuse to participate in the study or withdraw your consent at any time, simply by communicating in writing to [xxxx@xxxxxxxxxx.com.br](mailto:xxxx@xxxxxxxxxx.com.br).

If you agree with the terms proposed above, please click on the **AGREE** button.

## Appendix B

### *Questionnaire used on the survey*

- 1 What is the name of the organization in which you work?  
*This information will be used for research control purposes and will not be disclosed.*
- 2 In which state is this organization located?
- 3 Today, about how many people work in the organization under CLT contracting?  
*(Consider only people with a formal contract)*

**Answer options**

- None
- Between 1 and 2
- Between 3 and 5
- Between 6 and 8
- More than 9

4 What is the organization's area of activity?

**Answer options**

- Social assistance
- Development and defense of rights
- Environment and animal protection
- Religion
- Employer, professional and rural producer associations
- Education and research
- Health
- Culture and recreation
- Housing
- Other activities

5 In your opinion, what is the approximate percentage of women on the professional staff working in the organization?

*Consider as professionals all people who worked with or without remuneration in the last 12 months. Consider cis and trans women.*

**Answer options**

- Between 0 and 20%
- Between 21% and 40%
- Between 41% and 60%
- Between 61% and 80%
- More than 80%

6 What about the approximate percentage of women in leadership positions that work in the organization?

*Consider cis and trans women.*

**Answer options**

- Between 0 and 20%
- Between 21% and 40%
- Between 41% and 60%
- Between 61% and 80%
- More than 80%

- 7 In your opinion, what is the approximate percentage of black people on the professional staff working in the organization?  
*Consider as professionals all people who worked with or without remuneration in the last 12 months.*

**Answer options**

- Between 0 and 20%
  - Between 21% and 40%
  - Between 41% and 60%
  - Between 61% and 80%
  - More than 80%
- 8 What about the approximate percentage of black people in leadership positions that work in the organization?

**Answer options**

- Between 0 and 20%
  - Between 21% and 40%
  - Between 41% and 60%
  - Between 61% and 80%
  - More than 80%
- 9 Our organization has carried out specific initiative(s) to hire women and people of color.

**Answer options**

- Yes
  - No
  - I don't know
- 10 If you answered "yes", for how long?

**Answer options**

- Less than 1 year
  - Between 1 and 4 years
  - Between 5 and 8 years
  - Between 9 and 12 years
  - Between 13 and 16 years
  - For more than 16 years
- 11 Our organization collects and systematizes internal data on its workforce, considering information related to gender and race.

**Answer options**

- 5 - Always
- 4 - Often



- 3 - Occasionally
  - 2 - Rarely
  - 1 - Never
  - NA - I do not have this information/not applicable
- 12 Our organization adopts measures or protocols that establish conditions and opportunities for its leadership positions to be occupied by:

**Answer options**

- Women
- Black women and black people
- Does not adopt measures or protocols in this regard
- I don't know/I don't have this information

- 13 Our organization works or has worked with partner organizations to address gender and race diversity and equity.

**Answer options**

- Yes
- No
- I don't know

- 14 What are the partnership initiatives that the organization participates in or has participated in to address gender and racial diversity and equity?

*You can tick more than 1 alternative*

**Answer options**

- Activities in general (congresses, workshops, seminars and related)
- Institutional support
- Cooperation agreements
- Financing or sponsorship
- Mentorships
- Other

- 15 Our organization carries out internal actions aimed at the workforce to raise awareness and prevent different forms of discrimination and harassment.

*Consider as discrimination and harassment all episodes of racism, sexism, LGBTIphobia, moral, psychological and/or sexual harassment*

**Answer options**

- Yes
- No

- I don't know

16 If you answered "yes", for how long?

**Answer options**

- Less than 1 year
- Between 1 and 4 years
- Between 5 and 8 years
- Between 9 and 12 years
- Between 13 and 16 years
- For more than 16 years

17 What types of internal actions for awareness and prevention does the organization carry out?

*You can tick more than 1 alternative*

**Answer options**

- Training
- Lectures
- Seminars
- Campaigns
- Internal communication
- Group dynamics
- Internal protocols for structuring racial equity
- Internal protocols for structuring gender equity
- Other

18 Our organization has an anonymous reporting channel to record cases of harassment and/or discrimination.

**Answer options**

- Yes
- No
- I don't know

19 If you answered "yes" to the previous question, what are the reporting channels?

**Answer options**

- Telephone ("dial hotline")
- Application or registration system
- Email
- Whatsapp
- Direct contact with person in charge
- Other

20 What does our organization do when it receives a report of harassment or discrimination?

*You can tick more than 1 alternative*

**Answer options**

- Offers protection and assistance measures to victims
- Provides punishments or sanctions to responsible individuals
- Report the case to the superior of the accused person
- If applicable, report the case to the competent public bodies
- Collects and examines evidence and reports to verify the veracity of the allegation
- Maintains confidentiality of information and interested parties
- Other

ISBN: 978-950-34-2426-1

CHAPTER

12

## CURRENT HISTORY OF MIGRATIONS

Pedro Garrido Rodríguez

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter12>

# CURRENT HISTORY OF MIGRATIONS

*Pedro Garrido Rodríguez*

**Abstract:** Migratory movements are extremely complex, heterogeneous and diverse processes<sup>1</sup>. All peoples live or have lived through migratory phenomena and are influenced by them. In today's history, these processes have been increasing and their impact has become more and more visible. It has also been undergoing alterations. Proof of this is that countries that were mainly senders of migratory flows have become receivers and vice versa. The effects of climate change, the pandemic situation caused by COVID-19 and the Russian invasion of Ukraine have further aggravated the already difficult conditions of migrants.

**Keywords:** Migrations, Human Rights, refugees, migrants and COVID-19.

## 1 INTRODUCTION

Migratory movements have existed since the beginning of mankind. The Neolithic Revolution began as early as 9,000 BC

<sup>1</sup> For an overview of migratory movements throughout history and their implications, the following are particularly noteworthy: Manning, P. (2005). *Migration in World History*. Routledge; McKeown, A. (2016). *Global Migrations: The Basics*. Routledge; Dollot, Louis (1971): *Las migraciones humanas*. Oikos-Tau. Barcelona; Blanco, Cristina (2000): *Las migraciones contemporáneas*. Alianza Editorial. Madrid; Malgesini, Graciela (1998): *Cruzando fronteras. Las migraciones en el sistema mundial*. Icaria: Fundación Hogar del Empleado. Barcelona; Panadero Moya, Miguel y García Martínez, Carmen (Coords.) (1997): *Migraciones extranjeras en la Unión Europea*. Ed. Universidad de Castilla la Mancha. Cuenca; Fernández-Rufete, José y García Jiménez, Modesto (Eds.) (2005): *Movimientos migratorios contemporáneos*. Universidad Católica San Antonio. Murcia; Montes del Castillo, Ángel y Martínez Martínez, M<sup>a</sup> José (Eds.) (2008): *Migraciones, cultura y desarrollo*. Universidad de Murcia. Murcia; Marrodán, Dolores y Prado, Consuelo (Coords.) (1994): *Las migraciones: su repercusión en la sociedad y en la biología de las poblaciones humanas*. Universidad Autónoma de Madrid. Madrid; Klaus, J. Bade (2003): *Europa en movimiento: las migraciones desde finales del siglo XVIII hasta nuestros días*. Crítica. Barcelona; Ibarrola-Armendariz, A. y H. Firth, C. (Eds.) (2007): *Migraciones en un contexto global: transiciones y transformaciones como resultado de la masiva movilidad humana*. Universidad de Deusto. Bilbao; Chaliand, G. (1994): *Atlas historique des migrations*. Editions du Seuil. Paris; Gaigé, C. (2004): *Aging nations and the future of cities*. Centre for Economic Policy Research. London; Lewis, G. (1982): *Human migration: a geographical perspective*. Croom Helm. London.

and slowly spread from the Middle East to other regions of Europe through migration.

Throughout the Contemporary Age, migration took on an enormous volume and a more diverse typology that can only be understood as a whole from a multidimensional approach that integrates all its variables. It is necessary to distinguish between two fundamental periods: migrations between 1850 and 1973 and migrations from 1973 to the present day. The increase in migratory pressure in industrialised states began to be perceived as a problem to be solved, and the socio-cultural and political dimension of migration began to be considered with greater receptiveness, and not only the economic factor, which had been predominant until then. If we add to this the changes brought about by the global pandemic, the issue becomes even more complex. This research aims to shed some light on this phenomenon.

## 2 A BRIEF CONTEMPORARY HISTORY OF MIGRATION

In the period from 1850 to 1973, there was a significant diversification in the types of migration. Cristina Blanco<sup>2</sup> distinguishes between two migratory sub-processes: that of the beginnings of industrialisation (1850-1920) and that of the economic and political consolidation of the Western world after World War II (1945-1973).

In the first period, that of the beginnings of industrialisation (1850-1920), the main migratory flows are: spontaneous migratory flows from Europe to the colonies of the New World; forced migratory flows from the Asian colonies to other European colonies; and directed migratory flows from less developed Europe to the Europe that is beginning to industrialise. The importance of intranational flows from the countryside to the city should also be pointed out here, as these became very important during this period of industrialisation<sup>3</sup>.

---

<sup>2</sup> Blanco, Cristina (2000): *Las migraciones contemporáneas*. Alianza Editorial. Madrid. Op. Cit. Pp. 38.

<sup>3</sup> In Spain, the case of Madrid is illustrative: between 1850 and 1900 it experienced a demographic growth of almost 150%, from 221,707 inhabitants to 539,835. As Carballo Barral of the Complutense University of Madrid points out: "Most of the internal migratory movements in Spain since the mid-19th century were linked to the new socio-economic organisation and the various liberal disentailment processes, to changes in demographic behaviour and to the duality

In the period from 1850 to 1973, there was a significant diversification in the types of migration. Cristina Blanco differentiates between two migratory sub-processes<sup>4</sup>: that of the beginnings of industrialisation (1850-1920) and that of the economic and political consolidation of the Western world after World War II (1945-1973).

In the first period, that of the beginnings of industrialisation (1850-1920), the main migratory flows are: spontaneous migratory flows from Europe to the colonies of the New World; forced migratory flows from the Asian colonies to other European colonies; and directed migratory flows from less developed Europe to the Europe that is beginning to industrialise. The importance of intra-national flows from the countryside to the city should also be pointed out here, as these took on great volume in this period of industrialisation.

The main destinations were the USA and industrial Europe. Between 1800 and 1930, the USA received more than 40 million Europeans in search of land, autonomy and freedom, as opposed to the unattractive expectations of proletarianisation offered by their native Europe. The US did not impose restrictions on immigration until 1880. In Europe, Britain, Germany and France were the countries where immigration was most pronounced. Britain was the first European country to be affected by this large-scale immigration process. Largely as a consequence of the Industrial Revolution and the expansion of the British Empire. Its first great wave of immigration was led by the Irish, who were attracted by the incipient British industry, but also by the precariousness of their agriculture and the lack of competitiveness of their small industry compared to Britain's. In 1851, there were 700,000 Irish immigrants in Britain. In 1851, there were 700,000 Irish in Britain, most of them employed in hard labour in the textile industry and in the construction of canals and railways. The second great wave was that of Jews fleeing Russia. They

---

existing both in the system of inheritance and in the distribution and ownership of land in Spain as a whole. These factors contributed to the expulsion of the population from vast rural areas of the interior towards Madrid and the mining and industrial areas of the Basque Country and Catalonia. In his article, the author analyses the process of the creation of support networks for rural immigration and their integration into the city through family, kinship and peasant ties. Carballo Barral, Borja (2008): "Redes familiares en la inmigración hacia el Ensanche Este de Madrid (1860-1878)". In electronic journal: *Nuevo Mundo Mundos Nuevos*. Coloquios, 2008: <http://nuevomundo.revues.org/30993>

<sup>4</sup> Blanco, Cristina (2000): *Las migraciones contemporáneas*. Alianza Editorial. Madrid. Op. Cit.

numbered around 120,000 in the interval from 1875 to 1914. These migrations were mostly permanent. The immigrants had accessible naturalisation and the third generations of descendants already occupied important social and occupational positions. Germany had a forced and temporary recruitment process. Landowners in the East activated a stationary immigration of Poles and Ukrainians under very harsh working conditions and through a system that prevented permanent settlement. There were also significant migration flows as a result of industrialisation and economic growth, especially from Poland, Austria and Hungary. France was the destination of an important spontaneous migration flow. The new industry created a growing need for labour in jobs that the French tried to avoid as much as possible. Thus, in 1911, there were 1.2 million foreigners in France, or 3% of the population. Most of them came from Belgium and Italy.

In the second period, the period of Western consolidation (1945-1973), important changes took place. The most significant change was that the less developed countries became both senders and receivers of migratory flows. Thus, short-distance regional networks were established with neighbouring countries. For example, Argentina in South America received numerous immigrants from Chile, Bolivia and Paraguay. In Africa, South Africa, Nigeria and Mauritania became sites of regional immigration. The oil-producing countries of the Middle East also became a destination for workers from Asia and North Africa.

On the other hand, some long-distance movements disappeared, such as those of Asian workers forcibly recruited to European colonies in the New World; European emigration to the US declined; new intercontinental networks emerged in South America, Africa and the Middle East; European immigration from less industrialised Europe and former colonies increased; and a change of direction in intercontinental migrations between South America and Europe began.

Labour movements to Europe increased. Mainly with workers “invited” by the destination countries and those from the former colonies, who marched to the former metropolis. The “guest” workers were recruited by agreement between the sending and receiving countries. This is the case of Great Britain, Belgium, France,



Switzerland, the Netherlands and Germany, which brought in workers from countries such as Italy, Greece, Spain, Portugal, Yugoslavia, Morocco, Turkey and Tunisia. This system promoted temporary work and hindered permanent settlement. However, despite the restrictions, posting became permanent on many occasions. Workers from the former colonies were another important source of immigration. Examples include the many Irish and Commonwealth people who emigrated to Britain, the workers from Algeria, Morocco, Tunisia, Senegal and Mauritania who went to France, and the Indonesians and Caribbeans who went to the Netherlands.

After World War II, migration underwent substantial changes. New migratory flows with equally novel characteristics were added. In this sense, the intervention of states is fundamental, not only in migrations related to political events, but an intervention extended to all types of migration. Proof of this is the creation by states of ministries of immigration, the signing of multilateral conventions and treaties, the establishment of laws or the institution of international agreements on the subject.

For his part, Louis Dollot points out that the belligerent environment prior to the First World War<sup>5</sup> led to a gradual decline in traditional migratory flows<sup>6</sup>. In the first place, transoceanic migrations were reduced, and were practically interrupted years later, with the economic crisis of 1929, which was also the cause of the end of the great continental migrations. At the beginning of World War II, European emigration was very low. Proof of this is that in 1938 there were only 100,000 emigrants, compared with 600,000 in 1927 and 1,400,000 in 1913. There are various reasons for this change: in the new countries there is less and less useful space to settle and less need for foreign labour; states set up barriers to migration; industrial development in Europe requires labour, which absorbs a large number of potential emigrants; countries apply protectionist policies prioritising their national population. These protectionist and nationalist policies resulted in a very sharp decline in migration flows in 1929. The slight

<sup>5</sup> About migratory movements in the pre-World War I context, see: Lucassen, Leo (2005): *The Immigrant Threat: The Integration of Old and New Migrants in Western Europe since 1850*. University of Illinois Press. Illinois.

<sup>6</sup> Dollot Louis (1971): *Las migraciones humanas*. Oikos-Tau. Barcelona. Op. Cit. Pp. 97-120.

revival in the years leading up to World War II was characterised by a process of reverse migration flows, i.e. countries of emigration became countries of immigration and vice versa. By 1939 there was already a balance between emigration and immigration movements. There were also significant migration flows to North and South America during the inter-war period. The United States and Canada were highly sought after destinations for Europeans escaping political persecution and instability and seeking better economic conditions<sup>7</sup>.

In this 20th century context, forced migration of refugees and displaced persons took on an unprecedented dimension. The political and military tensions in the international community during the 20th century gradually led to the formation of an ever-widening network of such migratory movements that spread worldwide. During the first half of the 20th century, these movements were caused by armed struggles, the breakdown of empires and states, the most radical and belligerent nationalism and European dictatorial regimes. In Europe, the first large movements of refugees were motivated by the outbreak of the Balkan wars in 1911-1912, with Bulgarians, Greeks and Turks being particularly involved. The collapse of Russia and the Bolshevik revolution of 1917 caused 1.5 million Russian refugees to leave the country and take refuge in Western Europe and the Far East. The Treaty of Lausanne<sup>8</sup> forced 1.3 million Greeks and 400,000 Turks to return to their countries of origin. In the years following the end of World War I, some 9.5 million Europeans were displaced<sup>9</sup>. The dictatorships in Spain, Italy and Germany caused numerous displacements, for example, 1.5

---

<sup>7</sup> About this, see: Reimers, David M. (1992). *Still the Golden Door: The Third World Comes to America*. Columbia University Press.

<sup>8</sup> The Treaty of Lausanne was signed on 24 July 1922 in the Swiss city of Lausanne between the governments of Greece, Turkey and the Allied states of World War I. The agreement granted Turkey eastern Thrace, the islands of Imbros and Tenedos and guaranteed the integrity of the Greek minority in Turkey as well as the Turkish minority in Greece. The agreement granted Turkey eastern Thrace, the islands of Imbros and Tenedos and guaranteed the integrity of the Greek minority in Turkey, as well as that of the Turkish minority in Greece. However, the agreement also meant that the majority of the Greek population of Turkey was transferred to Greece and likewise a large part of the Turkish population of Thrace was transferred to Turkey.

<sup>9</sup> Merino Hernando, Asunción y González Martínez, Elda (2006). *Las migraciones internacionales*. Dastin. Madrid. Pp. 93-120. The authors point to three constants up to the advent of World War II: the strengthening of the nation-state, the growing volume of refugees, and an unwelcoming environment for migrants in the receiving countries.

million Germans, mostly Jews, had to leave Germany between 1933 and 1939<sup>10</sup>. During Mussolini's fascist regime, there were numerous internal displacements. After World War II, many Italians emigrated to seek new opportunities in the face of the destruction and poverty that had engulfed the country<sup>11</sup>. The dictatorship in Spain produced voluminous migratory flows to other European countries and to America to flee the regime or in search of freedoms and work and economic opportunities<sup>12</sup>. The Second World War caused the displacement of forty and a half million Europeans, the largest in history. Migrations were internal and external in Europe and other parts of the world, especially America<sup>13</sup>.

During the second half of the 20th century, there have been increasingly voluminous migrations, motivated by political, social and economic reasons that have had a major impact on the politics, demography and culture of many countries<sup>14</sup>. The refugee issue has become increasingly global and complex. The 1940s and 1950s saw the break-up of several states in Asia. The separation of India into the states of India and Pakistan led to the movement of 15 million people between the two countries. The division of Korea into North and South Korea resulted in the exchange of 5 million Koreans between the two territories. The division of Vietnam into North and South Vietnam resulted in the movement of 1 million people between the two. Since the 1948 Arab-Israeli War, many Palestinians, 2.7 million in 1993, have been displaced. In the 1960s and 1970s, the decolonisation of many African countries, such as Algeria, Angola, Rwanda and Zaire, was marked by social conflict and violence, which caused numerous displacements within the continent. The Cold War also had an effect on this issue, as the powers involved intervened in

<sup>10</sup> About this, see: Wyman, David. (1996). *Paper Walls: America and the Refugee Crisis, 1938-1941*. Pantheon.

<sup>11</sup> About this question, see: Bedani, Gino. (2005). *Italians in Britain: The Shaping of a Community, 1870-1970*. Palgrave Macmillan.

<sup>12</sup> For an in-depth understanding of this, consult: Richards, Michael. (2003). *A Time of Silence: Civil War and the Culture of Repression in Franco's Spain, 1936-1945*. Cambridge University Press.

<sup>13</sup> This issue has been studied in depth in: Wyman, Mark (1998). *DPs: Europe's Displaced Persons, 1945-1951*. Cornell University Press.

<sup>14</sup> Haas, Hein de; Castles, Stephen & Miller, Mark J. (2020). *The Age of Migration: International Population Movements in the Modern World*. Red Globe Press.

internal conflicts in other countries such as Cambodia, Afghanistan, Angola and Mozambique, thus aggravating the situation.

Returning to the general subject of migration, Louis Dollot distinguishes between two types of major international movements after 1945: *political migration: the result of border displacements, transfers of sovereignty, regime changes, demographic factors and population or Malthusian policy, which can play an ancillary role, and economic migration: aimed, for temporary or permanent expatriates, at social promotion and the achievement of a better standard of living; for the receiving countries, at industrial and agricultural development and expansion*<sup>15</sup>.

The period from 1973 to the present day is preceded by an enormous economic growth in Western Europe<sup>16</sup>, which promoted a large migratory flow. The major industrial centres of the time: Germany, Luxembourg, the Netherlands, England, France and Belgium, were fed by numerous immigrants from neighbouring countries to the south, mainly Italy, Portugal, Spain and Greece. From 1960 to 1973, this immigrant labour force was of enormous economic importance in the developed countries and was crucial to their gross national product growth rates of around 4% per year from 1960 until the 1973 crisis<sup>17</sup>. In 1950 there were already some five million foreign workers in the fourteen countries that made up the EU before 2004, and the number increased considerably. Between 1960 and 1973 the number of residents even doubled from 3.3 to 6.6 in the then twelve EU countries, with the foreign population accounting for around 6% of the total. Throughout the 1960s, the main immigration-receiving countries conceived of their societies as culturally homogenous and did not see the cultural, social and

---

<sup>15</sup> Dollot, Louis (1971). *Las migraciones humanas*. Oikos-Tau. Barcelona. Op. Cit. P. 109.

<sup>16</sup> Panadero Moya, Miguel (1997): *Las nuevas realidades de las migraciones extranjeras en la Europa comunitaria*. En: Panadero Moya, Miguel y García Martínez, Carmen. *Migraciones extranjeras en la Unión Europea*. Universidad de Castilla-La Mancha. Cuenca. Op. Cit. Pp. 15-26. In this chapter Panadero Moya also analyses the foreign population in the European Union, distinguishing between the foreign population with and without European citizenship.

<sup>17</sup> Hidalgo, Paloma (1994): *Los desplazamientos humanos en una perspectiva histórica. De las migraciones en la Edad Antigua a la emigración atlántica y post-bélica europea*. En Marrodán Serrano, D. y Prado Martínez, C. (Coords.): *Las migraciones: su repercusión en la sociedad y en la biología de las poblaciones humanas*. Ed. Universidad Autónoma de Madrid. Madrid.

political repercussions that the growing presence of immigrants would generate in the long term<sup>18</sup>.

With the oil crisis of 1973, these migration flows declined sharply. The considerable increase in immigration of the previous decade, the recession caused by the oil crisis and the process of change from the industrial to the service sector in European economies led most European countries to establish more restrictive entry conditions for immigrants, combined with return programmes. After the economic recession, the 1980s saw a major transformation in migration flows. Southern European countries, mainly Italy, Spain and Greece, changed the direction of their migration flows, becoming a destination for foreign immigration. In addition, the countries of Northern Europe, which had been receiving countries in previous decades, tried to stabilise their migratory flows by imposing strong restrictions on immigration in its different forms: regular immigration, irregular immigration and asylum. However, alongside these restrictive policies, there was also an expansion of migrant workers' rights. In Sweden and the Netherlands, for example, associations were implemented, the learning and maintenance of the mother tongue was facilitated, equal opportunities in the labour market were promoted, and immigrants were allowed to participate in local voting<sup>19</sup>.

Since the early 1990s, all EU countries have become immigration receiving countries, with the existence of previous relations being a very important criterion in the intensity of their migratory flows. Examples of this are the Indo-Pakistanis migrating to England, the Turks going to Germany, the Maghrebis leaving for France and Spain, and the Ibero-Americans also arriving in Spain. A constant in recent years has been the considerable increase in migratory pressure, mainly from the East, with the fall of communism, and from Southern Europe, mainly from Africa and Latin America, due to Spain and Portugal's links with their former colonies. Irregular immigration has grown disproportionately in this decade, in response to which the European countries have articulated various measures.

<sup>18</sup> Merino Hernando, Asunción y González Martínez, Elda (2006): *Las migraciones internacionales*. Dastin. Madrid. Op. Cit. Pp. 93-120. The authors also provide an exhaustive overview of international migration throughout the 20th century, focusing on the two destinations with the largest immigrant populations: America and Europe.

<sup>19</sup> *Ibidem*.

These are basically of two types: the regularisation of immigrants in an irregular situation, based on criteria such as length of residence, work performance, etc.; and deportation or denial of entry at the border itself, which in many cases is accompanied by a penalty for employers and transport companies. Alongside irregular immigration, states have paid particular attention in the 1990s to the increase in asylum applications, especially in the early years of the decade. The conditions for granting asylum have been tightened considerably to deter potential economic migrants disguised as asylum seekers. The immigration policies of European countries throughout the 1990s have focused primarily on entry restrictions, neglecting the goal of integration of migrants and their families<sup>20</sup>.

At the beginning of the 21st century, attempts have been made to make progress in favour of a communitarian immigration policy and a certain openness towards immigration has been experienced, although this has gradually faded with the worsening of social conflicts and the increase in xenophobia. The French immigration policy, presented in 2002 by the High Council on Immigration, focused on reducing restrictions and fighting discrimination. In Germany, where the Green Card for 20,000 computer technicians was introduced in 2001, the 2003 law provides for two paths to obtain a work permit: qualified personnel with the necessary skills in the country with a job offer and qualified personnel selected through a points system<sup>21</sup>.

The migration model has undergone dizzying changes in recent decades. According to Panadero Moya<sup>22</sup>, the characteristics of the current migratory model in the European Union are: 1.) *The small volume of its manifestations*; 2.) *The tendency towards consolidation of the foreign population residing in its territory*; 3.) *The enactment of strict national regulations that subject immigrants from third countries lacking European Union citizenship*.

Throughout this period, new migration patterns have emerged: the volume of floating migrants has increased very significantly;

---

<sup>20</sup> Merino Hernando, Asunción y González Martínez, Elda (2006): *Las migraciones internacionales...* Op. Cit. P.116.

<sup>21</sup> Merino Hernando, Asunción y González Martínez, Elda (2006)... Op. Cit. Pp. 93-120.

<sup>22</sup> Panadero Moya, Miguel (1997): *Las nuevas realidades de las migraciones extranjeras en la Europa comunitaria*. En: Panadero Moya, Miguel y García Martínez, Carmen. *Migraciones extranjeras en la Unión Europea*. Universidad de Castilla-La Mancha. Cuenca. Op. Cit. Pp. 25- 26.

migration networks have widened; new sending and receiving countries have appeared; and the types and forms of migration movements have diversified. All these changes have given migration an entity and a social importance never seen before. Cristina Blanco<sup>23</sup> argues that this global identitarian character of current international migrations can be seen mainly in three dimensions: the increase in the volume of migrants, the expansion of migratory networks and the diversification of migratory types.

The increase in the volume of migrants is evident in recent decades. According to the UN, in 1965 there were 76 million people residing outside their country of birth, by 1995 there were 125 million. It is not only the most developed countries that are the recipients of this increase; factors such as the establishment of migratory networks between developing countries or the strict restrictions on immigration put in place by the most powerful countries explain why less developed countries receive a large volume of immigration.

The expansion of migration networks, which took place during the 1980s and 1990s, has greatly helped to consolidate a complex web of international migration flows. In essence, south-to-north and transoceanic networks are the most significant, followed by intra-Asian and intra-African networks. After the fall of the Berlin Wall, East-West migration became very important, with Germany, Switzerland and Denmark being the main recipients of immigration from the former Yugoslavia and the former Soviet Union.

The diversification of types of migration has been enormous in recent decades. The types and forms of migration have increased enormously. Although the most common types of migration are economic migration, there are also other types of migration that either did not exist before or were much smaller in scale than they are today.

Refugees and displaced persons are a case in point. Although, as mentioned above, this type of forced migration has a long history dating back to antiquity, in recent decades this problem has affected an increasing number of countries and people, and has spread to a global level. According to UNHCR, in 1960 there were 1.4 million refugees in the world, by 1995 the figure had risen to 27 million and by the

<sup>23</sup> Blanco, Cristina (2000): *Las migraciones contemporáneas*. Alianza Editorial. Madrid. Op. Cit. Pp. 34-56.



end of 2009 there were 36.4 million<sup>24</sup>. However, as Klaus J. Bade points out<sup>25</sup>, in the national, European and international context, immigration policies mostly opt for restrictive measures against the immigration of refugees and asylum seekers rather than for measures to combat the causes of flight in the countries of origin.

The issue of refugees and asylum seekers represents a borderline where the universality of human rights is put to the test. It is a real humanitarian crisis. Since it is the political community that guarantees individuals their basic rights, what is at stake in the case of the refugee is the very right to have rights<sup>26</sup>.

The most recent news places us in the very complex and until now unprecedented situation of COVID-19. As is the case with all groups - and especially the most vulnerable - the pandemic has only made the situation for migrants even more difficult. The United Nations Refugee Agency (UNHCR) reports that in 2020 there were 79.5 million displaced people in the world. If this figure is compared with the data from 2018, in which there were 68.5 million, an increase of 11 million people can be seen. In 2021 the figure already rose to 89.3 million people. UNHCR data at the end of 2022 are even more dramatic: 108.4 million displaced people in the world. For the first time in history, the barrier of 100 million people has been surpassed. Something that until recently seemed unthinkable.

Refugees and other displaced people are some of the most marginalized and vulnerable members of society. They are particularly at risk during this COVID-19 outbreak because they often have limited access to water, sanitation systems and health facilities. More than 80 percent of the world's refugees and almost all of the world's internally displaced people are housed in low- and middle-income countries.

---

<sup>24</sup> More specifically, the figure at the end of 2009, according to UNHCR, is 36,460,306 persons: 10,396,540 refugees, 983,420 asylum seekers, 15,628,057 internally displaced persons, 2,481,018 returnees, 6,559,573 stateless persons and 411,678 persons at risk of concern to the organisation. In: Agencia de la ONU Para los Refugiados (2009): *La historia de los refugiados en estadísticas*. ACNUR. Electronic resource: <http://www.acnur.org/t3/recursos/estadisticas>

<sup>25</sup> Bade, Klaus J. (2005): *Europa y los movimientos migratorios de finales del S. XX*. En Fernández-Rufete, J. y García Jiménez, M. (Eds.): *Movimientos migratorios contemporáneos*. Ed. Universidad Católica San Antonio. Murcia.

<sup>26</sup> De Lucas, Javier (1996): *Puertas que se cierran. Europa como fortaleza*. Ed. Icaria. Barcelona.



Faced with this situation, UNHCR has acted around the world with awareness-raising, advice and logistical support projects. In Brazil, isolation areas for suspected cases are being formed in Boa Vista and hygiene packages are being distributed to indigenous communities in Belém and Santarém. In Colombia, more than 30 telephone help lines have been created to offer advice to refugees and immigrants from Venezuela. In Venezuela, UNHCR is offering a response with medical resources and technical assistance. In Mexico, it is providing information and equipment for shelters, in order to establish isolation areas. It is also locating medical personnel among the refugees who could provide important relief work.

Already in Africa, in Uganda, special prevention measures are being taken, raising awareness about hygiene habits, distributing disinfectant materials and supporting the training of health personnel. In Ethiopia, UNHCR partners are recruiting and training refugees in awareness-raising on interpersonal distancing, handwashing and respiratory hygiene.

In Syria, information activities on good hygiene habits are being carried out and medical personnel are being trained for possible interventions. In Iraq, protective equipment is being purchased for use at borders and refugee camps. UNHCR has sent 4.4 tons of medical equipment to Iran to support its weakened health system.

In Greece, water, sanitation and hygiene services are being increased in places where the largest refugee population is concentrated on the islands of the Aegean Sea. In them, there are 35,000 refugees in centers and settlements with large overpopulation.

These are some of the most important initiatives launched so far by UNHCR, which has made an emergency appeal for the coronavirus.

Cáritas has warned of the lack of protection to which the people of the Amazon are exposed. In this sense, it is supporting, in coordination with the Indigenous Missionary Council, the indigenous communities of Amazonas and Roraima and the Tapajós River basin. He has pointed out the serious risk of contagion due to the increase in invasions of territories. Which represents a serious danger even more when it comes to communities with a very precarious health system. The support focuses on prevention and protection against the pandemic

and on supporting the State in the application of urgent measures that avoid irreversible consequences in indigenous communities.

The Red Cross is carrying out notable actions. The development of an Activity Guide for managing family confinement stands out. He is carrying out family intervention with children, based mainly on psychosocial support. It is providing alternative care to children and adolescents who are separated from their biological families and under the child protection system. Also noteworthy is its Seracogedor Multichannel Service initiative, that is, support for foster families and social service professionals through digital resources.

### 3 CONCLUSIONS

Finally, current restrictive immigration policies have directly or indirectly favored the emergence of other types of migration. The developed countries of the West have been strengthening their external borders, however, this is not in itself a solution because, as Cristina Blanco emphasizes: Since the most bleeding causes of migration remain unchanged, the attempts to cross borders also remain unchanged. On the other hand, the recognition of family reunification as a fundamental factor for the correct integration of the immigrant has generated a type of migratory movement of enormous dimensions.

One of the big immigration problems today, with special incidence in Europe, is illegal immigration. There are various types within this form of immigration and various forms of expansion of the irregular sector, mainly in the area of construction, cleaning, seasonal jobs and other complementary or replacement jobs. Irregular employment always involves two components<sup>27</sup>: the employee in an irregular situation and the employer, who acts illegally.

Other types of migration that have grown in recent decades are those resulting from the global globalization of the economy or the increase in the standard of living in certain countries. An example

---

<sup>27</sup> Bade, Klaus J. (2005): *Europa y los movimientos migratorios de finales del S. XX*. En Fernández-Rufete, J. y García Jiménez, M. (Eds.): *Movimientos migratorios contemporáneos*. Ed. Universidad Católica San Antonio. Murcia. Op. Cit.

of this is the so-called “brain drain” or skilled migration, which has not yet been sufficiently studied despite its increasingly growing dimension. These migrations, linked to the highest levels of the socio-labor structure, have grown very strongly since the 1990s and hardly suffer any limitations from immigration controls. On the other hand, elderly immigration is taking on a certain volume. More and more people from developed countries who are retired or inactive are taking the opportunity to spend long periods of time in other countries with a better climate or quality of life.

The current migratory phenomenon is widespread on a planetary level, has a very large volume and has a diverse typology. The degree of complexity it has acquired has never been seen before in history.

The pandemic situation caused by COVID-19 has put millions of people around the world in an extreme situation. The most vulnerable groups are the ones who have it most difficult. Once again, it is demonstrated that in the face of global problems, easy, simplistic and short-range solutions do not work. It is time to strengthen international cooperation and multilateralism.

The increasingly noticeable effects of climate change are also increasing population movements. The so-called environmental refugees are people who are forced to leave their homes due to phenomena related to climate change, environmental degradation or natural disasters. It is an issue that has been given increasing attention in recent years and that causes great concern in the short and medium term future.

Finally, Russia’s invasion of Ukraine has caused significant population displacements. At the start of the conflict, UNHCR estimated that 2.9 million people would need humanitarian assistance in 2022 and developed a Humanitarian Response Plan covering six sectoral areas: education, food security and livelihoods, health, protection, shelter/non-food items and water, sanitation and hygiene. Right now, as of June 6, 2023, there are already more than 12 and a half million people who are displaced from their homes. Just over half are internally displaced and the rest are refugees who are in different countries in Europe. It is a conflict that has the international community in suspense and to this day there is still no end in sight.

## BIBLIOGRAPHY AND SOURCES

Abramovich, V. y Courtis, C. (2004): *Los derechos sociales como derechos exigibles*. Editorial Trotta. Madrid.

Agencia de la ONU Para los Refugiados (2018): *Reforzando la educación de los refugiados en crisis*. Ed. ACNUR.

Agencia de la ONU Para los Refugiados (2009): *La historia de los refugiados en estadísticas*. ACNUR. Electronic resource: <http://www.acnur.org/t3/recursos/estadisticas>

Asamblea General de Naciones Unidas (2015): *Transformar nuestro mundo: la Agenda 2030 para el Desarrollo Sostenible*. Resolution A/RES/70/1, 21 October 2015. New York.

Bade, Klaus, J. (2003): *Europa en movimiento: las migraciones desde finales del siglo XVIII hasta nuestros días*. Crítica. Barcelona.

Bade, Klaus J. (2005): *Europa y los movimientos migratorios de finales del S. XX*. In Fernández-Rufete, J. y García Jiménez, M. (Eds.): *Movimientos migratorios contemporáneos*. Ed. Universidad Católica San Antonio. Murcia

Balderas, G. (2008): *Cristianismo, sociedad y cultura en la Edad Media: una visión contextual*. Universidad Iberoamericana. México, D.F.

Bañón Hernández, A. (2002): *Discurso e inmigración. Propuestas para un debate social*. Universidad de Murcia. Murcia.

Bedani, Gino. (2005). *Italians in Britain: The Shaping of a Community, 1870-1970*. Palgrave Macmillan.

Bernat, J. S. y Gimeno, C. (Eds.) (2006): *Migración e interculturalidad: de lo global a lo local*. Universitat Jaume I. Castelló de la Plana.

Blanco, Cristina (2000): *Las migraciones contemporáneas*. Alianza Editorial. Madrid.

Cachón, L. y Laparra, M. (2009): *Inmigración y políticas sociales*. Ed. Bellaterra, Barcelona.

Carballo Barral, Borja (2008): “Redes familiares en la inmigración hacia el Ensanche Este de Madrid (1860-1878)”. In electronic review: *Nuevo Mundo Mundos Nuevos*. Coloquios.

Chaliand, G. (1994): *Atlas historique des migrations*. Editions du Seuil. Paris.

Claramunt, S., Portela, E., González, M. y Mitre, E. (1997): *Historia de la Edad Media*. Ariel. Barcelona.

De Lucas, Javier (1996): *Puertas que se cierran. Europa como fortaleza*. Ed. Icaria. Barcelona.

Dollot, Louis (1971): *Las migraciones humanas*. Oikos-Tau. Barcelona.

Fernández-Rufete, José y García Jiménez, Modesto (Eds.) (2005): *Movimientos migratorios contemporáneos*. Universidad Católica San Antonio. Murcia.

Gaigné, C. (2004): *Aging nations and the future of cities*. Centre for Economic Policy Research. London.

García Fitz, F. (2003): *Edad Media: guerra e ideología: justificaciones jurídicas y religiosas*. Sílex. Madrid.

Garrido Rodríguez, Pedro (2018): “Crisis humanitaria de refugiados, cooperación internacional y desarrollo e integración europea”. In: *El cincuentenario de los Pactos Internacionales de Derechos Humanos de la ONU. Homenaje a la Profesora M<sup>a</sup>. Esther Martínez Quinteiro*. Ediciones Universidad de Salamanca

Garrido Rodríguez, Pedro (2014): *Inmigración y diversidad cultural en España. Su gestión desde la bonanza económica a la crisis*. Ed. Fundamentos. Madrid.

Garrido Rodríguez, Pedro (2012): *Inmigración y diversidad cultural en España. Un análisis histórico desde la perspectiva de los Derechos Humanos*. Ediciones Universidad de Salamanca. Salamanca.

Haas, Hein de; Castles, Stephen & Miller, Mark J. (2020). *The Age of Migration: International Population Movements in the Modern World*. Red Globe Press.

Herrera Carassou, R. (2006): La perspectiva teórica en el estudio de las migraciones. Siglo Veintiuno. México D.F.

Hidalgo, Paloma (1994): *Los desplazamientos humanos en una perspectiva histórica. De las migraciones en la Edad Antigua a la emigración atlántica y post-bélica europea*. In Marrodán Serrano, D. y Prado Martínez, C. (Coords.): *Las migraciones: su repercusión en la sociedad y en la biología de las poblaciones humanas*. Ed. Universidad Autónoma de Madrid. Madrid.

Hooper, N. y Bennett, M. (2001): *Atlas ilustrado la guerra en la Edad Media*. Akal. Madrid.

<http://nuevomundo.revues.org/30993>

Ibarrola-Armendariz, A. y H. Firth, C. (Eds.) (2007): *Migraciones en un contexto global: transiciones y transformaciones como resultado de la masiva movilidad humana*. Universidad de Deusto. Bilbao.

Lewis, G. (1982): *Human migration: a geographical perspective*. Croom Helm. London.

Little, L. y Rosenwein, B. (2003): *La Edad Media a debate*. Akal. Madrid.

Lucassen, Leo (2005): *The Immigrant Threat: The Integration of Old and New Migrants in Western Europe since 1850*. University of Illinois Press. Illinois.

Malgesini, Graciela (1998): *Cruzando fronteras. Las migraciones en el sistema mundial*. Icaria: Fundación Hogar del Empleado. Barcelona.

- Manning, P. (2005). *Migration in World History*. Routledge
- Marrodán, Dolores y Prado, Consuelo (Coords.) (1994): *Las migraciones: su repercusión en la sociedad y en la biología de las poblaciones humanas*. Universidad Autónoma de Madrid. Madrid.
- McKeown, A. (2016). *Global Migrations: The Basics*. Routledge
- Merino Hernando, Asunción y González Martínez, Elda (2006): *Las migraciones internacionales*. Dastin. Madrid.
- Mitre, E. (2004): *Introducción a la historia de la Edad Media europea*. Istmo. Madrid.
- Montes del Castillo, Ángel y Martínez Martínez, M<sup>a</sup> José (Eds.) (2008): *Migraciones, cultura y desarrollo*. Universidad de Murcia. Murcia.
- Naciones Unidas (2019): *Informe de los Objetivos de Desarrollo Sostenible 2019*. Ed. Naciones Unidas, Nueva York.
- Pando Ballesteros, M<sup>a</sup>. Paz; Muñoz Ramírez, Alicia y Garrido Rodríguez, Pedro (dirs. y eds.) (2016): *Pasado y Presente de los Derechos Humanos. Mirando al Futuro*. Ed. Los Libros de la Catarata. Madrid.
- Pando Ballesteros, M<sup>a</sup>. Paz; Garrido Rodríguez, Pedro y Muñoz Ramírez, Alicia (eds.) (2018): *El cincuentenario de los Pactos Internacionales de Derechos Humanos de la ONU. Homenaje a la Profesora M<sup>a</sup>. Esther Martínez Quinteiro*. Ediciones Universidad de Salamanca, Colección Aquilafuente, N<sup>o</sup> 243. Salamanca.
- Panadero Moya, Miguel y García Martínez, Carmen (Coords.) (1997): *Migraciones extranjeras en la Unión Europea*. Ed. Universidad de Castilla la Mancha. Cuenca.
- Reimers, David M. (1992). *Still the Golden Door: The Third World Comes to America*. Columbia University Press.

Richards, Michael. (2003). *A Time of Silence: Civil War and the Culture of Repression in Franco's Spain, 1936-1945*. Cambridge University Press.

Rodríguez, G. (2008): "Migraciones e Inmigraciones en las religiones: la diversidad religiosa en el Medioevo". In: *Historia*. Vol.27. Nº 2. São Paulo.

Torres, Francisco; Gadea, Ma. Elena (2015): *Crisis, inmigración y sociedad*. Ed. Ágora.

Wyman, David. (1996). *Paper Walls: America and the Refugee Crisis, 1938-1941*. Pantheon.

Wyman, Mark (1998). *DPs: Europe's Displaced Persons, 1945-1951*. Cornell University Press.



ISBN: 978-950-34-2426-1

CHAPTER

# 13

**GLOBAL GOVERNANCE AND THE ESTABLISHMENT  
OF A COMMUNITY WITH A SHARED FUTURE FOR  
MANKIND IN THE POST-PANDEMIC ERA**

Shen Qian

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter13>

# GLOBAL GOVERNANCE AND THE ESTABLISHMENT OF A COMMUNITY WITH A SHARED FUTURE FOR MANKIND IN THE POST-PANDEMIC ERA

*Shen Qian*

**Abstract:** The epidemic has led to a series of “subsequent calamities” that have greatly affected developing and interacting among nations globally. These disasters have hindered economic recovery, created challenges in global management, exacerbated cultural differences, and posed a challenge to the international legal system. The concept of a Community with a Shared Future for Mankind presents an opportunity to effectively govern the globe in the Post-Pandemic Era. However, there is still a significant amount of work that needs to be accomplished in order to establish and develop this Community with a Shared Future for Mankind. China has suggested the *Global Civilization Initiative*, *Global Development Initiative*, and other projects to promote active participation of all countries in global governance. In order to navigate the intricate global landscape in the aftermath of the epidemic, our foremost priority should be to adhere to multilateralism and collaborate harmoniously to establish a robust international community. Furthermore, it is imperative to strengthen global collaboration and render it more inclusive. It is imperative to promote cultural exchange across nations while remaining mindful of their distinctiveness as well. Ultimately, it is imperative for all countries to comply with the establishment of a global legal framework, emphasizing the significance of international law in averting and handling public health crises.

**Keywords:** Community with a Shared Future for Mankind, Post-Pandemic Era, Global Governance, *Global Development Initiative*, *Global Civilization Initiative*

## 1 INTRODUCTION

The term “Post-Pandemic Era” denotes the period that follows the conclusion of the COVID-19 epidemic. Nevertheless,

the epidemic has not been entirely eradicated in the post-epidemic period. Instead, it experiences fluctuations and resurgences, with cases originating from various nations occurring in seasonal periods.

Following the epidemic, humans have acquired suitable medical treatment facilities to address virus mutations, built resilience against the epidemic's effects, and established the capacity to respond to health emergencies. The level of awareness regarding epidemic prevention and control has significantly increased throughout various sectors of society. The global economy, trade exchanges, and communication activities have gradually resumed, leading to the emergence of a new way of life in human society. This has resulted in changes in people's health concepts, consumption habits, psychological resilience, and more. Additionally, the evolution of the world's geopolitical landscape has accelerated, and global governance is now confronted with unprecedented challenges. Countries need to actively adapt to the environmental changes brought about by the epidemic in order to survive and thrive.

During the High-Level Dialogue between the Communist Party of China (CPC) and World Political Parties in March 2023, President Xi Jinping formally introduced the *Global Civilization Initiative* to the international community. The *Global Development Initiative*, *Global Security Initiative*, and *Global Civilization Initiative* have now merged to form a cohesive entity.<sup>1</sup> Their purpose is to facilitate exchanges and foster mutual understanding amongst civilizations, while encouraging peaceful and harmonious development. The three efforts play a crucial role in the idea of a community of human destiny, providing guidance for the establishment of a Community with a Shared Future for Mankind. These measures also serve as China's solution for managing the significant changes that have not occurred in a century, and they indicate the path for world governance at this critical juncture.

---

<sup>1</sup> *Deeply Grasp the Intrinsic Relationship between the Concept of Building a Community of Human Destiny and the Three Global Initiatives*, online:<[http://www.qstheory.cn/qshyjx/2023-08/08/c\\_1129791857.htm](http://www.qstheory.cn/qshyjx/2023-08/08/c_1129791857.htm)>.

## **2 THE SUBSEQUENT CALAMITIES ARISING FROM THE WORLDWIDE PANDEMIC**

Currently, the planet is undergoing unprecedented development. As the funding for peace, development, safety, and governance declines, the future and destiny of humanity hang in the balance. The recent onset of the epidemic, which emerged in late 2019, has had a significant detrimental impact on the lives of countless individuals globally, and this impact persists to this day. The emergence and global spread of this disease have posed a fresh array of obstacles for global governance. The pandemic not only triggered a global public health crisis but also had profound detrimental impacts on the world's governance structure and the international order it is built upon.

### **2.1 Deceleration in the Global Economy**

The global spread of the pandemic has led to a growing inclination towards anti-globalization. From an economic perspective, the immediate result of this situation is that countries are compelled to implement preventative measures against infectious diseases, causing a sudden halt in many domestic economic activities. Additionally, there are restrictions on international trade to ensure safety, resulting in significant disruptions in the global supply chain for goods and industry. In some cases, these disruptions may even lead to the complete breakdown of these supply chains, ultimately resulting in a decline in the global economy.

As a result, it is evident that the world encounters the rise of protectionist policies in international trade, increasing unilateralism in global governance, disruptions and disconnections in the global supply chain, emergence of extremist politics in certain countries, exaggerated focus on national security, and growing prominence of populist and nationalist tendencies. Anti-globalization, as an ideological inclination, is manipulated by a select group of politicians to impede the progress of other nations and safeguard their own interests.

## **2.2 The Difficulties of Global Governance**

The upheaval caused by the epidemic highlights the predicament of an ineffective global governance system. On one hand, the international community faces a deficiency in addressing unconventional security issues, a lack of collaboration among nations, and a prevailing inclination to shift accountability. Presently, the phenomenon of globalization is characterized by an uneven distribution of resources, such as public health systems and services, global health warning mechanisms, and governance resources, which have yet to be fully integrated on a worldwide scale. Consequently, the world's governance is in the condition of severe "governance deficit". In the global fight against the epidemic, relevant international organizations could only provide specialized guidance, instead of owing legal authority to coordinate the global distribution of healthcare resources and materials. Furthermore, they do not possess a comprehensive quality standard for preventive measures in each country, nor do they possess extensive knowledge about the prevalence of the disease.

## **2.3 The Cultural Schism Intensifies**

Although cultural contradictions and conflicts often arise during intercultural interactions, it would be myopic and simplistic to exaggerate these conflicts or assign blame to a single culture as the cause of pandemic. Such an approach would hinder the long-term progress of humanity. Amidst this outbreak, the varying responses to the identical anti-epidemic efforts across different countries highlight the biased and inconsistent attitudes of specific nations.

Due to variations in geographical environment and social history, Eastern and Western civilizations have distinct values. However, these differences are not insurmountable and can be resolved through negotiation and mediation. They do not imply that the two sides are incapable of engaging in friendly exchanges and equitable dialogue. Some countries and individuals in the West have excessively highlighted and exaggerated the disparities and disputes between civilizations, as an attempt to establish Western values as superior and more accurate than those of other civilizations. This approach has

undeniably hindered constructive dialogue between civilizations in the context of their diversity.

Civilizations, in fact, are not inherently superior or inferior, but rather possess diverse characteristics that vary based on geographical location. Disparities in civilization ought not to serve as a cause for conflict in the global arena, but rather as a catalyst for the advancement of human civilization. Civilizations should synergize their strengths and collaborate to advance together, fostering cultural exchanges and mutual comprehension as catalysts for human societal growth and as a means to uphold global peace.

## **2.4 The Obstacles to the International Order Founded on International Law**

Subsequent to the Cold War, specifically starting in 2008, there has been a growing trend for anti-globalization, the extreme nationalism and narrow populism emerged. Additionally, the United States has disengaged from significant international organizations and institutions, including the Trans-Pacific Partnership Agreement (TPP), the Paris Climate Agreement, United Nations Educational Scientific and Cultural Organization (UNESCO), and the United Nations Human Rights Council (UNHRC). During the United Nations General Assembly on September 25, 2018, the ex-U.S. President Donald Trump reaffirmed his stance on foreign policy, emphasizing the principles of “rejecting globalism” and “America First”.

Following the outbreak, several nations advocated for a “system of international governance based on rules-based international order”. However, they did not expressly clarify that whether the term “rules” within the context of an “rules-based international order” refers to “international law” or conveyed their specific commitment to a rule-based approach to the international order. It is evident from various legislative measures taken by these countries that they are primarily prioritizing their national laws over international laws, giving precedence to regional international laws, and acknowledging the politicization of international laws. This rule undermines the function of international law in the global order, contradicting the

need for improved global management and the establishment of a more equitable and rational international system.

### **3 ROLE OF THE COMMUNITY WITH A SHARED FUTURE FOR MANKIND IN PREVENTING AND TREATING INFECTIOUS DISEASES IN THE AFTERMATH OF A PANDEMIC**

Viruses are not constrained by geographical limits, and epidemics do not discriminate based on race. The global occurrence, transmission, and recurrence of a widespread public health emergency have underscored the undeniable fact of human interdependence and collective fate. The current aim for all countries is to engage in profound contemplation and meticulous strategizing on how to cultivate fresh possibilities during times of crisis and explore uncharted territories amidst periods of change.

Given the circumstances, it is becoming more evident that it is crucial and imperative to building a community of shared human future. During the World Economic Forum 2022, President Xi Jinping emphasized that “it has been shown once again that, in the turbulent waters of the global crisis, countries are not riding in more than 190 small boats, but in one big ship of shared destiny”. To sum up, the current global crisis has demonstrated that all countries are interconnected and share a common fate, rather than being isolated entities.

As the purpose of establishing the Community with a Shared Future for Mankind, according to Martin Albrough, given the complicated and unstable international circumstances, the idea of the Community with a Shared Future for Mankind, which has been launched and pushed forward globally over the past few years, meets the current international demand for development.<sup>2</sup>

The pandemic has further complicated and entangled the global situation, emphasizing the imperative and pressing need to establish a community of shared human fate. In order to achieve tangible outcomes in the establishment of a global community united by a

<sup>2</sup> Martin Albrow, *China's Role in a Shared Human Future: Towards Theory for Global Leadership*, New World Press, 2018.

common destiny, all countries must collaborate with the international community to forge a more promising future characterized by a wider perspective and a more inclusive mindset.

In 2011, the Chinese State Council Information Office released a White Paper called “China’s Peaceful Development”. This document presented the concept of “Community with a Shared Future for Mankind” (CSFM) for the first time and provided a comprehensive explanation of its significance<sup>3</sup>. At its core, the concept of CSFM was seen as the fundamental basis for fostering a novel kind of international connections and communication.

Confronted with the worldwide pandemic and the present situation of the world, it is not only the theory initiative and the value point, but also a practical choice and urgent call. In March 2017, CSFM was included in U. N. Security Council Resolution No.2344<sup>4</sup>. In March 2018, the idea of CSFM was officially inserted into the Chinese Constitution Law<sup>5</sup>, marking it as a fundamental rule of law for Chinese internal and external relations.

This year marks the 10<sup>th</sup> anniversary of the idea of the CSFM. Over the past ten years, the concept of CSFM has transitioned from being an idea to being put into practice, from being a mere vision to becoming a tangible reality. China urges the global community to embrace authentic multilateralism, protect the international system centered around the United Nations, endorse the United Nations’ pivotal role in global affairs, advance the development and enhancement of the global governance structure, and collaborate in establishing a unified future for all of humanity.

### **3.1 CSFM Plays a Significant Role in Promoting the Democratization of International Relations and the Establishment of the Rules-Based International Order**

Amidst the epidemic breakout, China prioritized the well-being of individuals and placed utmost importance on preserving

---

<sup>3</sup> “China’s Peaceful Development”, online: <[https://www.gov.cn/jrzq/2011-09/06/content\\_1941204.htm](https://www.gov.cn/jrzq/2011-09/06/content_1941204.htm)>.

<sup>4</sup> U. N. Security Council Resolution No.2344, online:<<http://unscr.com/en/resolutions/2344>>.

<sup>5</sup> Constitution of the People’s Republic of China, online: <[https://english.www.gov.cn/archive/lawsregulations/201911/20/content\\_WS5ed8856ec6d0b3f0e9499913.htm](https://english.www.gov.cn/archive/lawsregulations/201911/20/content_WS5ed8856ec6d0b3f0e9499913.htm)>.



human life. In the *Lancet*, China unequivocally prioritized the preservation of life over national economic interests when making critical decisions. China's achievements have been accompanied by significant social and economic drawbacks, and China must make challenging choices to attain an ideal equilibrium between health and economic safeguarding.<sup>6</sup>

The principle of “survival of the fittest” is not conducive to harmonious human cohabitation. The direct application of the “law of the jungle” from the natural world to human civilization, along with the belief in the dominance of power, has significantly eroded the notion of equal sovereignty among countries and has had a detrimental impact on global peace and stability. In the era of globalization, our interconnectedness and interdependence render the law of the jungle and the winner-takes-all mentality increasingly obsolete and constricting.

“Community with a Shared Future for Mankind: China's Proposals and Actions” was published on September 26, 2023<sup>7</sup>. China emphasized that the establishment of a community of shared future presents China's suggestion for restructuring and enhancing the global governance framework. The concept of CSFM does not include completely reversing the past or inventing a new stove. Instead, it advocates for the democratization of international relations and the advancement of global governance in a fairer and more reasonable manner. This significant concept has united people of all nations in their pursuit of peace and development, and their desire for stability. It has created strong connections among countries with diverse cultural backgrounds and varying levels of development. Moreover, it has surpassed the narrow mindset of zero-sum game, power politics, and cold war confrontation. The CSFM concept, which promotes the principles of “achieving shared growth through consultation and collaboration,” dismantles the discourse barriers of Western-centrism. It incorporates a diverse range of subjectivities, systems, and cultures into global governance and advances the democratization of global governance.

<sup>6</sup> See Sustaining Containment of COVID-19 in China, online: <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30864-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30864-3/fulltext)>.

<sup>7</sup> A Global Community of Shared Future: China's Proposals and Actions, online: <[http://www.scio.gov.cn/zfbps/zfbps\\_2279/202309/t20230926\\_771260.html](http://www.scio.gov.cn/zfbps/zfbps_2279/202309/t20230926_771260.html)>.

The concept of CSFM is essentially synonymous with the modern rule of International Law, being a novel approach to establishing the framework of international legal principles. The concept of CSFM encompasses various notions such as enduring tranquility, global security, shared economic success, harmonious cultural coexistence, and long-term viability. It aligns with the established principles of international law and can be viewed as a tangible interpretation of the principle of “international solidarity” in international law.

### **3.2 The Implementation of the CSFM is Crucial for Alleviating the Challenges Faced by Global Governance**

From a comprehensive viewpoint, the core of global governance is in the collaboration of all nations worldwide to address the issue of supplying global public goods<sup>8</sup>. Global public goods typically encompass a product, material resource, service, or policy that has a transnational character. Within the global governance framework, many nations assume the duty of supplying distinct public goods. Amidst the challenges posed by the epidemic, many countries have shifted their attention towards resolving their own internal issues. Consequently, there has been a noticeable decrease in their willingness to contribute to global public goods. In fact, some countries have even contemplated the idea of “decoupling” from the rest of the world, leading to a significant scarcity of global public goods that are established through multilateral cooperation mechanisms. The global pandemic has caused significant stress and challenges for governments worldwide, which are evident in various areas such as hegemonic shifts, financial instability, terrorism, and climate change.

The concept of CSFM aims to foster a mutually beneficial partnership, ensure peaceful development, promote inclusivity and harmony, encourage cultural diversity while respecting differences, and create a sustainable and interconnected world. It encompasses all aspects of human society and demonstrates a genuine commitment to addressing political, economic, cultural, social, and ecological

---

<sup>8</sup> Lu Jing, “Current Global Governance Dilemmas and Directions for Reform” 2022(02) People’s Tribune 46 at 49.

challenges. CSFM offers an effective governance framework to address the global governance deficit and serves as a crucial tool in tackling this issue.

The concept of CSFM, based on the principle that humanity is a unified entity, urges all nations to safeguard their individual interests while also protecting their shared interests, as this is crucial for the complete attainment of their own objectives. The sustainability of the Earth's natural system is inherently important, as it directly impacts the well-being of all nations. Preserving the usage of natural resources, reducing environmental pollution, and eradicating extreme poverty are collective responsibilities of humanity. Therefore, the concept of CSFM holds significant theoretical significance in addressing the issue of global sustainability.

### **3.3 The Concept of a CSFM is Crucial in Addressing the Control of Communicable Diseases in the Post-Pandemic Era**

The current epidemic, which is the most significant worldwide disaster since World War II, is greatly influencing the global political economy and the global security situation. The coexistence of opportunities and challenges is connected with the interplay between conflict and stability. The worldwide pandemic has resulted in significant calamities and damages to nations across the globe, revealing significant shortcomings and insufficiencies in global public health management. These distressing experiences in the course of human progress serve as a catalyst for introspection and realization, leading us to deeply recognize the significance and imperative of establishing a global community focused on human health. Simultaneously, it highlights the fact that global public health governance cannot be addressed or resolved by a single nation or a collection of nations alone. Instead, it necessitates the collaborative endeavors and collective deliberations of all nations.

Participating in the establishment of a CSFM society not only offers promising opportunities for the future of humanity, but also presents an effective approach to prevent and manage communicable diseases in the aftermath of a pandemic. The proactive adoption of the concept of global human community with a collective destiny will

facilitate the development of mutual comprehension among nations, bolster worldwide collaborative endeavors in combating contagious diseases, and finally triumph over the global public safety dilemma.

The prominence of global health concerns in the international agenda is an inherent outcome of the post-pandemic era, and the epidemic has underscored the significance of fostering a worldwide society dedicated to the well-being of humanity. The concept “a Community of Common Health for Mankind” was suggested in 2020.<sup>9</sup>

The concept of the Community of Common Health for Mankind is based on the CSFM, which expands upon the notion of a human community with a collective future. The concept of the Community of Common Health for Mankind acknowledges the interconnectedness and mutual influence of everyone’s health, emphasizing that it forms a unified entity. It is imperative for all nations to collaborate in order to safeguard the well-being of the global population’s health and the environment. The concept of human health community offers a clear direction and theoretical framework for effectively utilizing medical human resources, scientifically allocating medical facility resources, harnessing the effectiveness of social initiative, establishing a scientific system for managing infectious diseases, and developing a collaborative governance model involving various stakeholders. The global health community will adopt the principle of “extensive consultation, joint contribution, and shared benefits” to address the issues of normality, effectiveness, and lack of justice in the current global public health governance. This will involve incorporating contemporary elements into the international legal framework for health, enhancing the international legal mechanism for public health to better align with the current realities, and establishing a more equitable and efficient system for global public health cooperation and governance, thereby assuming a leading role in adding value.<sup>10</sup>

---

<sup>9</sup> Fighting COVID-19 Through Solidarity and Cooperation Building a Global Community of Health for All, online:<[https://www.gov.cn/gongbao/content/2020/content\\_5515270.htm](https://www.gov.cn/gongbao/content/2020/content_5515270.htm)>.

<sup>10</sup> Wang Yong, “The Legitimacy and Perfection of International Law in the Construction of Human Health and Wellness Community”, *World Economics and Politics* 2021(5) 4 at 9.

## **4 A HUMAN COMMUNITY WITH A SHARED FUTURE IN THE POST-PANDEMIC ERA**

Currently, the pandemic Continuing destruction the entire world, resulting in significant changes to human society. The globe is currently experiencing a new era characterized by instability and transformation. It is imperative for every accountable nation to address the challenges of the present era and make decisive and resolute decisions with assurance, bravery, and dedication. Amidst the new challenges of global governance in the post-pandemic era, China has proposed a range of value-driven, principle-driven, and programmatic initiatives to actively engage in the reform and establishment of the global governance system, as well as the creation of a Community with a Shared Future.

### **4.1 Embracing Multilateralism and Establishing a Community of Common Health for Mankind**

The sole means to tackle the shared difficulties faced by all nations is through strict adherence to multilateralism. Given the presence of unilateralism and hegemony in the international arena, which are being carried out in the name of multilateralism, it is imperative that we steadfastly uphold and actively engage in genuine multilateralism. The implication of multilateralism is that global matters should be addressed through collaborative deliberations, with the aim of placing the future and fate of the globe in the hands of all nations. The current intricate and unpredictable global situation necessitates a departure from the previous model of international government, where a single nation or a handful of influential nations held sway, as it is no longer suitable for the emerging pattern of progress. Simultaneously, as emerging economies and underdeveloped countries continue to rise, there is a growing demand for global governance to exhibit pluralistic engagement, inclusive consultation, and shared governance and construction.

Globally, the pandemic has caused significant harm to all countries, revealing significant shortcomings in the current global public health governance system. This has emphasized the crucial

need to establish a community focused on human health and well-being. Simultaneously, it highlights the fact that global public health governance is not a challenge that can be addressed or resolved by a single country or a few countries alone. It necessitates the collective efforts of all nations. It is important to uphold multilateralism, and it is the duty of great powers to proactively shoulder responsibilities and obligations. Upon analyzing the lessons derived from the prevention and control of this epidemic, we have discovered that the establishment of a comprehensive and effective global public health governance system is imperative. Without such a system in place, the recurrence of disorder in the prevention and control of future global epidemics is highly likely. The notion of the community of human destiny compels us to consider the imperative and feasibility of enhancing the global public health governance system.

To enhance the global health governance system, it is crucial for leaders and initiators to prioritize public health issues and advocate for their inclusion in international discussions and to support the leadership role of the World Health Organization (WHO) and other international organizations in global public health governance is vital. The United Nations and the World Health Organization are crucial establishments for preserving and enhancing global cooperation mechanisms. They serve as vital platforms for countries to uphold multilateralism within the existing international order, assuming a prominent and pivotal leadership position in international politics and health. We must steadfastly preserve the global governance structure centered around the United Nations, and bolster the efforts of the WHO in making substantial contributions to the worldwide battle against the epidemic. It is imperative for all nations to actively collaborate with WHO specialists, enhance the global health governance system under the guidance of WHO, establish a protective shield for human life and well-being, and collectively advance the establishment of a worldwide community for human health. On the other and, enhancing the global health governance system requires comprehensive and structured assistance, encompassing political, financial, and social support. China has supported the implementation of the United Nations 2030 Agenda for Sustainable Development by contributing to international cooperation in building the “Belt and Road” initiative.

Additionally, China has engaged in extensive collaboration on global issues such as famine, refugees, poverty alleviation, climate change, public health, counter-terrorism security, and inclusive reform of the World Trade Organization (WTO). Notably, during the outbreak of the epidemic, China actively participated in the prevention and control of major infectious diseases. China joined forces with the WTO and the international community to combat the epidemic and strongly advocated for the establishment of a community focused on human health and well-being. Furthermore, China's recent endeavors to establish a community focused on human health, starting in May 2021, have provided a comprehensive elucidation of the concept of the Community of Shared Future for Mankind (CSFM) in terms of public health and safety. These activities should offer a historical perspective that goes beyond national and regional boundaries.

#### **4.2 Strengthened Global Collaboration to Promote International Relations**

Democracy is the result of the advancement of human political culture and a universally shared principle for all of humanity. The prevailing tendency towards peace, development, cooperation, and mutually beneficial outcomes is inexorable, and the populace's aspiration for unity, collaboration, and advancement remains unwavering. The manifestations of democracy are diverse and extensive, and cannot be limited to a standardized model, much less a universally applicable criterion for assessment. The enjoyment of democratic rights by individuals is contingent upon their ability to participate in elections, engage in sustained political activities, conduct democratic elections, partake in democratic decision-making, management, and supervision, and adhere to a people-centered approach that fulfills the needs of the populace. These factors serve as crucial criteria for assessing a country's level of respect and protection of human rights. It is important to acknowledge that democracy is not exclusive to any particular country, but rather a universal right for all nations. The latest advancements in the global scenario have reaffirmed that external military intervention and the purported democratic transition can do immense damage. It is imperative that we actively advocate for

the universal principles of peace, progress, equity, impartiality, justice, democracy, and liberty for all individuals, while simultaneously opposing exclusive groups and win-lose scenarios.

The *Chinese Global Development Initiative*, released in September 2021, advocates for an approach that prioritizes the well-being and needs of individuals<sup>11</sup>. To guarantee and enhance the living conditions of the population, promote development for the welfare and advantage of the public, and achieve sustainable prosperity, it is essential to prioritize access to safety and foster comprehensive human development. The *Global Development Initiative* aligns with the goals and actions outlined in the United Nations General Assembly's 2015 Agenda for Sustainable Development. This agenda not only focuses on physical development, but also emphasizes the need for comprehensive reforms in economic, social, and environmental aspects. These reforms aim to promote fairness, environmental sustainability, and collaboration between public and private sectors.

Within the realm of international relations, democratization necessitates three primary actions. Firstly, it entails the abandonment of hegemony and power-driven politics, and instead advocating for the equal involvement of all nations in global affairs, regardless of their size, strength, weakness, wealth, or poverty. Secondly, it requires the rejection of double standards and the urging of all countries to adhere to international law, specifically the principles outlined in the United Nations Charter. Lastly, it calls for the prompt reform of unjust and irrational institutional structures, in order to advance the appropriate systems and regulations of international norms and keep up with the changing global political and economic landscape. Finally, it is necessary to promptly revise the unfair and illogical institutional arrangements, update the relevant systems and regulations of international standards, incorporate the recent changes in the global political and economic environment, and enhance the influence of developing nations.

In the aftermath of the pandemic, it is crucial for the global community to acknowledge the importance of collaborating on measures to prevent and control epidemics, based on the knowledge

---

<sup>11</sup> *Chinese Global Development Initiative*, online: <[https://english.www.gov.cn/news/top-news/202109/22/content\\_WS614a816dc6d0df57f98e0a56.html](https://english.www.gov.cn/news/top-news/202109/22/content_WS614a816dc6d0df57f98e0a56.html)>.



and insights gained in recent years. It is only by prioritizing the protection of global public health that we can foster mutually beneficial cooperation between all nations. This collaboration will ensure the safety and well-being of people worldwide, while also advancing the development of a new paradigm of international relations that values inclusivity and diversity.

### **4.3 Facilitating Cultural Exchange Between Nations in Order to Foster Mutual Understanding and Respect for Cultural Diversity**

Amidst the epidemic and its aftermath, certain countries witnessed the rise of racist sentiments, which worsened societal divisions, escalated international tensions, and hindered the progress towards a global society focused on human well-being. The concept of the Human Community with a Shared Future, promoted by China, aligns with the diverse nature of human civilization. It emphasizes that the relationship between civilizations should not be governed by a “survival of the fittest” mentality rooted in the “law of the jungle”. Instead, it advocates for a symbiotic and coexistent relationship based on principles of equality and respect. Instead, it ought to be a mutually beneficial and harmonious partnership founded on parity and reverence.

The concept of CSFM posits that the attainment of harmonious cohabitation is contingent upon the reciprocal acknowledgement and appreciation of each other’s cultural traditions and political systems. Each sovereign State maintains its unique cultural, political, and economic systems that align with its specific national characteristics, taking into account aspects such as cultural traditions, historical traditions, and physical settings. Cultural exchanges and mutual respect among countries are crucial for fostering global collaboration and coordination. Cultural exchanges serve as a crucial method for developing mutual trust and comprehension between different groups of people.

The *Global Civilization Initiative*<sup>12</sup> was launched in March 2023 with the aim of enhancing the practical methods for establishing

<sup>12</sup> *The Global Civilization Initiative*, online:<[http://english.scio.gov.cn/topnews/2023-03/19/content\\_85177312.htm](http://english.scio.gov.cn/topnews/2023-03/19/content_85177312.htm)>.

a Human Community with a Shared Future. The *Global Civilization Initiative* is based on four fundamental principles: reverence for the varied cultures of the globe, advancement of the collective ideals of humanity, emphasis on cultural legacy and innovation, and improvement of human communication and collaboration in the realm of human rights. The *Global Civilization Initiative* acknowledges the diversity of cultures and aims to reconcile the coexistence of different cultures while promoting a shared culture. It prioritizes the preservation of cultural heritage and the development of contemporary cultural values. Additionally, it seeks to establish a global platform for dialogue and cooperation, as well as a practical approach to building a society that addresses the destiny of humanity.

Promoting equitable communication between civilizations fosters the interchange of ideas and mutual comprehension, hence advancing human civilization and facilitating peaceful global growth. The promotion of dialogue among civilizations is rooted in the principles of equality and respect. This dialogue is fostered through increased exchanges and mutual understanding among civilizations. The concept of equality in this context does not imply exclusivity, but rather emphasizes the importance of substantive equality based on mutual respect among civilizations. During this critical juncture in the global battle against the epidemic, it is imperative for nations to overcome their isolationist tendencies. By seeking common ground while acknowledging differences and being guided by shared interests and universal values, civilizations should engage in equal and meaningful dialogue. This will foster cultural exchanges, mutual respect, and knowledge sharing, ultimately enabling us to collectively address the current crisis and advance the establishment of Human Community with a Shared Future.

#### **4.4 Maintaining the Establishment of a Global System Governed by International Law and Highlighting the Importance of International Law in Preventing and Managing Public Health Crises**

Since the outbreak of the epidemic, the globe has witnessed significant shifts in the course of the century, as the global pandemic of the novel coronavirus disease has entwined with its effects. In

September 2020, leaders from all nations convened a series of summits to commemorate the Seventy-Fifth Anniversary of the establishment of the United Nations. During these meetings, they pledged to collaborate in combating the pandemic, unite in addressing challenges, uphold multilateralism, enhance the United Nations' influence, and forge a shared future for current and future generations.

There exists a singular global system known as the international system, with the United Nations serving as its central entity. There exists a singular order, which is the international order established upon international law. The sole set of regulations that govern international relations are the fundamental norms derived from the goals and values outlined in the United Nations Charter.<sup>13</sup>

China, being a founding Member of the United Nations and the first signatory to the Charter of the United Nations, possesses a deep understanding of the value of peace and the challenges associated with development. China believes that the best way to achieve harmony among countries is through institutions and rules. It emphasizes that the size or strength of a country should not determine its influence. Great powers should take the lead in promoting and maintaining the rule of law at the global level. They should honor their commitments, avoid making exceptions or using double standards, and refrain from distorting international law. It is important to respect the rights and interests of other countries and avoid actions that undermine international peace and stability in the name of the rule of law.

Amidst the virus-induced challenge to the international legal system, international bodies such as the World Health Organization (WHO) and the World Trade Organization (WTO) assume a pivotal role. Nations ought to conform to the guiding stance of the United Nations and WHO in global public health governance, adopting the objectives of the United Nations Charter as the fundamental principles of international relations, and abiding by the regulations and structures of international solidarity when dealing with international matters and maximizing the leadership, efficacy, and expertise of WHO in the worldwide battle against the epidemic.

<sup>13</sup> Xi Jinping's speech at the general debate of the 76th session of the United Nations General Assembly, online: <[http://www.qstheory.cn/yaowen/2021-09/22/c\\_1127887219.htm](http://www.qstheory.cn/yaowen/2021-09/22/c_1127887219.htm)>.

The World Health Organization (WHO) is a key player in the global public health system. It offers guidance and support to countries worldwide on public health matters through the *International Health Regulations*. Additionally, it leads international efforts in responding to public health emergencies, with the aim of protecting human lives and well-being. The organization is dedicated to fostering global collaboration among nations in addressing public health emergencies, thereby facilitating the containment of infectious diseases across borders and creating a favorable international atmosphere for resolving public health crises. The World Trade Organization (WTO) and its precursor, the General Agreement on Tariffs and Trade, include provisions pertaining to the safeguarding of human life and health. These intergovernmental international organizations effectively address public health issues that endanger human well-being by creating appropriate legal regulations. They serve as a crucial means of promoting international collaboration in managing the global transmission of infectious diseases.

Hence, it is imperative to uphold the efficacy of international law. The capacity of member States to diligently adhere to international health accords and actively execute their responsibilities under international public health treaties is crucial for properly addressing the efficacy of international law in combating infectious illnesses. The act of acknowledging and improving international accords through domestic legislation is the most compelling proof of diligent adherence to international treaties and the preservation of the efficacy of international law. Hence, to establish legal enforceability of the international law pertaining to infectious disease control, member states need to enhance the incorporation of their domestic laws with international health arrangements, and actively enhance their relevant domestic health legislation in accordance with international law. Amidst the worldwide public emergency crisis, the member states involved in international health agreements should adhere strictly to the provisions of the treaties. They should also mobilize legal experts in public health to enhance their domestic legislation, ensuring better alignment with international public health regulations. Enhancing domestic legislation to bolster the advancement of international law is beneficial for effectively enforcing international law pertaining

to the regulation of contagious illnesses and fostering international collaboration among nations in addressing public health emergencies.

There is no doubt that carrying forward the idea of CSFM faces difficulties during its formation, and the epidemic has exacerbated and intensified those issues. These problems will hinder the accurate comprehension of the Community of Shared Future for Mankind and impede its development. Nevertheless, novel concepts will inevitably face diverse forms of opposition from their inception to their implementation. Therefore, the building of a Community of Shared Future for Mankind still requires many efforts. One of the important ways of playing its role lies in the transformation of a concept into a rule of law. As practice progresses, we believe the idea of CSFM will become more and more popular. It is of milestone significance to the construction of a new type of international relations with win-win co-operation in the new era.

ISBN: 978-950-34-2426-1

CHAPTER

# 14

## **DIGITALIZATION OF SURVEILLANCE ACTIVITIES AS A CORRUPTION PREVENTION MEASURE DURING THE COVID-19 PANDEMIC**

Sevalnev Vyacheslav Viktorovich  
Tsirin Artem Mikhailovich

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter14>

## **DIGITALIZATION OF SURVEILLANCE ACTIVITIES AS A CORRUPTION PREVENTION MEASURE DURING THE COVID-19 PANDEMIC**

*Sevalnev Vyacheslav Viktorovich*  
*Tsirin Artem Mikhailovich*

In Russia, the reform of control and oversight activities is actively pursued to ensure the protection of legally protected values (life, health, property, etc.), reduce administrative barriers and improve the quality of administration of control and oversight functions.

The coronavirus pandemic (COVID-19) and enforced quarantine restrictions aimed at containing it have had a shocking impact on the economy and society, exacerbating existing problems. The emergency measures led to a temporary halt in production, a sharp decline in trade and services, a drop in foreign trade and in the number of migrant workers and, ultimately, in GDP.

The COVID-19 pandemic has had a serious impact on all areas of public life, including control and surveillance, and at the same time, administrative legislation has been substantially updated.

Outbreaks of diseases such as cholera, influenza, HIV/AIDS, torso and MERS have resulted in large numbers of infected people and human casualties. However, no pandemic has received as much global attention as COVID-19, the name for a respiratory disease that stands out as being highly transmissible even to people who show no symptoms. Pandemics share some common features in terms of crime-related consequences.

First, a pandemic often leads to a financial crisis, both short- and long-term.

Secondly, all pandemics result in rapid mortality and other negative health consequences. Deaths are likely to have a direct impact on both the ability and profitability to commit certain crimes. For example, if a certain segment of the population is more severely affected than others (e.g. the elderly population, in the case

of COVID-19)<sup>1</sup>, then any activity associated with that segment of the population may change in a way that affects criminal activity.

Third, pandemics trigger changes in public policies designed to combat the disease. Beyond the obvious backlash (e.g. investment in medical R&D for vaccines or drugs), pandemics trigger various forms of public restrictions on public life. These measures include, rules on social distancing, quarantine, closure of national borders and temporary cessation of certain business activities.

States differ in their approaches to addressing the crisis and apply varying degrees of stringency in imposing and loosening restrictions. Nevertheless, restrictions have clearly led to radical changes in the daily lives of many people.

The COVID-19 pandemic presents unprecedented challenges for the global community. Governments are devoting enormous resources to respond to the ongoing public health crisis and economic challenges posed by global recruitment restrictions, damaged supply chains and shrinking financial markets. The amount of resources needed to ensure public health and safety, combined with the need to respond quickly to rapidly changing challenges, has increased opportunities for corruption.

The outbreak of a new disease has certainly increased corruption risks, especially in the health sector, due to the increased demand for medical products, simplified rules for public procurement, overcrowded health facilities and overburdened medical staff. Corruption and related types of crime have had a negative impact not only on the public but also on the private sector.

Understanding the current trends in emergency rule-making in the Russian Federation and the practices introduced against this background in the COVID-19 pandemic has highlighted a number of areas of legal regulation of anti-corruption measures applied in such circumstances.

Consider legislative solutions and other measures to minimize the negative economic consequences of the pandemic. Federal Law No 98-FZ of 1 April 2020 “On Amending Certain Legislative Acts of the Russian Federation Regarding the Prevention and Handling of Emergency Situations” has introduced a new Article 9.1 which

---

<sup>1</sup> Mortality rates increase with age and are highest for those aged 75 and over.



provides that in exceptional cases (emergency situations of natural or technogenic origin, a significant change in the ruble rate and similar circumstances) the Russian government has the right to introduce a moratorium on institution of bankruptcy proceedings on applications filed by creditors, creditors and counterparties in order to ensure economic stability. This law is also aimed at optimizing the activities of the federal executive authorities in exercising their powers of control, supervision and permitting activities.

A new concept has been introduced into the system of legal regulation - the “national guarantee system for the support of small and medium-sized business”, meaning the systematic provision of sureties and guarantees for private obligations when applying to credit and other financial resources (clause 9 of Article 3 of Federal Law No 83-FZ of 01.04.2020 “On Amending the Federal Law on the Development of Small and Medium-Sized Enterprises in the Russian Federation in order to develop a national guarantee system to support small and medium-sized enterprises”).

On 1 January 2021, Order No. 586 of the Ministry of Economic Development of the Russian Federation of 09 September 2020 came into force, approving the Basic Provisions for the Development of a National Guarantee System for Supporting Small and Medium-Sized Enterprises for the Period up to 2024. Corresponding amendments were made to a number of normative legal acts.

In a systematic way, all these measures to combat COVID infection in terms of economic support were spelled out in the Priority Action Plan for Sustainable Economic Development in the Worsening Situation Due to the Spread of New Coronavirus Infection (approved by the Russian Government on 17 March 2020).

The Supreme Court of the Russian Federation has issued clarifications on the application of Russian legislation in the context of the pandemic - Review of Selected Issues of Judicial Practice Related to the Application of Legislation and Measures to Counter the Spread of New Coronavirus Infection in the Russian Federation (COVID-19) (Approved by the Presidium of the Supreme Court of the Russian Federation on 21 April 2020).

They refer to contracts, force majeure, limitation of action, procedural time limits, bankruptcy, criminal and administrative

liability. It was allowed to postpone the due date if the epidemic was a circumstance of insuperable force for the debtor (Article 401(3) of the Civil Code). However, the Court stressed that it was important to prove that the circumstances related to the epidemic were extraordinary and unavoidable and that the failure to perform the obligation was due to these circumstances. It was also incumbent on the debtor to show clearly that it had actually taken reasonable measures to mitigate the negative consequences of the epidemic. It was allowed to restore procedural deadlines missed due to the coronavirus. The Supreme Court of the Russian Federation also provided an important clarification on the automatic moratorium on bankruptcy, regardless of whether the reasons for bankruptcy were related to the epidemic or not.

The second area of emergency rulemaking is legal measures aimed at addressing the causes of the growth in corruption and introducing new forms of combating it in the context of the pandemic.

If we look at corruption in sectoral terms, most of it occurred in the financial and credit sector, construction and the consumer market, transport and housing and communal services, land relations and the fuel and energy complex, agriculture and forestry, communications and shared construction, and the production of machinery and equipment.

It should be noted that public procurement remained the most corruption-prone area, involving 789 (+20.1%) crimes, of which almost 60% were corruption-related (463, +16.9%), including 170 cases of bribery. Criminal charges were brought against 393 persons (+22.8 %). Most of these acts were committed in the Volga, Central, North Caucasian and North-Western districts<sup>2</sup>.

These circumstances necessitated a swift change in the legal provisions governing public procurement in order to prevent corrupt practices. In the Russian Federation, procurement legislation was amended to allow direct contracts for goods, services and supplies in connection with COVID-19 until 31 December 2020<sup>3</sup>. The maximum price of direct contracts was doubled, it allowed the parties

---

<sup>2</sup> Form 495 of the GIAC of the Ministry of Internal Affairs of Russia for the year 2020. The crimes detected by the internal affairs bodies are taken into account.

<sup>3</sup> Federal Law of 1 April 2020 No 98-FZ "On Amendments to Certain Legislative Acts of the Russian Federation Regarding the Prevention and Elimination of Emergency Situations". URL: <http://publication.pravo.gov.ru/Document/View/0001202004010072>

to the contract to change the term of implementation and the price for reasons of force majeure or in other cases determined by the Government<sup>4</sup>. On the one hand, this measure significantly reduced the time needed to carry out much-needed procurement, while on the other hand it reduced transparency, thereby increasing the risks of anti-competitive and corrupt practices.

Amendments have been made to Federal Law No. 44-FZ of 05 April 2013 “On the Contract System in the Sphere of Procurement of Goods, Work and Services for State and Municipal Needs”, defining the right of the customer to make purchases from any contractor. To apply such a purchase procedure, it will be necessary to prove and provide a causal link between the purpose of the purchase and the preventive or eventual elimination of a disease (Letter No. IA/21684/20 of the Federal Antimonopoly Service of Russia of 18 March 2020).

For its part, Rospotrebnadzor has published a list of major fraud risks for the population during the COVID-19 pandemic<sup>5</sup>. These include the sale of counterfeit products against COVID-19 (filters, medicines and air purifiers), warnings to pay non-existent fines for allegedly violated blockage restrictions, offers of false services to obtain jobs, attempts to break into private homes disguised as medical and social workers, etc. Law enforcement agencies recorded numerous cases of fraud involving falsified electronic permits to leave private homes during lockdowns, sold for between 3,000 and 5,000 rubles, although such permits were issued free of charge by local authorities; the sale of counterfeit COVID-19 test kits at 15,000 rubles apiece and PPE at inflated prices. During the COVID-19 pandemic, the Prosecutor General’s Office recorded a record rise in cases of fraud involving the use of information and communication technologies<sup>6</sup>. Law enforcement and supervisory authorities are generally quick to respond to exposures of fraud and corruption in the media through various monitoring tools.

<sup>4</sup> Ibid.

<sup>5</sup> Main types of fraud related to COVID-19. Federal Service for Surveillance of Consumer Rights Protection and Human Welfare. URL: [https://www.rospotrebnadzor.ru/about/info/news/news\\_details.php?ELEMENT\\_ID=14333](https://www.rospotrebnadzor.ru/about/info/news/news_details.php?ELEMENT_ID=14333)

<sup>6</sup> Criminal statistics portal. Prosecutor General’s Office of the Russian Federation. URL: <http://crimestat.ru/analytics>

Examples of corruption related to the COVID-19 pandemic include the following cases. In November, the Irkutsk department of the Investigative Committee of Russia initiated criminal proceedings against a group of people suspected of committing fraud on a large scale (Part 4, Article 159 of the Criminal Code). According to the investigation, between May and October the acting Minister of Health of the Irkutsk Region, N. Ledyeva, her son and other persons embezzled about 25 million rubles from the regional budget while executing a state contract for the supply of personal protective equipment (medical masks and respirators)<sup>7</sup>, which had not been registered as such<sup>8</sup>.

In December in Chita city, V. Shalnev, head doctor of the state medical institution “Krasnoyarsk Clinical Hospital”, was arrested on charges of taking bribes on a particularly large scale. According to the investigation, he received more than 13 million rubles as kickbacks from the head of the company for unhindered conclusion of contracts with him for the supply of medical equipment, gowns and masks<sup>9</sup>.

Another process vulnerable to corruption is investment in research and development of drugs and vaccines against COVID-19. Researchers and scientists are preparing to develop drugs and vaccines against COVID-19, and huge sums of money are being invested in research and development. Consequently, the capacity, authority and degree of public responsibility of the public institutions charged with regulating and controlling the management of public resources need to be increased.

---

<sup>7</sup> The World Health Organization cited masks as one way to prevent infection with a new type of coronavirus. Since early February, there has been a shortage of medical masks and respirators in Russia, both at retailers and large online pharmacies. As a result, the Russian government restricted their export from the country in early March (the ban was lifted on 3 May). In April, Rosstandart stated that face masks fall into three groups: medical devices, personal protective equipment and others. For the manufacture of medical masks, the manufacturer shall take into account the requirements of GOST R 58 396-2019 “Medical masks. Requirements and test methods”. It specifies that a medical mask (medical face mask) is a medical device that covers the nose and mouth and provides a barrier to minimise direct transmission of infectious agents between staff and patient. A test method is used to ‘measure the effectiveness of bacterial filtration by mask material’. In addition, there is also TU 32.50.50-002-00302178-2020 “Medical mask of non-woven materials”. It specifies that there can be three types of mask, but they “correspond to type I according to the above-mentioned GOST R 58 396”.

<sup>8</sup> Trifonova E. Masked mode. // Vostochno-Sibirskaya Pravda. 08.12.2020.

<sup>9</sup> Eremenko E. Chief Physician of Zabaykalsk Krai Hospital arrested for taking bribes. // Kommersant. 06.12.2020.

The same can be said of the increased risk of conflicts of interest when health or economic interests are at stake, such as possible preferential treatment for friends or family members, patronage, nepotism and favoritism in recruitment and health workforce management in general.

In the Russian Federation, Rosfinmonitoring focused on raising awareness of emerging corruption risks during the COVID-19 pandemic and measures to identify them among private sector actors by publishing relevant information on its official website<sup>10</sup> and in the personal account sections of those actors on the corporate portal. It was recommended that the Investigative Committee of the Russian Federation step up its efforts to combat crime in view of its international forms related to the production and sale of narcotic drugs, PPE and medical equipment; and that the Federal Antimonopoly Service pay particular attention to the detection of collusion/fixation of prices related to the sale of essential commodities during the COVID-19 pandemic.

In July 2020, Rosfinmonitoring has prepared a toolkit entitled “Risks of theft of public funds, property of citizens and organizations during a coronavirus pandemic”<sup>11</sup>:

- the risks associated with public procurement;
- the purchase of overpriced goods, medical equipment, products, consumables and personal protective equipment;
- Facilitation of non-pandemic procurement procedures;
- defaulting on government contracts under the pretext of a coronavirus pandemic;
- the embezzlement of public funds under the pretext of spending them on the specific needs of the coronavirus pandemic;
- sale of counterfeit and expired products, as well as products of poor quality.

According to Rosfinmonitoring, the most frequent corrupt practices during the pandemic are the affiliation of suppliers of high-tech equipment to medical institutions, which facilitate the

<sup>10</sup> Measures to combat the spread of COVID-19. Federal Financial Monitoring Service. URL: <http://www.fedsfm.ru/covid19>.

<sup>11</sup> Financial Security Review. The pandemic and its associated money laundering risks // Financial Security. 2020. N°27. July. URL: <https://cutt.ly/tf6LEJ0>

participation of a single supplier in the procurement process while inflating the initial maximum contract price. In addition, misuse of budget funds allocated to increase the production of disposable medical products (masks and gloves; there is also sole-source bidding) and embezzlement of budget funds allocated for the construction of rapid medical facilities to combat the pandemic as part of a state defense order (in the Urals Federal District) are also encountered<sup>12</sup>.

Rosfinmonitoring monitored over 7000 government contracts related to the COVID-19 pandemic. The total value of these contracts, implemented by 4,500 legal entities and individual contractors, amounted to RUB 11 billion. Rosfinmonitoring conducted a risk assessment of the parties to these contracts in order to prevent their non-performance in a timely manner. The assessment identified a number of contracts at risk and referred them to the competent law enforcement authorities for criminal proceedings. As a consequence, a positive trend was recorded: implementation standards were strengthened and the number of suspicious transactions and shell companies decreased.

The analysis of legal measures to minimize the negative consequences of crisis situations has shown the need to proportionate such measures in the area of control and permitting activities with the objectives of combating corruption. The measures introduced and the restrictive rules binding on citizens and organizations should be applied taking into account the basic constitutional principles of transparency, proportionality, good faith, necessity, sufficiency, etc.

Digitalization makes it possible to qualitatively improve many processes, and this direction is reflected in a number of strategic planning documents. As rightly noted by RAS Academician T.Y. Khabrieva, law has an important (instrumental) role in combating corruption<sup>13</sup>. This is reflected in a number of strategic planning documents.

The legal regulation of the digital economy of the Russian Federation is carried out in accordance with the goals and objectives

---

<sup>12</sup> Rosfinmonitoring found a number of corrupt violations in the Urals in the fight against coronavirus. // <https://www.mterfax-russia.ru/ural/news/rosfinmonitoring-obnaruzhil-ryad-koiTupcionnyh-narusheniy-na-urale-pri-borbe-s-koronavirusom> (accessed 28.05.2020).

<sup>13</sup> Khabrieva T.Y., Chernogor N.N. Law in conditions of digital reality. *Journal of Russian Law* No. 1. 2018. p. 88.

of the development of the digital economy within the Eurasian Economic Union<sup>14</sup>.

The digital economy of the Russian Federation is represented by 3 levels, which are in close interaction and affect the lives of citizens and society. These are: markets and sectors of the economy (business areas), platforms and technologies, and the environment<sup>15</sup>. It should be noted that the environment encompasses regulation, information infrastructure, human resources and information security.

The main activities of the Government of the Russian Federation for the period until 2024<sup>16</sup> place considerable emphasis on the development of digital technology in the sectors of the economy, including relevant changes to the legislative framework, the transfer of interaction between citizens, businesses and the State to a remote, digital mode, the reduction of time and administrative costs when providing State and municipal services and exercising control (oversight) functions, and, with regard to combating corruption, the formation of an interactive analytics.

Digitalization of control (oversight) processes is also one of the priorities of the Federal Digital Public Administration Project<sup>17</sup>. The National Anti-Corruption Plan 2021-2024<sup>18</sup> provides for the identification of corruption risks in control (oversight) activities using digital technologies.

Presidential Decree No. 490 of 10.10.2019 approved the National Strategy for the Development of Artificial Intelligence for

<sup>14</sup> Decision of the Supreme Eurasian Economic Council of 11.10.2017 No. 12 “On the Main Directions for Implementing the Digital Agenda of the Eurasian Economic Union until 2025”, Order of the Eurasian Intergovernmental Council No. 17 dated 27.11.2018 “On the development of the concept of the application of special Regimes (“regulatory sandboxes”) within the framework of the implementation of the Digital Agenda of the Eurasian Economic Union”, Order of the Board of the Eurasian Economic Commission dated 30.10.2018. No. 166 “On the draft Recommendation of the Council of the Eurasian Economic Commission “On the Concept of creating conditions for the Digital Transformation of Industrial Cooperation within the Framework of the Eurasian Economic Union and the Digital Transformation of the Industry of the Member States of the Union”, Order of the Council of the Eurasian Economic Commission dated 13.07.2018 No. 17 “On the elaboration of an initiative to create an ecosystem of digital transport corridors of the Eurasian Economic Union” and others.

<sup>15</sup> For more details, see: Programme “Digital Economy of the Russian Federation”, approved by Decree of the Government of the Russian Federation No. 1632-r of 28 July 2017, sect. I. “General provisions” p. 3.

<sup>16</sup> Approved by the Government of the Russian Federation on 29.09.2018, No. 8028p-P13.

<sup>17</sup> Decree of the President of the Russian Federation of 21.07.2021 No. 474.

<sup>18</sup> Decree of the President of the Russian Federation of 16.08.2021 No. 478.

the period until 2030. The Strategy defines artificial intelligence (hereinafter referred to as AI) as “a set of technological solutions that allows imitating human cognitive functions (including self-learning and finding solutions without a predetermined algorithm) and obtaining results, when performing specific tasks, comparable, at least, to the results of human intellectual activity. The complex of technological solutions includes information and communication infrastructure, software (including that using machine learning methods), processes and services for data processing and solution search”), suggests using AI technologies to improve the efficiency of planning, forecasting and management decision-making processes, automation of routine processes, risk and adverse process forecasting, optimization of business processes, improving the quality of public administration<sup>19</sup>.

Presidential Decree No. 232 of 25 April 2022 approved the Statute on the Poseidon State Anti-corruption Information System (hereinafter, the GIS “Poseidon”) designed to enhance the effectiveness of efforts to prevent corruption and other offences, including the use of information and communication technologies to analyze and verify compliance with limitations, prohibitions and requirements established to counter corruption by persons subject to such limitations, prohibitions and requirements<sup>20</sup>. GIS “Poseidon” is designed to collect data in the framework of interagency cooperation on officials to verify compliance with anti-corruption legislation. Poseidon uses information from several government information systems (Federal Tax Service, Federal Property Management Agency, Federal Financial Monitoring Service and others), as well as information from social networks. Its application makes it possible to form a kind of a digital profile of the inspected person and obtain information on possible conflicts of interest, informal communication with representatives of controlled citizens and organizations, abuse of power, dubious financial transactions and other indicators of corruption risks.

---

<sup>19</sup> Presidential Decree No. 490 of 10.10.2019.

<sup>20</sup> Presidential Decree No. 232 of 25.04.2022



## CONCLUSIONS

Administrative and corruptive pressure should not be equated because while the former may be lawful, the latter is clearly unlawful. At the same time, it should be noted that it is unacceptable to take managerial action that is carried out within the law but for an unlawful purpose.

Most control and supervision activities can be digitized and, importantly, mediated digitally, thereby reducing corruption risks and building uniform and scalable nationwide algorithms for interaction with supervisory authority.

The automation of the submission and receipt of information should make it possible to identify more complex violations related to conflicts of interest, abuse of power, actions for the benefit of third parties, etc.

A systematic monitoring of the legal framework for regulations containing excessive requirements for small and medium-sized businesses is needed. A kind of weeding of the garden. In a crisis situation, it is not only a question of optimization and legal regulation, it is a question of survival. Individual prevention of corrupt officials in crisis situations will no longer help, it is necessary to reduce and tightly control their possible arsenal, which corresponds to the institutional mechanism of anti-corruption as “no possibility to deal with corruption”.

One of the operative measures to remedy the situation effectively prior to the comprehensive review of the sanctions in Administrative code, with the participation of the academic business community, could be a moratorium on the application of upper-range penalties, reducing the so-called “forked penalties”.

Given the inertia of a number of control and oversight bodies' approaches to the subject of mandatory requirements, it is naive to believe that these approaches will change. A strong counterbalance to this inertia is needed, supported by state-imposed measures, including legal liability for actions or omissions carried out formally within the law, but with unlawful purposes, special administrative and civil law rules protecting the rights of illegally prosecuted entrepreneurs.

ISBN: 978-950-34-2426-1

CHAPTER

# 15

## **“MINIMAL STATE” & “PROSPEROUS STATE”: TECHNIQUE OR HUMANITY?**

Maria Francesca Staiano

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter15>

# “MINIMAL STATE” & “PROSPEROUS STATE”: TECHNIQUE OR HUMANITY?

*Maria Francesca Staiano*

**Abstract:** In this article we propose the concept of “Community of Shared Future for Mankind”, as the international projection of the idea of “Prosperous State”, in opposition to the “Minimal State” dogma. It offers many contents to interpret the current Chinese internal reform process and China’s international positioning. Although similar currents and ideas had already emerged in the history of China, the analysis will focus on the innovative aspects of the current Chinese reformist trajectory. In fact, it is argued that elements of “neo-humanist” thought in China have revealed their influence on international law and relations. The new Civil Code of the People’s Republic of China, approved in May 2020, and the construction of new theories and practices of international relations, especially the adoption of a circular thought the construction of a system that stands as a people-centered approach (民本主义, *Min ben zhuyi*), generating a new humanism.

**Keywords:** Humanism, China, Civil Code, International relations, Community of shared future for mankind, prosperity, minimal state.

## 1 THE DOGMA OF THE “MINIMAL STATE”.

The COVID-19 pandemic has functioned as a “crisis accelerator” internally and internationally, as a truth serum that has caused the “veil of Maya”<sup>1</sup> to fall in the face of the inability to establish effective and rapid cooperation in response to the global pandemic.

This is due to various factors linked together:

The dogma of the “Minimal State”. This dogma that has been nourished by the Western narrative over the last 40 years (Nozick, 1974; Wolff, 1991). The neoliberal development model, which has built the

<sup>1</sup> The “Maya veil” is an expression coined by the German philosopher Arthur Schopenhauer, a great scholar of Hindu philosophies. According to him, the veil of Maya was the illusion that prevented the human being from experiencing the Truth, the absolute principle of reality.

now generalized idea of the state as an enemy, as a limit to development and economic growth, has marginalized and strongly weakened the role of the state, making it now unable to face any emergency. This almost absolute and untouchable theoretical “trend” in the West has also been replicated at the regional level: let’s think of the EU that placed budgetary laws before fundamental human rights, as happened during the Greek crisis of 2018, and how is happening today in the Covid-era (Staiano, 2020a). Even in Latin America this aspect derives from the colonial Western imprinting that bequeathed an ultraliberal vision, to the benefit of a very small percentage of the population.

Undermining politics. The theory of the minimal State has also weakened the value of politics and policy-making: the depoliticization of problems has given rise to the illusion of state decisions as mere administrative applications, emptying their political contents. Consequently, there has been a progressive delegation of decisions to executive powers, Governments, with a simultaneous decrease in parliamentary activities, which was followed by a gradual lack of preparation of political representatives. The narrative of “youthful nihilism” (Galimberti, 2008) and the impossibility of “getting out of the post-democratic system” (Crouch, 2004), of an elusive “liquid society” (Bauman, 2007), served as an ideological basis to legitimize any decision taken in the name of the market (COVID-vaccines is an example of this).

Lack of public confidence. The population witnessing a progressive worsening of their living and working conditions, has begun to “abandon” political interest, having lost the importance of the national political debate, with a progressive erosion of the entire democratic system. The vulgarity and irrationality of the measures implemented by national governments (in absence of international cooperation) have provoked violent reactions, especially from workers who are subjected to macro-economic decisions every day in constant opposition to their fundamental rights. As UN Secretary General António Guterres pointed out in his speech during the 76th UN General Assembly on 21 September 2021, “the collapse of confidence is leading to a collapse of values” (Guterres, 2021).

Democratic crisis and the affirmation of techno-science. The irrationality of the decisions taken, especially in the context

of Covid-19, and the now unbridgeable distance between citizens and governments, has declared the rupture of the citizen-state “social pact”. The government decisions taken on a purely scientific basis have triggered a strong distrust of the populations, who feel governed by an “incomprehensible technicality”: discrimination and severe violations of human rights not only with reference to the right to health but with a cascading effect on all economic, social and cultural rights have further exacerbated this democratic crisis, generating protests from citizens even in the face of scientifically correct measures, such as the vaccine. The protests that are developing in Europe against the vaccination campaign is a clear sign of this irrationality of the masses, due to a crisis of meaning of Western democracies built on dogmatic narratives and principles by now devoid of content. In Latin America, on the other hand, the crisis of democracy has a longer roots in society. The region is going through various crises, which have been deepened by the COVID 19 pandemic<sup>2</sup>. Poverty, indigence<sup>3</sup> and structural inequality contributed to aggravating the situation. The responses to the demands of society by the ruling elites have been mostly violent, throwing an unimaginable toll of deaths, injuries and people deprived of their liberty. Human rights violations in countries such as Chile, Colombia, Venezuela, Bolivia and Nicaragua, among others, have been reported to international organizations such as the Organization of American States (OAS) and the United Nations (UN). The region is in a situation of unprecedented fragmentation, with high rates of violence and flagrant human rights violations and absolute disbelief in the democratic system.

Extreme and violent nationalisms. As a result, extreme nationalistic systems are developing, governed through violent propaganda. The simplification and extremization of problems such as, for example, that of migration, vaccination, labor rights, have caused a strong internal political instability, with a worrying international

<sup>2</sup> According to ECLAC data, by the end of June 2021, more than 1,260,000 people had died from the coronavirus disease (COVID-19) in the countries of Latin America and the Caribbean, in what constitutes the greatest health crisis in the recent history of the region. This figure is equivalent to 32% of the world's total deaths.

<sup>3</sup> The poverty and indigence figures recorded the following percentages: 33.7% and 12.5% of the total population respectively in 2021, the worst figure since 2007 (ECLAC, 2021).

dimension: let's think about the shipwrecks in Mediterranean Sea or the construction of walls against Syrian, Afghan and African migrants, the whipping against Mexican immigrants in USA, all considered as "exploiters" of national resources, or the relocation of companies to other states with collective redundancies outside the trade union bargaining.

Inequalities and discrimination. Covid-19 has functioned as a detonator of inequality processes already unleashed, which have been aggravated by the pandemic<sup>4</sup>. We think of informal jobs, domestic care jobs, social impoverishment that has exacerbated the already strong xenophobia and intolerance towards foreigners, considered as a threat to public health and economic instability.

The migrants around the world were vulnerable also due to the abrupt border closure measures taken by different governments. These policies, combined with the global economic slowdown, generated in some regions a worsening of the humanitarian situation of certain groups that were already at risk before the pandemic, such as: asylum seekers, those displaced by environmental issues, those who suffer from insecurity, food and homelessness, among others.

To all these variables mentioned, which are of an internal nature of the States and which have impacted on the acceleration of the multiple crises in Latin America, added the complex problems faced by international relations as a whole today in a hyper-connected world and interrelated, which creates new challenges for all regions.

## **2 THE IDEA OF "PROSPEROUS STATE" IN CHINA: LEGAL HUMANISTIC ASPECTS**

In China we can observe a different paradigm, towards the construction of a "Prosperous State". As President Xi Jinping said, presenting his strategy towards the building of a "common prosperity" in China with the Taxation: "the stated objective of "common

---

<sup>4</sup> CEPAL. "América Latina y el Caribe ante la pandemia del COVID-19: efectos económicos y sociales", Informe Especial COVID-19, N° 1, 3 de abril 2020, Santiago <https://www.cepal.org/es/publicaciones/45557-coyuntura-laboral-america-latina-caribe-trabajo-tiempos-pandemia-desafios-frente>

prosperity” is “to regulate excessively high incomes” in order to ensure “common prosperity for all”.

The concept of “Prosperous State” has a very deep and long history: as described by Professor Gallelli (2021) the expression 富强 (*Fùqiáng*) means “Prosperous and powerful”. It crossed all Chinese political dimensions from Han Feizi to Xi Jinping through Mao Zedong and Deng Xiaoping: in fact, there is a motto in China that says “with Mao the Chinese nation has risen to its feet, with Deng it has become economically prosperous, with Xi it becomes prosperous and powerful”. So we can understand that the building of a prosperous State constitutes a process: in fact, observing Chinese way to a “Prosperous State”, we can include at list eight fundamental elements, which represent Chinese innovations in the construction of a “Prosperous State”:

- Socialist market economy
- New Normal
- Dual economy
- “Socialist Economic Development in the 21st Century” (Jabbour-Gabriele, 2021)
- Socialist Rule of Law with Chinese characteristics
- China-oriented globalization
- Belt and Road Initiative
- Community of shared future for mankind

According to He Yiting, Director of the Chinese Communist Party School, what is happening now is a transition “from a Big Country (大, *Dàguo*) to a Prosperous Country (强, *Qiangguo*)”. Prosperous State also means that China is not willing to suffer another humiliation, or to give in on all those aspects which it defines as “crucial interests” (核心利益, *Héxīn lìyì*), in an autonomist perspective.

In this sense, it is extremely relevant to the internal process of legal unification under the new Chinese Civil Code, especially in its humanistic perspective.

As masterfully described by Moore, “The Chinese tradition of thought and culture can be characterized by humanism, by its emphasis on the ethical, the intellectual (mainly in relation to life and activity), the aesthetic and the social” (Moore, 1968: 8).

According to Confucius, “man has a sacred mission: to reaffirm and elevate his humanity more and more” (Cheng, 2000: 62). Man as

the center of philosophical speculation in ancient China generated the definition of Confucian doctrine in terms of “humanism” (Grecchi, 2009). The indissoluble link between philosophy and human relations, and the pragmatic social action of Confucianism, have led to a direct interest of Chinese thinkers and scholarly officials, towards politics and governance in terms of harmonious social stability. The “feeling of humanity” (rén, 仁) manifested through the rites, therefore, responds to the need to “perfect oneself in order to rule men”, 修己治人 (xiuji zhiren) as detailed by Zhu Xi (Cheng, 2000: 548). The strong political and social influence of Confucian thought can easily be identified in terms of the “formation of man”, not only in a pedagogical key but above all in a legal one (Staiano, 2016; Moore, 1968: 6). It is with Mencius<sup>5</sup> that an even more humanistic impulse will be given to Confucian thought, not only through a deeper conviction about the benevolent nature of the human being, but also by extending the latter, perceiving “the continuity between Heaven and Man within of a morality derived directly from nature” (Cheng, 2000: 290) and arguing “the need for Confucian humanism to be transferred to a broader context to assume its meaning more comprehensively” (Cheng, 2000: 290).

In fact, an essential element of Chinese humanism is given by the encounter between Confucianism and Taoism, which allowed the penetration of human nature in the environmental context in which it is inserted, that is, “that context of Chinese humanism that consists in the symbiosis of man with the universe, it allowed the fusion between these two philosophical currents” (Grecchi, 2009: 35; Cheng, 2000). As also held by Chan Wing-tsit “The opposition between humanistic Confucianism and naturalistic Taoism is, at first glance, almost irreconcilable. But any complete distinction inevitably distorts the picture. Early Taoism is closer to Confucianism than is generally understood, especially in its philosophy of life” (Chan, 1968 (b): 31). It is no coincidence that the redefined concept of *Tianxia* (天下) constitutes the apex of this union, representing “everything

---

<sup>5</sup> Pre-Qin philosopher who developed his activities in the times of Guanzi, Laozi, Confucius, Mozi, Xunzi and Hanfeizi. It belonged to the school of Legism, which –among other postulates– proposed a direct connection between morality and interstate order (Yan, Xuetong, Ancient Chinese Thought, Modern Chinese Power, Princeton University Press, 2011).



under the sky” and including all beings and non-beings, each with its own political, cosmological and energetic, institutional and moral function<sup>6</sup>. Then the neo-Confucians (11th-12th centuries) synthesized the concept of “heavenly principle” (天理) which, by regulating the universe through its moral nature, “equates to the highest Confucian virtue, *rén* (仁), ‘love of neighbor’, which should no longer be understood as referring only to humanity, but extends to the entire universe. The universal value of *rén* (仁) and the existence of a single entity (一体) that would cancel out any difference between the nature of the cosmos and the nature of man merge into a single Principle, which can take different forms (理一而分殊)” (Scarpari, 2019). Chan Wing-tsit states that “the closest statement to a definition of *rén* (仁) is that it consists in mastering oneself and returning to ownership: this is practically equivalent to all Confucian philosophy, since *rén*, thus defined, implies the realization of the self and the creation of a social order ”(Chan, 1968 (b): 33).

Interestingly, many western authors argue that we cannot speak of Chinese humanism, given the extreme cultural difference and historical remoteness of the periods in the west and in China, while others speak of a dehumanization of Confucianism due to the westernization of China (Grecchi , 2009: 40). However, there is no doubt that “in China, the note of humanism has been strong, not only in Confucianism, but also in Taoism and Buddhism. It is not necessary to continue arguing that humanism is the keynote of Chinese thought. That keynote vibrates throughout the history of China ”(Chan, 1968 (a): 22).

Now, the Chinese humanistic spirit, through the values of Confucian and Taoist thoughts, lasts from the 6th century B.C. until today. However, the hybridization of China due to the initial collision with the colonial West, today has favored a social openness to certain instances of the population, adapting to the new needs arising from the development of the last forty years and the progressive

<sup>6</sup> For a deepening of the notion of *Tianxia*, Staiano M.F.-Bogado Bordazar L., *Las teorías de las relaciones internacionales con “características chinas” y sus implicaciones en América Latina*, in Staiano – Bordazar (Coordinators), *Dossier especial sobre China: China y su proyección en el siglo XXI*, *Revista de Relaciones Internacionales*, Vol. 26, N. 53, Universidad Nacional de La Plata Press, December 2017.

internationalization of the country. Therefore, domestically and internationally, we are witnessing an affirmation of innovative principles and a crisis between Western human rights and Asian values, subsumed in “Chinese characteristics”. Already in the 1960s, in fact, the development of a peculiar “scientific humanism” had been observed in China (Irti, 2017), as a representative of this *unicum*, due to the western impact that has generated crucial changes at the epistemological and philosophical level (Chan, 1968 (b): 67).

The Chinese legal experience is the product of a multidimensional and cumulative cultural process, in which the various layers of modern legal innovations overlapped with those of ancient Chinese thought, generating a fluid sedimentation of concepts, schemes, models and paradigms belonging to different periods, which were sometimes fragmented (Staiano, 2016). Fragmentation and legal flexibility (Castellucci, 2007) is one of the main characteristics of Chinese law, as well as “legal pluralism” (Juárez Aguilar, 2015). However, several elements lead us to identify a conspicuous unification of the Chinese legal model, through: a) the construction of a socialist rule of law with Chinese characteristics (Staiano, 2016); b) a qualitative evolution of Chinese law, in line with the principles of international law (Staiano, 2014; Li, 2008; Liu, 2008); c) the adoption of a Civil Code (Esborraz, 2019).

The adoption of the new Chinese civil code reveals a gap between the real and the symbolic. Western codes, in Europe in particular, are always thought of as the best legal experiences for several reasons. For its historical ties to Roman and medieval law; for its modernity and constant updating. On the other hand, as has been analyzed by Esborraz, the first civil code of the PRC, and the Argentine civil code as reformed in 2015, represent the only true codifications of the 21st century, including a series of legal institutes almost absent in European codes (Esborraz, 2019). Many are the analogous aspects between the Chinese and the Argentine code, especially with reference to the humanistic elements. As Esborraz emphasizes with his deep research:

From the comparison of both codifications, the community of concepts, principles, institutions and provisions existing between them emerges,

which is justified by the fact that both orders belong to the Romanistic legal system. This can be seen, in particular, in the general system adopted by both Codes, as well as in the particular attention paid to the protection of the human or natural person and the environment. Belonging to the Romanistic legal system facilitates dialogue not only between the Argentine and Chinese legal systems, but also between the latter and the other legal systems that make up the Latin American Subsystem, since they are all based on the common tradition of Roman Law. In addition, all of this acquires particular interest in view of the relations that China is establishing with Latin America.  
(Esborraz, 2019: 335)

Regarding the “humanist” vocation of the Chinese civil code<sup>7</sup>, at least two aspects can be considered relevant for the purpose of this discussion: the “people-centered approach” and the “green principle”. As stated by Wang Chen, Vice Chairman of the Standing Committee of the National People’s Congress, in his report to the Third Session of the Thirteenth National People’s Congress on May 22, 2020: “Codification of the civil code is an unavoidable requirement to improve the welfare of the people and safeguarding the fundamental interests of the greatest number of people »<sup>8</sup>.

With reference to the human person, there are at least two cardinal signs: a) Article 2 of the Law on the general part of civil law of 2017 that provides “civil law regulates personal relationships and property relationships between natural persons, legal persons, entities and organizations without legal personality situated on an equal footing ”; b) Book IV of the code entirely dedicated to personality rights (人格 权). This aspect coincides with the strong development of the people-centered approach promoted by Chinese socialist policy. In this sense, we recall “Xi Jinping’s Thought on

<sup>7</sup> The humanistic character of the new Chinese code is also supported by Esborraz (2019), p. 372, and other authors, as well as cited by Esborraz in note 144.

<sup>8</sup> Available at: [http://www.mod.gov.cn/topnews/2020-05/22/content\\_4865574.htm](http://www.mod.gov.cn/topnews/2020-05/22/content_4865574.htm)

socialism with Chinese characteristics for the new era”, inserted in Chinese Constitution in March 2018, where “People-centrism” is a key aspect of all legal and economic instruments implemented by Chinese government; the construction of the socialist rule of law with Chinese characteristics, the moderately prosperous economy and the new normality. Personality rights are inserted in a special section of the civil code, not only representing an innovation at the level of civil law systematization, but also reflecting an evolution, in a civil key, as an operational corollary of the constitutionalization of fundamental human rights. Human rights, in fact, were already present in the Chinese Constitution, in art. 33, reformed in 2004, with a very general and open notion. However, the general theory of human rights law “with Chinese characteristics” has been merged with domestic law, providing a full title of implementation of these in the new code. At the same time, the right to dignity (人格 保障) had already been affirmed, at the opening session of the XIX National Congress of the Communist Party of China on October 18, 2017, as reported by the Supreme People’s Court: “The right to dignity is a fundamental human right. Entering a new era, China’s main social contradiction has changed, and now people’s material demands have been basically satisfied, people’s demand for dignity is stronger than before”. In fact, art. 109 of the General provisions of the civil code establishes: “The law protects personal liberty and the dignity of the natural person”, endorsing the declaration of the Supreme Court and making it manifest.

As Liu Huawen argues, the progressive approach to international human rights law has pioneered the development of Chinese domestic law, which functions as a “tool of legal culture” (Liu, 2008). In fact, according to Liu: “Human rights law and concepts have their own humanistic and moral foundations; therefore, they produce not only general legal obligations but also humanitarian repercussions on public opinion and the moral evaluation of their implementation process, so their importance goes beyond the legal sense. In this regard, Orientals tend to add an internal moral obligation to the legal obligation ”(Liu, 2008: 6). The mix between the creation of modern legal science and the evolution of the Chinese moral sense is clear, and

---

<sup>9</sup> Available at [http://english.court.gov.cn/2017-11/08/content\\_34308303.htm](http://english.court.gov.cn/2017-11/08/content_34308303.htm)

they cannot do without their cultural roots. The Chinese humanist turn, therefore, is not a novelty, but a modernization of legal culture. The civil code approved on May 28, 2020, which will enter into force on January 1, 2021, is one more confirmation of this.

The other element in line with Chinese humanism in which we detect the peculiar encounter between man and nature, through the confluence of Confucianism and Taoism, is precisely the protection of the environment. Article 9 of the General Part of the Chinese Civil Code establishes: “in carrying out activities of a civil nature, subjects must contribute to the conservation of natural resources and the protection of the environment”. The so-called “green principle” (绿色原则), like personality rights, represents the result of a long process of legal evolution, in line with the objectives established by the CCP for the construction of an “ecological civilization”<sup>10</sup> and with the Chinese Constitution that establishes in art. 9: “[...] The state ensures the rational use of natural resources and protects rare animals and plants. The appropriation or damage of natural resources by any organization or individual by any means is prohibited”, and in art. 26: “The state protects and improves the environment in which people live and the ecological environment. It prevents and controls the risks of contamination and other audiences. The state organizes and promotes reforestation and forest protection”<sup>11</sup>.

Domestic legislation on environmental protection has been conspicuous in China, as the international effort to reduce polluting emissions in order to achieve a “sustainable development.” As stated by the Supreme People’s Court, there are two fundamental principles that have allowed a mandatory application of environmental protection:

a) The ecological and environmental damage compensation system (生态环境损害赔偿制度)<sup>12</sup> to which the Civil Code dedicates Chapter 7 of the Book 7 from art. 1229 to 1235: according to the

<sup>10</sup> This aspect is also marked by Esborraz. For a legal historical overview of the evolution of environmental law in China, see Esborraz, 2019, p. 387 (and references in notes 194 and 195); Toti E., *Il diritto dell'ambiente della Repubblica Popolare Cinese*, in *Leggi tradotte della Repubblica Popolare Cinese*, vol. VIII (*Legge sulla tutela dell'ambiente*), Torino, 2016, IX-XLIII; Xu Guodong, *Il diritto romano come ponte tra diritto cinese e diritto latinoamericano*, en Formichella L. – Terracina G. – Toti E. (coordinators) *Diritto cinese e sistema giuridico romanistico. Contributi*, Giappichelli, Torino, 2005, pp. 119-127.

<sup>11</sup> Text available at: [http://www.leggicinesi.it/view\\_doc.asp?docID=384](http://www.leggicinesi.it/view_doc.asp?docID=384)

<sup>12</sup> Available at: [http://english.court.gov.cn/2017-12/20/content\\_36013880.htm](http://english.court.gov.cn/2017-12/20/content_36013880.htm)

system, the people or companies that cause environmental damage should not only assume administrative and criminal responsibility, but will also be responsible for repairing the damage they cause to the environment and pay compensation for any ecological or environmental loss they cause. The compensation will be collected by local governments as a kind of non-tax revenue. This pilot program was launched by the central government in some provinces in 2015 and has been extended to the entire country since January 1, 2018.

b) The environmental protection tax (环保税)<sup>13</sup>, provided for by the Environmental Protection Tax Law, was approved at the meeting of the Standing Committee of the National People's Congress on December 25, 2016 and has been in force since January 1<sup>st</sup> 2018. It is the first law in China that imposes the collection of an ecological tax and aims to end the policies applied by some local governments that exempt companies that are large contributors to the local economy. Also force companies to update their technology and switch to cleaner production.

The “green principle” was added to the general part of the civil code, reserved for “fundamental rights”, which marks its aspiration to the universal application of the entire population, natural or legal persons, assigning specific protection, in line with the evolution of international environmental law<sup>14</sup>.

What emerges from this brief analysis is the strong humanistic element, interpreted in the light of traditional Chinese thought and the modern definition of “human development”, which includes sustainable development<sup>15</sup>. This content, which has permeated the “spirit of the laws” in the last forty years of normative evolution in China, today finds its most complete manifestation in the drafting of the new civil code, which functions at the same time as a moral and legal reference for all the citizens.

---

<sup>13</sup> Available at: [http://english.court.gov.cn/2017-12/14/content\\_36013836.htm](http://english.court.gov.cn/2017-12/14/content_36013836.htm)

<sup>14</sup> Consider the United Nations International Conferences on the Human Environment in Stockholm (1972), on Sustainable Development in Rio de Janeiro (1992), Johannesburg (2002), the Millennium Development Goals (2000-2015) and the current Sustainable Development Goals of the 2030 Agenda and the United Nations Conferences on Climate Change (COP 21 and COP 25).

<sup>15</sup> To deepen these aspects, cfr. Cadin R., *Profili ricostruttivi e linee evolutive del diritto internazionale dello sviluppo*, Giappichelli editore, Torino, 2019.

Chinese civil code has also had substantial social relevance for its sense of community. The spirit of community in the civil code, inspired at the same time by its own cultural experience and by the legal tradition of Roman law (Esborraz, 2019), is the internal manifestation of a broader community vocation.

Recently, on December 4th 2021 a new White Paper on “China: Democracy That Works” was published by the Chinese State Council<sup>16</sup>. In this document we can find some elements of Democracy with Chinese characteristics:

1. Democracy as a common value of humanity and an ideal that has always been cherished by the Communist Party of China and the Chinese people. For the past hundred years, the Party has led the people in the realization of people’s democracy in China. According to the text, today the Chinese people truly take their own future and that of society and the country in their hands.

2. The status of the people as the owner of the country is the essence of popular democracy. In China, full-process people’s democracy integrates process-oriented democracy with results-oriented democracy, procedural democracy with substantive democracy, direct democracy with indirect democracy, and popular democracy with the will of the state. It is a model of socialist democracy that encompasses all aspects of the democratic process and all sectors of society.

3. Democracy as a concrete phenomenon that is constantly evolving. Rooted in history, culture and tradition, it takes a diversity of forms and develops along the paths chosen by different peoples based on their exploration and innovation. The document indicates that democracy is a right of the peoples of all countries and not a prerogative of a few countries.

Almost in these three elements we can find the essential vocation to community and humanism in China, which confirm the “people-centered-approach” and the opening to new proposals to understand the long process of democratization.

---

<sup>16</sup> Full text available at [http://www.china-embassy.org/eng/zgyw/202112/t20211204\\_10462468.htm](http://www.china-embassy.org/eng/zgyw/202112/t20211204_10462468.htm)

### 3 THE COMMUNITY OF SHARED FUTURE FOR MANKIND AS A PROSPEROUS INTERNATIONAL COMMUNITY.

The Prosperous State is the internal face of a global governance strategy, proposed in its international vocation with “Community of shared future for mankind”.

The idea of creating a “community of shared future” emerged in September 2011 in the White Paper on Peaceful Development<sup>17</sup>, later upheld in Wen Jiabao’s speech during the XIV China-ASEAN Summit<sup>18</sup> and taken up by Hu Jintao in the opening speech of the XVIII National Congress of the Communist Party in 2012, in which the expression was improved with the formula “human community with a shared future”, later perfected by Xi Jinping in his famous 2015 speech, on the occasion of the 70th anniversary of the United Nations , “building a community of shared destiny/future for mankind”<sup>19</sup>, which includes five contents: political association, security, economic development, cultural exchanges and the environment. This perspective was taken up in the speech at the United Nations in Geneva in January 2017<sup>20</sup> and the idea of the essential need to “build a community with a shared future” was confirmed in October of the same year in the Report of the XIX National Congress of the Communist Party<sup>21</sup> and inserted, through Xi Jinping’s Thought on

---

<sup>17</sup> Full text of the Document of the State Council of the People’s Republic of China, *China’s Peaceful Development*, 2011, available at [http://english.www.gov.cn/archive/white\\_paper/2014/09/09/content\\_281474986284646.htm](http://english.www.gov.cn/archive/white_paper/2014/09/09/content_281474986284646.htm), accessed on 07/17/2020.

<sup>18</sup> WEN, Jiabao, 14th summit between China and the Association of Southeast Asian Nations (ASEAN) (10 + 1), Bali, Indonesia, November 18, 2011, Statement, available at [http://english.qstheory.cn/news/201111/t20111121\\_124891.htm](http://english.qstheory.cn/news/201111/t20111121_124891.htm), accessed on 07/20/2020.

<sup>19</sup> HU, Jintao, “Firmly advance on the path of socialism with Chinese peculiarities and fight for the consummation of the integral construction of a Moderately prosperous society “, in 18 National Congress of the Communist Party of China (CPC), November 8, 2012, Beijing, Full text of the report, available at <http://cr.chineseembassy.org/esp/zt/t992906.htm> , accessed on 07/20/2020.

<sup>20</sup> XI, Jinping, “Working Together to Forge a New Partnership of Win-Win Cooperation and Create a Community of Shared Future for Mankind” (speech at the UN General Assembly, New York, September 28, 2015), [https://gadebate.un.org/sites/default/files/gastatements/70/70\\_ZH\\_en.pdf](https://gadebate.un.org/sites/default/files/gastatements/70/70_ZH_en.pdf)

<sup>21</sup> XI, Jinping, “Work Together to Build a Community of Shared Future for Mankind” (speech at the UN Office, Geneva, January 18, 2017), [http://www.xinhuanet.com/english/2017-01/19/c\\_135994707.htm](http://www.xinhuanet.com/english/2017-01/19/c_135994707.htm)



Socialism with Chinese Characteristics for a New Era, in the Chinese Constitution with the March 2018 reform<sup>22</sup>.

The international importance of this community vocation for the future of humanity and the planet has been manifested in numerous international summits and Chinese foreign policy documents<sup>23</sup>. However, one of the most recent and relevant occasions is the Resolution 43/21 of the Human Rights Council of June 22, 2020 called “Promoting mutually beneficial cooperation in the field of human rights”, in which the importance of promote international relations based on mutual respect, equity, justice and mutually beneficial cooperation and build a community of shared destiny (future) for human beings in which all enjoy human rights<sup>24</sup>. It should be noted, then, as the internationalization of the community through the formula of “community of shared future” coincides with the progressive affirmation of international human rights law in China: Liu Huawen underlines “international laws offer a legal consensus of community, or better said, a common norm ”(Liu, 2008: 7).

In such a way that the “community of shared future for mankind”, 人 类 命 运 共 同 体 (Rénlèi mìngyùn gòngtóngtǐ), is presented as a key objective of China’s international relations towards the creation of a new international order, which also includes the three expressions of “relationality” (Qin Yaqing), “human authority” (Yan Xuetong) and Shanghai International Relations School of “symbiosis” (Staiano, 2018). The community of shared future for mankind represents “a new solution of global governance proposed by China”, which foresees the creation of “a global five-in one” including“ politics,

<sup>22</sup> <http://www.iri.edu.ar/wp-content/uploads/2018/03/opiniones-en-el-iri-staiano-marzo.pdf>  
[http://spanish.xinhuanet.com/2018-03/05/c\\_137016847.htm](http://spanish.xinhuanet.com/2018-03/05/c_137016847.htm)

<sup>23</sup> See, with special reference to Latin America, the “Document on China’s Policy towards Latin America and the Caribbean” of 2016. Already in the Foreword, emphasis is placed on globalization and multipolarity to achieve the difficult goals of “peace world and common development”. Likewise, reference is made to the need to “build international relations of a new type”, with the win-win principle as the core and “to forge a community of shared future for mankind”. In this process, the aim is to “take the China-LAC international cooperation association to a New Height”. “All countries, large or small, strong or weak, rich or poor, are all equal members of the international community.” Full text of the Document available at <https://www.fmprc.gov.cn/esp/wjdt/wjzc/t1418256.shtml>, accessed on 07/20/2020.

<sup>24</sup> Full text of Resolution 43/21 of the Human Rights Council of June 22, 2020 called “Promote mutually beneficial cooperation in the field of human rights”, available at <https://undocs.org/es/A/HRC/43/L.31/Rev.1>, accessed on 07/22/2020.

security, economy, culture and ecology ”(Xue, 2017: 337). The “community” refers to the set of states, small and large, that peacefully coexist among them (*relationality*) through common values inspired by the leading countries as responsible for international order (*human authority*), respecting and helping each other (*symbiosis*). In fact, the “community” does not refer strictly to a right but to a responsibility” (Feng, 2017).

In line with the prosperous community of shared future for mankind, one of the more original contributions to the international relations theory is the international symbiotic system, proposed by the so-called “Shanghai School”. It has brought together knowledge of sociology, biology and philosophy with international relations. The term 共生 (Gòngshēng), symbiosis, has its etymology in the biological sciences, and the two parts of the word coincide with the Greek etym of the word in Spanish. In fact, 共 (gòng) means “together” and 生 (shēng) means “live” “life”, as well as in Greek σύν “with, together” and βίω “live” (from βίος “life”). As in biology, where symbiosis indicates various forms of long-term coexistence between organisms of different species, animals or plants, called “symbionts” and different types of symbiosis are defined according to the type of relationship that exists between them, in the same way the studies of the Shanghai school discard the idea that state and sub-state actors can exist independently of each other, defining “antagonism as you without me and I without you”.

According to Professor Hu Shoujun (2012), the symbiotic system represents a positive vision about social evolution, an alternative to the Hobbesian or Darwinian one, and consists of three elements: 1) it is a totally endogenous process, in which all the phenomena that are generated in this system depend on totally from individuals and their behaviors, therefore, every social system results as a local “closed system”; 2) all symbiotic relationships are complex, mutually conditioning each other; 3) the elements of the system are symbionts, therefore linked by a relationship of dependence for their existence.

Also many Western authors sustain that Darwin must be reinterpreted because to guide the evolution of our species is not only the struggle of one against the other, but it is the relationship of constant complementarity that one species has with all the others. Of

course, competition is also typical of the living being, it is his first way of relating to the other, but it is a first step in the “relationality” (Qin), then there is the common understanding of the cooperative advantage, “against Ricardo’s competitive advantage”, till the construction of “real solidarity” for which the two antagonists are necessary for each other. This understanding requires a shift from man, a shift of the cognitive axis from the polarity of having to that of being (Balducci).

So, this necessary interdependence is the key-concept for the creation of a “community of shared future”, because the future is the “continuation of the species” on the Earth: the future is entrusted to man, in particular to the man of consumption who, by consuming disproportionately, shortens it, effectively denying the existence of future generations (Balducci).

In fact, at an internal stance symbiosis system “pursues the value orientation of harmonious coexistence between subjects” (Wang-Hu, 2016), and its natural extension in an international dimension is the “Community of shared future for humanity” (Staiano, 2020b; Jin, 2014): the “community of shared future” carries out the overcoming of realist theories as expressions of the mere national interest of each nation-state, enclosed in the post Westphalian concept of sovereignty, to interact internationally, and proposes a diplomacy inspired by the common interests of the international community, capable of generating win-win cooperation, towards a more just and equitable international order (Su, 2019: 12). In fact, only by combining these aspects under a comprehensive profile, as well as was done under a juridical perspective with the thought of Xi Jinping on the Rule of Law (Liu, 2020), we can understand the extent of a “responsibility for global symbiosis”, with the effect of “communization” of global interests and fears, through a “process of human globalization” (Wang-Hu, 2016). It is in this sense that we have already analyzed this trend as a manifestation of a “new Chinese humanism” (Staiano, 2020b). As stated by Professor Jin Yingzhong:

“The community with a shared future for mankind is a historical category. It is gradually created by various symbiotic relationships formed, expanded, extended, and strengthened during the historical development of human beings. It exists in the process of historical evolution. “You are in me”, “Everything is prosperous, and everything is damaged.” The contemporary sense of the community

of human destiny is the product of historical development. The emergence of the contemporary community with a shared future for mankind makes the individual development of any country and any actor have to consider how to face the integrity of the international society and how to coexist with others". (Jin, 2014)

The most difficult issue for the international community to accept is surely the leadership role of China as one of those responsible for international peace and security, implicit in the expression of "human authority": this element can be understood only by analyzing the term 王 (wáng) in its "chineseness". Many authors speak about *Wangcracy* and *Wangrency*, deepening the difference between the concept of 王道 (Wángdào), the king's way of governing, as opposed to that of 霸道 (Bàdào), the hegemon's way of governing, where it is evident "the political ideal of unity and harmony of the state civilization model of more than 2000 years of history in ancient China" (Tan, 2015).

These concepts represent elements of innovation in the framework of international relations, which in practice already have empirical results and mark the beginning of a new development of international relations at a global level. The Belt and Road Initiative (BRI) is an essential corollary to building a Community of Shared Future for Mankind. The BRI project, in fact, not only represents a concrete alternative to the traditional "assistance" cooperation, offered by western countries of the North, but it is also presented as a response through the resurgence of the real economy with respect to the financial and speculative economy, typical of Western systems, especially Anglo-Saxon. The BRI deconstructs the traditional division of roles between stronger and weaker countries, giving a voice to the peoples of areas long ignored in building the norms of international law: Africa, Eurasia, Latin America. The BRI has played an important driving role in the regional integration processes in Europe by highlighting the "gray spaces", deliberately left in the shadows by the European Union. These spaces have been skillfully filled by Chinese diplomacy, which has therefore restored considerable importance to the countries of Eastern Europe<sup>25</sup>. In the same way, China is gradually reactivating an equilibrium

---

<sup>25</sup> For example, the "17 + 1" Summit between China and 12 EU countries and 5 non-EU Eastern European members. <http://www.china-ccec.org/eng/>

in Latin America, intercepting the traditional role of the “backyard of the United States” and integrating new protagonist aspects of the Latin American region (Staiano-Bogado Bordazar, 2019). Even before the health crisis, China had developed the “Belt and Road” project with a deep aspiration for international win-win and south-south cooperation, through additional variations such as “the Health Silk Road”. In addition, active participation in the Summits on the environment and the commitment with respect to emission cuts, towards the creation of a “more beautiful and harmonious country”, with a “perseverance in the harmonious coexistence of people and nature”<sup>26</sup> and towards the implementation of the 2030 Agenda represent obvious signs of deep humanist inspiration.

The idea of creating a “community of shared destiny/future” has common roots with similar concepts: the aspiration for a new humanism, in line with the construction of sustainable development with the support of the 2030 Agenda, has recently manifested at the global level: many intellectuals<sup>27</sup> in recent years have published texts and analyzes in the hope of a new model of scientific, technical, moral and rational development that focuses on the human being in his natural context. Among these, one of the most incisive is undoubtedly Edgar Morin, who was the first to deepen the notion of “community of planetary destiny” (Morin, 2001 (a): 120) theorized by Otto Bauer with the term *Schicksalgemeinschaft* (Bauer, 1907 ), later adopted by Chinese government with the expression “community of shared future for mankind” 人 类 命 运 共 同 体 (Rénlèi mìngyùn gòngtóngtǐ).

<sup>26</sup> XI, Jinping, “For the achievement of the definitive triumph in the culmination of the integral construction of a modestly well-off society and for the conquest of the great victory of socialism with Chinese peculiarities of the new era”, 19th National Congress of the Communist Party of China (CCP), October 18, 2017, Beijing, available at [http://spanish.xinhuanet.com/2017-11/03/c\\_136726335.htm](http://spanish.xinhuanet.com/2017-11/03/c_136726335.htm) , accessed on 07/18/2020.

<sup>27</sup> Knowing not to be exhaustive, we can mention the following texts: Morin Edgar, *I sette saperi necessari all'educazione del futuro*, Raffaello Cortina Editore, Milano, 2001; Prenna Lino, *Un nuovo umanesimo europeo. Popoli, religioni, culture*, Il pozzo di Giacobbe Editore, 2020; Ciliberto Michele, *Il nuovo umanesimo*, Editore La Terza, 2017; Ferrarotti Franco, *Dalla società irretita al nuovo umanesimo*, Armando Editore, 2020; Torres Mauro, *Un nuevo humanismo*, Biblioteca Nueva, 2018; Ikeda Daisaku, *El nuevo humanismo*, Tezontle, 2013; Daodonnnet Luc, *Pour un nouvel humanisme*, Editions L'Harmattan, 2016; Okwa-Ondo Abraham-Peter, *Nouvel humanisme et ontologie africaine*, L'Harmattan, 2015; Chomsky Noam, *Le nouvel humanisme militaire*, Page 2, 2000; Matesanz Eva Maria, *Tout savoir sur l'art du lien: le nouvel humanisme connecté*, Kawa Tout Savoir Sur, 2014.

The Community of shared future for mankind as a general objective of the internationalization of a Prosperous State makes us underline that we are seeing a dual circulation in Law, as in the economy. In fact, The Central Working Conference on the Comprehensive Rule of Law, held in November 16 and 17, 2020, formally established Xi Jinping's thoughts on the rule of law, in which "An important part of Xi Jinping's thinking on socialism with Chinese characteristics in the new era is the fundamental follow-up and action guide for the comprehensive rule of law."

The materialization of the universalist vocation of the Prosperous State model, in its international declination of the Community of shared Future for Mankind, is the Belt and Road Initiative, which aspires to a Global cooperation with a strong multilateralism, a more equitable governance, a multidimensional perspective (health, green, digital, tourism, technology) and a more connectivity and union, representing under an international economy perspective "a direct challenge to neoliberal globalization" (Vadell-Staiano, 2020).

#### 4 SOME CONCLUSIONS

China is designing new internal and international schemes inspired by general principles shared by the international community and currently in existence: human rights, win-win cooperation, international solidarity, protection of natural resources, human development, among others. It seems that there is taking place in China that "double consciousness" barbarism-humanism described by Morin according to which «to the consciousness of barbarism must be integrated the consciousness that Europe produced - through humanism, universalism, the progressive constitution of a planetary consciousness - the antidotes to their own barbarism» (Morin, 2005: 109-110). China attributes a new framework of meaning to humanism through a new shared humanist mission, capable of aligning the Western democracies, which are now suffering a structural economic, social and cultural crisis, and the global South, which aspires to a rebirth to improve the life of their peoples. The new role of China will not be exempt from opposition from some Western countries that

disbelieve this idea, however China has been demonstrating its firm vocation for several years now.

This ontological divergence between global issues and state actions constantly undermines state action, and represents an obstacle to overcoming a “egotic spirit” towards a “common spirit” of humanity. According to Teubner “the staggered nature of globalisation is the cause of an emerging hiatus between self-constituting autonomous global social systems, and their political legal constitutionalisation” (Teubner, 2010).

And it can only be overcome through the construction of common actions, with international cooperation, based no longer on a “hostile” vision between states, but on a “communion” of intentions of the peoples, as new “global order and socio-economic relationships, pushing towards a breakthrough for a new world-system: not flat, not a pyramid but a real globe” (Herrmann, 2016).

In the famous novel by Luís Sepúlveda “An old man who read love novels” (Sepúlveda, 2009) the final duel between the tiger, who represents nature, and the man annihilated for existing in his anthropomorphic isolationism, only the latter can triumph tragically. However, the sign of the possible redemption of human barbarism, manifested by the shared reading of love novels, capable of building a community spirit, is undoubtedly the metaphor that describes the historical step we are taking. Man and the environment, through sustainable development that unites peoples in a common discourse, marks their destiny, their future. This is the humanism of the third millennium that we are all called to realize.

The increasing sophistication of the financial technique of the economy including fundamental rights (health, education, culture, work, etc.), in general, is a philosophical problem. Alain Supiot had already warned about the extreme technicality of our existence and proposed law as the only technique capable of “humanizing” other techniques. Perhaps this is the real problem that is developing in the economic and institutional models: the humanization (Prosperous State) or the technification of the law (Minimal State).

In the first case, a “new legal humanism” should be expected, as a “social antidote” to the dramatic crisis that we are witnessing. “Prosperous State” as the new paradigm in a humanistic perspective, according to the Chinese New Humanism (Staiano 2020): proposes the presence of

a “strong and prosperous” state, a National responsibility with a People-centric approach, an International responsibility, in a Community of Shared Future for Mankind, in which the Economy is subjected to a political control towards an affirmation of the Rule of Law.

On the contrary, it seems that Supiot’s forecast has been too optimistic, the law seems to have been inverted as a new technical tool to affirm the nationalist financial technique. What this crisis makes clear is that “the death of the State” is a poorly told fable (Surasky, 2021), but also that multilateralism based on strong, prosperous and committed States is the only channel to face common problems of humanity.

## BIBLIOGRAPHY

BALDUCCI, Ernesto, *Immagini del futuro*, Giunti Editore, 2008.

BAUER, Otto, *Die Nationalitätenfrage und die Sozialdemokratie*, Wien, 1907.

BAUMAN, Zygmunt, *Liquid Times: Living in an Age of Uncertainty*, Polity, 2007.

CADÌN, Raffaele, *Profili ricostruttivi e linee evolutive del diritto internazionale dello sviluppo*, Giappichelli editore, Torino, 2019.

CASTELLUCCI, Ignazio, “Rule of law with Chinese characteristics”, en *Annual Survey of International & Comparative Law*, 2007, Vol. 13, pp. 35-92.

CHAN, Wing-tsit, *Chinese Theory and Practice, with Special Reference to Humanism*, en Moore Charles A., *The Chinese mind: Essentials of Chinese Philosophy and Culture*, 1968(a), Honolulu, East-West Center Press, University of Hawaii Press, pp. 11-30.

CHAN, Wing-tsit, *The story of Chinese Philosophy*, en Moore Charles A., *The Chinese mind: Essentials of Chinese Philosophy and Culture*,



1968(b), Honolulu, East-West Center Press, University of Hawaii Press, pp. 31-76.

CHENG, Anne, *Storia del pensiero cinese*, Vol. 1-2, Einaudi, Torino, 2000.

Código Civil de la RPC, texto integral versión en idioma chino, <http://www.court.gov.cn/zixun-xiangqing-233181.html>

CROUCH, Colin, *Post Democracy*, Polity, 2004.

ESBORRAZ, David F., “Los nuevos Códigos civiles de la República Argentina y de la República Popular China confrontados: dos ordenamientos y un único sistema”, en *Roma e America. Diritto romano comune, Rivista di diritto dell'integrazione e unificazione del diritto in Eurasia e in America Latina*, vol. 40, 2019, pp. 335-390.

FENG, Weijiang, “Common Development, Common Values and the New International Order”, en *The Collected Works at the Symposium on China Studies*, Shanghai, 2017.

GALIMBERTI, Umberto, *L'ospite inquietante. Il nichilismo e i giovani* [*The disturbing guest. Nihilism and young people*], Feltrinelli, 2008.

GALLELLI, Beatrice, *La Cina di oggi in otto parole*, Il Mulino, Bologna, 2021.

GRECCHI, Luca, *L'umanesimo della antica filosofia cinese*, Petite Plaisance, Pistoia, 2009.

GUTERRES, António, Secretary-General's Address to the General Assembly, 2021, available at <https://unric.org/it/discorso-del-segretario-generale-allassemblea-generale/>

HERRMANN, Peter, *How Many Gigabyte has a Horse?*; Seminar ‘Continuidad y Cambios en las Relaciones Internacionales’ at ISRI (Instituto Superior de Relaciones Internacionales Raúl Roas

García), Habana, 2016; available at: [https://www.researchgate.net/publication/301815015\\_From\\_5\\_giant\\_evils\\_to\\_5\\_giant\\_tensions\\_-\\_the\\_current\\_crisis\\_of\\_capitalism\\_as\\_seedbed\\_for\\_its\\_overturn\\_-\\_or\\_How\\_Many\\_Gigabyte\\_has\\_a\\_Horse](https://www.researchgate.net/publication/301815015_From_5_giant_evils_to_5_giant_tensions_-_the_current_crisis_of_capitalism_as_seedbed_for_its_overturn_-_or_How_Many_Gigabyte_has_a_Horse)

HU, Shoujun, “Guoji gongsheng lun [International Symbiosis]”. *Guji guan cha [International Observation]*. Shanghai International Studies University, Vol. 4, 2012.

IRTI, Natalino, *La Cina verso l'unità di un Codice civile*, in *Corriere della Sera*, January 30, 2017, available at: [https://www.corriere.it/opinioni/17\\_gennaio\\_31/cina-l-unita-un-codice-civile-31b22dce-e705-11e6-b669-c1011b4a3bf2.shtml](https://www.corriere.it/opinioni/17_gennaio_31/cina-l-unita-un-codice-civile-31b22dce-e705-11e6-b669-c1011b4a3bf2.shtml)

JIN, Yingzhong, “Shi lun renlei mingyun gongtongti yishi—jian lun guoji shehui gongsheng xing [On the Consciousness of the Community with a Shared Future for Mankind—Also on the Symbiosis of the International Society]”, *Guoji guan cha [International Watch]*, n. 1, 2014.

JUÁREZ AGUILAR, Beatriz, *¿Estado de derecho liberal o socialista? Perspectivas desde la teoría socialista y del Partido Comunista de China*, en 5º Simposio Electrónico Internacional sobre Política china, 2015.

LI, Lin, *Historia del Derecho Chino y su Sistema Jurídico Contemporáneo*, China Academy of Social Sciences Press, 2008.

LIU, Hawen, *Los Derechos Humanos en China en el marco del Derecho Internacional*, China Academy of Social Sciences Press, 2008.

LIU, Huawen, “Lun Xi Jinping fazhi sixiang zhong de guoji fa yaoyi [On the Essentials of International Law in Xi Jinping’s Thought of Rule of Law]”, *Bijiao fa yanjiu [Comparative Law Studies]*, Vol. 6, 2020.

MANCINI, Roberto, *Utopia: dall’ideologia del cambiamento all’esperienza della liberazione [Utopia: from the ideology of change to the experience of liberation]*, Il segno dei Gabrielli editori, 2019.

MORIN, Edgar, *Breve historia de la barbarie en occidente*, Paidós, Buenos Aires, 2005.

MORIN, Egar, *I sette saperi necessari all'educazione del futuro*, Raffaello Cortina Editore, Milano, 2001(a).

MORIN, Edgar,, *Introducción al pensamiento complejo*, 2001(b), disponible en [http://cursoenlineasincostoedgarmorin.org/images/descargables/Morin\\_Introduccion\\_al\\_pensamiento\\_complejo.pdf](http://cursoenlineasincostoedgarmorin.org/images/descargables/Morin_Introduccion_al_pensamiento_complejo.pdf), accedido el 20/07/2020.

MOORE, Charles A., *The Chinese mind: Essentials of Chinese Philosophy and Culture*, 1968, Honolulu, East-West Center Press, University of Hawaii Press.

NOZICK, Robert, *Anarchy, State, and Utopia*, Basic Books, 1974.

SCARPARI, Maurizio, *L'umanesimo etico di Confucio*, en Religioni, spiritualità ed etica con caratteristiche cinesi, mayo 2019, disponible: [https://www.twai.it/articles/lumanesimo-etico-di-confucio/#\\_ftnref3](https://www.twai.it/articles/lumanesimo-etico-di-confucio/#_ftnref3)

SEPÚLVEDA, Luís, *Un viejo que leía novelas de amor*, Maxi Tusquets Editores, 2009.

STAIANO, Maria Francesca, “El neo-humanismo chino: un nuevo paradigma jurídico e internacional en las relaciones internacionales China-América Latina [Chinese neo-humanism: a new legal and international paradigm in China-Latin America international relations”], *Brazilian Journal of Latin American Studies, Special Dossier on China – Latin American and Caribbean*, Vol. 19, n. 37, 2020.

STAIANO, Maria Francesca y BOGADO BORDAZAR, Laura L., *La iniciativa la Franja y la Ruta: innovación propulsora de los procesos de integración regional a nivel global. Los casos de Europa y América Latina. 一带一路倡议：「区域一体化」升至全球「面」的推广性「新」。「洲」拉美的案例*, en Staiano, Maria Francesca - Bogado Bordazar, Laura L. - Caubet, Matías, *China: una nueva estrategia geopolítica global (la*

*iniciativa la Franja y la Ruta*), Universidad Nacional de La Plata Press, Mayo 2019, pp. 135-145.

STAIANO, Maria Francesca, “La cultura jurídica china: entre tradición e internacionalización”, in *Revista Institucional, Bolsa de Comercio de Rosario*, Año CV - N° 1529, Rosario, Septiembre 2016.

STAIANO, Maria Francesca, *El ordenamiento jurídico de la República Popular China en el marco del Derecho Internacional. Planificación familiar, Migraciones y Cooperación*, Universidad Nacional de La Plata Press, November 2014.

STAIANO, Maria Francesca, *La relaciones internacionales entre China y América Latina: encontrando un camino común hacia un nuevo orden mundial*, en *Humania del Sur – Revista de Estudios Latinoamericanos, Africanos y Asiáticos*, n. 25, Julio-Diciembre 2018, Universidad de Los Andes, Mérida, Venezuela.

STAIANO, Maria Francesca y BOGADO BORDAZAR, Laura L., *Las teorías de las relaciones internacionales con “características chinas” y sus implicaciones en América Latina*, en Staiano, Maria Francesca - Bogado Bordazar, Laura L. (Coordinadoras), *Dossier especial sobre China: China y su proyección en el siglo XXI*, *Revista de Relaciones Internacionales*, Vol. 26, N. 53, Universidad Nacional de La Plata Press, Diciembre 2017.

STAIANO, Maria Francesca y MARCELLI, Fabio, “COVID-19全球疫情的挑「、反思「展望—以意大利「「角的「察” (Challenges, Reflections and Prospects of the COVID-19 Global Pandemic. An Observation from Italy’s Perspective), en *Chinese Review of International Law* (「「法「究「「部 「「法「究), Vol. 4, July 2020, disponible en [https://mp.weixin.qq.com/s/OWRdPeJ1SFaRlaR8S\\_50gQ](https://mp.weixin.qq.com/s/OWRdPeJ1SFaRlaR8S_50gQ)

STAIANO, Maria Francesca, “¿法治「是人治? Una desmitificación del Estado de derecho hacia el ejemplo de la RPC”, *Caminhos da História*, Brasil, 2016.

SUPIOT, Alain, *Homo juridicus. Essai sur la fonction anthropologique du Droit*, Éditions du Seuil, 2005.

SURASKY, Javier, *Opinión del IRI*, 202

TAN, Chung, “Wangrenocracy”: *China’s Great Civilization-State Model*, en *China Studies Quarterly*, 2015 (en chino).

TEUBNER, Gunther, “Constitutionalising Polycontextuality”, in *Social and Legal Studies*, vol. 19, 2010.

TOTI, Enrico, *Il diritto dell’ambiente della Repubblica Popolare Cinese*, en *Leggi tradotte della Repubblica Popolare Cinese*, vol. VIII (*Legge sulla tutela dell’ambiente*), Torino, 2016, IX-XLIII.

TU, Weiming, Lectio Magistralis “The Benevolence as Universal Principle” en el VIII World Forum on China Studies. China and the World: Progressing Together over 70 Years, organizado por la Academia de Ciencias Sociales de Shanghai, The Oriental Riverside Hotel - Intercontinental Shanghai Pudong, Shanghai, 11 de septiembre 2019.

XUE, Li, *Community with a Shared Future for Mankind: A New Solution for Global Governance*, en *The Collected Works at the Symposium on China Studies 2017*.

XU, Guodong, *Il diritto romano come ponte tra diritto cinese e diritto latinoamericano*, en Formichella, Laura – Terracina, Giuseppe – Toti, Enrico (coordinadores) *Diritto cinese e sistema giuridico romanistico. Contributi*, Giappichelli, Torino, 2005, pp. 119-127.

WANG, Shijin - HU, Shoujun, “Gongsheng zhexue lun [Symbiosis Philosophy Outline]”, *Journal of Chang’an University* (Social Science Edition) Vol. 18 No. 3, July 2016.

WOLFF, Jonathan (1991), *Robert Nozick: Property, Justice, and the Minimal State*, Cambridge Polity Press.

ISBN: 978-950-34-2426-1

CHAPTER

# 16

**REEVALUATING HUMAN RIGHTS FRAMEWORKS:  
NAVIGATING THE POST-COVID WORLD AND  
ENSURING GLOBAL EQUITY**

Anju Gupta

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter16>

# REEVALUATING HUMAN RIGHTS FRAMEWORKS: NAVIGATING THE POST-COVID WORLD AND ENSURING GLOBAL EQUITY

*Anju Gupta*

**Abstract:** In the wake of the COVID-19 outbreak, this research article deftly negotiates the complex confluence of human rights frameworks and post-crisis concerns. The report exposes human rights breaches that occurred during the epidemic and highlights the shortcomings of current frameworks in terms of their ability to adjust to the quickly changing global environment. The necessity of global equity, which emphasises the equitable allocation of rights, resources, and opportunities among varied people, emerges as a major subject. The significance of reassessing and modifying human rights frameworks to reconcile individual rights with public health imperatives is emphasised. There is discussion of methods for promoting global justice within these frameworks, such as intersectional thinking, inclusive policy creation, and improved accountability systems. In closing, the article emphasises how important it is to prioritise global equality in the process of reconstructing societies after COVID-19. It also makes recommendations for future research, such as impact evaluations of pandemic response strategies, investigations into technology rights, and creative methods of fostering international collaboration. This research adds to the current conversation about creating rights-based, egalitarian, and resilient frameworks for a post-COVID society as the globe deals with the pandemic's consequences.

**Keywords:** Covid-19, Human rights abuses, International conventions on human rights

## 1 INTRODUCTION

The COVID-19 pandemic has caused unprecedented worldwide crises, challenging the fundamental foundation of human society and necessitating a comprehensive review of existing norms and structures. In the post-COVID world, where the vulnerabilities

and injustices revealed by the pandemic demand a re-evaluation of current frameworks, this research paper explores the complex landscape of human rights.

Not only has the COVID-19 pandemic presented an existential danger to public health, but it has also exposed the pervasive socioeconomic inequalities that exist globally. It is critical to examine how well human rights frameworks function in addressing the changing issues of this new period as countries struggle with the fallout. This study is significant because it examines how human rights—which are sometimes seen through the prisms of stability and security—need to be re-examined in light of the disruptions brought on by the epidemic.

Fundamental freedoms have long been promoted and safeguarded by human rights frameworks, which are based on the ideals of justice, equality, and dignity. These frameworks, which may be anything from international treaties to regional accords, provide a normative basis that directs how organisations and governments behave. But the suitability and flexibility of these frameworks are being questioned as the globe struggles with the pandemic's aftermath. Setting the foundation for a thorough examination of these frameworks' suitability in the given situation is a succinct synopsis of them.

In order to provide a framework for the re-evaluation of human rights in the post-COVID world, this study will critically evaluate the effects of the COVID-19 pandemic on these rights.

## **2 LITERATURE REVIEW**

### **2.1 Problems and Deficits in Frameworks for Human Rights:**

Human rights breaches have been exposed by the implementation of COVID-19 lockdown measures by many countries, causing alarm on a worldwide scale. The body of research on human rights frameworks reveals enduring difficulties and flaws that worsen during emergencies. Academics have emphasised how inadequate the present frameworks are at shielding people from abuses in times of



crisis (Amnesty International, 2020a; Human Rights Watch, 2020a). These criticisms include topics including police brutality, the abuse of authority by security personnel, and limitations on civil freedoms during lockdowns.

Furthermore, the absence of accountability procedures in human rights frameworks has drawn criticism for permitting violations to go unpunished (BBC, 2020a; Idris, 2020). The body of research highlights the need for a more resilient framework that can grow with the times and meet new problems while protecting individual rights.

## **2.2 Impact of COVID-19 on the Global Human Rights Landscape:**

The worldwide human rights environment now faces a complex and diversified set of difficulties as a result of the COVID-19 epidemic. There have been reports of arbitrary limitations, the disproportionate use of force, and the repression of essential freedoms from countries in Central Asia, Nigeria, Kenya, the Philippines, Iran, Sri Lanka, and other countries (Africanews, 2020; Aljazeera, 2020a; Human Rights Watch, 2020d). Certain governments have used lockdown tactics as a means of suppressing opposition, managing the dissemination of information, and limiting the freedom of expression (Ganguly, 2020; Human Rights Watch, 2020e).

The research also emphasises how lockdowns disproportionately affect weaker demographics, with women and children more susceptible to abuse, domestic violence, and sexual assault (Al-monitor, 2020; The Guardian, 2020a). In many countries, prisoners face significant dangers to their life (Human Rights Watch, 2020d). Declaring this state of affairs a “human rights disaster,” the UN is pleading with countries to ensure that fundamental rights are not infringed upon in the process of putting emergency preparations into place (OHCHR, 2020).

## **2.3 Gaps in Current Research:**

Even though the amount of research on human rights abuses during the COVID-19 epidemic is increasing, there are still some unanswered questions. The literature analysis highlights the need for a

more thorough understanding of how various countries handle crises and whether or not their responses comply with international human rights norms. Furthermore, little study has been done to examine the pandemic's long-term effects on the flexibility and resilience of human rights frameworks.

By offering a detailed study of particular cases of human rights breaches during the COVID-19 epidemic and making suggestions for a more comprehensive and flexible human rights framework in the post-COVID era, this report seeks to close these gaps. The goal of this analysis is to further the current conversation on crisis management and human rights.

### **3 HISTORICAL CONTEXT OF HUMAN RIGHTS FRAMEWORKS**

With roots in the intrinsic dignity of every person, the idea of universal human rights has developed throughout time, including ideas from many cultural traditions and written records. Although this religious system has historical origins, it wasn't until the devastating events of World War II that it gained international recognition.

#### **3.1 Early Traditions and Documents:**

People have historically deduced their rights and obligations from their links to certain groups, such as their families, communities, or religions. Confucius's Analects, the Bible, the Quran, the Hindu Vedas, and the Babylonian Code of Hammurabi all include customs similar to the "golden rule" of treating others as one would want to be treated. Long before the eighteenth century, indigenous cultures such as the Inca, Aztec, and Iroquois had rules guiding justice and behaviour.

#### **3.2 Precursors to 20th Century Human Rights Documents:**

The foundation for modern human rights ideas was established by written works like the Magna Carta (1215), the English Bill of

Rights (1689), the French Declaration of the Rights of Man and Citizen (1789), and the U.S. Constitution and Bill of Rights (1791). But marginalised people were first left out of these papers. Despite these drawbacks, oppressed groups used these ideas to support the right to self-determination in revolutionary movements.

### **3.3 Efforts Leading to the United Nations:**

The United Nations (UN) was a forerunner of the 19th-century efforts to halt the slave trade and lessen the horrors of war. The International Labour Organisation (ILO) was established in 1919 to supervise agreements that safeguarded the rights of workers. The League of Nations, which was established during World War I to address concerns about the protection of minority populations, was unable to succeed since the United States was not a member and it was unable to stop hostilities.

### **3.4 Post-World War II and the Birth of the United Nations:**

A pivotal moment was the Second World War, which led world leaders to create the United Nations with the principal objective of preserving world peace. Following the war, officials were sentenced for war crimes, crimes against peace, and crimes against humanity in the Nuremberg and Tokyo Trials. The Holocaust's horrors highlighted how urgently a framework to stop such crimes is needed. The United Nations Charter was created in 1945, including the human rights ideals outlined in President Franklin D. Roosevelt's "Four Freedoms."

### **3.5 The Universal Declaration of Human Rights (UDHR):**

The UDHR was ratified by the UN on December 10, 1948, in reaction to the horrors of World War II. This important text, which is sometimes referred to as the universal Magna Carta, affirmed the interconnectedness and indivisibility of all rights. The leadership of Eleanor Roosevelt was crucial in the UDHR's development, which emphasised each person's intrinsic dignity and unalienable rights. Although not legally obligatory, the UDHR has shaped the

constitutions of more than 185 UN members, serving as a model for shared success.

### **3.6 Human Rights Covenants and Subsequent Documents:**

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) were written by the UN building on the UDHR. These treaties, which have been ratified by more than 130 countries, make up the International Bill of Human Rights together with the UDHR. But only the ICCPR has been approved by the US with concerns.

### **3.7 Role of Nongovernmental Organizations (NGOs):**

Human rights advocates, mostly people and non-governmental organisations, have been instrumental in drawing attention to human rights concerns on a worldwide scale. Prominent groups like Human Rights Watch, Amnesty International, and others keep an eye on government behaviour and apply pressure to uphold human rights norms.

The development of human rights frameworks across time may be seen as a progression from prehistoric customs to modern international treaties. Human rights have progressed thanks to landmarks like the UDHR and later treaties, yet there are still issues in guaranteeing their universal implementation. While navigating the present global crises and working to develop and adapt human rights frameworks for a more fair and equitable society, it is imperative that we comprehend this historical backdrop.

## **4 IMPACT OF COVID-19 ON HUMAN RIGHTS**

### **4.1 Global Influence of the COVID-19 Pandemic on Human Rights:**

The COVID-19 epidemic has had a significant impact on human rights across the world, exposing weaknesses and escalating already-existing disparities. Government-imposed lockdowns, quarantines, and emergency protocols to stop the virus's spread have

given rise to a number of human rights issues. These difficulties range from problems with individual liberty and privacy to more general worries about social fairness and access to necessary services.

## **4.2 Challenges to Accessing Essential Rights:**

**Healthcare:** The epidemic has put a burden on global healthcare systems, making it more difficult for people to have access to quality medical treatment. Hospital overcrowding, a lack of medical resources, and inequities in healthcare delivery are among the problems. Individuals with pre-existing health disorders find it difficult to sustain regular medical care, and vulnerable groups are at a higher risk.

**Education:** Worldwide education has been affected by the shutdown of colleges and universities in an effort to stop the virus's spread. Unequal access to online learning materials has made educational disparities worse. Low-income students and those without internet access have barriers to continuing their education, which may contribute to long-term social inequalities.

**Work and Livelihood:** The pandemic's economic effects, including as job losses and company closures, have an impact on people's ability to work and support themselves. Particularly impacted are daily wage earners, informal labourers, and those in unstable employment. Restrictions and lockdowns have also affected a variety of businesses by upsetting supply networks.

**Individual Freedom and Privacy:** Although necessary for maintaining public health, government-imposed lockdowns and monitoring methods have sparked worries about people's right to privacy and personal freedom. There have been discussions over how to strike a balance between civil rights and public health as a result of the use of tracking systems, contact tracing apps, and other surveillance technology.

## **4.3 Responses from Governments, International Organizations, and NGOs:**

**Governmental Actions:** In reacting to the pandemic's concerns to human rights, governments have been essential. Lockdowns and

other precautionary steps were taken to protect public health, but reports of police brutality, arbitrary detentions, and abuse of authority have surfaced. For many countries, finding a balance between individual rights and public safety has proven to be a difficult task.

**International Organisations:** Countries have received guidelines and suggestions from international organisations such as the United Nations (UN) and the World Health Organisation (WHO). The UN has stressed how crucial it is to protect human rights during the epidemic. Enforcing accountability systems and maintaining coordinated global responses continue to present issues.

**Non-Governmental Organisations:** NGOs have been essential in keeping an eye out for abuses of human rights, standing up for marginalised communities, and keeping governments responsible. Among their initiatives include educating the public about how the epidemic affects underserved populations, offering necessary assistance, and participating in legal activism to defend people's rights.

#### **4.4 Looking Forward:**

The post-COVID world is complicated, and navigating it calls for an all-encompassing, rights-based strategy. Governments, non-governmental organisations, and international organisations must work together to tackle the many issues that the epidemic has brought up. In determining how to respond to the present and next global problems, striking a balance between individual rights and public health initiatives is still crucial. In the end, the pandemic has shown how crucial it is to have robust and flexible human rights frameworks that can protect everyone's wellbeing, even during emergencies.

## **5 REASSESSING FRAMEWORKS FOR HUMAN RIGHTS:**

### **5.1 Effectiveness of Current Human Rights Frameworks:**

The world after COVID-19 poses unparalleled difficulties that need a serious assessment of the efficacy of current human rights systems. Although these frameworks have been vital guides in the

preservation of basic rights, the epidemic has brought to light some of its shortcomings.

#### 5.1.1 Adaptability and Resilience:

Present-day human rights frameworks, which prioritise the values of justice, equality, and dignity, have proven resilient in the face of international crises. Their capacity to adjust to sudden and unforeseen difficulties, like a pandemic, has been put to the test, however. Since the main purpose of the frameworks was to handle more gradual changes, their usefulness must be reevaluated in light of the urgency of reactions during crises.

#### 5.1.2 Intersectionality:

The intersectionality of human rights problems has been exposed by the epidemic. The effects have been disproportionately felt by vulnerable groups, such as marginalised communities and those in fragile socioeconomic conditions. In order to address the varied and linked nature of rights abuses, current frameworks must embrace a more sophisticated understanding of intersectionality.

#### 5.1.3 Enforcement Mechanisms:

Although there are international human rights accords, their effectiveness has been hindered by the absence of strong enforcement mechanisms. Nations may transgress human rights without repercussions, casting doubt on their responsibility. Improving oversight, reporting, and punishment systems for human rights offenders is essential to improving the effectiveness of human rights frameworks.

### **5.2 Proposed Modifications and Additions:**

#### 5.2.1 Rapid Response Mechanisms

Enhancing the adaptability of human rights frameworks requires the incorporation of rapid response mechanisms. Human

rights may be protected in emergency circumstances by establishing procedures for quick international cooperation during emergencies. To properly coordinate actions, this may need fortifying already-existing international organisations or forming a specialised global task force.

#### 5.2.2 Inclusive and Equitable Approaches:

Changes should put an emphasis on more fair and inclusive methods that cater to the unique needs of disadvantaged groups. Human rights frameworks that include intersectionality principles guarantee that solutions take into account the varied realities of people and communities. This might include embracing a more thorough understanding of environmental justice and socioeconomic rights.

#### 5.2.3 Strengthening Accountability:

Improving accountability systems is essential to addressing enforcement deficiencies. To ensure that countries are held accountable for their actions, this may include giving international entities the authority to look into and decide cases involving abuses of human rights. In order to supplement official systems, non-governmental organisations should be given more authority to monitor and report on abuses of human rights.

#### 5.2.4 Technological Rights:

Technology is now being used more often to monitor and address public health emergencies as a result of the epidemic. Because of this, human rights frameworks must include technology rights to guarantee that personal freedoms are not violated by monitoring methods. It should be included into current frameworks to provide guidelines for the moral use of technology in emergency situations.

#### 5.2.5 Global Solidarity and Cooperation:

Given the interdependence of the world's problems, it is necessary to shift in order to give priority to global solidarity. This



entails promoting global collaboration, pooling resources, and taking on systemic problems as a group that lead to abuses of human rights. Initiatives that work together, such as the COVAX vaccine distribution project, provide role models for successful international collaboration.

## **6 THE CONCEPT OF GLOBAL EQUITY IN HUMAN RIGHTS**

In the framework of human rights, global equity is the equitable and reasonable allocation of opportunities, resources, and rights worldwide. It acknowledges that everyone has equal access to basic human rights, irrespective of their location, socioeconomic situation, or identity. This idea recognises the interdependence of human rights and the international community's collective obligation to alleviate injustice and advance justice.

Global equality acknowledges the interdependence of human rights and the fact that exercising one right often necessitates exercising another. It highlights the need of tackling systemic issues and injustices that transcend national boundaries in order to guarantee that everyone may enjoy their rights without facing discrimination.

### **6.1 Methods for Giving Equity a High Priority in Human Rights Frameworks:**

Make sure that while developing human rights frameworks and regulations, various communities' opinions are taken into consideration. In order to meet their unique requirements, this entails actively include marginalised communities, indigenous groups, and other vulnerable people in the decision-making processes.

Adopt intersectional strategies that acknowledge and deal with the interrelated elements that lead to injustice and prejudice. Think about the ways that intersections of racial, gender, socioeconomic, and disability characteristics generate particular obstacles. Human rights frameworks need to take into account the diversity of people's identities and experiences.

Put economic rights first and strive to close the gap in the world's economies. This entails tackling problems including differences in work prospects, uneven access to healthcare and education, and economic inequality. Ensuring that people are able to completely exercise their human rights depends on their economic empowerment.

Encourage more robust international collaboration to tackle global issues as a group. Urge countries to work together on matters like environmental preservation, public health, and ending poverty. A more fair distribution of opportunities and resources may be achieved via multilateral efforts and collaborations.

Encourage and enable non-governmental organisations and civil society groups to take up the role of human rights advocates. These groups are essential in keeping an eye out for human rights abuses, spreading awareness, and holding governments responsible. Enhancing their ability improves the general defence of human rights.

Encourage educational programmes that increase worldwide understanding of social justice, equality, and human rights. A culture that promotes equality may be fostered and people can be empowered to speak for their rights with the help of education. This involves adding instruction on human rights into official curriculum and outreach initiatives for the community.

Take steps to close the digital divide and make sure that, rather than widening the gap, technology breakthroughs promote global fairness. Encourage equitable access to ICTs while taking into account how they affect people's freedom of speech, privacy, and socioeconomic prospects.

Enforce stronger national and international accountability systems. Establish open procedures for handling complaints and make sure that organisations and governments are held accountable for violating human rights. Sturdy accountability systems support a human rights-abiding society.

Global human rights justice requires a comprehensive and cooperative strategy. Human rights frameworks may be developed and put into practice to advance fairness and justice by emphasising inclusive policies, addressing economic imbalances, encouraging international collaboration, and empowering people and communities.

Reaffirming our commitment to global equality in the wake of the epidemic is essential to creating a more resilient and fair world.

## 7 CONCLUSION

This study has examined the many ways in which the COVID-19 epidemic has challenged human rights frameworks and the ramifications for global fairness. Instances of human rights breaches during the COVID-19 epidemic have been brought to light in the article. These violations range from the disproportionate use of force during lockdowns to limitations on the right to free speech and invasions of privacy. The bulk of these infractions have been experienced by vulnerable groups, such as women, migrant labourers, and indigenous communities.

Although fundamental, the current human rights frameworks were put to the test in terms of how well they could adjust to the sudden and unanticipated demands of a worldwide epidemic. Among the drawbacks are the absence of quick reaction systems, the inadequate understanding of intersectionality, and difficulties with accountability and enforcement.

The idea of “global equity” became prominent, highlighting the need of an equitable and reasonable allocation of opportunities, resources, and rights throughout the globe. It was emphasised how intertwined human rights are and how critical it is to confront injustices worldwide.

Human rights frameworks need to be reevaluated and adjusted in the post-COVID era to take into account the changing nature of global concerns. Prioritising fair solutions that protect everyone’s rights and leave no one behind is essential as societies heal and rebuild.

The epidemic has highlighted the fine line that must be drawn between the preservation of individual rights and public health requirements. This balance must be struck by future human rights frameworks to guarantee that actions done in times of emergency comply with the requirements of necessity, proportionality, and non-discrimination.

Setting global fairness as a top priority within human rights frameworks is both strategically and morally necessary. Encouraging economic rights, addressing structural inequities, and using intersectional perspectives are essential elements in creating a more fair world.

Subsequent investigations may explore in-depth evaluations of the ways in which various countries' reactions to the epidemic impacted human rights, with a specific emphasis on marginalised groups. In future crises, more focused and equitable efforts will be informed by an understanding of the various effects of policies and initiatives.

Research on the consequences for technological rights and privacy is necessary, especially in light of the pandemic's greater dependence on technology. Future policy will be shaped in large part by examining the moral application of surveillance technology and their possible long-term effects on civil freedoms.

Research endeavours may be focused on determining and putting out workable procedures for keeping establishments and governments responsible for transgressing human rights in times of crisis. For the purpose of fostering trust and guaranteeing compliance with international human rights norms, it is essential to strengthen accountability.

Subsequent investigations may delve into novel methodologies to augment worldwide collaboration in tackling structural concerns that affect human rights. This might include looking at fresh approaches to cooperation, international accords that support diversity and fairness, or new forms of government.

Human rights frameworks need to be reevaluated and adjusted as the globe struggles with the pandemic's impact. A more equitable and resilient future will be possible if inclusive, intersectional methods are promoted and global equality is prioritised. The study directions delineated here provide a guide for academics and decision-makers to join the current conversation on how human rights and global equality interact in the post-COVID era.

## REFERENCES

Atalan A: Erratum to “Is the lockdown important to prevent the COVID-19 pandemic? Effects on psychology, environment and economy-perspective” [Ann. Med. Surg. 56 (2020) 38-42]. *Ann Med Surg (Lond)*. **56**: 217

Coccia M: The relation between length of lockdown, numbers of infected people and deaths of Covid-19, and economic growth of countries: Lessons learned to cope with future pandemics similar to Covid-19. *Science of The Total Environment*. 2021.

Schlosser F, Maier B, Jack O, Hinrichs D, et al.: COVID-19 lockdown induces disease-mitigating structural changes in mobility networks. *Proceedings of the National Academy of Sciences*. 2020; **117** (52): 32883-32890

Coccia M: How (Un)sustainable Environments Are Related to the Diffusion of COVID-19: The Relation between Coronavirus Disease 2019, Air Pollution, Wind Resource and Energy. *Sustainability*. 2020; **12** (22).

Makhbul ZKM, Rawshdeh ZA: Mental stress post-COVID-19. *International Journal of Public Health Science*. 2021; **10** (1): 194-201

Human Rights: Human Lives – Equality and Human Rights Commission 2014. Available at: [www.equalityhumanrights.com/publication/human-rights-human-livesguide-human-rights-act-public-authorities](http://www.equalityhumanrights.com/publication/human-rights-human-livesguide-human-rights-act-public-authorities)

Human rights review – Equality and Human Rights Commission 2012. Available at: [www.equalityhumanrights.com/publication/human-rights-review-2012](http://www.equalityhumanrights.com/publication/human-rights-review-2012)

ISBN: 978-950-34-2426-1

CHAPTER

17

**ONE BELT, ONE ROAD, ONE HOPE. BALANCE OF  
THE BELT AND ROAD INITIATIVE IN TIMES OF  
PANDEMIC AND GLOBAL CRISIS.**

Sebastián Schulz

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter17>

# ONE BELT, ONE ROAD, ONE HOPE. BALANCE OF THE BELT AND ROAD INITIATIVE IN TIMES OF PANDEMIC AND GLOBAL CRISIS.

*Sebastián Schulz*

**Abstract:** The year 2020 was strongly affected by the Covid-19 pandemic, not only in health terms, but also in economic, political and geopolitical terms. Although the economic effects of Covid-19 were felt especially in the Global North, developing countries had a decline in their social indicators. The counterpart has been emerging countries in general and those of Asia Pacific in particular. This situation is a reflection of a structural trend in the contemporary world system: the hegemonic decline of the world order configured after the Bretton Woods agreements and the rise of China and the Asia Pacific as the new centers of gravity of world geopolitics.

Within this framework, this work aims to take stock of the performance of one of the main geostrategic tools of the People's Republic of China: the Belt and Road Initiative, in a context of major geopolitical realignments, structural crisis and pandemic.

**Keywords:** Geopolitics; Covid-19; World crisis; China; Belt and Road Initiative.

## 1 GEOPOLITICAL REALIGNMENTS AND GLOBAL CRISIS

The year 2020 was strongly affected by the Covid-19 pandemic, not only in health terms, but also in economic, political and geopolitical terms. By February 2021, the pandemic had already affected more than 100 million people around the world and caused more than two million deaths. Of the total infections, around 27% occurred in the United States, 10% in India, 9% in Brazil and 3% in Great Britain<sup>1</sup>. In turn, according to data from the World Trade

---

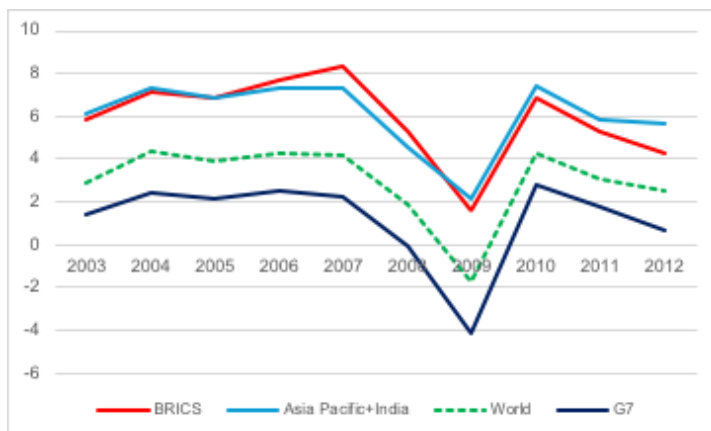
<sup>1</sup> Data from February 2021, taken from John Hopkins University. Available at: <https://coronavirus.jhu.edu/map.html>

Organization, world trade fell by 9.2% in 2020 and world GDP fell by 4.8% in the same period.

The effects on the world economy have been felt especially in the countries of the Global North, which have presented historic falls in their GDP, high unemployment rates and a deepening of the crisis in their industrial apparatus. Although, according to World Bank data, the world economy shrank by 3.1% in 2020, for the G7 powers the results were even less encouraging: overall, there was an average contraction of -7.6%, deeper in Great Britain (-10.4%), Italy (-9%) and France (-7.5%) (Ugarteche and Negrete, 2020).

The counterpart was the emerging and developing countries, who, like in the global financial crisis of 2008 (see Graph n°1), were the engines of the global economy and were responsible for the economic recovery in the post-pandemic of Covid-19 (see Graph n°2). Although its economic performance has not been homogeneous in all countries of the Global South, the Asia Pacific area stands out especially, confirming its role as the new center of gravity of the world economy.

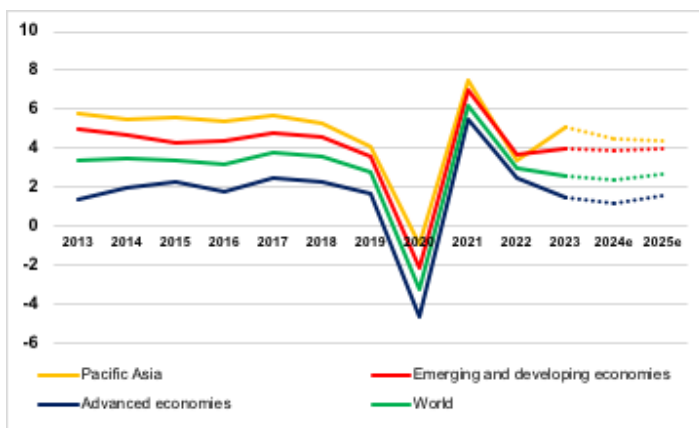
**Graph n°1.**  
**Average GDP growth percentage of selected countries (2003-2012)**



**Source:** own elaboration with data from the World Bank



**Graph n°2.**  
**Real GDP growth (annual percentage change) (2013-2025)**



**Source:** own elaboration with data and projections from the IMF.

As seen in both graphs, the Covid-19 pandemic confirmed the structural trends of the world system. Advanced economies have been the most affected by both crises, while emerging and developing countries in general, and the Asia Pacific region in particular, have positioned themselves as the engines of global economic recovery.

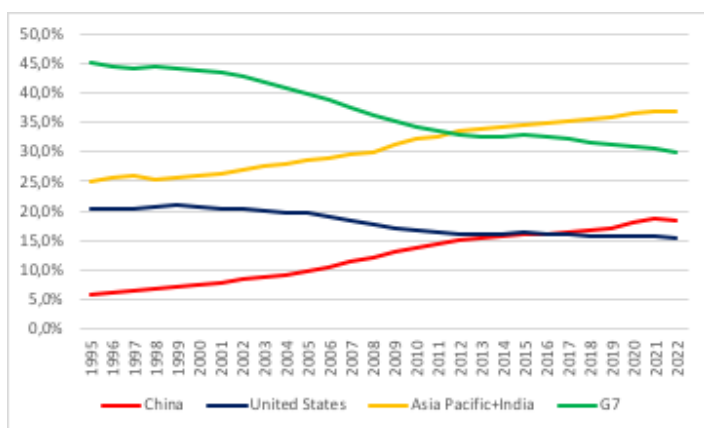
Without a doubt, the great protagonist of the world economy in the Covid-19 pandemic was the People's Republic of China. According to the World Bank, the US economy fell 2.8 points in 2020, while the Chinese economy grew 2.2 points in 2020 and 8.4 points in 2021. The Chinese government, in turn, launched a stimulus to stabilize the economy and begin recovery with the intention of expanding domestic demand. In addition, it was agreed to lower lending rates and lift restrictions on bank capital, while Chinese media announced major investments in infrastructure.

The Agricultural Development Bank of China (ADBC) provided loans worth 137 billion yuan (\$19.6 billion) to help 2,650 companies resume production, among which 78% were small businesses. In addition, the bank provided another 53.5 billion yuan (6.8 billion euros) in emergency loans for companies (mainly technology) involved in the fight against COVID-19.

These data express a more general trend in the contemporary world system: the hegemonic decline of the United States as the dominant power in the world order and the rise of China and the Asia Pacific as the new centers of gravity of world geopolitics. As seen in Graph nº3, in 2014 the People's Republic of China surpassed the United States as the world's leading economy, measured in terms of GDP-Purchasing Power Parity; but this process is also observed from a more general perspective, since the Asia Pacific + India area had surpassed the G7 in 2011 as the most responsible for global growth.

**Graph nº3.**

**Percentage of global GDP measured in Purchasing Power Parity in the G7 countries, Asia Pacific+India, China and the United States (in billion) (1995-2022)**



**Source:** Own elaboration with data from the World Bank.

The COVID-19 pandemic accelerated these ongoing processes. As seen in Graph 4, between 1971 and 2022 the economy of the People's Republic of China grew on average 6 points above that of the United States, in some years growing between 10 and 12 points above it. If we look at the economic performance of both countries in the context of the 2008 global financial crisis, we see that China grew more than 21 points faster than the United States if we add 2008 and 2009. Between 2020 and 2021, meanwhile, China cut another 7.5 points from the United States.

**Graph n°4.**  
**% annual GDP growth (1971-2022)**



**Source:** own elaboration with data from the World Bank.

## **2 CHINA'S INTERNATIONAL POLICY AGAINST COVID-19**

The rapid spread of the virus throughout all regions of the world exposed the need to strengthen international cooperation to jointly contribute to stopping its spread. Although the Covid-19 pandemic strongly affected central economies, developing countries were the most affected after the arrival of the pandemic in social terms, since the economic crisis had a strong impact on their fragile economies, at the same time as the health situation affected mainly the most vulnerable populations.

As never before, the Covid-19 pandemic exposed extremely starkly that the international system is going through an accelerated process of economic and social internationalization, where events that occur in a particular region have immediate effects on all regions of the planet. In this framework, international cooperation and solidarity were essential to achieve health and economic stability at a global level.

However, emerging and developing countries faced a lack of concrete responses from central powers, which expressed the need to strengthen global governance institutions and multilateralism as a way to confront the effects of the pandemic. In turn, the Covid-19

pandemic exposed the need for this redesign of international institutions to express a new vision of international relations, based on mutual benefit, win-win cooperation, solidarity and commitment to most affected countries.

In September 2020, within the framework of the 75th anniversary of the United Nations, Secretary General Antonio Guterres stated that it was “essential that the vaccine be considered a global public good” and that we must avoid “competition between countries trying to get all the vaccines possible, forgetting about those who have fewer resources” (UN, 09/15/2020). This position had already been introduced by Chinese President Xi Jinping in May 2020 during the 73rd session of the World Health Assembly (Xinhua, 05/18/2020), as an expression of a generalized demand from emerging and developing countries.

Considering the Covid-19 vaccine as a “global public good” would limit the possibility of conceiving it as a commodity subject to the business of big pharmaceutical companies and democratize their distribution, guaranteeing the accessibility and affordability of the vaccine for developing countries.

The Covid-19 pandemic exposed the yardstick by which the central powers measured international solidarity. The United States, France and other central countries promoted the confiscation of masks and respirators that were aimed at emerging and developing countries (Memo, 04/05/2020). Faced with the urgent need of all countries to have health supplies and medical equipment, the same promotion of inequality that was later expressed with the distribution of vaccines prevailed on the part of these countries.

In contrast, the People’s Republic of China held more than 80 video conferences with health experts from 153 countries to exchange experiences on how to confront and defeat the virus. China also sent 14 medical teams to 12 countries (Iran, Iraq, Italy, Serbia, Cambodia, Pakistan, Venezuela, the Philippines, Myanmar, Laos, Kazakhstan and Russia).

In relation to vaccination, while the central powers retained in their possession a quantity of vaccines much greater than their population, channeling their scarce international aid through the COVAX fund, the People’s Republic of China occupied the role of

global distributor of vaccines to the countries of the global South. According to the China International Cooperation and Development Agency, the scope of vaccine aid covered 26 Asian countries, 34 African countries, four countries in Europe, ten in America and six in Oceania, while China also supplied vaccines to the African Union, the Arab League and UN peacekeeping forces (Xinhua, 03/22/2021).

Among the extensive list of countries that received vaccines developed or produced in China, some of its closest neighbors stand out such as Nepal, Laos, the Philippines, Maldives, Pakistan, Mongolia, Thailand and Papua New Guinea. In turn, China has sent vaccines to European countries such as Georgia, Türkiye, Montenegro, Serbia, Hungary and others in the Middle East and Central Asia such as the United Arab Emirates, Palestine, Bahrain, Iraq, Kyrgyzstan. But the largest quantity of Chinese vaccines has undoubtedly gone to Africa and Latin America. In the case of the African continent, China has sent vaccines to Ethiopia, Niger, Mauritania, Sudan, Egypt, Djibouti, Gabon, Congo, Zimbabwe, Sierra Leone, Guinea, Uganda, Equatorial Guinea, Algeria, Mozambique, Tunisia and Botswana, while In Latin America, Chinese vaccines have reached, among others, Argentina, Bolivia, Mexico, Chile, El Salvador, Brazil, Colombia, Dominican Republic, Peru, Uruguay, Guyana, Dominica and Ecuador.

The advance of vaccination worldwide, but particularly in emerging and developing countries, based on Chinese vaccines, represented hope in containing the virus and economic recovery in the countries most affected in economic and health terms.

### **3 THE BELT AND ROAD INITIATIVE: CHINA'S GRAND STRATEGY**

Within this framework, this work proposes to take stock of the results obtained in 2020 by the main geostrategic tool of the People's Republic of China in the 21st Century: the Belt and Road Initiative (BRI).

The Belt and Road Initiative (BRI) consists of a set of projects and initiatives to interconnect the six continents. The proposal was made by current President Xi Jinping at the end of 2013 as a way

to “recreate” the ancient “Silk Road”, a series of trade routes that connected the Chinese empire with different regions of the planet.

The BRI has different dimensions, although the best known is the economic and commercial one: within the framework of the “New Silk Road”, the construction of roads, railways, ports and airports is contemplated to facilitate commercial connection between the different regions of the planet. However, the BRI also proposes specific objectives to promote cultural, educational, social, institutional, digital and spatial interconnection.

The BRI has two large formats. Land routes (which cover projects conducted on land, such as railways, highways, etc.) and sea routes, mainly composed of ports where Chinese companies have investments consisting of spare parts or construction from scratch. However, there are also other formats, such as the Digital Silk Road, the Space Silk Road and even the Polar Silk Road, which transits through the North Pole. At the same time, other non-geographic variables of the initiative have also been mentioned, such as the “Health Silk Road” (which has been the protagonist during the Covid-19 pandemic), the “Green Silk Road”, among other.

According to the China Non-Traditional Security Report of the Academy of Social Sciences, the Belt and Road Initiative serves the strategic objectives of the People’s Republic of China, including safeguarding economic security, promoting energy security, facilitate border security, promote economic development and combat the “three evils” (terrorism, separatism and religious extremism), discourage US geopolitical strategies and build a new stable and harmonious international system.

Ríos (2019) points out that the BRI is China’s main strategic tool, both to strengthen its global prominence and for the internal development of less industrialized areas. The Chinese government organized three Belt and Road Forums, in 2017, 2019 and 2023, where it brought together almost 40 presidents from all regions of the world, to present the scope and objectives of the Initiative.

According to a report by Chinese Foreign Ministry spokesperson Zhao Lijian, as of November 2020, 138 countries and 31 international organizations had signed cooperation documents for the joint construction of the Belt and Road Initiative. Today that

number has climbed to reach 150 countries. This means that almost 80% of the countries in the world are part of the BRI.

In turn, the promotion of the “New Silk Road” allows the Chinese government to preach a new model of international relations, stating that the Belt and Road Initiative

(...) is based on the principles of broad consultation, joint contribution and shared benefits, and is guided by the spirit of the Silk Road, characterized by peace, cooperation, openness, inclusion, mutual learning and mutual benefit. (State Council PRC, 2019)

Malena (2020), meanwhile, also points to the BRI as part of the grand strategy of post-Maoist China whose initial objective is to make the country strong internationally, achieve prominence and increase China’s influence globally. Ploberger (2017), for his part, frames the Belt and Road Initiative within a much broader plan, which he calls “China’s grand contemporary geopolitical strategy”, which allows identifying China’s specific interests and, in consequently, the specific spheres of influence that China is trying to establish.

The BRI, in this sense, has a double “offensive-defensive” objective. In defensive terms, it allows us to counteract the US strategy of the “Asian pivot” inaugurated under the administration of Barack Obama, which had the Trans-Pacific Partnership (TPP) as one of its pillars. On the other hand, in offensive terms, the BRI allows China to have an active cooperation policy towards its immediate periphery, mainly Southeast Asia and Central Asia. In turn, this also allows it to promote the growth of its western provinces, which have much less development compared to the coastal areas of the country.

Although the BRI initially contemplated projects for Asia, Europe and Africa, already in 2015 Chinese President Xi Jinping pointed out the importance of formally incorporating Latin America and the Caribbean into the project. In 2018, during the second China-CELAC Forum Summit, Xi noted that the region

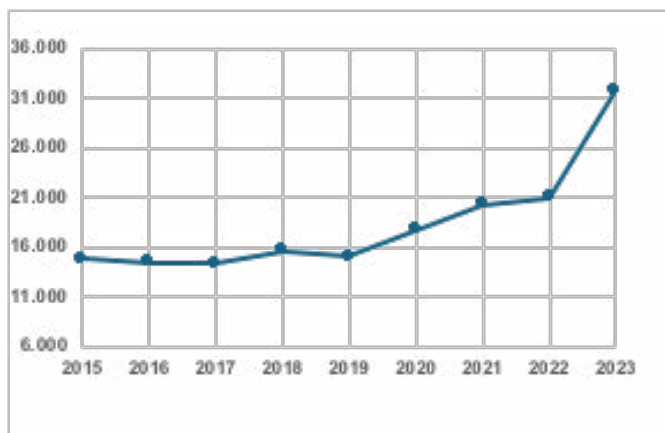
was a “natural extension” of the Silk Road, and countries were invited to join it. Since then, 22 countries in the region have already joined the BRI.

#### 4 PERFORMANCE OF THE BELT AND ROAD INITIATIVE UNDER THE COVID-19 PANDEMIC

According to data published by the Ministry of Commerce of the People’s Republic of China, in 2020 the country’s non-financial direct investment in the Belt and Road countries amounted to \$17.79 billion, representing an increase of 18% compared to 2019. Despite the effects of Covid-19 on the world economy, Chinese investment in the Silk Road countries increased considerably during the pandemic.

**Graph n°5.**

**China’s non-financial direct investment in Belt and Road countries (in billion)**



**Source:** own elaboration with data from the Ministry of Commerce of the People’s Republic of China.

The countries that benefited most from Chinese investment were those located in the China-Indochina Corridor (Singapore, Indonesia, Laos, Vietnam, Cambodia, Malaysia, Thailand), Kazakhstan, the United Arab Emirates and Bangladesh. According to the Chinese government, Chinese companies signed 5,611 new



contracts in 61 countries in 2020, with a newly signed contract value of \$141.46 billion. Impressive numbers considering that 2020 was a year of general contraction of the global economy.

Among the projects that saw the greatest progress in 2020 were the completion of the China-Laos railway tunnel, the signing of the contract for phase I of the China-Thailand railway and the construction of the Jakarta-Bandung railway. In addition, the main contract for the Hungarian section of the Hungary-Serbia railway came into effect and the Orange Line metro service was inaugurated in Pakistan. All this without counting the numerous projects that were agreed upon in Africa and Latin America through the Belt and Road Initiative.

On the other hand, the company China State Railway Group Co. Ltd. reported that the freight train that connects China with Europe completed 12,400 trips in 2020, which represented an increase of 50% compared to 2019. In turn, if we compare the number of cargo units (TEU), the year-on-year increase is even greater (56%), with more than one million units transported.

The so-called “Eurasian Land Bridge” or “Train to Madrid-London” is one of the most important bets of the Belt and Road Initiative, which crosses the Eurasian geopolitical heartland from east to west. The route connects the Chinese city of Yiwu, in the extreme east of China, with the Spanish and British capitals, making a trip of 13,000 kilometers and crossing ten countries (China, Kazakhstan, Russia, Belarus, Poland, Germany, Belgium, France, Spain and Great Britain), completing 32.5% of the total perimeter of planet Earth (Photo n°1).

In total, the trip lasts between 16 and 19 days, and more than a thousand categories of products are transported along the way, such as branded clothing, telecommunications equipment, motors and power tools, wine, olive oil, films for solar cells, home appliance components and other industrial products. The first trip was made in October 2014, and from there trade between China and Europe has increased sharply. In addition, the Eurasian railway functions as a “commercial artery” of the Silk Road, since other major corridors and projects such as the China-Pakistan Corridor and the Railway to Iran emerge from its route.

In a press conference, the Chinese government noted that the transportation network between China and Europe continued to expand in 2020, connecting 21 countries and 92 cities in Europe. Additionally, almost eight million items of medical supplies have been transported through this network, making it an essential health artery for the Health Silk Road and for cooperation in the fight against Covid-19.

**Photo N°1:**  
**The route of the Yiwu-Madrid-London train**



**Source:** Timex.

Another route that was consolidated in 2020 is the China Pakistan Economic Corridor (CPEC). That year, the Matiari-Lahor electric power transmission line was fully completed, raising the level of Pakistan's electric power supply; It was also put into service on the Lahore Orange Line. In relation to the strategic Gwadar Port, the Chinese government stated that it continues to break transportation records that have benefited not only Pakistan and China, but also neighboring countries such as Afghanistan.

In turn, the Chinese government signed a strategic cooperation agreement with the Islamic Republic of Iran in July 2020. It consists of a 25-year agreement, a period in which the People's Republic of China committed to investing more than 400 billion dollars in more than 100 infrastructure projects to modernize the Iranian industrial complex, from the oil and gas, railways, ports, airports, highways,

etc. As a counterpart, Iran committed to guarantee a regular supply of oil with discounts of between 12 and 18% for the next 25 years, that is, until 2045, when we are on the eve of the anniversary of the Revolution, and surely the geopolitical transition underway is at a more advanced stage than the current one. Point 7 of the agreement, in turn, formalized Iran's entry into the Silk Road (Schulz, 2020).

As we noted previously, the main protagonist of 2020 was the Health Silk Road. In the context of the international expansion of the Covid-19 pandemic, Premier Li Keqiang called for "strengthening health cooperation within the framework of the Belt and Road Initiative to jointly build the Silk Road in matters of Health".

The Chinese government also published the White Paper on the fight against Covid-19 "China in Action", which reviews the actions carried out by the country in the framework of the fight against Covid-19 and reflects the Chinese perspective on actions to confront the pandemic: domestically, placing people's lives above economic growth and mobilizing the entire country to combat the epidemic; and, at the international level, reinforce active international cooperation, share our own experience with the international community, both policies marked in the construction of a Community of Common Destiny for Mankind.

The so-called "Green Silk Road" has also had important results. In September 2020, Chinese President Xi Jinping announced at the UN General Assembly the commitment to achieve carbon emissions neutrality by 2060, which tells us that the next forty years will be central to the global energy transition. This process, likewise, is not new, but China is already the largest manufacturer of electric cars worldwide (45% of total production, compared to 22% in the United States), carbon emissions per person have maintained at a rate of less than 7% (compared to 15.7% in the United States), added to the fact that the People's Republic of China has positioned itself at the forefront of renewable energy production in its country and in the world.

## 5 CONCLUSIONS. ONE BELT, ONE ROAD, ONE HOPE

Through the Belt and Road Initiative, China aims to build a new tool for development in a world plagued by crises and tensions.

The call is aimed mainly at emerging and developing countries (the so-called “Global South”), and recovers the idea that trade is a central component of the bond between people, that the development of a nation is closely linked to the of the others, and that peace and stability are necessary conditions to guarantee the quality of life of the people.

The Belt and Road Initiative was born in the heat of an international order in question, characterized by the loss of hegemony of the United States, the end of unipolarism and the crisis of legitimacy of the international institutions created by the Bretton Woods agreements after of the second world war. In turn, the BRI was proposed as a tool to help developing countries alleviate the impacts of the global economic and financial crisis, the infrastructure gap, health, political, ecological crises, etc.

In the midst of the proliferation of global tensions, the People’s Republic of China proposed the Belt and Road Initiative to the world as a proposal to rebuild commercial, but also social, political and cultural ties, between distant peoples and nations, but which They are all belonging to a Community of Common Destiny for Mankind.

The Belt and Road Initiative is essentially a productive project supported by the real economy, which includes financing for the construction of railways, land roads, airports, energy projects, industrial parks and ports to expedite trade between the countries involved. Which is not minor, considering the contrast between China’s initiative and the growing economic financialization that the Global North is going through, the increase in financial speculation and bubbles, and the proliferation of currency runs that mainly affect economies in development.

Through the BRI, China builds “inclusive globalization,” also called “globalization with Chinese characteristics,” which consists of creating economic, political and social corridors that boost cooperation between people and nations around the world. If neoliberal globalization is characterized by prioritizing the accumulation of capital in fewer and fewer hands, inclusive globalization seeks to enhance national capabilities through international cooperation. If neoliberal globalization seeks to homogenize cultures and worldviews to Western consumption parameters, inclusive globalization is conducted respecting the diversity and heterogeneity of civilizations

that coexist in the world. If neoliberal globalization prioritizes the financial and speculative over the productive, inclusive globalization promotes investments in the real economy as a vector of development.

This is why we say that the BRI is a tool that contributes to the construction of a multipolar world. Contrary to what is maintained from a sector of the West, the BRI does not seek to create a world “centered in China”, but rather an order where there are multiple poles of power coexisting and cooperating harmoniously and peacefully.

The strong international support for the Belt and Road Initiative was expressed in the rapid acceptance it generated, mainly among emerging countries. As we mentioned, in just ten years, more than 150 countries have signed the Memorandum of Understanding to join the initiative, but in addition more than 3,000 cooperation projects have been promoted and almost 1 billion dollars have been allocated in investments. In turn, since its creation, BRI projects have helped create 420,000 jobs and as a result of its policies, almost 40 million people have been lifted out of poverty outside of China.

The Belt and Road Initiative, in this sense, became the great economic and geopolitical tool of the post-pandemic for the countries of the global South, being a tool with the capacity to provide financing for infrastructure projects without the requirements of adjustment policies required by organizations such as the International Monetary Fund and the World Bank, in addition to being a tool to enhance south-south cooperation, mutual benefit, civilizational dialogue and the construction of a Community of Common Destiny for Mankind.

Humanity faces unprecedented challenges. Faced with the persistence of unilateralism, hegemonism and interventionism promoted by the West, faced with the possibility of an environmental catastrophe produced by the uncontrollable profit motive of globalized capitalism, faced with the constant threat of war promoted by NATO and faced with the Inability of the current mode of production to resolve inequality, hunger and exclusion, the Belt and Road Initiative represents hope for the global South. It is not the answer or the solution to all of humanity's problems, but it does express the concrete materialization of the possibility of building a Community of Common Destiny for Mankind, in which peoples, nations and civilizations can coexist harmoniously.

## 6 BIBLIOGRAPHY

Malena, J. (2020). The evolution of China's grand strategy and its impact on relations with Latin America. Collection, Vol. 31, No. 1, November 2019-April 2020, pp. 37-52.

Memo (04/05/2020). "The 'world war of chinstraps', in 17 keys." <https://www.memo.com.ar/coronavirus/la-guerra-mundial-de-los-barbijos-en-17-claves-reveladoras/>

Ploberger, C. (2017). One Belt, One Road – China's new grand strategy, Journal of Chinese Economic and Business Studies, 15:3, 289-305, DOI: 10.1080/14765284.2017.1346922.

Ríos, X. (2019). "The state of China-Latin America relations", Working Documents, No. 1 (2nd period), Madrid, Carolina Foundation.

Schulz, S. (2020) "The strategic partnership agreement between China and Iran. Consolidation of the Chinese geostrategy and new geopolitical moment in the Middle East." Chinese Policy Observatory – OPCh. <https://politica-china.org/areas/politica-exterior/el-acuerdo-de-asociacion-estrategica-entre-china-e-iran-consolidacion-de-la-geoestrategia-china-y-nuevo-momento-geopolitico-en-el-medio-oriente>

State Council PRC (2020) "Fighting Covid-19. China in Action". <http://hr.china-embassy.org/eng/gdxw/t1786877.htm>

Ugarteche, O. & Negrete, A. (2020). "The world economy towards the end of 2020." Latin American Information Agency – ALAI. <https://www.alainet.org/es/articulo/209825>

UN (09/15/2020). "It is imperative that the COVID-19 vaccine be considered a global public good: Guterres." UN News. <https://news.un.org/es/interview/2020/09/1480492>

Xinhua (05/18/2020). "Xi assures that the Chinese COVID-19 vaccine will be a global public good when it is available." [http://spanish.xinhuanet.com/2020-05/18/c\\_139066955.htm](http://spanish.xinhuanet.com/2020-05/18/c_139066955.htm)

Xinhua (03/22/2021). “China will continue to provide vaccine aid for global pandemic response.” [http://spanish.xinhuanet.com/2021-03/22/c\\_139827272.htm](http://spanish.xinhuanet.com/2021-03/22/c_139827272.htm)

ISBN: 978-950-34-2426-1

CHAPTER

# 18

**GLOBAL JUSTICE AND THE 2030 AGENDA.  
AN INSTRUMENT FOR TACKLING  
THE COVID-19 PANDEMIC**

Luciano Mamede de Freitas Junior • Cássius Guimarães Chai  
Monica Fontenelle Carneiro

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter18>



# GLOBAL JUSTICE AND THE 2030 AGENDA. AN INSTRUMENT FOR TACKLING THE COVID-19 PANDEMIC<sup>1</sup>

*Luciano Mamede de Freitas Junior*  
*Cássius Guimarães Chai*  
*Monica Fontenelle Carneiro*

**Abstract:** Public health emergencies, such as the COVID-19 pandemic, challenge public policies to prove themselves effective and efficient in guaranteeing social rights. The UN's 2030 Agenda reflects the commitment made by member states to promote prosperity and the well-being of populations in a sustainable manner throughout the world. Specifically in health, SDG 3 - health and well-being - is presented as an instrument for the action of justice systems and political systems as a guarantee of global justice. As a general objective, we set out to discuss how the instruments of international justice aligned with the 2030 agenda act from the perspective of combating the Covid-19 pandemic in the light of John Rawls' theory, where the intense inequalities in health between societies are often the starting point for moral problems and other inequalities posed to society, conflicting with the guidelines of the 2030 agenda. The methodology used is socio-legal-critical, of a prominently comprehensive nature employing bibliographical research, focusing on the analysis of the confrontation with the Covid-19 pandemic, as well as on the performance of justice systems in articulation with political systems, addressing not only the politics of recognition translated into global justice but also a discussion on thinking about both instruments for global justice aligned with the 2030 Agenda and the perspectives of justice systems in the face of the Covid-19 pandemic. Justice systems act as a mechanism for resolving disputes, guided by a global pact, and are fundamental to society, organizations, and even the state. It was found that the implementation of the 2030 Agenda requires effective partnerships between governments, civil society, the private sector, and other actors whose justice systems can play a facilitating

<sup>1</sup> Article extracted from the expanded abstract published in the LIBRO DE ARTÍCULOS: V Seminario Internacional sobre Democracia, Ciudadanía y Estado de Derecho. Rule of Law. MONICA, E. F.; HANSEN, G. L.; SUÁREZ BLÁSQUEZ, G. (Orgs.). - Ourense: University of Vigo, 2023, entitled "AGENDA 2030 COMO GARANTIA DE JUSTICIA GLOBAL NO COPING WITH THE COVID-19 PANDEMIC".

role in promoting these partnerships, providing a stable and predictable legal environment for investments and sustainable development initiatives, as was necessary in the pandemic.

**Keywords:** Covid-19. Global justice. Recognition policy. Equity. Institutions of Justice.

## 1 INTRODUCTION

Conflicts and social issues involving citizens' lives have always existed in society as part of the complex world of variables that impact social dynamics.

Considering such an excessive potential for conflicts to erupt means that institutions must act to resolve them, assuring a critical central place both in citizens' daily lives and in the concerns of academics in general.

Justice systems play a fundamental role in society. They are responsible for enforcing and guaranteeing compliance with the law, promoting justice, resolving conflicts, and protecting citizens' rights. These systems comprise various institutions and actors, such as courts, judges, lawyers, prosecutors, police officers, and other legal professionals.

The primary function of justice systems is to ensure that laws are enforced fairly and impartially. They provide a mechanism for resolving disputes and conflicts between individuals, organizations, and even the state in criminal, civil, administrative, and constitutional law areas.

Justice systems protect fundamental rights and promote equality before the law. They ensure that all people have access to justice, including the right to a fair trial, adequate legal representation, and the right to present evidence and arguments in their defense, regardless of ethnic origin, religion, gender, or socio-economic status.

Within the perspective of interconnectedness, justice and political systems have an intrinsic relationship because both play essential roles in governing a society, albeit with distinct functions. Although there is a separation between justice and political systems,

they are intrinsically linked and collaborate to ensure proper governance and justice in a society.

The 2030 Agenda is a global action plan adopted by the United Nations in 2015. It establishes 17 Sustainable Development Goals (SDGs) to be achieved by 2030. These goals include poverty eradication, quality education, gender equality, access to justice, and effective institutions.

One of the SDGs (Goal 16) regarding access to justice is to promote peaceful, just, and inclusive societies that provide access to justice for all. Justice systems play a key role in guaranteeing this access, providing effective and accessible legal mechanisms to resolve disputes, protect citizens' rights, and combat injustice.

SDG 16 also addresses the importance of the rule of law and effective institutions, not only pointing out that Justice systems are the fundamental pillars of the rule of law but also ensuring that laws are applied fairly and impartially. They also strengthen institutions, promoting transparency, accountability, and effective governance.

As for corruption, one of the main obstacles to sustainable development, SDG 16 seeks to reduce its effects in all forms substantially. Justice systems play a crucial role in the fight against corruption, investigating and prosecuting corruption cases, ensuring accountability for those involved, and strengthening the integrity of institutions.

Implementing the 2030 Agenda requires effective partnerships between governments, civil society, the private sector, and other actors. Justice systems can facilitate these partnerships by providing a stable and predictable legal environment for investments and sustainable development initiatives.

Justice systems are intrinsically linked to the 2030 Agenda, as they promote access to justice, strengthen institutions, fight corruption, and establish just and inclusive societies. The successful implementation of the SDGs depends on the practical and impartial functioning of justice systems worldwide.

Critically discussing and comparing different references is always possible to stimulate scientific debate and develop freely. Still, it is necessary not to establish prohibitions to limit research possibilities. Free discussion is the basis of free thought, a cornerstone without which there are no free opinions. The evolution of knowledge presupposes

such freedom, as it occurs through the elimination of competing theories within a process of critical selection (Popper, 2006).

The main objective of this investigation is to understand the extent to which justice systems and political systems are related from the perspective of the role of institutions in the development process and the instruments for global justice aligned with the 2030 agenda.

The reasoning developed here is permeated by the socio-legal-critical method (Fonseca, 2009), which is prominently comprehensive. It uses only information gathered by means of the bibliographic research technique within the framework of the descriptive method, always aiming to build consistent scientific knowledge under a critical bias (Marques Neto, 2001).

The importance of the topic is evident, and to achieve what is proposed here, we will begin this article with an analysis of justice systems in conjunction with political systems, which is based on the integration of information, data, techniques, instruments, perspectives, concepts, and theories. Next, we will discuss an approach to the politics of recognition according to Charles Taylor (2021), highlighting the main theoretical foundations that support its premises; then, from the same perspective, a systemic dialogue will be presented, bringing to the fore aspects that translate global justice and its function in a democratic world; and finally, an expanded discussion on thinking about instruments for global justice aligned with the 2030 Agenda, as well as the perspectives of justice systems concerning the respective agenda. To sum up, these are the methodological paths that will be followed, and we must be aware of the great challenge of making the ambitious objectives compatible with the natural limitations of this type of scientific work.

## **2 CONSIDERING INSTRUMENTS FOR GLOBAL JUSTICE ALIGNED WITH THE 2030 AGENDA**

### **2.1 The politics of recognition**

The politics of recognition, as conceived by Charles Taylor, is an approach that emphasizes the importance of recognizing/

acknowledging and valuing the cultural and social identities of people in a society. It starts from the assumption that recognition is fundamental to forming personal and collective identity and that people have the right to have their identities recognized/appreciated and respected.

According to Taylor (1998), recognition involves two dimensions: recognition of equal status and recognition of difference. The first refers to the need for each individual to be treated equally in terms of rights and dignity. The second concerns the appreciation of the cultural, ethnic, religious, and sexual particularities of each person and group.

Recognition is a necessary condition for authenticity and human flourishing. As Taylor (1998) states, by being recognized by others and society, individuals/human beings can develop their identities, explore their potential, and live according to their values and convictions. Recognition gives people a sense of belonging and appreciation, contributing to their fulfillment and social well-being.

The significant problem regarding recognition, or its lack thereof, and its relationship with the construction of individuals' identity is expressed by Taylor when he points out that peoples' identities are/the individual's identity is formed, "in part, by the existence or lack of recognition and, often, due to incorrect recognition by others, a person or group of people can be harmed, be the target of a real distortion, if those around them reflect a limited image, of inferiority or contempt for themselves" (Taylor, 1998).

As an ethical-political proposal for contemporary times, the theory of recognition – whether in Taylor, Honneth, Habermas, or Ricoeur – has established itself as a fruitful conceptual framework for understanding social struggles. It offers an interpretative matrix that is attentive to the moral dimension of social conflicts and capable of perceiving the complexity of such conflicts in their material, symbolic, and legal dimensions. With specific reference to the Canadian, his notion of recognition brings a precious focus on intersubjectivity, highlighting the relational and agonistic character of the construction of society, as Taylor is concerned with the processes of construction of the self when arguing that individuals depend on the intersubjective recognition to self-realize.

However, it is necessary to emphasize that recognition always emerges due to a continuous intersubjective struggle. This means that acknowledgment cannot be fully achieved, ceded, or donated, as it is not restricted to specific purposes nor limited to achievements in the sphere of rights guaranteed by the State. It is not a final prize that sets individuals free. The dialogical exercise provides the formation and recognition of individual and collective identities. It can be practiced both on an intimate level, through the individual's relationship with significant others, and on a social level, that is, in the public sphere, through the policy of egalitarian appreciation that generates the identity of individuals, groups, and communities.

Man begins as an immediate being, immersed in his particular needs and impulses, with only the most nebulous and primitive notion of the universal. This is another way of saying that the Spirit is initially separated from itself and has to return to itself. In order for man to reach the point where he can be the vehicle of this return, he must be transformed; he must undergo long cultivation or formation.

The two elements that strengthened the debate about recognition, namely, the transition from honor to dignity and the modern notion of authenticity, also generated two new discussions. From the transition from honor to dignity came a universalist policy emphasizing all human beings' equal dignity. This principle seeks to prevent people from being classified as first or second-class at all costs. There is an equalization of people in terms of rights and privileges. For Taylor (1998), the most outstanding example of this is the North American civil rights movement of 1960

The notion of honor has acquired different interpretations over time, allowing research to study and investigate how such transformations are absorbed between individuals of the same family symbolism while attributing meaning to today's challenges. The defense of the vitality of this/such a concept in this article follows the movement of already existing ideas that it is not possible to universalize or generalize a closed notion of honor, as its systems are capable of changes based on its concrete updates in social interaction (ROHDEN, 1999).

The concept of honor in the old regime was based on the assumption of an intrinsic inequality in the constitution of that social structure. Faced with this notion of honor, the notion of

dignity emerged in modern societies, constructed in a universalist and egalitarian sense – the dignity of human beings as a universal category. In this way, the author continues, dignity became the only concept compatible with democratic societies. Consequently, forms of recognition became essential in modern democratic culture. As Taylor (2000) states, democracy introduced a policy of equal recognition that took various forms over the years and has now returned as a demand of/demanding the equal status of cultures and genders.

Charles Taylor (2000) follows Berger's perspective in looking at honor from the point of view of the configurations that supported the Old Regime. In his *Philosophical Arguments*, Taylor distinguishes changes that have strengthened the notions of identity and recognition in contemporary times, citing the collapse of social hierarchies based on honor as interpreted in the *ancien régime*.

Two changes that have made the modern preoccupation with identity and recognition inevitable can be highlighted/pointed out. The first is the collapse of social hierarchies, which used to be the basis of honor. Employment honor in the sense of the old regime, which was intrinsically linked to inequalities. For some, to have honor in this sense, not everyone must have it. And this is how Montesquieu uses it to define Monarchy as one of the three types of government. Honor is intrinsically a matter of preference. It is also the sense in which the term is used in a discussion about honoring someone by granting them a public award (...), a prize that would be worthless if it were to be given to everyone. Opposed to this notion of honor is the modern notion of dignity, which is now used in a universalist and egalitarian sense that allows a person to speak of the inherent dignity of human beings or the dignity of the citizen. This concept of dignity is the only one compatible with a democratic society, and the old concept of honor will inevitably be overcome (Taylor, 2000).

Furthermore, Taylor (2000) argues that the politics of recognition is particularly relevant in plural societies, where different identities and groups coexist. He argues that denial of recognition can lead to injustice and marginalization, undermining equality and social cohesion. Therefore, the recognition policy seeks to create an environment where all identities are valued and respected, promoting inclusion and social justice.

However, the recognition policy also faces criticism. Some argue that it can lead to the isolation of groups and the excessive reaffirmation of differences, making it difficult to build a shared collective identity. Furthermore, there is the challenge of balancing the recognition of differences with respect for universal rights and democratic values.

Therefore, Taylor (2000) highlights the importance of recognizing individual and collective identities as essential components of human flourishing and social justice, considering that it focuses both on creating an inclusive society where all people and groups have their identities valued and respected and finding a balance between the recognition of difference and the construction of a common shared identity.

## **2.2 What is global justice?**

According to Pogge (2006), global justice is based on the idea that the principles of justice and equality should be applied globally beyond national borders. He argues that global institutions and political structures must be reformed to ensure a more equitable distribution of resources and opportunities at the global level.

One of the main concerns is structural injustice in the global political and economic system. He argues that global rules and institutions, such as trade agreements and intellectual property policies, favor rich countries and disadvantage poor countries. These structures perpetuate poverty, inequality, and the marginalization of vast populations (Pogge, 2006).

Considering the current context of a globalized world and all types of economic and social inequalities arising from this cause, the solution for a counterpart aiming to benefit those who need it most and to provide a better distribution of the globe's wealth led to an increase and expansion of the debate about social ethics on a global scale. In this way, the theory of Global Justice was developed, proposing, among other tasks and areas of activity, an assessment of the benefits and burdens of the structural and institutional relationships that constitute and manage globalization (Collste, 2016).

From the perspective of these thinkers, the correct way to develop Rawls' theory about Global Justice would be to consider the



idea of an original position applied to the world as a whole (Nussbaum, 2004). To this end, *a priori*, access to justice should be expanded in order to consider every individual on the planet as a subject of justice. In other words, the most diverse political parties and groups worldwide should negotiate and reach agreements considering an immense global structure that, in turn, should reach the entire world population. In this way, this new composition would be beneficial for the position of the less favored (Pogge, 2006).

Human rights impose on people/citizens/societies a negative duty of avoiding contributing to the imposition of an institutional order that predictably gives rise to a human rights deficit that could be avoided without compensating efforts concerning protection and reforms in favor of its victims. Drawing an analogy with the negative duties of either breaking a promise or a contract or using another's property in an emergency without compensation, this negative institutional duty can impose positive obligations on participants who are at an advantage: obligations to compensate for their contribution to the damage. (Pogge, 2006)

In the modern world, the rules governing economic transactions— national and international — are the most critical causal determinants of the incidence and depth of extreme poverty and the broader human rights deficit. They are significant because of their incredible impact on economic distribution within the jurisdiction to which they apply. Therefore, even relatively small variations in a country's laws on tax percentages, labor relations, social security, and access to health care and education can have a much more significant impact on poverty, even more significant than major changes in consumer habits or the policies of a large corporation. This point also applies to the global institutional order. Even small changes concerning the rules governing international trade, lending, investment, use of resources, or intellectual property can greatly impact the global incidence of life-threatening poverty (Pogge, 2006).

Pogge (2006) argues that global justice requires reforming these unjust structures to create a more equitable system that can provide global growth and/or economic inequality aligned with the consequent persistence of extreme poverty.

International trade rules must be reformed to ensure fairer conditions for developing countries, including reducing trade barriers, eliminating harmful subsidies, and allowing poorer countries greater access to global markets.

Corruption and tax evasion, which divert resources that could be used to develop poorer countries, must be addressed. Pogge (2006) also argues that rich countries must take responsibility for combating these practices and ensuring greater transparency in international financial transactions.

The universal right to access basic resources such as clean water, adequate food, and healthcare. Based on such understanding, the author (Pogge, 2006) reinforces that the global community must work to ensure that everyone has access to these fundamental resources, regardless of their geographic location or socioeconomic status.

There is a need to create global institutions, such as the International Monetary Fund (IMF) and the World Bank, which are more accountable and transparent in their operations. Pogge (2006) advocates the inclusion of democratic accountability mechanisms and the participation of developing countries in the decision-making of these institutions.

## **2.3 What is “global” in global justice?**

Global Justice is an approach that seeks to promote justice and equality at a global level, considering transnational issues and universal human rights. While this approach has merits in pursuing a more equitable distribution of resources and opportunities, criticisms can be raised regarding its implementation in a democratic world.

It may face criticism related to state sovereignty and self-determination. In a democratic world, states have the right to govern their affairs and make decisions following the will of their people. Some argue that global justice can undermine these principles by seeking to impose global standards and policies on states, potentially undermining democracy.

The implementation of global justice often involves unelected actors and international organizations that may not fully represent

citizens' wishes and interests. This lack of representation can raise concerns about the legitimacy of decisions and policies adopted within the scope of global justice.

Pursuing global justice in a democratic world faces practical challenges and may have limitations in its effectiveness. Cooperation between states, establishing effective international institutions, and implementing global policies can be complex and cause political resistance. Furthermore, the lack of a centralized global authority makes it difficult to apply and enforce decisions made within the scope of global justice (Risse, 2019).

Global justice is often based on universal human rights values and principles. However, these values can conflict with cultural beliefs and value systems specific to different societies. The imposition of certain global standards and norms can be seen as interfering with cultural traditions and can be challenged in the name of cultural diversity.

When current migration processes are considered from a global perspective, the ideal scenario would be one in which all people could satisfy their basic needs in their usual residence and would not be forced to emigrate (Risse, 2012). After all, as fundamental as the right to emigrate is the right not to have to emigrate and to be able to remain in one's own country (Oberman, 2011). However, the reality of today's world bears little resemblance to this ideal scenario. There are far too many people who are unable to satisfy the most basic needs in their country, much less follow their life plans with dignity. Every year, a few million try to move to another country in search of a decent standard of living for themselves and their families (IOM, 2019). In some cases, they face danger and sacrifice what little they have to be able to enter the territory of their dreams.

It is crucial to remember that these criticisms do not entirely invalidate the pursuit of global justice. They highlight the tensions and challenges when implementing this approach in a democratic world. The debate about achieving global justice effectively and respectfully of democracy is an important topic to be discussed and refined as people move towards a more interconnected world (Miklaszewska, 2021).

Multiculturalism refers to the coexistence of different cultures in the same society, recognizing and valuing cultural diversity. It is

an approach that recognizes that individuals have different ethnic, religious, linguistic, and cultural backgrounds, seeking to promote equal rights and opportunities for all cultures in a society. Multiculturalist policy is a political approach that seeks to promote multiculturalism as a fundamental value. It recognizes that contemporary societies comprise culturally diverse groups and seeks to establish policies and practices that respect and value this diversity.

The multiculturalist policy aims to recognize and respect cultural diversity. It recognizes that all cultures have the right to exist and be valued. It seeks not only to avoid the imposition of a dominant culture over others and promote mutual respect between the different cultures present in society but also to encourage dialogue and cultural exchange between the different groups. This involves promoting mutual understanding, respecting differences, and building bridges between communities.

The multiculturalist policy seeks to combat discrimination and prejudice based on ethnic origin, religion, or culture. It aims to create an inclusive and plural environment where everyone can live freely without fear of discrimination.

However, it is essential to highlight that multiculturalist policy faces criticism and challenges. Some critics argue that it can lead to social fragmentation, lack of cohesion, and weakening of national identity. Furthermore, there are challenges regarding the integration of different cultural groups, the management of cultural conflicts, and the balance between cultural preservation and the adoption of shared values.

In short, multiculturalist policy seeks to promote peaceful coexistence and equality between the different cultures present in a society. It recognizes the importance of cultural diversity and seeks to establish policies and practices that respect and value this diversity, ensuring equal rights and opportunities for all.

### **3 CONSIDERING INSTRUMENTS FOR GLOBAL JUSTICE ALIGNED WITH THE 2030 AGENDA**

The publication of *The Law of Peoples* by John Rawls in 1999 formally inaugurated the emerging academic field of global justice

philosophy. Diverse and reasonable philosophical and religious conceptions outline a role for political philosophy that is to push the limits of what is practically possible in designing political and social institutions so that individuals are seen and act as free, equal, and usual cooperators. Intense health inequalities between societies are often the starting point of moral problems and other societal inequalities (Rawls, 1999).

The two most influential deontological theories, John Rawls and Ronald Dworkin defend an egalitarian conception of income-wealth distribution, whose implications for health care largely overlap with utilitarianism.

A government must show concern for the fate of all its citizens, respecting the ethical principle that human lives be successful rather than wasted. (Dworkin, 2002).

In this sense, deliberative democracy, socio-institutional and individual participation are necessary vectors to be accepted as structuring pillars, not only of the discursive conditions but of the institutional arrangements that allow the fulfillment of the constitutional principles of dignity, transparency, efficiency, and effective social inclusion and shared responsibilities arising from the form of a federative and republican state (Chai et al., 2016).

On December 31, 2019, the World Health Organization (WHO) was alerted to several cases of pneumonia in the city of Wuhan, Hubei Province, in the People's Republic of China. It was a new strain (type) of coronavirus that had not been identified before in humans. A week later, on January 7, 2020, Chinese authorities confirmed that they had identified a new type of coronavirus. In Brazil, on January 22, 2020, the Public Health Emergency Operations Center for the new coronavirus (COE Covid-19) was activated, a strategy foreseen in the National Plan for Response to Public Health Emergencies of the Ministry of Health (WHO), 2020).

The 2030 Agenda is a declaration that reflects the commitment made by the 193 Member States of the United Nations (UN) in 2015 to achieve a set of 17 Sustainable Development Goals (SDGs), which are broken down into 169 goals, aiming to promote the prosperity and well-being of populations in a sustainable way throughout the world. (UN, 2020)

Specifically for the health field, SDG 3—Health and Well-Being—is made up of 13 global goals that, in Brazil's case, were adapted to the reality and national priorities in 2018, primarily since the country had already achieved some of them. The readjusted goals guide the Brazilian State's action as they quantify specific objectives related to reducing child mortality, universal access to health services, and premature deaths from non-communicable diseases, among others, to be achieved by 2030 (UN, 2020).

The discourse on global justice revolves around the question of how to evaluate transnational institutional arrangements. Reflecting the breakdown of the traditional separation between intranational and international relations, the global justice language shift extends moral analysis to the entire field. People have already seen how this shift is fueled by the realization that the traditional conception of the world of international relations as inhabited only by states is rapidly losing its explanatory adequacy - as a result of the emergence and growing importance of transnational rules and through the creation and growing stature on the political scene of non-state actors, such as multinational corporations, international organizations, regional associations and NGOs (Pogge, 2008).

In the pandemic, the state of public calamity requires a unique interpretation of the chapter on social rights. Harmonious articulation with other constitutional principles and norms must be promoted, especially those focusing on individual and collective rights and duties, which, as widely known, are essential clauses of the Constitution (Costa et al., 20003), as well as those in charge of more effectively monitoring and controlling the application of resources destined to guarantee the right to health.

The 2030 Agenda presents itself as a humanist action program on the part of the United Nations of sustainable, inclusive, and emancipatory development, with a general objective represented by the achievement of the universal dignity of the human person and the planet, assuming prosperity as one of its objectives and principles, bearing in mind that the heads of state and government and high representatives of the countries of the world are “determined to ensure that all human beings can enjoy a prosperous life and full personal fulfillment and that economic,

social and technological progress occurs in harmony with nature” (Colglazier, 2015).

It presents the dignity of the human person as fundamental to reaching, first and foremost, those who are most left behind, that is, the least favored individuals (UN, 2015).

The COVID-19 pandemic has become an imminent threat to the 2030 Agenda, impacting developing countries, potentially causing a setback in poverty reduction, food security, and health, making it difficult for them to achieve the Sustainable Development Goals (SDG). This crisis has highlighted the vulnerability of global governance and the current system. Responses to this crisis seem to subordinate international cooperation to solving internal problems. However, many states, especially in the Global South, do not have the resources to address them (Santos-Carrillo et al., 2020).

## 4 FINAL REMARKS

The current global context presents us with unprecedented challenges, ranging from low economic growth and social inequality to environmental degradation that impacts the poorest sectors of society. To address these challenges, we must recognize individual and collective identities as essential components of human flourishing and social justice.

One way to achieve this is by embracing political multiculturalism and ensuring that all people have equal rights and opportunities regardless of their cultural origin. This means providing equitable access to public services, employment, education, housing, and political participation. For instance, governments can invest in infrastructure development in marginalized areas to reduce segregation and gaps in the quality of services.

We must also strive to achieve global justice by reorganizing global institutions and political structures to combat injustice and inequality. This requires a more equitable distribution of resources and opportunities on a global scale. For example, developed countries can support developing countries by investing in their infrastructure, education, and healthcare systems through foreign aid and partnerships.

The 2030 Agenda for Sustainable Development provides a roadmap for achieving sustainable economic, social, and environmental development. Governments, civil society, and the private sector can collaborate to implement this agenda by formulating public policies and budgetary monitoring and evaluation instruments. For instance, governments can incentivize the private sector to invest in environmentally sustainable projects.

To ensure effective partnerships between different actors, justice systems can play a facilitating role. They can provide a stable and predictable legal environment for investments and sustainable development initiatives. For instance, they can create a legal framework that promotes the protection of the environment and the rights of vulnerable groups.

In conclusion, by recognizing the importance of individual and collective identities, embracing political multiculturalism, and striving for global justice, we can work towards a more inclusive and sustainable world. Through the implementation of the 2030 Agenda for Sustainable Development and effective partnerships between different actors, we can address the challenges that our world faces and create a better future for all.



## REFERENCES

Costa, A.M. & Noronha, J.C. (2003). Social control in health: building participatory management. *Saúde Debate*, p. 358-363.

Colglazier, W. (2015). Sustainable development agenda: 2030. *Science*, 349(6252), p. 1048-1050.

Chai, C.G. & Pereira, I.P. (2016). Health planning: methodological frameworks, limits, and possibilities. *Journal of Fundamental Rights and Guarantees*. 17.

Collste, G. (2016). Globalization and Global Justice. From Ethics. *A Journal of Philosophical, Theological and Applied Ethics*, 3:1.

Dworkin, R. (2002). Sovereign virtue revisited. *Ethics*, 113(1), 106–143.

da Fonseca, M. G. P. (2009). Initiating research in law: Through the paths of knowledge and invention. Elsevier.

IOM (2019). Migration Data Portal.

Marques, A. R. (1982). The science of law: concept, object, method. Forensic.

Miklaszewska, J. (2021). Global Justice in a Democratic World: Contemporary Liberal Theories. Rowman & Littlefield.

Nussbaum\*, M. C. (2004). Beyond the social contract: capabilities and global justice. An Olaf Palme lecture, delivered in Oxford on 19 June 2003. *Oxford Development Studies*, 32(1), 3-18.

Oberman, K. (2011). Immigration, global poverty, and the right to stay. *Political Studies*, 59(2), 253–268.

WHO (2020). World Health Organization. Coronavirus disease (COVID-19).

UN (2015). Transforming our world: The 2030 Agenda for Sustainable Development.

Pogge, T. (2006). Recognized and violated by international law: The human rights of the world's poor. Pogge, T. (2008). What is Global Justice? *Revista de Economía Institucional*, 10(19), 99-114.

Rawls, J. (2017). A theory of justice. In *Applied Ethics* (pp. 21–29). Routledge.

Risse, M. (2012). On global justice. Princeton University Press.

Risse, M. (2019). What is 'Global' About Global Justice? *Fudan Journal of the Humanities and Social Sciences*, pp. 12, 193–210.

Rohden, F. (1999). Honor and family in some classic views of national formation. *BIB-Brazilian Journal of Bibliographic Information in Social Sciences*, (48), 69-89.

Santos-Carrillo, F., Fernández-Portillo, L. A., & Sianes, A. (2020). Rethinking the Governance of the 2030 Agenda for Sustainable Development in the COVID-19 Era. *Sustainability*, 12(18), 7680.

Taylor, C. (1998). Living with difference. *Debating Democracy's Discontent*, 212-226.

Taylor, C. (2000). Philosophical arguments. Loyola Editions.

Taylor, C. (2021). The politics of recognition. In *Campus wars* (pp. 249-263). Routledge.

United Nations. (2015). Department of Economic and Social Affairs Sustainable Development. The 17 Goals.

ISBN: 978-950-34-2426-1

CHAPTER

# 19

**FORCED DISPLACEMENT IN EMERGENCY  
CONTEXTS: THE COVID-19 PANDEMIC AND  
RESTRICTIVE MEASURES ON MOBILITY. THE CASE  
OF ARGENTINA AND BRAZIL.**

Natalia L. Loscocco • Valeria M. Allo

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter19>

## FORCED DISPLACEMENT IN EMERGENCY CONTEXTS: THE COVID-19 PANDEMIC AND RESTRICTIVE MEASURES ON MOBILITY. THE CASE OF ARGENTINA AND BRAZIL.

*Natalia L. Loscocco*  
*Valeria M. Allo*

**Abstract:** The emergency caused by the spread of the virus called COVID-19 has generated multiple negative impacts on vulnerable groups of individuals. The declaration of a pandemic by the WHO triggered a series of measures by States, including border closure to stop the spread of the virus. The health emergency and the claim to safeguard public health also entailed restricting access to and exercising fundamental rights enshrined in the international order and contained in national legal systems for asylum seekers and refugees. Consequently, the impact that the context of the COVID-19 pandemic generated on those seeking protection was given in two ways: the first of them concerning access to national territory - access to the procedure - and the second of them regarding inclusion - effective enjoyment of rights-.

**Keywords:** Forced displacement - Refugees - International protection - Covid-19 - Pandemic

### 1 INTRODUCTION

The emergency caused by the spread of the virus called COVID-19 has generated multiple consequences for the International Community and its various actors. However, those who have suffered the most from its effects have been individuals located in the most marginalized and vulnerable areas.

Since the declaration of a pandemic by the World Health Organization (WHO), the fundamental rights of asylum seekers, refugees, and displaced persons have been seriously affected by the numerous measures taken by States based on the safeguarding of

public health and the need to combat the virus, thus trying to prevent its spread.

According to statistics from the United Nations High Commissioner for Refugees (UNHCR), at the end of 2020, 82,400,000 people were forced to move as a result of conflict, persecution, violence, violation of their human rights, or events that had a significant impact on public order. (UNHCR, 2020)<sup>1</sup> In other words, even within an emergency that restricted mobility, forced displacement continued its upward trend.

In Latin America, the consequences of the pandemic for asylum seekers and refugees have been evident. However, the adoption of measures to respond to contingencies in the region has been uneven. Based on this, this paper will analyze the main measures adopted regarding mobility by two States in the region, Argentina and Brazil, since the declaration of the COVID-19 pandemic and to evidence their impact on the commitment to provide adequate international protection.

We will also briefly analyze the State's responsibility in this matter to try to answer questions such as: Have States been able to address the necessary measures to guarantee non-refoulement in this context of crisis? Have they met their international commitments to refugee protection by adopting measures restricting mobility? In this context, have the rights our national legal systems granted to persons needing international protection been realized?

In conclusion, we will summarize the challenges that States face in implementing measures that ensure access to internationally recognized rights, including those enshrined in domestic legal systems. These challenges arise where seeking protection through displacement to a safe country is necessary but restricted.

---

<sup>1</sup> The total number of forcibly displaced persons includes refugees, asylum-seekers, internally displaced persons and Venezuelans displaced abroad. It includes refugees and other displaced persons who are not under UNHCR's mandate, and excludes other categories, such as returnees and non-displaced stateless persons. UNHCR's total population of concern refers to those whom UNHCR is mandated to protect and assist. It includes forcibly displaced persons, those who have returned home in the past year, stateless persons (most of whom are not forcibly displaced), and other groups to whom UNHCR has extended its protection or provided humanitarian assistance. See: UNHCR. (n.d.). *Global Report 2020*. UNHCR. <https://www.acnur.org/media/informe-global-2020>.

## 2 LEGAL FRAMEWORK FOR PROTECTION OF VICTIMS OF FORCED DISPLACEMENT

Forced displacement is a global phenomenon that refers to situations in which people are forced to leave their homes due to various contexts, such as generalized violence, natural disasters, or armed conflicts.

However, no legal framework of protection applies to all these people equally. Although “forced displacement” is the common factor in all of them, the *legal framework* for those seeking international protection as refugees is particular. In this sense, this framework exhaustively establishes those circumstances in which forced displacement determines refugee status for a person seeking international protection.

The main instrument and cornerstone of international protection is the 1951 Convention (Convention Relating to the Status of Refugees, 1951), which in its article 1. A.2. considers as such any person who *“owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, because of such fear, unwilling to avail himself of the protection of that country; or who, having no nationality and being, as a result of such events, outside the country of his former habitual residence, is unable or, owing to such fears, unwilling to return to it.”*

Under these precautions, any individual who applies for asylum outside his or her country of origin should obtain a refugee status declaration. As previously explained, the definition of displacement has broadened over time and with changing circumstances in various regions. (Allo & Loscocco, 2021).

In this sense, by broadening the criteria for an individual to be considered a refugee, national legislation makes it possible to recognize those persons whose cases are not explicitly contemplated in the 1951 Convention. In other words, the presumption of a well-founded fear for a person to be considered a refugee is not a fundamental requirement.

The African region promoted the trend towards the broadening of the definition of refugee through the adoption of a definition that

would be embodied in the OAU Convention (OAU Convention, 1969) and that, years later, would be adopted by Latin America in the Declaration of Cartagena (Declaration of Cartagena, 1984). Both definitions incorporate into the elements already contained in the 1951 Convention and its protocol other criteria for recognition, such as generalized violence, foreign aggression, internal conflicts, massive violation of human rights, or other circumstances that disturb public order.

This broadening of criteria and the precautions provided for in the 1951 Convention make it possible to cover a broader range of people who flee their countries because their lives, liberty, or security are threatened.

In recent decades, the countries of the Latin American region<sup>2</sup> have been incorporating into their domestic systems norms that contemplate the definition proposed by the Cartagena Declaration of 1984 while at the same time improving internal mechanisms to provide more effective responses to asylum applications.

In the case of the Argentine State, Law No. 26,165, "General Law on the Recognition and Protection of Refugees," includes both definitions. Thus, article 4 (a) applies the term refugee by the 1951 Convention to which the State is a party, following the five criteria exhaustively established by the Convention, such as race, nationality, membership of a particular social group, or political opinion.

Subparagraph (b) also includes those who have fled their country of origin or habitual residence because of generalized violence, foreign aggression, internal conflicts, massive violations of human rights, or other circumstances that have seriously disturbed public order.

On the other hand, it provides for a catalog of rights and principles that make up the international protection of refugees, which arise in addition to the human rights treaties that bind the Argentine State, the 1951 Convention and its protocols, and all those instruments in this regard that will be ratified in the future.

Consequently, the Argentine legal protection framework that extends to refugees and asylum-seekers is applied following the principles of non-refoulment, including the prohibition of rejecting

<sup>2</sup> For the purposes of this paper, we refer to the Latin American Region in the strict sense, understood as the one that includes the Spanish- and Portuguese-speaking countries.

them at the border, non-discrimination, no sanction for illegal entry, family unity, confidentiality, and more favorable treatment of the human person.

In Brazil, Law 9.474 regulates the refugee procedure by establishing the rights and duties of asylum seekers and refugees and durable solutions for this population. It also considers refugees to be those who leave their country of origin due to fears of persecution based on race, religion, nationality, social group, or imputed political opinions or due to a situation of severe and widespread violation of human rights in their country of origin.

In other words, the Brazilian legal system includes the expanded definition, which aligns with its leading position in the region in the international protection of refugees. In this regard, Brazil was the first country in the Southern Cone to ratify the Convention on the Status of Refugees in 1960.

In principle, we can say that both cases constitute a clear example of solid and robust protection frameworks for both asylum seekers and refugees. In this sense, we can distinguish a common feature of all these definitions, which is a fundamental requirement to access international protection as a refugee, which is precisely the *displacement across a border* to a safe country.

However, as a result of the WHO declaration of the COVID-19 pandemic, this possibility of displacement was globally restricted, seriously affecting *the right of every individual to request and receive asylum*, enshrined in the international order and the respective domestic systems.

### **3 STATES AS CRITICAL ACTORS IN PROVIDING ADEQUATE PROTECTION.**

States' responses in emergency situations are essential to ensuring the effective protection of individuals under their jurisdiction by coordinating various resources to mitigate the effects of disasters and humanitarian crises.

As this paper does not analyze the state's responsibility in the face of the COVID-19 pandemic in its broad spectrum (a topic that



has been widely debated in the doctrine), we will focus specifically on the obligation of States to guarantee adequate protection of asylum seekers and refugees, highlighting the challenge of providing innovative and effective responses in an emergency context.

According to the general rules of state responsibility, it arises from the breach of a primary obligation (ILC. 2001). The 1951 Convention defines those it confers protection and establishes the obligations and principles essential to their treatment. Although it does not provide specific procedures for determining refugee status, the obligation of international protection is the responsibility of States parties.

To guarantee the exercise of the right to asylum, States must design procedures that ensure access to each of the rights arising from the 1951 Convention. The design of a “fair and efficient” procedure is the first step in a wide range of protection, over which each State has absolute control, and will also result in coherence with its migration policy (UNHCR, 2001).

The international commitments assumed the tradition in migration matters that define its policy, and the political and social situation will condition the asylum procedures. But international protection goes beyond the possibility of access to safe territory and guarantees non-refoulement; it essentially implies access to and effective enjoyment of fundamental rights. (Allo & Loscocco, 2021)

Refugee status is declaratory, which implies that an individual seeking international protection is already a refugee. This condition should guarantee access to rights on an equal footing with other foreigners from the first contact with the host country. Consequently, the design and implementation of a robust system for determining refugee status by States is a fundamental aspect of ensuring international protection in compliance with their obligations.

It should be noted that to this end, UNHCR assists States in improving their refugee status determination systems. In cases where States do not have such systems, UNHCR determines refugee status by its mandate (UNHCR, UNHCR, UNH 2001).

While States have made significant progress in developing national protection systems and ensuring access to asylum procedures, the reality of displacement is beyond their capacity to respond. A clear

example of this has been the challenges posed by the declaration of a COVID-19 pandemic in the face of new and changing displacement situations.

## 4 COVID-19 DISPLACEMENT CONTEXT

In 2020, new crises and other persistent ones forced more than 11,200,000 people to flee. If we consider only situations of international displacement, people of Syrian nationality topped the list of displaced persons, followed by Venezuelans, with a figure of 6,800,000 (UNHCR, 2021).

With this situation, States have developed immediate responses, seeking innovative measures to keep asylum systems functioning. Thanks to the use of technologies to process registration, manage cases, and renew documents online, states have developed immediate responses. However, in order to guarantee the effective exercise of the right to asylum, it is imperative to ensure access to the territory.

The question immediately arises regarding how this obligation can be fulfilled when the first necessary condition for providing protection is restricted to ensure public health.

In March 2020, governments worldwide ordered border closures and restrictive travel measures that have affected human mobility and displacement dynamics (IOM, 2021). According to a study by the International Organization for Migration (IOM), cross-border mobility in 2020 can be divided into three phases: firstly, between January and May of that year, characterized as a confinement with mobility. In other words, during this phase, apart from many national confinement measures, there was a boom in border closures (*IOM Publications Platform*, 2021).

Then, a second phase can be distinguished, temporarily located between June and September 2020, in which some accesses were opened exceptionally, accompanied by sanitary requirements. Finally, the third phase takes place between October and December 2020, characterized by a mixed panorama, with an opening to tourism accompanied by health requirements (*IOM et al.*, 2021).

All these restrictions on access to the territory and the health measures imposed by the States significantly affected those seeking international protection. During the first lockdown stage, requests for protection worldwide decreased by a third compared to last year (*IOM et al.*, 2021, 3).

In Latin America in particular, many displaced Venezuelans in Colombia, Peru, Chile, Ecuador, and Brazil lost their livelihoods, and some have tried to return home, even hiring the services of people who illegally make them risk their lives to cross borders (*IOM et al.*, 2021, 8).

Throughout the pandemic and faced with the need to adopt exceptional measures for cases where entry into the territory was imperative, new categories of exceptions were developed. These measures were aimed at making the entry of certain groups more flexible, such as “nationals and residents,” “health workers,” “those who required urgent medical treatment,” “crew members,” and “diplomats and members of NGOs,” among others.

However, none of these measures ensured access to the territory for those seeking international protection due to forced displacement. As a result, the number of people seeking refugee status fell drastically worldwide.

In 2020, some 164 countries closed their borders at the height of the pandemic, and 99 states made no exceptions for asylum-seekers (IOM, 2022). In addition, the pandemic context not only made access to the right to asylum impossible but also exacerbated the difficulties for asylum seekers and refugees already in host countries.

Consequently, it is possible to affirm that the impact generated by the context of the COVID-19 pandemic on those people seeking protection occurred in two senses: the first of them in terms of *access to the national territory* - access to the procedure - and the second of them is related to *inclusion* - effective enjoyment of rights enshrined in national legislation -.

## 5 INTERNATIONAL PROTECTION IN ARGENTINA AND BRAZIL IN “TIMES OF PANDEMIC”

Before the declaration of the COVID-19 pandemic, Latin America was already facing the challenge of *protecting* those displaced

from the Latin American region, although not exclusively. In this regard, among the groups of people who mainly sought asylum were nationals of Central America and Venezuela. We must not forget that, in addition, Latin American countries share certain standard features of inequality in access to rights, high rates of poverty, institutional difficulties, and patterns of exclusion, which, among others, affect natives in general and migrants and refugees in particular.

Based on these premises, we will focus on the “responses” that Argentina and Brazil provided to guarantee *access to international protection<sup>3</sup> in the context of mobility restriction*. In this sense, both countries are characterized by having a transparent and inclusive legal framework that guarantees migrants and refugees equal access to economic, social, and cultural rights regardless of their migratory status.

Both countries also share a modern legal framework for migration and refugee. As we have seen above, Argentina and Brazil have progressive legislation on refugees, allowing them to carry out good practices that UNHCR has highlighted.

The WHO’s declaration of a pandemic on March 20, 2020, jeopardized access to the territory of both States through the adoption of restrictive mobility measures to safeguard the population’s health. The closure of borders posed a considerable challenge to complying with international protection.

In this sense, in Argentina, the health emergency was decreed (Decree of Necessity and Urgency 260/2020) on March 12, 2020, and the borders were closed on March 16. This measure was adopted for fifteen days (Decree of Necessity and Urgency 274/2020) and was then successively renewed for a year and a half.

The closure of the borders materialized with DNU 274/2020, which prohibited the entry of non-resident foreigners into the country through air, river, land, or sea crossings. Exceptions were only established for persons involved in the transfer of goods, carriers and crew members of ships and aircraft, and personnel involved in flights and medical transfers.

---

<sup>3</sup> In this context, we refer to “international protection” and not strictly to “access to the right to asylum”, since we understand the former as a broad and encompassing concept that includes durable solutions. In this regard, see: Allo, V. M., & Loscocco, N. L. (2021). Durable solutions as a fundamental part of the right to asylum. Local integration in Argentina, an example of good practices. *Perspectives*, IV(1). ISSN: 2618-2246.

In the following days, due to fears of an increase in infections, the entry bans were extended to people residing in the country and to Argentines residing abroad (Dec. 312/2020), while foreigners in transit to another country were exempted from the entry ban (Disp. 1709/2020) (CAREF, UNHCR, 2022).

The group most affected by this border closure was that of non-resident foreigners in the country, among whom were people who had international protection needs and could typically enter Argentine territory through any of the 237 authorized border crossings, including land, river, sea, and air, without reflecting the enormous number of unauthorized crossings. But susceptible to transit by migrants on foot.

Since November 2021, as a good practice promoted by civil society and international organizations, some “safe corridors” have been enabled in air, land, river, and sea crossings. It is important to note that local governments exercised the role of the state through provincial agreements.

The corridors were open to all categories of entry, so they were the entry route for people seeking international protection. However, the existence of daily “quotas” limited the number of transits. In addition, no stable operational and administrative mechanism was put in place to enable entry into the territory for family reunification, humanitarian reasons, or persons in need of international protection.

It should be noted that from approximately 2018, due to the growth in the displacement of Venezuelan nationals in the region, the presence of other actors increased as part of the regional strategy for humanitarian assistance and protection of rights coordinated by the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM).

That is why, in 2020 and 2021, ecumenical organizations (ADRA, Pastoral de Migrantes, among others) and civil society organizations (CAREF, ANDHES, among others) worked in dialogue with state interlocutors, the National Directorate of Migration, the Ministry of Foreign Affairs, Conare, and the Public Defenders’ Offices, among other organizations (CAREF, UNHCR, 2022).

Regarding the asylum system in particular, the asylum application may be lodged at the border upon entry into the country

or once inside the territory without a time limit. An application for refugee status can be made without identity or travel documentation or with incomplete documentation.

During that period, applications were around 14,500, and recognitions were around 1,050 (i.e., they represented about 7% of applications for the period, against the cumulative historical average of 28% from 1985 to 2020). Of the total number of applications, some 6,200 (43%) were initiated by Venezuelans. As can be seen, in 2020, applications fell by half the previous year, possibly due to combined reasons for border closures and the implementation of technologies for administrative procedures.

Consequently, in the face of isolation measures and the suspension of face-to-face attendance in the administrative sphere, CONARE implemented an asylum application system through an online platform, which was available between mid-2020 and mid-2021. Under these circumstances, once the application had been made, CONARE issued and sent by e-mail the provisional document stating that the person had initiated the asylum procedure and authorizing them to move around the country, study, or work. The provisional document was automatically renewed every 90 days until CONARE issued a decision on the application.

The construction of operational agreements with different levels of municipal, provincial, and national management made the day-to-day activity of all the actors possible. These agreements ensured compliance with health measures and protected the rights of people on the move.

The constant dialogue between civil society organizations (CAREF, ADRA, the Argentine Red Cross, ANDHES, the Pastoral Migratoria), international organizations (UNHCR and IOM) and the National Directorate of Migration, CONARE, the Ministries of Health and Security, the Chief of the Cabinet of Ministers, the local Emergency Committees (COE), the municipalities and the local health and social development areas, it was crucial for achieving the objectives that the crisis presented (CAREF, UNHCR, 2022).

These dialogues and articulations contributed to many of the people who entered the country during the pandemic to complete health controls, continue to their destination, and access documentation that registers their presence there.

For its part, Brazil was the sixth country in the world to receive the highest number of asylum applications between 2018 and 2019 (UNHCR, 2019, 2020b). It was also the first Latin American country to report the disease and declare a health emergency. Consequently, it issued a series of ordinances with measures to contain the pandemic's advance (Zapata & Moulin, 2021, 68).

In March 2020, the Brazilian government initially ordered the closure of land borders with Venezuela and then extended it to neighboring countries. Subsequently, it suspended non-nationals entry into the country by sea and air (Portaria 47, 2020).

In May 2020, the government enacted Ordinance No. 255 (Portaria 255, 2020) prohibiting foreigners from entering the country by any means of transportation. It also incorporated some exceptions to exclude from the prohibition Brazilians, immigrants with legal residence in Brazil, foreigners who were officials before international organizations or belonging to a mission of their countries and were registered with the Brazilian government, and passengers in international transit.

They also allowed the entry into the country of relatives of Brazilians, relatives of immigrants residing in Brazil, other foreigners authorized by the Brazilian government for humanitarian reasons or public interest, and those foreigners who had the National Migration Registry (identity document of the migrant provided by the Federal Police).

In July of the same year, the Brazilian government again allowed the entry of foreigners by air transport, except people from Venezuela. As of December 2020, all restrictions on entry into the country had been extended indefinitely, except for air travel and entry through the borders with Paraguay and Bolivia. (Zapata & Moulin, 2021)

Along with this measure, on March 20, 2020, Ordinance No. 2 (Portaria 2, 2020) ordered the suspension of face-to-face service, procedural deadlines, procedures, and meetings of the National Committee for Refugees and the automatic extension of the validity of migratory documents. Although CONARE never formally suspended the receipt of asylum applications, in practice, these measures caused a 65 percent decrease in the number of

applications received compared to the previous year.<sup>4</sup> (Zapata & Moulin, 2021)

On the other hand, among the most significant adverse impacts of the pandemic for asylum seekers and refugees in Brazil has been access to documentation, which had an impact on access to other rights. The measures adopted by the States mentioned above made it impossible to renew migratory documentation and to initiate new migratory and refugee processes. Even though in June 2020 the Federal Police began to deal with “exceptional cases”, the country’s understanding of this prerogative was heterogeneous (Zapata & Moulin, 2021).

Likewise, this lack of access to documentation directly impacted the ability of migrants and refugees to access state mitigation programs to alleviate the emergency. In addition, the lack of technological resources or knowledge of technologies also represented an obstacle for asylum seekers and refugees. That is why the role played by civil society organizations, such as international organizations, as well as control bodies, such as the Public Defender’s Office of the Union (DPU) – an autonomous body of the Executive Branch whose objective is to provide free legal assistance to vulnerable groups – was fundamental for the assistance, defense and protection of the rights of the migrant and refugee population in the country during that period (Zapata & Moulin, 2021).

In this regard, most civil society organizations and international agencies could keep regular assistance programs running through a hybrid or entirely virtual format. In addition, due to the increase in social and economic vulnerability for this group caused by the pandemic, they had to reinforce the provision of immediate humanitarian assistance, often to the detriment of longer-term programs of local social and economic integration (Zapata & Moulin, 2021).

---

<sup>4</sup> In 2019, 82,552 applications were received and in 2020 only 28,899 were received. In this regard, see: Zapata, G., & Moulin, C. (2021). Discrimination by omission: Dynamics of social in/exclusion of the migrant and refugee population in Brazil in times of pandemic. In *Mobilities and Covid 19 in Latin America 33: inclusions and exclusions in times of crisis* (pp. 59-85). UNAM.



## 6 CONCLUSIONS

The closure of borders as a measure to try to stop the spread of the COVID-19 virus, *prima facie*, implied a restriction on mobility for asylum seekers and refugees in search of a safe place. Both Argentina and Brazil, faced with the same contingency, have maintained this restriction for a long time, affecting the fundamental rights of asylum seekers and refugees.

On the one hand, Argentina, through the adoption of various decrees of necessity and urgency, determined the closure of the borders, immediately affecting the mobility of this particularly vulnerable group. However, the adoption of exceptional measures to allow the entry of particular groups of people and the implementation of new technologies that allow the continuity of CONARE's work in the reception and resolution of applications has been essential to continue complying with the obligation of international protection.

Likewise, the role of organized civil society and international organizations in the search for solutions to guarantee asylum seekers' and refugees' access to rights has been fundamental during this period to alleviate the situation of double vulnerability to which they have been exposed.

For its part, Brazil was one of the first countries in the region to decree border closures. Faced with the great flow of mobility that this country has undoubtedly led to the restriction of access to and exercise of rights for both asylum seekers and refugees. In that regard, the disabling of asylum applications constituted a violation of fundamental principles such as non-refoulement, thereby affecting international standards of protection.

At the beginning of this work, we set out to analyze the measures adopted by both States regarding mobility and answer a series of questions regarding the implications of restrictions in emergency contexts, such as the declaration of the COVID-19 pandemic. Throughout the analysis, we were able to show that the closure of borders is based on safeguarding the population's health. However, it could have been an immediate contingency measure; its prolongation over time resulted in the impact of the mechanisms intended to protect asylum seekers and refugees.

That is why if there is one lesson that this experience at the regional and local level teaches us, it is undoubtedly the conviction that in order to guarantee adequate international protection, access to rights and non-refoulement as a cornerstone of the international protection of refugees, it is essential to strengthening protection systems by investing in resources. Decisions on measures to be taken in emergencies or humanitarian crises should not lose sight of the purpose of protection, precisely to avoid jeopardizing the life, safety, or freedom of those who have been forcibly displaced.

## BIBLIOGRAPHY:

United Nations High Commissioner for Refugees (UNHCR) (2021) *Global Report 2020*.

United Nations High Commissioner for Refugees (UNHCR) (2001, May). ASYLUM PROCESSES (FAIR AND EFFICIENT ASYLUM PROCEDURES).

Allo, V. M., & Loscocco, N. L. (2021). Durable solutions are a fundamental part of the right to asylum. Local integration in Argentina is an example of good practices. *Perspectives*, IV(1). ISSN: 2618-2246.

Bohnet H, Rüegger S. Refugees, and Covid-19: Beyond Health Risks to Insecurity. *Schweiz Z Polit*. 2021 Jun; 27(2):353-368. doi: 10.1111/SPSR.12466. Epub 2021 Jun 12. PMID: 35923364; PMCID: PMC8446961.

Coco, A., & de Souza, T. (2020, June). *The Law of State Responsibility and the Covid-19 Pandemic*. in Ferstman, Carla and Fagan, Andrew (2020) *Covid-19, Law and Human Rights : Essex Dialogues. A Project of the School of Law and Human Rights Centre*. University of Essex.

Argentine Commission for Refugees and Migrants (CAREF) and UNHCR, Borders closed due to pandemic: Families on the move and their transits to Argentina (2020-2021), United Nations High Commissioner for Refugees (UNHCR), 7 June 2022, <https://www.refworld.org/node/134598>

OAU Convention on the Specific Aspects of Refugee Problems in Africa. (1969, September 10). United Nations Treaty Series, 1, 14-691.

Cartagena Declaration on Refugees. (1984, November 19 to 22). Adopted by the “Colloquium on the International Protection of Refugees in Central America, Mexico and Panama: Legal and Humanitarian Problems”.

ILC, ‘Responsibility of States for Internationally Wrongful Acts (53rd session 23 April–1 June and 2 July–10 August 2001) UN Doc A/RES/56/83 Annex.

Law 9474. (1997, July 22). Define Mechanisms for the Implementation of the Refugee Statute of 1951, and Determine Other Provisions.

Law 26.165. (2006, November 28). *General Law on the Recognition and Protection of Refugees*.

Loscocco, N.L., & Allo, V. M. (2022). Towards the Eradication of Statelessness in the Americas: Advances and Challenges in the Practices of Argentina and Brazil.” Ch. 15 in “Constituição, democracia e sistema de justiça” [recurso eletrônico] / Rafaela Teixeira Sena Daibes Resque, Verena Holanda de Mendonça Alves, Cássius Guimarães Chai... [et al.].

Nabucco Martucelli, P. (2020, Sept-Oct). How are we refugees affected by the Brazilian responses to COVID-19? *REVISTA DE ADMINISTRAÇÃO PÚBLICA*. <http://dx.doi.org/10.1590/0034-761220200516>

International Organization for Migration. (2021, April 7)..*COVID-19 and the State of Global Mobility in 2020* | *IOM Publications Platform*. IOM Publications.

IOM. (2021, April 8). *First comprehensive global analysis of COVID-19 travel restrictions and border closures measures future impacts on mobility*. International Organization for Migration. Retrieved: April 18, 2024, from <https://www.iom.int/es/news/el-primer-analisis-mundial-integral-de-las-restricciones-los-viajes-y-cierres-de-fronteras-impuestos-por-la-covid-19-dimensiona-los-futuros-impactos-sobre-la-movilidad>

IOM. (n.d.). *Interactive World Migration Report 2022*. World Migration Report. <https://worldmigrationreport.iom.int/wmr-2022-interactive/?lang=ES>

Portaria nº 2, of March 20, 2020. (2020). Dispõe sobre a suspensão dos atendimentos presenciais, dos prazos processuais e das reuniões del Comité Nacional para os Refugiados (National Committee for Refugees), which deals with Law No. 9.474, of July 22, 1997. Brasília, DF.

Portaria Nº 47, OF 26 MARCH 2020 Dispõe sobre a restrição excepcional e temporária de entrada no País de estrangeiros por transporte aquaviário, conforme recomendação da Agência Nacional de Vigilância Sanitária - Anvisa. Brasília, DF.

Portaria No. 255, of May 22, 2020. (2020). Dispõe sobre a restrição excepcional e temporária de entrada no País de estrangeiros, de qualquer nacionalidade, conforme recomendação da Agência Nacional de Vigilância Sanitária - Anvisa. Brasília, DF.

Shaw, M. N. (2008). *International Law* (6th ed.). Cambridge: Cambridge University Press.

United Nations High Commissioner for Refugees. (2019). *Global Trends: Forced Displacement in 2018*. Geneva, Switzerland.

United Nations High Commissioner for Refugees. (2020b). *Global Trends: Forced Displacement in 2019*. Geneva, Switzerland.

Zapata, G., & Moulin, C. (2021). Discrimination by omission: Dynamics of social in/exclusion of the migrant and refugee population in Brazil in times of pandemic. In *Mobilities and Covid 19 in Latin America: inclusions and exclusions in times of crisis* (pp. 59-85). UNAM.

ISBN: 978-950-34-2426-1

CHAPTER

20

**DEMOCRACY CRISIS, MODERATING POWER,  
COVID-19, AND ANTI-DEMOCRATIC ACTS:  
AN ANALYSIS OF DEMOCRATIC INSTABILITY  
IN BRAZIL FROM 2019 TO 2022**

Juão Vitor Santos Silva • Alexandre de Castro Coura  
Cássius Guimarães Chai • Monica Fontenelle Carneiro  
Elda Coelho de Azevedo Bussinguer

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter20>

# DEMOCRACY CRISIS, MODERATING POWER, COVID-19, AND ANTI-DEMOCRATIC ACTS: AN ANALYSIS OF DEMOCRATIC INSTABILITY IN BRAZIL FROM 2019 TO 2022

*Juão Vitor Santos Silva*  
*Alexandre de Castro Coura*  
*Cássius Guimarães Cha*  
*Monica Fontenelle Carneiro*  
*Elda Coelho de Azevedo Bussinguer*

**Abstract:** In the last 30 years, Western democracies have faced challenges that stem from globalization and are characterized by expanded access to information and different complex and interconnected transformations in communication employing social media. In the Brazilian context, key events delineate democratic erosion: the Executive Branch's attempt to use the armed forces as a "Moderating Power," especially concerning the Judiciary, using the interpretation of Article 142 of the Constitution; the federal government's administration during the COVID-19 pandemic intensifying the political crisis, and the anti-democratic acts of January 2023. From 2019 to 2022, Brazil underwent an ambiguous political experience, providing an object of analysis for democratic erosion. The study places a significant focus on the Judiciary's response to these issues, exploring whether it offered institutional answers in reaction to threats from the former Chief Executive and whether these responses upheld or breached the limits of the democratic rule of law. These questions aim to assess democratic maturity in Brazil, using judicial responses as indicators of institutional commitment to the 1988 Constitution.

**Keywords:** Brazilian democracy; fundamental rights; reactionary populism; COVID-19; moderating power.

## 1 INTRODUCTION

Over the past 30 years, Western liberal democracies have experienced shocks, ruptures, and erosions stemming from various his-

torical processes and converging to some extent to globalization as a common factor. This phenomenon, characterized by the increasing expansion of access to information, the weakening of traditional communication channels, and the emergence of new forms of human interaction through social networks, is not a simple linear process. It is a plural and multifaceted process influenced by internal and external elements, demanding a comprehensive analysis.

To understand the impact of such a process in Brazil, it is crucial to delineate national and specific events, considering the internal dichotomies of liberal democracies observed in the country within the last 05 years. In this context, events widely mapped in Brazil's recent history stand out: the attempt to use the armed forces as a "Moderating Power," based on the interpretation of Article 142 of the Federal Constitution; federal government health policies and measures during the COVID-19 pandemic sanitary crisis as an exacerbating factor in the political scene; and the antidemocratic acts of January 8, 2023, as a boundary situation between barbarism and democratic civilization.

From 2019 to 2022, Brazil experienced an ambiguous political-constitutional experience, which provided an object of analysis to understand the erosion and rupture of democracy. This study, which focuses on the analysis of the judiciary, examines the legal-constitutional response of institutions to these problems.

The research questions explore whether the Judiciary provided institutional responses to the highlighted crisis faced by Brazilian democracy during the period under analysis, how this power reacted to threats made by President Bolsonaro, and whether the given answers reaffirmed or breached the limits of the democratic rule of law.

These questions aim to analyze how mature Brazilian democracy is so far, an analysis which is based on institutional responses as indicators of citizens' commitment, whether political agents or not, to the Constitution of the Federative Republic of Brazil of 1988.

## 2 DEMOCRATIC EROSIONS

The conflict between democracy and liberalism, the interpretation of Article 142 of the Federal Constitution of the Federative Re-



public of Brazil of 1988 (CRFB/88), and the role of the armed forces in Brazil

The death of most democracies tends to result not only from organized plots of forces but also from elected leaders' choices/decisions. In many cases, most leaders tend to undermine the process that brought them to power despite their efforts to preserve a democratic façade while corroding its essence (Levitsky; Ziblatt, 2018).

Nowadays, this process involves the articulation between democracy and liberalism. Highlighting Schmitt's central thesis on this topic, Mouffe (2019) reinforces his understanding that an unworkable regime has emerged from this relationship due to the union of heterogeneous political principles. Mouffe explains that Schmitt criticizes parliamentary democracy, which mixes the principle of democratic identity with the principle of representation associated with monarchy. Contrary to common belief, the latter argues that parliamentarianism, by privileging the legislative over the executive, does not belong to democracy but to liberalism. Representative democracy, according to Schmitt, was not established due to practical constraints but rather because of a liberal vision that attempts to resolve conflicts of values by relegating them to the private sphere.

Schmitt criticizes the liberal approach that seeks to resolve conflicts of values in the private sphere, believing that managing the plurality of interests through procedural rules would eradicate antagonisms. However, he argues that this attempt to nullify the political aspect will fail because such an element cannot be subjugated. Schmitt argues that the political dimension is intrinsic to society and cannot be eliminated using procedural agreements or relegating value issues to the private sphere. His critique emphasizes the inherently conflictual and undomesticated nature of the political issues that challenge the liberal view of the peaceful management of society based on procedural processes (Mouffe, 2019).

The conception that the political escapes legal control finds an echo in the trope "Supreme is the people," often repeated by a part of Brazilian society before, during, and after the electoral period. This expression reflects dissatisfaction with the decisions of the Supreme Court of Brazil, especially on issues such as abortion, drugs, and same-sex civil unions.

Recognizing the importance of avoiding generalizations, this analysis offers a specific view of events restricted to the issues it addresses. In other words, the temporal delineations serve the specific objectives of the article, especially in understanding the legal-constitutional response process to the federal government's actions from 2019 to 2022. The focus is on analyzing the ability of public officials in positions of power, especially the Supreme Federal Court, to offer responses within or based on the Constitution to crises that seek to exceed or break with its normative authority.

Introducing the controversy over the interpretation of Article 142 of the Brazilian Constitution, former president Bolsonaro's attempt to adopt the constitutional text to justify the employment of the Armed Forces against the other constituted powers, especially the Judiciary, is highlighted. The analysis begins with this specific case because it faithfully represents the attempt to superimpose one constituted power over others, undermining one of the fundamental pillars of democracy: the delimitation and maintenance of constitutional harmony, a prerequisite for the democratic rule of law itself.

The discussion about using the Armed Forces as a "Moderating Power" is longstanding in Brazilian constitutional history. Campos (1938) summarizes the ideas surrounding the detrimental, non-harmonious predominance of the political over the juridical. For the author, the legislative branch has lost the ability to create laws aligned with national expectations; furthermore, the judiciary should not be granted the final decision-making power on constitutional issues, as it is guided by judges with social philosophies or worldviews of their own, incompatible with the nation's will. Finally, universal suffrage would be limited to more general and straightforward issues defined by the head of the nation.

However, one cannot simply import or replicate analyses of historical experiences without considering the substantial differences between the historical periods and contexts involved. Although it may seem that one is experiencing historical periods similar to the authoritarian ones of the Estado Novo dictatorship, new factors clearly distinguish them from those in the past. For example, the importance of social media for the rapid resurgence and proliferation of reactionary and antidemocratic movements worldwide is highlighted.

Lynch and Cassimiro (2022) explain that reactionaryism, unlike conservatism, stands out for its radicalization, seeking rupture to restore a perceived lost order. While conservatism aims to preserve the fundamental institutions and values of the political society, reactionaryism, notably present in reactionary populist experiences, challenges the democratic rule of law by constructing a restrictive unity of the concept of the people and denying the social and political pluralism essential to democratic coexistence. The reactionary populism, addressed in the work in question, proposes a perception of democratic institutions as enemies of the people, seeking their destruction rather than reformulation.

This reactionary populism is based on Carl Schmitt's theory of anti-liberal democracy, which influenced totalitarian regimes in the 20th century. It advocates a view of politics confined to the nation as a homogeneous ethnic and cultural unit and legitimizes power concentrated in the leader through the devotion of the population (Lynch & Cassimiro, 2022).

There is a practical and intellectual stance towards these issues that results in the prevalence of the Executive and the Armed Forces in the guardianship of the other powers and the people, leading to the imbalance of constitutional harmony towards the dictatorship of one power, in this case, the Executive, over the others.

Amid threats to the democratic rule of law perpetrated by the former President of the Federative Republic of Brazil, Martins (2020) endorsed the position that the Armed Forces are the Moderating Power in the Rule of Law, arguing that the commanders of the three branches would have legitimacy to settle constitutional controversies, as well as stating that such intervention would only clarify the correct interpretation of the law applied in a conflict involving Constitutional Powers. However, this intervention would not be mediated by a pre-established legal procedure since it has no constitutional or infra-legal provision.

The reactionary speeches of President Bolsonaro (2019-2022), in which the Armed Forces are considered a "Moderating Power" serving the interests of the "nation" personified in the presidential will, intensify the hermeneutics of institutional harmony rupture (Brazil, 2022).

This interpretation of Article 142 and the juridical-political scope of the Federal Constitution of 1988 (Brazil, 2020a), outlining limits for the deployment of the Armed Forces, served as an agenda for the crisis between the Powers. The central question was whether the use of these forces in defense of the Homeland would be constitutionally valid only in situations of intervention to repel foreign invasion (as per Article 34, III, of the Federal Constitution) and in a state of siege, in case of war or response to foreign aggression (as stipulated in Article 137, II, of the Federal Constitution). Additionally, it was questioned whether such actions should follow the procedures for assessment and authorization by the National Congress, as established in Articles 36, § 1; 49, II; and 137, caput, of the Federal Constitution.

The deployment of the Armed Forces to guarantee constitutional powers has specific limitations, restricted to interventions “to guarantee the free exercise of any of the Powers in the Federative units” (as per Article 34, IV, of the Federal Constitution) and to the state of defense “to preserve or promptly reestablish public order or social peace threatened by serious and imminent institutional instability” (according to Article 136, IV, of the Federal Constitution), which may evolve into a state of siege (according to Article 137, I, of the Federal Constitution). Notably, among the Powers of the Union, the reference is not to the guarantee of the Armed Forces over each other but explicitly to independence and harmony, as stipulated in Article 2 of the Federal Constitution (Brazil, 2020a).

Furthermore, it is questioned whether the deployment of the Armed Forces in ensuring law and order is limited to extraordinary situations of defense of federative autonomy (intervention - as per Article 34 of the Federal Constitution), the State, and democratic institutions (states of defense and siege - according to Articles 136 and 137 of the Federal Constitution). Doubt arises about the possibility of using the Armed Forces in ordinary public security activities, contrary to the competencies of government spheres, as stipulated in Article 144 of the Federal Constitution (Brazil, 2020a).

Binenbojm (2022) criticizes the resurgence of legal theses proposing a moderating role for the Armed Forces based on Article 142 of the Constitution, arguing that this is inconsistent with constitutional unity, which establishes independence and harmony among the

Powers, dismissing the need for a Moderating Power. He emphasizes that the Armed Forces are not a power of the republic. However, they are subordinate to the President of the Republic and the Minister of Defense, emphasizing the role of the Supreme Federal Court as the guardian of the Constitution and the democratic nature of the Rule of Law. This resurgence of authoritarian views, almost a century after the wartime overcoming of fascism and Nazism through institutional processes, namely elections, highlights that the traits of reactionary populism are not extinguished.

The modern Constitution of the State emerges as an institutional “bridge of transition” between politics and law, preventing the harmful effects that both can exert mutually. This ambiguous feedback relationship means that the constitutional people obtain legitimacy from the constitutional legal system and vice versa (Neves, 2012, p. 76). This position is adopted here to reconcile a historically conflicting relationship, recognizing that if mismanaged, it can destroy liberal democracies based on the principle of pluralism.

### **3 INSTITUTIONAL CRISIS EXACERBATED: THE INTERSECTION WITH THE COVID-19 PANDEMIC.**

In Brazil, the COVID-19 pandemic triggered a constitutional conflict of a federative nature related to the global restriction measures of fundamental rights and guarantees adopted to contain the spread of the virus.

Within the scope of neoconstitutional experience, originating from post-World War II legal dogma, there is a gap regarding the recognition of consolidated practices in doctrine and jurisprudence that allowed for the limitation of human rights – especially freedom of movement – on a large scale, as seen in the pandemic, surpassing the classical constitutional cases of a state of siege, a state of exception, and federal intervention. The pandemic, as a milestone in global history, presented itself as a comprehensive threat, impacting health, politics, and the economy, revealing the lack of preparedness of society for multifaceted crises, culminating in aggravated inequalities, social tensions, and, in Brazil, institutional conflicts, with direct repercus-

sions on the very existence of the democratic rule of law.

In the 21st century, it is possible that the first experiences of massive suppression of fundamental rights and guarantees in countries with a democratic and liberal tradition probably occurred in the United States of America after the terrorist attacks of 2001. In the post-9/11 era, the federal and local governments in the United States capitalized on public fear to expand invasions of privacy, both electronically and through informants and infiltration, not only in international intelligence operations but also in criminal cases and against national political activists. The USA Patriot Act, enacted shortly after the attacks, granted the government the ability to use judicial orders from the United States Foreign Intelligence Court in domestic crimes, authorizing wiretaps in both national and foreign investigations. This led to privacy invasions, increased political surveillance, and detentions without recourse (Chevigny, 2004).

This scenario tested global constitutional doctrine and jurisprudence in the face of large-scale crises with local and international legal implications. The biological risk, with potentially apocalyptic consequences, challenged organized law's ability to offer institutionalized responses that meet citizens' normative expectations.

The clashes led by the former President of the Republic with governors and mayors culminated in the judicialization of the issue, resulting in a decision by the Supreme Federal Court (STF) (2020). This body determined that competence over health issues is concurrent among the Union, states, the Federal District, and municipalities. Thus, all federative entities can adopt normative and administrative measures in COVID-19.

In this scenario, the complexity and multiplicity of actors involved in pandemic management are evident, reflecting the unification and interdependence of decision-making spheres characteristic of a hyper-complex global society. Various factors, such as technological advancements, global integration, and cultural diversity, intensify an intricate web of legal, political, economic, and social elements.

The STF's decision to recognize the autonomy of the various federative entities has promoted decentralization of power, stimulating more adaptable and specific approaches to local realities. This reinforces the idea that the response to the health crisis required a

decentralized understanding, considering regional diversities and the complexity of the Brazilian context.

Despite initially seeming like a legal issue, the reality was much more severe. The lives of thousands and even millions of people were at stake, requiring the government to fulfill its role in coordinating policies to combat the coronavirus, in addition to dealing with those who intentionally disregarded social distancing restrictions due to a wave of denialism that permeated part of Brazilian society.

Sousa (2023) analyzed Law 13.979/2020 in light of the principles of the Universal Declaration on Bioethics and Human Rights, seeking to identify points of convergence and divergence between these two legal frameworks regarding measures taken to address the COVID-19 pandemic. According to the author, the law, as mentioned above, introduces significant innovations in applying measures in the Brazilian legal context to address the COVID-19 pandemic, especially outlined in Article 3. Additionally, she highlights the conformity of the International Health Regulations (IHR) with the Universal Declaration of Human Rights, Syracuse Principles, and Vienna Declaration, documents that Brazil, as a member of the UN, adopts and follows according to the 1988 Constitution.

The Syracuse Principles establish criteria for limitations on fundamental rights, requiring that such restrictions be based on scientific evidence, justified by a legitimate collective interest, and strictly necessary in a democratic society, among other requirements. These principles underpin the limitation of fundamental rights by Law 13.979/2020 during the pandemic, especially concerning public health, allowing the State to prevent severe threats to the population's health (Sousa, 2023).

The effectiveness of legislative efforts to create norms aligned with international standards for restricting fundamental rights encountered obstacles in the Brazilian political context. The lack of federative coordination between the Union, States, and Municipalities during the pandemic resulted in disjointed strategies and actions. Teixeira and Santos (2023) attribute this absence of coordination to authoritarian traits in the personality of the federal Executive Power's leader from 2019 to 2022, evidenced by insubordinate statements, prejudice, and deficit of empathy during the COVID-19 crisis, as illustrated by phrases such as "I am not a gravedigger" and "So what?"

Sorry, what do you want me to do? I am Messiah, but I do not perform miracles.”

The crisis management revealed significant divergences between the president and health ministers, culminating in conflicts with the Executive, Legislative, Judiciary, and state governors. The president’s stance, marked by dismissals, coercive approaches, and threats, generated tensions and highlighted a preference for confrontations over institutional collaboration, contributing to a polarized and ineffective political environment in managing governmental actions during the health crisis.

The former president, adopting a stance devoid of scientific basis, advocated for almost unlimited freedom of movement, arguing that even in public calamity due to the pandemic, everyone would have the fundamental right to disregard social distancing.

The Supreme Federal Court (STF) played a fundamental role in combating the denialism of the former president, making several decisions to contain his resistance to pandemic control measures. In decisions such as ADPF 668 and 669, the STF ordered the government to cease the production and circulation of campaigns against restrictive measures. Additionally, the Court imposed criteria of transparency and publicity on the Ministry of Health, ensuring the maintenance of the disclosure of official data related to COVID-19, and barred undue restrictions on the Access to Information Law, as recorded in the Actions for the Violation of Fundamental Precepts (ADPFs) nº 690, 691, 692, Direct Actions of Unconstitutionality (ADI) nº 6.351, 6.347, and 6.353 (Vieira; Glezer; Barbosa;2022).

Moreover, the STF demanded that the Executive Power adopt active measures to combat COVID-19 in indigenous lands (ADPF 709) and regarding the quilombola population (ADPF 742). Additionally, the Court forced the government to develop vaccination plans (ADPF 754 and 756) and specific pandemic containment measures (ADPF 709). Faced with the insufficiency of the healthcare system in the state of Amazonas, the Ministry of Health was demanded to present a plan of strategies to deal with the crisis in that location (ADPF 756). The authors also highlight that the STF, by preventing denialism from harming vaccination efforts, decreed the obligation of vaccination, establishing rules both for the impossibility of personal



convictions preventing children's vaccination (ADI 6.586 and 6.578) and for the autonomy of states and municipalities to import and distribute vaccines by the federal plan (ADPF 770), including requiring the disclosure of the preference order among priority groups for COVID-19 vaccination (ADPF 754) (Vieira; Glezer; Barbosa, 2022).

The decisions of the STF, as cited, reflect an important role in preserving and strengthening Brazilian democracy in the face of challenges during the analyzed presidential administration (2019-2022). The court acted as a counterbalance, curbing excesses and decisions that contradicted democratic principles and constitutional guarantees. The government's determination to halt advertising campaigns against restrictive measures and the imposition of transparency criteria on the Ministry of Health demonstrate the defense of the right to information and governmental responsibility in times of crisis.

By requiring the development of vaccination plans, specific measures to contain the pandemic, and interventions in indigenous and quilombola territories, the STF contributed to protecting vulnerable groups and promoting effective public health strategies. Additionally, by affirming the mandatory nature of vaccination, even in the face of resistance, the court defended public health over individual interests.

These decisions indicate a maturation of Brazilian democracy by showing the institutional system's ability to react and balance executive actions that could compromise fundamental rights. The STF played a fundamental role in protecting democratic institutions, emphasizing the importance of the judiciary as the guardian of the Constitution and promoter of democratic stability. These challenging experiences strengthen democracy, even if the maturation process is gradual.

#### **4 THE ANTIDEMOCRATIC ACTS OF JANUARY 8, 2023: A BORDERLINE CASE**

Citizens watched with extensive television coverage the antidemocratic acts of vandalism and invasion of the buildings housing the National Congress, the Presidency of the Republic (Palácio

do Planalto), and the Supreme Federal Court (STF) on January 8, 2023.

The March on Rome, which brought fascists to power in Italy in 1922, the Capitol invasion in Washington - USA, in 2021, and the antidemocratic acts that occurred on January 8, 2023, in Brasília - Brazil, have something in common. These events are like episodes that challenge democratic stability, seeking a reversal in expectations regarding strengthening democratic ideals.

The coup attempt in Brasília was the result of years of gestation of reactionary, violent, and obscurantist narratives, indicating concern about the impact of polarized speeches, conspiracy theories, and fake news on the weakening of constitutional democracies.

Reactionary populist leaders, including the former president, employ fake news as a strategy to destabilize the other constitutional powers. A common approach involves discrediting democratic institutions by disseminating false information that undermines public trust in the Judiciary, Legislative, and the press. Unfounded narratives of corruption, bias, and conspiracies are spread to create distrust in the institutions, as mentioned earlier.

Singer (2022) lists a series of events preceding the antidemocratic acts that illustrate actions contrary to democracy perpetrated by the former Chief of the federal Executive Branch, ranging from attempts to interfere with the Judiciary to actions to undermine the autonomy of institutions such as universities and the press, characterizing a series of threats to the Rule of Law in Brazil: a) attempted intervention in the Supreme Court: considering the deployment of troops and the removal of the court's 11 members, replacing them with presidential appointees; b) control of the federal police (PF): evidenced in an April 2020 ministerial meeting, where he projected the shadow of tyranny, indicating his intention to control the PF; c) appointment of university rectors and attacks on universities: broke with the tradition of appointing rectors voted by the university community, choosing rectors aligned with his interests, attacking the autonomy of universities and critical thinking; d) restrictions on freedom of expression and attacks on the press: using social media to disseminate misinformation, slander, and threats; e) offensive to weaken oversight bodies: sought to weaken the scope of oversight bodies, thus facilitat-

ing the capture of political institutions, representing a threat to the democratic system.

The term “fake news,” according to the definition by Sarlet and Siqueira (2020, p. 540), refers to the creation of a false sphere of information to deceive the target public, encompass a wide range of content such as unintentional errors, rumors, conspiracy theories, satire, distortions of reality, false political statements, parodies, manipulated content, among others.

Regarding the antidemocratic acts in Brasília, the dissemination of fake news played a significant role, contributing to the distorted narrative that fueled the movement and promoted misinformation, including regarding possible impunity and the success of the acts. This represents a severe threat to the Rule of Law and democracy.

Furthermore, in the Brazilian case, the reactionary populist leader used fake news to manipulate public opinion, promoting narratives that favored him and caused harm to his opponents. This includes spreading distorted information about policies, events, or adversaries. The exploitation of sensitive issues, the creation of social divisions, and electoral disinformation are also part of the strategies seeking to compromise the integrity of the democratic process. These tactics aim to undermine constitutional checks and balances, consolidate power in the hands of the populist leader, and question the legitimacy of the democratic system as a whole, posing challenges to preserving the fundamental principles of democracy. Combating the spread of fake news and promoting media literacy are essential to strengthening democratic defenses against such threats.

The growth of political polarization, distrust in institutions, attacks on the press, and the spreading of misinformation have contributed to the emergence of authoritarian and reactionary populism. The normalization of lying, the unfounded rejection of electoral results, and the pursuit of moral monopoly in representation threaten electoral integrity and the perpetuation of the democratic rule of law (Levitsky; Ziblatt, 2018).

The increasing political violence in Brazil is driven by the political exploitation of outrage, polarizing misinformation, and a lack of awareness of democratic values. Influential leaders’ normalization

of verbal violence contributes to belligerence, undermining tolerance and conflict resolution through dialogue, which are fundamental elements of the democratic ethos. Populist leaders assert that the only legitimate source of political authority resides in the “people,” promoting the idea of a direct connection with the leader, undermining elected representation, and challenging democratic principles (Levitsky; Ziblatt, 2018).

Preventing antidemocratic acts through law and constitutional jurisdiction involves various approaches and legal instruments. This includes strengthening or creating specific national security and counterterrorism laws, with appropriate penalties for threats to constitutional order, as was done in 2021 during the tenure of the former Chief Executive.

In addition to these legal measures, prevention involves educational initiatives to promote an understanding of democratic principles, the Constitution, and citizens’ rights and responsibilities. Strengthening democratic institutions and ensuring their independence and effectiveness can be just as crucial as assessing and, if necessary, reforming vulnerable institutions or procedures.

## CONCLUSION

Liberal democracies in the West have faced significant challenges, including shocks and erosions, due to globalization. In the Brazilian context, significant events such as the attempted use of the Armed Forces as a “Moderating Power,” the catastrophic management of the federal government during the COVID-19 pandemic, and the antidemocratic acts of January 8, 2023, highlighted a politically ambiguous and crisis-ridden experience, demanding analysis of institutional responses, especially from the Judiciary.

The analysis of institutional responses, focusing on the Judiciary, reveals the crucial role of the Supreme Federal Court (STF) in various scenarios. Faced with threats and Bolsonaro’s resistance to pandemic control measures, the STF made important decisions to ensure transparency and disclosure of official data and to halt undue restrictions on the Access to Information Act. The Court also engaged

in issues concerning specific populations' health, demonstrating its fundamental role in defending democratic principles.

The need to reaffirm constitutional democracy and the importance of the Constitution as a "bridge of transition" between politics and law are highlighted, especially in the face of resurgences of authoritarian theses. The relationship between politics and law must be carefully managed not only to avoid any damage to liberal democracy but also to ground and reaffirm it in the principle of pluralism.

The events of January 8, 2023, clearly demonstrated the need to enforce democracy and reject the short-sighted notion that absolute freedom of expression is an inalienable right. We must resemanticize the understanding of public accountability, especially in the context of the chief of state's role in using public reasoning to promote democracy erosion.

To prevent future anti-democratic acts, it is essential to implement legal instruments and educational initiatives emphasizing the importance of strengthening democratic institutions, promoting transparency, and advancing the understanding of democratic values. This must be done while considering the increased risks of reactionary and violent narratives that threaten democratic stability.

Despite the challenges, the institutional response, particularly from the STF, has demonstrated a solid commitment to defending the Rule of Law. These institutional responses underscore the maturity of Brazilian democracy and highlight citizens' critical role in upholding the principles established by the 1988 Constitution.

It is crucial to acknowledge that facing severe threats has allowed Brazil to mature and strengthen its democracy through this challenging process. However, this can only be achieved by rejecting the idea that absolute freedom of expression is an inalienable right and by holding public officials accountable for their actions. Doing so can build a more robust, resilient democracy for future generations.

## REFERENCES

ALVES, F. A.. Coronavírus e conflito federativo: como a gestão da crise da pandemia afetou a relação entre a união e os entes federados, por meio do populismo autoritário, no contexto constitucional periférico do Brasil. **Confluências | Revista Interdisciplinar de Sociologia e Direito**, v. 23, n. 3, p. 182-203, 1 dez. 2021.

BARROSO, L. R.. Populismo, autoritarismo e resistência democrática: as cortes constitucionais no jogo do poder. **Revista Direito e Práxis**, v. 14, n. 3, p. 1652–1685, jul. 2023.

BINENBOJM, G. As Forças Armadas e a Constituição. **Revista Eletrônica da PGE-RJ**, [S. l.], v. 5, n. 2, 2022. DOI: 10.46818/pge.v5i2.301. Disponível em: <https://revistaelectronica.pge.rj.gov.br/index.php/pge/article/view/301>. Acesso em: 05 jul. 2023.

BRASIL. **Medida cautela na Ação Direta de Inconstitucionalidade 6.457/Distrito Federal**. Supremo Tribunal Federal. Disponível em: <https://www.stf.jus.br/arquivo/cms/noticiaPresidenciaStf/anexo/ADI6457.pdf>. Acesso em: 01 jul. 2023.

BRASIL. **Bolsonaro diz que forças armadas são poder moderador que lhe dão apoio total**. Disponível em: <https://oglobo.globo.com/politica/bolsonaro-diz-que-forcas-armadas-sao-poder-moderador-que-lhe-dao-apoio-total-1-25152878#:~:text=%E2%80%9420 Nas%20m%C3%A3os%20das%20For%C3%A7as%20Armadas,cumprimentos%20a%20oficiais%20Dgenerais%20promovidos>. Acesso em: 08 jul. 2023.

BRASIL. **Bolsonaro volta a se referir as forças armadas como poder moderador**. Disponível em: <https://economia.uol.com.br/noticias/reuters/2021/08/12/bolsonaro-volta-a-se-referir-as-forcas-armadas-como-poder-moderador.htm>. Acesso em: 08 jul. 2023.

BRASIL. **Bolsonaro forças armadas devem apoio total as decisões do presidente**. Disponível em: <https://www.correiobraziliense.com>.

br/politica/2021/08/4943305-bolsonaro-forcas-armadas-devem-apoio-total-as-decisoes-do-presidente.html. Acesso em: 07 jul. 2023

CAMPOS, Francisco. **Diretrizes constitucionais do novo estado brasileiro**. Revista forense: doutrina, legislação e jurisprudência. Imprensa: Bello Horizonte, Imprensa Oficial do Estado de Minas Geraes, 1904-2018; Rio de Janeiro, Empresa Revista Forense, 1936-, Rio de Janeiro, Ed. Forense. Descrição Física: 114 v. ; 24 cm. Referência: v. 35, n. 73, p. 5–22, 229-249, jan./mar., 1938.

CHEVIGNY, P. A repressão nos Estados Unidos após o atentado de 11 de setembro. Sur. **Revista Internacional de Direitos Humanos**, v. 1, n. 1, p. 150–167, 2004.

COMPARATO, B. K.. **Os direitos humanos como antídoto ao fascismo**. Lua Nova: Revista de Cultura e Política, n. 116, p. 9–18, maio 2022.

LEVITSKY, Steven; ZIBLAT, Daniel. **Como as democracias morrem**. Tradução: Renato Aguiar. Rio de Janeiro: Zahar, 2018.

LYNCH, Christian; CASSIMIRO, Paulo Henrique. **O populismo reacionário**. São Paulo: Editora Contracorrente, 2022.

MARTINS, I. G. **Cabe às Forças Armadas moderar os conflitos entre os Poderes**. Consultor Jurídico – ConJur, 28 de maio de 2020. Disponível em: <https://www.conjur.com.br/2020-mai-28/ives-gandra-artigo-142-constituicao-brasileira>. Acesso em: 06 jul. 2023.

MARTINS, I. G. **Harmonia e independência dos poderes?**. Consultor Jurídico – ConJur, 2 de maio de 2020. Disponível em: <https://www.conjur.com.br/2020-mai-02/ives-gandra-harmonia-independencia-poderes>. Acesso em: 06 jul. 2023.

MOUFFE, C. **Pensando a democracia com, e contra, Carl Schmitt**. Disponível em: <https://cadernosdolegislativo.almg.gov.br/ojs/index.php/cadernos-ele/article/download/353/305>. Acesso em: 05 Jul. 2023.

SOUSA, M. E. A. DE .. Bioética e limitações às liberdades em tempos de COVID-19. **Revista Bioética**, v. 31, p. e3011PT, 2023.

SINGER, A.. Regime autocrático e viés fascista: um roteiro exploratório. Lua Nova: **Revista de Cultura e Política**, n. 116, p. 53–82, maio 2022.

TEIXEIRA, C. F.; SANTOS, J. S.. Análise estratégica da atuação do governo federal brasileiro na pandemia de COVID-19: 2020-2021. **Ciência & Saúde Coletiva**, v. 28, n. 5, p. 1277–1286, maio 2023.

VIEIRA, F. S.; SERVO, L. M. S.. COVID-19 e coordenação federativa no Brasil: consequências da dissonância federal para a resposta à pandemia. **Saúde em Debate**, v. 44, n. spe4, p. 100–113, 2020.

VIEIRA, O. V.; GLEZER, R.; BARBOSA, A. L. P.. Supremocracia e infralegalismo autoritário: o comportamento do supremo tribunal federal durante o governo Bolsonaro. **Novos estudos CEBRAP**, v. 41, n. 3, p. 591–605, set. 2022.

SARLET, I. W.; SIQUEIRA, A. B. Liberdade de expressão e seus limites numa democracia: o caso das assim chamadas “fake news” nas redes sociais em período eleitoral no Brasil. **Revista Estudos Institucionais**, v. 6, n. 2, p. 534-578, maio/ago. 2020, p. 540.



ISBN: 978-950-34-2426-1

CHAPTER

# 21

## THE PERENNIAL EMERGENCY OF COVID-19 IN BRAZILIAN PRISON: HOW DOES IT IMPACT THE OVERCROWDING PRISON IN BRAZIL?

Antonio Henrique Graciano Suxbergerr

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter21>

## THE PERENNIAL EMERGENCY OF COVID-19 IN BRAZILIAN PRISON: HOW DOES IT IMPACT THE OVERCROWDING PRISON IN BRAZIL?

*Antonio Henrique Graciano Suxberger*

**Abstract:** The COVID-19 pandemic has not only exacerbated existing challenges within the prison system but has also highlighted the lack of a comprehensive public policy approach to address these issues in Brazil. Despite the recognition since 2015 that the prison system represents an unconstitutional factual situation, there has been a failure to adopt a new perspective or posture that views the prison crisis as a public policy problem requiring systemic solutions. The perpetuation of the prison emergency, exacerbated by the pandemic, underscores the urgency of reforming the approach to overcrowding and other systemic issues within the prison system. Instead of implementing meaningful policy changes, the response has largely been limited to temporary measures such as early releases or frustration of valid convictions, which fail to address the root causes of the crisis. Moving forward, it is imperative for policymakers and stakeholders to adopt a more holistic approach that incorporates key concepts of public policy, such as accountability and institutional analysis, into efforts to reform the prison system. By recognizing the systemic nature of the challenges facing the prison system and implementing evidence-based policies, Brazil can begin to address the underlying issues and work towards sustainable solutions that uphold human rights and promote public safety.

**Keywords:** COVID-19; Prison system; Public policy; Overcrowding; Reform.

### 1 INTRODUCTION

As of December 2023, the population deprived of liberty in the Brazilian state numbered 644,316 individuals incarcerated, with 175,279 held in provisional detention pending resolution of criminal charges (BRASIL, 2024a, p. 12 and 19). This places Brazil around the 15th position globally in terms of incarceration rate, with

approximately 390 prisoners per 100,000 inhabitants (INSTITUTE FOR CRIMINAL POLICY RESEARCH (ICPR); BIRBECK UNIVERSITY OF LONDON, 2024). However, the reliability of prison-related data itself poses a significant challenge.

The prison issue is of great interest to legal practitioners as it directly reflects the functioning of the criminal justice system. Moreover, the discourse legitimizing penal intervention is closely tied to the purposes assigned to imprisonment. Yet, beyond legal perspectives, the prison conundrum constitutes a public problem necessitating a broader examination of its inclusion in the current political agenda and the challenges in bringing attention to this vital humanitarian issue.

In this article, we will scrutinize public policy approaches, delving into the concepts of “punitivism” and its methodological implications among legal scholars. Additionally, we will explore the imperative of integrating accountability into discussions surrounding the prison crisis, and finally, we will outline the implications of this discourse on the institutional framework of the justice system.

The lack of a comprehensive public policy approach is starkly illustrated by the impact of the COVID-19 pandemic on the prison system. This article aims to elucidate how the absence of such an approach has perpetuated the pandemic’s emergency status, with lasting repercussions.

## **2 IS THERE A METHODOLOGICAL BIAS AMONG JURISTS IN DEALING WITH THE PRISON ISSUE?**

The sheer scale of Brazil’s prison system underscores a penal control policy steeped in undeniable “punitiveness”. The exponential growth in prison numbers, particularly over the past two decades, might suggest an unequivocal surge in state punitiveness. However, understanding the nuanced nature of this punitiveness requires deeper analysis.

Punitiveness, as cautioned by Roger Matthews (2014, p. 22), is a widely acknowledged concept in criminological literature, indicating a prevalence of punitive mentalities in recent crime control policies. Yet,

the multifaceted nature of punitiveness complicates its straightforward interpretation solely based on escalating incarceration rates.

Understanding the phenomenon of mass incarceration necessitates considering the theoretical sophistication surrounding the state's penal managerialism and its actuarial dynamics (DIETER, 2013). Punitiveness intertwines with other dominant trends in penal policy, often embodying conflicting biases (MATTHEWS, 2014, p. 24, 33).

The methodological bias observed among jurists, who frequently employ data as arguments while disregarding inferential rules, engenders significant distortions perception and understanding of public issues at large, including the prison crisis.

Empirical research, as elucidated by Lee Epstein and Gary King, relies on observations to derive evidence about the world, without hierarchical distinctions between quantitative and qualitative evidence (EPSTEIN; KING, 2002, p. 3). This is particularly pertinent in analysing Brazil's prison issue, where staggering statistics have engendered a normative inertia concerning institutional adjustments within the criminal justice system. It's as if any proposed reform or structural change must halt the alarming rise in incarceration rates, leading to system immobilization.

However, the solution lies in the opposite direction. The "more of the same" approach perpetuates the paradox of an ineffective justice system culpable for mass incarceration. Ideological, normative, and political impediments hinder a holistic evaluation of the factors influencing crime dynamics, particularly the institutional frameworks materializing the state's punitive machinery.

The inaccurate apprehension of reality, stemming from the often-polemical use of data, as highlighted by Epstein and King, exacerbates the problem. Given that legal studies wield considerable influence over public policies, the methodological shortcomings in legal discourse reverberate into flawed policy modelling, prone to failure.

The relationship between legal knowledge production and public policy is contentious. Jurists often overlook the study of public policies, and when they do engage, it's with limited and fragile methodological tools (COUTINHO, 2013). Thus, a nuanced and ambivalent relationship emerges between legal theory and its practical

application in public policies, characterized by both proximity and detachment from social interactions.

Law assumes varied roles and dimensions in shaping public interest and governmental actions. Concerning state penal policy, especially its ramifications on human rights, the law acts as an institution, a tool, or a conduit for demands, influencing substantive, structural, instrumental, or participatory dimensions (COUTINHO, 2013).

Therefore, it is the positivized law that delineates the state's criminal policy options, outlining duties regarding criminal intervention and the operational framework of imprisonment within a legal system. However, the efficacy of the criminal justice system, like law enforcement, is non-linear and unequal, mirroring the systemic disparities inherent in incarceration policies.

Thus, positivized law, in its deontological and prescriptive nature, establishes the political-criminal options of the state, outlining the duty to execute criminal interventions, particularly concerning the operation of imprisonment within a given legal framework. Law, functioning as an institutional arrangement, delineates competencies and defines the coordination among inter-institutional actors, both public and private, in a structuring dimension that aligns the state's penal policy with the mechanisms of secondary criminalization. This entails understanding why certain facts are prioritized in investigations over others, the rationale behind criminal prosecutions resulting in convictions, and which of these convictions are actually enforced. Given the non-linear and inequitable nature of the criminal justice system's operations, expecting a different outcome in incarceration policy without addressing the actions of the institutional actors responsible for implementing the criminal justice system is unrealistic.

The instrumental dimension of law in shaping public policies refers to the array of possibilities or alternatives for implementing these policies. It emphasizes the role of law as a "toolbox," providing diverse instruments and avenues for realizing policy objectives (RIBEIRO, 2016, p. 214). Law plays a pivotal role in presenting effective institutional models for public action that materialize state policies. Legal instrumentalism, therefore, prioritizes the strategic aspect of law and underscores its role in the diagnosis and prognosis process, which

must be continuous and complementary to enhance the design and integration of legal institutions for effective functioning.

It is within this dimension that the Brazilian criminal justice system has unfortunately fallen short in its dual mission to serve as both a guarantor of rights and an instrument of state action to combat crime. This perception is compounded by the fact that, from a participatory standpoint, the prison issue receives scant attention on the public agenda. This can be attributed to the process of government agenda-setting, where the actions of those receiving public policies play a crucial role in determining which public issues garner governmental attention. Unfortunately, consideration for the incarcerated population in Brazil is minimal, if not entirely absent.

The lack of political clout among those impacted by prison policies to shape an agenda addressing Brazil's prison problem stems from the inherent concealment of social control. This phenomenon, which encompasses penal control, contributes to rendering the justice system's typical "clients" invisible, particularly in the context of incarceration. Consequently, despite their heightened visibility due to evident social conflicts, it is the pervasive social inequalities in Brazilian society that exacerbate the invisibility of the prison issue, adding a layer of cruelty to the situation (SUXBERGER, 2010, p. 81).

In the forthcoming section, we will delve into the participatory aspect of the law and its ramifications on the democratic essence that the prison issue must embody as a public concern.

### **3 THE NEED FOR ACCOUNTABILITY WHEN DEALING WITH THE PRISON ISSUE: THE DEMOCRATIC DEFICIT**

The current state of Brazilian prisons underscores the glaringly low level of involvement of the law in shaping public policies concerning criminal matters. This is a crucial point for comprehending the issue and exploring potential remedies: it is the participatory aspect of the law, in its interaction with public policies, that delineates the stakeholders potentially engaged in devising, executing, and assessing these policies. When the law fulfils this participatory role, it

ensures representation and facilitates social oversight of public policy. However, when we juxtapose this understanding with the prison crisis, it becomes apparent that the law has made minimal efforts to ensure accountability and mobilization for addressing and transforming the underlying context of the prison issue in Brazil.

The concept of accountability is closely intertwined with transparency and the execution of governmental actions. Transparency serves to mitigate the propagation of individual or exclusive interests within the public sphere, while also encouraging public engagement in the democratic process. This transparency enables the scrutiny of abuses committed in the exercise of public duties and diminishes information asymmetries between the public and private realms. The lack of transparency in prison data exemplifies these concerns. Reducing information asymmetries not only minimizes managerial shortcomings but also enhances oversight of the public sector. Therefore, transparency mechanisms augment the accountability of approaches to public issues (STIGLITZ, 1999).

The preference for retaining the English term “accountability,” rather than translating it into Portuguese, is justified by the complexity of ideas encapsulated within the concept. Translations such as “responsabilization”, commonly suggested by dictionaries, would inadequately convey the multifaceted nature of accountability. Brazil’s institutional evolution demonstrates persistent conservative forces and entrenched cultural norms, hindering our capacity to adapt and respond to evolving realities. This inherent challenge underscores the difficulty in fostering a genuine culture of accountability.

The challenges confronting Brazilian democracy encompass the imperative to enhance social oversight over state actions and its capacity to address citizen demands. Consequently, accountability emerges as a pivotal factor influencing trust in institutions and the level of political engagement in public governance. Numerous studies, particularly following the enactment of the 1988 Constitution and the consolidation of Brazil’s democratic transition, have highlighted the nation’s persistent accountability deficit (KINZO, 2004; MOISÉS, 2010; MOISÉS; MENEGUELLO, 2013).

The concept of accountability is intrinsically linked to the quality of democracy within a given context. Diamond and Morlino

(2004) delineate a typology of six dimensions enabling the assessment of democracy's quality. The initial three dimensions pertain to procedural aspects, such as the rule of law, ensuring citizens' equality before the law, and vertical and horizontal accountability, encompassing public officials' electoral and institutional accountability, respectively. The subsequent dimensions focus on the content of democracy, including citizens' freedoms and political, social, and economic equality, as well as the outcomes dimension, emphasizing responsiveness to the desires of citizens and civil society at large.

DIMENSIONS TO ANALYSE THE QUALITY OF A DEMOCRACY	
Procedural dimensions	1. Rule of Law
	2. <i>Accountability</i> vertical or electoral
	3. <i>Accountability</i> horizontal or institutional
Content dimensions	4. Citizens' freedom
	5. Political, social, and economic equality
Outcome dimensions	6. Responsiveness

Chart based on Larry Diamond and Leonardo Orlyno (2004)

These dimensions indeed offer a lens through which to evaluate the democratic health of a given political context, leading to the assertion that Brazil's prison issue exhibits an authoritarian bias and lacks democratic depth. This assertion is substantiated by the data highlighting the demographics of the incarcerated population, as outlined in the preceding discussion, revealing a disproportionate targeting of young, black, and undereducated individuals.

The asymmetric and dystopian operation of the criminal justice system underscores a selectivity that is neither egalitarian nor impartial, but rather hierarchical along lines of age, race, and socioeconomic status. Examination of the types of crimes resulting in most arrests in Brazil reveals a stark dissonance between discourse surrounding urban violence — undoubtedly a grave concern, given the country's staggering homicide rates — and the efficacy of the criminal justice system's response through incarceration.

This data asymmetry underscores a low quality of Brazilian democracy when assessed through the lenses of the rule of law and citizen



freedoms, particularly in relation to the criminal justice system and its handling of the prison issue. Furthermore, horizontal accountability suffers due to inadequacies in oversight bodies, which have failed to adequately address the illegality and substandard conditions prevalent in Brazilian prisons, characterized by overcrowding and inadequate facilities.

Rui Cunha Martins' insight rings true: "at least in a democratic-constitutional environment, the process — be it the criminal process — must correspond to what the rule of law is" (MARTINS, 2013a, p. 3). The judicial process serves as a microcosm reflecting the essence of the rule of law, emphasizing the imperative to comprehend contemporary political regimes. In this regard, the convergence of this assessment of Brazil's democratic quality with the metrics of its criminal justice system is noteworthy.

When Martins asserts that the process serves as a microcosm of the rule of law, he emphasizes how the instruments employed by the rule of law impact the procedural system — whether viewed hierarchically, from top to bottom, or laterally, considering the management of connectivity (MARTINS, 2013a, p. 4).

It's crucial to recognize that the quality of institutional action cannot rely solely on the political capacity of recipients of public policies to shape the agenda for a public problem. Such a perspective might lead to resignation regarding the invisibility of the prison issue within Brazil's political landscape. After all, what political mobilization capacity would the Brazilian prison population possess to influence politicians, administrators, and actors within the criminal justice system as a whole? Certainly, the necessity for visibility of the prison issue within the realm of public policies cannot solely result from the political mobilization capacity of those affected by mass incarceration.

Support for the democratic system encompasses various dimensions, reflecting citizens' differing capacities to instigate institutional action. These dimensions of political support for public policy actions should not be conflated; rather, they can be understood as either diffuse or specific (EASTON, 1968). Specific support pertains to citizens' satisfaction with governmental and political leadership performance, whereas diffuse support concerns their overall attitude towards the political system, regardless of individual performance. In

issues involving institutional arrangements not strictly derived from the political-electoral sphere, such as those closely affecting the criminal justice system, support for state actions stems more from experiences with institutional processes. This assessment encompasses perceptions of institutional performance results, advancements in social and economic spheres, and fulfilment of normative missions assigned by society.

People learn to discern between different dimensions involved in this process, differentiating between the transient actions of governments, the enduring functions of institutions, and their alignment with the political regime. Thus, various dimensions exist through which citizens perceive diverse qualities of institutional action.

If the prison issue fails to attract adherence to institutional action due to reasons related to support for the political community, other reasons for supporting institutional action necessitate visibility of this problem in Brazil. Apart from support for the political community, levels of support also pertain to democracy as an ideal, satisfaction with practical democracy, democratic institutions per se, and specific governments and political actors.

This breakdown of support for institutional action enables empirical exploration of how individuals experience these different dimensions unequally, affirming that political support at one level implies trust or support at others.

Regarding prisons specifically, what does the law present as a substantive dimension, i.e., the objectives of state action? Considering democracy as an ideal entails that the criminal justice system aspires to an egalitarian and non-hierarchical ideal. However, the profound inequality evident in prison demographics contradicts this aspiration, shedding light on Brazil's socioeconomic disparities. It's untenable to reconcile a qualitative assessment of democracy with such crude and undesirable selectivity.

The discordant conflict between calls for harsher penal responses and the stark reality depicted by prison data — indicating excessive and inadequate punishment of regular clientele — suggests dissatisfaction with the current state of affairs even from the perspective of institutional action satisfaction.

Regarding institutions per se, have the legally established safeguards fulfilled their missions satisfactorily? Have government

managers of the prison issue undertaken structuring actions to address the problem adequately? The unequivocal answer to these questions appears negative, as we will discuss in the following section.

## 4 WHAT ABOUT THE INSTITUTIONS?

Viewing the state's inertia towards the prison issue solely because of low political support directed at the incarcerated contradicts typologies explaining interaction models between actors in public policies.

The first model, the principal-agent relationship, depicts citizens as principals and elected politicians as agents. These politicians, in turn, are principals concerning their political appointees, who act as agents to execute political choices. These appointees are then principals in relation to the bureaucratic apparatus, the agent tasked with implementing state actions (SECCHI, 2013, p. 117-118). Informational asymmetry within this model can lead to deviation in institutional action, either through misguided appointments or moral hazard, where agents may diverge from or deceive principals. Chain accountability mechanisms mitigate these risks, although informational asymmetry isn't always negative. Normative frameworks can ensure that even politicians elected on a populist or punitive platform don't automatically enact actions contrary to humanistic concerns regarding the prison issue.

The second model involves public policy networks, which entail informal interactions among public and private actors involved in policy formulation and implementation (SECCHI, 2013, p. 119). Civil society organizations advocating for human rights and international pressure to address the issue contribute to shaping the political agenda and promoting alternatives. These networks include public policy communities, thematic networks, epistemic communities, social media networks, and advocacy coalitions (ENGUÉLÉGUÉLÉ, 2018; JENKINS-SMITH; NOHRSTEDT, 2014).

Other models — elitist, pluralist, and “iron triangles” — also demonstrate that institutional action, driven by political or bureaucratic actors, aligns with the substantive dimension of the law.

The reasons justifying state penal control also necessitate structuring actions to address the prison issue.

The conflicting relationship between the functioning of the criminal justice system and external expectations highlights the need to reject claims of neutrality within the legal framework. Criteria governing its operation must be identified, demarcated, and decided upon.

Martins emphasizes that the accusatory model adopted in domestic law should not simply overlay the procedural system. Instead, this model should be understood as an organic translation of democracy itself. This understanding authorizes criminal justice system operators to constantly question whether institutional practices align with the democratic-constitutional framework governing the system (MARTINS, 2013b, p. 74).

## **5 THE COVID-19 PANDEMIC AS AN EXAMPLE: A PERENNIAL EMERGENCY**

The COVID-19 pandemic has exacerbated longstanding issues within Brazil's prison system, particularly regarding overcrowding and inadequate facilities. The divergence in guidelines between the Federal Executive Branch and the Judiciary, coupled with the pandemic-induced emergency, has further highlighted the systemic deficiencies.

In 2020, there was a notable 10.93% drop in Brazil's prison population, likely influenced by efforts to reduce overcrowding and mitigate the spread of the virus. However, subsequent years saw fluctuations, with a 1.02% increase in 2021, followed by a 4.54% decrease in 2022, and a significant 0.33% increase in 2023 (BRASIL, 2024b, panel 6). A similar trend is observed in the number of pre-trial detainees, albeit with slight annual decreases from 2019 to 2023 (BRAZIL, 2024b, panel 9).

Despite these fluctuations, the chronic shortage of prison vacancies persists. The deficit remains alarming, with figures showing consistent shortages throughout the pandemic. For example, in 2020, the shortage increased from 242,933 to 262,531 vacancies, indicating closures and reduced capacity due to the pandemic. Similarly,

shortages persisted in subsequent years, albeit with slight fluctuations (BRASIL, 2024b, panel 12).

Furthermore, the disparities in imprisonment rates among Brazilian states underscore the unequal administration of justice. While some states have relatively low imprisonment rates compared to the national average, others exhibit alarmingly high rates, exacerbating existing inequalities in the criminal justice system.

The government's response to the crisis has largely been limited to measures such as early release or reduced use of custodial sentences. While these measures may alleviate overcrowding to some extent, they fail to address the systemic issues underlying mass incarceration. A comprehensive public policy approach is necessary to address the multifaceted challenges facing Brazil's prison system.

## 6 CONCLUSION

The lack of visibility surrounding the prison issue in Brazil is symptomatic of broader deficiencies within the public policy cycle. While electoral dynamics may not necessarily prioritize this issue, its importance stems from other aspects that define the democratic quality of the Brazilian context. Addressing the prison crisis requires not only structural reforms within the prison system but also systemic changes that impact the processes of criminalization and prioritize accountability measures beyond incarceration.

The political agenda concerning criminal issues often overlooks the true scope of cases within the criminal justice system. Instead, it tends to focus on high-profile cases that do not represent most individuals affected by the system. This disconnect hinders the effective pursuit of solutions and improvements within the political-criminal system.

In response to the COVID-19 pandemic, the Brazilian state has implemented simplistic measures, such as releasing incarcerated individuals, as a temporary solution. However, these measures fail to address the underlying systemic issues and have transformed the pandemic emergency into a persistent crisis.

Moving forward, addressing the prison crisis requires a comprehensive approach that considers the complexities of penal

control agencies and prioritizes holistic reforms within the criminal justice system. By reorienting the political agenda to focus on systemic improvements rather than short-term solutions, Brazil can begin to address the root causes of its prison crisis and work towards lasting change.

## REFERENCES

BRASIL. Ministério da Justiça e Segurança Pública. Secretaria Nacional de Políticas Penais (SENAPPEN). *Relatório de Informações penais (RELIPEN): 15º Ciclo SISDEPEN - 2º semestre de 2023 [recurso eletrônico]*. Brasília: SENAPPEN - MJSP, 2024a. Available at: <https://www.gov.br/senappen/pt-br/servicos/sisdepen/relatorios/relipen/relipen-2-semestre-de-2023.pdf>.

BRASIL. Ministério da Justiça e Segurança Pública. Secretaria Nacional de Políticas Penais (SENAPPEN). *SISDEPEN - Dados Estatísticos do Sistema Penitenciário. Business Intelligence. 15º ciclo de coleta (dados obtidos entre julho e dezembro de 2023, abr. 2024b*. Available at: <https://app.powerbi.com/view?r=eyJrIjojMDMwODBhZTctMW-E2Mi00MTc3LTlhYjMtZjE0NzA0OWRmNTVhIiwidCI6ImViMDkwNDIwLTQ0NGMtNDNmNy05MWYyLTRiOGRhNmJmZThlMSJ9>. Accessed at: 30 abr. 2024.

COUTINHO, Diogo. O direito nas políticas públicas. In: MARQUES, Eduardo; FARIA, Carlos Aurélio Pimenta de (Org.). *Política Pública como campo disciplinar*. São Paulo: UNESP, 2013, p. 181–200.

DIAMONG, Larry; MORLINO, Leonardo. The quality of democracy: an overview. *Journal of Democracy*, v. 15, n. 4, p. 20–31, oct. 2004.

DIETER, Maurício. *Política Criminal Atuarial: A Criminologia do Fim da História*. Rio de Janeiro: Revan, 2013.

EASTON, D. *Uma teoria de análise política*. Trad. Gilberto Velho. Rio de Janeiro: Zahar Editor, 1968.

ENGUÉLÉGUÉLÉ, Stéphane Bobé. As comunidades epistêmicas penais e a produção legislativa em matéria criminal. *Revista Brasileira de Políticas Públicas*, v. 8, n. 2, p. 960–978, 26 sept. 2018.

EPSTEIN, Lee; KING, Gary. The Rules of Inference. *University of Chicago Law Review*, v. 69, n. 1, 1 jan. 2002. Available at: <https://chicagounbound.uchicago.edu/uclrev/vol69/iss1/1>.

INSTITUTE FOR CRIMINAL POLICY RESEARCH (ICPR); BIRBECK UNIVERSITY OF LONDON. *World Prison Brief data. Highest to Lowest. (Acesso on-line)*. Londres: Birbeck University of London, 2019. Available at: <http://www.prisonstudies.org/highest-to-lowest/prison-population-total>. Accessed at: 20 mar. 2019.

INSTITUTO DE PESQUISA ECONÔMICA APLICADA (IPEA); FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA (FBSP). Atlas da Violência 2023- Infográfico. Infográfico apresentado em Apresentação do Atlas da Violência 2018. Rio de Janeiro, 5 dec. 2023. Available at: <https://www.ipea.gov.br/atlasviolencia/publicacoes/274/atlas-2023-em-infograficos>. Accessed at: 30 abr. 2024.

JENKINS-SMITH, Hank; NOHRSTEDT, C. The advocacy coalition framework: foundations, evolution and ongoing research. In: SABATIER, P.; WEIBLE, C. (Org.). *Theories of the policy process*. 2. ed. Boulder (CO): Westview Press, 2014. p. 183–224.

KINZO, Maria D’Alva G. Partidos, eleições e democracia no Brasil pós-1985. *Revista Brasileira de Ciências Sociais*, v. 19, n. 54, p. 23–40, fev. 2004.

MARTINS, Rui Cunha. *A Hora dos Cadáveres Adiados*. 1. ed. São Paulo: Atlas, 2013a.

MARTINS, Rui Cunha. *O ponto cego do Direito: the brazilian lessons*. São Paulo: Atlas, 2013b.

MATTHEWS, Roger. O mito da punitividade revisitado. In: MACHADO, BRUNO AMARAL (Org.). *Justiça Criminal e Democracia - Vol. II*. São Paulo: Marcial Pons; FESMPDFT, 2014, p. 25–51.



MOISÉS, J. A. *Democracia e confiança: por que os cidadãos desconfiam das instituições públicas?* São Paulo: Editora da Universidade de São Paulo, 2010.

MOISÉS, J. A.; MENEGUELLO, R. (Org.). *A desconfiança política e seus impactos na qualidade da democracia*. São Paulo: Editora da Universidade de São Paulo, 2013.

MOISÉS, José Álvaro; CARNEIRO, Gabriela Piquet. Democracia, desconfiança política e insatisfação com o regime: o caso do Brasil. *Opinião Pública*, v. 14, n. 1, p. 1–42, jun. 2008.

PINHO, José Antonio Gomes De; SACRAMENTO, Ana Rita Silva. Accountability: já podemos traduzi-la para o português? *Revista de Administração Pública*, v. 43, n. 6, p. 1343–1368, dec. 2009.

RIBEIRO, Leonardo Coelho. O direito administrativo como caixa de ferramentas e suas estratégias. *Revista de Direito Administrativo*, v. 272, p. 209–249, 1 nov. 2016.

SECCHI, Leonardo. *Políticas Públicas: conceitos, esquemas de análise, casos práticos*. 2. ed. São Paulo: Cengage Learning, 2013.

STIGLITZ, J. *On liberty, the right to know, and public discourse: the role of transparency in public life*. Oxford: Oxford Amnesty Lectures, 1999.

SUXBERGER, Antonio Henrique Graciano. *Ministério Público e política criminal: uma segurança pública compromissada com os direitos humanos*. Curitiba: Juruá, 2010.

SUXBERGER, Antonio Henrique Graciano. Repensando os desafios da dogmática jurídico-penal a partir da teoria crítica dos direitos humanos. *Revista de Estudos Criminais*, v. 61, p. 99–114, 2016.

ISBN: 978-950-34-2426-1

CHAPTER

# 22

## THE APPLICATION OF THE BRAINSTORMING TECHNIQUE IN LEGAL EDUCATION IN THE CONTEXT OF THE COVID-19 PANDEMIC

Cristina Rezende Eliezer

<https://doi.org/10.55658/gpcds-criticaldialoguescovid19-chapter22>

# THE APPLICATION OF THE *BRAINSTORMING* TECHNIQUE IN LEGAL EDUCATION IN THE CONTEXT OF THE COVID-19 PANDEMIC<sup>1</sup>

*Cristina Rezende Eliezer*

**Abstract:** The COVID-19 pandemic has significantly impacted the educational sector, compelling teachers, and students to adapt to remote teaching. In this context, the brainstorming technique has gained prominence as a tool to stimulate creativity and promote conjectures for the resolution of legal problems in law school. This chapter aims to explore the possibilities of applying the brainstorming technique in the legal education, highlighting its potential to enhance the development of creative processes. Through bibliographic and documentary research, the study examines the dimensions of creativity in the teaching and learning process during the pandemic and the specific application of brainstorming in legal education. The technique is known for enhancing the emergence of ideas, problematization, and systematization, privileging the construction of scientific knowledge by valorizing the previous knowledge of all group members. By fostering a reflection on the (re)significance of legal language and focusing on interdisciplinary methodological techniques, this chapter seeks to contribute to a more effective interaction between teachers and students, enabling the structuring of ideas that solve legal demands through the exercise of creativity. The study concludes that brainstorming is a valuable tool for law school education, particularly in the context of the COVID-19 pandemic, as it promotes creative thinking and critical thinking skills essential for addressing the complex social relations and legal challenges that arise in times of crisis.

**Keywords:** Brainstorming; Law school; COVID-19 pandemic; Remote teaching; Creativity; Collaborative learning.

---

<sup>1</sup> Translated by Cássius Guimarães Chai.

## 1 INTRODUCTION

On January 30, 2020, through the Resolution of the State Council of Education of Rio de Janeiro No. 376/2020, the World Health Organization (WHO) declared that the outbreak of the disease caused by the coronavirus (COVID-19) constituted a Public Health Emergency of International Concern; that is, it consisted of the highest level of alert, as provided for in the International Health Regulations. Therefore, on March 11, 2020, Covid-19 was characterized by the WHO as a pandemic<sup>2</sup>.

In this sense, Lyra, and Soares (2021) argued that the pandemic scenario compulsorily interrupted students' presence in the school space because they were subjected to educational processes transferred from formal institutions (public or private) to the home environment in a collaborative system between school and family.

Given this scenario, a remote teaching regime was implemented to avoid interrupting educational processes. Consequently, even during emergencies, educational tools must be used, particularly in Higher Education. Some well-known methods such as video lessons and conferences are useful. The incidence of synchronous and asynchronous classes has also increased. However, especially in the Law School, there is a need to think of a technique that simultaneously stimulates creativity while promoting conjectures for the (re)solution of legal problems, which, notably, emerge from social relations.

Therefore, this chapter aims to promote dialogue about the *brainstorming* tool, based on its possibilities of application in legal training and education approaches, to contribute to a theoretical and practical articulation around the social perspective of language, highlighting, more specifically, creativity as a tool capable of stimulating curiosity, the enhancement of prior knowledge, and the consolidation of the teaching and learning process, as well as for the resolution of legal problems.

Legal science is permeated by interpretative challenges, gaps, and sometimes exacerbated formalism, which can hinder communication and transmission of ideas. There are linguistic-

---

<sup>2</sup> Available at: <https://www legisweb.com.br/legislacao/?id=391613>. Accessed on: May 11, 2024.

discursive specificities that, when presented in educational spaces, can distance subjects in the learning process and inhibit participation in discussions that seek to solve the issues (pro)posed in the classroom, especially considering that disputes emerge from complex social relations and demand reasonable resolution for the parties involved.

Given this scenario, the following question arises: What are the possibilities of using the *brainstorming* tool in legal education and training? Is this technique capable of enhancing the development of creative processes?

According to Carvalho (1999), *brainstorming* is currently becoming increasingly important, given that it enhances the emergence of ideas, problematization, and systematization, since it has the characteristic of privileging the construction of scientific knowledge with the valorization of the previous knowledge of all members of the group. It takes the essential point of learning experiences, expressed as opinions, to build grounded knowledge. Therefore, the usefulness of this technique is related to each subject's search for knowledge, based on what is already known.

Bibliographic and documentary research has also been conducted. The chapter was divided into two sections: a) the COVID-19 pandemic and the dimensions of creativity in the teaching and learning process, and b) the possibilities of applying the *brainstorming* technique in legal education and training. By dimensioning a reflection on the (re) significance of legal language with a focus on interdisciplinary methodological techniques, it is expected to contribute to a more effective interaction between interlocutors (teacher and student), enabling the structuring of ideas that solve legal demands through the exercise of creativity.

## **2 THE COVID-19 PANDEMIC AND THE DIMENSIONS OF CREATIVITY IN THE TEACHING AND LEARNING PROCESS.**

Creativity in the educational field is an efficient mechanism for the construction of knowledge and integral formation of students in multiple spheres. The term creativity, according to Brito, Vanzin,

and Ulbricht (2009), aims to describe certain behaviors of the subject or social group and is usually associated with artistic expression and with technological innovation. Thus, the analysis of creativity allows, among other issues, an understanding of the factors that influence the emergence (and consolidation) of creative behaviors.

With the incidence of the COVID-19 pandemic, in addition to the technological resources already available, such as Distance Learning (DE), new possibilities need to be instituted, including creativity gained space; neither teachers nor students were specifically prepared for this emergency. At that point,

The COVID-19 pandemic has changed the world's daily lives, owing to essential sanitary measures and social isolation. Therefore, all sectors are affected by industry, commerce, agriculture, and services. Education is one of the most committed sectors in the world. Teachers were tasked with educating students about inequalities in their access to information technology. Thus, teachers and students had to adapt to a new form of teaching: remote. Thus, emergency remote teaching was a possibility that educational institutions used to repair a crisis situation; however, it should not be compared with Distance Learning (DE). EaD is an educational modality in which didactic-pedagogical mediation in teaching and learning processes occurs using means and technologies of information and communication, with students and teachers developing educational activities at different places or times. Teachers faced remote classes, which proved to be less productive over time than face-to-face classes, requiring active teaching and learning strategies that required significant changes in teaching practices. These changes in education and how teachers teach classes were a paradigm shift, as teachers had to quickly adapt and teach content from face-to-face

classes to online platforms using information and communication technology (ICT). It was found that, whether they wanted to or not, teachers were included in the context of the crisis, compelling them to invest in the challenges of developing interaction, education, communication, and technological skills. (Winters *et al.*, 2022, p. 2)

Thus, we note that the use of ICTs was of immense value for the continuation of educational processes during the COVID-19 pandemic. Thus, *brainstorming*, as one such technique, has gained notoriety. According to Parolin (2001), it is relevant to highlight that this technique is one of the tools that enhance the creative process. First, it is important to contextualize creativity and understand its associated factors so that it is possible to understand the entire process from a broader, clearer, and more targeted perspective.

Thus, the concept of creativity is intuitive. It is common to hear when we are asked to conduct an activity for which we do not have the means available to carry it out, to “use creativity.” Sometimes, we also tell people to be “creative” to perform a certain task. The popularity of the theme induces us to interpret it in a commonsense context. However, to achieve the objectives of this study, a more technical understanding is necessary, starting from the origin of the meaning. Creativity is related to “creating”; therefore, it requires creative activity. Meantime

To create forms. It is to be able to give form to something new, regardless of the field of activity. In this “new,” it is a matter of new coherences established for the human mind, phenomena related in a new way, and committed in updated terms (OSTROWER, 1977, p. 09).

At this point, discussing creativity inevitably involves innovation. Creativity is, therefore, an essential instrument for promoting innovation in educational environments. Regarding this dialogue, Filho and Barros (2018) assert that a great characteristic of contemporary culture is that creativity and its intrinsic relationship

with innovation have risen to the *status* of ethical foundations. They argue that neither the ideas of innovation nor creativity are new. This approximation occurred because of a confluence of factors that drove the formation of a new dynamic of social, cultural, and economic processes and models. All these phenomena are similar and unequivocally complement each other. In this sense:

Experts say that creativity is one of the most accessible skills to find in people's behavior in organizations, referred to as creative behavior, or doing better than what was already being done. This concept differs from that of innovation; that is, the professional who seeks paths not yet traveled, new products and processes, market opportunities, wants to create technologies, invent, or reinvent the wheel, and patent products and/or processes. [...] Creativity and innovation are complementary skills. (FELDMAN, RUTHES, CUNHA, 2008) 240)

This concept is in line with the need to (re) rethink strategies that enable the development of creativity since it is part of the social dynamics itself. That said, educational spaces, considered as environments in which training takes place, must be prepared to incorporate the value of contemporary culture into student activities. Although there are nuances in theoretical concerns, especially in the more recent scenario, dealing with creative potential is always a demand in the educational context.

Thus, the course of the creative process is related to the interaction between the individual and environment. Therefore, Ostrower (1977) explains that creative potential is elaborated at multiple levels of the subject's sensitive-cultural-conscious being and is present in many ways in which the individual seeks to capture and configure the realities experienced. Similarly, Granado (2000) asserted that creativity is associated with reasoning, an exclusive characteristic of human beings, and is linked to the senses and emotions that stimulate the process of acquiring and indexing information.



In the creative process, the search for solutions involves the integration of three elements: imagination, fantasy, and creativity. In this sense:

Finally, creativity is the ability to form ideas, images, and things that are not present mentally or to give existence to something new, unique, and original but with a purpose. Creation itself therefore differs from creativity. This is equivalent to saying that when one is purposefully creative, the search for solutions is based neither on the fragility of fantasy (which has no restrictions) nor on the ease of imagination (which functions reproductively even if it is not given a purpose) (DUALIBI; SIMONSEN, 1990, p. 15).

In law courses, legal discourse, a desirable component of the teaching and learning process, has characteristics conceived of with formalism and with an excess of erudition. Thus, the development of creative capacity is required, which can favor foundation and interpretation, and the unforeseen transformations in constructing social relations require theoretical and practical articulations that emerge from the tools used in educational spaces.

In this sense, the discussion about creativity is articulated with the contributions of techniques and trends capable of fostering the development of creative actions, such as brainstorming, which, once incorporated into the educational process, enables the transformation (action) of *signifiers* and *meanings* since the tool is characterized by the formation of ideas that come from the semantic shared information.

The Law is characterized by “interpretative spaces,” which require interpreters to update them. In addition to bringing rules of an objective nature, the law is founded on principles of excellent breadth that challenge society and the community of interpreters. In addition, there is a distance between what is regulated/positive and what occurs in social relationships. The law does not walk in the same march as society and demands complementation. Norms, in a strict sense, cannot support all the existing situations.

These gaps give rise to a widespread interpretative problem. Judges, attorneys, and/or Public Prosecutor's Office officials are among the professionals who are committed to upholding the law; they naturally use cleverness to find solutions that safeguard protected legal assets. Thus, the professionals indicated above must complete a legal degree before fulfilling their responsibilities, and the use of techniques like brainstorming, which is still taught in undergraduate courses, is a significant step toward meeting the needs of society.

Eliezer, Ferreira, and Nunes (2020, p. 33-34), on the use of these tools, expressed themselves as follows:

To bring to the discussion the issue of multimodality in the context of law is to promote an approximation of this field of knowledge to the demands of society [...] Social interactions are being meant, starting to incorporate resources that give more dynamism to ways of communicating with different social subjects. [...] Assuming the dynamics of language practices through the articulation of different semiotic resources (words, images, sounds, movements, colors, etc.) represents a fruitful search for the adaptation of the modes of production of discourses to enunciative situations.

In this scenario, legal education needs to contemplate, in addition to the basic knowledge already sedimented, tools that guarantee adequate interaction and that are inherent to group discussions, in a disciplined manner, and with creative perspectives. However, for this sharing to happen satisfactorily, the transmission of information/communication needs to be effectively received, and this depends on the processes of the employed significance, because,

language names, identifies, designates; cuts, configures, establishes relationships; More than a "means," it is a mode of (inter/opera) action: relationship with the other, mental activity; a fundamental mode of signification (production

of signs, meanings). Language refers to itself; that is, one speaks of language with and through language. Still, the man speaks of himself, (re) recognizes himself, and turns on himself through language. Language does not always communicate; it is not transparent; It means by means of the “unsaid” and does not necessarily mean by means of what is said. We can say that it sometimes works by itself, producing multiple effects and meanings [...] (SMOLKA, 1995, p. 12)

It was observed that the language had multiple meanings. In the case of multimodal language, which can articulate the law to latest trends in the information society, teaching and learning must consider sign systems (primarily oral, written, and imagined). Although the subjects (teachers and students) occupy diverse social positions, creativity can not only favor communication, but also complement what is not said and what is not said, being a foundation and not a pure strategy. Pereira (2012, p. 3) asserts that “there is no law without language, in the same way that there is no thought outside language. It is, therefore, a more intense relationship than mere support.”

Feldman et al. (2008) clarified that creativity is surprising and practical, both for the creator and society, as a process that has a beginning, middle, and end, and requires hard work and discipline. Thus, the gaps in static thinking are filled by needs and customs that can favor the generation of ideas.

This dimension includes intuition. Ostrower (1987) explains that intuition is based on the processes of creation and that although creativity is related to an individual’s experiences, it is a rational act. This process becomes more conscious as it begins to shape.

### **3 POSSIBILITIES OF APPLYING THE *BRAINSTORMING* TECHNIQUE IN LEGAL EDUCATION**

Bateman and Snell (1998) explained that word *brainstorming* is a process in which people seek to interact verbally under certain

conditions. Thus, each subject speaks and provides suggestions to seek solutions for certain problems. The preambular idea is related to the fact that speeches should be heard and, more than that, received without censorship. This technique is known as “brainstorming.”

Complementing the above, when investigating the etymology of this word, Minicucci (2001) argues that *brainstorming* enables the generation of ideas. In English, the word *brain* refers to the brain, whereas *storming* refers to a storm. Therefore, the Portuguese version would be an “explosion of ideas.”

Osborn (1987, p. 73) defined the term as the action of “[...] use the brain to disrupt a problem.” One theorist states that the quantity of ideas leads to quality. All possibilities for solving a problem must be explored because probabilities can lead to new combinations. Therefore, when several alternatives accumulate, the design of new products becomes easier. The prototypes were created using sketches.

Within the scope of the legal training and education, linguistic dimensions have singularities embodied in the peculiarities of the Legal Science itself. Therefore, it is common to observe the use of technical excesses and exaggerated formalism that can hinder communication. These specificities, *per se*, already interfere in the processes of signification.

Brainstorming can contribute to the adequacy of rhetorical and discursive strategies that constitute the production of meanings, ideas, and problematization. Problems always exist; therefore, *brainstorming* provides a dialectical view of the construction of knowledge, as its synthesis becomes a new thesis to be studied and even overcome. In the legal field, problems can have various dimensions (which emerge from gaps, as observed). Seeking a solution in a joint/participatory way and enhancing students’ creative processes is an efficient way to conceive results.

In that regarding the *brainstorming* technique,

It is important for organizations to seek solutions together, enabling a broad perspective of ideas and ways to solve a problem, making it easier to choose the best decision. With brainstorming, it is possible to take advantage of all the creativity

and intelligence of employees from different areas to build a broad and assertive action plan in the face of a problem. This motivates the choice of the theme and the advantages of its use from valuing employees to solving the issue addressed. (GRANADO, 2020, p. 6)

It follows that *brainstorming* is a creative technique or a stimulant. Every implementation technique requires an action or activity. In such cases, you still need a facilitator is required. One of the precautions for using the tool is not to let the activity turn into a separate, disorderly, and unregulated “chat.” The idea is to manage the problem(s) and create action plans with the help of the participants who present their ideas. There are a few steps to implementing a *brainstorming session*.

Nóbrega, Neto, and Santos (1997) explained that methodologically, brainstorming follows two phases. The first is called “creative” and in it the participants of the session present the greatest number of ideas and suggestions, but without the concern of analyzing them. The second is called “critique,” and in it the members of the session, individually, justify and defend their ideas to convince the group (it is the stage of filtering ideas for the permanence of those that were better founded). The session begins when the coordinator (moderator of the work) clarifies his role and the secretary (registrar, organizer of the participants’ contributions), makes a presentation, and establishes a debate on the subject, defining the objective to be achieved based on the contributions presented at the end of the meeting.

In the context of law schools, using the steps listed above, the first step is to identify the legal problem for a given case. The important thing at this moment is the delimitation of the problem; after all, it needs to be based on reality that provokes the reflection and curiosity of the participants because, many times, discussions in the field of law are distant from the lived world and present themselves as a caricature of reality. Once a problem (or situation) is identified, *brainstorming* is evoked for resolution. The team (students) is organized; with the mediation of a facilitator, debates are established (which can be enhanced with the use of creativity), and finally, a synthesis is made.

Baxter (2000) explained that classical *brainstorming* involves some essential steps: guidance, preparation, analysis, ideation, incubation, synthesis, and evaluation. “Orientation” would be the starting point of *brainstorming*. At this point, the facilitator guided the team on the problem. In the “preparation” phase, the coordinator establishes a considerable amount of time, around 30 minutes, for the team members to formulate their ideas, with their registration by the rapporteur. In the “analysis” stage, which follows, a new time marking is made (around 15 minutes), so that there can be a conjunction of the proposed ideas, based on the criteria defined by the group. The “ideation” stage is characterized by the selection of the most relevant proposals to be detailed within a period. The “incubation” stage is applying the creative technique, which can vary from hours to days. The last phase, which is that of “synthesis and evaluation,” also requires a determination of time (approximately 15 to 20 min), with the aim of detailing and describing the solution (or solutions) to confront it(s) with the briefing, verifying its adherence.

The “ideation” phase deserves to be highlighted, as it is linked to the formation or conception of the idea. Osborn (1987) argued that ideation is a stage of the process that requires all ideas to be imagined as solutions or directives for other ideas that, in turn, may lead to a solution. In this way, the more ideas that are conceived through alternate possibilities, the more likely it is to get one or more of them right, which can lead to the solution of the problem.

With further research on this technique, the suggested steps are defined as follows:

- 1 – Identification (definition/delimitation, writing/drawing).
- 2 – Preparation (direct/indirect; sketching/drawing/writing).
- 3 – Incubation (involuntary/voluntary; marking/scribbling/outlining).
- 4 – Warm-up (affective/psychomotor; delineate/draw/sketch).
- 5 – Illumination (verbal-oral/graphic-verbal and writing/sketching/drawing).

- 6 – Elaboration (graphic-visual/glyphic-synesthetic; drawing/sketching/writing).
- 7 – Verification (partial/final: writing/drawing/sketching). (GOMES, 2011, p. 110)

Although the unfolding of the stages of creative production has changed, since the classical model consists of fewer phases, researchers have consolidated the understanding that subdivisions are methodological, that is, for didactic purposes. Therefore, the processes vary according to the problems to be solved and type of project to be developed. According to Osborn (1987, p.105), “these steps are neither scientific nor formulaic. We present them simply as an auxiliary means for understanding the various phases of the solution of the creative problem.”

In view of the above, we can assert that *brainstorming* is a creative technique, capable of generating alternatives for the generation of results, allowing interaction and integration among team participants. The entire process (conducted by the coordinator), which begins in the orientation phase and proceeds to the final stage consisting of synthesis and evaluation, is related to creativity, which is inherent to the senses. The creative solution desired using the technique allows ideas to be presented without censorship, thus avoiding blockages or embarrassment. The figure of the advisor-coordinator ensures the organization of the process, which is simple and without much rigidity, but at the same time, it is dynamic.

For successful application of the technique, it is important that the group members have a reasonable knowledge base regarding the theme of the session. Minicucci (2001) explains that the more robust the group's knowledge base is, the more effective it is to meet its objectives. In addition, he explained that the coordinator must have, in addition to knowledge, experience of group action.

To better understand the importance of applying the technique in legal education and training, it is necessary to conduct a qualitative study using *brainstorming* exercises in the classroom. Case studies on the tool in the context of Legal Sciences, although desirable and indispensable, are still ongoing, considering that they are more commonly conducted in other areas of knowledge (marketing, administration, design, etc.).

## 4 FINAL REMARKS

It became clear from performing a literature study for this chapter that brainstorming is often utilized in marketing and administration to encourage creativity. Its use in legal education has not, however, received considerable attention. It is clear from illustrating the capacity of a group to work together to solve problems by using concepts that derive from a methodical process that this approach may be adjusted and applied in many areas of expertise.

It is evident when one looks at innovative teaching and learning strategies that the brainstorming tool works well to foster creativity in the administration and marketing domains. Still, little research has been done on brainstorming methods in the legal sector. The illustration of how teamwork can help solve problems by generating concepts and suggestions emphasizes the possibilities of using this approach in other fields of knowledge. To understand how brainstorming could raise educational outcomes in the field of legal studies, more research and empirical analysis are required.

In the legal context, *brainstorming* can shed light on the resizing of interactions because ideas, approaches, and hypotheses arising from a mutual creative effort are not discarded or criticized, which allows for greater fluidity and spontaneity. The language, undertaken throughout the process, must consider the social and discursive context, subjects, ways of saying (which are semiotic choices), objectives of interlocution, and effects of meaning. In addition, articulating legal education with techniques of exploration of thought represents the possibility of updating ways of organizing and conceiving legal activity itself, which, imbued with social interactions, must be in line with innovation.

This *brainstorming* technique can be adapted to a legal course. It is also suggested that case studies be conducted to generate creative alternatives in the composition of solutions in educational contexts. The existence of innovative ideas can be the starting point for the development of solutions to legal problems.



## REFERÊNCIAS

BATEMAN, Thomas S.; SNELL, Scott A. **Administração: construindo vantagem competitiva**. São Paulo: Atlas, 1998.

BAXTER, M. **Projeto de Produto: guia prático para o desenvolvimento de novos produtos**. São Paulo: Editora Edgar Blücher, 2000.

BRITO, Ronnie Fagundes de; VANZIN, Tarcisio; ULBRICHT, Vânia. Reflexões sobre o conceito de criatividade: sua relação com a biologia do conhecer. **Ciênc. cogn.**, v.14, n.3 Rio de Janeiro, nov./2009. Disponível em: < [http://pepsic.bvsalud.org/scielo.php?script=sci\\_arttext&pid=S1806-58212009000300017](http://pepsic.bvsalud.org/scielo.php?script=sci_arttext&pid=S1806-58212009000300017)>. Acesso em: 08 ago. 2022.

CARVALHO, A. V. de. **Aprendizagem Organizacional em tempos de mudança**. São Paulo: Editora: Pioneira Administração e Negócios, 1999.

CONSELHO ESTADUAL DE EDUCAÇÃO DO RIO DE JANEIRO (Rio de Janeiro). **Deliberação nº 376/2020**. Orienta as instituições integrantes do Sistema Estadual de Ensino do Estado do Rio de Janeiro sobre o desenvolvimento das atividades escolares não presenciais, em caráter de excepcionalidade e temporalidade, enquanto permanecerem as medidas de isolamento previstas pelas autoridades estaduais na prevenção e combate ao Coronavírus - COVID-19. Disponível em: <https://www.legisweb.com.br/legislacao/?id=391613>. Acesso em: 11 maio 2024.

DUALIBI, R.; SIMONSEN, J. H. **Criatividade e Marketing**. São Paulo, Editora Abril, 1990.

ELIEZER, Cristina Rezende; FERREIRA, Helena Maria; NUNES, Vítor Ferreira. Direito, Tecnologia e Linguagens: do “juridiquês” ao *visual law*. In: ELIEZER, Cristina Rezende; SOUSA, Lorena Ribeiro de Carvalho; NUNES, Vítor Ferreira. **Direito, Tecnologia e Sociedade**. Santo Ângelo: Metrics, 2020.

FELDMAN, Liliane Bauer; RUTHES, Rosa Maria; CUNHA, Isabel Cristina Kowal Olm. Criatividade e inovação: competências na gestão de enfermagem. **Rev. Bras. Enferm.**, Brasília 2008, mar.-abr., n. 61 (2), p. 239-242. Disponível em: < <https://www.scielo.br/j/reben/a/LzhKRBg7pdy5jhq9M5cYRQG/>>. Acesso em: 01 ago. 2022.

FILHO, Gilson Soares Raslan; BARROS, Janaina Visibeli. Criatividade na Escola: emancipação ou instrumentalização? **Educação & Realidade**, Porto Alegre, v. 43, n. 4, p. 1499-1514, out./dez. 2018. Disponível em: < <https://www.scielo.br/j/edreal/a/B35tMVgsnM9KRSNTKtm5zwf/>>. Accessed em 31 jul. 2022.

GOMES, L. V. **Criatividade e Design**: um livro de desenho industrial para projeto de produto. Porto Alegre: sCHDs Editora, 2011.

GRANADO, Graziane Correa da Silva. Brainstorming e a aplicação do modelo clássico. **Revista Científica Multidisciplinar Núcleo do Conhecimento**. Ano 05, ed. 10, vol. 18, p. 05-20, outubro de 2020. Disponível em: ><https://www.nucleodoconhecimento.com.br/engenharia-de-producao/brainstorming>>. Acesso em: 12 ago. 2022.

LYRA, Aline; SOARES, Antonio Jorge Gonçalves Soares. Reflexões acerca da educação domiciliar e da descolarização a partir do cenário de pandemia. In: VASCONCELOS, Maria Celi Chaves (org.). **Educação domiciliar no Brasil mo(vi)mento em debate**. Curitiba: CRV, 2021.

MACIEL, Kátia Regina Ferreira Lobo Andrade. Em defesa

MINICUCCI, A. **Técnicas do trabalho de grupo**. São Paulo: Atlas, 2001.

NÓBREGA, Maria de Magdala; NETO, David Lopes; SANTOS, Sérgio Ribeiro dos. uso da técnica de *brainstorming* para tomada de decisões na equipe de enfermagem de saúde pública. **R. Bras. Enferm.**, Brasília, v. 50, n. 2, p. 247-256, abr./jun. 1997. Disponível em: < <https://www.scielo.br/j/reben/a/Cj9yHFqYQBCKvsk7DVz5pFJ/?format=pdf>>. Acesso em: 12 ago. 2022.

OSBORN, A. **O poder criador da mente: princípios e processos do pensamento criador e do “brainstorming”**. Trad. E. Jacy Monteiro. São Paulo: Ibrasa Editora, 1987.

OSTROWER, Fayga. **Criatividade e processo de criação**. Rio de Janeiro: Editora Vozes, 1977.

PAROLIN, S. R. H. **A perspectiva dos líderes diante da gestão da criatividade em empresas da região metropolitana de Curitiba-PR**. Dissertação (Mestrado em Administração) – UFRS: Porto Alegre, 2001.

PEREIRA, R. S. **A Linguagem Jurídica**. Conteúdo jurídico. Brasília: Universidade Católica Dom Bosco – UCDB, 10/03/2012. Disponível em: <<http://www.conteudojuridico.com.br>>. Acesso em: 31 jul. 2022.

SMOLKA, A. L. B. A concepção de linguagem como instrumento: um questionamento sobre práticas discursivas e educação formal. **Temas psicol.**, vol.3 n. 2, Ribeirão Preto, ago. 1995. Disponível em: <[http://pepsic.bvsalud.org/scielo.php?script=sci\\_arttext&pid=S1413-389X1995000200003](http://pepsic.bvsalud.org/scielo.php?script=sci_arttext&pid=S1413-389X1995000200003)>. Acesso em: 10 ago. 2022.

WINTERS, Joanara Rozane da Fontoura; NOGUEIRA, Débora Rinaldi; HEIDEMANN, Ivonete Terezinha Schülter Buss; DURAND, Michelle Kuntz; MAGAGNIN, Adriana Bitencourt; ARAKAWA-BELAUNDEI, Aline Megumi. **O ensino remoto durante a pandemia de COVID-19: repercussões sob o olhar docente**. Available at: <https://www.scielo.br/j/reben/a/h36cMcTq3L8ZrYdzWgJGqqC/?format=pdf&lang=pt>. Acesso em: 10 maio 2024.

## AFTERWORDS:

### **“CRITICAL DIALOGUES ON PANDEMIC PERSPECTIVES. THINKING ABOUT THE AFTERMATH CHALLENGES”**

*Jedrzej Skrzypczak*

The COVID-19 pandemic dramatically and seemingly permanently changed many human and social aspects. It was the first such unprecedented global challenge in the globalisation and digital age. This crisis indeed required extraordinary and unusual solutions, regulations and a decisive response to limit the spread of the disease and protect societies. Often, however, this was just a pretext for introducing oppressive surveillance and undermining human rights, such as political, social and cultural rights. The WHO's announcement of the COVID-19 pandemic on 11 March 2020 led many countries to impose a state of emergency and grant governments extraordinary powers. At the beginning of the pandemic, when the first cases of coronavirus infection appeared in China and then quite rapidly in many parts of the globe, basically no one knew how dangerous this pathogen could be to the health and life of the global population, how to effectively protect themselves from the virus and, finally, how to effectively treat those infected. At the time, as humanity, we did not have access to vaccines to protect against infection or medication for those affected. The only way to limit the spread of the coronavirus was to order and implement a blockade or quarantine, a known remedy for epidemics for centuries. This usually results in serious negative consequences in virtually all spheres of life, both societal and individual. It has brought economies worldwide to a near standstill, and in all their aspects, from production to the provision of all services to transport. The functioning of many spheres of social, political and human activity was then frozen. The structures and institutions of the state, democracy, education and entertainment ceased functioning.

No state or society was certainly prepared for such a situation, even though such a threat had been warned about for years. Decision-makers should have been aware as early as the end of 2019, when there were reports about the emergence of the epidemic and how to combat it in the PRC that a new deadly threat was looming. At the time, however, they failed to respond adequately to the seriousness of the situation (Skrzypczak, de la Fuente. 2024).

It must also be acknowledged that the global management of the COVID-19 pandemic by the United Nations (UN) and the World Health Organisation (WHO) has been criticised despite the enormous efforts made by these organisations to combat the pandemic, as mentioned in the introduction. This criticism relates to issues such as the timeliness of the response to the threat, the transparency of the decisions taken and the fairness and effectiveness of the response. The WHO and the UN have been criticised for their delayed response to declaring COVID-19 as a public health emergency of international concern (PHEIC) and then as a pandemic. Critics argued that a faster response could have led to more effective early action to contain the virus worldwide. Initial communication with governments and the public about the severity of the virus was also criticised, potentially leading to an underestimation of its impact in the early stages. The WHO was criticised for relying on data from member states that could have been more accurate and timely. This reliance was cited as potentially hindering a more effective early global response. Concerns were also raised about the WHO's relationship with China, particularly the over-reliance on assurances from the Chinese government early in the outbreak. This may have contributed to the delay in taking the necessary action to contain the outbreak in the PRC. The vaccine distribution strategy was also criticised. The central allegation was that high-income countries were securing large quantities of vaccine doses directly from manufacturers, delaying the availability of vaccines in low- and middle-income countries. Similar allegations were made about distribution arrangements for other resources, such as personal protective equipment and testing. Many countries faced shortages that affected their ability to manage the pandemic effectively. The WHO was also criticised for changing its guidelines on issues such as the use of masks and airborne transmission of the virus. Guidelines

and recommendations were sometimes seen as insufficiently adapted to the context of individual countries, particularly for countries with different health infrastructure capacities.

Similarly, the UN and WHO faced funding and political support challenges, which affected their ability to respond effectively. WHO, in particular, has been subject to political pressures that may have influenced its actions and statements. Criticism of the UN and WHO response to the COVID-19 pandemic highlights the complexity of managing a global health crisis. Issues such as timeliness, transparency, equitable access to resources and policy adaptability play a key role in the effectiveness of the global response. This critique provides valuable lessons for future health crises and highlights the need for reforms in global health governance, better emergency preparedness and a more equitable global health system. (Fidler 2020, UN 2023; Skrzypczak, de la Fuente. 2024).

This crisis undoubtedly required unusual, immediate solutions, regulation and a decisive response to limit the spread of disease and ensure the sanitation of the population. The dramatic health situation often made it relatively easy to justify even the most restrictive solutions and limitations. However, it was not infrequently a convenient pretext for the introduction of oppressive monitoring of individuals and entire communities and the violation of human rights, such as political, social and cultural rights (especially freedom of expression), surveillance of citizens, invasion of privacy, restriction of movement, coercion into certain professions and many other human rights, as well as the opportunity to make huge fortunes using extraordinary public purchasing procedures. There have also been several cases of using the pandemic state for corrupt activities and making huge fortunes (Skrzypczak, de la Fuente. 2024).

Human rights, civil liberties and political, economic and social rights were constantly tested to save lives and health. It was not only in authoritarian states that there were various temptations to pursue private interests and political and legal actions in non-transparent ways under the pretext of fighting a pandemic. Of course, it is difficult to say unequivocally whether better political decisions, crisis management and more efficient and honest spending of public funds could have saved any of the victims of the disease (Skrzypczak, de la Fuente. 2024).

The only safe sphere of activity at the time seemed to be cyberspace. Entities and individuals proficient in this area proved to be the biggest winners of this crisis. Most states then decided to move the institutions and procedures of public life into a parallel digital world. For constitutional reasons, this was often not possible. Moreover, the passage of time worked against them in this case. For example, due to the pandemic threat, it was impossible to convene procedural bodies to implement the legal changes applied (Skrzypczak, de la Fuente. 2024).

Many democracies have dealt with this challenge by further strengthening citizens' trust in the institutions of the democratic rule of law. Unfortunately, in many cases (this applies to some countries considered a democracy), the enormity of the challenges posed by successive waves of pandemics seemed to overwhelm decision-makers capacity (Club de Madrid, 2021; Khan. 2023). Only now are things concealed when the phenomenon comes to light.

Now that the end of the pandemic has been officially declared, it is time to make the first conclusions and recommendations for the future. While we will undoubtedly be grappling with the effects of the pandemic for many years to come, we will only know the exact extent of this misfortune in a few years. There are certainly lessons to be learned for the future. The management of similar crises needs to be reorganised (The Time. 2021, Fidler. 2020, UN, 2023). We have no certainty that a similar microbe or other agent will not paralyse the world again.

The book entitled *Critical Dialogues on Pandemic Perspectives: Thinking about the Challenges after a Disaster* is part of a stream of reflections on how the COVID-19 pandemic changed the world from different perspectives (McCaul's Final Report. 2023; Montserrat. 2023; Sachs. 2022; UN, 2023; Skrzypczak, de la Fuente. 2024) As the editors of the volume emphasise, the main message is an attempt to analyse the multifaceted consequences of such pandemics, highlighting the crucial relationship between cultural integration, state responsibilities and the cultivation of communities with a shared future for Mankind. It aims to provide practical strategies for building a more robust and interconnected global society. Certainly, the undeniable value of this study is its interdisciplinarity and its view

from the perspective of different academic disciplines. The common denominator of these reflections is, of course, the reflection on the impact of the COVID-19 pandemic on the fate of the world and societies around four main issues, i.e. firstly, intersectoral cooperation for cultural integration, secondly, the legal framework and the rights of entrepreneurs, thirdly, the concept of a 'community for the common future of Mankind' and a critical assessment of the role of the state and multilateralism. The overarching goal of Critical Dialogues on Pandemic Perspectives is to seek appropriate cultural, legal and state strategies in the aftermath of a pandemic, serving as a testament to the power of collective effort and shared responsibility in building a future that values humanity, justice and the rule of law above all else. Therefore, this book is highly recommended not only for academics and students but also for political and public life practitioners.



**REFERENCES:**

Club de Madrid (2021), Democracy & Emergencies. Lessons from the COVID-19 Pandemic for Democratic Resilience. Final Report of the Global Commission on Democracy and Emergencies, December 2021, [https://clubmadrid.org/wp-content/uploads/2022/04/ClubdeMadrid\\_resumen\\_ingles\\_DIGITAL.pdf](https://clubmadrid.org/wp-content/uploads/2022/04/ClubdeMadrid_resumen_ingles_DIGITAL.pdf)

Skrzypczak, O.P. de la Fuente /eds./, 2024. Lessons for Implementing Human Rights from COVID-19: The Pandemic Has Changed the World, Routledge 2024

Khan A. (2023), Political Turmoil and Corruption Scandals: Dissecting Poland's 'Respirator Affair', <https://bnn.network/politics/political-turmoil-and-corruption-scandals-dissecting-polands-respirator-affair/>

McCaul's Final Report (2023), The Origins of the Global Pandemic, Including the Roles of the CCP & WHO, <https://foreignaffairs.house.gov/finalcovid-19pandemicoriginsreport/#>

Montserrat D. (2023), Special Committee on the COVID-19 pandemic: lessons learned and recommendations for the future, [https://www.europarl.europa.eu/doceo/document/A-9-2023-0217\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2023-0217_EN.html)

Sachs J. D and others (2022) The Lancet Commission on lessons for the future from the COVID-19 pandemic, The Lancet, Vol. 400, No. 10359, 14 September, 2022, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(22\)01585-9/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(22)01585-9/fulltext)

UN (2023), Human Rights, <https://www.un.org/en/global-issues/human-rights>

WHO (2023), World Health Organization, Overview, <https://covid19.who.int>

The Economic Time. 2021. WHO is the pandemic response: From criticism to Nobel? <https://economictimes.indiatimes.com/news/international/world-news/whos-pandemic-response-from-criticism-to-nobel/articleshow/81443977.cms?from=mdr>

Fidler D. P. 2020. The World Health Organization and Pandemic Politics. The good, the bad, and an ugly future for global health, <https://www.thinkglobalhealth.org/article/world-health-organization-and-pandemic-politics>

UN 2023. HIGH-LEVEL POLITICAL FORUM, 1ST AND 2ND MEETINGS (AM&PM) 10 JULY 2023. Impact of Pandemic, Worldwide Crises Must Be Overcome to Achieve Sustainable Development Goals, Speakers Stress, as High-Level Political Forum Opens, [HTTPS://PRESS.UN.ORG/EN/2023/ECOSOC7134.DOC.HTM](https://press.un.org/en/2023/ECOSOC7134.DOC.HTM)

## ÍNDICE REMISSIVO

**Para localizar el término deseado, desde el lector de PDF, utilice el comando Ctrl+F o el comando Buscar - Lupa. Si está leyendo desde un teléfono móvil, utilice la herramienta de búsqueda/encontrar (Lupa).**

Academics .....	353
Afghanistan .....	277, 382
American.....	10, 11, 12, 18, 19, 43, 45, 83, 90, 105, 107, 151, 153, 172, 174, 178, 183, 195, 202, 207, 212, 233, 260, 326, 346, 354, 358, 391, 414
Angola.....	276, 277
Artificial .....	124, 135, 145, 319
Association .....	10, 13, 16, 19, 22, 23, 29, 125, 133, 231, 237, 339, 358
Aztec .....	355
Belgium.....	272, 277, 381
Belonging.....	49, 50, 57, 331
Black .....	258, 265
Brazil.....	4, 17, 37, 34, 39, 42, 54, 55, 58, 61, 90, 91, 92, 95, 96, 100, 108, 123, 125, 126, 129, 131, 133, 134, 135, 136, 137, 140, 142, 148, 151, 153, 154, 155, 158, 159, 162, 183, 185, 206, 236, 237, 238, 239, 240, 254, 257, 261, 283, 368, 374, 398, 399, 406, 410, 413, 414, 417, 418, 419, 423, 424, 425, 426, 428, 429, 430, 432, 436, 437, 439, 443, 444, 445, 447, 448, 449, 450, 451, 453, 454, 455
Brazilian.....	3, 12, 13, 16, 17, 23, 25, 29, 30, 37, 39, 45, 47, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 67, 68, 90, 91, 96, 103, 105, 106, 107, 123, 125, 126, 133, 137, 141, 142, 143, 150, 151, 156, 157, 158, 160, 162, 235, 236, 237, 238, 242, 252, 253, 262, 354, 399, 404, 410, 417, 423, 424, 425, 426, 427, 432, 435, 437, 438, 439, 443, 447, 448, 449, 450, 454

Cambodia .....	277, 373, 380
CentralAsia .....	354, 374, 378
Characteristics .....	341
Children.....	70
China.....	10, 12, 22, 23, 26, 27, 29, 30, 37, 31, 76, 77, 78, 79, 80, 81, 85, 86, 112, 148, 217, 218, 219, 220, 221, 222, 224, 225, 226, 227, 228, 230, 232, 233, 290, 291, 295, 296, 297, 298, 302, 303, 304, 306, 309, 323, 326, 327, 328, 329, 330, 331, 333, 335, 337, 338, 339, 341, 345, 346, 347, 348, 351, 352, 354, 356, 357, 358, 368, 370, 371, 373, 374, 376, 378, 379, 381, 382, 384, 386, 387, 388, 390, 398
Chinese .....	10, 12, 22, 26, 27, 29, 31, 76, 216, 217, 220, 232, 296, 305, 323, 327, 328, 329, 330, 331, 333, 335, 337, 338, 339, 341, 344, 345, 346, 347, 348, 349, 354, 356, 358, 370, 373, 374, 376, 378, 379, 381, 382, 384, 386, 388, 389, 398
Civil.....	12, 16, 26, 58, 91, 123, 140, 153, 160, 172, 230, 235, 237, 259, 260, 262, 276, 290, 314, 323, 327, 330, 335, 351, 358, 452
Civilization.....	290, 291, 306, 307, 357
Communities .....	72
Community .....	3, 30, 55, 207, 276, 286, 290, 291, 295, 296, 298, 301, 302, 304, 306, 307, 311, 323, 327, 339, 340, 344, 345, 347, 349, 352, 357, 358, 384, 386, 387, 405
Companies .....	94, 237
Concept .....	30, 74, 291, 300, 319
Concepts .....	31
Conflicts .....	387
Consequences.....	70, 76, 119, 120
Constitutional.....	10, 14, 15, 16, 17, 22, 23, 29, 31, 143

Control .....	14, 22, 219, 300
Cooperation .....	27, 30, 54, 265, 301, 319, 339, 365, 374, 396
Coronavirus .....	208, 313, 370, 402
Corruption.....	10, 27, 29, 211, 312, 319, 395
Country .....	54, 57, 59, 66, 69, 76, 271, 327
Covid-19.....	5, 42, 72, 76, 80, 148, 159, 160, 162, 164, 167, 211, 214, 216, 218, 215, 326, 352, 370, 368, 369, 370, 372, 373, 376, 379, 382, 384, 388, 386, 387, 398, 405, 421, 461
Crises .....	307
Cultural.....	22, 23, 26, 30, 52, 53, 54, 62, 64, 69, 72, 74, 77, 93, 192, 197, 202, 215, 216, 293, 294, 306, 358
Culture.....	3, 10, 12, 20, 24, 25, 27, 50, 51, 52, 53, 57, 62, 63, 67, 68, 74, 77, 263, 276, 290, 349, 350, 354, 358
Democracy .....	12, 14, 218, 304, 338, 351, 404, 456
Department.....	14, 19, 20, 22, 23, 27, 76, 404
Destiny .....	291, 384, 386, 387
Discrimination .....	151, 153, 200, 418, 424
Discussions.....	72
Diversity.....	16, 19, 22, 170, 171, 172, 177, 262, 306
Domestic.....	23, 150, 151, 153, 155, 161, 335
Domesticviolence..	151
Economy.....	97, 292, 319, 349
Education.....	12, 14, 16, 19, 20, 25, 26, 27, 178, 208, 261, 263, 358, 360, 461, 463
England.....	168, 277, 278
English .....	23, 25, 240, 355, 448, 469
European.....	10, 12, 14, 17, 19, 29, 40, 48, 49, 50, 52, 54, 55,

	64, 66, 69, 70, 72, 77, 83, 112, 131, 132, 133, 182, 192, 200, 202, 203, 233, 270, 271, 272, 273, 274, 276, 277, 278, 280, 282, 330, 345, 374
Expression .....	23
Extreme.....	130, 326
Families.....	421
France .....	27, 83, 271, 272, 273, 277, 278, 369, 373, 381
Fundamental.....	10, 13, 16, 17, 20, 93, 94, 353, 402, 434
Future .....	30, 290, 291, 295, 296, 298, 302, 304, 306, 307, 311, 323, 339, 340, 345, 347, 349, 352, 357, 358, 369
Generation .....	76
Germany .....	29, 37, 83, 86, 113, 115, 121, 271, 272, 273, 274, 276, 277, 278, 280, 281, 381
Global.....	5, 10, 12, 26, 70, 72, 76, 112, 178, 180, 194, 269, 289, 290, 291, 292, 293, 295, 298, 299, 301, 304, 305, 306, 307, 347, 356, 357, 354, 358, 365, 366, 367, 368, 369, 386, 387, 393, 395, 396, 400, 402, 404, 406, 421, 423, 424
Governance .....	17, 123, 125, 126, 128, 136, 137, 178, 211, 290, 293, 299, 357, 404
Greece.....	273, 274, 277, 278, 283
Group .....	3, 10, 11, 13, 14, 16, 17, 18, 19, 20, 22, 23, 25, 26, 29, 31, 80, 91, 195, 216, 237, 266, 358, 381
Human.....	5, 10, 14, 16, 17, 20, 22, 23, 25, 26, 29, 45, 49, 76, 84, 90, 93, 107, 168, 169, 172, 176, 181, 183, 191, 195, 197, 199, 200, 201, 202, 203, 204, 205, 209, 211, 212, 215, 216, 218, 231, 269, 288, 291, 294, 295, 301, 306, 307, 315, 326, 333, 337, 341, 358, 352, 353, 354, 355, 356, 358, 362, 364, 365, 366, 367, 368, 369, 370, 394, 421, 432
Immigration.....	26, 55, 70, 76, 280, 402
Impact.....	208, 354

Inca.....	355
Inclusion .....	52, 64, 72
Infectious .....	219
Information.....	17, 29, 82, 95, 133, 296, 321, 388, 404, 434, 438
Initiatives .....	291, 366
Innovations .....	124
Institutional .....	14, 25, 43, 215, 265
International .....	5, 10, 12, 14, 16, 17, 19, 22, 23, 25, 26, 27, 29, 74, 76, 77, 89, 93, 133, 168, 169, 171, 172, 173, 176, 177, 178, 184, 191, 194, 197, 200, 202, 205, 214, 215, 231, 276, 288, 294, 296, 299, 301, 304, 307, 310, 323, 337, 341, 349, 351, 352, 356, 358, 352, 354, 356, 358, 360, 362, 374, 387, 395, 405, 412, 415, 422, 423, 424, 432, 461
Iran .....	283, 354, 373, 381, 382, 384, 388
Iroquois.....	355
Italy.....	11, 12, 31, 83, 202, 272, 273, 274, 277, 278, 356, 358, 369, 373, 436
Judicial.....	10, 29, 123, 124, 126, 129, 130, 136, 137, 142, 145, 313
Justice.....	5, 10, 14, 20, 23, 123, 125, 126, 129, 130, 135, 139, 143, 168, 169, 170, 171, 174, 175, 176, 178, 357, 386, 387, 388, 393, 395, 402, 404
Kenya.....	216, 354
Language.....	12, 23, 25, 27, 55, 358, 468
LatinAmerica.....	11, 12, 19, 25, 29, 31, 34, 35, 36, 37, 38, 39, 40, 41, 83, 85, 108, 169, 175, 183, 200, 207, 211, 278, 325, 326, 331, 341, 345, 346, 354, 358, 374, 378, 381, 388, 406, 408, 413, 414, 417, 418, 424
Law .....	3, 5, 10, 12, 14, 16, 17, 19, 20, 22, 23, 25, 26, 27, 29, 31, 55, 58, 86, 90, 92, 94, 103, 108, 112, 115, 125, 127, 128, 129, 132, 133, 134, 137, 142, 144,

	151, 153, 154, 155, 156, 157, 161, 162, 168, 169, 171, 177, 178, 180, 184, 205, 218, 216, 217, 219, 220, 221, 222, 224, 225, 226, 227, 228, 229, 231, 232, 237, 243, 294, 296, 299, 301, 307, 312, 313, 314, 315, 318, 327, 331, 337, 344, 347, 349, 352, 356, 358, 386, 397, 408, 410, 421, 423, 424, 428, 430, 432, 434, 436, 437, 439, 446, 449, 457, 460, 461, 466
Legal .....	10, 11, 12, 14, 16, 20, 23, 27, 29, 30, 103, 104, 106, 110, 137, 178, 218, 222, 226, 237, 357, 358, 422, 446, 461, 469, 472
Legislation.....	23, 27, 119, 313
Literature .....	25, 58
Lockdowns.....	361
Luxembourg.....	277
Migrant.....	50, 69, 72, 197, 203, 216
Migrants.....	47, 63, 203, 212, 216, 273, 288, 421
Mozambique .....	216, 277, 374
National .....	10, 12, 14, 17, 22, 23, 25, 26, 27, 29, 72, 85, 123, 129, 135, 148, 150, 151, 160, 161, 169, 171, 174, 217, 220, 221, 222, 224, 225, 226, 227, 228, 229, 237, 313, 319, 331, 333, 337, 339, 346, 349, 358, 370, 398, 415, 416, 417, 424, 429, 435
Nations .....	76, 106, 170, 171, 172, 174, 177, 178, 180, 191, 192, 194, 195, 197, 202, 215, 230, 231, 282, 294, 296, 303, 305, 306, 309, 326, 337, 339, 356, 362, 364, 373, 388, 398, 399, 404, 406, 415, 421, 424
Necessity .....	414
Netherlands.....	25, 273, 277, 278
Nigeria .....	272, 354
Number .....	178
Order .....	10, 14, 219, 294, 296, 306, 313, 319, 351, 358



- Organization ..... 19, 82, 89, 133, 137, 174, 177, 178, 180, 182,  
184, 192, 195, 200, 207, 210, 259, 294, 303, 304,  
309, 310, 316, 326, 369, 398, 402, 405, 412, 415,  
423, 461
- Organizations ..... 19, 125, 235, 237, 260, 262, 358, 360
- Orientation ..... 471
- Pandemic ..... 5, 12, 31, 33, 38, 159, 214, 216, 290, 292, 300,  
356, 358, 405, 421
- Paris ..... 27, 109, 170, 171, 173, 178, 231, 269, 287, 294
- Penitentiary ..... 14
- People ..... 20, 23, 27, 52, 182, 217, 219, 220, 221, 222, 223,  
224, 225, 226, 227, 228, 229, 232, 297, 299, 323,  
331, 333, 335, 337, 339, 349, 355, 368, 370, 371,  
373, 374, 376, 379, 382, 384, 386, 398, 399, 451
- Philippines ..... 354, 373, 374
- Population ..... 97, 276, 288
- Portugal ..... 14, 47, 54, 55, 56, 58, 59, 60, 61, 62, 64, 66, 69,  
72, 74, 273, 277, 278
- Power ..... 11, 137, 219, 328, 358, 371, 424, 425, 427, 428,  
430, 432, 434, 438
- Prevention ..... 10, 151, 160, 219, 312, 314
- Priority ..... 313, 366
- Prison ..... 14, 443, 457
- Privacy ..... 136, 360
- Problems ..... 353, 421, 422, 469
- Process ..... 13, 20, 123, 126, 129, 130, 136, 142
- Protection ..... 10, 20, 23, 118, 129, 131, 133, 137, 172, 209, 221,  
315, 337, 358, 408, 422, 423
- Public ..... 10, 14, 16, 17, 19, 20, 25, 26, 27, 29, 54, 68, 77,  
81, 82, 91, 108, 115, 125, 128, 140, 153, 158, 160,

	162, 175, 176, 177, 178, 195, 205, 215, 220, 307, 319, 370, 386, 398, 415, 418, 443, 461, 467
Questionnaire.....	74, 262
Race .....	260
Racial .....	200, 259
Refugees .....	25, 29, 70, 76, 281, 282, 405, 406, 407, 408, 410, 415, 417, 421, 423, 424
Region.....	29, 76, 103, 126, 130, 221, 225, 226, 316, 409
Republic.....	17, 27, 54, 58, 126, 129, 135, 216, 217, 219, 220, 221, 224, 225, 226, 227, 297, 323, 339, 368, 370, 371, 373, 374, 376, 379, 382, 384, 386, 398, 425, 428, 430, 431, 435
Restrictions .....	32, 214, 360
Results.....	244
Rule .....	5, 23, 26, 31, 132, 142, 168, 169, 171, 217, 327, 344, 347, 349, 352, 386, 428, 430, 436, 437, 439, 449
Russia.....	113, 271, 274, 285, 311, 314, 315, 316, 373, 381
Sanitary.....	20, 31
Scientific .....	12, 20, 27, 70, 192, 294
Security .....	14, 17, 22, 27, 29, 94, 133, 136, 158, 160, 229, 291, 296, 297, 317, 376, 416
Social .....	11, 12, 14, 16, 19, 20, 22, 23, 26, 27, 29, 47, 52, 70, 72, 74, 76, 86, 93, 94, 96, 112, 115, 120, 144, 164, 167, 192, 197, 200, 202, 203, 216, 258, 259, 263, 352, 357, 358, 376, 402, 404, 467
Socialism .....	217, 341
Society .....	3, 10, 17, 18, 19, 20, 22, 23, 24, 31, 124, 235, 237, 262, 352
Solidarity.....	301, 365

Spain .....	11, 14, 22, 25, 83, 270, 271, 273, 274, 276, 277, 278, 290, 358, 381
State .....	10, 14, 17, 19, 20, 22, 26, 27, 30, 33, 34, 36, 37, 38, 39, 41, 43, 45, 52, 72, 84, 103, 129, 139, 149, 152, 157, 159, 160, 161, 162, 171, 172, 198, 199, 202, 204, 217, 219, 220, 222, 224, 226, 227, 228, 230, 231, 232, 236, 237, 239, 254, 284, 296, 306, 315, 319, 321, 323, 325, 326, 327, 338, 339, 347, 348, 349, 354, 357, 378, 381, 388, 391, 399, 406, 408, 411, 421, 423, 429, 430, 432, 461
Structural .....	208
Tax .....	10, 20, 31, 43, 321, 337
Technology.....	14, 22, 25, 26, 365
Tokyo.....	356
Traditional.....	376
Union.....	14, 40, 49, 50, 54, 66, 70, 112, 131, 222, 277, 280, 281, 319, 345, 374, 418, 429, 431, 432
Universal .....	49, 93, 200, 215, 357, 356, 432
Usually .....	37
Venezuela .....	12, 34, 44, 216, 283, 326, 356, 373, 414, 417
Violence .....	19, 23, 150, 151, 153, 155, 161
Vulnerable.....	20, 180
Women .....	150, 151, 153, 159, 160, 162, 200, 254, 259, 265
Words .....	323
Work.....	17, 60, 95, 101, 118, 258, 259, 315, 340, 360
World.....	10, 12, 17, 26, 82, 83, 182, 184, 191, 192, 194, 200, 210, 217, 237, 261, 269, 270, 271, 272, 273, 274, 276, 288, 289, 291, 295, 300, 301, 303, 304, 309, 310, 316, 357, 358, 355, 356, 362, 368, 369, 370, 371, 372, 373, 387, 395, 398, 402, 405, 423, 430, 457, 461

**DIÁLOGOS CRÍTICOS:  
CULTURA, DIREITO E SOCIEDADE**



**UNIVERSIDAD NACIONAL DE LA PLATA**

