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<https://doi.org/10.1590/198053146788>

FEDERAL CIVIL SERVICE EXAMINATIONS
FOR UNIVERSITY FACULTY AND
AFFIRMATIVE ACTIONS FOR
RACIAL EQUALITY

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Abstract

In this study, quali-quantitative methodology was applied to analyze the implementation of Law no. 12,990/2014 on quotas for Black candidates at 63 federal universities and 38 federal 'institutes' (secondary and vocational training), during the period that spanned 2014 to 2018. The law reserves 20% of teaching vacancies filled through federal civil servant examinations for Black people. We observe the distance that separates the legally-stipulated conditions and actual practice in these institutions. As five years have now gone by since the passage of this legislation, it seems safe to say that the goal of expanding racial/color diversity in federal civil service will not be achieved through public examinations for teaching careers. Moreover, meeting this goal becomes progressively harder, given the present scenario of resurgence of meritocratic discourses that question the legitimacy of affirmative actions for Afro-Brazilians.

PUBLIC PROCUREMENT • TEACHING CAREER • BLACK • AFFIRMATIVE ACTION

CONCURSOS PÚBLICOS FEDERAIS PARA DOCENTES E AÇÕES
AFIRMATIVAS PARA CANDIDATOS NEGROS**Resumo**

Analisamos, por metodologia qualiquantitativa, a implementação da Lei n. 12.990/2014, que reserva 20% das vagas de concursos públicos federais para candidatos negros e negras, no âmbito das carreiras docentes de 63 universidades federais e de 38 institutos federais, no período 2014 a 2018. Constatamos que o percentual legalmente previsto está longe do praticado nas universidades federais e institutos federais. Passados mais de cinco anos desde a aprovação da lei, parece que o objetivo de ampliar a diversidade de raça/cor no serviço público federal não será alcançado por concursos para as carreiras docentes, em um cenário de recrudescimento de discursos meritocráticos que colocam em xeque a legitimidade de ações afirmativas para pessoas negras.

CONCURSOS PÚBLICOS • CARREIRAS DOCENTES • NEGRO • AÇÕES AFIRMATIVAS

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DISCRIMINATION POSITIVE ENVERS LES CANDIDATS NOIRS DANS LE RECRUTEMENT D'ENSEIGNANTS DANS LES UNIVERSITÉS PUBLIQUES

Résumé

Ce travail utilise une méthodologie quali-quantitative pour analyser l'application de la loi n° 12 990/2014, réservant 20% des postes à des candidats noirs dans les concours de recrutement d'enseignants dans 63 universités fédérales et 38 instituts supérieurs d'éducation dans la période 2014-2018. Il a été constaté que le pourcentage prévu par la loi est loin de celui pratiqué par les universités fédérales et les instituts fédéraux. Passés cinq ans de l'adoption de la loi, il semble que l'objectif d'élargir la diversité concernant la race et la couleur de la peau dans la fonction publique ne sera pas atteint par le biais de concours de recrutement, dans un contexte de recrudescence des discours méritocratiques remettant en question la légitimité de la discrimination positive envers les noirs.

MARCHÉS PUBLICS • CARRIÈRE EN ENSEIGNEMENT • NOIR • ACTION POSITIVE

CONCURSOS PÚBLICOS FEDERALES PARA PROFESORES Y ACCIONES AFIRMATIVAS PARA CANDIDATOS NEGROS

Resumen

Analizamos, por metodología cuali-cuantitativa, la implementación de la Ley no. 12.990/2014, que reserva el 20% de las vacantes de concursos públicos federales para docencia en 63 universidades federales y 38 institutos federales a candidatos negros, en el periodo de 2014 a 2018. Constatamos que el porcentaje legalmente previsto está muy lejos del practicado en universidades federales e institutos federales. Transcurridos más de cinco años después de la aprobación de la ley, parece que el objetivo de ampliar la diversidad de raza/color en el servicio público federal no será alcanzado mediante concursos para carreras docentes, en un escenario de resurgimiento de discursos meritocráticos que amenazan la legitimidad de acciones afirmativas para personas negras.

LICITACIÓN • CARRERA DOCENTE • NEGRO • ACCIÓN AFIRMATIVA

MAPPING POSSIBILITIES AND FRAGILITIES

This article reports on the results of research¹ on a quota system that has been applied for filling permanent positions for Black faculty within the Brazilian federal university system. The educational institutions that are our object here are referred to using their Brazilian abbreviation: UFs, or Federal Universities, and IFs, or Federal Institutes for secondary, vocational and technological education, throughout the five geographical regions of this South American nation (see Table 1, below). The specific period we examine spans June 9th, 2014 to December 31st, 2018, corresponding to federal legislation (Law no. 12.990 (BRAZIL, 2014) that sets aside 20% of all positions offered through the federal system's public selection exams for people of color.

1 This article originates in research which began in mid-2017, when one of its authors, Luiz Mello, was on leave from his university position for training at the National Institute of Science and Technology of Inclusiveness in Education and Research (Instituto Nacional de Ciência e Tecnologia de Inclusão no Ensino e na Pesquisa (INCTI)). The latter, directed by Dr José Jorge de Carvalho from the Anthropology Department of the University of Brasília, has as its major goal the production of knowledge on affirmative action policies within Brazilian universities. We extend our gratitude to Dr Carvalho, as well as to Amanda Cristina de Oliveira, Denise Clara Santos Santana and Rafaela Aparecida de Figueiredo Alves, undergraduate students in the Social Sciences Program of the Federal University of Goiás, who took part in data collection and theoretical and methodological discussion through an undergraduate research internship program.

TABLE 1
FEDERAL UNIVERSITIES AND INSTITUTES, BY GEOGRAPHICAL REGIONS, IN 2019

REGION	FEDERAL UNIVERSITIES	TOTAL	FEDERAL INSTITUTES	TOTAL
North	Ufac (UF State of Acre), Unifap (UF State of Amapá), Ufam (UF Amazona region), Ufopa (UF West of State of Pará), Ufpa (UF State of Pará), Ufra (UF Rural Amazonia), Unifesspa (UF South and Southeastern Pará), Unir (UF State of Rondônia), UFRR (UF State of Roraima), UFT (UF State of Tocantins)	10	Ifac (IF of Education, Science and Technology of the State of Acre), Ifap (IF of Education, Science and Technology of the State of Amapá), Ifam (IF of Education, Science and Technology of the Amazon), Ifpa (IF of Education, Science and Technology of the State of de Pará), Ifro (IF of Education, Science and Technology of the State of Rondônia), IFRR (IF of Education, Science and Technology of Roraima), Ifto (IF of Education, Science and Technology of Tocantins)	7
Northeast	Ufal (UF of Alagoas), Ufba (UF of the State of Bahia), Ufob (UF of Western Bahia), UFRB (UF of the Recôncavo Bahia), UFSB (UF of Southern Bahia), UFC (UF of Ceará), UFCA (UF of Cariri), Unilab (University for the International Integration of Afro-Brazilian Lusophony), Ufma (UF of the State of Maranhão), UFCG (UF of Campina Grande), UFPB (UF of the State of Paraíba), Ufpe (UF of the State of Pernambuco), UFRPE (UF of Rural Pernambuco), Univasf (UF of the San Francisco Valley), Ufpi (UF of the State of Piauí), Ufersa (UF of Semi-Arid Region), UFRN (UF of the State of Rio Grande do Norte), UFS (UF of the State of Sergipe)	18	Ifal (IF of Education, Science Technology of the State of Alagoas), IFBA (IF de Education, Science and Technology of the State of Bahia), IFBaiano (IF of Bahian Education, Science and Technology), IFCE (IF of Education, Science and Technology of Ceará), IFMA (IF of Education, Science and Technology of Maranhão), IFPB (IF of Education, Science and Technology of Pernambuco), IF Sertão PE (IF of Education, Science and Technology of the Sertão Pernambucano), IFPI (IF of Education, Science and Technology of the State of do Piauí), IFRN (IF of Education, Science and Technology of the State of Rio Grande do Norte), IFS (IF of Education, Science and Sergipe)	11
Western Central	UnB (University of Brasília), UFG (UF of the State of Goiás), UFMS (UF of the State of Mato Grosso do Sul), UFGD (UF of Grande Dourados), UFMT (UF of the State of Grosso)	5	IFB (IF of Education, Science and Technology of Brasília), IFG (IF of Education, Science and Technology of Goiás), IF Goiano (IF Goian Institute of Education, Science and Technology Goiano), IFMT (IF of Education, Science and Technology of the State of Mato Grosso), IFMS (IF of Education, Science and Technology of the State of Mato Grosso do Sul)	5
Southeast	Ufes (UF of the State of Espírito Santo), UFJF (UF of Juiz de Fora), Ufla (UF of Lavras), UFMG (UF of the State of Minas Gerais), Ufop (UF of Ouro Preto), UFSJ (UF of São João del-Rei), UFU (UF of Uberlândia), UFV (UF of Viçosa), UFTM (UF of the Minas Triangle), Ufvjm (UF of the Valleys of Jequitinhonha and Mucuripe), Unifal (UF of Alfenas), Unifei (UF of Itajubá), UFF (UF Fluminense), UFRJ (UF of Rio de Janeiro), UFRRJ (UF of Rural Rio de Janeiro), Unirio (UF of the State of Rio de Janeiro), UFABC (UF of the ABC region), UFSCar (UF of São Carlos), Unifesp (UF of São Paulo)	19	Ifes (IF of Education, Science and Technology of the State of de Santo), IFMG (IF of Education, Science and Technology of the State of Minas Gerais), IFNMG (IF of Education, Science and Technology of the North of Minas Gerais), IFTM (IF of Education, Science and Technology of the Minas Triangle), IF Sul de Minas (IF of Education, Science and Technology of Southern Minas), IF Sudeste MG (IF of Education, Science and Technology of Southeastern Minas), IFF (IF Fluminense of Education,), IFRJ (IF of Education, Science and Technology of Rio de Janeiro), IFSP (IF of Education, Science and Technology of São Paulo)	9
South	UFPR (UF of the State of Paraná), UTFPR (Federal Technological University of the State of Paraná), Furg (University Foundation of Fundação Universidade Rio Grande), UFGSPA (UF of Health Sciences of Porto Alegre), UFFS (UF of the Southern Border), Ufpel (UF of Pelotas), UFRGS (UF of the State of Rio Grande do Sul), UFSM (UF of the State of Santa Maria), Unila (UF of Latin American Integration), Unipampa (UF of the Pampas), UFSC (Federal University of the State of Santa Catarina)	11	IFPR (IF of Education, Science and Technology of the state of Paraná), IFRS (IF of Education, Science and Technology of the state of Rio Grande do Sul), IF Farrroupilha (IF Farrroupilha of Education, Science and Technology), IF Sul-Rio-Grandense (IF of Education, Science and Technology of Southern Rio Grande), IFC (IF Catarinense of Education, Science and Technology) and Ciência and IFSC (IF of Education, Science and Technology of Santa Catarina)	6
Brazil	63		38	

Source: Authors' own.

Although still incipient, there is a growing corpus of academic research on the impacts of Law no. 12.990 (BRAZIL, 2014), as well as on affirmative action in favor of Afro-Brazilian presence in civil service and its repercussions within Brazilian society. Such studies are, to a large extent, restricted to Master's and Doctoral theses that tend to have lesser dissemination in the form of articles and books, yet among which those of Priscila Nunes Pereira (2018), Gabriela Felden Scheuermann (2017), Alice Ribeiro de Sousa (2016), Gianmarco Loures Ferreira (2016), Heitor Vinicius Bento Pessoa (2016), Iolanda Pinto de Faria (2015), Plinio de Melo Pires (2015) and Thiago Maços de Oliveira Miranda (2015) stand out.

From a wider analytical perspective, these works share, among their major conclusions, a recognition of the relevance that Law no. 12.990 (BRASIL, 2014) has had for the struggle against the racism prevailing in Brazil today. At the same time, they tend to converge in the hypothesis that those who have been most benefitted by affirmative action are people of color already belonging to the Afro- descendent population that enjoys better socio-economic conditions and has therefore been able to provide higher quality education for its children. It is nonetheless important to mention that this reality also plays itself out in relation to white families for whom race/color, educational level, social and class/income function as social markers and identity attributes that are mutually-reinforcing, representing social privileges that are camouflaged as social, economic, political and cultural rights.

Within the ambit of debate on affirmative actions for Black people, attempts to subordinate the category of race/color to that of the social class/income of beneficiaries are generally little more than a poorly-masked expression of racism. Such positions hold that affirmative action should be based on social criteria alone, and particularly on income, thereby meant to benefit the needy, regardless of race. Yet this type of argument neglects the fact that affirmative action policies based on race/color do not constitute, *a priori*, policies for income redistribution but rather for the struggle against racism.

Among the scant works that inquire into affirmative actions based on race/color for employment within public administration, the work of Ana Paula Sampaio Volpe and Tatiana Dias Silva (2016), Tatiana Dias Silva (2014) and Tatiana Dias Silva and Ana Paula Sampaio Volpe (2013) stands out. These scholars have provided a broad analysis of affirmative actions for Black people in civil service at municipal, state and federal levels. Work by Barbara Estanislau, Eduardo Gomor and Jéssica Naime (2015) examines racial inequality in Brazilian society in a general sense and within federal public administration in particular. Marcilene Garcia de Souza (2010) carried out an exhaustive analysis of the pioneering quota law in the state of Paraná which implemented 10% of all vacancies in civil service exams to Black people.

Taking these studies as the background for our own research, we sought information regarding public service exams for teaching careers through a mapping of the calls that appeared on the institutional sites of all 63 UFs and 38 IFs, from the time that Law no. 12.990 was approved (June 6th, 2014). We were able to ascertain that the 20% of the vacancies legally allotted to Black candidates

were far from being filled as such, as shown in Tables 2 and 3 below (which also specify the slots that are reserved for candidates with physical disabilities, for the same calls).²

TABLE 2
VACANCIES OFFERED IN PUBLIC EXAMINATIONS FOR UNIVERSITY FACULTY CAREERS, IN ALL 63 FEDERAL UNIVERSITIES, ACCORDING TO GEOGRAPHICAL REGION, OVER THE PERIOD SPANNING 06.09.2014 TO 01.31.2018

GEOGRAPHIC REGION	TOTAL VACANCIES	GENERAL VACANCIES	VACANCIES FOR BLACKS	VACANCIES FOR THE DISABLED
North	2.687	2.572 (95,7%)	85 (3,2%)	30 (1,1%)
Northeast	5.581	5.357 (96%)	145 (2,6%)	79 (1,4%)
Central Western	1.926	1.569 (81,5%)	208 (10,8%)	149 (7,7%)
Southeast	4.925	4.700 (95,4%)	184 (3,7%)	41 (0,8%)
South	3.013	2.468 (82%)	342 (11,3%)	203 (6,7%)
Brazil	18.132	16.666 (91,9%)	964 (5,3%)	502 (2,8%)

Source: Authors' own.

TABLE 3
VACANCIES OFFERED IN PUBLIC EXAMINATIONS FOR TEACHING CAREERS IN HIGH SCHOOL EDUCATION AND VOCATIONAL AND TECHNOLOGICAL TRAINING, IN ALL 38 FEDERAL INSTITUTIONS, BY GEOGRAPHICAL REGION, OVER THE PERIOD SPANNING 06.09.2014 TO 01.31.2018

GEOGRAPHIC REGION	TOTAL VACANCIES	GENERAL VACANCIES	VACANCIES FOR BLACKS	VACANCIES FOR THE DISABLED
North	850	785 (92,3%)	48 (5,7%)	17 (2%)
Northeast	1495	1163 (77,8%)	243 (16,2%)	89 (6%)
Central Western	524	430 (82%)	72 (13,8%)	22 (4,2%)
Southeast	1069	870 (81,4%)	153 (14,3%)	46 (4,3%)
South	1259	1098 (87,2%)	108 (8,6%)	53 (4,2%)
Brazil	5197	4346 (83,6%)	624 (12%)	227 (4,4%)

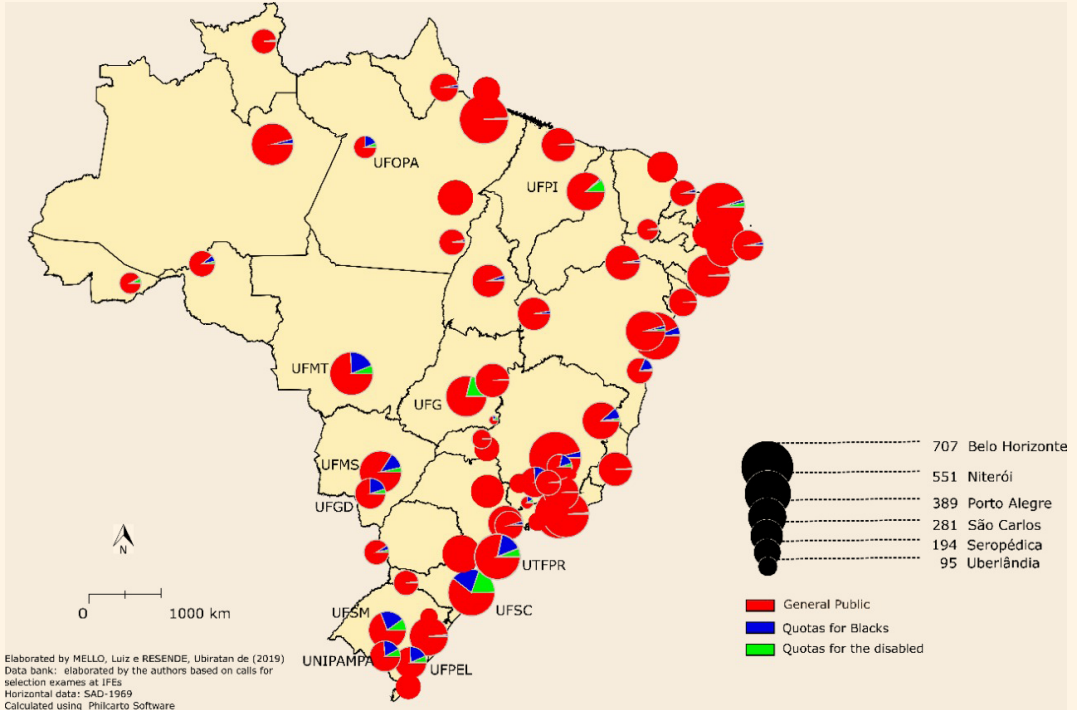
Source: Authors' own.

Maps 1 and 2 (see below) provide the geographical distribution of the total number of vacancies for UF and IF teaching careers, respectively, also showing the number of vacancies allotted for the general public and those that reserved for candidates with physical disabilities. Furthermore, they illustrate, within the scale of each specific institution, the actual proportion of vacancies for Black candidates that were filled, thereby revealing how close each one of them comes to the legally stipulated 20%.

² Article 5º, § 2º of Law n. 8.112 (BRASIL, 1991) establishes 20% as the maximum percentage of vacancies to be reserved for people with disabilities in public civil service exams, while article 1º, § 1º, Decree no. 9.508 (BRAZIL, 2018a) stipulates a minimum of 5%.

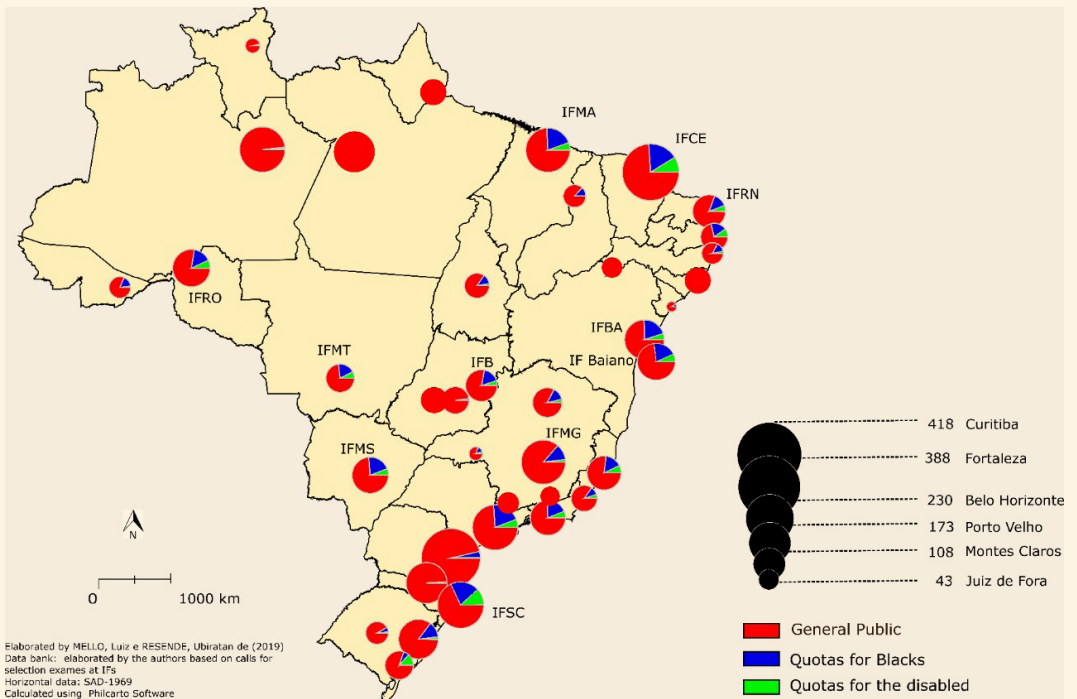
MAP 1

PROPORTIONAL DISTRIBUTION OF VACANCIES OFFERED THROUGH PUBLIC EXAMINATIONS FOR UNIVERSITY FACULTY CAREERS, IN ALL 63 FEDERAL UNIVERSITIES, ACCORDING TO GEOGRAPHICAL REGION, OVER THE PERIOD SPANNING 06.09.2014 TO 01.31.2018



MAP 2

PROPORTIONAL DISTRIBUTION OF VACANCIES OFFERED IN PUBLIC EXAMINATIONS FOR TEACHING CAREERS IN HIGH SCHOOL EDUCATION AND VOCATIONAL AND TECHNOLOGICAL TRAINING, IN ALL 38 FEDERAL INSTITUTIONS, BY GEOGRAPHICAL REGION, IN THE PERIOD SPANNING 06.09.2014 TO 01.31.2018



The data provided above through tables and maps correspond to over 18,000 vacancies offered through public examinations for permanent faculty at UFs and the more than 5,000 vacancies for permanent teaching positions at IFs. We can nonetheless be sure that these totals are inferior to the actual number of people who were hired by federal educational institutions during the period in question, for two major reasons: 1) it was not always possible to locate all calls for positions on the pages of the respective educational institutions and 2) during the period in which examination results remained valid, new vacancies, not originally stipulated in the call, may have come up, as previous occupants died or retired, left or resigned from their jobs. In any event, the total number of vacancies that were identified, as well as the percentage of vacancies destined to the general public or specifically for people of color, provide evidence of an undeniable tendency of being unable to fill the 20% of vacancies allotted through the racial quota system prescribed by Law no. 12.990 (BRASIL, 2014) for IFs (12% filled) and UFs (5,3% filled).

Furthermore, given the fact that this data refers specifically to vacancies offered through official calls, the number of Black faculty that has actually been hired is even less, given situations in which there are no Black candidates actually registered for the exams or who obtain passing scores in examinations for which racial quotas have been established. In both of these situations, according to Article 3º, § 3º, of Law no. 12.990 (BRAZIL, 2014), unfilled vacancies are supposed to return to the general pool. It would also be important to discover, through new research, if the vacancies that appear after the dissemination of funding calls are filled according to provisions established by the law, since the vacancies reserved for Black candidates are supposed to be applied to all civil service exams throughout their entire period of validity, and not only to those that have been officially announced through opening calls.

As Maps 1 and 2 illustrate, percentages of vacancies reserved for Black candidates vary from one institution to another, among both UFs and IFs, with very few of them actually able to comply with the legally stipulated 20%. While some institutions are not able to get anywhere near the goal, most are in intermediate situations between the two extremes and tend to reach about 5%.

These difficulties in the actual ability to meet legal requirements were foreseen by Tatiana Dias Silva and Josenilton Marques da Silva (2014), authors of *Nota Técnica n. 17* [Technical Note 17] of the Institute of Applied Economics (*Instituto de Pesquisa Econômica Aplicada (Ipea)*) on “vacancies reserved for Black candidates in public examinations: an analysis reserva de vagas para negros em concursos públicos: an analysis based on Bill 6.738/2013” published in February of 2014. In this report, attention is brought to the need to guarantee compliance of quotas for Afro-Brazilians in university positions, notwithstanding the paucity of positions that are actually available

Their concerns are due to a specificity within the provisions of Law no. 12.990 (BRAZIL, 2014), established in its 1º, § 1º: “Vacancies must be reserved [for Black candidates] whenever and wherever the *number of vacancies offered through public civil service exams* is greater or equal to 3 (three)” (our emphasis). This

would apparently explain the difficulty that the above-mentioned technical report foresees, considering that certain educational institutions, usually UFs, publish calls for faculty in which less than three openings are offered – usually, with just one. Other institutions, both IFs and UFs, publish calls for a large number of vacancies, yet the latter are distributed over a range of fields of knowledge with fewer than three vacancies per area. In situations such as these, the specific exams held for each area are thought of as independent examination processes, offering less than three positions and thereby leaving room for their interpretation as exempt from quota rules. Such an understanding does nonetheless run counter to what the aforementioned law establishes – it refers in fact to the total number of openings and makes no allusion whatsoever to the specificities of their internal division.

In the case of the IFs, there is often a greater number of positions offered per field of knowledge, which implies a higher percentage of vacancies immediately susceptible to quota application than in the case of the UFs, even in situations in which the erroneous interpretation that the 20% reserve refers to specific areas (rather than to the totality of openings per call) prevails. Furthermore, regardless of the interpretation that is made, actual implementation still falls short of legal provisions: data shows that the percentage of vacancies accorded Black candidates in IFs stands at 12%.

It is pertinent here for the record that on June 8, 2017, the Federal Supreme Court (*Supremo Tribunal Federal* (STF)) plenary, in answer to the Declaration of Constitutionality (Ação Declaratória de Constitucionalidade (ADC)) n. 41 presented by the Federal Council of the Brazilian Bar Association (OAB), unanimously approved the report by Supreme Court Judge Luís Roberto Barroso, which not only established the constitutionality of Law no. 12,990 (BRASIL, 2014), but verbatim said that “exams cannot split the vacancies according to the specialization as a means of circumventing affirmative action policy, which only applies to examinations offering more than two positions” (BRAZIL, 2017, p. 3, our italics). What then is the reason for the imposition of this minority stance if, in the case of exams for teaching positions in the IFs and especially the UFs, the Brazilian Supreme Court ruled that vacancies reserved for Black candidates be calculated on the basis of the total number of openings in each call, not allowing for any kind of internal division?

Despite this situation, there are signs that the restrictive interpretation of Law no. 12.990 (BRAZIL, 2014) has begun to change, at least within the ambit of exams for teaching positions in federal educational institutions. Our research has allowed us to observe that, albeit not at the pace that liability would require, some federal educational institutions have changed their way of interpreting the law and begun to apply the rule to reserve 20% of all vacancies in each call rather than in each specific area of knowledge, as they did previously. Examples are the Federal University of Mato Grosso do Sul (UFMS Call n. 84, December 29th, 2017), Federal University of Bahia (UFBA Call no. 2, December 26th, 2018) and Federal University of Goiás (UFG Call no. 13, May 30th, 2019).

In the specific case of the Federal University of Goiás (UFG), during the 4 ½ years of validity of the law we analyze, examinations were held for 428 permanent faculty positions, of which only two openings, or 0,47%, were reserved

for Black candidates. Yet in the terms of the Call that was published in May of 2019, mentioned above, the 20% was applied to the totality of vacancies, which now meant that 12 of the 59 positions offered in the call were reserved for Black candidates. This means that in one call alone, the number of vacancies covered by Affirmative Action legislation was multiplied by 6, in relation to the 12 previous calls in which openings varied between 8 and 89 – in different fields of knowledge and including one to two positions per field. Thus, if the current understanding had been applied by the UFG from the time Law no. 12.990 (BRASIL, 2014) was approved, rather than a mere the two vacancies reserved for Black candidates, exams held prior to December 31, 2018 would have rendered total of 86 vacancies.

We note that the change in the legal interpretation, in the case of the UFG, was communicated to the academic community through Official Document 3, symbolically³ dated May 13th, 2019, from the Office of the Dean of Human Resources and addressed to “Directors of Special Academic Units, Director of the CEPAE, Directors of Academic and Regional Unites of the UFG” on the matter of “Clarifications on vacancies reserved for people with disabilities and Black people” as quoted below:

5. On vacancies reserved for Black candidates:

6. *The UFG will also adapt all calls for examinations for Permanent University Faculty position according to Law n. 12.990, 06/09/2014, and to Regulatory Ordinance n. 4, 10/06/2018, of the Ministry of Planning, Development and Management/Secretariat of Human Resources, referring to the reservation of vacancies for Black candidates.*

7. Considering that Law n. 12.990, in its Article 1.º determines that que “20% (twenty per cent) of all vacancies offered through public examinations for filling permanent positions be destined to Black candidates...” [...], *the UFG will adopt the following methodology for the reservation of vacancies to Black candidates, following principles of reasonableness and proportionality: for each 5 (five) positions, the first one will be reserved for candidates self-declared as Black, observing the chronological order of requests to hold exams put in to the respective Academic Departments/Special Academic Departments and the Dean of Human Resource Management.*⁴ (UNIVERSIDADE FEDERAL DE GOIÁS - UFG, 2019, our italics, own translation)

³ Slavery was officially abolished in Brazil on May 13th, 1888 (Translator’s note).

⁴ In the original: “5. Sobre a reserva de vagas para candidatos negros:

6. *A UFG também adequará os editais de concurso para professor da Carreira do Magistério Federal à Lei no. 12.990, de 09/06/2014, e à Portaria Normativa n. 4, de 06/10/2018, do Ministério do Planejamento, Desenvolvimento e Gestão/Secretaria de Gestão de Pessoas, que tratam da reserva de vagas aos negros.*

7. Considerando que a Lei n. 12.990, em seu artigo 1.º, determina que “ficam reservadas aos negros 20% (vinte por cento) das vagas oferecidas nos concursos públicos para provimento de cargos efetivos...” [...], *a UFG adotará a seguinte metodologia para a reserva de vagas a candidatos negros, seguindo os princípios da razoabilidade e da proporcionalidade: a cada 05 (cinco) vagas, a primeira será reservada aos candidatos que se autodeclaram negros, observando-se a ordem cronológica da entrada dos pedidos de concursos das Unidades Acadêmicas/Unidades Acadêmicas Especiais junto a esta Pró-Reitoria de Gestão de Pessoas.*”

It is worth pointing out that at the UFG, criteria for the definition of which of the vacancies within the same call for faculty positions are to be reserved for Black candidates is stated as “the chronological order of requests to hold exams as put in to the respective Academic Departments/Special Academic Departments and the Dean of Human Resources Management”, as emphasized in the passage of the official document cited above. This is practically the same procedure that the UFG has been using since 2009, providing for the maximum of 20% of permanent teaching vacancies to be legally reserved for people with disabilities, including cases in which the vacancies in a particular call are distributed over different fields of knowledge. Over the time period our research covers, the differential treatment that was given to each type of quota (for the same calls) resulted in an expressive discrepancy between the two vacancies reserved for Black candidates in permanent faculty positions and the 90 vacancies earmarked for people with disabilities.

In the research that we carried out within federal institutions of education, we saw that, in several cases, the percentage of vacancies reserved for Black candidates was applied in areas in which there were Black candidates approved, based on scores, permitting the fulfillment of the legally stipulated quota of 20%. For the majority of the other UFs and IFs that calculated a reserve of 20% of vacancies for Black candidates in relation to the total number of positions offered through a particular call, the criteria used to define the specific areas of slots allotted was the lottery system, carried out through a public hearing occurring prior to the call’s publication. In our understanding, this is the most adequate procedure, considering the method of dissemination (public hearing) and the fact that vacancies, although previously specified through publicized calls, are always and for diverse reasons subject to the risk of a lack of candidates for specific fields of knowledge.

Further related to the above-described scenario, it is important to reflect upon the reasons behind administrative practices that result in the publication of different calls for public examinations for faculty positions, each call with only one position per field of knowledge and announced at short interval (sometimes several calls come out within the same week). This constitutes another way of dividing up the vacancies and makes it absolutely impossible to comply with Law 12.990 (BRASIL, 2014), which stipulates that there must be at least three openings per call in order for affirmative action policies to be applicable. Under the circumstances, why not bring these different calls, with only one or two vacancies each, into just one in which a larger number of positions are offered and on the basis of which the 20% of positions reserved for Black candidates could be put into effect?

BETWEEN THE BEST OF INTENTIONS AND THE LIMITS OF RACISM

In an earlier text, we discussed and problematized the scant number of Black professors within the federal university system (MELLO; RESENDE, 2019), pointing to the high rates of under-reporting of race/color among faculty (based on data furnished by the Higher Education Census, carried out by the National

Institute of Educational Research and Study (*Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira* (INEP)). The limited number of Black faculty in UFs and IFs stands in contrast to more recent tendencies toward the significant growth in the population of Black students in undergraduate programs at federal institutions of higher education and at the secondary school level, within IFs. Here again, we have relied on data supplied the INEP census, especially from the time Law n. 12.711 was approved (BRAZIL, 2012). The latter, known as the Law of Educational Quotas, reserved 50% of all vacancies to students whose basic education was done in public schools, also prescribing “subquotas” according to (dis)ability, income and race/color.

Given this scenario and although it has not been the object of our research, this may be an opportune moment to reflect upon the major causes underlying difficulties in the implementation of Law no. 12.990 (BRAZIL, 2014), in its general purpose of diversifying race/color profiles in civil service and, in particular, among faculty at federal educational institutions. Qualitative studies would certainly be a part of the theoretical- methodological path taken to find answers for this question, yet the racism that informs the institutional logics of the State bureaucracy that is a structuring element of Brazilian society would also prove a fundamental point of departure for understanding how white elites maintain their privileges. It is the latter social group whose members usually occupy positions of prestige within national academic and scientific fields, as well as within the country’s public institutions of teaching, research and extension.

New research should be able to promote deeper reflections on the potential intersections of the administrative difficulties in applying the law in question and on the institutional racism which often underlies racial blindness – the denial of racism and of the centrality of race/color as determinants of social structure – that tends to contaminate the processes of implementation, monitoring and evaluating public policies in Brazil and other parts of the world. Moreover, it becomes necessary to reflect upon possible reparation policies, considering that the great majority of federal universities and institutions did not fill the legally stipulated 20% of vacancies over the first five years that the law was in effect, which respectively represents 2.665 and 415 faculty positions which should have been awarded to Black candidates.

These reflections are particularly challenging in the face of social, political, cultural and economic juncture associated with the 2018 presidential, senate and gubernatorial political races in which debates on racism and other forms of discrimination and social exclusion took up unprecedented space, revealing a fractured society in which notions of democracy, justice and liberty were resignified within struggles between diverse social groups. The socio-cultural landscape that has emerged is one of the abolition of boundaries between physical and virtual worlds, the near-absence of limits between reality and fiction; of supposedly tenuous distinctions between truth, post-truth and personal truth and of previously unimaginable epistemic disputes between empirical evidence, ideologies disguised as moral imperative and conspiratorial theories.

Within such a universe, it is also important to reflect upon the possibilities of alliance between white and Black researchers for the construction of anti-racist

policies and practices, ones that do not underestimate the subalternizing force of racism nor romanticize the emancipatory potential of alliances between people of different races/colors. The geno(epistemo)cides associated with post-colonial Eurocentric logics are almost always present in the global south as well, defended by their elites and including intellectuals, as scholars such as Achille Mbembe (2019), Grada Kilomba (2019), Joaze Bernardino-Costa, Nelson Maldonado-Torres and Ramón Grosfoguel (2018), Walter Dignolo (2017), Aníbal Quijano (2009), Frantz Fanon (1952/2008), Stuart Hall (2003), Abdias Nascimento (2002, 1978), Guerreiro Ramos (1995, 1954) and Lélia Gonzalez (1988) have pointed out.

It seems equally promising to increase understanding of the current moment of the torn social, cultural and political fabric in Brazil, particularly with regard to the public disputes associated with social markers, axes of subordination and identity attributes linked to race and color. We must take full account of the symbolic and economic disputes that are a product of the relations between whiteness, structural racism, affirmative action and anti-racist policies. Among the works that inspire us in this endeavor are those of Ana Amélia de Paula Laborne (2014), Lourenço Cardoso (2014), Lia Vainer Schucman (2012), Liv Sovik (2014), Vron Ware (2004), Iray Carone and Maria Aparecida Silva Bento (2002).

Understanding the dynamics of this scenario and its potential short term development becomes particularly important if we consider that both Law no. 12.711 (BRAZIL, 2012) and Law no. 12.990 (BRASIL, 2014) were written up to be valid for a period of 10 years, defined, respectively, in the following terms:

Law no. 12,711/12:

[...]

Art. 7 Within a period of 10 years from the date of publication of this Law, the special program for the access of Black, brown, indigenous and students with disabilities to institutions of higher education, as well as students whose entire junior and senior high school education has been carried out in public schools, will be reviewed. (Clause redefined by established by Law no. 13,409, 2016) (BRAZIL, 2012)

Law no. 12,990/14:

[...]

Art. 6 This law enters into effect as of the day of its publication and will be valid for a period of 10 (ten) years.⁵ (BRAZIL, 2014, own translation)

5 In the original: "Lei n. 12.711/12:

[...]

Art. 7º No prazo de dez anos a contar da data de publicação desta Lei, será promovida a revisão do programa especial para o acesso às instituições de educação superior de estudantes pretos, pardos e indígenas e de pessoas com deficiência, bem como daqueles que tenham cursado integralmente o ensino médio em escolas públicas. (Redação dada pela Lei n. 13.409, de 2016) (BRASIL, 2012)

Lei n. 12.990/14:

[...]

Art. 6º Esta Lei entra em vigor na data de sua publicação e terá vigência pelo prazo de 10 (dez) anos. (BRASIL, 2014)

Furthermore, our attention is drawn to the fact that bills have already been presented to Congress, and particularly within the House of Representatives, that have as their goal a reversal in the judicial position on affirmative actions based on race/color, under the argument that previous legislation violates constitutional and order and “the meritocratic principle” as in the case of Bill n. 5,008, of 2016 which “establishes the application of *social quotes as the sole criteria for entrance into public universities, technical programs and civil service exams*” (our italics). We highlight the fact that the Federal Supreme Court has already taken a position on the constitutionality of racial quotas in the National University of Brasilia (UnB) and on the system that reserves vacancies on the basis of racial and ethnic criteria in selection processes for entrance into public institutions of higher education, in the form of the Ruling on the Non-compliance of Federal Precepts (*Arguição de Descumprimento de Preceito Fundamental* (ADPF) no. 186 (BRAZIL, 2012b). More recently, the court has manifested its position on the constitutionality of Law no. 12,990 (BRAZIL, 2014), in terms of the ruling on the previously-mentioned ADC no. 41 (BRAZIL, 2017).

As an example of the most recent initiative against affirmative action for Black persons in Brazil, we highlight Bill n. 1.443, from 2019, presented by congressional representative Dayane Pimentel (PSL/BA), whose article 1 expressly states that it “*hereby revokes Law no. 12.711, of August 29th, 2012, which legislates on admissions to federal universities and federal institutes of secondary technical education and establishes other measures*” (our italics). Considering the radical scope of the measure proposed, on March 29, 2019, the Human Rights Causcus of the National Council of Public Prosecutors (*Grupo Nacional de Direitos Humanos do Conselho Nacional de Procuradores-Gerais dos Ministérios Públicos*, which works at state and federal levels) and the Federal Attorney for Citizen’s Rights, through Joint Technical Note no. 1, publicly positioned themselves against the suppression of racial quotas for access to public universities and technical education institutions, in the terms of the above-mentioned bill. In this context, on April 2, 2019, Bill no. 1,443/2019 had its proceedings interrupted at the request of the plaintiff; March 19, 2019, the same parliamentarian had already presented Bill no. 1.531/2019, which “*alters arts. 3, 5 and 7 of Law no. 12,711, of August 29, 2012, to remove the racial sub-quota mechanism for admission to federal institutions of higher education and technical education at the secondary school level*” (italics ours). In the new version of the bill, the congresswoman’s objectives seem to remain unchallenged: not to end affirmative actions for admission to federal educational institutions in their entirety, but to suppress racial quotas, albeit maintaining other criteria.

Initiatives such as these seem to ignore the long trajectory of over 20 years of studies revealing the positive impacts of affirmative action that targets Black students within undergraduate education in Brazilian public universities ⁶

⁶ With regard to affirmative action in post-graduate programs, and with the exception of pioneering works such as those of José Jorge de Carvalho (2003), studies and publications on the topic are more recente. Particularly noteworthy are the works of Ana Christina Vanali and Paulo Vinicius Baptista da Silva (2019), Anna Carolina Venturini (2019), Anna Carolina Venturini and João Feres Júnior (2018) and the two-volume anthology put together by Amélia Artes, Sandra Unbehaum and Valter Silvério (2016a, 2016b).

and their repercussion in the construction of a less unequal and more inclusive society, as argued by scholars such as Márcia Marques de Carvalho and Fábio Waltenberg (2015), Marcus Eugênio Oliveira Lima, Paulo Sérgio da Costa Neves and Paula Bacellar e Silva (2014), Jocélio Teles Santos (2013) and Adilson Pereira dos Santos (2012).

At present, one of the main aspects of the debate on affirmative action for Afro-descendants continues to be the issue of how to prove whether persons actually belong to the groups that are benefitted. This matter surfaces in the genesis of almost all discussions on affirmative action based on race and color in Brazil, as of the end of the 1990s. While Law no. 12.711 (BRAZIL, 2012a) refers, in its Article 3, to “self-declaration” as a criteria for definition of who belongs to particular racial groups in a broad sense, Law no. 12.990 (BRAZIL, 2014), in its article 2, only paragraph, considers the possibility that there may be “falsehood” involved in self-declaration. In the event this occurs, the candidate is immediately eliminated from the selection process or has their admission as a civil servant annulled, and under some circumstances, may face legal prosecution.

Based on this legal measure, on April 6, 2018, the Ministry of Planning, Budget and Management (Ministério do Planejamento, Orçamento e Gestão (MPOG), issued Normative Ordinance no. 4, which “regulates the procedures of complementary external evaluation to accompany the self-declaration of Black candidates, for the purpose of filling vacancies reserved in federal civil service, under the terms of Law no. 12,990, of June 9, 2014”. Note that this ruling represents the materialization of the position stated in the aforementioned ADC no. 41, by the Supreme Court, which on June 8th, 2017 stipulated that:

The establishment of racial quotas of 20% of the vacancies offered, for positions and employment in civil service, in direct and indirect public administration, is hereby considered constitutional. *The use of subsidiary criteria of identification, alongside those of self-identification, is also legitimate, as long as in doing so, human dignity is respected and persons are guaranteed the right to defense.*⁷ (BRAZIL, 2017, p. 3, our italics, own translation)

To a large extent, this Supreme Court determination as well as the MPOG ordinance have been central arguments for the implementation of complimentary procedures that accompany self-declaration of race or color, not only in civil service exams but also in student admissions to undergraduate and graduate programs in public institutions of higher education, particularly in light of increasing complaints of fraud. The centrality that is still given today to effective proof of belonging to groups benefitted by racial quotas in

7 In the original: “É constitucional a reserva de 20% das vagas oferecidas nos concursos públicos para provimento de cargos efetivos e empregos públicos no âmbito da administração pública direta e indireta. É legítima a utilização, além da autodeclaração, de critérios subsidiários de heteroidentificação, desde que respeitada a dignidade da pessoa humana e garantidos o contraditório e a ampla defesa.”

the implementation of affirmative action for people of color leads us to one particularly important reflection, among others: the old rhetoric that it is not possible to know who is white or who is Black in Brazil – complicated particularly by the presence of those who are “brown”, and in that sense bring to bear a long history of racial miscegenation, reinforces the argument that affirmative action should not be exclusively directed to racial groups but rather to categories of “social vulnerability” such as low income and poverty. This latter position seems to be notably present in legal initiatives that attempt to make changes in Laws no. 12.711 (BRAZIL, 2012a) and no. 12.990 (BRAZIL, 2014), to transform “racial quotas” into “social” ones. For a more detailed discussion on the role of verification committees and the limits and possibilities of an approach that combines self-declaration and external evaluation of race and color, see among others, works by Alice Hertzog Resadori and Roger Raupp Rios (2018) and André Saddy and Stephan Bertollo Santana (2016/2017), the edited volume put together by Gleidson Renato Martins Dias and Paulo Roberto Faber Tavares Junior (2018) and the Report by the Interministerial Working Group on Racial Quotas (2018), the document that served as the basis for the aforementioned Ordinance no. 4/2018 of the MPOG (BRAZIL, 2018b).

IN SEARCH OF NEW INROADS

The major conclusion of this research is that federal educational institutions, including UFs and IFs, are far from being fully benefitted by the good intentions of Law no. 12.990 (BRAZIL, 2014), with regard to the diversification of the race/color profile of their faculty and teachers, given the failure to fulfill the required reserve of 20% of all civil service exam vacancies for Black candidates. Furthermore, the federal government has not carried out the legally-required monitoring and evaluation on the impact of the above-mentioned law on the composition of the corpus of federal civil servants, as demonstrated by the complete lack of public data on how quotas have or have not been implemented generally and in the specific case of teaching positions.

If, in demonstrating the distance between the number of vacancies stipulated by law and how this is played out in reality through the examinations held at federal educational institutions, our research is able to contribute to some extent to greater understanding of affirmative action for Black people in Brazil today, there are still many lacunae and unanswered questions that demand further research, such as those we list below:

1) What are the potential impacts of the presence of Black candidates, registered as quota system beneficiaries, on the dynamics of civil service examinations for teaching staff and faculty, considering – among other things – the structural and institutional racism that may even affect their evaluation and the selection process as a whole?

2) What are the percentages of self-declared Black candidates who have passed civil service exams yet are barred from taking their positions by evaluation

committees that claim their self-declaration as fraudulent, not recognizing them as Black?

3) What is the actual number of Black people actually approved in public examinations for teaching positions in federal institutions as quota candidates, as well as those Black professionals who are not disputing quota vacancies, and what are their areas of background, training and professional activity?

4) If the vacancies that are reserved for Black candidates have not actually been filled by them, what are the major barriers that have created this situation? Is it due to the lack of eligible candidates in specific areas, or their failing to pass the corresponding exams?

5) Has the quota for Black candidates been applied throughout the entirety of the examination and hiring process, or only for the vacancies that were announced in the initial call?

6) How has the hiring of Black faculty affected the administrative and academic dynamic of educational institutions, considering the racism that is a part of the ordinary life of internal faculty relations, as well as relations between faculty, students and technical-administrative staff?

It would also be relevant to follow debates in the Brazilian National Congress on the validity of Law no. 12.990 (BRAZIL, 2014), which is supposed to be upheld until 2024, as well as legal initiatives meant to revoke affirmative action laws based on race/color and/or their substitution by laws that are exclusively based on criteria of social vulnerability based on income levels.

Lastly, it is important to raise questions as to whether measures can be taken to change the situation that allows fulfilling existing legislation on quotas to be avoided. Moreover, in ideal terms, we can ask what can be done to repair the current situation in which over 3000 vacancies that were to have been reserved for Black teachers and faculty were lost to a general pool of candidates. Certainly these issues must be placed within the wider context of crisis that has currently hit the entire federal network of high school, technical, technological and higher education in Brazil in which the absence of institutional budgets to guarantee the quality functioning of Ufs and IFs is but the tip of the iceberg of a politically-organized project. The latter is in operation at national and international levels, and aims at devaluing scientific knowledge, basic and university education and teaching careers as a whole, and in particular those careers linked to federal civil service. This reality is a part of national and global disputes that are in turn connected to structural conflicts and struggles between groups who hold different perspectives and world views regarding freedom, justice, citizenship, and human rights – including the right to education and the need to combat racism and epistemicide.

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NOTE: Both authors contributed equally to the elaboration and revision of the above article.

HOW TO CITE THIS ARTICLE

MELLO, Luiz; RESENDE, Ubiratan Pereira de. Federal civil service examinations for university faculty and affirmative actions for racial equality. *Cadernos de Pesquisa*, São Paulo, v. 50, n. 175, p. 8-29, jan./mar. 2020. <https://doi.org/10.1590/198053146788>

Received on: SEPTEMBER 1, 2019 | Approved for publication on: NOVEMBER 14, 2019



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