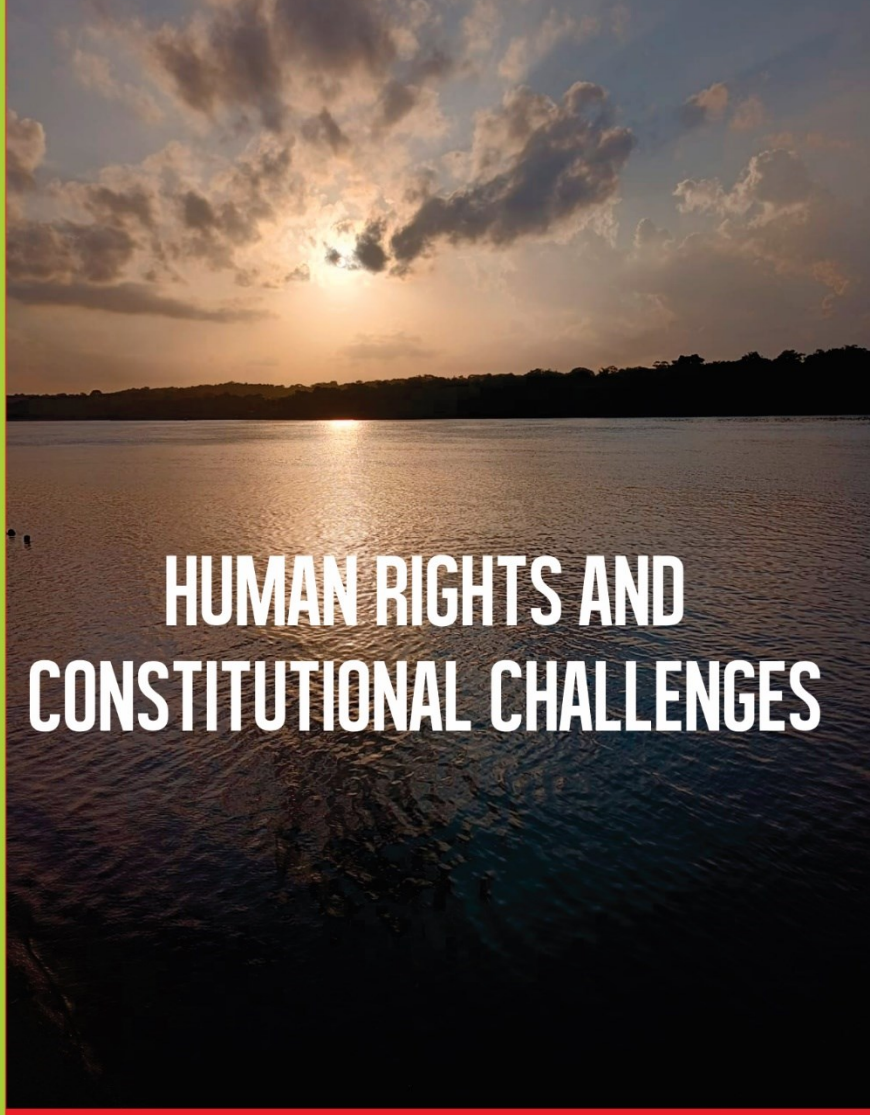

HUMAN RIGHTS AND CONSTITUTIONAL CHALLENGES

Dinaldo Silva Júnior
Diego Moura de Araújo
Maria José Motta Sobreira
(DIRECTORES)

ideia

It was with great honor that I received the invitation from my friends Dinaldo Silva Júnior, Diego Moura de Araújo and Maria José Motta Sobreira to write the preface to yet another of their magnificent works, now entitled “Human Rights and Constitutional Challenges”. The work, which has the participation of renowned Brazilian and foreign jurists, as well as the support of major national and international universities, deals with a theme of great importance to Brazilian and universal law, even more so in times of COP30 in Brazil, to be held in Belém do Pará, in the Amazon, in 2025.

ANDRÉ AUGUSTO MALCHER MEIRA

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(DIRECTORES)

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By Cássius Guimarães Chai

PREFACE

It was with great honor that I received the invitation from my friends Dinaldo Silva Júnior, Diego Moura de Araújo and Maria José Motta Sobreira to write the preface to yet another of their magnificent works, now entitled “Human Rights and Constitutional Challenges”. The work, which has the participation of renowned Brazilian and foreign jurists, as well as the support of major national and international universities, deals with a theme of great importance to Brazilian and universal law, even more so in times of COP30 in Brazil, to be held in Belém do Pará, in the Amazon, in 2025.

In a time when the world is electronically globalized and society is increasingly enslaved to technology - which does nothing to support or encourage good reading habits, or to leaf through a book - the coordinators and authors are immortalized among those who still worry about having the patience to organize and write a book. In fact, patience is one of those feelings that is scarce in everyday life, people want everything yesterday, everything now, everything now. Practicing the grammar of thought in order to dedicate oneself to culture is something rare and, it must be said, the authors do so with great skill, dedication and love when writing each entry in this work. Those who read with feeling feel in each line the central idea of the themes addressed here and, above all, the passion with which they were written. Therein lies the revelation of the spirit and backbone of this book. The late jurist and writer Silvio Augusto de Bastos Meira urged: “We should all prepare ourselves for the future by learning things we do not yet know, unlearning things we know but should no longer know, and

relearning things we once knew and which have become useful again"; Cicero, a great Roman thinker, stated: "It is not enough to acquire wisdom; one must also know how to use it"; Goethe, a great German thinker and philosopher, in his maxim no. 243 said: "Whatever the object, one only learns well through those one loves." These three thoughts are present in this book, with the full magnitude of the authors' wisdom, who bring us yet another work worthy of all possible and impossible accolades.

Santa Maria de Belém do Grão Pará, December 16, 2024

André Augusto Malcher Meira
President of the Silvio Meira Institute (ISM)
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THE GOOD PRACTICES OF THE AMAPÁ STATE PUBLIC PROSECUTOR'S OFFICE DESIGNED FOR RESOLUTIVE ACTION IN ITS CONSTITUTIONAL FUNCTION

Nicolau Eládio Bassalo Crispino[1]
Gláucia Porpino Nunes Crispino[2]
Danielle Gonçalves da Silva[3]

1. INTRODUCTION

The 1988 Constitution gave the Public Prosecutor's Office the task of defending the legal order, the democratic system, and unavailable social and individual interests[4]. As an institution that is

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[3] Bachelor of Law from the Federal University of Amapá – UNIFAP. Legal Advisor to the Attorney General's Office of the State of Amapá.
[4] BRASIL. Constituição da República Federativa do Brasil de 1988. Brasília, DF: Presidente da República 1988. Available in: <https://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm> Accessed on: October 20, 2023.

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essential to justice, with relevant attributions in protecting collective interests and fundamental rights, ministerial action requires continuous improvement to succeed in its constitutional mission.

Faced with the need to act in a resolutive manner towards the community, obtaining useful legal results and their realization on a practical level, the Brazilian Public Prosecutor's Office has sought to overcome the merely procedural perspective of its interventions, above all by adhering to good practices in the extrajudicial sphere of action, aimed at protecting and defending fundamental rights.

This dialog between resolutive practice and ministerial action is an important milestone in access to justice. In line with this objective, the National Council of the Public Prosecutor's Office, through Recommendation nº 54 of March 28, 2017, established the National Policy for Promoting Resolute Action by the Brazilian Public Prosecutor's Office.

This Recommendation represents implementing an "*institutional culture oriented towards delivering socially relevant results to society*"[5]. Under the terms of art. 1º, §1º of the normative guidance act, resolutive action is defined as follows:

> "For this resolution, resolutive action is understood to be that utilizing which the member, within the scope of his/her attributions, contributes decisively to effectively preventing or resolving the conflict, problem, or controversy involving the realization of rights or interests for whose defense and protection the Public Prosecutor's Office is legitimated, as well as to prevent, inhibit or adequately redress the injury or threat to these rights or interests and to enforce

[5] BRASIL. CNMP - Conselho Nacional do Ministério Público. Recomendação CNMP n.º 54/2017. Available in: <https://www.cnmp.mp.br/portal/images/Recomendacoes/Recomenda%C3%A7%C3%A3o-054.pdf>. Accessed on: October 20, 2023.

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> the sanctions applied judicially in the face of the corresponding unlawful acts, ensuring that they are as effective as possible through the regular use of the legal instruments made available to them for the extrajudicial or judicial resolution of these situations".

Based on the conceptualization presented, the Public Prosecutor's Office Resolutivity Manual[6] understands the term resolutivity as the quality of the performance of the member of the Public Prosecutor's Office, whether in the judicial or extrajudicial sphere, in the civil, criminal, or collective areas. In short, within the general perception of the subject, the manual states that resolutive action aims to produce useful legal results with a positive impact on society.

To this end, several measures are needed to consolidate a model of ministerial action based on resolutive action, among which the recognition of the member as an "*agent of transformative political will*"[7] stands out. This is because consolidating effective functional activity requires the member to be integrated and aware of the social reality, to adopt the relevant measures for social transformation.. Isso porque a consolidação da prática da atividade funcional eficaz exige que o membro esteja integrado e consciente da realidade social, com vista à adoção das providências pertinentes para a transformação social.

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[6] CNMP - Conselho Nacional do Ministério Público. Manual de Resolutividade do Ministério Público [recurso eletrônico]. Corregedoria Nacional do Ministério Público. 1. ed. Brasília: CNMP, 2023. p. 21. Available in <https://www.cnmp.mp.br/portal/images/Publicacoes/documentos/2023/manual_de_resolutividade.pdf> Accessed on: October 10, 2023.

[7] GOULART, Marcelo Pedroso. Elementos para uma teoria geral do Ministério Público/Marcelo Pedroso Goulart. – Belo Horizonte: Arraes Editores, 2013. p. 19. Available in: <http://www.iea.usp.br/pessoas/ElementosparaumateoriageraldoMP.pdf> Accessed on: October 10, 2023.

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For these reasons, Marcelo Pedroso Goulart[8] affirms that transformative social intervention by the Public Prosecutor's Office necessarily involves its institutional updating. This understanding highlights the dynamism of reality and the constant changes in social demands, which require the development of new institutional doctrine based on institutional policies that guide the fulfillment of concrete goals to achieve the socially legal results pursued by the body.

From the perspective of the work of its members, the National Council of the Public Prosecutor's Office issued General Recommendation CNMP-CN n.º 02/2018, which established general rules regarding the parameters for evaluating the effectiveness and quality of the members and units of the Public Prosecutor's Office. Among the principles and guidelines established, the relevance of knowledge of the social deficiencies of the locality in which they operate stands out as a skill for the member to act articulately in conflict situations[9].

In this context, the Resolutivity Manual, in the chapter on the foundations of the duty of relativity, formulated by Davi Reis Pirajá[10], states the importance of disseminating knowledge related to humanistic and interdisciplinary training during the courses for entry, life tenure, and promotion in the career of members:

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[8] GOULART, Marcelo Pedroso. Ministério Público: estratégia, princípios institucionais e novas formas de organização. *In* LIVIANU, R., coord. Justiça, cidadania e democracia [online]. Rio de Janeiro: Centro Edelstein de Pesquisa Social, 2009. p. 158-169. (p. 160) Available in: <https://books.scielo.org/id/ff2x7/pdf/livianu-9788579820137-14.pdf> Accessed on: October 10, 2023.

[9] BRASIL. CNMP - Conselho Nacional do Ministério Público. Recomendação CNMP-CN nº. 02/2018. Available in: <https://www.cnmp.mp.br/portal/atos-e-normas/nrma/6112/> Accessed on: October 10, 2023.

[10] PIRAJÁ, Davi Reis S. B. Fundamentos do Dever de Resolutividade do Ministério Público. Capítulo 3. *In* "Manual de Resolutividade do Ministério Público". Corregedoria Nacional. Op. cit. p.74. Accessed on: October 20, 2023.

> "Today, social and human issues are highly complex. The current situation reveals an interconnection between social, political, and economic problems, which are systemically connected and feedback on each other. Understanding this correlation between the most diverse issues in society is fundamental for dealing with the demands that Public Prosecutor's Office members face. It is therefore necessary to adapt ministerial activities to a paradigm of action based on humanistic values and dialog between the various areas of knowledge"[11].

Given this, this article aims to present elements that can contribute to the continuous improvement and unity of ministerial action by presenting the good practices adopted by the Public Prosecutor's Office of the State of Amapá (MPAP), especially concerning the implementation of socially relevant projects: Citizen Registration Project (Projeto Registo Cidadão), Radar Ambiental app, SOS Mulher app, and the Victim Support Center (Centro de Apoio às Vítimas).

Based on the projects mentioned above, albeit briefly, this study aims to present the benefits obtained by prioritizing the out-of-court resolution of social conflicts, especially as it proves to be a way of enabling a faster, more economical, and implementable solution, with the delivery to Amapá society of concrete results of MPAP legal action.

[11] In this excerpt, the author took as a basis the teachings of Cléia Cristina Pereira Januário Fernandes and Carmelina Maria Mendes de Moura in the chapter "Atuação Humanista e Integrada: um novo olhar sobre o Estágio Probatório". *In* Brasil. Conselho Nacional do Ministério Público. Revista Jurídica da Corregedoria Nacional: Atuação das Corregedorias no Estágio Probatório dos Membros do Ministério Público Brasileiro: o futuro do Ministério Público e o Ministério Público do futuro/Conselho Nacional do Ministério Público. – Vol. V. – Brasília: CNMP, 2018. Available in: <https://www.cnmp.mp.br/portal/images/Publicacoes/documentos/2018/REVISTA_JURIDICA_5_WEB.pdf> Accessed on: October 20, 2023.

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2. RESOLUTION AS A PRINCIPLE OF INSTITUTIONAL STRATEGIC PLANNING

In his writings on human rights, Norberto Bobbio comments: "The fundamental problem with human rights today is not so much to *justify* them as to *protect* them"[12]. The problem presented by the political scientist leads us to reflect on whether it is unnecessary to analyze rights by their nature and foundation, whether they are natural or historical, absolute or relative rights, but rather what is the safest way to guarantee them, to prevent them from being continually violated, despite being constitutionally enshrined.

Not only as an institution that performs functions essential to the administration of justice but also aware of the problems to be faced with preventing the violation of rights, the Brazilian Public Prosecutor's Office continues to rethink its methods of action, moving beyond measuring mere productivity to evaluating, in a concrete and effective way, the results of the work carried out by its enforcement bodies.

As a starting point, CNMP Resolution n.º 147 of June 21, 2016[13], provides for the Public Prosecutor's Office Institutional Strategic Planning, establishing efficiency, resolutiveness, and

[12] BOBBIO, Norberto. A era dos direitos. Tradução Carlos Nélson Coutinho. Apresentação de Celso Lafer. Rio de Janeiro: Elsevier. 2004. p. 16. Available in: <https://edisciplinas.usp.br/pluginfile.php/297730/mod_resource/content/0/norberto-bobbio-a-era-dos-direitos.pdf> Accessed on: October 10, 2023.

[13] BRASIL. CNMP - Conselho Nacional do Ministério Público. Resolução CNMP nº 147, de 21 de junho de 2016: dispõe sobre o planejamento estratégico nacional do Ministério Público, estabelece diretrizes para o planejamento estratégico do Conselho Nacional do Ministério Público, das unidades e ramos do Ministério Público e dá outras providências. Available in: <https://www.cnmp.mp.br/portal/images/Resolucoes/Resolu%C3%A7%C3%A3o-147_2.pdf> Accessed on: October 10, 2023.

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publicity as its basic principles. To make it easier for members to visualize the strategic objectives, the National Strategy Map comprises the following elements: Mission, Vision, Values, Perspectives, Objectives, Programs, and Actions.

The vision element is defined by Article 2 of CNMP Resolution nº 147/216 as "*the desired future for the Institution*". In this sense, based on national and regional actions promoted for collective debate on issues related to the final activity, the institutional vision of the Public Prosecutor's Office was constructed in the strategic planning map from 2020 to 2029 in the following terms: "*To be an institution with resolute action in defense of society, in the fight against corruption and crime and in guaranteeing the implementation of public policies*"[14].

Once these guidelines have been established, the ministerial bodies must act following the planning through which the institution works strategically to fulfill the mission that justifies its existence: to defend and fight for respect for all citizens to have their basic needs guaranteed for a dignified life.

2.1 The Institutional Strategic Planning of the Public Prosecutor's Office of the State of Amapá (ISP PF AP/2020 2029)

As an offshoot of national strategic planning, built with the contributions of members to help shape a single institutional purpose, the strategic planning of the Public Prosecutor's Office of the State of Amapá (MPAP) was regulated by Normative Act nº

[14] Planejamento Estratégico Nacional: Ministério Público 2020/2029/Conselho Nacional do Ministério Público. – Brasília: CNMP, 2019, p. 26. Available in: <https://www.cnmp.mp.br/portal/images/Publicacoes/documentos/2019/Final-LivretoCNMP-PlanejamentoEstrategico.pdf> Accessed on: October 10, 2023.

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0000027/2021 GAB/PGJ[15], which includes empathy, integrity, proactivity, problem-solving, and commitment as the institution values. It also lists the following objectives to be achieved:

> Art. 4º The strategic planning of the MP-AP for the period 2020-2029 includes:
> (...)
> IV - The strategic objectives:
> a) Strengthening citizens' knowledge of their rights and responsibilities and commitment to social inclusion;
> b) Citizenship: guaranteeing broad protection and defense of fundamental rights and guarantees;
> c) Fairness: strengthening the effectiveness of civil and criminal prosecution to guarantee the rights of the accused and victims;
> d) Promote educational activities for the exercise of citizenship;
> e) Intensify dialogue with society and social and political organizations with a focus on social control;
> f) Guaranteeing access to services and information in a transparent and timely manner;
> g) Intensify extrajudicial defense with a focus on resolving problems and getting closer to society;
> h) Improve the proactive monitoring of public policies that guarantee rights;
> i) Encouraging self-composition mechanisms to achieve social peace;
> j) Intensify the fight against crime and administrative improbity;
> k) Improving internal controls and intelligence instruments;
> l) Promoting innovation and work processes with a focus on simplification and excellence;
> m) Improving effective communication with society and institutional relations;
> n) Strengthening management and public governance mechanisms;

[15] AMAPÁ. MPAP – Ministério Público do Estado do Amapá. Ato Normativo nº 0000027/2021-GAB/PGJ. Available in: https://www.mpap.mp.br/diario/pdf/diario/894; p. 9 a 21. Accessed on: October 18, 2023.

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o) Intensifying people development and a culture focused on institutional values and results;
p) Promoting quality of life at work and valuing civil servants;
q) Promoting modernization and creating integrated, secure, high-performance technological solutions.

The objectives established demand the due attention of prosecutors so that they are reflected in the quality of the work conducted. This is because the Public Prosecutor's Office member, when duly aware of the existence of a strategic objective in their area of activity, must prioritize action to fulfill these objectives.

Although it is one of the smallest ministerial bodies compared to the other units of the Federation, MPAP has acted within its strategic planning, dedicating itself to devising social projects and fostering good practices among its members based on the need to fulfill institutional strategies.

3. RESOLUTIVE ACTION: APPROXIMATION BETWEEN THE PUBLIC PROSECUTION OFFICE OF THE STATE OF AMAPÁ AND THE SOCIETY FOR THE ENFORCEMENT OF RIGHTS

Aware of its constitutional role, the Amapá State Public Prosecutor's Office (MPAP) has, over the years, developed projects to strengthen the culture of human rights defense, using elements obtained through active listening to the population. This proactive and empathetic behavior on the part of the ministerial body towards the community, in addition to building assertive communication with vulnerable groups, allows the member to identify social demands related to their area of activity, promoting democratic and appropriate solutions outside the litigious judicial context.

This topic will briefly present some of the projects designed by the enforcement bodies to realize the constitutional

corollaries inherent to the institutional functions and guarantee the incorporation of good resolution practices within the MPAP.

3.1. The Citizen Registry Project (Projeto Registro Cidadão)

The dignity of the human person, as one of the foundations of the Federative Republic of Brazil, is a right that runs through the constitutional text, materializing with civil personality, which begins with birth (art. 2º, Civil Code)[16]. The Public Prosecutor's Office, as an institution that defends democracy and social interests, has the role of effectively promoting the exercise of citizenship, ensuring that every person, as a right of personality, has the right to their name, including their first and last name (art. 16, Civil Code).

Considering that the right to a name is an attribute of the personality to be established in the civil registry of birth, the Public Prosecutor's Office of the State of Amapá, within the scope of the 2nd Civil Prosecutor's Office of Macapá, promoted the Citizen Registry Project, to guarantee the right to citizenship of children, young people, and adults through the issuance of the Civil Registry of Birth.

To try to eradicate under registration of births and ensure the exercise of citizenship, this Citizen Registration project was developed in 2006, under the coordination of the 2nd Macapá Public Prosecutor's Office, carried out in conjunction with the Amapá State Court of Justice through the Legal Father Project (Projeto Pai Legal) later incorporated into the National Council of Justice (CNJ) under the name Father Present Project (Projeto Pai Presente)

[16] BRASIL. LEI Nº 10.406, 10 de jan. de 2002. Institui o Código Civil. Available in: <https://www.planalto.gov.br/ccivil_03/leis/2002/l10406compilada.htm> Accessed on: October 20, 2023.

conducted by the 2nd Family, Orphans, and Succession Court of Macapá[17].

Concerning the sub-registration of births, Technical Note no 01/2020[18], issued by the Brazilian Institute of Geography and Statistics (IBGE), provides the following clarifications on the subject:

> "Sub-registration of births refers to all births not registered in the same year of their occurrence or the first quarter of the following year. This indicator is important to show how far the country is from fulfilling the basic requirement of recognizing the newborn as a citizen, and consequently to strengthen public policy actions to increase such registrations."

In effect, civil registration of birth gives publicity to the live birth of a given person, giving them a legal and authentic existence and the ability to contract obligations and acquire rights[19]. Access to basic documentation ensures everything from rights relating to education and health, such as enrolment in the public school system, medical and hospital care, and essential public services, to

[17] The Citizen Registration Project was coordinated by the 2nd Public Prosecutor of Macapá, Gláucia Porpino Nunes Crispino. The project was conducted in conjunction with the Legal Father Project, which was conceived by the Presiding Judge of the 2nd Family, Orphans, and Successions Court of the Macapá District, Judge Elayne da Silva Ramos Cantuária.

[18] IBGE - Instituto Brasileiro de Geografia e Estatística. Pesquisa Estatísticas do Registro Civil: Nota técnica 01/2020. Esclarecimentos sobre o Sub-Registro de Nascimentos. Rio de Janeiro, 2020. Available in: <https://biblioteca.ibge.gov.br/visualizacao/periodicos/3099/rc_sev_esn_2018.pdf > Accessed on: October 10, 2023.

[19] BRASIL. TJDF – Tribunal de Justiça do Distrito Federal e dos Territórios. Informativo. O que é um Registro de Nascimento? Brasília, DF: 2019. Available in: <https://www.tjdft.jus.br/informacoes/perguntasmaisfrequentes/extrajudicial/nascimento#:~:text=O%20registro%20de%20nascimento%20d%C3%A1,contrair%20obriga%C3%A7%C3%B5es%20e%20adquirir%20direitos> Accessed on: October 20, 2023.

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the exercise of political citizenship characterized, in general terms, by the right to vote.

To properly understand the social repercussions of the Amapá ministerial body initiative, especially by facilitating access to basic civil documentation, it is necessary to understand that sub-registration is associated with various factors, such as poverty, social exclusion, the distance between the place of birth and the registry office, as well as the costs incurred in registering. These circumstances, combined with the lack of formal recognition of the individual as a citizen, make the situation of vulnerability and social inequality even more likely.

In this context, the mobilization of the Public Prosecutor's Office and the Court of Justice, in the extrajudicial sphere, conducted in the "Citizen Registration" and "Legal Father" projects has produced positive results in favor of the realization of fundamental rights, given the opportunity offered to the population of Amapá to issue free civil birth registration and, consequently, the reduction of the percentage of under registrations in the State of Amapá and the approximation of children and adolescents with their biological identity[20].

Based on a mapping of neighborhoods and schools conducted by the state Secretariat for Mobilization and Social Inclusion, it was possible to identify children and adults who did not have records to establish the action plan to be conducted by the institution. Civil society could count on joint efforts to assist the public and justification hearings during the project. These actions

[20] PROJETO Pai Legal. Macapá, AP. [s. d.] Available in: <https://old.tjap.jus.br/portal/publicacoes/projetos-sociais/862-pai-legal.html> Accessed on: October 20, 2023.

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were necessary and effective in achieving socially relevant results based on a resolutive approach[21].

The several social contributions made by the implementation of the policy to eradicate sub-registration of births throughout the state of Amapá were highlighted in the 13th edition of the Human Rights Award, promoted by the Special Secretariat for Human Rights of the Presidency of the Republic. In the Santa Quitéria do Maranhão category - Civil Registration of Birth, the Citizen Registry Project won the award for its work in the area of human rights.

3.2 The Radar Ambiental app

By prioritizing participatory citizenship and solidarity over aspects of democracy and environmental justice, the normative basis of Environmental Law is embodied in art. 225 of the Constitution of the Republic[22], the content of which guarantees everyone the "*right to an ecologically balanced environment, a good for the common use of the population and essential to the quality of life*". Consequently, in the same democratic vein, the constitutional text concomitantly enshrines the fundamental duty to defend and preserve the environment on the part of the public authorities and the community.

[21]AP – Projeto Registro Cidadão do Amapá é vencedor do prêmio Direitos Humanos 2007. ARPEN/PE Associação dos Registradores de Pessoas Naturais do Estado de Pernambuco. Assessoria de Imprensa Arpen Brasil. Pernambuco: 11 de dezembro de 2007. Available in: <https://arpenpe.org/?p=1750> Accessed on: October 10, 2023.

[22] VIERIA, Marcelo Lemos. "A mediação no âmbito da 'Ação Civil Pública Ambiental': Dever jurídico fundamental do particular na busca pela concretude da justiça ambiental". Ministério Público e Sustentabilidade. O direito das Presentes e Futuras Gerações. 1. ed. – Brasília, DF. 2023. p. 46. Available in: <https://www.cnmp.mp.br/portal/images/Publicacoes/documentos/2017/Publicacao_CTMA_final.pdf> Accessed on: October 10, 2023.

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In the environmental sphere, given the importance of the legal asset under protection and the complex conflict of economic interests surrounding it - licit and illicit -[23], it is essential to bring the Public Prosecutor's Office and civil society closer together to strengthen policies aimed at protecting the environment.

Given the collective nature, based on the priority of solidarity, of the right to a balanced environment, the Rio Declaration on Environment and Development, in its Principle 10[24], addressed environmental democracy, stating the following:

> The best way to address environmental issues is to ensure the participation of all interested citizens at the appropriate level. At the national level, every individual should have adequate access to environmental information available to public authorities, including information on hazardous materials and activities in their communities and the opportunity to participate in decision-making processes. States must facilitate and encourage public awareness and participation, making information available to all. Effective access to judicial and administrative procedures, including compensation and damages reparation, must be provided.

Based on the need to guarantee popular participation in issues related to the environment, the Public Prosecutor's Office of the State of Amapá developed the Radar Ambiental App in 2022, following the proposal formulated by the Macapá Environmental Prosecutor's Office and the MPAP Coordination of the Environmental Operational Support Center (CAO-AMB). The tool

[23] CNMP - Conselho Nacional do Ministério Público. Manual de Resolutividade do Ministério Público [recurso eletrônico]. Corregedoria Nacional do Ministério Público. *Op. cit*. P. 281.

[24] BRASIL. Declaração do Rio de Janeiro. Estud. av. [online]. Ago. de 1992, vol.6, n.15, p.153-159. Available in:. https://doi.org/10.1590/S0103-40141992000200013. Accessed on: October 10, 2023.

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enables dialogue and collaboration between the public and the prosecution service, including providing evidence of an environmental crime so that, if the conflict cannot be resolved, it can help members of the Public Prosecutor's Office to bring legal action[25].

The Radar Ambiental app emerged from the daily reality of the Public Prosecutor's Offices working in the environmental area, specifically concerning the receipt of factual reports on recurring issues converted into extrajudicial and judicial proceedings. Combined with technological resources, the application aims to provide evidence for civil and criminal environmental lawsuits, with the help of remote sensing and satellite information, data that allows the location of environmental damage to be identified, and a reference to be included in procedural systems when proceedings are brought[26].

In addition, this application is a model tool for social interaction to offer the Public Prosecutor's Office of the State of Amapá, through the Center for Operational Support of the Environment (CAO-AMB), a fast-pace for registering and receiving reports of environmental crimes, ensuring the participation of all

[25] The Environmental Radar app was conceived as a proposal within the 1st and 2nd Environmental Justice Prosecutors' Offices of Macapá, initiated by the Public Prosecutor Marcelo Moreira dos Santos and by the Coordinator of the Operational Support Center for the Environment of the MPAP, Public Prosecutor Fábia Regina Rocha Martins. The app was developed by the Information Technology Department (DTI) of the MP-AP. "RADAR Ambiental: MP-AP lança aplicativo para mapeamento de denúncias de crimes ambientais." *In* https://mpap.mp.br/noticias/gerais/radar-ambiental-mp-ap-lanca-aplicativo-para-mapeamento-de-denuncias-de-crimes-ambientais. Accessed on: October 10, 2023.

[26] RADAR Ambiental: MP-AP lança aplicativo para mapeamento de denúncias de crimes ambientais. Available in: <https://mpap.mp.br/noticias/gerais/radar-ambiental-mp-ap-lanca-aplicativo-para-mapeamento-de-denuncias-de-crimes-ambientais> Accessed on: October 10, 2023.

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interested citizens, to guarantee the broad protection and defense of an ecologically balanced and sustainable environment.

This experience can be recognized as a good institutional practice for promoting dialogue not only formally and technically but also for building informal communication with the Amapá community, materializing the efficiency of functional activity for the benefit of the environment and citizens. Therefore, depending on the circumstances, the Radar Ambiental app operates within the parameters of resoluteness aimed at preventing, repairing, or making liable for damage caused to the environment[27].

To disseminate the benefits of the app implemented in the Public Prosecutor's Office of the State of Amapá, aligned with the National Strategic Map and the need to give concrete expression to fundamental rights, the Radar Ambiental app is listed in the National Project Bank and is currently enrolled in the National Council of Public Prosecutors Award, in the sustainability category[28].

3.3 The SOS Mulher app

Domestic and family violence against women is a complex problem to be tackled by the Public Prosecutor's Office since the constitutional text has given it the role of promoting gender

[27] CNMP – Conselho Nacional do Ministério Público. Manual de Resolutividade do Ministério Público [recurso eletrônico]. Corregedoria Nacional do Ministério Público. Op. cit. p. 281.

[28] CNMP – Conselho Nacional do Ministério Público. Banco Nacional de Projetos. Radar Ambiental 2.0. Available in: <https://bancodeprojetos.cnmp.mp.br/Detalhe?idProjeto=3595> Accessed on: October 10, 2023.

equality[29]. In addition to this fundamental guarantee, the 1988 Constitution enshrines equality between men and women, in terms of rights and obligations, in the context of family relationships and assigns the state the duty to adopt mechanisms to combat domestic violence:

> Art. 226. The family, the basis of society, has special protection from the State.
> (...)
> § 8º. The State shall ensure assistance to the family in the person of each one of its members, creating mechanisms to curb violence within their relations.

As you can see, the obligation to protect every family member is the state's duty, according to constitutional precepts. However, due to various factors, one of the main difficulties encountered in combating domestic violence is the silence of the victims who, out of fear, do not feel safe to ask for help and report their aggressors[30].

To properly reflect on the issue, it is important to mention that the State of Amapá, through the Police Station for Crimes against Women, recorded 3,530 incidents in the first seven months

[29] BRASIL. Constituição da República Federativa do Brasil de 1988. Available in: <http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm>. Accessed on: October 10, 2023.

[30] LOURENÇO, Lia Ruiz. Considerações sobre as disposições preliminares, Título I - Da lei maria da Penha. Violência Doméstica e familiar contra a mulher. Revista do Nudem, p. 06-21. Available in: <https://www.mpsp.mp.br/portal/page/portal/documentacao_e_divulgacao/doc_biblioteca/bibli_servicos_produtos/BibliotecaDigital/BibDigitalLivros/TodosOsLivros/Violencia-domestica-e-familiar-contra-a-mulher.pdf> Accessed on: October 10, 2023.

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of 2017, 80% of which were due to aggression suffered by husbands or partners[31].

Considering the alarming number of cases of violence against women, the Public Prosecutor's Office of the State of Amapá, through the Technical Cooperation Agreement (TCA) signed with the Macapá City Hall, developed the SOS Mulher app[32], the purpose of which is to provide preventive assistance to women at risk of domestic violence. The main functionality of the tool is to send a short text message asking for help via a "panic button" highlighted on the screen.

It should be noted that the message sent will be addressed to five people already registered on the app, who are presumed to be trusted by the woman who is a victim of violence. In addition, the distress call contains the geographical location where the message was sent, which makes it easy to identify the address of the app user.

To promote not only the expansion of channels for reporting violence against women but also to give them access to information about their rights, the SOS Mulher app has a space designed to give visibility to useful telephone numbers in the women's support network and in the educational field, to disseminate knowledge about rules designed to combat the practice of gender violence. This is a good practice implemented by the Amapá ministerial body due to its ease of use and remarkable effectiveness in the social sphere, guaranteeing its use by any woman who finds herself in a situation of imminent risk of violence.

[31] PACHECO, John. Delegacia de Macapá registra 3,5 mil casos de violência contra a mulher em 2017. G1 AP, Macapá. 16 ago. 2017. Available in: <https://g1.globo.com/ap/amapa/noticia/delegacia-de-macapa-registra-35-mil-casos-de-violencia-contra-a-mulher-em-2017.ghtml> Accessed on: October 10, 2023.

[32] The SOS Mulher App was developed by the Information Technology Department under the coordination of its then Director, Rodinei Silva da Paixão.

It should be noted that although the app is aimed at women at risk of domestic violence, the tool can be used in other actions to prevent and alert incidents related to women's safety.

Within this general perspective of urgency in confronting violations of women's fundamental rights, the SOS Mulher app, developed by the Amapá Public Prosecutor's Office in the Information Technology Department, is part of the catalog of projects awarded by the National Council of Public Prosecutors, winning first place in the CNMP Award, in the Information Technology category, in 2019[33].

3.4 The Victim Support Center

Improving the effectiveness of criminal prosecution while also ensuring the victim's right to full protection and dignity is yet another function of the Public Prosecutor's Office, and this attribution derives from the very ownership of public criminal action conferred on the body under the terms of art. 129, I, of the 1988 Constitution[34]. Given the special vulnerability of victims of crime, it is essential to preserve and protect their rights, avoiding further traumas during police investigations or criminal proceedings.

[33] CNMP – Conselho Nacional do Ministério Público. "Prêmio CNMP – Catálogo de projetos premiados". Brasília: CNMP, 2019. p. 41. Available in: <https://www.cnmp.mp.br/portal/images/noticias/2019/agosto/20-08-v03_CartilhaA4-CNMP-ProjetosPremiados.pdf> Accessed on: October 10, 2023.

[34] CNMP – Conselho Nacional do Ministério Público. "Guia prático de atuação do Ministério Público na proteção e amparo às vítimas de criminalidade". Brasília: CNMP, 2019. p. 8. Available in: <https://www.cnmp.mp.br/portal/images/noticias/2019/dezembro/Guia_Pr%C3%A1tico_de_Atua%C3%A7%C3%A3o_do_MP_na_Prote%C3%A7%C3%A3o_%C3%A0s_V%C3%ACtimas_de_Criminalidade_digital.pdf> Accessed on: October 10, 2023.

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From this perspective, the Brazilian Public Prosecutor's Office has adopted a change in legal and institutional culture, starting with the recognition of victims of criminal offenses and acts of infraction as subjects of rights, detaching them from the position of mere evidence gatherers.

> "In the criminal field, the victim was relegated to a mere element of procedural evidence for many years. Repositioning the victim as a subject of rights within our legal system is an urgent measure of extreme social relevance. Victims must be the protagonists of their rights, receiving special attention from the state, not only in terms of seeking redress but also in terms of shelter and protection"[35].

To encourage good practices to protect and ensure the rights of victims of violence, ensuring the humanization of the criminal process to the detriment of a mere legal formal response, the Public Prosecutor's Office of the State of Amapá implemented, in 2023, the Center for Victim Assistance in the Public Prosecutor's Office "We Belong" (CAVINP), a unit attached to the office of the Attorney General for specialized technical support and implementation of the Institutional Policy for Comprehensive Protection and Promotion of Rights and Support for Victims[36].

The creation of the reception center is based on the objective of forming an inter-institutional network to support, promote, and ensure the rights of victims of any infraction, with

[35] RIBEIRO, Carlos Vinícius Alves; FELIX, Juliana Nunes; SOUZA, Marcelo Weitzel Rabello. "Os direitos das vítimas: reflexões e perspectivas". ESMPU, v.1, Brasília, 2023. Available in <https://www.cnmp.mp.br/portal/images/Publicacoes/documentos/2023/direitos vol1.pdf> Accessed on: October 10, 2023.

[36] BRASIL. CNMP - Conselho Nacional do Ministério Público do Estado do Amapá. Resolução n.º 243, de 18/10/2021. Available in: <https://www.cnmp.mp.br/portal/images/Resolucoes/2021/Resoluo-n-243-2021.pdf> Accessed on: October 10, 2023.

priority for victims of sexual crimes, domestic violence, and violence against life throughout the state of Amapá[34]. In defense of the legal order violated by the commission of a crime, the initiative is based on the premise that all people whose rights have been violated should receive adequate care, protection, shelter, swift response, and reparation.

As part of the Institutional Policy of Comprehensive Protection and Promotion of Rights and Support for Victims, CAVINP[37] has been implemented by the Coordination of the Prosecutors of the Jury Court of Macapá, in compliance with the guidelines of the National Council of the Public Prosecutor's Office (CNMP), aimed at improving and welcoming victims of crime and observing their rights at all stages of criminal prosecution.

Through the search for ways to improve its members and employees, due to the constant legal, social, political, and economic changes, the Public Prosecutor's Office of the State of Amapá has achieved a trajectory of socially positive action, resulting in recognition of victims' rights, especially avoiding their submission to repetitive and unnecessary procedures, which cause new damage and suffering, causing re-victimization.

Sharing these good practices with other members makes it possible to improve the actors' functions constantly. As a result, the Public Prosecutor's Office is united around the National Movement in Defense of Victims to develop coordinated actions to mobilize, train, and encourage good practices to protect and ensure the

[37] The "We Belong" Victim Assistance Center (CAVINP) was established by Normative Act No. 0000030/23 – GAB/PGJ, on the initiative of the Coordinator of the Macapá Jury Court Prosecutors' Offices, Public Prosecutor of Macapá Klisiomar Lopes Dias. "MP-AP institui o Centro de Atendimento às Vítimas 'Nós Pertencemos' " (CAVINP). Available in <https://www.mpap.mp.br/noticia/mp-ap-institui-o-centro-de-atendimento-as-vitimas-nos-pertencemos-cavinp-#:~:text=O%20Minist%C3%A9rio%20P%C3%BAblico%20do%20Amap%C3%A1,N%C3%B3s%20Pertencemos%E2%80%9D%20(CAVINP)> Accessed on: October 10, 2023.

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rights of victims of violence, omission, hatred, intolerance, insecurity, inequality, or exploitation.

4. FINAL CONSIDERATIONS

This article concludes that access to justice and the realization of fundamental rights are premises inherent to consolidating a Resolute Public Prosecutor's Office, whose *ratio* is the defense of the legal order, the democratic regime, and unavailable social and individual interests. Achieving these lofty goals requires permanently improving the institution's members, civil servants, and employees and, above all, promoting resolutive practices to fulfill the constitutional mission.

Such practices should be encouraged, implemented, and disseminated, so the main provisions that established the National Policy to Encourage Resolute Action in the Brazilian Public Prosecutor's Office were analyzed, highlighting Recommendation n.º 54/2017 and CNMP-CN General Recommendation n.º 02/2018. This approach was necessary to understand the institutional resolution model to follow, its scope, and what it seeks to protect.

Once this analysis has been conducted, we discuss the projects developed within the Amapá State Public Prosecutor's Office, which have brought useful and socially relevant results, regardless of the existence of a lawsuit. Undoubtedly, the projects implemented are good practices resulting from institutional planning with a focus on speed, the expansion of extrajudicial action, and the proactive conduct of the members of the *Parquet*.

Although the projects listed are important instruments for protecting the social interest and are based on relentless action, the mission given to the Public Prosecutor's Office is continuous and requires constant evolution, and this work is a simple contribution to the academic and institutional debate.

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CORRUPTION IN THE AMAPÁ STATE PENITENTIARY SYSTEM: THE CASE OF FAKE CERTIFICATES

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INTRODUCTION

Corruption is a global crime. Its practices extend to all countries in the world, varying only in intensity and scope of action, and are therefore not exclusive to poor or developing countries.

International initiatives such as the United Nations Convention against Organizational Crime and the United Nations Convention against Corruption are commendable. They correspond to demonstrations that corruption is a crime that deserves attention from all countries due to the harmful economic, social and legal effects produced.

In Brazil it couldn't be any different. There are signs of corruption in our country since the time of discovery in 1500. From then until today, the criminal scheme of corruption continues to prevail and has taken root in the various sectors of Public Administration. There are cases of illegal administrative contracts, embezzlement of money in public works, fraudulent bidding, allotment of public positions in exchange for political support, illicit benefits to prisoners, among other creative forms of corrupt practices that not even legislation, doctrine and jurisprudence are capable of exhausting.

The State of Amapá, located within the legal Amazon, suffers from the same problems of corruption that exist in the country. Cases of corruption are recurrent within the Executive and Legislative Powers, involving the highest authorities of the aforementioned powers. Such agents were, on some occasions, judicially convicted and even imprisoned.

This widespread state of corruption in Amapá exposes a bitter but well-known reality in the context of criminal

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organizations – the participation of public agents at the highest levels who accepted entering the world of crime through their own choices, through ethical deviations and because they thought that the famous impunity existing in Brazil would compensate for the practice of these "white collar" crimes.

It is within this local, national and global context that this article will analyze the case of false certificates at the Institute of Penitentiary Administration of Amapá – IAPEN, in the years 2016 to 2018, which exposed the fragility of the penitentiary system as well as exposing the Amapá population to social insecurity with the undue release of several prisoners.

FACTICAL-LEGAL CONTEXT OF THE CASE OF FAKE CERTIFICATES

The Institute of Penitentiary Administration of Amapá - IAPEN is the agency responsible, in the State of Amapá, for implementing penitentiary policies aimed at custody, incarceration of provisional and definitive prisoners and precautionary limitation of civil imprisonment. In Macapá, it is located in the Cabralzinho neighborhood and has three prison centers: Penal Colony, Men's Penitentiary and Women's Penitentiary (IAPEN, 2022).

IAPEN has custody of more than two thousand prisoners, both provisional and permanent, and is the place where those sentenced to closed and semi-open regimes are sent to serve their sentences. The aforementioned authority provides food, medical, dental, psychological, social, educational and legal assistance in accordance with art. 11, of the Criminal Execution Law No. 7,210/1984 (LEP).

Among the various bodies linked to the municipality, the School and Vocational Assistance Unit – UNAEP, linked to the Penal

Treatment Coordination – COTRAP, stands out for the purposes of re-education and insertion of prisoners into society. UNAEP is responsible for promoting and promoting professional courses, readings[3] and other activities that help the prisoner to resocialize.

According to the Penal Execution Law, a convict who serves his sentence in a closed or semi-open regime has the right to redeem, through study or work, part of the time spent serving his sentence. The count is carried out as follows: a) 1 (one) day of sentence for every 12 (twelve) hours of school attendance – primary, secondary, including vocational, or higher education activity, or professional requalification – divided into minimum, in 03 (three) days; and b) 1 (one) day of penalty for every 3 (three) days of work[4]. Furthermore, the time redeemed will be counted as a sentence served, for all legal purposes [5].

The Saint Joseph School operates within the Amapá penal system, and educational unit that aims, among other purposes, to offer Youth and Adult Education (EJA). The aforementioned school "through pedagogical actions, based on the reading of a prison school culture, and the interfaces that unfold within the daily life of the prison and prison school, contributes to the reintegration process" (NEVES, 2019).

Using the structure of Saint Joseph School to continue the project of resocialization of men and women in custody, IAPEN also enters into agreements with public companies and private entities, such as PETROBRAS, SEST/SENAI/SENAC, to carry out activities miscellaneous, e.g. papier-mâché and origami courses; 1st and 2nd

3 Law 12,433, of June 29, 2011, which amended the provisions of article 126 and 129 of the Criminal Execution Law, equated work activity with education in prison for the purposes of redemption.
4 Article 126.
5 Article 128.

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Stage of Secondary Level; Assembly and maintenance of computers; Woodworking and Recycling.

After due proof of such professional courses, inmates receive certificates of completion and approval with a previously established workload. This will serve to clear the sentences and, consequently, progress faster.

THE CRIMINAL SCHEME

The criminal association established at IAPEN, in the period between 2016 and 2018, subject to police investigation and subsequent complaint by the Public Prosecutor's Office, consisted of the involvement of public agents, IAPEN employees, and inmates who paid for the issuance of false certificates for the purpose of remission of pity. Initially, 04 (four) defendants were charged, including the head of the School and Vocational Assistance Unit – UNEAP at the time; the then secretary of Saint Joseph School and two other inmates.

The aforementioned defendants associated[6] themselves in an orderly manner with the aim of committing various crimes, including passive corruption[7], forgery of a private document [8] and

6 The crime of criminal association occurs through the conduct of bringing together 03 (three) or more people with the specific purpose of committing crimes (art. 288, CP). In the same sense, see TRF-1st Region, HC 0001139-31.2014.4.01.0000/GO, Rapporteur Judge Fed. Henrique Gouveia da Cunha, DJe 7/3/2014.

7 According to article 317, Brazilian Penal Code, anyone who "requests or receives, for themselves or others, directly or indirectly, even outside of their role or before assuming it, but as a result of it, an undue advantage, or accept the promise of such an advantage". (our translation)

8 Article 298, Brazilian Penal Code: "Forging, in whole or in part, a private document or altering a true private document. Penalty – imprisonment, from 1 (one) to 5 (five) years, and fine". (our translation)

entry of a telephone device into a penitentiary institution[9]. Such practices aimed, among other things, to facilitate the redemption of time served by IAPEN inmates through falsification of course diplomas from various partner institutions.

IAPEN inmates paid between R$500.00 (five hundred reais) and R$26,000.00 (twenty-six thousand reais) so that the aforementioned defendants could produce false certificates for the purpose of remission of their sentence. There was a continuity of crime that lasted at least 02 (two) years, between 2016 and 2018, benefiting more than 100 prisoners.

The damage caused by the criminal scheme goes beyond the simple amount received illicitly. Dozens of prisoners had their regime progressed and began to serve a lighter sentence, therefore violating the criminal execution regime. Several convicts were unfairly placed on the streets, which demonstrated contempt for justice, social disruption and caused a serious risk to peace and public safety.

Once the complaint was received and, after the trial at the 1st Criminal Court of the District of Macapá-AP, one of the detainees was acquitted and the others involved were convicted. The former head of the School and Vocational Assistance Unit, who led the criminal scheme and charged money from prisoners to enter false course data, which were never taken, was sentenced to more than 14 (fourteen) years in prison in addition to a fine; the then Secretary and teacher at Saint Joseph School, who received money for certificates of completion of professional courses and false certificates of study time, had a sentence set at 12 (twelve) years and 06 (six) months in prison in addition to a fine and, Finally, as

9 Article 349-A, Brazilian Penal Code: “Entering, promoting, intermediating, assisting or facilitating the entry of a mobile telephone, radio or similar communication device, without legal authorization, into a prison establishment. Penalty – detention from 3 (three) months to 1 (one) year”. (our translation)

for the inmate involved in the criminal association, who had the role of arranging other prisoners to pay for false certificates issued by him, he was sentenced to 04 (four) years and 02 (two) months in prison and a fine. On appeal, the convictions were maintained, only the quantum of the prison sentences was resized. The ruling became final on 07/22/2021.

BRIEF STUDY ON CORRUPTION IN THE CURRENT CONTEXT

The practice of corruption is not something new in the global context and is not exclusive to underdeveloped or emerging countries. This nefarious activity is permeated throughout the evolution of humanity, whether in the form of corruption between private individuals when members of nomadic tribes were corrupted by other rival tribes in exchange for the most diverse advantages – new territories and hunting, fishing and gathering products –, whether in the time of Ancient Egypt, 3,000 BC, when public officials demanded bribes to make certain decisions (WERNER, 2017), approaching today the most common aspect of corruption that occurs within the public service.

Aristotle (2001) already stated that good is what things tend to, that is, the purpose that all human action should have. And the practice of good produces, as a logical consequence, moral virtue, inherent to the human being. However, there is no moral virtue without practicing justice or being honest. And honesty consists of "discovering the truth through the cunning of the spirit, or in maintaining human society by giving each person what is theirs and faithfully observing conventions" (our translation) (CICERO, 2022, p. 35).

Now, considering that natural law prohibits us from harming others, the practice of crimes, such as corruption, is ab

initio, a major ethical and social deviation. In the words of Cicero (2022, p. 120):

> "It is a principle of universal knowledge that public utility and private utility are one and the same thing. If everyone takes for themselves, human society will be diluted. If nature prescribes that man must do good to his fellow man for the sole reason of being man, it follows that there is nothing useful in particular that is not useful in general. For this reason, this law of nature is the same for everyone, and we are all subject to it; Natural law further prohibits us from harming others". (our translation).

In this aspect, when committing criminal action, people are sensitized by what seems useful to them, and separate it from what is honest. Thus, for thieves, it is useful to steal other people's products for themselves, because the economic advantage obtained would offset the risks of criminal activity[10].

Long after the teachings of Aristotle and Cicero, the Economic analysis of Law, more precisely, of crime, came to ratify what ancient thinkers already said about the possible advantages taken into consideration by criminals when committing certain crimes. This occurs both through positive or negative incentives as well as through a cost-benefit analysis (PATRÍCIO, 2015).

Evidently, in the practice of corruption this cost-benefit is taken into consideration. In relation to the criminological guidelines for corruption that are taken into account by corrupt and corrupting agents, the following are mentioned: i) corruption is a crime with a high level of concealment; ii) corruption is a complex act, sometimes resembling economic crime, sometimes

10 "In their mistaken judgments, these wicked people see nothing but advantages that they can derive from things; They don't see the punishment, I don't mean the laws, which they often violate, but the demoralization itself, a very atrocious penalty" (our translation), (CÍCERO, 2022, p.123).

associative crime; iii) corruption is characterized by a low percentage of clarifications of discovered or reported crimes; iv) corruption and organized crime are interconnected criminological realities; and v) once convicted, criminals will benefit from low amounts of sentences applied (MANNOZZI, 2009).

The corrupt or corrupting agent, in general, is not insane or has a behavioral abnormality (PATRÍCIO, 2015). On the contrary, he is a person of good social character, who has access to the wealthier classes and, at times, has contacts at the highest levels of public service and public authorities themselves. This offender measures very well the benefit he will obtain from obtaining the illicit act, whether through a directly economic advantage or another practical benefit that will compensate for eventual imprisonment. With the help of good lawyers, it checks the number of crimes of the same type that have been convicted in the Courts, the time it would take for this to occur, and the measures to mitigate the sentence in the fateful case of being arrested by the competent authorities.

Becker (1974), since 1968, used the economic theory of crime to justify certain criminal offenses based on maximizing expected utility and potential gains resulting from criminal action. A person commits an offense if the utility expected of him exceeds the utility he could obtain by using his time and other resources in other activities. Thus, some people become criminals not because their basic motivation differs from that of other people, but because their benefits and costs differ[11].

Corruption can also be understood through sociology. By this branch of knowledge, corruption is seen as a social phenomenology, that is, a collective dynamic through which the body or model that orders and shapes the community,

11 In the same sense, Báez Gómez (2013).

disconnected from the end that encourages it, loses its driving form, its distinctive structure and their regularity of behavior. Thus, corruption is characterized as a state of moral degradation of a negative nature in which men, with their immoral behavior, deviate from the expected collective social state (GARCÍA, 2010).

In the specific case of corruption, there is no predefined concept on the subject in the main international instruments, namely the 2000 United Nations Convention against Transnational Organized Crime (Palermo Convention) and the 2003 United Nations Convention against Corruption (Merida Convention). These instruments seek to promote measures to prevent and combat corruption by classifying certain conduct by public or private agents and defining parameters for international cooperation.

Regardless of the definition, which will occur through the legislation of each country or even through specialized doctrine on the subject, it can be said that corruption seriously affects the credibility and structure of Public Administration, the legitimacy of institutions, the economy of countries in addition to aggravating human rights by promoting social inequality and misappropriation of public funds.

There are studies that point to corruption as the cause of the loss of approximately 5% (five percent) of world GDP (BAÉZ GÓMEZ, 2013) and (ROSE-ACKERMAN, 1999), therefore being a major obstacle to economic development and Social. This is because it weakens the rule of law in relation to free business competence and access to basic services; changes government spending by reducing allocations to education; reduces the efficiency of public spending; limits the development of small and medium-sized businesses; harms innovative activity and, in short, has a negative impact on human development.

Finally, there is a current understanding that corruption significantly affects human rights, hard-won during the course of civilizational evolution, *verbis:*

> "Corruption implies the directing of 'finite' public resources to private interests to the detriment of collective needs. Social rights such as education, health, basic sanitation and housing are placed in the background, with the private interests of corrupt officials taking precedence. Anyone who requests, for themselves, a percentage of the price charged by the private company when carrying out a public work or service is not actually obtaining the amounts involved from the company. The real cost will be passed on to the agreed price, which, once paid by the State, will imply the disbursement of public resources that could be destined to meet 'infinite' social needs. In this order of ideas, the relationship between corruption and human rights is clearly seen. The idea inherent to human rights of protecting, promoting and realizing them, when examined from the State's perspective, is seriously affected by acts of corruption" (our translation) (PIOVESAN *et al*, 2018, pp.87-88).

ANALYSIS OF THE CASE OF FAKE IAPEN DIPLOMS FROM THE PERSPECTIVE OF CORRUPTION

The phenomenon of corruption that occurred within the penitentiary system of the State of Amapá, between the years 2016 and 2018, unfortunately, is not something isolated within the structure of criminal execution in Brazil. It is very common to see in the news suspicions and arrests of prison staff who facilitated the entry of drugs, weapons, cell phones and other prohibited goods to inmates.

In the specific case of Amapá, the phenomenon of corruption stands out through circumvention of criminal legislation and criminal execution through an ingenious device – the forgery of private documents equivalent to certificates and/or diplomas of

completion of courses that would have been completed from within IAPEN, but which were never made.

Therefore, there is not a simple bribery of public agents in isolation or even individual corruption, but a true criminal association in the technical sense of the term – three or more people brought together for the purpose of committing crimes – structurally organized. There was, therefore, a clear "abuse of public power for private benefit, or even, the violation of a duty and improper use of the power granted by others to obtain private benefits" (our translation) (LOVATO, 2020, p. 361).

In this stratified structure there were those who forged documents; who managed prisoners to offer fake diplomas; who received money from inmates or family members and who led the entire organization under the mantle of being the former Head of the School and Vocational Unit in charge of supervising the courses and signing the fake diplomas. According to Benavides Vanegas (2000), the phenomenon of corruption is only possible when a decision-maker, guided by general rules and criteria, deviates from the public interest and starts to elect private interests with priority within the Administration. The corrupt public agent seeks to convey the image of a successful leader who tends to convey credibility in his actions in order to avoid being discovered.

In the table reported above, the occurrence of systemic corruption that:

> "presupposes a relationship of personal interdependence and balanced correlation in exchanges carried out between actors in the public and private sphere, and follows the logic of choice both on the part of the corrupt and the corruptor at the socio-cultural and political-economic levels" (our translation) (WERNER, 2017, p. 36).

In summary, these were coordinated actions between public servants, holders of decision-making power over public policies and public resources, establishing a complex network of relationships with the purpose of allocating resources to meet individual and collective interests.

According to Werner (2017), systemic corruption has four essential characteristics: i) Plurality – corruption is a plural phenomenon when it occurs through both public and private initiatives, with the parameter being a certain public official holding power in the allocation of public resources and the possibility of if it influences your decision in favor of an individual or group; ii) Reciprocity – corruptor and corrupt use the logic of quid pro quo, that is, they make a pact in which each one hopes for the return they want to obtain from the other; iii) Interaction – the agreements and relationships signed between corrupt and corrupting agents are repeated over time, not consisting of something isolated; and iv) Asymmetry – relations between the public and the private are not only shown in the hierarchy of the public administrator vis-à-vis subordinate citizens, because the private sector often seeks the public servant to offer support in order to achieve vested interests[12].

In the criminal system installed in the specific case in Amapá, corrupt public agents did not just commit document forgery for just one prisoner in isolation. The spurious relations between the administration and the inmates had been occurring for more than two years and had involved, through judicial proceedings subsequently instituted, approximately 10% (ten percent) of the prisoners in the closed regime of the aforementioned penitentiary institute. Public agents benefited

12 On the differentiation between high and low level corruption and the perception of its value that can take place at administrative, political, legal levels and among private actors, *vide* Boehm e Lambsdorff (2009).

from the amounts obtained by prisoners and relatives in amounts between R$500.00 (five hundred) and R$26,000.00 (twenty-six thousand reais). In turn, the convicts benefited from falsified diplomas and private documents that attested to hours of professional training courses that had not been completed, serving to reduce their sentences and advance their regime under the auspices of current legislation.

In this way of thinking, corruption tarnishes the entire image of the Public Administration, which has the constitutional function of managing public resources well by maintaining strict disciplinary control of inmates, enforcing criminal decisions and sentences and providing conditions for the harmonious social integration of convicts and of the hospitalized[13].

In this sense, Gómez Rivero (2017) states that the interest protected and violated with public corruption refers to the correct functioning of the Public Administration in general, whose guarantee demands respect: i) the constitutional principles of equality, loyalty, objectivity and impartiality in relation to to those administered; ii) public trust and the prestige and correct image of public bodies; and iii) the duties of fidelity and loyalty required of every public servant.

Furthermore, in the case in question, not only were the constitutional principles inherent to Public Administration in general, such as impersonality, legality and morality, left tainted. Corruption in the penitentiary system harmed the security and public peace of society, which abruptly began to coexist with several criminals who were not resocialized and/or had not yet served their full sentence in a closed regime provided for in Brazilian legislation. One of these criminals, who illegally benefited from the progression of the regime, escaped from the State of

13 Article 1of the Criminal Execution Law.

Amapá and continued to commit crimes in another State of the Federation, being arrested again carrying false identity and documents.

To make the situation worse, there are no official statistics on how many of these individuals, who were unduly released due to the redemption of their fake diplomas, reoffended and committed crimes in society.

The corruption reported here does not only demonstrate a weakness in the internal control of good practices and/or a lack of compliance culture within the penitentiary system[14]. There would not need to be an entire complex structure for investigating administrative offenses, because it would only be sufficient to: a) comply with the basic principles of Public Administration[15]namely, legality, impersonality, morality, publicity, legal security, public interest and efficiency[16]; b) have an active internal internal affairs department; and c) enforce the content of Law No. 12,846/2013, which establishes the Anti-Corruption Law in the country[17].

The corrupt scheme was only discovered through monitoring work on criminal organizations that operated at IAPEN, and intelligence carried out by the Coordination of Intelligence and Police Operations – CIOP, in partnership with the Coordination of

14 On the evolution of national legislation, the strengthening of institutions and supervisory systems to combat corruption in Brazil, *vide* Hage (2020).

15 Article 37, of the Federal Constitution of Brazil - "The direct and indirect public administration of any of the Powers of the Union, the States, the Federal District and the Municipalities will obey the principles of legality, impersonality, morality, publicity and efficiency and, also, the Following". (our translation)

16 Article 2 of Law 9874/99 – "The Public Administration will obey, among others, the principles of legality, purpose, motivation, reasonableness, proportionality, morality, broad defense, contradictory, legal security, public interest and efficiency". (our translation)

17 Article 1 - "This law provides for the objective administrative and civil liability of legal entities for carrying out acts against the public administration, national or foreign". (our translation)

Penitentiary Intelligence – CIP/IAPEN. Although the prison's own internal monitoring system discovered it, this only occurred two years after the criminal association had already been established, that is, a very long time that demonstrates an obvious flaw in the internal system for investigating irregularities.

Another clear failure was the lack of awareness of these illicit acts perpetrated by the Criminal Execution unit of the Court of Justice, which had the duty to verify the correct integrity of the certificates as well as the reasonableness of the number of hours that the inmates said they had completed in relation to professional diplomas. Here are two interesting examples of already convicted prisoners who benefited from the criminal scheme.

The first defendant J.J.E. dos S. used the criminal scheme to obtain the amount of 4,184h through false professional courses. It can be concluded that based on the number of class hours related to the events held by the defendant, he would not do anything else at IAPEN other than study, and should be awarded as a dedicated student and a true intellectual, which in fact did not happen. If we compared it to a higher education course in Brazil, it would only be inferior to the Medicine course, which totals 7200 hours, according to the Ministry of Education's website, by Resolution nº 2, of June 18, 2007. What's more, considering that the Law Course has a workload of 3,700 hours, the aforementioned defendant could have completed the full bachelor's degree in Law and another specialization.

Another defendant R.R.dos S.M. was also one of the prisoners who benefited from the fake certificates through illicit payments to public agents. He legally obtained an incredible 5,494 hours in just over 02 (two) years in prison. It can be noted, without a doubt, that the judicial failure was evident. Although it could be claimed by the aforementioned Judicial Unit that the credibility of the certificates issued by IAPEN could not be doubted due to its

public faith, it is obvious that the least common sense would suggest distrust for the absurd and totally disproportionate hours spent by the inmates.

Finally, unfortunately, the Judiciary also fails to combat corruption crimes more effectively. The penalties applied by the 1st Criminal Court of Macapá in the case in question, which were greater than 8 (eight) years of imprisonment for public agents, constitute a clear exception. As a rule, either the sentences are low or those involved are acquitted, which is undoubtedly a criterion taken into consideration in the cost-benefit analysis of this hateful and criminal practice.

According to the most authoritative doctrine, the illicit gain obtained in the crime of passive corruption is not limited to just receiving cash, it can be of any nature and be in favor of oneself or others, even a job for a nephew (PAULSEN, 2018, p. 135).

We can mention a criminal action promoted by the Public Ministry against members of the Legislative Branch of the Municipality of Laguna-Santa Catarina. The state parquet stated that, when the position commissioned in the City Council is used as a bargaining chip, it constitutes an undue advantage capable of constituting a crime of passive corruption. However, the Superior Court of Justice - STJ, the highest infra-constitutional Court in the country, decided that the exchange of votes for appointments to commissioned positions – whatever – is Brazilian parliamentary practice and, although such behavior can be considered immoral, it's not illegal.

FINAL CONSIDERATIONS

Corruption is a complex crime that has been updated over the centuries. From bribing public agents in Ancient Egypt to receiving undue advantages by IAPEN employees, it can be

concluded that the crime corresponds, in addition to an ethical deviation, to conscious individual choices that take into account the cost-benefit of the spurious activity practiced.

Now, considering the context of impunity in which: i) the criminal agent can profit millions of reais by receiving illicit advantages to the detriment of the Public Administration; ii) the undue advantage is hidden in tax havens or even through money laundering; iii) there is a long period of time in which the investigative bodies will discover the criminal fact and only subsequently will judicial proceedings be initiated; and iv) there are convictions with low sentences or even acquittal due to lack of evidence; criminals are tempted to venture into the practice of corruption, because they see a use for themselves in this "advantageous dishonesty".

In the case of corruption in false professional certificates, it was clearly demonstrated how corruption is present in the various sectors of Public Administration, such as the State Penitentiary Institute. In this case, corruption did not occur through the more common method of bribing public officials to let cell phones, money, drugs and other illicit and unauthorized products into cells. This criminal scheme adopted a more cunning form – unduly using the benefits of the law to obtain advantages in the progression of sentences.

This time, it is understood that corruption within IAPEN was a simple example of how this perverse crime can affect the prisoner's human rights - to serve a fair sentence and to be resocialized by the State - as well as the population in general - to have security and public peace away from dangerous people whose custody was assigned to the State Public Power.

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VIOLENCE AGAINST HISPANIC-BRAZILIAN WOMEN: DATA AND PROPOSALS FOR DEBATE

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1. HISTORICAL ASPECTS

Violence against women in the context of gender violence, a social scourge that continues, has clearly broadened its spectrum in recent years. That is, the current context allows for the extension to other closely related abused groups such as children, adolescents and trans people who identify as women. The United Nations defines violence against women as *"any act of gender-based violence that results in or may result in physical, sexual or mental harm or suffering to women[3]."*

However, this work will bring to the table the rapid increase in violence against women in different contexts, especially in Brazil and Spain, based on recent data and legislation created to combat such violent acts. According to ARAÚJO (2008), there has never been so much research on the subject as in recent years. The

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[3] https://www.paho.org/pt/topics/violence-against-women . Last access in 2023-11-10.

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concept *"violence against women"* is often used as a synonym for domestic violence and gender-based violence. But despite the overlap between these concepts, there are specificities in their use as analytical categories. We will see throughout this work that they are not the same.

With the abrupt increase in violence against women, there is also a growing specialty in the treatment of its data, previously relegated, hidden or sensitive to political activities in which women are especially involved:

> *A evolução histórica do fenômeno da violência é difícil de ser explicitada de maneira completa e estatisticamente confiável. Contudo se a análise da evolução de tipos específicos de violência nos últimos 20 anos é parcial nesse momento, já conseguimos produzir diagnósticos interessantes em relação aos últimos 10 anos e é cada vez mais provável que instrumentos quantitativos sejam aprimorados e permitam análises mais apuradas daqui em diante*[4]*.*

[4] ENGEL, Cíntia Liara. A violência contra a mulher. Instituto de Pesquisa Econômica Aplicada – IPEA. Brasília, 2020. *"The historical evolution of the phenomenon of violence is difficult to explain in a complete and statistically reliable manner. However, although the analysis of the evolution of specific types of violence over the last 20 years is partial at this point, we have already been able to produce interesting diagnoses in relation to the last 10 years and it is increasingly likely that quantitative instruments will be improved and allow for more accurate analyses from now on."*

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2. DATA ON VIOLENCE AGAINST WOMEN IN BRAZIL

In particular, the period of the Covid-19 pandemic considerably worsened the situation[5], according to Tedros Adhanom Ghebreyesus[6].

Although violence against women is endemic in all countries and cultures, in Brazil, about 4.3 million women were raped in different ways during the pandemic period, which establishes a devastating ratio: one woman was raped every 8 minutes in these circumstances. Another important fact is the age range of the victim. According to the research Visible and invisible: the victimization of women in Brazil in 2021, more than 1/3 of these victims are young people and even children of 16 years old.

Due to the 'lockdown' period, the domestic space was the most serious scenario. It is not that this environment did not previously appear as a place of reproduction of violence against women, however, the interruption of assistance, services and work activity resulting from confinement increased violence. The family

[5] In the fight against gender violence, the UN promotes: in attention to public policies for gender coordinated also by the UNDP, the COVID-19 Global Gender Response Tracker (UNDP/UN WOMEN) was launched. The COVID-19 Global Gender Response Tracker follows, from a gender perspective, measures in the form of public policies that were planned and implemented by governments around the world in the fight against the COVID-19 Pandemic, like, *"it includes national measures that directly address women's economic and social security, including unpaid care work, the labor market and violence against women (...). It can provide guidance for policymakers and evidence for advocates to ensure a gender-sensitive COVID-19 policy response".* IN: SILVA JÚNIOR. D.B. The actions of the United Nations organization against the Covid-19 pandemic. Geoconnections online. v.1, 2021. P. 14.

[6] IN: https://portal.fiocruz.br/noticia/violencia-contra-mulheres-no-contexto-da-covid-19.

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space concentrates most cases, representing 60% of them, with the perpetrator being a close person, particularly the partner[7].

The various forms of violence against women generate consequences for all those involved, whether children, family members or the perpetrator, with the most harmful and despicable form being femicide. Recent data show that in 2021, 1,319 women were murdered in Brazil, that is, one victim every 7 hours. The State of Tocantins, in 2021, drew attention for the 144% increase in its femicide rates. Another warning is about sexual violence in the category of rape and violation of vulnerable people[8]:

> *"O ano de 2021 marca a retomada do crescimento de registros de estupros e estupros de vulnerável contra meninas e mulheres no Brasil, que apresentaram redução após a chegada da pandemia de Covid-19 no país. Foram registrados 56.098 boletins de ocorrência de estupros, incluindo vulneráveis, apenas do gênero feminino. Isso significa dizer que, no ano passado, uma menina ou mulher foi vítima de estupro a cada 10 minutos, considerando apenas os casos que chegaram até as autoridades policiais".*

Another group of women who systematically suffer domestic violence are Transgender Women, despite having been

[7] ARAUJO, Maria de Fátima. Gênero e violência contra a mulher: o perigoso jogo de poder e dominação. Psicol. Am. Lat., México, n. 14, out. 2008.

[8] BUENO, Samira (coord.). Violência contra mulheres em 2021. São Paulo: Fórum Brasileiro de Segurança Pública, 2021, p. 8. *"The year 2021 marks the resumption of the growth of records of rape and rape of vulnerable women and men in Brazil, which will appear to reduce after the end of the Covid-19 pandemic in the country. Foram registered 56,098 bulletins of rape, including vulnerable, only the female gender. This means saying that, not last year, a girl or woman was a victim of rape every 10 minutes, considering only the cases that were reported to the police authorities".*

born men, the change in gender identity conditions them to suffer violent acts due to their feminine condition[9]:

> " (...) em decorrência disso acabam ficando muito mais expostas a predadores sexuais e aqueles mesmos sujeitos que tornam o ambiente familiar como o mais perigoso para mulheres. Levando essa mesma violência, que violenta e mata mulheres cis em contextos de violência doméstica e/ou ainda vítimas de feminicídio. Travestis e mulheres trans acabam se tornando vítimas do feminicídio qualificado e agravado devido a identidade de gênero" (BENEVIDES, 2023, p.40).

Data shows that 151 transgender women – transgender people who identified themselves as women – were murdered in the first quarter of 2020. Data from the Information System (SINAN)[10], collected between 2014 and 2017, indicate that 49% of the attacks perpetrated against them occurred within their homes.

That said, how has Brazil dealt with this problem in light of the Law? And do non-cisgender women have the same safety net against violence?

The most important legal instrument to combat and confront violence against women is Law no. 11,340/2006, known as the

[9] BENEVIDES, Bruna G. Dossiê: assassinatos e violências contra travestis e transexuais brasileiras em 2022. Associação Nacional de Travestis e Transexuais - ANTRA. Brasília - DF, 2023: "(...) *as a result of this, they end up being much more exposed to sexual predators and those same individuals who make the family environment the most dangerous for women. This leads to the same violence that violates and kills cis women in contexts of domestic violence and/or even victims of femicide. Transvestites and trans women end up becoming victims of qualified and aggravated femicide due to their gender identity" (BENEVIDES, 2023, p.40)*

[10] Boletim n. 05/2020 – Associação Nacional de Travestis e Transexuais. Disponível em: https://antrabrasil.org/assassinatos/ IN: SCOTT JR., V., & VIEBRANTZ, kevin de M. *Mulheres transgênero em situação de violência doméstica e familiar: a aplicabilidade da lei maria da penha*. Revista Da Faculdade De Direito Da UERJ – RFD. Rio de Janeiro, 2022. P. 233.

Maria da Penha Law. This, issued in accordance with § 8 of art. 226 of the Federal Constitution, the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, provides for the creation of Domestic and Family Violence Courts; modifies the Criminal Procedure Code, the Penal Code and the Criminal Enforcement Law among other measures[11].

According to Valmôr Scott Jr and Kevin de Moraes Vierantz (2021) in the article Transgender women in situations of domestic and family violence: the applicability of the Maria da Penha law: *"the Law is not limited to the creation of a specific procedure for the investigation and prosecution of crimes committed in the domestic sphere, but also innovates by presenting a series of mechanisms that aim to protect the physical, psychological and patrimonial integrity of women in vulnerable situations[12].* Although it has some gaps, one of which is the lack of support for non-cisgender women. And there are several factors that make it difficult for these women to benefit from the application of this Law, ranging from the conservative view that a biologically transsexual is not a woman, to the biological vulnerability between men and women, which permeates the actions of the High Courts, showing that there is no uniformity in their decisions.

Although there has been progress in this area over the last 20 years, such as more thorough processing of data, greater social and judicial awareness, more coordination between medical services and the judicial environment, more assistance to children as a directly affected group, and support for trans women, the current

[11] BRASIL. LEI Nº 11.340, 8-7-2006. Deputy Chief of Legal Affairs.

[12] SCOTT JR., V., & VIEBRANTZ, kevin de M. *Mulheres transgênero em situação de violência doméstica e familiar: a aplicabilidade da lei maria da penha*. Revista Da Faculdade De Direito Da UERJ – RFD. Rio de Janeiro, 2022. P. 218.

law shows exhaustion and an inability to address the violent phenomenon in a more comprehensive way, fails to prevent femicide, and does not adapt to new forms of violence that have arisen, for example, as a result of new technologies or the situation generated by the global Covid-19 pandemic.

3. GENDER VIOLENCE VS. DOMESTIC VIOLENCE: SPANISH CASE

In Spain 'Gender Violence' emerged as an independent concept cause the promulgation of Organic Law 1/2004, of December 28, on Comprehensive Protection Measures against Gender Violence. In its explanatory statement, Right to Life (which also includes the Right to physical and psychological integrity) of article 15 is liked with the Prohibition of non-discrimination from article 14 and, of course, with various international standards. In added appears its definition[13]: *"It is a form of violence that is directed against women for the very fact of being women, for being considered, by their aggressors, to lack the minimum rights of freedom, respect and decision-making capacity."*

[13] The Explanatory Statement sais: *"In this regard, we can cite the Convention on the Elimination of All Forms of Discrimination against Women of 1979; the United Nations Declaration on the Elimination of Violence against Women, proclaimed in December 1993 by the General Assembly; the Resolutions of the last International Summit on Women held in Beijing in September 1995; Resolution WHA49.25 of the World Health Assembly declaring violence a priority public health problem proclaimed in 1996 by the WHO; the report of the European Parliament of July 1997; the Resolution of the United Nations Commission on Human Rights of 1997; and the Declaration of 1999 as the European Year for the Fight against Gender Violence, among others. Very recently, Decision No 803/2004/EC of the European Parliament adopting a Community action programme (2004-2008) to prevent and combat violence against children, young people and women and to protect victims and groups at risk (Daphne II programme) has set out the position and strategy of the representatives of the citizens of the Union in this Regard"*

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Article 1, which regulates the Object, mentions in its wording that action will be taken against violence that is conciseness "*a manifestation of discrimination, inequality and power relations between men and women, (...)".* Although the context in which it occurs is in a relationship between a couple, whether the relationship has ended, whether the couple is a spouse, or even if the members do not live together - which goes beyond the scope of private intimacy - it should not be confused with 'Domestic violence' sine the natural inequality produced by reason of gender would not be present in the latter.

Article 1, dedicated to regulating the Object, mentions in its content that action will be taken against violence that is considered *"a manifestation of discrimination, the situation of inequality and the power relations of men over women, (...)".* Although the context in which it occurs is in the relationship of a couple, whether or not the relationship has ended, whether or not the couple is a spouse, or even if the components do not live together -which goes beyond the scope of private intimacy-, it should not be confused with 'Domestic Violence' since in the latter the natural inequality produced by reason of gender would not be present.

The turning point is the law recognizes although the acts could occur within the family, they transcend the private sphere and involved the public power, issuing this law, which is called *"comprehensive"* because it establishes a series of novel measures with which to regulate *"a social reality that is affected*[14]*".* However, the reference to the family context cannot be ignored, since it is plausible that violence directly affects all the people in the home,

[14] BRACAMONTES RAMIREZ, Perla Elizabeth. "La necesidad de una ley integral para hacer frente a la violencia de género en España (LO 1/2004)". *La ventana [online]*. 2016, vol.5, n.43 [citado 2023-12-17], pp.125-173. Available on: <http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1405-94362016000100125&lng=es&nrm=iso>. ISSN 1405-9436.

including children and even adults - generally fragile grandparents - who are also dependent on the adult who is suffering the abuse. For this reason, a system of financial aid for victims without resources was put in place, along with other measures typical of the law, such as the creation of autonomous protective bodies dependent on our Ministries, as well as the streamlining of judicial processes for the establishment of urgent and emergency measures for the protection of victims, and coordination between the Civil and Criminal Jurisdictions, which must not fail.

Today we cannot forget that violence against women no longer depends on a previous relationship: often the aggressor and the victim do not know each other, and sexual violence has grown exponentially, especially at early ages, and what has been called *the other forms of violence against women.*

4. CURRENT EVENTS AND DATA IN SPAIN

In the violent act we can identify two aspects: objective and a subjective. The first is based on the indisputable biological difference between genders, which allows the man to subdue his partner with brute force and even end her life with relative ease. The second is found in the specific motivation to commit these reprehensible actions and as stated by our Ministry of Health, Social Services and Equality: *"The objective of the aggressor is to cause harm and gain control over the woman, so it occurs continuously over time and systematically in form, as part of the same strategy*[15]*."*

[15] From the Women's Institute: https://www.inmujeres.gob.es/servRecursos/formacion/Pymes/docs/Introduccion/02_Definicion_de_violencia_de_genero.pdf

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Therefore, it is also a characteristic feature, the will of the perpetrator, who consciously and determinedly desires with malice the purpose of annulling the personality of the victim.

The Ministry of Equality was created in Spain in 2008, at which time the Social Policies were separated from those of Equality, the former passing to the Ministry of Education.

It was established to supervise the application and normative development of Organic Law 3/2007, of March 22, for the effective equality of women and men and the LO 1/2004.

After several remodelling, its structure has remained as follows, having been created within it[16]: (1) the General Directorate of Social Diversity and LGBTI Rights; (2) the Government Delegation against Gender Violence; (3) the General Directorate for Equal Treatment and Ethnic-Racial Diversity and (4) the Women's Institute.

The Government Delegation against Gender Violence is the most representative organization, with very explicit and intuitive website[17], offering detailed information, awareness campaigns, access to professionals, all the statistical data and studies, as well as a disturbing *other forms of violence against women* whose purpose is to absorb those novelties, changes and progressions of the phenomenon so that they are not left outside the law. Although the legislative machinery cannot adapt to circumstances society like it would be necessary.

A positive reading of the statistics shows that murders due to gender violence in our country have decreased by 29% in the last

[16] https://www.igualdad.gob.es/

[17] https://violenciagenero.igualdad.gob.es/home.htm

20 years[18], [19]. However, statistics are increasing globally[20]in terms of the overall victimization rate and the number of complaints. Organizations such as Amnesty International[21] claim that, in almost countries, regardless of legislative efforts, the resources available to victims remain scarce. The lack of these resources would slow down the process of getting victims to safety: *"social awareness is needed, a fundamental objective in which the media could play a key role."*

In the *State Pact on Gender Violence*[22], the Senate Equality Commission and the Congressional Equality Commission have created several programmes that they hope will contribute to the prevention, protection and reparation of victims, regardless of their place of residence – to prevent regional inequality – and their origin. If there is something that is also inherent to this issue, it is that the assaulted women come from all social strata, regardless of the educational and academic training of both (women and men).

[18] According to a press release issued on 11-24-2023, its treatment was generated by the Comprehensive Monitoring System for Gender Violence cases known as the VioGén System.
https://www.lamoncloa.gob.es/serviciosdeprensa/notasprensa/interior/Paginas/2023/241123-descenso-asesinatos-violencia-genero.aspx

[19] In operation since July 27, 2007, dependent on the Ministry of the Interior, created by Organic Law 1/2004, for the study of patterns and triggers of femicides, in order to promote strategies and preventions.
https://www.interior.gob.es/opencms/ca/servicios-al-ciudadano/violencia-contra-la-mujer/sistema-viogen/

[20] https://www.abogacia.es/actualidad/noticias/las-denuncias-y-las-victimas-de-la-violencia-de-genero-aumentaron-en-espana-mas-de-un-10-en-2022/

[21] https://www.es.amnesty.org/en-que-estamos/espana/violencia-contra-las-mujeres/

[22] *Pacto de Estado en materia de violencia de género.* Consolidated Document of Measures of the State Pact on Gender Violence (Congress + Senate). https://violenciagenero.igualdad.gob.es/pactoEstado/docs/Documento_Refundido_PEVG_2.pdf

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The MATRIX FUNDATION exposes another difficulty to legal system effectivity is the complexity of creating profiles to raise social awareness, but also the detection of aggressions, due to the existence of what they call the obvious *dark zone* which no complaints appear. Namely, the group of affected women who remain in the shadows because not file a complaint: *"80% of cases affect women between 21 and 50 years old. More specifically, one in three women who suffer gender violence is between 31 and 40 years old*[23]*. (...) Every week, on average, four minors under 16 years of age and 40 women between 16 and 20 years of age suffer gender violence in Spain (8.3% of all cases). Older women are also victims to a lesser extent. Every week, on average, 20 women aged 61 or over – seven of them over 70 years of age – suffer gender violence in Spain (3.7% of all cases). The frequency of widowhood at an advanced age may partly explain these figures, but it is a known fact that older women who are victims of gender violence report it less, for religious reasons, sociocultural conditions, or lack of awareness of it, which also determines their statistical underrepresentation*[24]*"*.

5. UNRESOLVED MATTER AND THE POLITICAL ISSUE

Despite the initiatives and campaigns for prevention and awareness, gender-based violence continues to be an unfinished task in Spain. It is even striking that it is recurrently used by certain representative political groups at a national level, who send

[23] https://fundacionmatrix.es/como-son-las-victimas-de-la-violencia-de-genero-en-espana/

[24] Access to the study in Spanish, named*: "Study on women over 65 years of age victims of gender violence",* promoted, driven, financed and supervise by the Government Delegation:
https://violenciagenero.igualdad.gob.es/violenciaEnCifras/estudios/investigaciones/2019/estudio/Estudio_VG_Mayores_65.htm

messages to the population about its uselessness and about investing the public budget elsewhere. There are politicians who promote that this expenditure is not necessary and that the Ministry of Equality should be abolished.

These groups consider that violence should be seen as what it is, no matter which direction it comes from, and that it should be interpreted in the same way, whether it is from a man to a woman or vice versa: but the statistics hardly show cases in the opposite direction, and it could be that if death were to occur, it would be sponsored by previous mistreatment of the woman by the deceased over a long period of time, often not reported but known to those around her.

Although the public statistics and evidences, a significant percentage of the population has accepted the idea that these laws are unfair to men and that they promote the demonization of the male gender, since they consider that all men can be seen as abusers and that the victims use them as an instrument to obtain normative benefits in their favour and to their detriment, for example, in a family legal process.

On the other hand, victims consider that it is not enough and that the existing means for women to be truly protected fail. In our opinion, such arguments should not be given any kind of amplification or follow-up, because contrary to those who think that it is a manifestation of Fundamental Right to Freedom Expression, this can no longer be claimed when such statements could violate the most Fundamental Rights' women and children, as well as of the fragile people who depend on the assaulted women.

6. CONSIDERATIONS ON MALE VIOLENCE AND OTHER FORMS OF VIOLENCE AGAINST WOMEN: UNIVERSAL ISSUES

The term 'male violence' goes beyond what we said about 'gender violence' based on a related broader phenomenon: violence against women can occur without the need for a pre-existing family or a relationship between the aggressor and the victim. The female gender is the risk factor that defines it: violence only because being a woman.

Moreover, the website of the Government Delegation against Gender Violence contemplates the following 'other forms': (1) Trafficking of women and girls for the purpose of sexual exploitation; (2) Female genital mutilation; (3) Vicarious violence. We must make special mention of the latter, since it involves causing harm to the woman's children and is generally common, so that she suffers. There are several cases currently being tried in Spain, where the man's conscience and will are noted, in mortifying the mother by taking away she considers most important in her life: her children.

As a special requirement of these pages, we believe that the so-called 'online gender violence' should deserve a prominent section on the government website, which also participates in this amplification that we have just seen because of the aggressor not usually being known to the victim, but it is also gender violence. What's more, cyberbullying or cyberstalking has been known to the Ministry for years, as it has a work published in 2013[25].

The European Institute for Gender Equality (EIGE) has published its own on 2017[26] and the authorities know that the

[25]https://violenciagenero.igualdad.gob.es/violenciaEnCifras/estudios/colecciones/pdf/Libro_18_Ciberacoso.pdf

[26]https://eige.europa.eu/sites/default/files/documents/ti_pubpdf_mh0417543esn_pdfweb_20171026164000.pdf

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phenomenon has worsened after the COVID-19 pandemic, because of the widespread use of social networks, verifying that up to 80% of the digital practices victims were women[27].

The objective of the violence is to create a hostile online environment for them to embarrass them, intimidate them, denigrate them, belittle them or silence them through surveillance, theft or manipulation of information or control of their communication channels. Affected range could be well-known women (journalists, politicians, public figures) or reach any woman, who receive these attacks in their email, Instagram, mobile phone.

Assault forms are the same (insults, defamatory expressions, rumours, pornographic images, theft of information, accusation), and what changes is the medium, which is one more tool to achieve the aggression.

It is worth paying attention to these specific dangers, but without forgetting that it is still the same problem and that we must continue along the lines of prevention and education, silencing the pressure groups that seek to attack the Fundamental Rights of all with their populism.

7. CONCLUSIONS

FIRST. - Gender violence is a social scourge faced by all countries, not only in Europe but also on the other side of the Atlantic.

SECOND. - In the two countries studied, this type of violence is penalized and aggravated by the meaning it has for the aggressor and by the serious consequences it has for those around him, but in

[27] https://violenciagenero.igualdad.gob.es/violenciaEnCifras/estudios/investigaciones/2022/pdf/Estudio_Impacto_COVID-19.pdf

both countries more needs to be done, although the means are insufficient.

THIRD. - In Brazilian Case, prevention is still lacking and the frequency of feminicides and rapes is still high, because the law still adapting to other groups such as transgender women who have not yet achieved effectiveness in the Courts.

FOURTH. - In Spain, the issue is advanced, there are more organizations, and a consolidated protection network that, however, does not satisfy all citizens. Although most citizens recognize that women must be protected and any measure is welcome, some pressure groups are downplaying the issue, denying not only the objective aspect, based on biological difference, but also the subjective aspect, which is represented with the greatest cruelty in vicarious violence.

FIFTH. - However, the phenomenon does not cease and is also amplified, and can now be called *sexist violence*, a term that ignores the previous relationship between man and woman, to make it pivot on the very fact of being a woman, as occurs in trafficking for sexual purposes, cyberbullying, and sexual violence.

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HUMAN INTELLIGENCE AND ARTIFICIAL INTELLIGENCE - THE CHALLENGE OF COMPLEMENTARITY -

Maria José Motta Sobreira[1]

"Protecting the dignity of the person and caring for a fraternity that is truly open to the entire human family."
Pope Francis, 2024[2]

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Author's note:

This work, "Human Intelligence and Artificial Intelligence - the Challenge of Complementarity" was presented at a conference this October at the Palazzo San Calixto in the Vatican-Rome, in partnership with the Dicastery for Laity, Family and Life and the Pontifical Academy Pro Vita, which have been working to propose an ethical manifesto limiting the frontier from which life, our life, is defended, according to the Holy Father's proposal.

[2] Pope Francis, Artificial Intelligences and Peace, theme of the World Day of Peace, January 1, 2024.

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INTRODUCTION

Artificial Intelligence (AI) has become a priority theme in the programs and objectives of the main international institutions with political and social responsibilities, due to its potential for socio-economic development, but the ethical challenge it poses does not dispense the permanent monitoring of its action by those who originated it: human intelligence.

We therefore, looked for a relationship between human intelligence and artificial intelligence, trying to highlight how these two forms of knowledge are not mutually exclusive, but rather complementary. As we move towards a new world, increasingly steeped in technology, it is crucial to recognize our shared responsibility to build a harmonious partnership between human and artificial intelligence.

It's a subject to be dealt by experts, not to make it a subject without substance, but rather a subject for discussion and debate for everyone and which concerns everyone, even for me, who is afraid of artificial intelligence. But overcoming fears is always important; sometimes it's decisive in knowing not only where we are, but also who we are. There no single threshold in our lives, there are many; being afraid of recognizing and crossing that of artificial intelligence is a risk to be avoided if we don't want to remain in a world that no longer exists. Our understanding that artificial intelligence does not seek to replace but rather to expand and enhance human capabilities echoes in our hearts and minds, as an opportunity to embrace innovation, without losing sight of the fundamental values that make us human.

The "supposedly revolutionary" advances presented by AI technicians and programmers are cause "for both optimism and concern." It is clear to all of us that, despite the recognition of the effectiveness of AI in the task of storing immense amounts of

information that are sometimes not necessarily true, AI does not possess an "intelligence" like us humans. After all these apocalyptic alarms, this concept has been reinforced by contemporary visionaries and scientists, such as Geoffrey Hintonos and Yoshua Bengio,[3] the "fathers" of deep learning, as well as leading experts in artificial intelligence, among them Yuval Noah Harari and Daniel Kahneman who put forward concrete proposals to contain the future risks associated with an uncontrolled and unbridled development of AI. Harari, in an interview with the Daily Telegraph newspaper, even ask for "20 years in prison" for all those who create fake people" using AI.

It has thus become evident to everyone that the issue of the ethics of artificial intelligence is crucial for the coming decades. The choice to propose ethical recommendations and to ask those who produce and work with these systems to expose themselves, to commit themselves and to take responsibility in accepting the challenge of a technology directed towards a humanism centered precisely on the dignity of the person and of the entire human family has matured.

As we take audacious steps into the future, we call for the wisdom and vision of spiritual and philosophical traditions to join with the creativity of science and new technology. Together and only together, we can create artificial intelligence for the benefit of humanity, facing pressing challenges, promoting equality and strengthening our understanding of existence, lighting the way for fruitful collaboration between human and artificial intelligence, reinforcing our conviction that by combining the best of both worlds, we can build a future in which technological progress and human well-being are harmoniously intertwined.

[3] Geoffrey Hinton and Yoshua Bengio, scientific paper "Managing AI risks in an era of rapid progress," published in the Italian newspaper La Republica, by Pier Luigi Pisa, 24-10-23.

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THE RELATIONSHIP BETWEEN ARTIFICIAL INTELLIGENCE AND THE DANGER OF DEHUMANIZATION

The disruptive nature of AI due to the speed, breadth and systemic impact that characterize the technological revolution in which it is hegemonically inserted, make artificial intelligence a total social phenomenon that has given rise to portentous transformations, defining a new era, whose effects go beyond the concerns of any of us in the traditional context, depending on the challenges caused by the accelerated dynamics of its own evolution. In fact, the questions that most often arise, assume that goes far beyond human experience itself. AI has thus become a vehicle for many branches of activities and facets of human life, not only in terms of scientific research but also in education, manufacturing, logistics, transport, defence, justice, politics, advertising, art, culture, among many others.

Its characteristics in terms of learning, evolution and capacity to surprise, will have such a level of identity change, of human experience and of reality itself, as we have never experienced since the dawn of the modern age. This frenzy, this desire for artificial intelligence, combined with the pernicious myth that technological progress equals moral progress and that almost anything or even everything will be allowed, it can be fatal.

Aided by the progress and changes that come from it, we are making the human mind access to new perspectives, allowing us to glimpse goals that were previously unattainable. We can predicted and mitigated disasters, deeper mathematical knowledge and even a complete knowledge of the universe and reality.

According to the first publication for the "Ethics of Artificial Intelligence" released and recommended in November last year by the United Nations Educational, Scientific and Cultural Organization, (UNESCO) - "The potential of AI is enormous, but

there are also certain risks involved. If its use is inappropriate, it can generate more segregation, gender and racial discrimination, reinforce stereotypes, and perpetuate inequalities. If your database has origin problems, it can result in misinterpretation and can have disastrous consequences."

This technological revolution is in fact changing our thinking, our knowledge and even the very conception of our reality and in doing so it is changing the course of Humanity.

Humanity, which has been experiencing great changes throughout history, is faced with an unpredictable revolution, but which was, nevertheless, already predictable and which is as profound as it is disconcerting, because we do not yet know what it has done and what it may do in a future universe. Blurring the boundary between intelligences (human and machine), complex computerized systems integrate human decisions in our daily lives, in many and diverse ways, even if, most of the time, they are absent from the immediate human consciousness.

This relationship of almost total dependence, between the human and the algorithm, has been widely discussed since, in the context of that relationship, the machine is gaining more and more decision-making autonomy, through its ability to learn. Therefore, it seeks to mitigate this risk and control any damage, with the main objective that AI is only human-centered, and for this and always, there must be human supervision in an attempt to ensure that the systems are reliable, safe and beneficial.

However, this dynamic and disruptive nature of the machine has made visible some of the risks linked to its unpredictability, speed and uncontrollability. The various risks that are inherent to it have left the sphere of the programmer and the provider and have gained collective consciousness to the extent that they are no longer seen as a mere chance, but as sources of possible responsibility. The conflict between innovation and precaution has

gained, especially in the last decade, greater and enormous visibility. We are undoubtedly facing a critical challenge: how do we ensure that AI is being developed and applied in an ethically and responsibly way, protecting and promoting the dignity of human life that we value so much?

Quoting Maria da Glória Garcia, in -Themes of Ethics- Reflections and Challenges-[4] , "if technological power is not accompanied by duties arising from the principle of responsibility, the sustainability of human life may be at stake. The same is true that the immoderate use of technological power by present generations, without subjection to ethical principles and rules, negatively affects future generations and, at the limit, can endanger earthly life"

Could it be that at the advent of this new world we are faced with new ways of being **human** *sapiens?* Will new humanities and new ways of being human of other species ever appear on the horizon? And are we meeting other and new possible humanities, in another future and in those that will unfold?

The Brazilian researcher António Vargas Garcia, Brazil's representative to the United Nations Educational, Scientific and Cultural Organization (UNESCO) in the negotiations on the ethics of artificial intelligence, warned at UN NEWS: "The more powerful the technology, the more important it is to ensure that its use is safe and responsible and that it serves the common good."

It is therefore not in vain that the United Nations is increasingly showing great concern about the impact of this technology on the world today and, already in 2018, established a working group, of which the "United Nations Economic Commission for Europe" is a member, with the aim of promoting

[4] Maria da Glória Garcia, Themes of Ethics - Reflections and Challenges, p.212,Lisbon,2022.

dialogue and collaboration between different stakeholders, including governments, the private sector, academia, civil society and experts in this field. The goal to be achieved is, without a doubt, the promotion and international cooperation by addressing issues of governance and ethics, among other initiatives, seeking to ensure that the decision-making in relation to AI is responsible, always taking into account the development of ethical principles, through its own guidelines and regulations, thus reflecting the recognition of the significant impacts that the technology can have in the most diverse areas.

These same concerns have also led the European Commission to publish a set of good practices for educators, with a view to "an ethical use of AI". Artificial Intelligence technologies, highlights the European Commissioner for Innovation, Research, Culture, Education and Youth, Mariya Gabriel, have "great potential to transform Education and Training. They can help struggling students and help teachers achieve individualized learning with the primary goal of developing human capacities."

That is why UNESCO has been actively engaging in discussions about artificial intelligence and its impact on the world, organizing global dialogues and forums, with the aim of promoting open and inclusive discussions on the ethics of AI. In November 2019, it adopted a "Recommendation on the Ethics of AI," with the aim of establishing ethical principles and guidelines, highlighting the importance of inclusion, transparency, accountability and respect for human rights.

This rapid evolution of technology and its increasing integration into the various spheres of our lives has had a great impact on humanity and on the very notion of humanity itself. It is true that these new technologies can present challenges that affect our traditional understanding of "being human" and our very connection to the world.

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For this reason, the Church is also called to discuss the challenges posed to humanity by AI. So, at a Symposium last year in October, at the "Palazzo della Cancelleria", explains Monsignor Paul Tighe, secretary of the Pontifical Council for Culture, "that it is necessary to rethink the meaning of the human being, the issues related to conscience and the role of Christian doctrine, and in general the various consequences of the introduction of AI because, as Pope Francis has stated on several occasions, "Developments in this field have increasingly significant implications in all areas of human activity," alerting us to the need to reflect on the ethical problems raised by the widespread use of this new technology, encouraging integrated knowledge in order to avoid the technocratic paradigm, (as it is called in the Encyclical Laudato Si)5. In this context, the Vatican calls for a "conscious use of Artificial Intelligence systems" and the "primacy of the human" through a new resource. The Dicastery for Culture and Education, in partnership with the Markkula Center for Applied Ethics at Santa Clara University in the United States of America, has published the manual "Ethics in the Age of Disruptive Technologies: An Operation Roadmap".

This manual is intended to be a veritable compass for navigating through ethically ambiguous technology, warning several times of the dangers of the advancement of artificial intelligence for human beings. "The idea is to help people at every stage, from programming onwards. We've tried to write in the language of business and engineering so that they can actually be used and find similarities to things and patterns that experts have seen before," explains Ann Skeet, co-author of the book.

[5] Pope Francis, Encyclical Laudato Si', published on June 18, 2015, updated on August of this year, 2023.

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One of the greatest scientists of the last century, Stephen Hawkings, had already warned us that machines, in their eagerness to learn, can surprise even their own managers and at any moment they can start a war by publishing fake news, stealing email accounts and sending fake press releases. just manipulating the information....

In the end, all of this means that technology is not only unreliable, but it also can't really "perceive, understand" what we humans perceive and understand. It simply generates content according to its statistical models, which is very good for tricking us into believing that technology can do anything.

It is unlikely that even the most powerful machines, with the most sophisticated learning algorithms, which consume all the written texts, all the images and all the sounds that we humans produce, will be able to develop the understanding or intelligence comparable to human intelligence. Our intelligence and instincts are the result of hundreds of millions of years of evolution and well over a hundred thousand years of human development.

Since Mary Shelley's "Frankenstein," much of science fiction has focused heavily on the question of non-human or artificial intelligence. With Stanley Kubrick's 1968 film "2001: A Space Odyssey" and George Lucas' 1977 "Star Wars," science fiction stories have always fueled the idea that we "humans" are not the only intelligence that exists and that the world may even be a little more different than we think, if we take into consideration "the other intelligent things".

I have often wished for the world portrayed in the universe of "Star Wars", in which the "good guys", the "jedai" so called in the film, always win and solve all the problems of humanity: the problem of poverty, peace, justice and in which the dignity of the Person is always recognized. Mere fantasy of mine!

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Today, in the middle 21st century, similar to the unprecedented scientific revolution of the 16th century, with the consecration of scientific methods, it is through artificial intelligence that we also go in search of truth and reason. It is the new expression of contemporaneity! The discoveries in that century, not only of Copernicus but also of Galileo that sparked that same revolution, challenged our understanding of the world around and through ourselves, forcing us, as humans, to rethink our understanding, our position and our being in the world.

We used science and our reason to move forward and conquer the world. Descartes synthesizes this age of reason in his thought - "I think therefore I am" - which emphasizes the importance of consciousness and the human mind as proof of our existence, of being "Person". Perhaps this Cartesian dualism has influenced, in part, AI research.

After all, computers only have one mind and are highly effective at performing logical, analytical, and repetitive tasks, based effectively on an extensive processing of information, but they are not able to deal with metaphysical, ethical, or philosophical issues in an abstract and subjective way, as we humans do.

In the end, if machines already compete with us, humans, in the activity of thinking, what makes us unique beings? What differentiates humans from intelligent machines and what does it mean to be human in the age we live in? And what will allow us to continue to create values and make decisions, to understand social situations and interactions? It is perhaps time to redefine our self-conception - "I have hope therefore I am, I imagine therefore I am, I have a goal therefore I am, I reflect therefore I am, I dream therefore I am, I love therefore I am, I have heart therefore I am"!

What differentiates us humans is our ability to feel, our ability to experience emotions, to love, to penetrate the soul of the

other sometimes so close and so far, our ability to create and appreciate art, to understand social and moral nuances, to establish deep emotional connections and to make decisions based on a wide range of factors. including personal values and our own intuition. Everything that, after all, makes human beings unique for being human, for being People and allows us to move forward.

As our understanding of how the mind and cognition evolve, it has become abundantly clear that human beings are not only rational thinkers, but also emotional beings. According to Antonio Damasio, in – "The Strange Order of Things - " Emotions are indispensable for our rational life, it is the emotions that make us unique and it is our emotional behaviour that differentiates us from each other and these responses do not depend exclusively on the brain but on its interaction with the body and our own perceptions with the body."[6] Computers, machines don't have emotions, I'll go

[6] António Damasio. Renowned neuroscientist and neurologist, known for his work in the field of neuroscience particularly in relation to emotions, brain functioning, and consciousness. He is the author of notable works beyond the above, including "The Mistake of Disposal" and "In Search of Spinoza", where he explores how emotions play a fundamental role in our knowledge, decision-making and behavior. Its competencies are more focused on neuroscience and understanding the workings of the human brain and emotions than on the direct development of AI technology. However, we can with his work establish a relationship between human intelligence and artificial intelligence by highlighting, essentially, what distinguishes them – emotional awareness – which is rooted in the emotional experience and genuine empathy of the human being, while AI is based only on calculations and information processing. AI can be programmed to recognize facial expressions or speech patterns that indicate emotions, but that doesn't mean it experiences those emotions in the same way as a human. So, while AI can be a powerful tool for analyzing data and even assisting in the interpretation of emotions in specific contexts, true emotional intelligence is an intrinsically human trait that involves experiences and empathy that AI cannot replicate. It is important to recognize this distinction as we explore the role of human intelligence and artificial intelligence in fruitful collaboration between the two, reinforcing our conviction that by combining the best of both worlds, we can build a future in which technological progress and human well-being are harmoniously intertwined.

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further, machines don't have hearts! And contrary to what Descartes and even his follower Kant, proposed, that reasoning should be done in a way dissociated from emotions, in fact it is human emotions that allow the balance of our decisions, influence our perception, empathy and understanding of the world around us, fundamental for deep understanding, creativity and value-driven decision-making.

I cannot fail to mention Blaise Pascal, [7] in the year in which the 400th anniversary of his birth is celebrated and in which Pope Francis himself, in his Apostolic Letter Sublimitas et Miseria Hominis, signed on 19 June, the day he was born in France in 1623, sums up the meaning of his life as a "tireless seeker of truth". Blaise Pascal "showed himself to be an indefatigable seeker of truth, and as such he always remained 'restless', attracted by new and wider horizons." Pascal, in his deepest search for spiritual truths, emphasized that human reason has its limitations when it comes to addressing transcendental and metaphysical questions, such as the divine existence, but in a more complex reflection on reason, he recognized that both can coexist and that the search for

[7] Blaise Pascal. He was a brilliant thinker, one of the most prodigious and luminous scientific intelligences of the twentieth century. Pope Francis writes the "Apostolic Letter," "Sublimitas et Miseria Hominis" "Greatness and the Misery of Man" – wanting with it to remind all of us, men and women of our time, of the nature of the human condition in the world, expressing the duality of human nature by highlighting both the remarkable achievements of humanity and its weaknesses and imperfections. After all, reason alone cannot solve and determine all problems. Pascal lived in a very different time than our own, but his philosophical and ethical contributions may be relevant to discussions about artificial intelligence and technology in a contemporary world. Pascal was known for his reflections on human nature, morality, and faith. He would probably approach artificial intelligence in a balanced way, considering its benefits and challenges from an ethical perspective.

understanding must be a balanced journey, in which reason can lead to a deeper appreciation of truth.

Despite having lived long before the emergence of artificial intelligence, it is nevertheless interesting to consider how his philosophical approach could be applied to the context of artificial intelligence.

If he was alive today, who knows? Perhaps it would be possible for him to approach artificial intelligence in a balanced way, taking into account not only its rational aspects but also its emotional and ethical implications, and probably explore the interaction between artificial intelligence and human intelligence.

However, it is up to us today to reflect on how AI can be used to solve complex problems while at the same time raising questions about the use of ethics, especially when it comes to philosophical questions about the nature of mind and consciousness.

It is up to us today to seek a deeper understanding of how artificial intelligence fits into the broader narrative of human nature, taking into account both its potentialities and its limitations since, by its very nature, artificial intelligence is an expression of the human capacity to rationalize, analyse, and process information, challenging our ability to understand what is possible for us.

We are walkers in a world not only of great and new changes, but also of many other possibilities through the alteration of the human relationship with reason and reality - this is an unprecedented technological revolution - which is transforming our world, bringing with it a series of challenges and opportunities for which we were not prepared.

The advent of these new technologies, their ability to learn and process information, which human reason itself could never process, may soon provide answers to some of the many questions that have eluded our understanding.

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FINAL THOUGHTS

Human intelligence and artificial intelligence are now, hand in hand, intersecting and being applied to all sorts of goals on a global scale. Understanding these changes requires the deep commitment of all of us, scientists, strategists, philosophers, theologists and many others. This is, without a doubt, a global commitment. It is time for us to define the type of partnership we will have and want with AI, as a new reality that will result.

As we dive into the depths of this new era, we are not only witnessing a technological revolution but also an awakening of the human imagination itself, on a journey that takes us to the unimaginable. Our efforts, in shaping a future-today, cannot be just about creating bytes and algorithms, because the truth of the human experience goes beyond simple numbers and algorithms. Instead, our efforts should be directed towards creating a world where the human mind and the machine collide, venturing into unknown worlds forging wonders that previously seemed unattainable.

However, as we venture into hitherto unknown territories, it is vital to remember that the real magic lies in our humanity and that artificial intelligence is only the expression of our transformative creativity, a tool that can help us discover functional truths and that amplifies our ability to learn, connect and build.

We, humans, are the artisans who construct and shape our destiny and it is our own experience, conscious and emotional, that connects us to the deepest questions about the meaning and nature of our existence.

However, true wonder emerges only when we use it to uplift us, to inspire us, and to unite us. As we explore the new possibilities that this new era offers us, we need to hold fast to the compass of our shared values, – we must never forget the spark that

makes us truly human – our ideals of justice, fairness and compassion.

So, while technology may change what we do, who we are and what we are as human beings will remain untouched. Our hearts, our empathy, and our search for true human understanding will continue to guide us. As we contemplate the bright future, where artificial intelligence intertwines with our lives, let us remember that it is our choices and our actions that give and give meaning to this journey, to Life.

So, let's look at AI not just as a simple tool, but as a mirror that reflects our ethics and morals. So, as we continue to break new ground in AI, we will do so, but with respect for our own humanity, the humanity that gives life to technology, that gives it its meaning, and that inspires us to create a better world, a new world, where progress and compassion go hand in hand.

It is in the intersection and collaboration between machines and emotions that we can achieve truly remarkable advances. We seek not only to examine the challenges, but also to seek solutions to guide the development of artificial intelligence in a way that honors our commitment to human dignity and compassion. May these fruitful discussions and actions lead us to a future in which technology enhances our humanity rather than threatening it, and at the same time we face the misery of dehumanization that it can cause. Our journey has just begun!

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WAR IN UKRAINE: THE LEGAL RESPONSIBILITY FOR VIOLATIONS OF HUMAN RIGHTS PERPETRATED BY THE WAGNER GROUP INTERNATIONALLY

Ricardo dos Santos BEZERRA[1]
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1. INTRODUCTION

The Private Military Companies (PMCs) constitute a particularity of our century and they are already present in the vast sceneries of the international area. Inside conflict zones, they are used as a support to the national armed forces, or are directly part of the hostility. In milder regions, they operate in the security of civil and state installations, often operating in close cooperation with the public institutions of the contracting State, which clearly

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indicates the degree of proximity between this nation and the PMC's country of origin.

The Wagner Group is a Russian PMC established to protect the Russian national interests abroad. As the group offers its services to Moscow's allies, the Wagner Group amplifies the global influence of Russia without involving the conventional forces directly; thus, avoiding public explanations. Not only internally, but also internationally.

Due to the explicit absence of clear links with Moscow and the lack of specific international regulation for the activities of PMCs, the Wagner Group enjoys a privileged position that allows it to conduct operations without restrictions and, therefore, commit abuses and violations of human rights. The Russian invasion of Ukraine exemplifies this situation, highlighting numerous and serious cases of war crimes, disrespect for civil rights and prisoners of war and even violations against its own staff. Faced with this reality, an immediate response from International Humanitarian Law (IHL) is required to prevent impunity.

Therefore, the article begins by addressing the origin of PMCs and their distinction in relation to the category of mercenaries, and then explores the main characteristics of the Wagner Group. Subsequently, the human rights violations committed by members of the Russian PMC against combatants, civilians and even their own members are discussed, concluding with an analysis of the international legal responsibility for these violations, whether attributed to the Russian State or, at least, to the involved agents themselves individually.

2. WAGNER GROUP: A PRIVATE MILITARY COMPANY IN THE SERVICE OF KREMLIN

The Private Military Company — or PMC —, emerged in the XX century as an unfolding dispersion of economic power, politics, and military, once focused on the superpowers of the Cold War, Soviet Union and the United States. With Russia facing a deep crisis and the United States reducing drastically their investments in the defence area, both the countries witnessed the significant decrease of their armed forces in terms of equipment and personnel. This situation, allied to the neoliberal logic predominant at the time provided the opportunity of abundant supply of specialised labour and weaponry at reasonable prices, resulting in the foundation of dedicated companies to provide services related to war. The eclosion of diverse armed conflicts and the disappearance of hegemonic potency support created a crescent demand and highly lucrative for these services in benefit of development and creation of the PMC. Like Afonso (2021) summarises:

> The end of the cold war brought a vacuum of power, which the PMC sought to fulfil. The disarmament of big potencies in the 1990 decade and the demobilisation of thousands soldiers, due to the end of bipolar conflict, created an ample space for the actuation of PMC, given the wide offer of weapons and, hence it low cost, in addition large quantity of ex-soldiers in search for a job.

As their notable effectiveness in promoting the geopolitical interests of great powers was recognized, the hiring of the services of these companies became stronger, above all, as instruments in a strategic proxy war. When using non-state actors, the States found in a proxy war the ideal approach to achieve its goals without the necessity to involve its regular troops directly, specially when it is

a complex political question and of difficult justification in a delicate international context.

The effort to create an image of reliable and safe institutions, with their own particularities to distance them from classic figures of mercenaries also generated very positive effects for the relations between the PMC and its contractors. According to Shearer (1998, p. 68. apud Vinha, 2009, p. 46) 'there are countless similarities between PMC and traditional mercenaries, eg. they are exterior of the conflict, motivated by financial income and participate directly in the actions of combat', still, there are significant differences:

> (They) Present an image distinctly professional; defend and publicise openly their utility and professionalism; utilise legal and financial instruments accepted to ensure their commercial business; and; for now, support not only governments recognised internationally, avoiding non-appeal regimes to the international community. (Brayton, 2002, p. 306 apud Vinha 2009, p. 46)

When detaching from the widely criticised and, even, condemned practice of mercenarism, exposing a professional image and of cooperative entity, the PMCs facilitate the process of acceptance, despite criticism, of its use in environments of instability. This approval is reinforced when it occurs under the premise of the actuation in States with institutions unable to keep minimum social order or just serves to the assistance of troops already in activity in the region.

Thus, diverse PMCs, for example the Wagner Group, emerge for the protection and promotion of Russia's international interests without commitment of significant portions of the national budget and at the same time, mitigate the direct responsibility of the country for its agents' actions.

Founded by Dmitry Valerievich Utkin, an ex-official of the Russian special forces and directed until 2023, by the oligarch

Yevgeny Viktorovich Prigozhin, this Russian PMC has the name 'Wagner Group' due to Utkin's admiration by the German composer Richard Wagner — been himself called 'Wagner' and, therefore, its followers referred as 'group of Wagner ', describes Ray (2023). One of the crucial motives for its creation was the fall of the pro-Russian president of Ukraine, Viktor Fédorovytch Ianukóvytch, in 2014, during intense protests of the 'Euromaidan', one event that leads the Russian State to response with the mobilisation of experienced combatants without establish direct bounds with them.

Then, the PMC was employed in the fast occupation of the Peninsula of Crimea, but soon expanded its operations, coordinating and training separatist groups in the east of Ukraine, which contributed to the increase of stability in the country. Since then, the military relevance, politics and economics of the Wagner Group has grown continuously, Thoms (2023) indicates that the group's operations develop around 30 countries, including Armenia, Syria, Central-Africa, Sudan, Libya, Mozambique and Venezuela.

In these countries, the activities of the group are quite varied, encompassing the protection of local structures and the military training of armed forces, even direct support to fragiles or bankrupt to keep the power. In the case of Sudan, exemplifies Rampe (2023), the Russian PMC is involved in training of Sudanese troops, protection of the extraction of mineral resources and acts in the repression of contrary movements of the government of president Omar al-Bashir.

Due to this wide performance, the operations of the Wagner Group are highly lucrative, conferring greater financial independence in relation to the Russian State, beyond this, the remuneration for its provided services is not limited to currency money stretching to agreements that involves assets, commodities and the concession of rights to explore natural resources, such as

wood, mineral deposits, precious stones, petroleum and natural gas, explains Rampe (2023) .

These Agreements usually are established with companies led by Yevgeny Prigozhin, compounding a business model which has been fundamental for the financial success of the Wagner Group and its influence in the various economic sectors of the countries involved. In Syria, Rampe (2023) narrates that part of the payment agreed for the services of liberation and protection of the oil fields included provenance recipes of petroleum and gas, while, in the Central-African Republic (CAR), the subsidiaries of Wagner received the control of a gold mine em Ndassima, and the illimited rights for word exploration. According to Bhattacharya (2023):

> $250 million: How much companies linked to Wagner Group chief Prigozhin amassed from natural resources it got in exchange for providing security services to scores of weak and war-torn countries in Africa and the Middle East in the four years before Russia's invasion of Ukraine, as per a Financial Times investigation.

Counting with diverse sources of revenues, the Wagner Group could attract ex-members of Russian Armed Forces and from allied nations as Serbia, Ukraine (specially russophones of Donbass), Syria, Libya and Afghanistan, offering superior remuneration to their armed forces equivalents, an attractive tactic that made the group become an elite force highly capable to the most variety of conflicts worldwide. According to Laterza (2023):

> To serve in Syria, one common combatant from the referred company receives 140 to 160 thousand ruble every month. To work in Libya - 170-190 thousand rubles. The service in the Central-African Republic was considered the most lucrative - 200-240 ruble per month.
> Those with notorious military specialties (such as sniper, sapper, engineers) received 20-40%¨more than its colleagues without its qualifications for example. The equivalent of official functions had

> the double of the salary of a private with minimum salary. In some cases, the monthly salary of an official equivalent can be 500 to 700 thousand ruble in the PMC WAGNER.
> In the case of the death of a combatant family member, the indemnification costs around 1 to 5 million rubles.

Sierra et al. (2023) exposes that, before the Russian invasion of Ukraine, join in Wagner Group was harder since it had an elevated criteria of selection, which included physical aptitude, age inferior to 40 years, no criminal antecedents and military experience, which explained the relatively small size of the organisation, composed up to 8000 contractors distributed in different countries. However, the direct participation of the Wagner Group in the Russian-ukrainian conflict of 2022, resulted in severe casualties, forcing the Russian PMC to flexibilize its criteria of hiring, such as elimination of previous military experience, increasing of maximum age, the offering of Russian citizenship for recruits and their families from other nationalities, and the polemic reduction of the prisoners sentence in exchange of detachment of six months in Ukraine. To raise the scope of these measures, social media and posters on billboards were utilised all across Russia as vehicles of propaganda.

These actions resulted in a rapid growth of the PMC that, in 2022, already counted with more than 50.000 active members majority detached in Ukraine.

Nonetheless, this increase of troops is not reflected, proportionally, in operational efficiency, but, like the military specialist Ukrainian Alexander Kovalenko (2023, apud Sierra et al., 2023) described: '...the degradation of Wagner's personnel'. The implication of this expansion, that recruited individuals of diverse nationalities principally motivated by financial gains and a lot of times poorly trained, resulting in brutal actions. These combatants, by starting the action, both perpetrated and were victims of

atrocities, revealing a complete disrespect by the life of the involved and an absolute despise by the rights of civilians incapable to escape the hurricane of armed conflicts.

2. VIOLATIONS OF HUMAN RIGHTS: THE ACTIONS of THE WAGNER GROUP UNDER SCRUTINY

The Wagner Group was the PMC that stood out of the most at the Russian invasion of Ukraine mostly, in the capture of the cities of Soledar and Bakhmut, although these were victories achieved with elevated human loss and material, beyond the practice of an infinity of crimes, which can be classified as one 'Pyrrhic Victory'. The Ukrainian soldiers captured or surrendered in combat were the first to feel the brutal impacts of these operations, which is corroborated with the declarations of Yevgeny Prigozhin, like the one proffered in his Telegram account and reported in The Kyiv Independent (2023): 'We will kill everyone on the battlefield, take no more prisoners of the war!'.

Following this line of action, the members of PMC, frequently perpetrated massacres against Ukrainian combatants that surrendered, a lot of times registering these atrocities which are evidentially practices of torture and summary executions, including shooting, decapitations and even the launch of grenades in the trenches where the soldiers gathered, describes Khrebet (2023). Even the few ones made prisoners of war faced similar torments, subjects of torture, unsanitary conditions and pointless interrogations. Illia Mykhalchuk, an Ukrainian soldier captured by the Wagner Group next to the city of Bakhmut, has a remarkable report. According to Horton (2023), Mykhalcuck was kept in one 'Dark and poor ventilated basement', had both arms amputated, even one of them in the conditions of recovery and faced relentless

efforts of his captors to break his determination while waiting for the day to return home.

As all of these atrocities were no longer shockingly enough, the abuses committed by the members of the Wagner Group against Ukrainian soldiers do not even spare the bodies of the dead:

> Besides mistreating and killing POWs, sometimes Wagner operatives also disrespected the dead bodies of Ukrainian soldiers by mutilating them, beheading them or selling them to their families. Videos have emerged of dead Ukrainian soldiers with their heads and hands cut off supposedly by Wagner operatives. A soldier we interviewed also testified to seeing beheaded Ukrainian soldiers. As some testimonies we collected show, Wagner personnel sometimes tried to sell dead bodies to the families of the victims or ask for something in exchange: there was one case, for example, where the body of an Ukrainian soldier was offered to his family in exchange for a car (Sierra et al., 2023).

Against the civilians, the agents of the Wagner Group do not show mercy also. As with the soldiers, the civilian population that encountered themselves in the middle of conflicts became victims of these brutal actions of the PMC, facing acts of violence, extortion and destruction of its homes and ways of subsistence. And even more than that; the members of the Wagner Group received orders to eliminate any witness, resulting in alarming reports of ex-members admitting the murder of dozens of civilians, including children. During an interview to Gulagu.net (2023 apud The Kyiv Independent, 2023), one ex-member of the Wagner Group revealed that was instructed by Prigozhin to 'clean' Soledar and Bakhmut, to eliminate everyone that crossed its way. Complementing Sierra et al. (2023), says:

> Evidence demonstrates the responsibility of Wagner's operatives in war atrocities. In the area near Kyiv some sources reported that Wagner was also involved in the systematic torture and killing of

> civilians. The most relevant case in this oblast was the killing of the mayor of Motyzhyn, Olga Sukhenko, and her family. Three members of Wagner and five Russian soldiers tortured and killed them: the mayor's son was shot in the leg to extort information from him and killed in front of his family, then the mayor and her husband were beaten up and killed.

The impactant testimonies of Alexey Savichev and Azmat Uldarov, that affirms being ex-members of the Wagner Group, were in detail registered by Gulagu.net, The Guardian and CNN, with plenty of documentation which proves unequivocally their involvement in the conflict and presidential indult received. These revelations clarify an extension of barbarity committed during the conflict:

> Uldarov said his fellow mercenaries in one instance killed a group of people who had taken shelter in the basement of a nine-floor block of flats in Bakhmut, including a young girl. 'She was screaming, she was a little kid, she was five or six and I shot her, a kill shot. I wasn't allowed to let anyone out, you understand?' (Sauer, 2023).

About Savichev, Dean (2023) evidences with even more details:

> 'Whether a hut or a house, the point was to make sure that there wasn't a single living person left inside.'
> '…It doesn't matter whether there is a civilian there or not. The house needs to be swept. I didn't give a f**k who was inside…'
> '…Savichev said Wagner fighters who did not follow orders were killed'.

Still, all the victims of the Wagner Group were not restricted to soldiers and Ukrainian civilians, but also its own personnel. In

the Russian Offensive for Donetsk, the strong Ukrainian resistance added to the suicide tactics of Yevgeny Prigozhin became the most intense, brutal and ferocious battles, since the beginning of invasion. The loss of the Wagner Group agents, which became recognized as the 'meat grinder of Bakhmut', were unequally, as described by Beaumont (2023).

Recruited soldiers from prison, with poor or none military experience and without adequate training were launched in hordes against Ukrainian positions well trenched and armed, while the ones with greater strategic values were placed in other sectors of the front. Sasha (2023, apud Beaumont, 2023), member of the 24° mechanised brigade of Ukraine that fights in the area, declared what he saw daily: 'They just sent one group after another, against our positions… That also means that they are suffering ever greater losses. They are just throwing in meat.' .

Reports of the use of prisoner recruits as 'cannon fodders' are countless and evidence of the neglect of the value of human life. Like Alexey Savichev (2023, apud Sauer, 2023) narrates: 'We were basically just meat for our commanders, I still don't know how I survived… No one gave a shit about us'.

Savichev (2023, apud Sauer, 2023) revealed being integrated small units of assault and received orders for dangerous attacks against Ukrainian positions, estimating that, of 100 recruited prisoners, only 21 returned alive.

According to Sauer (2023), eastern numbers point that the Wagner Group suffered more than 30.000 losses, ex-convicts mainly.

3. THE INTERNATIONAL LEGAL RESPONSIBILITY

The war, being the apex of hostilities between sovereign States, demands an observance of laws and moral conduct even in

the most critical moments. The *jus in bello*, or International Humanitarian Law (IHL), establishes crucial guidelines to be followed during armed conflict with the objective to minimise the consequences for all involved, however, the complex reality of the war does not favour the application of these rules, being that, a challenge especially evident against flagrant violations of Human Rights perpetrated by the Wagner Group in the course of the war of Ukraine in the search for legal responsibility by these acts.

In principle, since Russia is the State of origin of the Wagner Group and notably, when it comes to the promotion of the global interests of Russia that the PMC operates, the country could be responsible for the crimes committed by the agents of the PMC, and consequently, subject to sanctions. Many videos that show that highlight agents of the Wagner Group making use of equipments and military bases added to Vladimir Putin's declarations, recognising the PMC's involvement in the Donbass region and having, as exposed by Cabus e Letrone (2023), entirely financed the PMC from May 2022 to May 2023, with the State budget, illustrate the depth of the link between the Wagner Group and the country's top management, in addition to corroborating the possible attribution of human rights violations to the Russian State.

However, to attribute this responsibility to the Russian nation and its main leaders, evidence is needed that goes beyond mere financing and statements of support for the PMC. According to the Responsibility of States for Internationally Wrongful Acts – ARSIWA, articles 1, 2 and 34, every State that practises an internationally wrongful, omissive or commissive act may be held internationally responsible for it and, consequently, be compelled to full reparation for the damage caused, whether through restitution, compensation or satisfaction, which is the manifestation of regret.

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For the moment, the articles 2 and 3 of the ARSIWA determine that for the State to assume responsibility, firstly it is necessary that the conduct can be attributed to it and, secondly, that it is a violation of international obligation, with the lawfulness of the act in light of the domestic normative provisions of the country without affecting its characterization as illicit under international law. Due to the numerous and notorious violations of human rights by Wagner Group agents, the second requirement is quickly met, the main difficulty related to the first being due to the intentional obscurity that marks the PMC's relationship with the Kremlin.

Pursuant to article 4 of ARSIWA, 'The conduct of any State organ shall be considered an act of that State under international law', being this organ, 'any person or entity which has that status in accordance with the internal law of the State'. Beyond that, even if the act is practised by the same person or entity that is not recognised as an organ of the State conforming the definition mentioned, since it is authorised by the law of its State to exercise elements of the governmental authority, this act can also be considered practised by the State, as the article 5 says.

However, the Russian law does not classify the Wagner Group as an organ of the State, or at least an organ classified by law to exercise 'elements of governmental authority'. On the opposite, President Vladimir Putin uses the illegal classification of mercenary activity to decisively exempt state responsibility for the acts of the Russian PMC's agents since article 359 of the Russian Penal Code determines that: 'recruitment, training, financing, or any other material provision of a mercenary, and also the use of him in an armed conflict or hostilities, shall be punishable by deprivation of liberty for a term of four to eight years'.

In these cases, the article 8 of the ARSIWA provides that:

> The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.

This involves the attribution of responsibility to the State due to the direct influence of its members in the practice of illicit acts. Since it is not possible to attribute the actions of the Wagner Group, as it does not have a legal connection with the government, ARSIWA allows the possibility of attributing responsibility for the conduct, as long as the combatants are acting under the instructions, direction or control of the State.

It is a more restricted type of accountability, since 'any unauthorised conduct that is not directly influenced by the State remains private in character and does not lead to State responsibility' (Maddocks, 2022). Thus, although the link between the PMC and Russian authorities is more exposed on the international stage, there is great difficulty in gathering evidentiary material regarding the effective control of the Wagner Group operations that resulted in violations of international law by members of the Russian government and high-ranking military. As Williams e Maddocks explain (2023):

> In effect, for conduct to be attributed to a State pursuant to this test, State officials must exert tactical control over the operation in which the relevant violations were committed. In the case of the Wagner Group, this would mean that evidence is required, for example, that Russian military officers exercised command and control over the Wagner Group fighters who were involved in the killing of civilians.... Regarding the capture of Soledar, for example, if it is correct that the Wagner Group led the assault rather than acting in support of Russian troops, this suggests the PMC may have operated independently from Russia's conventional forces, within its own separate chain of command. If that was the case, the PMC did not act under Russia's effective control, even if the State

> provided strategic direction and material support towards the offensive.

The need for substantial evidence and, consequently, the difficulty of applying such a modality of attributing responsibility is even defined by the International Court of Justice in its ruling in the case relating to military and paramilitary activities in and against Nicaragua, (1986, paragraph 115):

> The Court has taken the view (paragraph 110 above) that United States participation, even if preponderant or decisive, in the financing, organizing, training, supplying and equipping of the contras, the selection of its military or paramilitary targets, and the planning of the whole of its operation, is still insufficient in itself, on the basis of the evidence in the possession of the Court, for the purpose of attributing to the United States the acts committed by the contras in the course of their military or paramilitary operations in Nicaragua. Al1 the forms of United States participation mentioned above, and even the general control by the respondent State over a force with a high degree of dependency on it, would not in themselves mean, without further evidence, that the United States directed or enforced the perpetration of the acts contrary to human rights and humanitarian law alleged by the applicant State.

Therefore, holding members of the Wagner Group individually responsible emerges as a more effective approach to prevent impunity from occurring in the face of human rights violations committed in Ukraine. However, for it to become a viable alternative, the status of its members must first be defined in international law, as such categorization directly influences the conduct of legal procedures.

According to article 43 of AP 1 (International Committee of the Red Cross, 2010), the ones who have the right to participate directly in hostilities is the combatant, a member of the armed forces of one of the belligerent parties, these being made up of all

organised armed forces, groups and units that are under a command responsible to the State for the conduct of their subordinates and that are subject to an internal disciplinary system that, *inter alia*, ensures compliance with the rules of international law applicable in armed conflicts.

Such a classification would grant Russian PMC agents some kind of immunity, when captured, which would make the Ukrainian State's attempts to prosecute or punish them for lawful acts of war, such as murder and destruction of property, unfeasible. This is a way of protecting combatants who have become prisoners of war from abuse by their captors: protecting their rights from being violated simply for having participated in hostilities. The exception is if such acts constitute violations of IHL, which are not supported by the combatant's immunity.

However, as exposed previously, the operations of the Wagner Group are not 'under a command responsible to the State', that is, subordinated to the Russian Ministry of Defense, at least officially, and neither does the PMC indicate that it has any disciplinary regulatory framework of its own that facilitate compliance with international humanitarian law. The absence of these two requirements, therefore, strips members of the Wagner Group of their combatant status and, consequently, of all rights, including legal immunity, conferred on prisoners of war.

Following this line of reasoning, if the Russian PMC is not considered combatants, on the other hand, it cannot be classified as mercenaries either. This is because art.47 of AP 1 (International Committee of the Red Cross, 2010) lists six requirements to be met to define a mercenary:

> 2. A mercenary is any person who:
> a) is specially recruited locally or abroad in order to fight in an armed conflict;
> b) does, in fact, take a direct part in the hostilities;

> c) is motivated to take part in the hostilities essentially by the desire for private gain and, in fact, is promised, by or on behalf of a Party to the conflict, material compensation substantially in excess of that promised or paid to combatants of similar ranks and functions in the armed forces of that Party;
> d) is neither a national of a Party to the conflict nor a resident of territory controlled by a Party to the conflict;
> e) is not a member of the armed forces of a Party to the conflict; and
> f) has not been sent by a State which is not a Party to the conflict on official duty as a member of its armed forces.

As can be seen, the concept of mercenary, as it is restricted and cumulative, makes it practically impossible to apply it to all members of the Wagner Group, with the criteria of nationality being what most highlights this, since, although there are some agents belonging to other nations, most of those in action in the Donbass region are former Russian convicts.

Thus, the most acceptable and logical solution to be applied to the case is the attribution of responsibility for human rights violations on an individual basis, analysed case by case, with the members of the Russian PMC being prosecuted in an international forum such as the International Criminal Court, or in another State, under the principle of universal jurisdiction. According to the European Center for Constitutional and Human Rights (ECCHR):

> The principle of universal jurisdiction provides for a state's jurisdiction over crimes against international law even when the crimes did not occur on that state's territory, and neither the victim nor perpetrator is a national of that state. The principle allows national courts in third countries to address international crimes occurring abroad, to hold perpetrators criminally liable, and to prevent impunity.

And those who ordered the crimes or allowed them to occur can be held accountable based on the doctrine of command responsibility.

> In international criminal law, the principle of command responsibility allows for commanders to be held criminally liable for crimes committed by their subordinates. This will apply if the commander was in a position to prevent crimes committed by forces under their effective control and knew or should have known that the crime would be committed.

The lack of official ties with central authorities of the Russian government or its countless organs, added to the difficulty in classifying its members under the international law, creates significant obstacles to attributing responsibility to the Wagner Group, but not at the point of leaving them unpunished.

4. CONCLUSION

In the contemporary scenario, the PMCs have emerged as solid and well-structured non-state actors, to the point of establishing their presence in almost all conflicts across the globe. Its main advantage, plausible deniability and the absence of explicit links with contracting States, have become attractive features. However, this autonomy is also problematic, as it does not exempt such entities from responsibility for human rights violations. While attributing responsibility to the home state can be attempted, it is often a complex challenge. The international standards, in turn, present considerable restrictions, making their effective application difficult.

The search for accountability in the face of human rights violations often faces obstacles, including the feeling of impunity resulting from evidentiary limitations for affected States. However,

justice is not unattainable. Despite the challenges, individual accountability appears as a possible path. Although it can be a slow process and fraught with obstacles, the search for truth and justice remains a beacon of hope. While enforcing international standards is difficult, perseverance in individual accountability offers an opportunity to prevail against impunity and ensure a fairer future.

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THE VISIGOTHIC LAW CODE: ORIGIN, EVOLUTION AND SUCCESSION LAW

Mário Vinícius Carneiro Medeiros[1]

VISIGOTHIC LAW: ORIGIN AND EVOLUTION

The Iberian Peninsula is the result of the presence of various peoples, some indigenous and others invaders[2]. Romans, Alans, Suevi and Vandals, the latter subdivided into Asdingos and Silingos[3], occupied the region for centuries. Later, in 414 AD, the Visigoths came from Gaul and took Barcelona[4].

The presence of so many peoples in the region formed an amalgam of creeds, customs and cultures. Likewise, Visigothic legislation was influenced by other laws. In fact, the Visigothic state itself had these characteristics, because if, on the one hand, it showed the characteristic aspect of Germanic communities and their constitutions, on the other it received Roman influences in

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terms of its legal and political characteristics[5].

A priori, it was thought that Visigothic Law had an exclusively Germanic character, a trend that has now been abandoned. New studies show that the subject contains considerable content on what is known as customary Roman law in the West. This has led to new reflections on old questions that were previously considered settled, as well as the emergence of others motivated by the same aspect[6].

The first challenge for the reconstruction of Visigothic law concerns the question of its sources. Initially, this law was customary[7]. The first news of a written law of the Visigothic people was given in a letter written by Sidonius Apollinaris, which reported the existence of written laws in the reign of Theodoric, without specifically pointing out which Theodoric, since there were two monarchs with that name in the 5th century[8].

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[5] *"The Visigothic state of the Hispanic Peninsula appears, in its constitution, as a product of the mixture of Germanic elements (the unity of the group given by the chief, the social bonds established hierarchically by the loyalty of men to their chief), with Roman elements (the idea of res publica, a bundle of permanent collective interests of the community which the king himself must respect and serve, the idea that sovereignty over people and things is an attribute of the community and not of the prince, and that a collective patrimony is made up of goods intended for public use)."* MARCELLO CAETANO. *História do Direito Português.* Lisboa: Editorial Verbo, 1985, p. 92.

[6] *"Traditional ideas about Visigothic law were later subjected to a thorough critical review, with emphasis on the studies of Ernst Levy, Paulo Merêa, Garcia-Gallo and Álvaro D'Ors. The conclusions reached opened up different horizons. The conception that viewed Visigothic sources from a purely Germanic angle has been overcome. On the contrary, it is now understood that these sources constitute an invaluable repository of the so-called ordinary Roman law of the West. This perspective raises new questions and resurrects old ones that seemed to have reached a definitive judgment."* COSTA, *Op. cit.*, p. 142.

[7] MARCELLO CAETANO. *Op. cit.*, p. 100.

[8] *"1) Pre-Euricus legislation - From a passage by Sidonius Apollinaris, we know that the Visigoths had written laws during the reign of a monarch named Theodoric, and therefore before Euricus. There is reason to suppose that these laws were granted by*

Still in the aforementioned century, around 475, King Euric ordered the compilation of Visigothic laws into a *Codex*[9]. A fragment of this text was discovered in the 18th century, in Corbie, in a palimpsest that is currently in the National Library in Paris. The document dealt with the division of land between Romans and Goths, contracts, donations and successions[10]. It shows their concern to legitimize what is known as ordinary Roman law, without forgetting the presence of characters from Visigothic practices. Some point out that the *Lex Salica* was influenced by this text[11].

For decades, there has been discussion about this document in terms of its applicability. According to Garcia-Gallo, a Spanish historian, since the code applied to all the inhabitants of the Visigothic sovereign's domain, it would mean that the principle of the territoriality of law was applicable, even in the 5th century[12]. Other authors, including Paulo Merêa, agree that the Eurician Code was the Goths' own legislation[13].

On the other hand, it is common ground among authors that

Theodoric I (419-451) and perhaps also by Theodoric II (453-466)." MERÊA,Paulo. *A Legislação Visigótica.* Exposição sucinta para uso dos alunos de História do Direito Português. Coimbra: Gráfica Conimbricense, Limitada, 1921, p. 3.

[9] MERÊA. *Idem*, p. 4.

[10] MARCELLO CAETANO. *Idem*, *idem.*

[11] *"Written by Roman jurists, it mainly describes Roman law as it was applied in practice in the Visigothic kingdom, ordinary Roman law; but there are also Visigothic elements in it; an influence of this text on the Lex Salica cannot be ruled out."* GILISSEN, John. *Introdução Histórica ao Direito.* Lisboa: FundaçãoCalouste Gulbenkian, 1979, p. 176.

[12] MARCELLO CAETANO. *Idem*, p. 101.

[13] *"The probable date of this code is between 469 and 481, presumably around 475. It is therefore the ancient monument of Germanic legislation and had an influence on other Leges Barbarorum, especially the Law of the Bavarians. It applied to issues between Visigoths and between Goths and Romans. It reveals a double influence: Germanic and Roman."* MERÊA. *Op. cit*., p. 4.

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there are three complete legal texts which have been the basis for studies in the area: the *Breviary of Alaric* (506), the *Law of Teudis* (546) and the *Visigothic Code*, in its versions by Recesvindo (654) and Ervígio (681). Zeumer calls these writings "*dated laws*" (*leyes fechadas*), since there is no doubt about their authors and dates[14].

Alaric's Breviary, also known as the *Lex Romanum Visigothorum*, sought to remedy the lack of Visigothic laws aimed specifically at the Roman population living in his domains. With countless constitutions and opinions of his own for the inhabitants of Roman origin, Alaric II sought to restore imperial Roman law (both public and private) by compiling *leges* and *jus*, which were to be applied among the Romans[15]. This document was extremely successful, both in Visigoth territory and in Western Europe, and was considered by the Church to be legitimate Roman Law, which was adopted in its relations[16].

For a long time, it was debated whether the Breviary had repealed the Eurician Code. This was Garcia-Gallo's opinion, which

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[14] *"By dated laws we understand not only those that bear a date, but all those that contain data on the time of their drafting, even if they only bear the name of the legislator. As dated laws we have in the first term, the Lex Romana of Alaric II of the year 506, a law of King Teudis of the year 546 and also numerous loose laws of Recaredo I and his successors that have been transmitted in the different redactions or manuscript forms of the Lex Visigothorum, and, finally, this Code itself in the primitive form that comes from Recesvinto and in its new redaction carried out by Ervigio."* ZEUMER, Karl. *Historia de la Legislacion Visigoda*. Barcelona: Universidade de Barcelona, 1944, p. 13.

[15] *"It includes among the leges: a) Constitutions of the Codex Theodosianus. Official collection ordered in 439 by Emperor Theodosius; b) Post-Theodosian Novels promulgated until 463. As for jus, the following texts can be found: a) Liber Gali, i.e. the adaptation of the Institutes of Gaius to common usage; b) Paul's 'Sentences'; c) some constitutions taken from the private collections known as the Hermogenian and Gregorian Codices; d) a text of Papinian's 'Responses'."* MARCELLO CAETANO. *Op. cit.*, p. 102.

[16] MARCELLO CAETANO. *Idem*, p. 103.

was followed by many authors[17]. According to this author, the proof that the second legislation had repealed the first was in the silence of the sources about it, after the existence of the Breviary. However, studies by other authors have shown that the same happened with the law promulgated by Teudis, which made no reference to the legal text of Alaric II. According to Merêa, it is possible that the Code of Euricus continued to be in force as general legislation and the Breviary as a supplementary law aimed at the Roman population[18].

According to Zeumer, the second of the "*dated laws*" is the so-called *Law of Teudis*. It is a document promulgated in 546 by King Teudis, whose purpose was to repress abuses when it came to collecting court fees, and was the only law published after the reign of Euricus until Leovigildo's *Codex Revisus*[19]. This, in fact, was the most important work chronologically, after the Eurician Code.

The reign of Leovigildo took place between 572 and 586. It is estimated that in 580[20] the Code of Euricus was revised, adapting it to the conditions of the society of the time and seeking to update it[21]. The original text is unknown, but it is possible to reconstruct it

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[17] MERÊA, Paulo. *Estudos de Direito Visigótico*. Coimbra: Acta Universitatis Conimbrigensis, 1948, p. 199.

[18] *"The idea that the Breviary repealed the Code of Eurycleanus must definitely be set aside. What could be admitted - and this is the hypothesis I dared to suggest in the event that the territoriality of the Code of Euricus was accepted - was that the Code of Euricus would have continued to be in force a general law, and the Breviary would have come into use alongside it, as a subsidiary source and intended primarily for the Roman population. The purpose of this complementary code was to avoid the inconveniences of freely claiming Roman sources."* MERÊA. *Idem*, p. 207.

[19] COSTA. *Op. cit.*, p. 146.

[20] COSTA. *Idem*, *idem.*

[21] *"In this reference to Leovigildo's reform, I see the existence of a code, or a collection, which contains a certain number, greater or lesser, of the confusing laws of Eurico that Leovigildo corrects, and where at the same time he introduces certain laws, necessary or useful, even if they have been set aside, and suppresses many that have fallen into disuse and are therefore useless."* HERCULANO, Alexandre -

thanks to the Visigothic Code of 654, since the expression "*antiquae*" was placed in the epigraph[22].

Looking at the aforementioned text, we can see that Leovigildo sought to eliminate the legal differences between the Goths and the Romans, seeking a law applicable to all the inhabitants of the kingdom. As an example, we find the end of the ban on mixed marriages[23]. His son and successor, Recaredo I, continued the process and, abjuring Arianism, converted to Catholic Christianity, which became the official religion of the state. It was thus possible to establish a religious and legal community among all the inhabitants of the kingdom[24].

From then on, separate legislation was scarce, although the character of a single law applying to the entire population within the borders prevailed. During the reign of Chindasvindo (642-653), a large number of laws were enacted which brought about significant legal reforms in a wide variety of aspects, both in the organization of the state and the judicial system, as well as in the areas of procedure, private law and criminal law[25]. These laws were based on ancient Gothic law, as well as Roman law[26].

In 654, Recesvindo promulgated the third of the "*dated laws*", as Zeumer called it. This is the Visigothic Code, also called *líber judicum*, *forum judicum*, *liber judiciorum*, whose text is

Opúsculos por Alexandre Herculano - Tomo 05 . Disponível em: http://wordincontext.com/pt/leovigildo. Acessado em: 16.01.2013.

[22] *"Between those that are complete or almost complete and the corresponding antiquae there are numerous changes of phrase, which sometimes modify the substance of the law. However, since the inedito published by Bluhme is a fragment of the primitive code, it is inevitable that the antiquae belong to the reform of Leovigildo, since there is no evidence of another revision prior to that of Chindaswintho and Receswintho."* HERCULANO. *Idem*.

[23] ZEUMER. *Op. cit.*, p. 76.

[24] ZEUMER. *Idem*, *idem.*

[25] COSTA. *Idem*, p. 147.

[26] ZEUMER. *Idem*, p. 81.

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presented in three different forms: one from the time of Recesvindo, another from the time of Ervígio and the last, whose date of publication is uncertain, which was called "vulgate"[27].

The first of these forms, called recesvindian and dating from 654, was inspired by the 8th Council of Toledo. Scholars debate whether the new text was of personal or territorial application, since there was a provision prohibiting any recourse to Roman laws or institutions. However, even with divergent opinions, the idea prevails that Roman laws were repealed with the promulgation of the Visigothic Code[28].

The result of the crossing of the canonical, Germanic and Roman legal currents, with the latter prevailing over the *leges* and "iura" before Justinian law, the structure of the Visigothic Code has twelve books, subdivided into titles, made up of laws. At the beginning of these laws are the words "*antiqua*", "*antiqua emendate*" or the name of the monarch who wrote or amended them[29].

In 681, following the evolution of society itself, King Ergygigus ordered a revision of the text promulgated by Recesvindo, with the participation of the Seventh Council of Toledo. On this occasion, several laws were modified, others were suppressed, and several were added. Among these laws, we find

[27] MARCELLO CAETANO. *Op. cit.*, p. 104.

[28] *"It is the Code itself which, in Book II, Title 1, Chapter 10, expressly forbids recourse to Roman laws or institutions, which seems to be a repeal of the Lex Romana Wisigothorum. Historian Gaudenzi, however, denies that this is the meaning of the text: he believes that the prohibition refers to the Roman laws introduced into the Peninsula by the Byzantines during their domination. And Ernesto Mayer, a notable German writer, maintains that the L.R.W. remained in force even after the promulgation of the Visigothic Code. On the other hand, the Spanish historian Rafael de Urena claims that the L.R.W. had been repealed since the time of Leovigildo."* MARCELLO CAETANO. *Idem*, *idem*.

[29] COSTA. *Op. cit.*, p. 148.

some from the time of his predecessor, Wamba, as well as those of Ervigius himself who, with the backing of the Council of Toledo, included laws against the Jews[30]. According to this legislation, they had to sell their Christian slaves within sixty days, under penalty of confiscation of half their property; if they were poor, their hair would be shaved off and they would suffer a hundred lashes. However, in both cases, the slave would be free[31].

Finally, there is the so-called Vulgate form of the Visigothic Code. These are texts written after Ergygius and contain fifteen novellas written by his successors, Egica and Witiza. In them, there is another provision prohibiting the entry into ports of ships carrying goods belonging to Jews and their exchange with Christian merchants[32]. There were also doctrinal additions, such as the Primus Titus, which summarizes the theory of Visigothic Public Law, in harmony with the canons of the councils, as well as the teachings of Saint Isidro of Seville[33].

It should be noted that there is no definitive text of the

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[30] *"When, after the abdication of Wamba, Ervigius took the scepter on October 15, 680, he seems to have immediately projected great legislative plans. What concerned him most was the legislation against the Jews. Already in the first months of his reign he had an extensive law on this subject drafted. To carry out his purposes he made use of the Council which inaugurated its work in Toledo on January 9, 681 (Conc. Tolet. XII). In the 'Tomus' which he delivered on that day to the Council, after the speech of the crown, he invited the assembly to examine the laws recently given by him against the impiety of the Jews, confirming them and publishing them summarized in an agreement of the Council: 'leges, quae in Iudaerorum perfidiam a nostra gloria moviter promulgate sunt, omni exminationis probitate percutrite et tam eisdem legibus tenorem inconvulsun adiicite quam pro corundem perfidorum excessibus complexas in unum sententias promulgate. '"* ZEUMER.*Op. cit.*, p. 94.

[31] FIELDMAN, S. A. Judeus, escravos e proselitismo na Espanha visigótica. *In: História:* Questões & Debates, Curitiba, Editora UFPR, n. 37, p. 156. Disponível em: http://ojs.c3sl.ufpr.br/ojs2/index.php/historia/article/view/2706/2243. Acessado em: 16.01.2013.

[32] ZEUMER. *Op. cit.*, p. 108.

[33] MARCELLO CAETANO. *Op. cit*., p. 105.

vulgate form, since those who copied the Code of Ergygigus added what was in their interest. There is therefore no way to estimate the number of texts or the number of individuals who did so.

On the other hand, Visigothic Law still has other sources. Firstly, the canons of the councils, the most important of which are Capitula Martini, compiled by St. Martin of Braga in the middle of the 6th century, and Collectio Hispanae, of unknown authorship and supposedly dating from the 7th century. In addition to these sources, we have the so-called Visigothic formulas, dating from the second decade of the 7th century, which depict the vulgar Roman Law of the time[34].

There are also other sources which, because they are not complete, do not indicate the date they were written or even whether they were written by Visigoths. This is the case, for example, with the so-called *Fragmenta Gaudenziana*, also known as the Holkham fragments[35], which is a text written in Lombard script, found by Gaudenzi in the Holkham Library and dated to the end of the fourth century. Its origin is much debated, with passages attributed to Justinian, as well as others taken from the *Lex Visigothorum Recesvindiana*, but also attributed to the Byzantine emperor[36]. Scholars disagree about the source of this miscellany of information, some pointing to its origin as being from the Hispanic Peninsula, others as being of Italian origin[37].

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[34] MARCELLO CAETANO. *Idem*, p. 108.

[35] MARCELLO CAETANO. *Idem*, *idem*.

[36] MERÊA. *Op. cit.*, p. 122.

[37] *"According to Gaudenzi, it was necessary to distinguish between the primitive nucleus (which did not yet include the Epitome of Egidio, with the eight novellas that follow it), whose cradle, in his opinion, was the Hispanic Peninsula, and the compilation as we know it, of Italian origin. Conrat considers the hypothesis of two successive forms to be acceptable, the first of which could be well before the ninth century, but rejects Gaudenzi's opinion, as he considers the collection to be of Provençal origin. Patetta rejects the distinction between the primitive nucleus and*

SOME ASPECTS OF THE RIGHT OF SUCCESSION IN THE EURICO CODE

The Eurytian Code, presumably dating from 475[38], has not been found in its entirety. Knowledge of the part dealing with legitimate succession was only possible thanks to the work of Zeumer, who reconstructed the text. In the palimpsest kept at the National Library in Paris, only sparse words remained. Corresponding with the laws *antiquae* of the *Lex Visigothorum Recesvindiana*, it was possible to see that Visigothic legislation, similarly to Roman legislation, established three distinct classes of successors to those who died *ab intestato*: descendants, ascendants and collaterals[39], observing by agnation, i.e. male kinship.

In order to understand how legitimate succession was carried out, it is necessary to understand what *family* meant to the Visigoths. In the Visigoth family structure, the subordination of the *pater* over the *filius* was not similar to that established in Roman law. While in Roman society the *pater* is the head of a family institution, in the Visigothic family there is only a domestic subordination to him, with a duration limited to the time the child is a member of the household. Thus, while that procedure is based on the legal character of the *patria potestas*, Visigothic law sought

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the later additions, supporting the Italian origin of the collection." MERÊA. *Idem*, p. 123.

[38] MERÊA. *Op. cit.*, p. 4.

[39] *"[In hereditate illius, qui m]oritur inte[status, sin flii desunt], nepobitus debe[tur hereditas. Sin nec nepotes] fuerint [pronepotes vocantur ad her]editatem. [Si vero qui moritur nec fillios n]ec nep[otes nec pronepotes reliquerit], pater aut mater [hereditates sibi vindicabit. Si persona]e desunt [quae aut de superior aunt de inferior, genere discreto ordine veniunt, tunc illae personae, quae sunt a latere constitutae, requirantur, ut hereditatem accipiant]."* (IV 2,2 e IV 2,3). BRAGA DA CRUZ. *Op. cit.*, p. 2.

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to formalize a custom of the Germanic people[40].

According to the custom and law of the Visigoths, a woman was simply an object of marital business, and thus under the total control of the paternal will[41]. In the event of the succession of the *pater* who died *ab intestato*, although there was the principle of masculinity, as in Roman law, daughters were not excluded from the process with regard to real estate. They were just passed over for brothers. If there were no sons, competition disappeared, and the daughters were fully eligible[42].

However, this process had different aspects: a daughter who married without the necessary paternal authorization, for example, would lose her share. According to Braga da Cruz, this provision had the character of a penalty, typical of Visigothic law, since the successor had broken the hierarchy that Visigothic social norms imposed on the family context. In a contrary position, Paulo Merêa states that there is a Roman-Vulgar tradition with the same characteristic[43].

Still on the subject of daughters, those who followed the rules regarding marriage would receive the same share of the estate as sons. Due to the fact that the text is not very clear, the scholars Ficker and Braga da Cruz differ: while the former interprets that this rule applied to cases in which the daughters had no descendants, the latter defends the principle that it applied to all cases. Both, however, are unanimous in saying that the daughter, although she had free administration over the other assets, would only be entitled to the usufruct of the real estate contained in her share, with the brother being the naked owner. The same rule would apply if she were a member of a religious order, and she

[40] MERÊA. *Idem*, p. 2.
[41] MERÊA. *Idem*, p. 5.
[42] BRAGA DA CRUZ. *Idem*, p. 3.
[43] BRAGA DA CRUZ. *Op. cit.*, p. 4.

would also be the mistress of the other assets[44].

Very diverse situations are envisaged in the Eurician Code, such as succession involving the offspring of a married couple. If the mother died and there were children, the father would be entitled to the usufruct of the property left to the children by the deceased. This right would be extinguished when the widower married again. If a son or daughter married, the father was obliged to give them two-thirds of the mother's inheritance and reserved the usufruct of the remaining third for himself. When the descendants reached the age of 20, half of the mother's inheritance would be given to them, with the father retaining the usufruct of the other half[45].

As we mentioned earlier, Visigothic legislation was influenced by other legislation. An example of this is the provisions on the succession of grandchildren, set out in the second part of chapter 327 of the Eurician Code. Directly inspired by the imperial constitution of Valentinian, Theodosius and Arcadius in the year 389, later reproduced in the Theodosian Code, there was a legal determination that grandchildren *ex filio*, whose father had already died, should receive their grandfather's inheritance in full, the hereditary share going to their father, if he were alive. If they were

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[44] *"The difference between our interpretation and that of FICKER lies in the following: - For FICKER, chapter 320 of the Eurytian Code would have enshrined, at the beginning, as an absolute rule, the equality of succession between sons and daughters; and the restrictions that follow would have been exceptional, concerning only daughters who died without leaving descendants. As far as we are concerned, these restrictions alluded to in chapter 320 - with the exception of the third, which refers, as we shall see, to the 'sanctimonialis' daughter -. They concern all daughters, whether they have descendants or not (in this sense, also ZEUMER, ob. and vol. cit., pp. 98-99). As a consequence of this, we believe that chapter 320 would in fact have begun by affirming the right of daughters to an inheritance identical to that of sons; but then went on to emphasize the restricted scope of the rights they could exercise over this inheritance."* BRAGA DA CRUZ. *Idem*, p. 5-6.

[45] BRAGA DA CRUZ. *Idem*, p. 9.

grandchildren *ex filia*, whose mother had already died, they would only receive 2/3 of their mother's hereditary share, if she had not died[46].

Time and the lack of sources capable of better explaining the ideas of the time led scholars to have some doubts about chapter 327 of the Code of Euricus, given that the first part leads us to the problem of how the son would succeed to the property inherited from his father[47]. This leads us to the following question: does the succession restriction imposed on grandchildren *ex filia* concern any and all succession of grandchildren to the inheritance of their grandparents? Or would it be restricted only to the succession of grandchildren to those assets that came to the grandparents as a result of a *luctuosa hereditas*, i.e. the mother's right to succeed her son?[48]

The controversy arises because, in Law IV, 2, 18, of the Visigothic Code, we find this expression both to designate the mother's succession to the property that the son had inherited from his father, and the mother's succession to the property that the son had inherited from her. However, only the first hypothesis is provided for in the Eurician Code, despite the fact that Merêa, after analyzing the facts, concluded that the applicability is general, for all purposes[49].

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[46] BRAGA DA CRUZ. *Idem*, p. 11.

[47] *"Si vero qui moritur fllios, nepotes et pro nepotes reliquerit, ipsi omines habeant facultates, ea conditione servat,ut nepos ex eo fllio, qui patre supérstite mortus fueritintegram de avi bonis, quam fuerat pater eius si [vixisset], habiturus, percipiat portionem; nam nepotesex ea fllia, q[eu ant] e patre(m) mortua est, de ea portione, quam mater fuerat habitura, tertia(m) por[tionem perdant]."* BRAGA DA CRUZ. *Op. cit.*, p. 10.

[48] BRAGA DA CRUZ. *Idem*, p. 13.

[49] *"The legislator, when considering the case of de cujus (the deceased) being orphaned by his father, thought it appropriate to split the hypothesis into two: that there were no children and that there were children of the same de cujus (deceased). Only in the first case (defunct father...) would it be possible for the mother to inherit,*

The discussion is not restricted to the case we have cited. Other issues of difficult interpretation appear in the same chapter. The absence of texts from the period ends up casting doubt on the interpretation of the law in question, because, according to chapter 327, grandchildren *ex filia* received their inheritance minus 1/3, the "*portio quam mater lucrat habitura*". As the daughters received the land belonging to this portio, according to chapter 320, even if they only had its usufruct, the discussion consists of whether the principle applies *to all property or only to that whose full ownership would belong to the mother.*

Various scholars have given their opinions on the matter. Thus, while Ficker sides with the first hypothesis, Zeumer follows the other. However, neither of them presents convincing arguments for a basis[50]. Braga da Cruz, on the other hand, puts forward three hypotheses, the first of which is that grandchildren would be subject to the same restrictions as their mother if she were alive. In the second, if only daughters survived *de cujus* (the deceased) and there were no male children, the grandchildren *ex filia* would have full ownership, respecting the 1/3 share in favor of the succession shares of the deceased mother's sisters. Finally, the third hypothesis would be the competition between grandchildren *ex filia* and grandchildren *ex filio*. In this case, the former would be deducted 1/3 in favor of the grandchildren *ex filio*, in accordance with Chapter 320[51] of the Eurician Code.

What can be inferred from such statements is that, similarly to chapter 320 of this code, according to which daughters are

and hence the need to limit her rights of disposal to the presence of other children, siblings of de cujus (the deceased). In the second case, however, (si vero qui moritur...), that is, if de cujus (the deceased) left descendants, even if they are only grandchildren, they are the only heirs, even if the deceased's mother is still alive, and, incidentally, this succession is regulated." MERÊA. *Op. cit.*, p. 219.

[50] BRAGA DA CRUZ. *Idem*, p. 14.

[51] BRAGA DA CRUZ. *Op. cit.*, p. 14.

passed over by sons in the inheritance aspect, we find the same principle being applied in chapter 327, in relation to *ex filia* grandchildren by *ex filio* grandchildren. As the text of the palimpsest has sixteen illegible lines, Braga da Cruz admits the possibility that the principle of full ownership of movable assets and the usufruct of real estate property was foreseen, with bare ownership existing for male grandchildren[52].

In the absence of descendants, Chapter 336 of the Euryclean Code stipulates that the property of the deceased should pass to the ascendants. Under this provision, if the son died and the mother was widowed, all the property inherited from the father by *de cujus* (the deceased) would pass to the mother-in-law, who would have the use and enjoyment of it, but could not dispose of it, as this was a measure to preserve it in the family group. If there were no other descendants, she could dispose of them freely. If the beneficiary died without having made a will, her next of kin would be the beneficiaries, with the relatives of the deceased spouse taking precedence[53].

Regarding the succession of grandparents, Chapter 328 of the Euryclean Code contains a curious and still unclear provision: if *de cujus* (the deceased) leaves property whose heirs are the paternal grandfather and the maternal grandfather, the latter will be excluded and the entire inheritance will go to the former. However, if the paternal grandfather and maternal grandmother are concurrent, the inheritance must be shared equally between them.

Zeumer and Braga da Cruz do not offer any doctrinal support to explain this legal provision. However, the latter hypothesizes that it may have been an error on the part of the

[52] BRAGA DA CRUZ. *Idem*, p. 19.
[53] BRAGA DA CRUZ. *Idem*, p. 22.

scribe when copying the original text, when the correct wording would be that if the paternal grandfather competed with the maternal grandmother, the former would receive the entire inheritance. If, however, the paternal grandfather competed with the maternal grandfather, the inheritance would be shared equally[54]. Álvaro D'Ors, in turn, defends the idea that this principle comes from Roman Law, in which the paternal grandfather was subrogated to the *parens manumissor*, having preference over the other ascendants. However, the presence of the maternal grandmother in the succession process was tolerated, since she would only be entitled to the usufruct of the half that had gone to her[55].

With regard to the succession of collaterals, although the Paris palimpsest only made it possible to reconstruct a single chapter on it, it is assumed that there were four others, of which few words or loose letters have been recovered. Therefore, considerations on this topic are only possible when they are matched with passages from the Visigothic Code[56].

Chapter 329 of this code deals with the subject, and is the only one whose reconstruction was possible. It begins with a provision on the succession of collateral relatives, establishing, exceptionally, that if a sister aunt of the father or a sister aunt of the mother survived to *de cujus* (the deceased), both should share the inheritance left to them. As an exception, it is therefore considered

[54] BRAGA DA CRUZ. *Idem*, p. 29.

[55] *"In summary, the 'oddity' of 328 can be explained as follows: the paternal grandfather, subrogated to the position of parens manumissor, has preference over the other ascendants, because he alone inherited in Roman law unde legitimi but tolerates the concurrence of the grandmother, aterna because she acquires only the usufruct of half."* D'ORS, Álvaro. *Estudios Visigoticos II – El Codigo de Euricon – Edicion, Palingenesia, Indices*. Consejo Superiorde Investigaciones Cientificas Deleagion de Roma, 1960, p. 266.

[56] BRAGA DA CRUZ. *Op. cit.*, p. 36.

that if there were two collateral relatives of the deceased at the same degree, but from different branches, the sharing would not be in the same proportions[57].

In order for such an exception to arise, there must therefore be a general principle. Faced with the conditions presented by the palimpsest, it was left to scholars to construct hypotheses to define it. Thus, they assume that the first of these would be the right of truncation, or the right of succession preference of agnatic relatives over merely cognatic relatives[58].

The right of truncation is summarized in the rule *paterna paternis*, *materna maternis*, whereby this right determines that, if the deceased leaves no descendants, the assets they have inherited from the paternal and maternal lines are returned to the relatives of the respective lines from which those assets came. The other principle would be based on a deduction from what the Visigothic legislator proposed: once the factual situation of an agnate and a cognate surviving *de cujus* (the deceased), both in the collateral line and female, was proposed, exceptionally, there would be an equal sharing, since Braga da Cruz believes that the legislator's initial desire was only to establish the Roman succession system, when cognates are only called upon in the absence of agnates.

As the right of trunkality does not appear expressly enshrined in the Eurician Code, unlike agnatic succession, it appears expressly, at least once, in chapter 327. The author understands that, when *ex filia* grandchildren succeed, the general principle not expressed in the palimpsest would be exactly that[59].

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[57] *"This brief chapter establishes the equality of the paternal aunt (agnate of the third degree) with the maternal aunt (cognate of the same degree). This seems to imply that the paternal uncles (patrui) or their descendants excluded the maternal ones, by advantage of agnation; but not the paternal aunt, who was equated to a cognate, according to the Roman norm."* D' ORS. *Idem*, p. 270.

[58] BRAGA DA CRUZ. *Idem*, p. 37.

[59] BRAGA DA CRUZ. *Op. cit.*, p. 48.

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Regarding the succession of collaterals, this was established in chapters 329 to 333 of the Eurician Code. As we have already said, chapter 329 was the only one that could be reconstructed from the Paris palimpsest, with the others being completely illegible or with scattered letters or words.

By conjecture, Braga da Cruz says that chapter 330 was dedicated to the succession of siblings, since the following chapter already mentioned the case where the deceased did not leave brothers or sisters, but their children (nephews)[60]. According to Law IV, 2, 5 of the Visigothic Code, this principle meant that brothers and sisters succeeded equally. However, this rule only applied to brothers and sisters of the same blood, since consanguineous and uterine brothers and sisters descended with the deceased from the same father and mother[61]. However, in the event of the absence of siblings of the deceased, the same author admits the possibility of calling the uterine and consanguineous siblings, with the sisters being given preference, by analogy with the situation provided for in chapter 320. It remains unclear, due to lack of data, whether the exclusion would be in relation to real estate or the entire estate, as provided for in the aforementioned chapter, when it is provided that they are owners of movable assets and have the usufruct of real estate[62].

The lack of siblings and the consequent presence of nephews was also mentioned in the Eurician Code, more precisely in its chapter 331. As this part of the document was completely fragmented and unreadable, only antiqua IV, 2, 8 of the Visigothic Code remained, which established the division of inheritance per capita between them, with no difference if they were descendants of sons or daughters[62]. Based on this provision, it is assumed that the code had the same provision.

[60] BRAGA DA CRUZ. *Idem*, p. 49.
[61] BRAGA DA CRUZ. *Idem*, *idem*.
[62] BRAGA DA CRUZ. *Idem*, p. 51.

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CLOSING REMARKS

Studies on Visigothic society and the law of its people have attracted the attention of various scholars from the middle of the 14th century to the present day, because although science has developed techniques for reconstructing ancient documents, unfortunately no copies of Visigothic law have been found in a good state to reveal the legal past of these people. Therefore, this article in no way seeks to close the subject. On the contrary, it is merely a panoramic view of the subject, encouraging the reader to seek out the scholars cited here, who deal with the subject in greater depth.

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CONTENTS

THE PROTECTION OF HUMAN RIGHTS IN TRANSNATIONAL FAMILIES: THE NEED FOR A HUMANITY IN MOBILITY[1]

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1. INTRODUCTION

Migration as a study phenomenon delves into the diversity of social interaction factors that it affects (Canales, 2015; Escobar and Masferrer, 2021). In addition, the academic developments that have allowed it to accumulate theoretical, interdisciplinary and diversified knowledge, it has been established in a broad field of knowledge, in which transnational families are located (Ciurlo, 2014) (Gonzálvez Torralbo, 2016) as a reference that transforms

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the dynamics of this social institution that suffers micro and macro social structural variations and places it in the current context.

Given that social changes are faster than the transformation of their narratives and assimilation of new roles and forms of interaction, it is important to conceptualize: 1. World migration in figures that measure the migratory reality, 2. The emergence of a new typology of family called transnational family and with it the structural changes that families face related to the impact of their human rights.

2. GLOBAL MIGRATION

As a phenomenon, migration is inherent to humanity and forms of social organization, due to environmental, economic, cultural, political and subsistence factors according to each era in history. Today can be recognized as the century of migration, given the technological developments that have brought humanity closer to a concept of global citizenship under which desirable cultures and ways of life are brought closer, communication and transportation barriers are eliminated, technological applications are developed that guide destinations and alternative routes, which makes it desirable to migrate towards new beginnings, migration opportunities with a vocation for permanence are offered given the demographic changes that require the repopulation of young people, boys, girls and adolescents in some areas of countries with declining birth rates. In addition to this, there are added global social situations such as poverty, climate change, social inequalities, political violence and constant wars that contribute to mass migrations and make the reality of migration uncontrollable (Diodato et al., 2023).) internal and international as indicated by the World Bank Group (2023, p.1).

About 2.5% of the world's population – 184 million people, including 37 million refugees – now live outside their country of nationality. The majority – 43% – are in developing countries. 40% (64 million economic migrants and 10 million refugees) live in high-income countries that belong to the Organization for Economic Co-operation and Development (OECD). 17% (31 million economic migrants) live in the Gulf Cooperation Council countries. Almost all are temporary workers with renewable work visas. They represent, on average, close to half of the population of the countries in the region. 43% (52 million economic migrants and 27 million refugees) live in low- and middle-income countries.

Although there are multiple situations that migrants go through (Garciandía & Garcíandía, 2023), the main one may be family separation, since this universal institution of biological, legal and emotional kinship weaves ties and economic responsibilities, parenting and joint responsibility for care. , physical and emotional protection for life (Parella Rubio, 2007), this migratory context being the one that most confronts its members about their lives and relationships.

3. THE RISE OF TRANSNATIONAL FAMILIES

Although the phenomenon of migration has always had an impact on families through separation, reconfiguration and economic support, have not always been recognized, since the difCommunication skills, meetings and returns were influencing the breaking of ties with families of origin and the formation of new families in shelters. However, at the end of the 20th century, new globalizing realities emerged with communication technologies, transportation, free trade agreements, travel agencies, tourism, social networks and an unstoppable dynamism that transformed societies towards a vision more global, a culture for the diversity of

ways of life, theoretical and legislative notions that reaffirm the different nationality(Aizencang, 2013).

The transnational beyond the geographical, capable of detaching spatial reality to address multi-situated spaces, but in constant interaction from economic, political, cultural, ideological, emotional and legally protected relationships., which materialize in the European Union as a clear example of expansion of its national space, makeBy referring to the reality of diasporic social circuits, academics, social and political organizations are integrated to understand and improve the living conditions of migrants in the world (Lerma Rodríguez, 2016).

In this context, the reality of transnational families is still poorly developed and appropriated by migrants, since it is part of the traditional family, which has as its predominant characteristic face-to-face interaction, sharing housing, food, and physical care. direct, the private decisions made in the intimacy of the relationships built, among others, that are significantly transformed, which is why a migrant who moves towards a transnational family feels that his family is ending, surfacing feelings of pain and victimization in the face of the abandonment, separation, division, loss of home, inability to fulfill roles, especially those of a couple (Acadera & Yeoh, 2019) and parenthood (Camarero, 2010; Aguilar, 2013).

Therefore, educating in the appropriation of the transnational family as a new typology contributes to the elimination of negative classifications and positions its reality asmulti-situated interaction, coexistence in non-geographical spaces, with dinVirtual and communicative friendships through media, which require higher levels of trust, adaptation, negotiation and reconfiguration of roles (Mendoza Pérez, 2017; Illanes, 2016).

Therefore, the support of networks of caregivers of extended, community and institutional families that allow strengthening their dynamics and making their existence visible beyond the theoretical and giving it meaning in social experiences, embracing it in the imaginations and feelings of boys, girls, adolescents, young people, older adults, men and women who emigrate daily and thereby become part of this new reality (Román Reyes et al., 2014).

In addition to the narratives that coinconcepts such as: Transnational family, Transnational parenting, Transnational motherhood, Transnational conjugality, construction of roles and relationships for parenting, care and intersubjective growth and parental belonging, among other meanings that allow them to designate themselves and see themselves socially recognized. as families in transnationality and not trying to fit into traditionality that ends up hurting and stigmatizing(Torre Cantalapiedra, 2016), andThese new languages de-victimize the idea of abandonment of families and their environments and in this new status they canrequest social and state support.

4. TRANSNATIONAL FAMILIES AND THE HUMAN RIGHTS

Transnational families in the framework of human rights refer us to article 13 of their declaration, which states:

> 1. Every person has the right to move freely and choose their residence within the territory of a State.
> 2. Everyone has the right to leave any country, including their own, and to return to their own country (United Nations, 1948, p. 4)

In that sense, the norm implicitly regulates emigration as a right to move, but it is not done in the same way with immigration,

since under the concept of sovereignty of the states, they may or may not subscribe and enforce the different treaties. international organizations that seek to protect the very humanity of immigrants. The immigration regulations of the countries show situations such as expulsion from the territories or denial of entry, exposing them to violations of their rights such as human trafficking, torture, rejection, prostitution, hunger, illness, death due to traveling through irregular passages that They are exposed to violent situations, in which they lose their identity, exposed to robberies, sexual violence, undignified treatment, in which they feel in a legal limbo, since in order not to be deported they do not report any violation of their rights, making them the collective imagination, classifies them as illegal and subjects them more easily to any form of exploitation. Each population group that emigrates from their countries constitutes a transnational family that demands psychosocial care and protection of their rights just like families in their place of origin (Rivas & Gonzálvez, 2011).

A revision to the human rights treaties of migrants such as the International Convention on the Elimination of All Forms of Racial Discrimination (United Nations, 1965), International Covenant on Economic, Social and Cultural Rights (United Nations, 1966), Convention on the Elimination of All Forms of Discrimination against Women (United Nations, 1979), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (United Nations, 1984), Convention on the Rights of the Child (1989), Convention on the Rights of Persons with Disabilities (2006), International Convention for the Protection of All Persons from Enforced Disappearances (2010),They show the historical resistance of countries to the integration of immigrants into their societies.

Other conventions for labor development seek dignified treatment of workers, International Convention on the Protection

of the Rights of All Migrant Workers and Their Families (1990), protocols for the protection of refugees, statelessness, security in life human rights at sea, against illicit trafficking. Cooperation between countries with migration programs and public policies such as those of the Southern Common Market (Mercosur), the Andean Community (CAN) and the Puebla Panama Plan are also highlighted. This international regulation makes it possible to identify the absence of explicit agreements on the protection of migrant families, family migration and, in general,psychosocial measures that allow them to enjoy the legal protection provided to families worldwide, whose recognition as institutions benefits them from state protection.

4. METHODOLOGY

With the growing Venezuelan emigration in Latin American countries, the "migration and family work group in the Americas" is proposed, which brings together researchers from the Simón Bolívar University of Colombia, the Autonomous University of Honduras and the Autonomous University of Ciudad Juárez in Mexico, proposing the research "ethnography and daily life in migrant families from Venezuela."From Guber (2001), Restrepo (2018) and Vargas (2007), ethnography is proposed as interpretation and sociocultural evidence, to analyze the life practices and the most representative meanings of their cultural reality, allowing migrant families to experience their daily life, day-to-day life in the city markets, seeking work support, scavenging and begging, street habitability, and the scenario where they plan new migratory routes.

The starting point is participant observation in the markets: "La Sexta" and "Cenabastos". There, tours were developed for a week in which the dynamics of street sales of sweets, small

quantities of vegetables, but in which interaction predominated, adaptation and mother-child-sibling relationships, local market population and buyers. Based on these observations, we interact with 15 migrant women, heads of household, who have assumed this leadership after migration and as a result of family separation, to whom ethnographic interviews are asked with guiding questions about the migratory reality, their family interaction. with the members who emigrated and those who stayed, their daily lives, the construction of reality in the host territories, these interviews were presented as conversations and recovery of anecdotes as statedGuber (2001).The analysis of the information was carried out using the Atlas Ti 9.0 software and from the grounded theory position of Straus and Corbin (2001), whose steps were open, axial and selective coding. Based on this coding, the findings were triangulated.

5. RESULTS

The existence of two major findings stands out: 1.the structural changes of transnational families and 2. New forms of interaction and relational dynamics at a macrosocial level in transnational families.

6. STRUCTURAL CHANGES OF TRANSNATIONAL FAMILIES

Studies in the field of families agree in describing families with "structures" in their formation, relational dynamics, development of functions, forms of communication, care, economic allocation and other actions, which are fundamental to provide functionality or accommodation to its members (Camejo Lluch, 2015; Donati, 2004; Fry 2020). These structures, although today they are questioned by the use of hierarchies and vertical

relationships, do not imply that they are negative in all their elements, since aspects such as norms, values, upbringing, distribution of roles, communication and limits, contribute to the consolidation of models. of democratic families, in which responsible and happy citizens are formed who build and achieve their well-being (Soto Ospina, 2016).

However, families face changes inherent to the life cycles of their members and as a group, which generates imbalances and conflicts (Tovar and Vélez, 2007), which, added to migration, leads them to face inequality, dependence and violation of rights. rights, questions, guilt, violence and other situations reported by the families interviewed.

The family formation, family separation appears, the change of roles in parents and other family members, loss of childhood of children and adolescents who go out to work or take on family care tasks, parental distancing replaced by remittances, as recognized by some interviewees when they point out: 5:1 "I have taken care of raising my grandson since the mother, one of my oldest daughters, left him with me to travel to Medellín", 1:19 my son wants to speak loudly to me, he tells me strong things as if I was her daughter", 2:9 "many of the women who emigrate from Venezuela leave children in the care of other relatives or neighbors", 3:13 "it is quite complex and all these processes are greatly affected", 3:15 " the way of relating, the way of interacting, the way of coping" Family problems emerge in distant relationships, single children, caring grandparents who do not have the ability, health and strength to take on the upbringing of their grandchildren and the self-recognition of the family change - from nuclear to single parent, from extended to single children, as evidenced in some stories where families express specific difficulties of breakups, assuming fracture, thus, I was a two-parent family and if one of the parents travels, now I am a single-parent

family, creating a break, when in reality a transnational two-parent family is faced , the bond is maintained from a distance and this family continues its structure, now, with a new dynamic.

Other effects that are added, such as the illness of parents, children, or violence in intra-family contexts due to abandonment, gender violence and the existence of mental health problems in different members of the families: 13:4 “it was due to the state of health of my two children”, 13:3 “The child neurologist and was diagnosed with Gilles de Tourette”, 13:7 son is 13 years old, in September 2018 he was diagnosed with a chronic illness”, 12:5 “my daughter needs complete hematology tests”, 8:6 “The cytology they performed on me in September showed an abnormality”, 9:8 “4 days ago he had to be hospitalized, and he also needs an operation for a knee implant”, 15: 4 “We do not work, we receive the help of an older son to take care of the children”, 17:3 “The grandmother assures that she is not the mother of the minor, but rather that she is the one who has taken care of the girl”, 18 :2 “the grandmother takes care of all the minors”, 18:6 “for the well-being of my three children and she only dedicated herself to work and I cannot pay much attention to them”, 19:2 “she is looking for work since "She alone maintains the home."

The result of facing these situations is travel, loan of resources or sale of their belongings to finance the trips, letting their adolescent children migrate alone, adapting to new contexts and separations, developing coping skills and solving problems and needs such as describe their stories: 2:8 “there are many breakups, emotional ties are obviously affected, family support networks are altered,” 3:3 “they do it without consulting their children, who evidently because they are children end up suffering from this breakup. ", 1:2 "we also see that single women leave Venezuela", 5:2 "mom is not willing to take care of my son", 17:2 "mom has 4

more children and it was difficult for her to have them all" , 1:19 poverty has made it difficult to support us."

Each of these family transformations represents a structural affectation that affects their daily dynamics and with it, the fulfillment of family functions such as the confidence of knowing that they have a core of care and affection, security of action as a social subject to count on. with protective environment, social networks.

7. NEW FORMS OF INTERACTION AND RELATIONAL DYNAMICS AT A MACROSOCIAL LEVEL IN TRANSNATIONAL FAMILIES

This second category shows aspects of lack of protection by states and societies towards families, a situation that forces them to fight to overcome their structural problems in addition to the effects that the context produces on them, such as not having stable networks that allow them to generate independence. and build family and personal life projects in their places of origin and reception. Inequalities imposed by a context that discriminate or exploit them as immigrants without documentation, in extreme poverty, labor exploitation of children and adolescents, without employment, without social security, unprotected and with physical and mental health problems predominate.

Basic aspects such as schooling become a complex right: 12:5 "mother is managing an educational place in a school", 15:5 children and grandchildren in activities for boys, girls and adolescents"

The difficulty in maintaining links that allow them to achieve goals and develop multiple activities for each of their members: 1:19 "the high levels of poverty have even made it difficult for them to maintain care and hygiene practices," 1 :20 "these links are affected by unsatisfied basic needs, for example, by the

precariousness to which they are subjected", 2:3 "This could be a criterion for staying, the one who needs care or the caregivers who are indispensable for these families and their support", 3:1 Condition of poverty, - illness of a member of the family - who are usually the head of that group.

Other aspects commented on by those interviewed such as exposure to danger after passing through illegal crossings or trails, the little communication they can access due to cell phone theft, lack of data or technological illiteracy, difficulty due to separation, which is not addressed with psychosocial support and the links that are only determined through remittances: 2:7 "we use trails, unsafe places to try to shorten the path and this puts us at risk", 2:9 there are families in which their vulnerable conditions do not allow them to have cellular equipment."

Fundamental rights such as life, access to services to satisfy basic needs such as education, work, food, transportation, health, etc. They are broken for transnational families by not having documentation or caregivers for their children, as this makes it difficult for them to enter working life, leading to a lack of opportunities for each family member to be able to make life plans. evidencing the absence of the State with the care and promotion of development with the population in general, very contrary to what is stated in international commitments:

> The World Summit on Social Development (1995) in Copenhagen where the importance of the family as a basic unit of society was recognized and recognized that it played a key role in social development and that as such it should be strengthened, paying attention to rights, capabilities and responsibilities of its members. The World Social Summit Program of Action recognized that in different cultural, political and social systems there are various forms of family and that the family has the right to receive comprehensive protection and support (United Nations, nd).

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Thus, a world that promotes sustainable development must propose different strategies to achieve it, but prioritizing people and their rights over nationalities, it is global citizenship that can make it understood that the present century represents human mobility as a characteristic. predominant, which is why universal rights must consider and protect transnational families as a priority for the care of the planet, its inhabitants and future generations under the basis of a society that changes in its family dynamics, while this protection is maintains all its rights, in the fight against poverty focused on families (Mokomane, 2012), the reconciliation of work and family (O'Brien, 2011), as well asthe protection of intergenerational relationships.

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THE REGIONAL COMISSION FOR LAND SOLUTIONS AND THE PROMOTION OF HUMAN RIGHTS GUARANTEES

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1. INTRODUCTION

The pursuit for human rights consolidation has crossed centuries in the history of human civilization. Over time, humanity has been searching unceasingly for the acknowledgment of the importance of having dignity and freedom. After years of fighting, many aspects have evolved over local, regional, and international community on the human rights issues.

This theme covers several fields of analysis, among which the land issue stands out.

The right to housing is constitutionally provided for in Article 6th of Brazil's Magna Carta. However, even though Brazil is the 5th largest country in the world in territorial extension, there are still numberless conflicts land wise.

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In 2020, the year of the pandemic, the Federal Supreme Court, thought the Action for Non-compliance with Fundamental Precept number 828, suspended compliance with repossession and collective eviction orders for the duration of the pandemic in the country.

For the return of compliance with decisions sensitive to land issues, the Federal Supreme Court ordained the creation of the Land Solutions Commissions, which is the object of this paper. Therefore, the commissions have emerged as a tool to the Human Rights protection system.

2. HISTORICAL OVERVIEW OF LAND SOLUTIONS COMMISSIONS IN BRAZIL

The pandemic scenario of the year 2020 increased vulnerability in individuals, specifically those who were already considered economically disadvantaged. Given the context of the Covid-19 pandemic, the Socialism and Freedom political party (PSOL in Brazilian Portuguese) proposed the Action for Non-compliance with Fundamental Precept number 828/DF (ADPF 828 in Brazilian Portuguese). This action was advocated to the judge urgently asking for the interruptions of evictions and forced removals, judicial or administrative, of places that were object of judicial dispute or not, and it was partially granted on June 3rd, 2021, aiming the protection of housing during that period.

At the end of the effects of the first injunction, the plaintiff proposed a second request for a preliminary injunction. The lawsuit's rapporteur, Minister Luís Roberto Barroso, on April 30th, 2022, issued the second decision upon the preliminary injunction's decision, in which was kept the suspension of the evictions, according to the criteria in Law Number 14.216/2021, extending the deadline until June 30th, 2022.

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Immediately thereafter, provoked once more, the Minister issues the third decision granting the injunction, in which the rapporteur extended the deadline to keep the suspension of collective evictions until October 31st, 2022.

Given the expiry of the aforementioned time limit and the allegations of serious consequences of ceasing the effects of the injunctions previously granted, the plaintiff, requested, on October 20th, 2022, another preliminary injunction, which was partially granted on October 31st, 2022, being endorsed by the Plenary of the Federal Supreme Court on November 2nd, 2022.

After all the granted injunctions, the pandemic in national and international scenario started to show improvement and control over the epidemiological matter. The infection cases of COVID-19 in Brazil started to show expressive reduction. In this context, it was concluded that the reasons that based the concession of the injunctions no longer existed entirely, so that the extension of the suspension requested by the plaintiff was not justified. Thus, the Supreme Federal Court determined the creation of a transitional regime for the resumption of vacated properties, object of collective conflict which execution of the resumption was suspended by ADPF 828/DF.

The transitional regime must be implemented through the Land Solutions Commission installed in all courts in the country.

Posteriorly, the National Justice Counsil (CNJ in Brazilian Portuguese), published the Resolutions number 510 of June 26th, 2023, that regulated the creation of the Reginal Land Solutions Commissions within the National Counsil of Justice and Courts, instituted guidelines for carrying out technical visits in areas subject to possession litigation and established protocols for handling actions involving evictions and repossession of collective housing properties or productive areas for vulnerable populations.

3. THE COMISSION AS A PROMOTER OF HUMAN RIGHTS

For a more comprehensive understanding of issues related to Human Rights, it is necessary to understand the evolution of Human Rights issues in Brazil and in international society.

Up to the first half of the 20th century, what dominated the international agenda were the so-called High Politics themes, which consisted of topics considered essential for the survival of the State and the maintaining of the status quo, such as wars, military power, and offensive foreign policy.

Matters focused on the social field and human dignity are classified as Low Politics topics. However, with the end of World War II the world scenario changed drastically. (MORGENTHAU, 1947).

Given the scenario of transformations in international society, Human Rights issues began to gain more space on the international agenda. (MUÑOZ, 2017). As a result of such transformations, the United Nations Organization was created in the international system (1946), at the international level, the Interamerican Court of Human Rights (1979), at the regional level. Currently, by virtue of Law number 12.986, of June 2nd, 2014, the Council for the Defense Human Rights is now called the National Human Rights Council.

Before the advent of ADPF 828 and the order for the Land Solutions Commissions to be installed in the country, the National Human Rights Council published Resolution number 10 of October 17th, 2018, which provided for guaranteed human rights solutions and preventive measures in situations of collective rural and urban land conflicts.

The resolutions of the National Human Rights Council establishes adequate treatment policies for cases that deal with land conflicts, as set out in Article 8 of the aforementioned

resolution "Negotiations carried out before public authorities that act or will act in the treatment of collective urban and land conflicts, whether in the extrajudicial sphere, within judicial process or in parallel to the judicial process, must be guided by the search for solutions that guarantee human rights, given the asymmetry between the parties involved […]".

Thus, the Land Solutions Commissions in the Judiciary came to comply with what the National Human Rights Council proposed.

The Land Solutions Commissions, which emerged through ADFP in the Federal Supreme Court, are not isolated. On the contrary, they are part of a system of Human Rights protection that, as demonstrated, covers national and international issues.

4. THE OPERATION OF THE LAND SOLUTIONS COMMISSION IN THE STATE OF AMAPÁ

Aiming to provide better treatment to issues involving land conflicts of a collective nature, as well as complying with what was determined by the Federal Supreme Court and the National Justice Council, the Court of Justice of Amapá, in July 2023, installed the Regional Land Solutions Commission.

Instituted by Ordinance number 69322/2023-GP/TJAP, the Land Solutions Commission of Amapá Court of Justice's activities include technical visits to urban and rural occupations, the preparations of reports on occupied areas and intense dialogue with the partied through mediation.

With an administrative character, the Land Solutions Commission of Amapá Court of Justice aims to provide operational support to judges so that in getting to know the lawsuit phase it can be an instrument to enable an agreement between the parties, and, in the sentence enforcement phase, it can be a support for

compliance with repossession and collective eviction orders in the least traumatic way possible for those involved.

The fact is that, currently, repossession warrants are fulfilled with the use of police force, which in many cases generates expenses, mobilization of public workers, and use of materials that could be reduced. After all, the repossession in a collective demand generates great state strain, in addition to the trauma caused to the occupants, especially children and elderly people who were part of a certain occupation.

With the advent of the Land Solutions Commissions, the Judiciary innovated in the fulfillment of nature repossession orders of collective nature, in this way, it is possible for the sentence to be carried out in a way that respects the human rights of the plaintiff, who will have back the portion of land that was legally recognized, and the occupants, who will be able to leave the place voluntarily and with the necessary support from the government.

The Land Solutions Commission of the Amapá Court of Justice is made up of a judge who serves as president, ten judges of law; a member of the Public Defender's Office of the State of Amapá; a representative of Amapá Terras (Amapá Lands); an agency linked to the Government of the State of Amapá; Secretary of Environment of the Municipality of Macapá; and by an administrative secretary.

One of the characteristics of the commission is the fact that it is inert, that is, it needs to be provoked so that it can act on a given demand. The Public Prosecutor's Office, government bodies, the Public Defender's Office, Lawyers, or any of the parties, may request the intervention of the Land Solutions Commission in their respective demands.

Once provoked, the commission will analyze the demand, and, after studying it, the dialogue between the parties begins.

Dialogue work is the key part of the Commission's success since it consists of conversations with the parties' lawyers and the

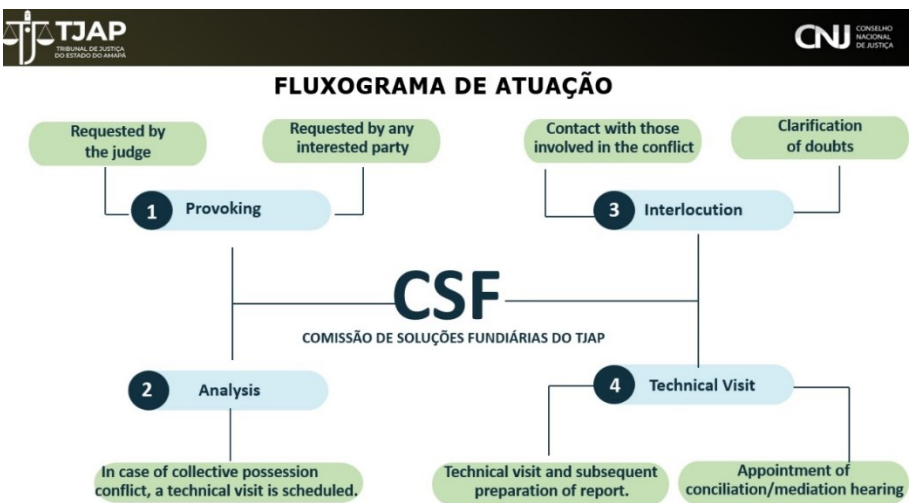
occupants of the areas. During the preliminary conversation with the occupants, awareness work is carried out so that they know the reasons for the technical visits and other works of the commission. This conversation can generate a relationship based on trust, which is essential for building a favorable environment for an agreement.

After the interlocution work, the technical visit begins, which is duly regulated by Annex II of Resolution 510/2023 of the National Justice Council.

At the end of the technical visit, a meeting is scheduled with all occupants present. In this opportunity, the judge that conducts the visit explains all the procedures that will be done from now on.

In view of all the work, when it is noted that the parties are willing to start a conversation for the purpose of self-composition, the judge of the cause may designate a mediation hearing so all the parties can reach an agreement.

The commissions' way of working can be summarized through the following flowchart:



(Picture 1: Land Solutions Commission Performance Flowchart of Justice Court of Amapá)

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5. CONCLUSION

Given the exposed in this work, it is concluded that Human Rights system on a local and international scale needs mechanisms and operational support so that what is idealized in Brazilian treaties, international conventions, and resolutions that deal with human rights can be achieved.

The Land Solutions Commissions in Brazil, thought the technical visits and mediation, can promote citizenship, respect, and dignity of human beings, points that are part of the list of Human Rights that must be followed and guaranteed by the State.

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THE LEGAL INSTITUTE OF LOCAL INTEGRATION OF REFUGEES IN BRAZIL: AN ANALYSIS OF ACADEMIC PRODUCTION (2010 TO 2022)

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1. INTRODUCTION

The protection of refugees is a highly relevant issue in international law, especially after the Second World War, when there was a high influx of displaced persons around the world. In this context, with the aim of guaranteeing rights for these people, on December 14, 1950, the General Assembly of the United Nations (UN) created the United Nations High Commissioner for Refugees (UNHCR) and, in 1951, approved the Geneva Convention on the Status of Refugees.

The Refugee Statute provides for three durable solutions to protect people in this condition: Local Integration, Voluntary

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Repatriation and Resettlement. The Brazilian state committed itself to the international protection of refugees by regulating the Convention through Federal Law No. 9.474/97, which also contemplated the same durable solutions.

According to data from the Federal Police, in the period from 1997 to 2009, following the enactment of Law No. 9,474/97, Brazil received 2,488 requests for refuge, and of this number, 1,747 people were recognized as refugees. In the period from 2010 to 2021, the number of refugee applications was 298,331, more than 100 times higher than in the first 13 years of the law. Of this total, 57,028 people were recognized as refugees. The main groups of refugee applicants between 2010 and 2021 were Venezuelans and Haitians, who accounted for 59% and 13.3% of all applications, respectively (CAVALCANTI; OLIVEIRA; SILVA, 2022).

The high migratory flow in Brazil in recent years and the need to know what measures have been adopted to realize rights that guarantee conditions for a dignified life, offering access to housing, employment, health, education and documentation, led this study to focus specifically on one of the durable solutions, Local Integration.

A first approach to this legal institute revealed a gap in the consolidation of studies on this subject, which allowed us to establish the problem proposed for this research: what is the academic production on the Law of Local Integration of Refugees in Brazil? Therefore, the general objective of the study is to analyze research trends regarding the Institute for the Local Integration of Refugees.

The time frame chosen was between 2010 and 2022 due to the great impact on the Brazilian migratory flow as a result of Haitian immigration from 2011 onwards and Venezuelan

immigration from 2016 onwards (CAVALCANTI; OLIVEIRA; SILVA, 2021).

The research will therefore be exploratory. The methodology consists of a rigorous and wide-ranging survey of academic production, based on searches in the Theses and Dissertations Database and the Periodicals Portal, both of the Coordination for the Improvement of Higher Education Personnel (CAPES). To do this, we used a combination of two descriptors: "local integration" and "refugees".

This article is divided into two sections, which present the theoretical framework on the subject as well as the results of the research: The Institute for the Local Integration of Refugees; The Overview of Academic Production on the Right to Local Integration from 2010 to 2022.

2. THE INSTITUTE FOR THE LOCAL INTEGRATION OF REFUGEES

On December 14, 1950, the UN General Assembly created the United Nations High Commissioner for Refugees - UNHCR. According to Jubilut (2007), the aim of the UNHCR was to protect refugees and act to promote and implement durable solutions for this group of people.

According to Trindade (2003), the UNHCR's strategy would not only be to promote the protection of refugees, but also to act preventively to deal with problems related to this group of people.

In 1951, the Geneva Convention on the Status of Refugees was approved. Brazil ratified the Convention and enacted it domestically through Decree 50.215 of January 28, 1961. The 1951 Convention provides for rights linked directly or indirectly to the process of Local Integration, such as: the right to work (art.

17, art. 18 and art. 19); housing (art. 21), public education (art. 22), public assistance (art. 23) and documentation (art. 25, art. 27 and art. 28), freedom of movement (art. 26) and naturalization (art. 34) (UN, 1951).

Brazil also ratified the 1967 Protocol on the Status of Refugees, which extended the application of the Convention with regard to time and geographical limitations, according to Article 1 (UN, 1967).

According to Santos (2017), the Convention had temporal and geographical flaws, and the 1967 Protocol Relating to the Status of Refugees was adopted so that these flaws would not interfere with protection and the achievement of durable solutions. The wording of the Convention considered the protection of refugees to include events in Europe and only situations that occurred before January 1, 1951.

Thus, a refugee would be anyone who has a well-founded fear of being persecuted for their race, religion, nationality, social group or political opinions and is unable or unwilling, for these reasons, to avail themselves of the protection of their country of origin (PIOVESAN, 2014). However, in 1984, the expanded definition of refugee was welcomed by the Cartagena Declaration, which, in its third item, established that the definition of refugee should, in addition to containing the elements of the 1951 Convention and the 1967 Protocol, also include as refugees people who have fled their countries because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violations of human rights or other circumstances that have seriously disturbed public order (RAMOS, 2018).

The Convention and the Protocol were regulated in Brazil by Federal Law No. 9.474/97. The law is structured in 8 titles, 17 chapters, 3 sections and 49 articles that regulate the legal status

of refugees, establishing the means for granting refuge, the list of rights and duties of refugees, as well as the hypotheses of termination of refuge.

According to Ramos (2018), Law No. 9,474/97 adopts the restricted definition of refugee in Article 1, but broadens it in item III of the same article by stating that a refugee is one who:

> Art. 1 [...]
> III - due to a serious and widespread violation of their human rights, they are forced to leave their country of nationality to seek refuge in another country (BRAZIL, 1997).

According to Leão (2017), in order to request refuge, every foreigner must enter national territory, and Brazilian law states that it is not necessary for them to carry a passport or any other identification document, nor do they need to present a visa. Article 7 of Law 9.474/97 states that "irregular entry into national territory does not constitute an impediment to the foreigner requesting refuge from the competent authorities". Thus, foreigners cannot be prevented from entering national territory if they intend to seek protection that they have not found in another territory due to a situation of danger to their life or physical integrity.

After entering the country, foreigners must go to a decentralized unit of the Federal Police at any time to apply for refuge. Brazilian law does not impose any extra requirements on the applicant, who must simply express their desire to remain under the protection of the Brazilian state, regardless of whether their entry into national territory was irregular. When they start the procedure to apply for refuge with the Federal Police, the applicant will be entitled to provisional documentation that regularizes them in the country and guarantees access to the formal job market, with the consequent issue of a work permit.

The aim is thus to facilitate the integration of foreigners and prevent them from entering the informal job market (LEÃO, 2017).

Brazilian legislation has adopted the durable solutions for refugees proposed by the UNHCR. Thus, the institute of Local Integration is provided for in Law No. 9.474/97 as follows:

> CHAPTER II
>
> Local Integration
>
> Art. 43: In exercising their rights and duties, the atypical condition of refugees must be taken into account when they need to present documents issued by their countries of origin or by their diplomatic and consular representations.
>
> Art. 44: The recognition of certificates and diplomas, the requirements for obtaining resident status and admission to academic institutions at all levels should be facilitated, taking into account the unfavorable situation experienced by refugees (BRASIL, 1997).

According to Moreira (2014), Local Integration aims to develop the process of integrating refugees into a new context, in the destination country that will host them. In this sense, Rezende and Fraga (2020) understand that in the Local Integration process, the refugee's identity and cultural and religious aspects, among others, must be respected, since integration does not depend solely on them, but on the way they will be welcomed in the receiving country.

For its part, the UNHCR understands Local Integration as a gradual and complex process that involves legal, economic, social and cultural dimensions and imposes considerable demands on both the individual seeking protection and the host

society. In many cases, acquiring the nationality of the host country is the result of this process (UNHCR, 2022a). Local integration is a multi-layered process in which, in addition to providing access to housing, employment, education and health, cultural aspects that refugees bring with them to the destination country must also be taken into account.

According to Amorim (2017), the law demonstrates that refugees' access to and exercise of their citizenship rights, in order to effectively integrate into Brazilian social life, should not be hindered by bureaucracy that doesn't work or by a lack of common sense on the part of public authorities and Brazilian society. Therefore, considering the refugees' unfavorable situation, it must be easy for them to integrate into the community.

According to Moreira (2014), although Law 9474/97 provides for Local Integration, it is limited to issues relating to documents, including those relating to education, and does not establish terms for integration, such as access to public policies.

However, Gomes (2017) believes that the provisions contained in the law on Local Integration are of great practical use, because most of the time refugees arrive in the destination country without any documents, either because they lost them on the way or because they left their country of origin in a hurry, so the requirement for original documents is not justified, and the process should be facilitated so that basic rights are not denied.

In addition to the provisions of articles 43 and 44, the law guarantees other rights directly or indirectly linked to Local Integration, such as the right to an identity card proving their legal status, a work permit and a travel document (article 6 of Federal Law 9474/97).

According to Rezende (2021), an interesting aspect of the law is the establishment of the National Committee for Refugees (CONARE). The Committee is responsible for analyzing the application, recognition and loss of refugee status in the first instance. According to article 14 of Federal Law 9474/97, CONARE will be made up of:

> Art. 14 [...]
> I - a representative of the Ministry of Justice, who will chair it;
> II - a representative of the Ministry of Foreign Affairs;
> III - a representative of the Ministry of Labor;
> IV - a representative from the Ministry of Health;
> V - a representative from the Ministry of Education and Sports;
> VI - a representative of the Federal Police Department;
> VII - a representative of a non-governmental organization dedicated to refugee assistance and protection activities in the country.

According to Moreira (2008), CONARE's institutional arrangement consolidates a tripartite structure bringing together the main players in the refugee cause: non-governmental organizations, the UNHCR, and the Brazilian government (represented by its bodies and presiding over CONARE). In this sense, Rezende and Fraga (2020) criticize CONARE's composition for not having any refugee members, as this would make the debate broader, more isonomic and democratic.

Moreira (2014) explains that in the tripartite structure, the Brazilian government provides universal basic services (health, housing, education), civil society through NGOs and religious institutions provides essential services such as Portuguese courses, food aid and housing aid, and the UNHCR finances the aid needed to help institutions carry out local integration programs.

According to Rezende and Fraga (2020), among the public policies in place for local integration, we have the issue of documents such as the individual registration, identity card, work permit and travel document, some of which are issued by the Federal Police when the refugee enters Brazilian territory. In addition, the government also provides for the inclusion of refugees in CadÚnico and Bolsa Familia (UNHCR, 2014).

However, despite the provision of services by the state, Sarmento (2022) believes that in the process of local integration it is civil society that becomes the protagonist, as the state is prominently silent. In this sense, civil society in Brazil is represented by Cáritas Arquidiocesana, which according to Santos and Silva (2020) is a non-profit organization of the Catholic Church that carries out activities to welcome refugees, creating mechanisms to protect these people.

Amorim (2017) explains that Cáritas relies on three levels of cooperation to operate: agreements, made with the United Nations High Commissioner for Refugees - UNHCR and the National Committee for Refugees - CONARE, responsible for providing the institutional and financial framework for the operation of its Refugee Reception Center; partnerships, signed with public and private sector entities such as SESC, SESI and SENAC, offering technical and vocational training courses, as well as language courses; and lastly, collaborations with entities such as the Centro de Amparo ao Trabalhador (Worker Support Center), aimed at getting refugees into the job market. This shows that Archdiocesan Caritas plays a very important role in the process of local integration of refugees.

Also important is the role of the Sérgio Vieira de Melo Chair (CSVM), which promotes the education and training of refugees through a cooperation agreement with several Brazilian universities. Among the work carried out by the CSVM is the

revalidation of refugees' diplomas, as well as the teaching of the Portuguese language (UNHCR, 2022b).

Another institution involved in the local integration of refugees is the Migrations and Human Rights Institute (IMDH), which provides social, legal-administrative and humanitarian assistance, offers Portuguese courses and an introduction to Brazilian culture, as well as helping refugees to obtain documents such as CPF, RG and a work permit (MILESI and ANDRADE, 2015).

The large role played by civil society organizations in the local integration process ends up removing the responsibility of the state to monitor and ensure the rights of refugees.

The parameters used to guarantee local integration are insufficient. In this sense, Sarmento (2022) believes that the core of the problem is the lack of specific public policies for refugees. For his part, Moreira (2014) points out that refugees need to be involved in the process of drawing up public policies for their integration. Moreira (2014) also explains that there are difficulties in various spheres of integration, such as access to public services (health, education) and social programs, working conditions and the discrimination that refugees suffer in the host country.

Having said that, it can be seen that the initiatives for the local integration of refugees come mainly from non-governmental institutions. They end up becoming the main actors in this process by trying to fill a state gap. The state confers rights, but it is clear that there is no effort to make them effective through public policies for refugees, who end up swallowed up by the bureaucracy and neglect of public authorities. Therefore, there are several difficulties in the process of Local Integration, because the parameters with which the institute is guaranteed are still insufficient.

Therefore, in view of this scenario, in the next section we will present research that has focused on this issue, whose data will be compared with the analyzed framework.

3. THE PANORAMA OF ACADEMIC PRODUCTION ON THE RIGHT TO LOCAL INTEGRATION FROM 2010 TO 2022

The aim of this section is to draw up a broad and rigorous overview of existing academic production on Local Integration Law between 2010 and 2022. This survey can be classified as State of the Art research, which, according to Ferreira (2002), is research that adopts an inventory and descriptive methodology of academic and scientific production on the subject being investigated. In this sense, Romanowski and Ens (2006) believe that the State of the Art provides an overview of what has been produced in the area, as well as identifying existing gaps.

Initially, we defined the criteria for selecting the works that make up our study, so we prioritized academic production between the years 2010 and 2022. Next, we established the Theses and Dissertations Database and the CAPES Journal Portal as our research sources, as they are relevant databases for Brazilian academic production. The Coordination for the Improvement of Higher Education Personnel (CAPES) is a foundation of the Ministry of Education that works to strengthen *stricto sensu* postgraduate studies (masters and doctorates). CAPES relies on the Portal de Periódicos and Banco de Teses e Dissertações platforms to gather and make available scientific content produced in Brazil, and others signed with international publishers, to teaching and research institutions in the country, as well as facilitating access to information on theses and dissertations defended in national postgraduate programs (BRASIL, 2023). We searched these databases using a

combination of two descriptors: "local integration" and "refugees".

The search using these descriptors found a total of 37 papers in the CAPES Theses and Dissertations Database, 29 of which were dissertations and 8 theses. In the CAPES Journals Portal, the search using these descriptors resulted in a total of 32 articles. From this total of papers found on both platforms, we carried out a second search filter by reading the titles, keywords and abstracts of the papers. Thus, we excluded studies that did not deal with the Local Integration of Refugees and were not related to the research topic.

Thus, after the exclusion process, a total of 11 papers were selected to make up the *corpus of* analysis. Of the 11 papers selected, 6 are dissertations located in the CAPES Theses and Dissertations Database and 5 are articles located in the CAPES Journal Portal. In addition, of the 6 dissertations selected, two, Rezende (2021) and Sarmento (2022), had not been authorized by the platform for access. However, we found these papers available in the repositories of the universities where they were presented, which is why we included them in our research.

We consider it important to present an overview of the works chosen for analysis, starting with the dissertations selected from the CAPES Theses and Dissertations Database. Table 1 shows the characteristics of the academic productions, such as: title, author, advisor, year, location and postgraduate program.

Chart 1: Overview of the dissertations selected from the CAPES Theses and Dissertations Database

Title	Author	Year	Location	Graduate Program
1. Local integration of refugees in Brazil and human rights: the role of companies	Vanesa Celano Tarantino	2016	University of São Paulo	Graduate Program in Law
2. local integration of refugees in Brazil: An analysis of public policies in the light of international and national legal instruments on refugees	Paula da Cunha Duarte	2019	Federal University of the State of Rio de Janeiro	Graduate Program in Law
3. Consensus building in complex migratory conflicts: an appropriate method for formulating public policies for the local integration of refugees and immigrants in Brazil	Camilla Figueiredo Fernandes	2021	University of Fortaleza	Professional Master's Degree in Law and Conflict Management
4. Refugees in Brazil: from the crossing to public	Heverton Lopes Rezende	2021	University of Marília	Graduate Program in Law

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policies for local integration				
5. local integration policies for immigrants and refugees in the city of Rio de Janeiro, from 2009 to 2021: an inclusive view	Marcia Miranda Charneski	2021	Federal University of the State of Rio de Janeiro	Graduate Program in Political Science
6. The role of organized civil society in the local integration of refugees in Brazil	Carolina de Abreu Sarmento; Conor Foley	2022	Pontifical Catholic University of Rio de Janeiro	Professional Master's Program in International Policy Analysis and Management

Source: Own elaboration based on the survey carried out in the CAPES Theses and Dissertations Database, 2023

The table below shows the characteristics of the articles selected from the CAPES Journal Portal. The table is structured as follows: title, author, journal or database and year of publication.

Chart 2: Works selected from the CAPES Journal Portal

Title	Author	Journal	Year
1. Refugees in Brazil: reflections on the local integration process	Julia Bertino Moreira	REMHU: Interdisciplinary Journal of	2014

		Urban Mobility	
2. role of the Sérgio Vieira de Mello Chairs in the process of local integration of refugees in Brazil	Julia Bertino Moreira	Directory of Open Access Journals Monções	2015
3. Human Rights and Global Governance: The work of the Sérgio Vieira de Mello Chair in the local integration of refugees	Camilla Marques Gilberto; Fernanda de Magalhães Dias Frinhani	Journal of Human Rights and Effectiveness	2016
4. local integration of Congolese refugees and asylum seekers in Rio de Janeiro	Vanessa Brulon; Maya Fernandes Ishizuka	Public Administration and Social Management	2019
5. Local integration of refugees in Brazil	Heverton Lopes Rezende; Fellipe Vilas Bôas Fraga	Espaço Acadêmico magazine	2020

Source: Own elaboration based on the survey carried out on the CAPES Periodicals Portal, 2023.

The eleven papers selected from the CAPES Theses and Dissertations Database and the CAPES Periodicals Portal were chosen as the object of analysis for this research, because they are the ones that, in some way, refer to the Local Integration of

Refugees. Against this backdrop, we read the eleven papers in full and analyzed them. It is worth mentioning that among the selected papers there are researchers who are responsible for two publications. This is the case of Rezende with his research from 2020 and 2021, and Moreira with articles published in 2014 and 2015.

With regard to the theoretical basis of the selected works, the researchers generally used as a reference the main Brazilian authors who work on the issue of refuge, such as Liliana Lyra Jubilut, André de Carvalho Ramos and Rosita Milesi. As well as authors considered to be references in human rights, such as Flávia Piovesan and Antônio Augusto Cançado Trindade.

Given the data collected in our study, we realized that academic production places more emphasis on mapping and analyzing public policies for local integration, as well as the role of civil society in this process. In general, the selected studies indicate that the state confers rights, but it is clear that the existing public policies for the local integration of refugees are not sufficient. Thus, in the face of the state's shortcomings, non-governmental institutions have become the main actor in the process of local integration of refugees.

The selected papers highlight the interest in researching (in)existing public policies for the local integration of refugees and their formulation. Rezende and Fraga (2020) point out that due to the high influx of migrants in recent years, demand has far outstripped the supply of public policies for local integration. In this sense, Rezende (2021) points out that an important local integration policy of the federal government is "Operation Welcome", which provides assistance mainly in the implementation of the first integration measures on national territory. According to Rezende (2021), the operation, which takes place on Brazil's border with Venezuela, is organized into

three areas: border planning, reception and internalization. In internalization, the government is in charge of transporting these people to other cities in the national territory, so that they can start their lives again. However, does transferring people from one state to another allow them to start afresh or does it simply relieve one member state of its responsibility by passing them on to another?

Charneski (2021) corroborates this perspective when he criticizes "Operation Welcome" for only targeting Venezuelans in the north of the country, which would show a politicization of the migratory agenda, with no single national policy. In this sense, Duarte (2019, p.124) indicates that "the policies implemented are of an emergency nature, to deal with the contingent immediately, without necessarily being concerned with long-term actions and programs", that is, the author points out that even with a broad legal framework in Brazil for the protection of refugees, there are few specific public policies for their local integration.

According to Fernandes (2021), although the country is extremely advanced from a legislative point of view, the government is silent when it comes to implementing the rights of refugees and immigrants recognized in its own laws. Therefore, for Charneski (2021), there is no effort to create specific public policies for refugees, what happens is that they are included in existing policies.

In his research, Sarmento (2022) points out that the crux of the problem of local integration is the lack of specific public policies, and that in the absence and insufficiency of the state, civil society organizations take on roles that would be the responsibility of the state. As a result, in the absence of state policies, refugees end up turning to civil society.

Scientific evidence shows that the state is silent on formulating and implementing specific public policies for the

local integration of refugees. In this scenario, research shows that civil society organizations play a crucial role in the process of local integration, as they end up filling a state gap.

Charneski (2021) points out that the passivity of the state in creating exclusive policies for refugees and immigrants has led to the growth of the role of civil society organizations. The author believes that it is local governments that complement the work of welcoming and integrating refugees carried out by civil society organizations and not the other way around.

Therefore, for Sarmento (2022), without Civil Society Organizations, refugees would not be able to fully integrate into Brazilian society. In this sense, Gilberto and Frinhani (2016) state that it is essential to strengthen the participation of civil society, and that academia would be an important space for the integration of refugees from the perspective of education. In this way, the Sérgio Vieira de Mello Chair is of enormous importance in the process of local integration of refugees, through teaching, research and extension activities (MOREIRA, 2015). As explained in the first section of this paper, the Sérgio Vieira de Mello Chair promotes cooperation agreements with several Brazilian universities. Thus, it works on the local integration of refugees on various fronts, offering Portuguese courses, medical treatment, food aid, housing and access to higher education (MOREIRA, 2015). In light of this, the academic output demonstrates the importance of civil society organization in the face of state omission in the process of local integration of refugees, but without a more powerful denunciatory tone, which should even give rise to accountability for the omitted bodies.

Rezende (2021) points out that an important measure for the Local Integration of Refugees is MEC resolution no. 1/2020. The resolution makes it compulsory for migrant children and adolescents to be enrolled in the public school system, even if

they don't have documents. It even provides for classification mechanisms so that the student is enrolled in a grade compatible with their age group. Rezende (2021) believes that this measure is in harmony with Article 44 of the Refugee Law, which deals with Local Integration. As explained in the first section of this paper, it is common for refugees to arrive in the destination country without any documents, which is why the resolution proves to be a useful measure in the Local Integration process.

With regard to trends extracted from the analysis of academic production, Fernandes (2021) proposes in his work that the adoption of an inclusive, democratic, participatory and transparent method would be the only way to reverse the problems with local integration. This method would be consensus-building through a Permanent Forum that would be part of the structure of CONARE (National Committee for Refugees). The method would be based on agreements built on a horizontal decision-making process with the participation of all the actors involved in local integration. Thus, it would be responsible for formulating, implementing, monitoring and developing public policies for refugees.

The solution found by Fernandes (2021) seems more attentive to the rights of refugees and immigrants, as it proposes a dialog between all the actors in the local integration process, who have no participation in the formulation of the public policies that concern them. From the same perspective, Rezende (2020) states that an alternative would be to change the composition of CONARE by including at least one refugee to make the group more representative. Moreira (2014) reinforces the importance of giving refugees a voice, enabling them to participate in debates and decisions on the terms of local integration. In fact, political rights were not guaranteed to

refugees by Law 9474/97, which ends up hindering their ability to have their demands heard (MOREIRA, 2014).

In addition, Fernandes' (2021) proposal for the creation of a Permanent Forum would make it possible to develop an extension project, since the author suggests that local observatories of the Forum be set up in universities in each of the country's capitals, to map and monitor migratory conflicts throughout Brazil.

In relation to access to employment for refugees, Tarantini (2016) gives examples of companies that work to integrate refugees by offering internship and job vacancies, training courses and vocational guidance, making internal hiring processes more flexible, welcoming places and raising community awareness against discrimination against this group of individuals. Tarantino (2016) states that the benefits of promoting the local integration of refugees for these companies are many, such as: improving corporate image, greater employee engagement, increasing the company's credibility with the community, developing the leadership of employees who help refugees, in addition to the fact that employed refugees are very committed and stay longer in their positions than Brazilians. However, we would point out that refugees constantly suffer abuse and disrespect for their labor rights simply because they are foreigners and in a vulnerable situation.

Charneski (2021) points out that access to the job market for immigrants and refugees is hampered by language barriers and the lack of identity documents, which ends up forcing them into the informal economy. In addition, refugees end up being victims of xenophobic and discriminatory actions by the population who fear losing their jobs. Ishizuka and Brulon (2019) state that even when refugees manage to enter the job market, it is in a different field to the one they worked in in their country of

origin, due to the difficulty of proving experience and validating diplomas. In addition, these bureaucratic problems are accompanied by the racial and cultural discrimination that refugees suffer, mainly because of their situation of vulnerability. In this sense, Tarantino (2016) points out that it is important for the business sector to be aware of the rights of refugees and to be sensitized to the issue of refuge, so that there is no discrimination when it comes to hiring or not hiring these people. According to Ishizuka and Brulon (2019) there is a lack of knowledge among employers about aspects of refuge, such as the reason for the lack of documentation from the refugees' country of origin and the difficulty of proving the veracity of information. Thus, we understand that this situation of vulnerability of refugees results in the exploitation of their labor, making them subject to violations of their labor rights.

As scientific production has shown, refugees encounter numerous barriers to accessing employment, such as the language, difficulties in getting their documents recognized, racial and cultural discrimination, as well as misinformation from employers and the community on the subject of refuge and the fact that this is a legal public in Brazil in terms of legislation. In addition, refugees are underused when they enter the job market, as they are unable to prove their qualifications, so they end up working in different areas than they did before entering Brazil. This vulnerability allows employers to exploit the condition of refugees by offering low wages and not respecting their labor rights. Although Tarantino (2016) presents examples of companies that integrate refugees, scientific production shows that there is a lack of policies to encourage the hiring and retention of these individuals in private companies.

As far as the public sector is concerned, Rezende (2021) says that vacancies could be offered in the public service,

especially for positions that deal directly with refugees, such as in health, education and culture, since many migrants have good professional qualifications, but because of the bureaucracy, they are unable to develop their trade in the country.

FINAL CONSIDERATIONS

In this paper, we sought to address the issue of the Local Integration of Refugees, in view of the high influx of migrants in Brazil in recent years and the need to guarantee decent living conditions for these people. In this research, we considered it necessary to present what measures had been adopted to make the Right of Local Integration for Refugees a reality, as it is provided for in Federal Law 9474/97. In this sense, due to the gap in the consolidation of studies on the subject, we set ourselves the research problem of answering what academic production refers to the Right of Local Integration of Refugees in Brazil, in the period from 2010 to 2022.

In order to answer the research problem, we used the CAPES Theses and Dissertations Database and the CAPES Periodicals Portal to carry out a broad survey of academic production on the Right to Local Integration in Brazil, published between 2010 and 2022. In this way, we selected a total of 11 papers to make up the analysis material.

When we analyzed the selected academic output, we noticed the researchers' interest in mapping and formulating public policies for local integration, as well as the role that civil society plays in this process. This was something that generally brought the works closer together. Despite the existence of an important public policy by the federal government for the local integration of refugees, "Operation Welcome", it is only of an emergency nature, to deal with the high number of refugees on the Venezuelan-

Brazilian border. The research shows that the state grants basic rights to refugees, but is not concerned with formulating specific public policies for these people, i.e. there is a state omission in the duty to ensure Local Integration. This lack of action on the part of the state means that civil society organizations have become the main actors in the local integration of refugees.

In the process of constructing this work, we found that the researchers presented trends that represent progress on the issue of Local Integration. One important contribution was Fernandes' (2021) proposal to adopt a democratic and participatory method through the construction of a Permanent Forum that would be part of the structure of CONARE (National Committee for Refugees). This Forum would be responsible for formulating, implementing, monitoring and developing public policies for Refugees, as well as enabling the participation of all the actors involved in the Local Integration process. We consider this dialog between all the participants in the Local Integration process to be important, because something that was highlighted in the research was the lack of participation by refugees in the formulation of public policies that concern them. It is necessary for this group of people to have a voice in the decisions that involve them so that their demands are really met and the Local Integration process becomes more efficient.

Finally, we noticed that there was little denunciation of the bodies that should implement the institute of Local Integration for refugees and a lack of empirical studies on the subject, with little listening to this group of people in situations of vulnerability.

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CONSTITUTIONAL JURISDICTION, BEHAVIOR AND JUDICIAL POWER: THEORETICAL APPROACHES[1]

Rebecca Bianca de Melo Magalhães[2]
Gabriel Eidelwein Silveira[3]

> *"Quando vou a um país, não examino se há boas leis, mas se as que lá existem são executadas, pois boas leis há por toda a parte".*
>
> Montesquieu

The aim of this paper is to discuss theoretical variants and empirical studies on the behavior of judicial institutions, especially courts exercising constitutional jurisdiction. The article is divided

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into four parts: the first presents a description of the theoretical arrangements on the role of constitutional courts in contemporary democracies. The second presents the main theories of judicial behavior, with a focus on higher courts. The third proposes an application of the institutional approach, presenting a comparative perspective between the cases of the constitutional courts of Germany, Brazil, the United States and Mexico. Finally, the fourth and last section presents conclusions and contributions to the research agenda.

1. THE UNBEARABLE LIGHTNESS OF CONSTITUTIONAL COURTS: REFLECTIONS FROM CLASSICAL TO CONTEMPORARY POLITICAL THEORY

Modern constitutionalism is characterized by institutional engineering aimed at the division of powers and mutual controls. Constitutionality control, or judicial review, - understood as the mechanism used by the courts to annul ordinary legislative or administrative acts in conflict with the constitution - has emerged as an almost universal feature of Western-style democracy, which is indispensable for the so-called democratic rule of law.

The ability to control the legitimacy of laws emerges in parallel with a search to delimit the power of legislative majorities by means of an alternative institutional system to the supremacy of the political process, or as a way of recognizing that certain rights and guarantees are not a matter of convenience, they are not negotiable.

Furthermore, in a federal system, there is a need for a court with powers to decide if and when state authorities have overstepped their bounds and with powers to review the constitutionality of legislative and administrative decrees necessary for the existence of a democratic political system. When

the court acts within this extension of fundamental democratic rights, the legitimacy of its actions and its place in the system of government can hardly be questioned. But the further it moves outside this scope, or into the "gray areas" of its competence, the more doubtful its authority becomes.

Even at the beginning of the 19th century, when Tocqueville (2010) compared the political systems of France and the United States, he described the judiciary as a very strong institution in the American political system, since in his view the possibility of controlling the constitutionality of laws made the constitutional court very powerful.

In classical political theory, the prominence of judicial institutions, in a context of constitutionality control, is also observed in "The Federalist Papers" (MADISON, HAMILTON, JAY, 1993), whose reflection concludes that their vulnerability lies in the fact that they ultimately depend on the decision of the incumbents about their compliance. From a theoretical point of view, the "less dangerous" power of the state would be far removed from the legislature, which controls the budget, and the executive, which controls the sword, the courts, which would give it few formal mechanisms to ensure compliance with its decisions.

During the 19th century, the control of constitutionality became more commonplace in Western systems, especially in the American political system, above all since the historic (and much cited) case of Marbury Vs. Madison, which established the precedent for the invalidation of legislative acts by the judiciary, although the power of judicial review in relation to federal laws was not clearly described in the constitutional text of 1787.

In that historical period, in the European constitutional systems in force at the time, constitutionality control was not explicitly provided for, because there was a resistance to it overriding the prerogatives of parliament, undermining the

legitimacy of elected representatives, which would open up space for a "government of judges". It wasn't until the Austrian constitution of 1920 that control of constitutionality, concentrated in an apex court, was formally incorporated into a written constitution, as an alternative model to the American one, which was decentralized in the instances of the judicial system.

This is how concentrated control was theoretically conceived, which would be exercised by an apex court that would be given the task of re-discussing normative acts that did not conform to constitutional rules, even in the abstract. In other words, a veto power, since it gave them the power to invalidate laws, without the need for the abstract questioning of the law to originate from a concrete dispute involved.

In this way, various constitutions incorporated the limitation on the legislature, which Tocqueville (2010) had identified as a positive effect of the judicial review, which we translate more appropriately as constitutionality control.

In short, not only has the institution of concentrated constitutionality control come to occupy a more common place in political systems around the world, but also, over the last few decades, courts have begun to use their jurisdiction more actively, so as to increase their prominence in the political arena - a combination of factors identified by Tate and Vallinder (2000) that has culminated in the identified "global expansion of the judicialization of politics".

Considering the context of this emphasis on growing judicial influence, are the courts in fact becoming increasingly dominant institutions? The endless debates about the interactions between political and legal decision-making mechanisms, as Dahl (1957) summarizes, challenge a problem that persists, which is the difficulty of countermajoritarianism (GARGARELLA, 1996).

Some of the literature states that, although often endowed

with broad powers of review and institutional shielding, constitutional courts do not always have direct means of ensuring the enforceability of their decisions. Instead, compliance may require the cooperation of other non-judicial actors, even the cooperation of the very institutions whose acts the court has just undermined, since some judicial decisions present the potential problem of compliance since they depend on the response of other actors.

The real influence that judges can exert in the use of their political power will be determined by the interactions between the branches of government and permeated by the stimuli of society itself, since, under certain conditions, constitutional courts can be tremendously influential institutions capable of controlling the exercise of political power.

Contemporary political theory is divided into two main strands when it comes to explaining causal mechanisms: behavioral and institutional.

In the second strand, the analysis that focuses on institutional design, the explanation is based on the structures that surround them, since, although the idea of a constitutional court implies the ability to judicially control political acts, there is a wide variety of possible interactions with other political institutions, as well as the space for the development of what literature has conventionally called judicial activism.

From the point of view of the calculation of the judicial actors in the decision-making process, for example, there are a plurality of factors that are taken into account and that go far beyond the ideological plane, but orbit around the behavioral components of the agents.

Even though the agents are at the center of the debate, their preferences can also be inferred by analyses more focused on their beliefs or group membership. Political sociology has made a huge

contribution to this agenda: for example, field theory - especially the concept of the "legal field" (BOURDIEU, 1989) - sets out to analyze the degree of autonomy that agents involved in legal dynamics have to establish, through their disputes, what the law actually in force will be at each moment in the history of the disputes themselves. In this conflict, whose dynamics are determined by the relative positions of the agents in the field (which, in turn, depends on the volume and structure of the resources available to them), the legal field establishes the internal beliefs of the agents involved in it (*illusio*, *doxa*), while at the same time marking the relative autonomy of legal reason in relation to other dynamics, such as disputes over political power and economic competition.

However, the behavioral approach can also cover the interaction of judicial actors with other political actors or even the public/electorate. In this case, theories derived from the contributions of economics, such as game theory, stand out, since the logic found is derived from theories of rational action and strategic interaction between agents and institutions.

The discussion about the excessive power of constitutional courts has historically been the obsession of American constitutional theory (FRIEDMAN, 2002) and reflects a debate about the role of the judiciary in a democracy, especially after the aforementioned process of expanding the judicialization of politics. However, as we know, due caution must be exercised in relation to populist positions on this issue - which advocate the return of constitutional interpretation to the legislature or to the "people" themselves - as they stem from a lack of understanding (or even political anger) in relation to the constitutional role of the judiciary in reaffirming fundamental rights (FISS, 2006-2007).

The next section discusses models for analyzing the behavior of judicial institutions, with a focus on constitutional courts, from the perspective of political science.

CONTENTS

2. THEORETICAL APPROACHES TO THE BEHAVIOR OF CONSTITUTIONAL COURTS

There are some specificities regarding the theoretical explanations that deal with judicial behavior when compared to the behavior of other political institutions.

The first difference lies in the moment in which the decision-making process takes place - the judicial decision, unlike the decision on the choice of a public policy, takes place after the outcome of a given policy. Not only are the results in place, but there are also conflicts to be resolved and problems arising from a given piece of legislation or policy, since there is no judicial process without a dispute, i.e. a confrontation of conflicting interests. In this way, judicial institutions have a broader view of the consequences of choices that have already been made.

The political cost of the decision is also a crucial point, as political agents can be punished by the electorate or take credit for results and choices. Judicial institutions do not operate under the same logic (ROCHA, 2005). Even so, although they are more distant from the scrutiny of the electorate, the political cost can have an impact on the judiciary's relationship with the legislative and executive branches, for example.

Firstly, because, as far as the agents are concerned, in judicial institutions, the recruitment of most of their members follows the general rules of the civil bureaucracy (as a rule, public competition) and does not go through electoral processes. The position of their agents, as members of the courts, is considerably more stable than that of elected representatives - although there is a wide variety in the various composition systems that exist.

The rules of stability and appointment to office are directly associated with isolation from other political institutions. A practical example, in the case of the Brazilian constitutional court,

is that there is little chance of losing one's mandate, so there is practically no risk of removal from office due to decisions unfavorable to other political actors.

Unlike the political decision-making process, judicial decisions, although they also result in exclusive possibilities, are often anchored by legal logic and one of them is not always "legally impossible" - laws, jurisprudence, principles, contrary to what the legalistic approach argues, are some nuances of what will actually be considered in solving a problem. What's more, their choices do not come from their own initiative, but are a response to a formal request from the parties affected by a given policy.

Thus, in American political science, the research agenda on judicial behavior has produced several systematic works, both empirical and theoretical, to explain how courts and judges decide. The most frequent theoretical approaches are: legal; attitudinal; strategic; and institutional - the last three being of greater interest to political science (SEGAL; SPAETH, 2002). Baum (2008) summarizes the definition of the four main models of studies on judicial behavior in political science:

> (1) in the legal model, judicial decisions would be the result of interpreting the law in the best possible way. For this reason, judicial agents or institutions would arrive at results or doctrinal positions based on technique.
> (2) In the attitudinal model, the criterion would be to make good public policy, so that judicial agents or institutions decide between alternatives based on their merits as a policy or personal ideological positioning.
> (3) In the strategic model, although it contains a political component, the decision-making process is guided by results in its courts and in the government as a whole - in other words, there is a focus on the interaction between judicial and political agents and institutions.
> (4) Finally, in the institutional model, factors endogenous to judicial institutions are more decisive in explaining the behavior of

> their agents. This strand can have more cultural components - relating to the belonging, identity or beliefs of the agents, or even more rational/strategic.

An example of the application of the attitudinal model would be the vast empirical literature that considers presidential appointments as a proxy for the political preferences of judges. Many studies focus on the American constitutional review system, in which there are clear differences between the only two existing parties and in which political appointments are more clearly related to the decision-making behavior of judges.

The last two approaches (strategic and institutional) are derived from the attitudinal one, since they start from the same basic premise that their agents - often with judges as units of analysis - have political preferences. The strategic model, in general terms, brings the notion that, in order to understand judicial behavior, it is necessary to consider its interaction with other relevant actors. In other words, when making their decisions, the agents weigh up the expected behavior of their peers (the higher courts are collegiate bodies), other judges from different levels (higher or lower), the public and the incumbents, modulating their own decision by making a rational calculation of losses and gains, based on a "game theory" model.

Finally, the institutional model refers to the influence of other institutional characteristics of the body to which they belong. This model explores, for example, differences in rules on the appointment of magistrates, length of term or chances of dismissal, as institutional characteristics, between different constitutional courts, as well as other elements of institutional or legal culture, to explain variations in the behavior of the actors. These last three models, developed by political science, challenge the legalistic model, which predates them and tends to be confused with pure legal reason (legal doxa), according to which magistrates would be

impartial arbiters of the law (judges as *bouche-de-la-loi*), so that their personal traits and beliefs would have no bearing on their decisions.

Explanations with a more marked legalistic component, which describe the judge's objective as being to give the best interpretation of the law (or to give the best meaning, from a normative point of view) to the laws, however, constitute a tradition that is still very influential in legal culture, despite the fact that fewer and fewer researchers accept this explanation.

Oliveira (2002) assumes that their insertion into the political arena is marked by their attachment to an identity based on professional ideology and the merit of technical legal knowledge, which distinguishes them from other political elites (WERNECK VIANNA; BURGOS; SALLES, 2007). Thus, some of the judges themselves - once again taking the Brazilian constitutional court as an example - seem to consider themselves reliable interpreters of the law, or pretend to make this idea credible when asked in interviews whether they consider themselves activists or not. However, from a sociological point of view, we could say that the legalist model corresponds to the "spontaneous sociology of jurists" (SILVEIRA, 2020b, p.02).

Baum (2008) also states that these legalistic components can be identified in a school known as historical institutionalism (GILLMAN, 1999; WHITTINGTON, 2005), although this current emphasizes the relationship between courts and the political regime more broadly. One of its weaknesses is that any decision could be consistent once the judge has been convinced that it is legally appropriate. What makes it problematic from an operational point of view is that it is not falsifiable, it is not capable of offering a valid explanation of judicial behavior.

In fact, legislation has an independent and measurable influence. This does not, however, require a deterministic or

mechanical approach to judicial decision-making and is not very different from seeing the law as a gravitational force in decision-making. Determining its impact is not very different from determining that of other social phenomena, and obviously decisions must change to the extent that normative acts are altered, keeping alternative phenomena constant. The position of higher courts is just as influential when looking at lower courts.

In contrast to the legalistic view, the main argument of the strategic approach is that agents (judges or justices) opt for actions realizing that their choices enable political results in conjunction with the actions of other actors who react to these decisions. Several theories on judicial decision-making admit that judges are motivated by ideology or political preferences (SEGAL; SPAETH, 2002; SUNSTEIN et al., 2006) and behave strategically among their peers and before other external actors in choosing their political preferences (EPSTEIN; KNIGHT, 1998; HELMKE, 2005; STATON, 2010). The strategic literature, therefore, starts from the idea that judicial behavior is interdependent with regard to individual preferences limited by the preferences of other actors, internal institutional rules and the external environment - including the relationship between powers and public opinion (EPSTEIN; KNIGHT, 1998).

When observing the judiciary, it is also possible to conclude that in many systems, including Brazil, there are institutional idiosyncrasies that separate judicial actors depending on the hierarchical levels they are at. An entry-level judge does not find the same stimuli as a regional court judge, which is not the same in the case of judges in higher courts, especially courts with constitutional jurisdiction.

Regarding the incentives considered when analyzing constitutional courts with an interactional approach, the most frequently cited in empirical research can be classified into five

groups: (1) institutional reputation; (2) individual or collective decision-making process; (3) alignment with the chief executive who appointed the ministers; (4) political and/or social impacts estimated before the decision was taken; and (5) interactions with the executive and the legislature - risk of non-compliance with decisions and public opinion - or the dilemma of implementing decisions.

At this point, also focused on the genesis of strengthened judicial institutions, there are explanations that suggest that delegation from the incumbents is necessary to overcome political dilemmas such as the difficulty of countermajoritarianism. From this family of theories, there are at least four possible explanations, with some variants, found in contemporary political theory for the strengthening of judicial institutions:

> (1) the insurance policy theory (HIRSCHL, 2001; GINSBURG, 2003), according to which the strengthening of the judiciary, especially its power of constitutional review, would serve as insurance against possible violations of rights, i.e. against a 'majoritarian threat', which is more likely in conditions of high party fragmentation, for example;
> (2) the theory of the judiciary's informational advantage over political majorities (ROGERS, 2011), which is also known as the theory of the representative function of the courts. It is an offshoot of the previous theory, i.e. deliberate delegation, and suggests that powerful courts provide informational advantages to political majorities by eliminating policies adopted under uncertainty that turn out to be ill-conceived or simply ineffective;
> (3) the theory of the representative shortcut (WHITTINGTON, 2003), according to which the reason for delegation would be to guarantee the legislature a way of changing previous policies without the need to form majorities;
> (4) Finally, a fourth deliberate delegation model suggests that courts are strengthened when governments recognize the need for institutional changes motivated by the infeasibility of certain constitutional arrangements capable of undermining incentives for

> economic growth or threatening the solvency of the state (NORTH; WEINGAST, 2008). In law, the concept of the reserve of the possible is a theory that comes close to the approach described.

One of the consequences of the strengthening of the judiciary is the phenomenon of the judicialization of politics (TATE; VALLINDER, 2000) which, in very brief terms, is characterized as an effect of the democratic constitutions in the second post-war period, which ended up accentuating the role of the judiciary in the political game (VIANNA, 1999).

Their "normative dilemma" lies in the central difficulty that the same movement that sought to build the first model of modern democracy, elevating the judiciary to an independent status and reserving for it a counter-majoritarian function, also presents these institutions with the possibility of advancing their political-normative power, i.e. the risk of them practicing "judicial activism", which takes on negative contours from a moral/ethical or even representative point of view.

In this respect, however, we must warn that the same term "judicial activism" has been used without terminological rigor, including by the mainstream media and party political discourse, and can refer, depending on the context, to very different repertoires of judicial behavior (SILVEIRA; EIDELWEIN, 2022). Furthermore, there are a number of labels offered by the vast literature on what judicial institutions do with this delegated or constructed power, which go beyond the dichotomy between activism and self-restraint. Nevertheless, challenges persist due to the vagueness and polysemy of the terms.

The following section proposes a review of theories of institutional analysis, especially with a focus on constitutional courts, adopting Ginsburg's (2003) insurance policy explanation as a theoretical approach. This is followed by a comparative proposal between four cases frequently found in the case studies surveyed in the literature: Germany, Brazil, the United States and Mexico.

CONTENTS

3. THE INSTITUTIONALIST APPROACH AND CONSTITUTIONAL COURTS IN COMPARATIVE PERSPECTIVE

This section describes some institutional configurations that relate to the expected behavioral results typified by the theory. With regard to institutional explanations, analyses usually start with the rules that form the court's jurisdiction, rules that are explicitly defined by constitutions, laws, rules of procedure, or developed by the judicial decisions themselves. In this sense, the so-called de jure power corresponds to the constitutional or legal premises that regulate guarantees of judicial independence.

Observing the structural rules that prevail in contemporary constitutional courts, articulated in his theoretical approach to the majority dilemma, Ginsburg (2003) developed the aforementioned insurance policy theory, classifying the variety of institutional configurations found into five dimensions: access to the court; the effect of judicial decisions; forms of selection; the length of the term of office of constitutional judges; and, finally, the number of members of the courts. In each aspect evaluated, it is observed how the institutional design reflects and encourages results expected at the time of the constitutions' genesis, considering the expectation of political arrangements.

In order to situate the phenomenon under study, in the Table 1 below, the constitutional courts of Germany, Brazil, Mexico and the United States have been selected for a brief comparative description. Potential inferences from observing the respective institutional configurations will then be presented.

Table 1: Analysis of Constitutional Courts and the Insurance Policy Theory

	Brazil	**Germany**	Mexico	United States
Number of Members	11	16	11	9
Nomination	President, Senate (two-third majority)	*Bundestag* - House of representatives (8); *Bundesrat* – Senado (8), (two-third majority)	President, Senate (two-third majority)	President, Senate (½ + 1 majority)
Tenure	Until retirement	12 years	15 years	Until retirement
Reappointment	Does not apply	No	No	Does not apply
Professional requirements	Unblemished reputation and notorious knowledge	Same qualifications for federal judges. 6/16 must be recruited from higher courts	Legal training with 10 years of experience and a good reputation	Legal training
Age restrictions	35 minimum 65, maximum	40, minimum 68, maximum	35, minimum	Does not apply

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Constitutional Review	President of the Republic; Federal Senate, House of Representatives, Legislative Assembly; Governor of State or Federal District; Attorney General of the Republic; Federal Council of the Brazil Bar Association; Political party with representation in the National Congress; Trade union confederation or class entity.	Federal Government, State Governments (Länder), 1/3 of the House of Representatives	1/3 of the House of Representatives or Senate (in case of international laws); 1/3 of the Local Assemblies (state laws); Attorney General, against any law; party leaders against federal electoral laws	Any Litigant - Only *in concreto* issues
Diffuse Constitutional Review	The lower courts	The lower courts	The lower courts	The lower courts

Source: MAGALHÃES, 2019, p. 76, adapted from constitutional texts (http://comparativeconstitutionsproject).

To begin with, let's take as an example a comparison on access, a factor that refers to the agents or institutions able to initiate proceedings under the jurisdiction of these courts.

Considering that the strategic component corresponds to the implications of certain institutional designs on future interactions, more restricted access to agents or institutions has the effect of limiting the "insurance" function of the constitutional court, while broader access decentralizes the monitoring function and increases the chances of monitoring and judicial control of policies under the logic of constitutionality control. It is so called because it would be a constitutional choice based on the future prediction of political forces. The greater the uncertainties - for example, in the case of high party fragmentation - the greater the interest in maintaining broad access, increasing the veto power for future opposition.

In the Brazilian case, through the institutional approach, by observing its configurations, it is possible to conclude that the process has resulted in greater influence from the constitutional court insofar as there is great discretion in the agenda of judgments, combined with the vast volume of cases provided by the breadth of access - a large number of agents legitimized to bring a direct action for constitutionality.

In stark contrast to the Brazilian case, in the United States there is greater selectivity given to the constitutional court - such as its ability to reject cases in its appellate jurisdiction, with no corresponding mechanism in the Supreme Court.

The STF's jurisdiction is divided between original jurisdiction and appellate jurisdiction, each divided between mandatory and optional cases. Because its structure is geared towards protecting federalism, all of its compulsory jurisdiction concerns conflicts between states (in the case of original jurisdiction) and conflicts between federal laws and the constitution or state and federal laws.

By contrast, in the German case, appellate action, although aimed at controlling constitutionality, bears a resemblance to writs of mandamus, habeas corpus and habeas data, which exist in the

Brazilian procedural system. As described in the table above, in order to initiate the equivalent of a Direct Action for Unconstitutionality, the Federal Executive, State Governments or 1/3 of the Chamber of Deputies must take the initiative.

Finally, in the case of Mexico, in the control of abstract constitutionality, similar to the mechanism of the German court, the requirements for a case of this nature to be filed also characterize access that is considered more restricted, since they require: 1/3 of the Chamber of Deputies or Senate (against international laws); 1/3 of the Local Assemblies (against state laws); Attorney General of the Republic, against any law; and party leaders against federal electoral laws.

In short, access is only granted to specific political institutions, which classifies them as "restricted access", which, according to Ginsburg's theory (2003), could indicate a low degree of fragmentation or uncertainty about future configurations of political forces.

Regarding the effect of decisions, i.e. the consequences of what is determined, for example, in a declaration of unconstitutionality, the degree of malleability of the effects of decisions can give greater or lesser discretion to the court, so that it can really act as a veto player.

In the US system, for example, the courts are limited by the rule of stare decisis, i.e. they do not overturn laws they deem unconstitutional. Instead, as subsequent similar cases must follow the rule in previous cases, the annulled law remains valid, but dormant for all practical purposes.

In Germany, the constitutional court has two options for declaring unconstitutionality. It can decree legislation null and void or incompatible. In the latter case, the court declares the law unconstitutional, but does not annul it and usually sets a deadline for the legislature to make the necessary adaptations, which the

literature considers to be a way of softening its political impact.

In the Brazilian case, there are similar mechanisms that limit the effects of decisions to some extent. In the judgment of Adins declared well-founded and well-founded in part, there are three possibilities - interpretation in accordance with the constitution, declaration of unconstitutionality without reduction of text and modulation of the effects of the decision (VALENTE, 2017).

Finally, in Mexico, the court's decisions, in these cases of concentrated control, define general effects whenever eight or more justices agree with the resolution, i.e. there is a minimum quorum criterion.

As for the forms of selection, these refer to the mechanisms of political control over the court as an institution - in other words, they refer to the question of the dependence or insulation that recruitment implies in future decisions - either because of the possibility of retaliation by other political agents or institutions "affected" by unfavorable decisions - within a more strategic logic, or because of the component of belonging to social fields or ideological spectra of its agents - in a more sociological analysis. Thus, recruitment by political appointment (for example, the nomination of the STF minister by the President of the Republic with senatorial confirmation), where it is used, guarantees political control of the decision-making profile, because "the simple fact that professional magistrates are chosen within very homogeneous professional elites, in sociological terms, guarantees some degree of predictability in their positions" (SILVEIRA, 2020a, p.106).

4. FINAL CONSIDERATIONS

The aim of this article was to present an overview of the theoretical framework pertaining to constitutional courts and their place in contemporary democracies. It also provided a brief

literature review of the main explanatory models regarding the behavior of their agents and institutions.

In order to reflect on the potential of the institutional model, the third section sketches a comparison between paradigmatic constitutional courts, either through the logic of rational (strategic) choice or through a more cultural logic.

We observed the variety of approaches and, consequently, the various possible methodological paths. The didactic analysis proposal aimed to classify possibilities of causal inferences regarding the behavior of judicial institutions, which can be identified as political institutions sui generis, suggesting, albeit in an introductory way, a reflection on the structure of selected constitutional courts, pointing out similarities, differences and implications of institutional choices in their participation in the political process.

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Afterword
A Multifaceted Exploration of Human Rights in Contemporary Society

By Cássius Guimarães Chai[1]

The compilation *Aktuelle Herausforderungen für den Schutz der Menschenrechte: Brasilianische Perspektiven* offers a profound intellectual journey through the pressing challenges of human rights in a rapidly transforming world. This work stands as both a mirror and a compass: it reflects the complexities of human dignity in the face of systemic and emergent issues while guiding us toward innovative perspectives and actionable solutions.

This book does not merely describe problems but also interrogates them, positioning its discourse within the broader landscape of global justice and sustainable development. As such, it invites the reader into a nuanced conversation that bridges local realities and global imperatives, blending empirical rigor with a forward-looking imagination.

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An Interdisciplinary Convergence

The themes addressed in this study underscore the inherently interdisciplinary nature of human rights. From systemic corruption to gender violence and from land conflicts to artificial intelligence, the chapters illuminate how legal, political, economic, and technological dimensions intersect in shaping human experiences. By integrating these perspectives, the book transcends the traditional confines of legal analysis and enters the realm of applied human-centered research.

The methodology employed across the chapters, whether rooted in case studies, legislative analysis, or historical exploration, encourages the reader to approach human rights as a dynamic and evolving construct. This is not a collection bound by rigid frameworks; it is an invitation to think critically about the adaptive nature of justice in an era defined by rapid societal and technological changes.

Emerging Challenges and Universal Aspirations

Throughout its pages, the work addresses the challenges posed by structural inequalities, technological disruptions, and the shifting dynamics of power and governance. These are not merely local concerns, but reflections of broader global patterns. The discussions resonate with the United Nations' Agenda 2030, particularly its emphasis on fostering peace, reducing inequalities, and ensuring inclusive and sustainable development.

- **Institutional Reform**: The exploration of institutional practices highlights the tension between procedural norms and the need for transformative justice. The emphasis on innovative mechanisms such as technology-driven solutions demonstrates how public institutions can adapt to deliver meaningful outcomes while aligning with the principles of transparency and accountability.

- **Gender and vulnerability**: Gender-based violence and the vulnerabilities of marginalized groups are recurrent themes. By situating these issues within the broader societal context, the chapters remind us that achieving gender equity is not a linear process, but a multifaceted endeavor that demands systemic change and intersectional approaches.
- **Migration and Transnational Realities**: The reconfiguration of families across borders serves as a lens to examine the impact of global mobility on human rights. The narratives in these chapters challenge traditional notions of belonging and identity, advocating a more inclusive understanding of social and legal structures in a migratory world.
- **Technological Governance**: The ethical implications of artificial intelligence and other disruptive technologies are explored in terms of urgency and depth. These reflections underscore the need for regulatory frameworks that balance innovation with human dignity, cautioning against the dehumanizing potential of unregulated technological advances.

An Invitation to Multiple Perspectives

Rather than offering definitive answers, the book thrives in its ability to provoke thoughts and encourage dialogue. The discussions are framed not as isolated critiques, but as interconnected explorations that reflect the diverse dimensions of human rights in a globalized world. This openness to multiple perspectives is perhaps the work's greatest strength, as it invites readers to engage with the material through their own lens of experience and expertise.

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This book compels us to move beyond the binary conceptions of justice and embrace the complexity of human rights as a lived reality. This urges us to consider how local innovations can inform global strategies, how historical lessons can guide contemporary reforms, and how emerging technologies can be harnessed for the greater good.

A Call to Action

As the world is at the crossroads of profound societal and technological transformation, this work serves as both a reflection of our current challenges and a roadmap for the future. It aligns with the imperatives of Agenda 2030 by emphasizing inclusive solutions, collaborative governance, and centrality of human dignity in all pursuits of progress.

The book's contributions extend beyond academia and offer valuable insights for policymakers, practitioners, and advocates. It challenges each of us, whether as scholars, citizens, or global actors, to rethink our assumptions, question entrenched systems, and envision new possibilities for a fairer and more equitable world.

Why Read This Work?

1. **Depth and Breadth**: The interdisciplinary approach ensures a comprehensive exploration of human rights challenges across multiple dimensions.
2. **Global Relevance**: While rooted in the Brazilian perspective, the discussions resonate with universal concerns, making the work accessible and impactful to a global audience.
3. **Innovative Insights**: By addressing emergent issues such as artificial intelligence, the book positions itself at the cutting edge of contemporary human rights discourse.

4. **Actionable Reflections**: The chapters offer not only critiques, but also pathways for reform, empowering readers to translate insights into practice.
5. **Human-Centered Approach**: Above work prioritizes human dignity, reminding us of the fundamental values that underpin all justice systems.

Conclusion: Bridging Thought and Action

Aktuelle Herausforderungen für den Schutz der Menschenrechte: Brasilianische Perspektiven is a clarion call for a more inclusive and adaptive vision of justice. It transcends the boundaries of disciplines and geographies and offers a holistic perspective on the pressing issues of our time. It is not merely a book to be read; it is a book to be engaged with, debated, and acted upon. It is an invitation to join the collective effort to redefine and reimagine what it means to protect human rights in the 21st century.