

# Social participation in public policy councils in the “Bolsonaro era”: The case of the National Council for the Rights of Children and Adolescents

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## Resumo

Neste artigo objetivo analisar os caminhos assumidos pelo controle social na “era Bolsonaro”, em especial no estudo de caso do Conselho Nacional dos Direitos da Criança e do Adolescente (Conanda). Com base em pesquisa bibliográfica, documental e entrevistas, analiso as estratégias políticas, discursivas e jurídicas utilizadas pelo governo federal para desestruturar a institucionalidade democrática advinda com a Constituição Federal de 1988, sobretudo após edição do Decreto n. 9.759/2019 e suas justificativas alicerçadas em uma retórica de polarização política (“despetização”) e “falsa oposição” entre democracia participativa e gestão das políticas públicas. Posteriormente, faço uma análise das situações vivenciadas no Conanda, entre 2019 e 2021, com a produção de um conjunto de estratégias de cunho moral, administrativo e jurídico. Em termos morais, usam-se repertórios discursivos difundidos em redes sociais para desqualificar moralmente as representações da sociedade civil presentes no Conanda. No âmbito administrativo, o Ministério da Mulher, da Família e dos Direitos Humanos faz uso de uma série de impasses administrativos que afetam intencionalmente a atividade-meio do Conanda, provocando sérios prejuízos a sua atividade-fim, isto é, ao próprio controle social. Por último, no aspecto jurídico, a publicação do Decreto n. 10.003/2019 trouxe retrocessos participativos ao Conanda, os quais foram alvo de julgamento no Supremo Tribunal Federal, que, apesar de ter colocado freios judiciais a boa parte dos ímpetus autoritários do governo, não anulou algumas amarras normativas do Decreto que têm, até hoje, provocado um impasse estrutural na capacidade de incidência política da sociedade civil.

## Palavras-chave

Conselhos de Políticas Públicas. Controle Social. Democracia. Governo Bolsonaro. Conselho Nacional dos Direitos da Criança e do Adolescente.

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## Abstract

This article aims to analyze the paths taken by social control in the “Bolsonaro era,” especially in the case study of the National Council for the Rights of Children and Adolescents (Conanda). Based on bibliographic, documentary research and interviews, I analyze the political, discursive and legal strategies used by the federal government to destructure the democratic institutionality arising from the Federal Constitution of 1988, especially after the issuance of Decree n. 9,759/2019; and its justifications based on a rhetoric of political polarization (“dePTization”, i.e., undoing the actions of PT, the Workers’ party”) and “false opposition” between participatory democracy and public policy management. Subsequently, I analyze the situations experienced at Conanda between 2019 and 2021, with the production of a set of moral, administrative, and legal strategies. In moral terms, discursive repertoires disseminated on social networks are used to morally disqualify the representations of civil society present in Conanda. In the administrative sphere, the Ministry of Women, Family and Human Rights uses of a series of administrative deadlocks that intentionally affect Conanda’s support activities, causing severe damage to its core activity, that is, to social control itself. Finally, in the legal aspect, the publication of Decree n. 10,003/2019 brought participatory setbacks to Conanda that were the subject of a trial in the Federal Supreme Court, which, despite having placed judicial brakes on much of the government’s authoritarian impulses, did not annul some normative ties of the Decree that have, to this day, caused a structural impasse in civil society’s capacity for political advocacy.

## Keywords

Public Policy Councils. Social Control. Democracy. Bolsonaro Government. National Council for the Rights of Children and Teenagers.

## Introduction

For the last 10 years, I have been constantly following public policy councils, largely due to my professional work in the fields of professional training of the Rights Guarantee System (SGD)<sup>2</sup> and research related to the planning and monitoring of public policies, with special emphasis on the rights of children, adolescents, and young adults<sup>3</sup>.

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<sup>2</sup> This expression, whose acronym is SGD, represents a set of public institutions and social entities committed to the promotion, protection and/or social control of the rights of children and adolescents. The legal regulation is contained in Conanda Resolutions n. 113 and 117 of 2006.

<sup>3</sup> On the subject, see: Oliveira (2013, 2014, 2015, 2016, 2017, 2018).

The observation that the beginning of the “Bolsonaro era” marks a critical change in public policy councils is not exaggerated or partisan. Indeed, since these mechanisms of social participation in public management were instituted in their current format — with the advent of the Federal Constitution of 1988 — it would be an exaggeration to say that they had never been threatened or disputed by different interest groups to serve purposes sometimes contrary to their constitutional objectives. What comes with the administration of Jair Bolsonaro (Liberal Party/PL) is something different in the intensity of anti-democratic radicalism, in which the right to participation becomes hatred towards participation.

For this reason, the objective of this work is to outline a certain “history of the present” including the main political, institutional, and legal movements related to the management of the National Council for the Rights of Children and Adolescents (Conanda), against the backdrop of the broader debate on the status of public policy councils in the “Bolsonaro era”. Additionally, from there, also considering the debates on the conditions of democracy and social participation.

When I say “history of the present,” I want precisely to highlight the events that continue to be produced concerning the theme and the subjects of the research, which also places me in a political-academic position of seeking to reflect upon the photography of the current conjuncture. In this regard, I work based on the methods of documentary and bibliographic research, as well as interviews with members of civil society organizations that have been (and still are to this day) fully immersed in these disputes.

What I propose is a reflection based on a case study (Conanda) to problematize our democratic (mis)routes and the strategies used to deconstruct and reconstruct the meanings of social control in the Brazilian State. At first, I will address some theoretical and legal aspects of social control, seeking to highlight its importance for the construction of democracy in Brazilian society, in addition to pointing out the general context experienced during the Bolsonaro era. Then, I will make a more detailed analysis of the case that occurred in Conanda, in order to propose an inductive approach to situations that have certainly been experienced in many other collegiate bodies.

## 1. “We cannot be held hostage by councils”: From the rights to the hatred towards participation

The adoption of an institutional architecture of participatory management for political deliberations is an indelible mark of the Federal Constitution of 1988 and the social desires from the period of redemocratization of Brazilian society. The sharing of the administration power of the “public thing” (*Res-publica*) with subjects from different interest groups in society is based on the constitutional precepts of citizenship (Art. 1, line II) and social participation in the planning, implementation and monitoring of public policies (Art. 194, line VII, Art. 204, line II, Art. 206, line VI, Art. 227, par. 7, among others) (OLIVEIRA, 2019a). This is in order to establish, at least at the formal level, part of the institutional paths for the democratic control of the State.

For Raichelis, the social and constitutional debate consolidated the understanding that “councils are important channels for collective participation and the creation of new political relations between governments and citizens and, above all, for building a process of permanent public dialogue and deliberation” (2015, p. 176). Parity and deliberative councils are thus conceived as a strategic mechanism for social control over public policies and sharing of power between the State and the organized civil society. And, consequently, for the very guarantee of democracy.

Despite the constitutional innovation of democratic institutionalism, Oliveira (2019a) and Raichelis (2015) emphatically recognize the existence of experiences prior to the Federal Constitution of 1988, both in civil society – such as the community councils and popular councils, created in the 1970s and 1980s – as in the State itself, such as the National Environment Council, which emerged in 1981, and the National Education Council, whose first formulation dates back to 1911. In these cases, the “council model” of political deliberation had limitations in terms of State institutionalism and, therefore, in the ability to influence the political agenda, or social representativeness, since they had few or no members outside the State bureaucracy<sup>4</sup>.

In any case, with the new social, institutional and legal scenario marked in the constitutional paradigm of the redemocratized society, comes the

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<sup>4</sup> Raichelis (2015) also notes the existence of the “council format” in several historical international references, such as the French Revolution in 1789 and the councils of the Paris Commune (1971), as well as the institution of the *soviets* (from *soviète*, which means council in Russian) in the Russian revolutions of 1905 and 1917.

fructification of the “council model” in various areas of public policies, at all levels of public administration. According to Instituto de Pesquisa Econômica Aplicada [Institute for Applied Economic Research] (IPEA), which surveyed the profile and performance of the members of many of these national public policy councils:

[t]he number of national councils has increased considerably since the early 1990s. While between 1930 and 1989 only five national councils were created, between 1990 and 2009, 26 more councils were added, in view of the dissemination of the idea of expanding participation in the post-FC/1988 public policy formulation process (2013, p. 09).

It is necessary to emphasize, as it may be drawn from the timeline highlighted by IPEA (2013), that the national public policy councils were created or reformulated during administrations of right and left political parties. Therefore, and even aware of the difficulties and disputes that occurred in each national political scenario, the constitutional principle was adopted to expand the range of subjects, themes and interests included in the political arena of the “council model.”

Certainly, the “rigging” [T.N.]<sup>5</sup> or the co-optation of councils by dominant political groups in local administrations, especially at the municipal level, has occurred since the beginning of the post-constitutional life of these collegiate spaces, but never in the sense of confronting their participatory architectures and democratic legitimacies. More than pointing out the “bankruptcy” of such model, these facts precisely indicate the difficulties in confronting the Brazilian authoritarian political tradition, existing in both the State sphere and other domains of social existence, such as marital and labor relations.

In 2014, there was a new institutional boost to social participation, with the issuance of Decree n. 8,243/2014, better known as the National Policy for Social Participation. It sought to provide legal regulation to forms of social participation in the institutional structures of the State, with the aim of strengthening and articulating the democratic instances “of dialogue and joint action between the federal administration and civil society” (BRASIL, 2014), as established in Article 1.

The reason here is qualitative — and not quantitative or economic — and it relates to the need to increase the spaces for social participation in the State

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<sup>5</sup> The term “rigging” here (the idea of “aparelhamento” in the original text in Portuguese) is used to denote political control, as in a patronage system.

sphere to ensure a greater alignment between the priorities of the political agenda and the diversity of opinions, interests, and realities of the subjects. Specially to reduce – even if it does not eliminate – the participation inequalities between different interest groups, especially those historically vulnerable.

The 2016 coup d'état, with the impeachment of President Dilma Rousseff (Workers' Party/PT) and the rise to the presidency of Michel Temer (Brazilian Democratic Movement/MDB), inflicted a first setback in social rights and social control, given the approval of the Constitutional Amendment Bill n. 95/2016 and the reduction of State support for the maintenance of many public policy management councils. This measure was justified by a neoliberal discourse based on State austerity with the public budget. At the same time, there was an ideological selectivity in the political agenda in prioritizing certain social agendas to the detriment of others. For example, early childhood and not children and adolescents, rural entrepreneurship and no longer traditional peoples and communities, or the repression of human trafficking and no longer handling – with the same weight of consideration – the preventive aspects and the assistance to victims.

Certainly, as Mariana<sup>6</sup>, a social activist and former advisor to Conanda, notes, "Bolsonaro's administration came to finalize a dismantling process that was already underway, which worsened a lot during the Temer administration, but accelerated dramatically under the Bolsonaro government" (interviewed on 07/14/2021). The process of democratization of the State's management and the social relations is in a difficult and contradictory dispute of political culture that, with Jair Bolsonaro (PL) coming into office, produced setbacks in a speed we have not seen since the democratic reopening of the Brazilian State. Since then, the political-discursive strategy of economic austerity has been combined with the moral disqualification of civil society representatives who are members of these councils, and the dissemination of the idea that "too much democracy" harms the management of the State and public policies.

This gained an anti-democratic institutional configuration on April 11, 2019, when Decree n. 9,759 was published, in which the Bolsonaro government proposed the mass extinction of collegiate bodies and the "guidelines, rules and limitations" for those that remained or were created in the context of the federal public administration. This Decree was partially reformulated by Decree n.

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<sup>6</sup> I use fictitious names to avoid undue exposure of the identity of the people interviewed.

9,812, of May 30, 2019, much as a result of the position of the Federal Supreme Court (STF), when the matter was judicialized<sup>7</sup>. Nonetheless, at its core, it remains the same: To extinguish most collegiate bodies, especially councils related to the different areas of public policy, and to define, for those that survive or are created, strict composition and operation rules; for example, the maximum duration of their meetings. This in addition to repealing the Decree on the National Policy for Social Participation.

According to a survey conducted by Saconi, Aleixo and Maia (2019), shortly after the deadline scheduled by the government to decide which collegiate bodies would be extinguished (June 28, 2019), of the 2,593 collegiate bodies existing in federal management at the time, only 1.2%, that is, 32 of them, were expressly maintained under direct federal public administration (and the majority had their composition reformulated to reduce or cancel the participation of representatives of civil society). A total of 996, or 38%, were preserved, those linked to federal educational institutions. Other 734 collegiate bodies were extinguished and 863 did not have their normative act of creation identified (if law or decree), pending a final decision.

On the same day of the publication of Decree n. 9,759/2019, the then Chief of Staff, Onyx Lorenzoni, went public to justify the act to society indicating that it was a conduct adopted by the government to give an end to the “remnants of PT administrations, with distorted views and ideological bias, which do not represent the totality of society” (apud CONFETAM, 2019). Later, it was the president, Jair Bolsonaro (PL), who expressed the intention to “streamline the councils, extinguishing the vast majority of them so that the government can function. We cannot be held hostage by councils, many of them formed by people appointed by other governments” (apud SHINOHARA; MAIA, 2019).

The discursive shift proposed by the public authorities, from the political to the moral sphere, establishes the disqualification of the people and social entities they represent and invokes an alleged “swelling” [T.N.]<sup>8</sup> of social

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<sup>7</sup> Although the STF, in an injunction issued on June 12, 2019, indicated by a majority of the justices that this presidential act (the Decree) could not affect the public policy councils established by federal law (since that was the responsibility of the National Congress, and it was only up to the president to extinguish collegiate bodies created by decrees and normative acts inferior to these), the fact is that the maintenance of this normative instrument, even after the limitations imposed by the STF, allowed the federal government to perform acts of mass extinction of these bodies with little or no public justification of the reasons related to the decisions made, in addition to stopping the functioning of public policy councils and changing the focus of its members, from social control to lobbying public authorities, to ensure that their bodies survived the announced cuts.

<sup>8</sup> By using the term “swelling” (“inchaço”, in the original text in Portuguese) the authors aims to convey that allegedly there is overparticipation of society, there is an alleged negative

participation in state institutionality caused by the PT federal administrations. Thus, the “council model” and the other formats of collegiate bodies are questioned and, therefore, brought to a different level of dispute. It is no longer a discussion about rights and democracy, but privileges, costs, and ideologies. The right to participation is transformed into a hatred towards the participation of interest groups that are contrary to the hegemonic political position. And there lies the anti-democratic ideology of opposing the efficiency of public management to democratic institutionality, bringing back, as a positive aspect, the authoritarian tradition of the national political culture. As Mariana summarizes: “in fact, they hate participation and social control; only this is coming into effect using the same network that we used to expand; they use it, they are deconstructing it and building a new focus to eliminate the processes.”

I followed more directly the institutional changes caused by Decree n. 9,759/2019 in: Conanda, the National Youth Council, the National Council for Combating Human Trafficking (Conatrap), the National Council for Drug Policies (Conad), and the National Environment Council (Conama)<sup>9</sup>. Of these, I address below the trajectory experienced by Conanda between 2019 and 2021.

## **2. The disputes at Conanda in the “Bolsonaro era.”**

### **2.1. A brief history of Conanda**

The legal-normative change of the Irregular Situation Doctrine to the advent of the Comprehensive Protection Doctrine became effective with the promulgation of the Federal Constitution of 1988 and the Statute of the Child and Adolescent (Law 8,069/1990) and with the ratification of the United Nations Convention on the Rights of the Child (via Decree n. 99,710/1990). This change was based on the formulation of strategic – and, I would say, paradigmatic – realignments of the administration of children’s and adolescents’ rights and public policies.

The first realignment was the creation of a specific body to serve as a “gateway” for the demands of children and adolescents, i.e., the Guardianship Council of Rights, whose members are drawn from society and whose functions have enabled the reduction of the concentration of power historically

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exaggeration in social participation.

<sup>9</sup> Some works, written in the urgency of the concerns and the outrage arising from each Decree formulated to modify the institutionality of the councils, are Oliveira (2019b, 2019c, 2019d, 2019e).



directed to the Childhood and Youth Court (formerly the Juvenile Court). The second was the municipalization of care, seeking to work on the decentralization of services from the local context, in order to also avoid the concentration of power in the federal government and to provide municipalities with the opportunity to manage public policies aligned with their socio-territorial contexts. The third was the implementation of the Council for the Rights of Children and Adolescents (Conselho dos Direitos da Criança e do Adolescente - CDCA), with a social control function and a parity and deliberative nature, in the three spheres of government, to ensure the democratization of planning and monitoring of policies, services and actions for children and adolescents.

These measures have become guidelines of the policy of care as per the Statute of the Child and Adolescent, within the scope of its Article 88, items I and II. And, according to Tavares (2010, p. 353), the strategic realignments should be read in combination with Articles 227, caput, and 204, item II, of the Federal Constitution, which prioritize the “political-administrative decentralization and the participation of the population in the formulation of policies and the control of actions at all levels of the federation, through representative organizations.”

On October 12, 1991, Conanda was formally established through Law n. 8,242, with the primary function of elaborating the general norms and control of the national policy of care for the rights of children and adolescents, among other measures. Since then, and until 2021, Conanda has drafted 226 resolutions – 224 officially published resolutions and two other resolutions (probably numbers 224 and 225)<sup>10</sup> intentionally not published by the current government (I will return to this point later). These resolutions regulate different issues related to the rights of children and adolescents, such as the organization of the Rights Guarantee System (Resolutions n. 113/2006 and 117/2006); the regulation on advertising for children and adolescents (Resolution n. 163/2014); and the guidelines for the intercultural care of children and adolescents from traditional peoples and communities (Resolutions n. 181/2016 and 214/2018).

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<sup>10</sup> These numbers are an assumption, because, in fact, since they have not been published, such resolutions do not yet have official numbers. But, given that on the government's own website (available at: <<[<https://www.gov.br/participamaisbrasil/https-wwwgovbr-participamaisbrasil-blob-baixar-7359>>](https://www.gov.br/participamaisbrasil/https-wwwgovbr-participamaisbrasil-blob-baixar-7359)>>; last accessed on: 10/05/2022) the order of resolutions skips from 223 to 226, explicitly displaying the absence of two resolutions, numbers 224 and 225, I have inferred that the content of the approved and unpublished resolutions may correspond to these numbers.

In addition, Conanda has organized and/or approved several intersectoral plans, such as the Ten-Year Plan for the Human Rights of Children and Adolescents (2011), the Socio-Educational Assistance Plan (2013) and the Plan to Combat Sexual Violence against Children and Adolescents (2000 and 2014), among others. Not to mention the organization of 11 National Conferences on the Rights of Children and Adolescents held since 1994 and the implementation of numerous actions of outreach and political advocacy with the Executive, Legislative and Judiciary branches, the Public Prosecutor's Office, as well as the media, companies, and society in general. These actions aimed to either defend the rights of children and adolescents against threats of setbacks and/or face situations of serious individual or collective violations of these rights, or propose greater engagement and progress in the political, normative, institutional and practical conformation of these institutions.

This is a brief history of what Conanda's various administrations have accomplished over these 30 years of existence. Its history testifies, as defined in the evaluation of the 25<sup>th</sup> anniversary of the Statute of the Child and Adolescent – which took place in 2015 – that this collegiate body and other CDCAs have enabled “a greater approximation between the State and society in their decision-making and social participation processes, insofar as these instances elaborate, deliberate and supervise, in the federal, state and municipal spheres” (CONANDA, 2016, p.91).

This does not mean that Conanda's trajectory had always been a story of laurels and achievements, quite the contrary. Over time, the difficulties to operationalize what had been standardized have become a constant challenge, showing how governments, even left-wing ones, ended up reducing or disregarding the constitutional guarantee of absolute priority for children and adolescents. In addition, the body had to fight many battles to prevent the implementation of structural setbacks for these rights, the most emblematic of which was the dispute for the (non) reduction of the age of criminal responsibility.

But in all these moments, the threat to the existence or functioning of Conanda has never been at stake, but rather the way it worked and the conflicts of interest within its collegiate and with other interest groups in society.

## **2.2. Disputes over children's rights and Conanda in the “Bolsonaro era”**

With Jair Bolsonaro (PL) coming into office, the agenda of children's and adolescents' rights takes on traits of retrogression and abusive uses. Still in the

election campaign, the then PSL candidate, now PL affiliate, brought among his main proposals the support for reducing the age of criminal responsibility, something he has always defended during his 30-year political career.

However, still months into his administration, the Bolsonaro government was the scene of several controversies about how it understands the management of children's and adolescents' rights. The president himself invites an increase in tourism with the explicit intention of supporting the sexual exploitation of women<sup>11</sup>, including children and adolescents, on the very eve of May 18, the National Day to Combat Sexual Abuse and Exploitation. Then, from the same president, we hear a statement about him being in favor of child labor, as a salutary measure for the "moral development" of the subjects<sup>12</sup>, thus demonstrating complete ignorance regarding the legal norms and the factual situation of deaths, serious occupational accidents, school dropout rates and the growth of poverty caused by child labor in Brazil. Similarly, the former Minister of Women, Family and Human Rights, Damares Alves, is part of a social organization that is investigated for crimes of illegal adoption and human trafficking of indigenous children (OLIVEIRA, 2021), not to mention that, during the 33<sup>rd</sup> Meeting of High Authorities on Human Rights and Chancelleries of Mercosur and Associated States, the former minister presented data, without scientific ground or census information, , claiming that 1,500 indigenous newborns are buried alive every year by their parents and relatives<sup>13</sup>.

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<sup>11</sup> "In criticizing 'gay tourism' in Brazil, President Jair Bolsonaro suggested that whoever wants to come to the country should 'feel free' to 'have sex with a woman.' In addition to provoking controversy with the LGBT community, the president's statement generated a reaction from state governments, especially in the Northeast. In the region, predatory tourism is associated with the sexual exploitation of children and adolescents" (MARIZ, 2019).

<sup>12</sup> Between 2019 and 2020, on at least three occasions, President Jair Bolsonaro publicly defended child labor as a measure of training or moral correction for children. See the journalistic articles of: Exame (2020), Marchao (2019) and Portal G1 (2019).

<sup>13</sup> "Speaking at a meeting with Argentinian lawmakers as part of a human rights encounter of countries of the Mercosur, Damares Alves said that 40 of the 305 Brazilian Indigenous peoples have the habit of killing some of their children. Finally, the minister indicated that another challenge for the government is to rescue the children that these Brazilian Indigenous peoples are going to kill" (DIÁRIO DE NOTÍCIAS, 2019). As the repudiation note of the Brazilian Anthropology Association (2019) points out, "[t]his is a statement has no foundation, no scientific basis whatsoever. How did the minister arrive at this number? How did she establish the relationship between the alleged number and the attributed cause of death? From what sources? According to data available in SESAI's Annual Management Report (RAG) for 2018, which covers the period from January 1, 2018 to September 30, 2018, extracted on January 10, 2019, of the 381 deaths recorded, 330 were children under one year of age whose cause of death was investigated and reported in the Indigenous Health Care Information System (SIASI). There is no death record related to the alleged cause pointed out by the minister. In the 2017 RAG, SESAI reports the occurrence of 472 cases of infant death (children under 01

This discursive repertoire of the President of the Republic and his former minister is the tip of the iceberg of what is happening in the management of the national policies of children and adolescents, in which there was also the – quite conflicting – mixture of militarists and neo-Pentecostal evangelicals in the conduct of the National Secretariat for the Rights of Children and Adolescents. Not to mention the explicit support to the Bullet Caucus [T.N.]<sup>14</sup> for the processing of the draft constitutional amendment that proposes lowering the age of criminal responsibility. All of this, however, can be claimed as part of the democratic game that brought to power the extreme right and its military-religious logic of understanding the rights of children and adolescents. The setbacks are evident and threaten democracy itself.

In the case of Conanda, we can classify the strategies to modify its design, composition and functioning on three fronts: Moral, administrative, and legal.

The dilemmas began with the difficulty in appointing civil society members for the collegiate body at the beginning of the Bolsonaro administration. The inauguration should have taken place in February 2019, but it was only scheduled for the following month, March, and after much pressure from civil society organizations. The justification for the delay from the Ministry of Women, Family and Human Rights (MMFDH), where Conanda is administratively based, was budgetary constraints.

In addition, as Samara, former Conanda councilor, emphasizes:

On the day we were taking office, there was an article in one of these newspapers that support the government talking about the per diem spree, as if civil society councilors were squandering the money received for per diem; the article claimed it was a very high amount, trying to mobilize public opinion against civil society (interviewed on 07/12/2021).

The journalistic article, published in the newspaper *Diário do Poder* (2019), indicates, right at the beginning, that “the government decided to end the spree of per diems and airfare for members of ministerial councils” and, later,

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year) in that year, with 321 deaths being investigated. The data was extracted from SIASI in January 2018, which covered 33 Special Indigenous Health Districts (DSEI). There is also no indication that [the deaths] occurred in the circumstance indicated by the Minister.”

<sup>14</sup> “Bancada da Bala” (or “Bullet Caucus, freely translated into English) is a term used in Brazil to refer to the Parliamentary Front comprised of politicians who defend the free purchase and possession of firearms by civilians and the flexibilization gun-related laws.

provides the example of Conanda, indicating that its “14 NGO leaders are squandering R\$ 40,000 away per month with their comings and goings”.

There is no consideration on the quality of the work developed by representatives of civil society in collegiate bodies, only the use of a rhetoric of moral disqualification of these subjects due to the expenses they represent to the public coffers. The discourse of economic austerity is combined with the denial of participatory democracy, which once again calls for the reinstatement of authoritarian tradition in politics.

The use of terms such as “spree” and “squander” also signals a discourse of trivialization of politics which targets subjects who differ from the interests of the federal government. The former minister, Damares Alves, used similar rhetoric herself when questioning in a video on her Facebook page the approval by Conanda, in November 2020, of a resolution that disciplines, among other things, the guarantee of conjugal visits for adolescents in socio-educational detention facilities. In the video, the former minister calls the measure a “motel for teenage boys and girls financed with public money” and an incentive to “statutory rape”<sup>15</sup>.

According to Fernandes et al. (2020), the use of social media during the Bolsonaro government, especially by the president himself and his ministers, takes place strategically to produce post-truth and disinformation discourses, in which scientific evidence and knowledge are replaced by alternative facts based on a revitalization of truth, the trivialization of data objectivity, and the supremacy of emotional discourse. This was accentuated in the period of the Covid-19 pandemic, given the federal government’s denialist stance in the face of the new coronavirus, but it was already present since the beginning of the Bolsonaro administration. Bolsonaro’s ministers, especially former minister Damares Alves, assumed as a discursive strategy to not only disqualify knowledge, but the subjects themselves and the organizations that produce this knowledge.

This shows the lack of knowledge about the presence of this same guarantee (right to conjugal visits for adolescents) in Law n. 12,594/2012, which established the National System of Socio-Educational Assistance, from article 67 to 70, and the fact this is a sexual right of adolescents<sup>16</sup>, whether they are

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<sup>15</sup> Excerpts taken from the speech of Minister Damares Alves in a video, in which she takes a stance on the issue, accessed on: <https://www.facebook.com/watch/?v=241640270716057> There is also a journalistic article from Revista Poder (2020) that highlights the minister’s arguments.

<sup>16</sup> The fact that the Criminal Code prohibits sexual relations with children and adolescents under the age of 14 (statutory rape) cannot be used as a measure to generalize the impediment of sexual activities between all

deprived of liberty or not. But, more than that, what I emphasize in this argument is the presence of the discursive strategy of moral disqualification of civil society representatives. Thus, the rhetorical use of the defense of the rights of children and adolescents is based on values of a conservative morality, resulting in the impediment of access to these rights by the subjects of rights in this case, that is, adolescents in detention facilities. In addition, and in retaliation for the approval of this resolution in Conanda, the MMFDH has not published the resolution in the Federal Official Gazette, and there is no predicted deadline for this publication<sup>17</sup>.

This act of not publishing the approval and, therefore, not making an internal Conanda resolution legally valid is just one of the administrative mechanisms adopted by the Bolsonaro government, and especially by former minister Damares Alves, to restrict the political legitimacy and regular functioning of Conanda.

On May 23, 2019, Conanda (2019) published a Public Note addressed to the MMFDH denouncing “the process of invalidating the functioning” of the body and specifying that this occurs through: (1) the extinction of technical positions, especially those linked to the monitoring of the National Congress and the updating of the council’s website; (2) the slow pace in the processing of the logistical procedures necessary for the organization of the 11<sup>th</sup> National Conference on the Rights of Children and Adolescents, which seriously threatened its execution at the time; and (3) “the [c]ontainment of resources from the National Secretariat for the Rights of the Child – SNDCA and the National Fund for the Rights of Children and Adolescents [FNCA], in the respective amounts of R\$ 6,356,886.00... and R\$ 3,618,896.00” (CONANDA, 2019, p. 01). This process was conducted by the MMFDH without any transparency regarding the reasons for performing the aforementioned acts nor any dialogue about alternatives to avoid reaching such a situation.

This type of contingency of resources for children and adolescents is similar to the one which occurred in 2016, shortly after the opening of the impeachment process against Dilma Rousseff (PT) by the National Congress, with the

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age groups of adolescents. Sexual rights require respect for autonomy and the guarantee of public policies to ensure access to information, contraceptive methods and appropriate conditions for the sexual development of adolescents, including those deprived of liberty.

<sup>17</sup> Another Resolution, probably number 225, approved on December 21, 2020, which provides the parameters for the implementation and operation of the modality of family foster care, within the scope of the Program for the Protection of Children and Adolescents Threatened with Death (PPCAAM), has also not been published, although it already has the electronic signature of the president of Conanda at the time,. It seems that institutional retaliation has become widespread for all resolutions issued by the body.

consequent (until then provisional) inauguration of Michel Temer (MDB) as the President of the Republic. Michel Temer instituted Ordinance n. 611/2016 that suspended, for 90 days, several expenses of the Ministry of Justice and Citizenship, where Conanda and SNDCA were simultaneously housed. The Federal Prosecutor's Office for Citizens' Rights (PFDC), part of the Federal Public Prosecutor's Office (MPF), requested information on how the activities of Conanda and the autonomy of FNCA would be maintained, emphasizing, in the end,

that children and adolescents are absolute priorities, as per Article 227 of the Federal Constitution of 1988, and that it is the responsibility of the family, the society, and the government to fully protect this segment of the population – as determined by international regulations, such as the Convention on the Rights of the Child (MPF, 2016).

In 2019, the PFDC had to demand information from the MMFDH on the reasons why SNDCA convened the June meeting of the Conanda Collegiate without guaranteeing support for airfare and per diems to members of civil society residing outside Brasília, in violation of the provisions of "Law 8,242, of October 12, 1991, Article 1, § 2, [which] establishes that the technical-administrative-financial support necessary for the functioning of CONANDA is the responsibility of the Executive Branch" (MPF, 2019).

In 2020, already during the Covid-19 pandemic, the situation remained the same, as Samara reports:

In 2020, we had many problems regarding the executive secretariat (of Conanda). There were three people who filled the position; one passed it to another and then to another; and they put themselves at the service of the minister and not at the service of the council. An exceedingly small team, unable to do the work, comprised by overloaded servers who do not have the qualification to develop the tasks required of them. In addition, they took Conanda's website down... without prior notice and with the excuse that the federal government was standardizing the websites... but a lot of information was left out [of the new website] and until today it has not been updated. A lot of problems with the preparation of minutes... several minutes were not prepared... On the website they only have the signature of the executive secretary because they were not approved [in Conanda's plenary session], because [their content] had inaccuracies in the deliberations and it was not possible to sign [the minutes] that way. The resource that the ministry had to pay for the functioning of the executive secretariat in 2020 was not spent, not a

single penny; it was 50,000, a small amount, but it was still not used. In addition to the problem with freezing the resources from fund, which is a remarkably high value, and frozen... (interviewed on 07/12/2021).

It is possible to perceive the political use of administrative resources related to support activities (airfare; technical positions; financial resources, etc.), precisely those that ensure the operationality of the collegiate body, to obstruct or delay the performance of core activities, that is, social control itself. The centralization of the decision on “how” and “when” these support activities will take place in the hands of the minister is not a problem itself, as this has always been the case in the administrative operation of Conanda. The problem lies in using this centralization to control the quality and effectiveness of Conanda’s management, in order to intentionally undermine it.

On September 4, 2019, the Bolsonaro administration initiated another wave of intervention in Conanda and obstruction of social participation in the body: The modification of its legal regulation. On that day, the Presidency of the Republic published Decree n. 10,003. As occurred with Conama, Conad, Conatrap<sup>18</sup> and other collegiate bodies that survived the mass extinction promoted by Decree n. 9,759/2019, there was a new normative proposal focused on reducing or extinguishing the open positions destined to civil society in these public policy councils, causing the government to dominate the deliberative process and voiding the existential reason of these bodies.

In the case of Decree n. 10,003/2019, the main measures contained therein are: (1) it dismissed the composition, at the time, of civil society in Conanda, a total of 14 full members, and their respective alternates, who were elected at a regular assembly held in 2018 and with a mandate until October 2020; (2) it changed the composition of the body from 28 to 18 members, maintaining parity, but prohibiting the reappointment of civil society organizations and defining that the president of Conanda was then appointed directly by the President of the Republic and had the power of “casting vote”; (3) Assemblies became quarterly, instead of monthly, and for those who are not from Brasília, the only option of participation was via videoconference, but with no indication of structural and communication conditions to guarantee this measure; (4) The elections of civil society members began to be conducted in a public selection process organized by the MMFDH, dismissing the role of the National Forum for the Rights of Children and Adolescents, which should

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<sup>18</sup> Conama, through Decree n. 9,806, of May 28, 2019. Conad, via Decree n. 9,926, of July 19, 2019. And Conatrap, through Decree n. 9,833, of June 12, 2019.



appoint members to compose the organizing committee of the electoral assembly, as provided for in Article 2 of Conanda's Resolution n. 211 of September 24, 2018; (5) it extinguished Conanda's executive secretariat, linking this technical-administrative support to the SNDCA team.

The repercussions and social and institutional reactions were immediate. In the National Congress, six Legislative Decree drafts (PDL) were filed to stop the effects of Decree n. 10,003: PDL n. 608/2019, authored by Representative Maria do Rosario (PT/RS); PDL n. 609/2019, authored by Representative Ivan Valente (PSOL/SP); PDL n. 610/2019, authored by Representative Leandre Dal Ponte (PV/PR); PDL n. 611/2019, by Representative Erika Kokay (PT/DF); PDL n. 612/2019, authored by Representative João Guimaraes (PT/CE); and, PDL n. 613/2019, authored by Representative Gervasio Maia (PSB/PB). Because of their similar contents, they were attached to the first PDL, n. 608. And since September 11, 2019, this PDL awaits the consideration of the Committee on Social Security and Family, with Representative Eduardo Barbosa (PSBD/MG) as rapporteur. That is, it was "shelved" or had its processing intentionally paralyzed.

At the same time, the Attorney General's Office filed the Action for Non-compliance with Fundamental Precept (ADPF) n. 622, in which social organizations defending the rights of children and adolescents also participated, requesting the challenge of the aforementioned Decree for violating constitutional norms. In a preliminary injunction issued on December 20, 2019, Justice-Rapporteur Luis Roberto Barroso decided: To re-establish the mandates of the civil society councilors at Conanda, until the end of the term (October/2020); that the meetings should continue to be held monthly and the travel expenses of the councilors should be the responsibility of the federal government; that the next election of civil society representatives should be made in a specific assembly, not through a public selection process under the control of the MMFDH; and to restore the election of the president of Conanda by his/her peers, instead of being appointed by the President of the Republic.

Indeed, the STF's preliminary injunction and merits decision — the latter only took place on February 26, 2021 — stipulate judicial brakes on the authoritarian impulses present in Decree n. 10,003. Most of the content of the Decree was classified in the trial on the merits as an "autocratic legalism" or an "abusive constitutionalism", as has been the case in other countries, where we may observe "the conduct of charismatic leaders, elected by popular vote, who, once in power, modify the legal system, with the purpose of ensuring their permanence in power" (STF, 2021, p.3).

Mariana, when evaluating the Conanda case at STF, argues that

it forced a reaction, it forced the STF to take a stand on a subject that we could not advance; no place would welcome us, nothing... It was something very harmful and silencing too, even by the STF, so this agenda shook up the issue, and, at some point, they would have to answer. And the good thing is that there was no agreement with what was being imposed, and in this arm wrestling they did not win 100% (interviewed on 07/14/2021).

However, both the injunction and the decision on the merits did not accept the requests regarding the suppression of the casting vote of the president of Conanda, “since it seems reasonable as a criterion for resolving the impasse” (STF, 2021, p. 13), nor did they annul the equal reduction in the number of open positions for councilors, as well as the impediment to reappoint civil society representatives.

What Justice-Rapporteur Luis Roberto Barroso and the other Justices who followed his vote understand by “a criterion for resolving the impasse” to the casting vote has become, in the political context in which Conanda is inserted, the government’s mechanism par excellence to empty the political power of civil society, especially after the entry of new members, whose inauguration took place on June 22, 2021. Given that the presidency of Conanda is currently held by a government representative and will last for a year of the current administration<sup>19</sup>, it can be said that until the end of the Bolsonaro government, at least in his current term, every discussion that takes place at Conanda will have the collegiate decision predominantly guided by the government's interests.

Thus, the casting vote, in deliberative spaces of strong political polarization, becomes an instrument of reproduction of political authoritarianism disguised in the intention of respecting the democratic game and in the resolution of the political debate. The impasse resolved in the decisions on concrete cases generates, by adopting this criterion, a structural impasse in the functionality of social control, since it creates an abstract hegemony — that is, a predefined majority of votes of State representatives, although there are chances of divergences among these representations — which reduces the participatory potential and political advocacy of civil society, affecting democracy itself.

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<sup>19</sup> The presidency of Conanda alternates between government and civil society, with the former in in odd-numbered years and the latter in even-numbered years.

On the other hand, the reduction in the number of open positions in Conanda, from 28 to 18 and thus from 14 to 9 civil society representatives, undermines the diversity of representation in a country with continental dimensions. And, as for the impediment of reappointing civil society representatives for a new election, Samara warns that “not allowing any reappointment is bad; at least one should be allowed [for reappointment], because a complete renewal means that the new councilors do not have an understanding of the history of the deliberations” (interviewed on 07/12/2021). Since the impediment of reappointment is restricted to civil society positions, this also becomes another mechanism to ensure the government’s political dominance, given that the “history of deliberations” should be left to the governmental nominations that continue in Conanda after the change in management.

## Final considerations

The “Bolsonaro era” has been marked by the construction of multiple strategies of confrontation and hatred towards the democratic pillars of the Brazilian State. As I draft this article, we are getting closer to an institutional coup every day, with the president urging the military and his radical supporters to conduct acts of defense of the government and challenge the other government branches in the September 7 demonstrations [T.N.]<sup>20</sup>. In Congress, Bolsonaro has drafted and signed a request for the *impeachment* of Supreme Court Justice Alexandre de Moraes and has already indicated that he will draft a second document, with the same request, now directed at Justice Luis Roberto Barroso, also of the Supreme Court. On social media and in the “motorcades” [T.N.]<sup>21</sup> that the president has sponsored in several parts of the country on weekends, speeches calling for the closure of the STF and the National Congress, the support for the military takeover and the hatred towards all people seen as “enemies of the king” are frequent and increasingly dangerous.

Faced with this serious political situation with which we live, immersed in the serious health crisis resulting from the Covid-19 pandemic, it is simply for the right to democracy that we are fighting, once again, as if we were rewinding

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<sup>20</sup> On September 7 Brazil celebrates the anniversary of its independence and there are demonstrations all over the country. During the Bolsonaro era, these demonstrations have been taken over by the right-wing government representatives to promote their political agenda.

<sup>21</sup> During Bolsonaro’s electoral campaign and often throughout his administration, he took part in motorcades (riding both cars and motorcycles) with his supporters.

– in a clear political, legal and civilizational setback, not to mention the historical one – to the times of the marches and the campaign for “Diretas já” [T.N.]<sup>22</sup> and for the redemocratization of the country, in the 1980s.

The 1980s were fundamental for establishing the legal and political foundations of the Democratic Rule of Law, supported by the pillar of the Federal Constitution of 1988, in which citizenship and democracy were established as founding and operational values of the state machinery. The democratization of the institutional architecture established by the constitutional text made it possible for the “council model” to come to fruition in many areas of the public power, at different federal levels, ensuring that the diversity of interest groups could be represented in the composition of deliberative spaces on public policies. However, throughout this period, this has coexisted with political disputes that have at their core the impetus to maintain the Brazilian authoritarian political tradition and the fields of democratic resistance to it, largely coming from civil society.

With the arrival of the “Bolsonaro era,” political authoritarianism has gained extreme intensity, and attacks on the democratic structures of the State gained ideological airs of “dePTization” [T.N.]<sup>23</sup> and criticism of “too much democracy” that supposedly would stifle the deliberative dynamics of the public management. None of this is supported by evidence-based analysis. Neither the “council model” is a creation of the PT governments, although it has been driven by them, nor does public management lose momentum with the wide presence of civil society representations, quite the contrary.

It is the diversity of political representations and, above all, a qualified performance of civil society over the years of implementation of the “council model” in public management which have ensured an increasing progression of rights and quality of access and organization of public policies. This has occurred, and still occurs to this day – even though in a staggered manner – because of the subjects and organizations outside the State who have most proposed a critical and propositional evaluation of the State action, aiming to ensure the inclusion of historically vulnerable social groups and the improvement of State management with a focus on democracy and public transparency.

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<sup>22</sup> Campaign to resume direct elections in Brazil during the military dictatorship.

<sup>23</sup> Undoing the actions of PT (Workers’ Party), getting rid of the initiatives, models, forms of government, etc. implemented during the PT administrations.

The case of Conanda, analyzed in this article, is an example of how government management can disrupt decades of the institutional consolidation of the “council model.” The use of moral, administrative, and legal strategies to reshape the composition and functioning of Conanda was authoritarian and discriminatory. The dissemination of untrue and defamatory information about civil society representations, seeking to morally disqualify them on social networks and the media, fostered a wave of hate speech — simply look at the comments on the minister’s video on Facebook — and the legitimization of the government’s authoritarian acts against Conanda.

By using conservative morality to question Conanda’s decisions in the resolution that handled the right to conjugal visits for adolescents deprived of liberty, we see the promotion of not only the (neo)conservative uses of children’s rights, but the confrontation with the deliberative process of social control with the support of an emotional and sensationalist rhetoric. Thus, aiming at popular support for the authoritarian measures adopted by the MMFDH, including not publishing the aforementioned resolution. What is at stake here is how these post-truth discourses produce severe damage to the management of the rights and public policies of children and adolescents and build the paths for popular support for the reinstatement of authoritarianism in social control.

On the other hand, administrative and legal measures intend to use bureaucratic daily life and legal norms as mechanisms of political control in favor of the deliberative hegemony of the existing power. These measures were partially confronted in the STF’s decision on the (in)constitutionality of Decree n. 10,003/2019, but their effects, insofar as the Decree was not annulled or modified by the decision, consolidated an institutional framework of emptying the political power of civil society in Conanda, in addition to government control of the “history of deliberations” for future administrations of the collegiate body.

At the same time, this generates a cascading effect for the other federal entities, since what has been happening at the federal level can be used as a “model” for the modification of the CDCA in states, municipalities, and the Federal District, replicating the worsening of social participation quality in public policy councils, especially in public policies for children and adolescents. In fact, research centered on these federative entities would greatly contribute to understanding the practical and territorial extent of the authoritarian acts of the federal government against the “council model.”

In any case, democratic resistance continues to occur, whether in Conanda, with the current composition of civil society representations, or in other social spaces and organizations, such as the National Forum on the Rights of Children and Adolescents. These resistances point out that the right to democracy is crucial for the guarantee of the rights of children and adolescents, and that, in this, social participation has a key role, historically and constitutionally built for the achievement of social justice in this country.

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