

## **A. Introduction:**

1. In this report, the Black Coalition for Rights, and the Conectas Human Rights examine, succinctly, the fulfilling of some of the main international obligations of human rights of the Brazilian state, related to the creation and maintenance of affirmative actions for the black population of the country. We've analyzed, to a certain degree, the current situation of the rights to education and work of black and mixed-race people, starting from the previous exam of the Universal Periodical Review (Revisão Periódica Universal), that occurred in 2017.

2. Specifically, we indicate the urgency of continuation and strengthening of three affirmative actions that have received a lot of attention in the public debate last year: [i] The Racial Quotas Law on Technical Education on High School and on College (Law 12.711 of 29<sup>th</sup> of August of 2012), [ii] The Racial Quotas Law on Public Service (Law 12.990, of 9<sup>th</sup> of June of 2014) and [iii] the affirmative actions on the private sector (exemplified by a recent and notorious case). Such actions align with international commitments, such as the Interamerican Convention against Racism, Racial Discrimination, and Correlated Forms of Intolerance, ratified by the Brazilian State only in 2021. At the end of the document, we've elaborated questions and provided a series of specific follow-up recommendations and oriented toward the approached racial affirmative actions.

3. In a quite general way, racial affirmative action consists of a set of public and private policies that try to promote equity of rights and opportunities to groups that were historically segregated and excluded in societies shaped by modern slavery.<sup>1</sup> They are known as policies of temporary character while they don't achieve their due objectives, the surpassing of racial inequality, which involves a demand for historical reparation. In Brazil, there are measures that aim to surpass the impacts of racial discrimination, and segregation above else, against black and indigenous populations, "increasing the participation of minorities in the political process on the access to education, health, jobs, general goods, social protection networks, and/or of cultural acknowledgment"<sup>2</sup>

4. During the third cycle of the RPU, Brazil received and accepted approximately more than 10 recommendations that might be used in the facing of racial discrimination against black people and related to guarantee of access to positions and spots in institutions of the Brazilian society. Following the evaluation of a series of legal sources news and documentation of the human rights approach in all the subsequent sections of this submission will try to demonstrate that Brazil did not fulfill the accorded recommendations. At the same time, there were found sharp gaps in implementation, considering above all the moments of increase in inequality during the COVID 19 pandemic.

5. The Black Coalition for Rights and the Conectas Human Rights are profoundly concerned with the inaction of the Brazilian states in what surrounds the monitoring and improvement of these

---

<sup>1</sup> <https://dspace.unipampa.edu.br//handle/riu/4348>

<sup>2</sup> <https://pp.nexojournal.com.br/glossario/A%C3%A7%C3%B5es-afirmativas>

affirmative actions, especially if considered authority acts, including the acts of governmental parties to weaken such affirmative policies.

6. The Black Coalition for Rights and the Conectas Human Rights are even more alarmed with the context of the increase of social inequalities and exclusion of minority groups through history. Structurally these dynamics make it difficult and weaken the ingress and permanency of black people in universities and on the job market as well.

7. This document is divided into other five sections, beyond the attachment, in which there is a matrix of recommendations that we suggest being made to the Brazilian state, which are:

- In Section B, we analyzed some of the international rules to be implemented with more cooperation from the side of the authorities.
- In Section C, we evaluate the current situation of the Racial Quotas law.
- In Section D, we focused on the Racial Quotas law on public service.
- In Section E, we present a related case to racial affirmative actions in the Brazilian private sector.
- In Section F, we finalize with some recommendations that are to be suggested to Brazil based on the analysis made through this contribution.

## **B. Acceptance of International Rules:**

8. Considering that racial affirmative actions are necessary to the defense of human rights,<sup>3</sup> mainly of the population that has been socially excluded by the accounts of racist structures. From the historical struggles and the resistance of black, indigenous, and other movements, there is, on the scope of the international regime of human rights instruments that confirm the urgency of adoption of such policies. In the International Convention on the Elimination of All Forms of Racial Discrimination (1965),<sup>4</sup> in its first and second articles, we can see commitment related to the implementation of actions for surpassing social barriers that might come from negative discrimination. To monitor that there was the creation of the Committee on the Elimination of Racial Discrimination (CERD), an organization that follows and reviews the situation in these countries that are related to this important convention.<sup>5</sup>

9. Although on the third circle cycle of the RPU, Brazil has accepted the recommendation 136.21, which becomes clear that the Brazilian state should enhance its cooperation with the mechanisms of the organizations of the treaty, the country sent with a lot of delays, its report to be reviewed by

---

<sup>3</sup> <https://www.scielo.br/j/cp/a/3bz9Ddq8YpxP87fXnhMZcJS/?format=pdf&lang=pt>

<sup>4</sup> [http://www.planalto.gov.br/ccivil\\_03/decreto/1950-1969/D65810.html](http://www.planalto.gov.br/ccivil_03/decreto/1950-1969/D65810.html)

<sup>5</sup> <https://sur.conectas.org/afrodescendentes-como-sujeitos-de-direitos-do-direito-internacional-dos-direitos-humanos/>

CERD, not including the matters about inequality and the effects of the COVID 19 pandemic on the black population. In its report, submitted only in September of 2020, the Brazilian state prefers to discuss the facts that occurred only until the year 2017, avoiding themes like the ones that are related to the pandemic.<sup>6</sup>

10. Another delay related to international commitments refers to the delay in the implementation of the Interamerican Convention against Racism, Racial Discrimination, and Correlated Forms of Intolerance of 2013, which was only ratified in the year 2021. The lack of the implementation of this Convention that has come to have constitutional amendment power on the Brazilian legal system<sup>7</sup> indicates in part, a lack of commitment to recommendation 136.224, on which it is demanded exactly the protection of minorities against racial discrimination. Besides that, Brazil hasn't ratified or proclaimed the Interamerican Convention Against All Forms of Discrimination and Intolerance, which also offers, as shown in article 6, important subsidies to racial affirmative actions.

### **C. The Racial Quotas Law:**

11. Law number 12.711 of 29th of August of 2012<sup>8</sup>, commonly denominated as “Racial Quotas Law” is a very important conquest for the indigenous and black movements. Through these affirmative actions, it became institutionalized the reserve of half of the spots to ingress in universities and federal institutions of technical education of high schools all over the country. On the Racial Quotas Law, there is still a prevision of racial sub quotas for mixed-race, black, and indigenous people that have studied their high school years in public schools. Equally, there is a reserve of spots for people with physical disabilities that fit the socio-economic criteria of a family with an income equal to or inferior to 1,5 minimum wage per capita.

12. Although the affirmative policies in universities already have a history that goes back to 2002, the date of the first implementation of a system of spot reservation by the Rio de Janeiro State University (UERJ), we can comprehend that the Racial Quotas Law was a milestone for the institutionalization of racial affirmative action policies. Besides that, this law follows a trajectory of revindications and mobilization of black movements on the international scope, namely by the Conference of Durban in 2001, the ONU III World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance against racism and hatred towards people of other nationalities.<sup>9</sup>

---

<sup>6</sup> <https://www.cnnbrasil.com.br/saude/negros-morrem-40-mais-que-brancos-por-coronavirus-no-brasil/>

<sup>7</sup> <https://www.conectas.org/noticias/por-que-a-convencao-interamericana-contra-o-racismo-pode-e-deve-ser-incorporada-a-constituicao/>

<sup>8</sup> [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2012/lei/l12711.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12711.htm)

<sup>9</sup> <https://periodicos.ufv.br/RCH/article/view/3445>

<https://www.scielo.br/j/nec/a/P7jQbyjZbNLCfvRFFjgCkCp/abstract/?lang=pt>

13. The Durban Conference consisted of an international milestone for the acknowledgment of racism as a structural problem for various social inequalities that reach above else the black population: The resolutions that are present on the Durban platform materialized themselves on different fronts in Brazil. The IBGE (Brazilian Institute of Geography and Statistics), for example, started to use the criteria of self-proclaiming of color/race on the demographical census due to the influence of the reunion. Still on this path, organizations – public, private, and non-governmental – also started to register in a more systematic way data of color/race of their public, essential information to diagnose the racial inequality in education, public security, and other areas.

14. The creation of the Secretary of policies for the promotion of racial equality, in 2003, and the approval of the Racial Equality By-law (Law 12.288, 2010), in 2010 –mechanisms created from the Durban document –, are only two examples of the impact of the conference that goes beyond the quotas system in universities, having the aforementioned racial sub quotas. The conference impacted even the Brazilian foreign affairs policy with the creation of a program of racial affirmative action at the Itamaraty.

15. With the black women's protagonism, the Brazilian civil society was fundamental in the construction of these policies. The Durban Conference signaled changes such as the adoption of the word Afro-American on ONU (afrodescendente), showing that specific groups suffer from racism and discrimination.<sup>10</sup> In this sense, racial discrimination is approached in an intersectional and transversal way, in other words, there is the acknowledgment that race oppression is articulated together with gender, geographical location, social position, and other factors.

16. And started to claim that the States have a central role in the racism confrontation, demanding that the countries develop specific policies for black people in health care, education, security, and other areas. With Durban, it's considered slavery and people's traffic as slaves, crimes against humanity, and it's demanded historical reparation, introducing, on a global scope, antiracism as a central factor in the development of these countries.

<sup>11</sup>17. However, in the last years, we've seen attacks and regression attempts against these important conquests of the black population. Going against the recommendations 136.220, 136.139, 136.174, 136.152, 136.173, received on the UPR (RPU) in 2017, various authorities of the Brazilian government have turned against these racial affirmative actions. It was the case, of the current Minister of Education, Milton Ribeiro,<sup>12</sup> who in 2021 claimed that the quotas should not be racial, but only social, denying the structural racism in the Brazilian society. The same minister had already claimed that “the university should be for a few, in the sense of being useful to society. Responding to these statements, the Black Rights Coalition made a repudiation note to the “elitist character

---

<sup>10</sup> <https://sur.conectas.org/pautando-a-igualdade-racial-na-agenda-global-de-direitos-humanos/>

<sup>11</sup> <https://www.conectas.org/noticias/o-legado-da-conferencia-de-durban-para-o-brasil/>

<sup>12</sup><https://www.correiobraziliense.com.br/politica/2021/05/4923113-bolsonaro-volta-a-negar-racismo-e-diz-s-empres-questionei-a-questao-de-cotas.html>

view of the college education” minister, that shown his racist vein against the 400% raise, according to IBGE, in the presence of male and female black students between the years of 2010 and 2019.<sup>131415</sup>

18. Going against the recommendations 136.220, 136.139, 136.174, 136.152, 136.173, received on the UPR (RPU) in 2017, we can identify the legislative proposals that aim to end the quotas system for ingress in universities, thus revoking, the Racial Quotas law, or attacking specifically the racial sub quotas. In monitoring that we’ve made with various organizations, we’ve noticed the increase of legislative projects in the National Congress with the means to modify this important political affirmative. Although the Racial Quotas law has no expiration date and the Supreme Federal Court (STF) has already made it constitutional, various authorities are trying to revoke the racial sub quotas, attempting to use the pretext of review that is present in article 7 of the law, that consists, only, in an update for enhancement against the changes of the national context after ten years past its publication.<sup>16</sup>

19. On the Executive scope, we’ve seen the inaction and the management problems of the current Ministry of Education related to the National High School Exam (Enem), an exam used to compete for spots in federal universities and some others from states. Through Enem, the students may use their grades to apply to wide competition spots or quotas on the Unified Selection System (SiSU), in the program University For All (ProUni), and on the Student Financing Fund (FIES).

20. However, facing the failures of the Ministry of Education in the past generations, some issues compromised not only the full realization of Enem but also its postponement, the drastic decrease of registrations, and flaws in the exam corrections. There were complaints of intervention attempts on Inep, the organization responsible for the exam’s elaboration. In 2020, flaws in the logistical planning of Enem involved an index of 51% of abstention on the first day of the exam and 55% on the second day of the exam.

---

<sup>13</sup> <https://educacao.uol.com.br/noticias/2021/11/17/cota-racial-social-ministro-educacao.htm>

<sup>14</sup> <https://g1.globo.com/educacao/noticia/2021/08/10/ministro-da-educacao-defende-que-universidade-seja-para-poucos.ghtml>

<sup>15</sup> <https://coalizaonegrapordireitos.org.br/2021/08/11/nota-coalizao-negra-milton-ribeiro-ministro-educacao/>

<sup>16</sup> <https://pp.nexojornal.com.br/opiniao/2022/O-Congresso-e-a-Lei-de-Cotas>.

[https://docs.google.com/spreadsheets/d/1E7Xb3Eikm\\_-vIuTj79SicplIYtI\\_sOtjCnAnB\\_v5eXM/edit#gid=94729566](https://docs.google.com/spreadsheets/d/1E7Xb3Eikm_-vIuTj79SicplIYtI_sOtjCnAnB_v5eXM/edit#gid=94729566)

<https://www.conectas.org/noticias/igualdade-o-que-muda-no-brasil-com-o-reconhecimento-da-constitucionalidade-das-cotas/>

<https://www.camara.leg.br/noticias/850137-projeto-acaba-com-cotas-baseadas-em-cor-ou-raca-nas-universidades/>

<sup>17</sup>21. Even though education is a fundamental right, as it is written in the Brazilian Federal Constitution, its breach has been recurrent, above all when we talk about the black population. The 2021 Enem was the withier and more elitist of the last ten years. According to the Folha de São Paul newspaper, “[A] drop on the registration is a reflex of the Bolsonaro government in removing the fees exemption of whom did not take the past exam, made at the moment of the highest peak of pandemic in Brazil. This resulted in the lowest percentage of black people registering for the exam, which is the way in for the candidacy to the previously mentioned spots.<sup>18</sup>

22. Therefore, it’s become clear that recommendation 136.168 was not contemplated, because, for it to be implemented it’s essential the presence of black people in the candidacy and ingress of the Brazilian universities. Besides that, the COVID-19 pandemic, the government flaws, and the economic flaws caused severe problems with access to education, denying many people the conditions to go on in their studies. According to the research of Cebrap Afro about the situation of the students on online teaching during a pandemic period, “[N] in High School, the percentage of mixed-race students that had no access to cell phones with an internet connection (14%) it’s more than the double of those of white students (6%).<sup>19</sup>

23. Again, related to the Racial Quotas law, we can indicate that the State is failing in monitoring properly their advances aiming to enhance this important mechanism. According to the analysis of Luiz Augusto Campo and Márcia Lima, specialists on the theme: “Although the Racial Quotas law has established in its text the need to organize a series of evaluation researches until 2022, practically there were no efforts in that regard on the last governments. On the contrary, many forums and initiatives created to such end were discontinued.<sup>20</sup>

24. This indicates the non-implementation of the recommendation 136.220 since the Brazilian State has not guaranteed the procedures of monitoring for the improvement of the quotas on education, with the loss of the validity of the Committee of Follow-up and Evaluation of Spots Reservation. It lacks systemized data for an evaluation that updates and comprehends the situation of the beneficiaries of the affirmative policies. Various researches pointed out that the Racial Quotas law

---

<sup>17</sup><https://www.brasilefato.com.br/2020/01/28/falhas-no-enem-nao-sao-um-acidente-de-percurso-aponta-especialista>

<https://www1.folha.uol.com.br/educacao/2020/01/mec-erra-em-notas-do-enem-e-diz-que-vai-corriger-problema.shtml>

<https://g1.globo.com/df/distrito-federal/noticia/2021/11/19/crise-no-inep-servidores-reunem-denuncias-de-assedio-e-intervencao-e-entregam-ao-tcu-e-cgu.ghtml>

<https://www.correiobraziliense.com.br/brasil/2021/11/4964413-servidores-do-inep-tem-dossie-com-denuncias-de-assedio-e-interferencia-no-enem.html>

<https://congressoemfoco.uol.com.br/temas/educacao/senador-quer-que-ministro-da-educacao-explique-falhas-no-enem-ao-senado/>

<sup>18</sup><https://www1.folha.uol.com.br/educacao/2021/09/enem-2021-e-o-mais-branco-e-elitista-da-decada.shtml>

<sup>19</sup><https://cebrap.org.br/wp-content/uploads/2020/11/Informativo-3-As-desigualdades-educacionais-e-a-covid-19-.pdf>

<sup>20</sup><https://promocaodedireitoshumanos.dpu.def.br/%eF%bf%bcnota-tecnica-sobre-o-monitoramento-das-politicas-afirmativas-de-cotas-raciais-nas-instituicoes-federais-de-ensino-superior-nos-termos-da-lei-12-711-2012/>  
<https://pp.nexojornal.com.br/opiniao/2021/Duas-d%C3%A9cadas-de-cotas-conquistas-e-desafios>

has been of great importance to the democratization of access to a college education, but there are still some challenges to surpass, demanding a more systematic following-up by the State, as well as resources for the education, that had a significant drop on the last six years, involving the Budget Ceiling, that has frozen the social investments.<sup>21</sup>

#### **D. Racial Quotas law on Public Service:**

25. Another racial affirmative action that has been under the spotlight it's the so-called Racial Quotas law on the Public Service (Law 12.990, of June 9<sup>th</sup> of 2014), which has a reserve of 20% of the Civil Service Examination spots for effective position and Civil Service Jobs on the scope of the federal public administration to black people. Differently from the law 12.711/2012, this presents, in its text, a deadline, losing its validity in 2024, in case it's not renewed by the National Congress. However, according to the technical note elaborated by the Union's Public Defender (DPU – Defensoria Pública da União), there are no sufficient mechanisms of monitoring to follow up on the results of the law, preventing the scouting of the fulfilling of its objectives. Thereby, the technical note recommends the renewal of this affirmative action policy. The non-fulfilling of this has taken it to a non-implementation of the recommendations 136.48, 136.150, and 136.222 received in 2017 to ensure the continuity of policies of promotion of ethnical-racial equality<sup>22</sup>

#### **E. Racial Affirmative Actions on the Private Sector:**

26. According to the data of the Inter-union Department of Statistics and Social economics Studies (IDIEESE – Departamento Intersindical de Estatísticas e Estudos Socioeconômicos), in the survey “Brazil: The insertion of the black population and the job market” of 2020, the black people are the ones with less income and the lowest rate in management positions. Besides that, presents the biggest rate of unsafe jobs and underutilization.<sup>23</sup>

27. Therefore, it becomes clear the necessity of affirmative policies on the private sector scope for black people to access positions with greater income and with due legal protection. In this regard, many institutions have tried, in part, to install procedures that would soften racial inequality. One

---

<sup>21</sup><http://www.consultaesic.cgu.gov.br/busca/dados/Lists/Pedido/Item/displayifs.aspx?List=0c839f31%2D47d7%2D4485%2Dab65%2Dab0cee9cf8fe&ID=1613037&Web=88cc5f44%2D8cfe%2D4964%2D8ff4%2D376b5ebb3bef>

[https://pp.nexojornal.com.br/opiniao/2022/As-universidades-federais-depois-das-cotas?utm\\_medium=Email&utm\\_campaign=cotaspp&utm\\_source=nexo](https://pp.nexojornal.com.br/opiniao/2022/As-universidades-federais-depois-das-cotas?utm_medium=Email&utm_campaign=cotaspp&utm_source=nexo)

<https://www.extraclasse.org.br/educacao/2021/11/educacao-publica-perdeu-quase-40-do-orcamento-em-seis-anos/>

<sup>22</sup><https://promocaoedireitoshumanos.dpu.def.br/nota-tecnica-sobre-os-relatorios-da-secretaria-nacional-de-politicas-de-promocao-da-igualdade-racial-snpir-acerca-do-monitoramento-e-avaliacao-da-politica-de-cotas-no-servico-publico-federal/>

<sup>23</sup> <https://www.dieese.org.br/outraspublicacoes/2020/graficoNegros.html>

case of many equally illustrative was the trainee program of the company Magazine Luiza that was created for young black people. This racial affirmative action for the promotion of equity, in the work environment, was the target of much public criticism and a lawsuit filed by the DPU (Public Defender), a federal organization. Several organizations of the civil society have manifested themselves in defence of affirmative actions in the private sector, indicating that they don't consist of negative discrimination.<sup>24</sup>

28. Attacks promoted by authorities against actions such as these prevent the implementation of the recommendations 136.150, 136.38, 136.151, 136.149, and 136.133. Because such recommendations aim to stimulate the efforts for the access, training, and inclusion of more black people and other minority groups on the job market and in leadership positions. The criticism of such racial affirmative actions ended up introducing a racist posture of denial of racism as a structural problem in Brazilian society.<sup>25</sup>

#### **F. Suggested Recommendations to the Brazilian State:**

- Ratify the Interamerican Convention Against All Forms of Discrimination and Intolerance, aiming especially the fulfilling of article 6.
- Extend the validity deadline of Law 12.990/2014 (Racial Quotas law on the Public Service);
- Enhance the mechanisms of monitoring and evaluation of racial affirmative policies, looking to guarantee the public access to the data and reports for a review that enhances such policies;
- Widen and strengthen the mechanisms of Law 12.711/2012 (Racial Quotas law on universities and in federal institutions of high school technical education);
- Stimulate more racial affirmative actions in the private sector;
- Reject legislative proposals that aim to revoke or weaken the Racial Quotas law as a whole or the devices of racial sub quotas;
- Implement, truly, the Interamerican Convention Against Racism, Racial Discrimination, and Correlated Forms of Intolerance on the public policies of the country.

---

<sup>24</sup><https://www.conectas.org/noticias/organizacoes-manifestam-apoio-a-magazine-luiza-em-repudio-a-atos-racistas/>

<sup>25</sup>

[https://coalizaonegrapordireitos.org.br/wp-content/uploads/2020/10/Nota-DPU\\_-CoalizaoNegra.docx.pdf](https://coalizaonegrapordireitos.org.br/wp-content/uploads/2020/10/Nota-DPU_-CoalizaoNegra.docx.pdf)