

## The implementation of the right to college education of people with disabilities in Brazil: advances and pending challenges in promoting the citizenship agenda\*

### *A implementação do direito à educação superior das pessoas com deficiência no Brasil: avanços e desafios pendentes na agenda de concretização da cidadania*

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#### Abstract

The right to an inclusive college education for people with disabilities in Brazil has undergone major changes in the last fifteen years. With the internalization of the International Convention on the Rights of Persons with Disabilities (2006), several domestic laws were enacted to include these people in the university environment, which can generate substantial gains in terms of citizenship. However, there is a gap between the normative provision of rights and its corresponding realization. Based on this situation, this paper will analyze to what extent the current state of guaranteeing access to a college education for people with disabilities corresponds to the improvement of their citizenship. The research is based on the deductive method and made use of documentary and theoretical sources. The work was divided into two parts: at first, we sought to demonstrate how there is a link between the recognition of the human rights of people with disabilities and the construction of citizenship; then, the current state of national public policy on the subject was investigated in terms of achievements and challenges. It was possible to conclude that there are advances in terms of building an inclusive agenda in college education for people with disabilities that have an impact on strengthening their citizenship, but there are still important challenges to be faced in the practical aspect of its effectiveness.

**Keywords:** Citizenship. Disabled persons. College education.

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## Resumo

*O direito à educação superior inclusiva das pessoas com deficiência no Brasil sofreu alterações importantes nos últimos quinze anos. Com a internalização da Convenção Internacional sobre os Direitos das Pessoas com Deficiência (2006), leis domésticas foram promulgadas com o objetivo de incluir estas pessoas no ambiente universitário, o que pode gerar ganhos substanciais em termos de cidadania. Existe, contudo, uma distância entre a previsão normativa de direitos e sua correspondente concretização. A partir dessa conjuntura, este trabalho analisará em que medida o estado atual de garantia do acesso ao ensino superior das pessoas com deficiência corresponde ao aprimoramento de sua cidadania. A pesquisa utilizou o método dedutivo e fez uso de fontes documentais e teóricas. Dividiu-se o trabalho em duas partes: num primeiro momento, buscou-se demonstrar como existe um liame entre o reconhecimento dos direitos humanos das pessoas com deficiência e a construção da cidadania; a seguir, investigou-se o estado atual da política pública nacional sobre o assunto em termos de conquistas e desafios. Foi possível concluir que existem avanços em termos de construção de uma agenda inclusiva no ensino superior das pessoas com deficiência que repercute no fortalecimento da sua cidadania, mas ainda há importantes obstáculos a serem enfrentados no aspecto prático de sua efetivação.*

**Palavras-chave:** Cidadania. Pessoas com Deficiência. Educação Superior.

## 1 Introduction

On March 21, 2017, journalist Marina Wentzel published<sup>1</sup> an article on BBC Brasil in which she reported the struggle of a mother to obtain the right to education for her daughter, a Brazilian child with Down syndrome, in a regular school in Switzerland<sup>2</sup>. The news drew attention mainly because it came to light on the same day that the United Nations Development Program (UNDP) released the Human Development Report, which placed Switzerland in 2nd place (tied with Australia) in the Human Development Index (HDI), with a score of 0.939.

The article narrated the Nogueira family's struggle to allow Leticia, 15, to be included in a conventional school in the Canton of Vaud (Switzerland), without distinctions. The challenge was to confront the domestic understanding that children with Down syndrome should be placed in schools for special children. According to Wentzel's report (BBC NEWS Brasil, 2017), in an interview with Leticia's mother, the path to non-exclusion was up and down, with several meetings, negotiations and tests: "it looked like a jury panel, several people interviewing my daughter to see if she really knew all that. They were surprised to see how articulate and decisive she is. When they finished that interview, they said: 'Okay Leticia, the canton of Vaud will give you a chance'", reported the emotional Denise (Leticia's mother).

Leticia's case demonstrates a mobilization of the Swiss authorities. But, without the mother's insistence, the barrier imposed by domestic laws would prevail against a fundamental right of people with disabilities: that of not being treated or subjected to discrimination on the

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<sup>1</sup> British Broadcasting Corporation. British Broadcasting Corporation, better known by the acronym BBC.

<sup>2</sup> Available at: [http://www.bbc.com/portuguese/internacional-39338288?ocid=socialflow\\_facebook](http://www.bbc.com/portuguese/internacional-39338288?ocid=socialflow_facebook). Accessed on: 21 jul. 2020. The full reference to the report can be found at the end of the article.

basis of their condition, since they have the same rights and freedoms as other people, which emanate from the inherent dignity and equality of all.

The challenges encountered by people with disabilities have dragged on for years and the need to eliminate discrimination is not the privilege of any society, whether it is considered socially advanced or not. In Brazil, since the Federal Constitution of 1988 (CF/1988) came into force, specialized educational assistance to people with disabilities is a guarantee that should preferably occur in the regular school system<sup>3</sup>. After more than 30 years, this is not a reality throughout the country. Although the case reported in the paragraphs above deals with the basic educational level, this work will deal with the analogous situation, focusing on the higher education scenario.

In democracies, the correlation triggered by the idea of having rights does not always have repercussions on full access to their respective exercise. The lack of access to the rights enshrined in constitutional texts, treaties and many other legislative actions has become the rule in many societies around the globe. The violation of rights has been naturalized by the actions and omissions of governments and civil society itself, and, after 70 years of approval of the Universal Declaration of Human Rights (1948), the concept of universalization of rights is in a neuralgic moment.

The latest transformations highlight the inclusion of people with disabilities for higher education and its justification is found in the history of special education in Brazil. Since the 1990s, educators at various levels have dedicated themselves to overcoming the dichotomization and fragmentation of school systems (regular and special), in order to create conditions for the inclusion of disabled and non-disabled students in the same educational space<sup>4</sup>. In just over 20 years, these collaborative efforts have produced diverse realities that project other challenges for access to higher education.

This conjuncture also meets a technical-legislative evolution in the matter. First, Brazil, through Decree No. 6,949, of August 25, 2009, internally promulgated the International Convention on the Rights of Persons with Disabilities and its Optional Protocol, both from 2006; the main convention stipulates rules on access to education in its Article 24. Years later, Law No. 13,146, of July 6, 2015, was enacted, which instituted the Brazilian Law for the Inclusion of Persons with Disabilities (or the "Statute of Persons with Disabilities"), which has

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<sup>3</sup> CF/1988. Art. 208. The State's duty to education will be fulfilled by guaranteeing the following: [...] III - specialized educational assistance to the disabled, preferably in the regular school system.

<sup>4</sup> For more details, see Nozu, Ribeiro and Cabral (2021); Rodrigues and Nozu (2019) and also Nozu, Bruno and Cabral (2018).

its own chapter on the subject of Arts. 27 to 30. Finally, Law No. 13,409, of December 28, 2016, amending the so-called "quota law" (Law No. 12,711, of August 29, 2012), expanded affirmative inclusion policies to provide for the reservation of vacancies for people with disabilities in technical courses at the secondary and higher levels of the federal institutions of higher education (IFES).

These inclusion actions must be understood within a broad spectrum. Not only because they promote the extension of rights to historically marginalized segments of the population, but because it is an unfolding of a democracy in consolidation. In the same sense, the assurance of such rights does not exist in an international normative-institutional vacuum. As the step-by-step described in the previous paragraph suggests, there is an association between the ratification of the binding international document (treaty) and the expansion of domestic regulations that aim to give greater breadth to access to higher education in Brazil for people with disabilities. At the moment, it is important to verify whether the development of this public policy is in line with the objectives from which it was designed.

This work is based on the assumption that the realization of the right to higher education of people with disabilities is part of a perspective of democratic participation and affirmation of citizenship. Thus, the research will problematize whether the educational policies legally adopted in Brazil, aimed at the inclusion of people with disabilities in higher education, make use of appropriate strategies and instruments to guarantee citizen participation, capable of enabling or not the effective educational emancipation.

The work was elaborated from the deductive method and using documentary and theoretical sources. Domestic legislation (Constitution and laws) and international conventions on the subject were analyzed in order to understand the obligations assumed and created by the State in relation to the higher education of people with disabilities. In addition, a report produced by the Committee on the Rights of Persons with Disabilities was used, which provides concrete data to compare domestic policies with recommendations presented at the international level. The entire analysis was carried out in dialogue with a theoretical framework that dialogues with the categories of citizenship and human rights.

The work is divided into two sections. In the first, it seeks to integrate the enshrinement of the rights of people with disabilities in legal documents and the desirable effects for and in democracies, since, even in the face of the inability to offer a high-intensity citizenship, this guarantee of rights promotes an alternative for the protection of the dignity-freedom of these people. In the second section, the construction of the national policy for the right to higher

education for people with disabilities in Brazil and the challenges faced by it will be presented, emphasizing its limitation in the face of the obstacles pointed out by the monitoring mechanism of the International Convention on the Rights of Persons with Disabilities (2006).

There are many obstacles faced in Brazil, both in the broad and general agenda of higher education and in the specific and complex agenda of the treatment of people with disabilities. Uniting these two objects of public policy and analyzing them together, while making visible the difficulties of dealing with the issues, will serve to formulate plausible alternatives for their improvement.

## **2 Democracy, citizenship and the protection of people with disabilities as a human right**

The promulgation of the Federal Constitution of 1988 made Brazil formally organize itself as a democratic regime and, in more than 30 years, many challenges posed in the 1980s have still not been overcome<sup>5</sup>. The advances that mark the rupture and continuity of this process cannot be understood without taking into account the stain of the authoritarian legacy of the civil-military dictatorship of 1964-1985, present both in government institutions and in civil society itself.

Most of the time, the authoritarian legacy can be perceived in the way rights are concerted in the political arena or how it is present in the processes of transition to democracy. In the Brazilian case (and also in the Argentine one), as O'Donnell (1993) recorded, the bureaucratic-authoritarian regime was essentially one of exclusion. The transition from an authoritarian to a democratic regime was painful, especially when the right to truth and memory, or the punishment of perpetrators of human rights violations and the reform of institutions for democracy did not occur in a full way.

The way in which the Brazilian state became intertwined with society after 1988 set a significant tone on the characteristics of the probable democracy that would consolidate, last or fail in the country. The ups and downs of the Brazilian democratic process can be classified in the concept of Polyarchy developed by Dahl (1997), since the country has elected leaders, elections (free, fair and frequent), freedom of expression, alternative sources of information and a kind of inclusive citizenship. However, polyarchies can be the result of a peculiar political dynamic, generating different results when compared with other democratic experiences.

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<sup>5</sup> Some of the challenges of the democratic transition have not even been faced, such as overcoming part of the legislation and authoritarian practices produced by the civil-military dictatorship regime of 1964-1985.

By looking carefully at the question "what is democracy?", political theory refers to the idea that democracy is a regime that provides opportunities for: i) effective participation; ii) equality of vote; iii) the acquisition of an enlightened understanding; iv) the exercise of definitive control of planning; and v) the inclusion of adults (Dahl, 2001).

These criteria are important, as Dahl (2001) notes, because they are starting points that help in the (allegedly) ideal demonstration of a society, in which everyone is politically equal in determining the destinies of the political community. To indicate how complex it is to even conceptualize democracy, it is possible, in this definition, to criticize that the inclusion of adults could already be discrimination against children and adolescents. If some members are given greater opportunities than others in expressing their views, it is likely that the aspirations of those will prevail. If the votes of some are counted with greater weight than others, they can create political exceptions that run counter to social equality. If everyone is equally qualified to participate, it is necessary that they have access to information to qualify decision-making and, once these conditions are present, it is possible for everyone to control the government's actions with the inclusion of the largest number of people.

These criteria, when incorporated into institutions and political culture, also produce desirable consequences. Dahl (2001) lists at least 10 advantages present in democracy, because it: i) avoids tyranny; ii) promotes essential rights; iii) ensures general freedom; iv) promotes self-determination; v) it stimulates moral self-determination; vi) contributes to human development; (vii) protects essential personal interests; viii) seeks political equality; ix) fosters peace; and x) instigates prosperity.

Once again, the Brazilian context draws the attention of O'Donnell (1993), released in the early 1990s. The contributions of this author help to understand the context of Brazilian redemocratization. The processes of redemocratization that followed in Latin America, between the 1970s and 1990s, had different and complex characteristics. Following ideal types as an explanatory model for such different experiences may not be adequate in the face of the problem of democratization. When the democratic criteria and their advantages in the medium and long term are integrated, it can be seen that each of those points leads to a central direction focused on the State. But the same author warns that care should be taken with the unbridled belief in the State's ability to promote democracy and citizenship, as it is also the result of the asymmetries of power present in society<sup>6</sup>.

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<sup>6</sup> "It is a mistake to reify the State; that is, to see as one thing the State and the State apparatus (or, equivalently, the public sector, or the aggregate of public bureaucracies). [...] But the state is also, and no less fundamentally, a set of social relations that establishes a certain order, and ultimately sustains it with a centralized coercive

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From the above systematization and from the set of social relations that establish a certain order, the ideological character of the State in relation to rights cannot be excluded. In modern democracies, the State has ended up claiming the attribution of being the creator of these orders and, in the task of distributing justice through its legal system (Executive, Legislative and Judicial Branches), externalizes an order that is not egalitarian or socially impartial.

The formalization of the legal system created is based on normative production (Constitution, laws, decrees, resolutions, etc.) and on the presumption that it is equal for all citizens. This institutional arrangement was structured, in terms of fundamental rights, in the conception of citizenship, understood, within Arendt's maxim, as the idea of the "right to have rights", because, as Lafer points out:

Equality in dignity and rights of human beings is not a given. It is a building of collective coexistence, which requires access to a common public space. In short, it is this access to public space – the right to belong to a political community – that allows the construction of a common world through the process of asserting human rights (Lafer, 1997, p. 58).

The innumerable relationships that make up the State can be represented by the systems of economics, politics, law, social movements, education, health and many other possible systems. These systems are the hard core of citizenship. Thus, in the context of redemocratization and even in consolidated democracies, there is a need for a connection between democracy and citizenship. O'Donnell (1993) understands that when the authoritarian dimension is mixed in a complex and powerful way with the democratic dimension and the State is unable to impose its legality, a democracy with "low intensity" citizenship is sustained.

The space of democratic experience in Brazil seems to be articulated in the bias of low-intensity citizenship. As much as the legal system assumes the political equality of its citizens, the exercise of citizenship does not extend to everyone in a solid way or with high intensity, in the terms developed by O'Donnell.

In practice, the civil, political and social rights of a significant number of people are in a gray area, between what is placed by the legal system and its implementation, which can be explained by weak affirmative action or other public policies of inclusion. As Hirschman (1992, p. 9) points out: "the disturbing experience of being excluded, not only from opinions, but from the entire life experience of a large number of our contemporaries, is, in fact, typical of modern

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guarantee, over a given territory. Many of these relationships are formalized in a legal system created and sustained by the state. The legal system is a constitutive dimension of the State and the order that it establishes and guarantees over a given territory. This order is not an egalitarian and socially impartial order; both in capitalism and in bureaucratic socialism it sustains, and helps to reproduce, systematically asymmetrical power relations." (O'DONNELL, 1993, p. 125).

democratic societies". In some segments of society, the wall and barriers of exclusion remain intact even in times of universal acclaim of rights; And, within this context, the condition of people with disabilities can be mentioned.

In the last 15 years, some cracks in this wall of exclusion have begun to emerge. An example of this that deserves to be highlighted occurred when the United Nations (UN) expanded international attention and sponsored the creation of the International Convention on the Rights of Persons with Disabilities (2006).

Since the post-World War II period, with the Universal Declaration of Human Rights (1948), the UN has been focusing on one of the main problems that mark the reflections of political philosophy. And about this the question remains: how to make the factions coexist peacefully without self-destructing? This is a philosophical question that dates back to ancient Greece. Both Plato and Aristotle faced these challenges, either with the universalist proposal of the former or with the particularist version of the latter. The Declaration of 1948 records the universalist conception, but, at the same time, the numerous conventions created from it (which dealt with civil, political, economic, social, cultural rights, the elimination of all forms of racial discrimination, the rights of women, children, the prohibition of slavery, forced labor and similar practices, on refugees, on the prevention and repression of the crime of genocide, actions against torture or other cruel, inhuman and degrading treatment or punishment, for example) mark the panorama of the particularities of human rights in special situations.

The International Convention on the Rights of Persons with Disabilities (2006) was belatedly inserted in the process of expanding the rights of its target audience. This is a particularity that imposes on the States Parties a significant change in their legislation. Thus, it is known that Brazil has gone through a long trajectory of adjustments to adapt its legislation to the document; and that the main legislative responses were the National Policy for the Rights of Persons with Disabilities, instituted by Decree No. 7,612, of November 17, 2011, Law No. 13,146, of July 6, 2015 (Statute of Persons with Disabilities), and Law No. 13,409, of December 28, 2016, which instituted quotas in favor of these people in federal institutes and universities. These documents will be analyzed in the later section.

These changes are part of a complex context about people with disabilities and, curiously, are based on the recognition of equal rights as a full unfolding of human dignity. The need to register in a treaty, in the twenty-first century, that States must promote, protect and ensure the full and equitable enjoyment of all human rights and fundamental freedoms by persons with disabilities, in order to promote respect for their inherent dignity, reflects a disturbing

experience that refers to the idea of an exclusion that has become naturalized, silenced by the high conditions of inequality.

In Brazil, the development of citizenship rights did not occur in a structured way, as Marshall (1967) shared, when reporting the English experience, for whom the eighteenth century brought civil rights, the nineteenth century gave rise to political rights and, in the twentieth century, social/economic rights emerged. Here, in order to understand citizenship, it is necessary to analyze the concreteness of this historical phenomenon. Access to the rights of freedom, for example, was not a guarantee of access to political rights. The Brazilian reality is not the result of the same chronological experience as the English and, as Carvalho (2010) points out, the local order was inverted. For this author, social rights possibly arrived first, in the 1930s, precisely when political rights were suppressed and civil rights were reduced.

Marshall's (1967) progressive perspective and Carvalho's (2010) analysis are fruitful, mainly, to allow questioning this linearity represented by the development of citizenship rights. In a scathing critique of Marshall's work, Hirschman (1992) sought to identify that each of Marshall's three progressive attacks (that civil, political, social, and economic rights developed as a result of each other) was followed by ideological counterattacks and that many of the reactions were at the origin of convulsive social and political struggles which, Generally, they led to retreats from the intended progressive programs, as well as to much human pain and misery.

The development of Hirschman's critique (1992, p. 13) can be understood in the following terms: "the first reaction is the movement that followed (and opposed) the affirmation of equality before the law and civil rights in general". This reaction was linked to the first years of the French Revolution and certainly reflected more a contradiction to the events that culminated in the Revolution and the production of the text than to the content of the Declaration of the Rights of Man and of the Citizen (1789). However, the radical counterrevolutionary discourse ended up dissuading the positive or negative effects of the Revolution and the projection of equality came to be attacked for representing a "perverse effect", in which "any deliberate action to improve an aspect of the economic, social or political order only serves to exacerbate the situation that one wishes to remedy" (Hirschman, 1992, p. 15). This is the thesis of perversity.

The second reactionary wave opposed the universal *sufrágio*, which established the expansion of the right to vote. Hirschman points out that, in this second reaction, there were few authors who specifically declared the objective of rolling back the advances of popular

participation in politics. However, he does not fail to clarify that, for many years, this reaction accumulated conceivable arguments to belittle the masses, the majority and the idea of democratic government: "despite making few proposals for alternative institutions, much of this literature warned, explicitly or implicitly, against the extreme dangers that threatened society, as a result of the tendency towards democratization" (Hirschman, 1992, p. 14). It was the thesis of incapacity that sustains attempts at social transformation as they are unsuccessful, because they simply cannot "leave a mark".

The third reactionary wave was contemporary with the *Welfare State* model and aimed at trying to push back or "reform" some of its aspects. This is the threat thesis, which "argue[d] that the cost of reform or social change is too high, as it endangers another precious previous achievement" (Hirschman, 1992, p. 16).

In Brazil, the development of citizenship rights has also not occurred in a homogeneous or unchallenging way. Given the national characteristics, as pointed out by Carvalho (2010), it is possible to record that a large part of the reactions were gestated within the State itself. Taking the 1930s as a turning point in this model of "citizenship", national solutions were built under the tutelage of a complex authoritarianism. Many rights, such as social rights (regulation of work, social security, health and education), political rights (expansion of the electorate with the Electoral Code of 1932, which instituted women's suffrage) and civil rights were understood within the questionable concept of social paternalism of the State in relation to civil society.

The choices of the past certainly reflect consequences for the present; and with civil, political and social rights, this was no different. Although it is possible to observe the legislative advances and the exercise of rights that were unprecedented in the post-1988 period, the Brazilian State has not yet been able to institutionalize numerous rights for its citizens. If what prevails in Brazil is a low-intensity citizenship, minority groups or those with long-term physical, mental, intellectual or sensory impairments are the main ones affected by this unequal correlation of rights.

In this context, the rights of people with disabilities stand out, paradoxically, for their negligence, initially, and for their violation, more recently, when there are declarations or affirmations of rights<sup>7</sup>. One of the reasons is that the very concept of disability is an evolving

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<sup>7</sup> In this sense, the analysis made by Niklas Luhmann (2000, p. 158) is valid: "The most current form of affirmation of human rights could thus be, simultaneously, the most original (most natural). Norms are recognized through their violations; and human rights to the extent that they are not complied with. Just as expectations often become conscious through their frustration, so often do norms through offense to them. The situation of frustration leads in the systems that process information to the reconstruction of their own past, to recurrent processing, with Pensar, Fortaleza, v. 27, n. 4, p. 1-24, jan./mar. 2022

concept and must always be open to interpretive possibilities. Legislation can never be static in relation to the rights of the disabled and it, together with inclusive practices, must be willing to implement intergenerational dialogues capable of integrating social change so that everyone has the right to belong to a political community.

Next, it is discussed how legislative actions on the rights of people with disabilities can provide access to higher education, within a perspective that combines participatory transformation in democracy with practical unfolding of citizenship with high intensity.

### **3 The regulation of the policy of access to higher education in international and domestic legislation: the advances and challenges in the brazilian implementation**

The legislative actions produced within the framework of the UN and the transformations they operate in the legal systems of its States Parties have significant potential to include persons with disabilities in a new *status* in the public space. The 2006 convention is an important milestone, but there are other initiatives made by the States that precede this period.

In Brazil, legislation to support people with disabilities has been present since 1988. However, despite the slow legislative effort observed in the country, this personal condition has always imposed limits on the exercise of rights. In view of this, the Convention is a good starting point, as it recognizes that disability is an evolving concept, mainly because it finds that this condition results from the interaction between people with disabilities and the barriers due to attitudes and the environment that prevent the full and effective participation of these people in society on an equal basis with others. It was promulgated internally, as already mentioned, through Decree No. 6,949, of August 25, 2009, being the first treaty ratified by the National Congress in the form of Article 5, paragraph 3, of the Constitution<sup>8</sup>, which grants it the legal nature equivalent to a constitutional amendment.

The concept of disability, as an evolving concept, allows for an open interpretation of the diversity of people with disabilities (including those who require greater support), which may or may not expand in the face of new barriers erected in specific contexts. When envisioning impediments that hinder the participation of these people in society on an equal footing,

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rescue and apprehension of what is relevant at the moment. It seems that the updating of human rights today uses this mechanism primarily at the global level."

<sup>8</sup> CF/1988. Article 5. All are equal before the law, without distinction of any kind, guaranteeing to Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms: [...] § 3. International treaties and conventions on human rights that are approved in each House of the National Congress, in two rounds, by three-fifths of the votes of the respective members, shall be equivalent to constitutional amendments.

mechanisms and alternatives for inclusion with autonomy, individual independence and freedom to make their own choices must be created. The Convention also advanced in establishing a conceptual parameter by considering that persons with disabilities are those who have long-term physical, mental, intellectual or sensory impairments, which, in interaction with various barriers, may obstruct their full and effective participation in society on an equal basis with other people (Art. 1).

Clearly, the concept of disability includes the environment (the environment), not linking or attributing a kind of "guilt" or exclusive responsibility of the person who is prevented or has peculiar difficulties, specific needs, to participate in life in society. Disability, therefore, comes to be contextualized and, in a way, shared with the political community.

The disabled person does not "carry" the disability and this new orientation impacts the way in which the definitions of the person with disabilities will be revised in the States that have ratified the Convention. According to Gaburri (2016), in Brazil, for example, two models were used in the legal system to define whether a person could be considered disabled or not. It was the medical model, which began in the 1960s, referenced by the paradigm of specific services, such as special schools, assistance entities and rehabilitation centers, and the social model, which aimed at social inclusion, with mutual efforts for the inclusion of people with disabilities.

The rules of the Convention follow the social model, mainly by stating that the assessment of disability, when necessary, will be biopsychosocial, carried out by a multiprofessional and interdisciplinary team to consider the impediments in the functions and structures of the body, socio-environmental, psychological and personal factors, the limitation in the performance of activities and the restriction of participation. This type of holistic diagnosis, therefore, does not refer only to the individual, but indicates attitudes and transformations that are the responsibility of the State and civil society, which need to recognize their deficiencies.

As demonstrated by Izabel Maria Madeira de Loureiro Maior, in a presentation to the book published by the Special Secretariat for Human Rights of the Presidency of the Republic on the Convention (Maior, 2008, p. 21): "the UN opened its doors, for the first time to organized civil society, in the elaboration, in record time, of the Convention on the Rights of Persons with Disabilities (2002 to 2006)". For the aforementioned author, with this, "The UN changed before and transformed itself even more, with the success of the mature, sensible and progressive negotiations of the convention [...]".

These transformations can be observed based on the principles that inspire the Convention (Article 3): i) respect for inherent dignity, individual autonomy, including the freedom to make one's own choices and the independence of persons; ii) non-discrimination; iii) full and effective participation and inclusion in society; iv) respect for difference and acceptance of people with disabilities as part of human diversity; v) equal opportunities; vi) accessibility; vii) equality between men and women; and viii) respect for the development of the capacities of children with disabilities and the right of children with disabilities to the preservation of their identities.

These principles were incorporated into the fifty articles that make up the text of the Convention and, as a result, the States Parties undertook to adopt all necessary measures, including legislative and administrative measures, aimed at modifying or repealing laws, regulations, customs and practices in force that may constitute discrimination against persons with disabilities.

After the Convention was incorporated at a level equivalent to a constitutional amendment, it was expected that the infra-constitutional legislation would undergo changes with a view to normative harmonization. The main legislative change in this regard occurred with the enactment of Law No. 13,146, of July 6, 2015, which instituted the Brazilian Law for the Inclusion of Persons with Disabilities (Statute of Persons with Disabilities). More recently, Law No. 13,409, of December 28, 2016, was also enacted, which amended Law No. 12,711, of August 29, 2012 (which deals with admission to federal universities and federal institutions of technical education at the secondary level), to add the reservation of vacancies for people with disabilities in federal basic and higher education. Inspired by the terms of the Convention, domestic laws have incorporated a significant set of actions to promote and protect the rights of persons with disabilities, especially by establishing educational frameworks, concepts and guidelines for present and future generations.

As an example, the Statute of Persons with Disabilities highlights that this condition does not affect the civil capacity of the person, including for the constitution of a family by marriage or stable union; for the exercise of sexual and reproductive rights; to exercise the right to decide on the number of children and to have access to adequate information on reproduction and family planning, as well as to preserve their fertility, with compulsory sterilization being prohibited; to exercise the right to family and family and community life and to exercise the right to custody, guardianship, curatorship and adoption, as an adopter or adoptee, on an equal basis with other people (Art. 6).

This recognition of not being incapable has become of fundamental importance for the understanding and extension of citizenship rights to people with disabilities. Arguing about rights and using the term citizenship to encompass them, on the other hand, does not seem to be unprecedented. Numerous works have made use of these arguments to produce narratives that integrate civil, political, and social rights experiences for communities or social groups of the most varied. As much as its use may have reached a significant number of people, dealing with citizenship is still necessary, especially in countries that are unable to guarantee the effectiveness of rights to a large part of their citizens.

One of the major legislative changes was the modification of the theory of civil incapacity, which excluded people with disabilities from the list of people who are absolutely incapable (Statute of Persons with Disabilities, Art. 84, § 2; Civil Code of 2002, 1.783-A). As a result of this change, the legislator established a new legal institute, designated as supported decision-making. According to the legal definition, supported decision-making is the process by which the person with disabilities elects at least two suitable people, with whom they maintain ties and who enjoy their trust, to provide them with support in decision-making about acts of civil life, providing them with the elements and information necessary for the exercise of their rights.

As can be seen, the procedure aims to create means for people with disabilities to be able to personally exercise acts of civil life with greater autonomy, in proportion to their needs<sup>9</sup>. An alternative institute to curatorship is taken care of, which remains valid for those who cannot express their wills, as well as other legal hypotheses not related to the condition of being a person with a disability. It is considered that this change in domestic legislation was stimulated by Article 12 of the International Convention on the Rights of Persons with Disabilities (2006), which establishes the full recognition of equality before the law. The assisted decision-making model is a way to prevent every person with disabilities from being the target of interdiction and considered incapable; thus conferring primacy to his will and not to the figure of the curator.

Specifically with regard to the right to education, the Convention (Art. 24) requires States Parties to build an inclusive education system at all levels, with lifelong learning for persons

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<sup>9</sup> With the entry into force of the Statute, part of the literature questioned whether, by attributing this greater autonomy to people with disabilities, the legislation had not failed to protect them from the storms of life. This is a valid question. However, here follows the view of Pereira and Brazzale (2017), for whom, by recognizing the decision-making capacity of people with disabilities in the existential field, the State certified their dignity through greater autonomy. The "paternalistic" aspect of state behavior was diminished in favor of the recognition that such individuals deserve the same respect as others to decide on existential aspects of their lives. As for the patrimonial scope, the traditional instrument of curatorship remains.

with disabilities, especially with special care in relation to ensuring that education is provided with the means of accessibility inherent to its limitations (sign language, braille, alternative writing, etc.). In Article 24, item 5, the conventional text states that it is the obligation of the States Parties to guarantee the access of persons with disabilities to higher education in general and continuing education, without discrimination and under equal conditions, in addition to employing reasonable accommodations.

In the same sense, the 2030 Agenda for sustainable development, signed by the UN with the objective of establishing an action plan to guarantee peace and prosperity for people, determines, in its Goal 04, that, by that year, all people, including those with disabilities, must be guaranteed access to all levels of professional training (4.5).<sup>10</sup> With this, the Organization repeats the content of the determinations contained in the 2006 Convention.

The Statute follows the similar grammar of ensuring that people with disabilities have an inclusive educational system, at all levels, for lifelong enjoyment. It is the obligation of the public authorities to ensure, encourage, monitor and evaluate – according to the law – access to higher, professional and technological education on an equal basis with other people, in addition to including – in the curricular content of higher education and professional, technical and technological level – topics related to people with disabilities (Art. 28, XIII and XIV). With regard to admission to higher education itself, Article 30 guarantees a series of affirmative actions that the public power and the private sector must comply with in the entrance exams at universities and institutes of technical and technological professional education that concern the strategies for the reception of these students and the performance of the tests<sup>11</sup>, without touching on affirmative actions in relation to the guarantee of their entry into higher education.

The additional step in relation to the Statute was taken by Law No. 13,409, of December 28, 2016. By amending Arts. 3, 5 and 7 of Law No. 12,711, of August 29, 2012, it added people

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<sup>10</sup> 2030 Agenda. Objective 4. Ensure inclusive and equitable quality education, and promote lifelong learning opportunities for all. [...] 4.5 By 2030, eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the most vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations.

<sup>11</sup> Statute of Persons with Disabilities, Art. 30. In the selection processes for admission and permanence in the courses offered by higher education and professional and technological education institutions, public and private, the following measures must be adopted: I - preferential service to people with disabilities on the premises of Higher Education Institutions (HEIs) and in services; II - availability of an exam registration form with specific fields for candidates with disabilities to inform the accessibility and assistive technology resources necessary for their participation; III - availability of tests in accessible formats to meet the specific needs of candidates with disabilities; IV - availability of accessibility and assistive technology resources V - extension of time, according to the demand presented by the candidate with disabilities, both in the performance of the selection exam and in academic activities, upon prior request and proof of need; VI - adoption of evaluation criteria for written, discursive or writing tests that consider the linguistic uniqueness of the person with disabilities, in the domain of the written modality of the Portuguese language; VII - complete translation of the notice and its rectifications in Libras.

with disabilities to the list of citizens entitled to the reservation of vacancies (quotas) in higher education and technical/technological education at the secondary level in federal institutions of higher education, alongside self-declared black, brown and indigenous people (Art. 1). As a result, since the beginning of 2017, the selections for admission to the IFES have been reserved for people with disabilities. This feat is characterized as an affirmative action responsible for ensuring compliance with the international obligation of the Brazilian State to ensure that such individuals receive continuing education throughout their lives, although it is known that the number of vacancies offered is well below the country's demand<sup>12</sup>.

The inclusion of people with disabilities has not stopped in the scope of undergraduate courses. This is because the Ministry of Education (MEC) issued Normative Ordinance No. 13, of May 11, 2016, which, respecting university autonomy, determined that the IFES should reserve vacancies in their graduate programs (academic and professional master's degrees and doctorates) for blacks (blacks and browns), indigenous people, and people with disabilities (Art. 1). It is the responsibility of the Coordination for the Improvement of Higher Education Personnel (CAPES) to manage the periodic preparation of the graduate student census for the purpose of monitoring the actions of inclusion of these people in the national graduate system (Art. 3). Thus, this ordinance was recently famous for its repeal, but it has already taken effect again<sup>13</sup>.

The federal government's action in establishing affirmative actions that guarantee the inclusion, even of a small portion of people with disabilities in public higher education at the undergraduate and graduate levels, manifests the State's commitment, at least in the legislative field, to the effort to include this group in cutting-edge educational environments.

The continuing education offered at IFES aims to ensure both the interaction of people with disabilities in academic environments, attracting the positive repercussions arising from their inclusion in the university community, as well as their training for the exercise of the most varied professional activities achieved by those who have higher education in the country (teachers, doctors, engineers, jurists, biochemists, etc.). Thus, although gradual, it is possible to notice a positive evolution on the subject.

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<sup>12</sup> Not to mention people with disabilities who are not even guaranteed their most basic rights, such as health, housing, basic education, assistance, food, etc. Despite this, the data collected annually by the Higher Education Census point to an increase in enrollments of people with disabilities. Reports are available at: <http://portal.inep.gov.br/censo-da-educacao-superior>. Accessed on: 21 jul. 2020.

<sup>13</sup> As his last act in the position of Minister of State for Education, Abraham Weintraub revoked the regulation through MEC Ordinance No. 545, of June 16, 2020. A few days later, however, based on strong popular pressure, the (substitute) Minister of State for Education, Antonio Paulo Vogel de Medeiros, issued MEC Ordinance No. 559, of June 22, 2020, to render the first one ineffective.

But Brazil's performance also comes with criticism. When analyzing the range of guarantees offered by Article 24 of the International Convention on the Rights of Persons with Disabilities (2006), based on the interpretation offered by the Committee on the Rights of Persons with Disabilities, conveyed through General Comment No. 04 (2016) on the right to inclusive education, it is clear that, although the State has advanced towards guaranteeing the physical presence of persons with disabilities in the university environment, Some steps still need to be taken with regard to providing them with effective inclusion<sup>14</sup>.

It is not enough just to guarantee the entry of people with disabilities into the academic environment, as stated in paragraphs 24 and 38 of the Commentary. It is also necessary to combat discrimination that may arise, in particular when persons with disabilities also belong to other vulnerable or marginalised groups, and to train education professionals at all levels to master the skills and values needed to foster inclusive educational environments.

In § 71, the Committee adduces that the main contents to be taught to education professionals must include the understanding of human diversity, growth and development, the human rights-based model of disability and inclusive pedagogy that enables teachers to discover students' functional skills (strengths, abilities and learning strategies) to foster their participation (teachers') in inclusive educational environments. The teacher should also be able to use, at the basic level, alternative methods of communication (Braille language, large-scale printouts, accessible media, sign language, etc.).

At the macro level, the Committee also establishes that States must legislatively format an inclusive education plan with implementation deadlines and sanctions for its violation (§ 63). Its elements include, for example<sup>15</sup>: i) compliance with international human rights law; ii) the definition of inclusion and the specific objectives for achieving its completeness at all educational levels; iii) the right to inclusive education as a key element; iv) the guarantee that students with disabilities will have access to the same environment as those who do not have them; v) the guarantee that all new schools to be built will be accessible to people with

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<sup>14</sup> The Committee, in § 11 of the Commentary, distinguishes the categories exclusion, segregation, integration and inclusion. While the first two concern the impediment of access to the educational system by people with disabilities (exclusion) and their placement in environments different from the rest of the population (segregation), the difference between the last two is more subtle. Integration occurs when people with disabilities are placed in regular teaching environments, without adaptations, and it is expected that they will accommodate themselves to the same conditions offered to other students; Effective inclusion, on the other hand, occurs when adaptive measures are adopted in the way content is transmitted, in teaching methods, in approaches, in educational structures and strategies with the aim of overcoming the barriers naturally faced by people with disabilities.

<sup>15</sup> Other measures were listed in the commented document. Here, priority was given to placing only those considered most important, without disregarding the others.

disabilities; vi) the introduction of mechanisms to monitor the implementation of these policies; vii) a policy for early detection and support for persons with disabilities to be assisted in inclusive educational environments; viii) the obligation of local authorities to train teachers with inclusive means of language and communication; and ix) the guarantee that people with disabilities will be heard in the formatting of public policies that affect them in terms of education.

As can be seen from the Brazilian legislation commented on, some measures still need to be implemented in the country in order to adapt its policy, for the inclusion of people with disabilities, to the parameters defined by the Committee. Concern about the issue is essential because the exercise of the right to inclusive education is one of the main ways in which people with disabilities can obtain the necessary mechanisms for participation in public life. The gains in citizenship resulting from the appropriation of scientific categories in any area, when added to the eventual participation in environments of student and professional representation, are capable of providing such people with the essential instruments to claim their rights in the public arena. In other words, participating in university education does not only yield people with disabilities labor dividends; but it also gives them the opportunity to influence the Community's political life.

The difficulties pointed out can be validated from the literature that works with empirical data from the context discussed. Thus, the inclusion of people with disabilities in the university environment demands more than the mere guarantee of their presence: it is necessary to formulate policies responsible for generating an environment in which professionals and students interact in welcoming such people and adapting existing mechanisms, aiming to overcome accessibility limitations.

Based on an interview conducted at the Education Center of the Federal University of Roraima (UFRR), Siems-Marcondes (2017) highlighted the story of a visually impaired student who climbed the various academic stages from basic to higher education. According to the interviewee, the positive factors were mainly the reception and predisposition of teachers, added to the existence of assistive technologies that allowed them to adapt to the educational context. On the other hand, the absence of architectural standards adapted to people with disabilities at UFRR was a negative factor in their experience. The study indicates that the human and emotional factor is fundamental for the strategy of inclusion of people with disabilities in facing the barriers and limitations imposed, something that, in order to be achieved, requires more than the guarantee of entry into such an environment.

In another study, which interviewed five students with disabilities from a higher education institution in the interior of Paraná, the existence of facilitating mechanisms for the completion of entrance exams and the internal normative adaptation in order to adapt to the national inclusion requirements were highlighted as positive points, which clashes with the lack of accessibility in the physical structure of the unit (Garcia; Bacarin; Leonardo; 2018).

On the other hand, an important emphasis was given to the university's initiative to create scholarships for paid monitors (with a weekly workload of 12 hours) who assist, guided by professors, students with disabilities. The assistance is given through the planning of follow-up activities so that solutions can be found for the specific needs of those assisted. This experience reinforces the idea developed here that the follow-up after the entry of students with disabilities into the university environment is as important as the guarantee of their presence.

Thus, and despite the criticism, it is necessary to recognize the advances made in Brazilian legislation and the remarkable change in the direction of the policy of inclusion of people with disabilities in higher education in the last two decades. These actions create better conditions for these individuals to take broader flights and be able to train themselves for the exercise of professional duties and for civic life.

Inclusion in the most advanced levels of education reinforces important ties with the democratic experience. If, already within the experience of the Federal Constitution of 1988, there was a time when people with disabilities were made invisible, even in basic education, the advances outlined in the legislation and practices commented on demonstrate that the State has changed its tone regarding its approach. It now remains to continue improving the physical and methodological instruments of accessibility so that the desired inclusion can be achieved.

#### **4 Final considerations**

This work, as must have been made clear, does not have an end in itself. It consists of a provocation and reflection on the measures implemented by the State in favor of the inclusion of people with disabilities in higher education, especially after the enactment of Law No. 13,409, of December 28, 2016, and Normative Ordinance No. 13, of May 11, 2016. Once the link between such measures and the realization in terms of citizenship in favor of these people has been established, it is the role of academia and other social segments to continue to point out the necessary criticisms for their improvement.

However, as seen in the introductory part, exclusion also occurs in societies considered socially advanced; and, among all the forms of government available, it can be noted that, in democracies, the greatest number of desirable consequences are realized for their citizens. Certainly, this is a good starting point for analyzing the impact that the conventions and their respective transformations in the domestic law of the States promote for people with disabilities, in the sense of strengthening the democratic regime through the educational emancipation of this group of subjects, historically marginalized, in terms of enabling qualified participation in the deliberative processes of the public sphere.

It was seen in the work that the expansion of rights related to citizenship advanced in different ways across countries. One cannot adopt a foreign theory on the subject and transplant it to the local reality as if ideas were capable of modifying facts in the same way as had occurred in other political communities. In other words, in Brazil, the conquest of social rights obeyed a concessionary logic on the part of the State, in a period in which civil and political rights were suppressed. Therefore, with the 1988 Constitution, it can be said that the country took its most solid steps towards the gradual guarantee of the aforementioned categories of rights; However, even so, many challenges exist with regard to its enjoyment.

The opening given by the Constitution to international human rights law allowed the prerogatives inserted in treaties to enter the domestic legal order with binding force and with the capacity to induce public policies, given their immediate effectiveness and their integration into the constitutionality bloc. This was the case of the International Convention on the Rights of Persons with Disabilities (2006), which, among other things, established the prescription (should-be) of the right to inclusive education for persons with disabilities; subsequently producing a series of laws by the domestic legislator in order to transform conventional normativity into reality.

It was possible to perceive that, although state legislation has ensured that people with disabilities have access to the appropriate means to take entrance exams in higher education institutions and the reservation of vacancies (quotas) for this population, this is not enough, by itself, to generate inclusive education. The inclusion model outlined by the Committee on the Rights of Persons with Disabilities and the experts also requires the constant training of teachers on inclusive pedagogies and methodologies in higher education. For the reception of students, architectural and communicational accessibility must provide for the overcoming of barriers imposed by differences. Thus, the formulation of a public policy with such objectives must be

projected at all levels of education, with effective participation of people with disabilities in the decision-making processes about the policies that affect them.

Therefore, access to an inclusive educational system by people with disabilities can provide them with the collection of theoretical, practical and critical knowledge necessary for the formation of competent professionals and citizens aware of their roles in society. Thinking about inclusive education goes beyond the accumulation of encyclopedic training content. It is also to provide individuals with autonomy so that they do not subject their lives to decision-making in which they do not participate. It cannot be taken for granted that disability is an obstacle to the recognition of dignity. Overcoming this involves the occupation of higher education spaces by these people.

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