



COLLECTIVE MANDATES: LEGISLATIVE, QUALITATIVE AND EXTENDED REPRESENTATIVE ANALYSIS OF VULNERABILIZED GROUPS

MANDATOS COLETIVOS: Análise legislativa, qualitativa e de representatividade ampliada de grupos vulnerabilizados

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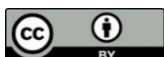
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ABSTRACT

Since the 2010 elections, there has been an increase in the number of collective candidacies, considered an instrument for expanding the sociopolitical representation of vulnerable and historically marginalized groups. However, to date, there is no specific legislation dealing with the candidacy and functioning of collective mandates. The study investigates the collective mandates as a legal, social and political phenomenon in contemporary times, going through both the qualitative and quantitative analysis of the mandates in force based on the doctrine, as well as the legislative analysis of bills and proposals that aim to discipline the issue in the legal system. national legal system (PL n.1422/2021, PEC n. 379/2017, PL n. 4724/2020 and PL n. 4475/2020). Under the hypothetical-deductive and literature review methods, based on data submitted by Secchi and Leal (2020) the results achieved confirmed the expansion of collective candidacies in national elections and the tendency to increase the number of collective claims from the crisis of political representation of vulnerable groups such as women, black people, indigenous peoples, LGBTQIA+ people and people with disabilities, relating to struggles of social movements and waves of political renewal. Thus, it is crucial that collective mandates be formalized in the text of the law, establishing rules and criteria for candidacies and, in the event of an election, for their functioning.

Keywords: Crisis of Political Representation; Participatory Democracy; Collective Mandates.

RESUMO

Desde as eleições de 2010, observa-se o aumento do número de candidaturas coletivas, considerado instrumento de ampliação da representatividade sociopolítica de grupos vulnerabilizados e historicamente marginalizados. No entanto, até o presente momento, não há legislação específica que verse sobre a candidatura e funcionamento dos mandatos coletivos. O estudo investiga os mandatos coletivos como fenômeno jurídico, social e político na contemporaneidade, passando tanto pela análise qualitativa e quantitativa dos mandatos em vigência com base na doutrina, bem como a análise legislativa de projetos de lei e propostas que almejam disciplinar a questão no ordenamento jurídico pátrio (PL n.1422/2021, PEC n. 379/2017, PL n. 4724/2020 e PL n. 4475/2020). Sob os métodos hipotético-dedutivo e de revisão de literatura, com base nos dados apresentados por Secchi e Leal (2020) os resultados alcançados confirmaram a expansão das candidaturas coletivas nas eleições nacionais e a tendência de aumento do número de pleitos coletivos a partir da crise de representatividade política de grupos vulnerabilizados como mulheres, pessoas negras, indígenas, pessoas LGBTQIA+ e pessoas com deficiência, relacionando-se com lutas de movimentos sociais e ondas de renovação política. Desta forma, é crucial que os mandatos coletivos sejam formalizados no texto da lei, fixando regras e critérios voltados para as candidaturas e, em caso de eleição, para seu funcionamento.

Palavras-chave: Crise de Representatividade Política; Democracia Participativa; Mandatos Coletivos.



1. INTRODUCTION

Currently, it is clear that there are asymmetrical conditions of political and social resources that constitute the social structure of spaces, which tend not to operate equally within institutionalized procedures, compromising the ability of individuals and social groups to insert themselves. they find themselves marginalized, generating a crisis of representation involving vulnerable groups in political arenas, without there being equal participation, although this is one of the assumptions of the Democratic Rule of Law (RUVIARO DA SILVA, 2014).

Latin American countries like Brazil developed from a Eurocentric modernity project , generating a result that overlaps peoples, territories and identities that were sustained by black slavery and indigenous servitude, producing reflections that echo for centuries and that end transforming national politics into an instrument of political inequality, in which historically silenced groups end up without representatives of their rights and interests in the political arena in general and in the public debate as a whole (SEPÚLVEDA, 2020).

One of the possibilities for confronting this crisis of political representation of the vulnerable consists of the collective mandate, which can be understood as an elected candidacy in which a group of people positions themselves as candidates, jointly, for the same public position (XEREZ, 2019). In the 2020 elections, for example, a significant increase was observed in those associated with the need for greater socio-political representation of groups such as women, black people, indigenous people, LGBTQIA+ people and people with disabilities, relating to the struggles of social movements and waves of political renewal (TROTТА, 2020; SECCHI; LEAL, 2020).

That said, the general objective of the study is to carry out a legislative, qualitative and representative analysis of collective mandates in favor of vulnerable groups, covering aspects related to participatory democracy, both in the legal doctrine on the subject, and in projects and proposals in progress. that seek to regulate the matter in the form of the following instruments: PL n.1422/2021, PEC n. 379/2017, PL n. 4724/2020 and PL n. 4475/2020.

A literature review research was carried out using the hypothetical-deductive method, in addition to jurisprudential research, seeking to identify the topic, raising problems and hypotheses and representing their implications (WALLIMAN, 2015). The research problem, that is, the guiding question that seeks to develop from the scientific article, consists of the following question: how the regulation of collective mandates can contribute to the recognition of such instruments as expanding the social and political representation of vulnerable groups , based on a study by TROTТА, 2020; SECCHI; LEAL, 2020.

The justification for preparing the study is based on: a) the increase in the number of collective candidacies from 2010 onwards and their significant growth in the 2020 municipal elections; b) the presence of projects and proposals that seek to address this issue; and c) the possibility of making concrete use of collective mandates to face the crisis and political responsibility of the groups analyzed in this work, generating conditions that can provide social and legal transformations in the country considering the rights and guarantees granted to historically marginalized individuals and groups and silenced.

The consecration of this democratic-legal institute would be a possibility for expanding representative democracy and political pluralism, based on art. 1st, item V and sole paragraph of CRFB/1988.

2 SOCIAL VULNERABILITY AND REPRESENTATIVENESS IN POLITICAL ARENAS

According to Sepúlveda (2020), modern societies in the West “according to the Gramscian tradition, experienced the expansion of democracy, with its local variants, as a more or less general phenomenon from the second half of the 20th century”, especially with the rise predominantly model of liberal or representative democracy, based on universal suffrage, parliamentarism and the expansion of the idea of citizenship. However, the author argues that this phenomenon generated a crisis of representation, which manifests itself in the distance, disbelief or apathy between representatives and those represented, in a dramatic scenario of neoliberalism that undermines the meanings of citizenship.

According to DORNELES and VERONESE (2018, p. 44):

A democracia brasileira é, por essência, representativa, mas apresenta inúmeras características do modelo participativo em sua estruturação. O modelo participativo de democracia objetiva o comprometimento de todos os cidadãos e busca a efetiva participação destes nas decisões. Após o fim do regime militar, o Brasil vive o mais longo período de estabilidade institucional, embora tenha passado –e passa –por graves problemas.

In view of this, it can be said that Brazilian democracy is in continuous improvement, in a constant search for balance, thus recognizing vulnerable groups, known as “minorities”, would be the primordial way for the success of any democracy.

In the absence of this recognition and the presence of discriminatory acts, movements end up emerging in search of recognition and equal rights in the social context. (DORNELES and VERONESE 2018, p. 44)

It is possible to cite, as an example, the issue of male domination, which is described by Bourdieu (2012) as the result of symbolic discrimination, which for generations cited gender differences and the lack of recognition of women as subjects of transformation, which can contribute to the creation of new models of society. To achieve this, the author argues that women must occupy spaces and represent themselves in the political context.

When we think about spaces like the National Congress, for example, it is common to reflect on what we see in the newspapers and on television: an arena made up of white men, who know little or nothing about the problems of different social groups. Even with important advances that have occurred over the last few years and with people who represent the most vulnerable taking a position and occupying spaces in arenas and in public debate, this is an image that is still very present in the collective social imagination. The same occurs when we think about the scenario of the presidency of the Republic: to date, Brazil has had thirty-six presidents of the Republic, of which only one was a woman, being Dilma Rousseff, between 2011 and 2016 (when she suffered an ¹*impeachment* process).), having been elected with massive support from her predecessor, Luiz Inácio Lula da Silva, who served as President from 2003 to 2010 and enjoyed great popularity. In the list of presidents of the Republic, we thus see a general absence of figures that could be more representative of these groups, considering in this equation not only the presence of a single woman, but also the absence of other more representative figures, such as a black president or a indigenous president.

This is precisely what Ruviaro da Silva (2014) discusses, in his study in which he covers social vulnerability as a challenge to participatory democracy: in his view, there is little inclusive capacity in politics from the most marginalized strata of the population, considering that the existence of a participatory democracy (in which, in theory, marginalized groups would have equality to elect their representatives) does not, in itself, create equal opportunities between groups and individuals.

For the aforementioned author, the asymmetric conditions of political and social resources, which constitute the social structure of spaces, tend not to operate equally within institutionalized procedures, compromising the insertion capacity of individuals and social groups that are marginalized. This is how the crisis of representation involving vulnerable groups in political arenas is created: there is no equality of participation, although this is one of the assumptions of the Democratic Rule of Law. Allowing representatives of these groups to participate in elections, in this context, does not presuppose an equal duel in the political field.

¹Available at < https://www.ebiografia.com/todos_os_presidents_do_brasil/> Access: May 17th. 2022.

Eurocentric modernity project was established , a result that overlaps peoples, territories and identities. This project was sustained by black slavery and indigenous servitude, promoting in countries like Brazil, together with the looting of materials and precious stones, part of the original accumulation, necessary for the development of capitalism itself:

O processo de construção democrática nos países que compõem esse território é marcado pela violência, mandonismo político, patrimonialismo, dando vida à sociedades extremamente hierarquizadas e autoritárias. O liberalismo, ao chegar ao continente, acaba por ser filtrado pelas elites locais, o que dificultou mesmo aqueles ganhos restritos, de que se beneficiaram trabalhadores em outros países ocidentais, relegando grandes parcelas da população a uma condição de não cidadão. A ideia de uma esfera pública, de garantia de direitos, de cidadania, fora nesse sentido, frequentemente espoliada em nome de negociações, de acordos e manobras realizadas no interior do Estado, capturado por interesses privados. Ao mínimo lampejo de uma vontade popular organizada, uma reação das classes dominantes forçava uma restauração, com a devida exclusão das forças populares, ao que se seguia alguma renovação (SEPÚLVEDA, 2020, p. 823).

Now, the crisis of representation and social participation of marginalized individuals and groups throughout national history do not consist of mere accidents in the conception of the Democratic State of Law, but rather of a systematized effort to maintain power on the part of the elites, something that takes us back to the arrival of the white man in Brazil, positioning himself as a conqueror and as a dominant class in function of the others.

In the view of the author of the present study, not only is it 'not interesting' for political elites that there is no representation, but the very existence of social representation of vulnerable people represents a risk for the maintenance of power elites, as well as expanding public debate. In this way, a context is created in which participatory democracy, despite its name, ends up generating a format (or a system) in which representation must be limited.

In Fraser's (2001) view, recognition consists of the self-identification of oneself in others, as a way of seeing oneself represented and legitimized as part of a social process, generating identity, self-confidence, group (and class) self-awareness and the ability to see oneself in the other as an entity that transforms sociopolitical reality. In the same direction, the 1988 Constitutional Diploma establishes in its article 14 that popular sovereignty will be exercised through universal suffrage and direct and secret voting, with equal value for all, and it is also necessary to highlight the terms of article 1, in its sole paragraph in which states that all power emanates from the people and that its exercise will occur through elected representatives. However, the cold text of the legislation, however commendable the constituent intention, does not in any way ensure the sociopolitical representation of vulnerable groups, this being a multifaceted phenomenon, including from the historical perspective addressed here.

According to Jorge, Liberato and Rodrigues (2016), the conception of democracy, which guides the studies of Electoral Law, in the form of principles, foundations and rules of conduct, must establish the adequacy between governmental activity and the will of the people, making - use norms that regulate political rights that not only include the right to vote and be voted for, but also the right to have representation. Now, this social and legal conception of democracy presupposes representation, which does not occur in practice within political arenas and spaces of power.

Minorities, in this sense, end up being removed from the “democratic” game, generating and deepening this crisis of representation. Sepúlveda (2020) highlights that even with the important transformations that occurred in this context with the advent of the 1988 Constitution, with internal conditions favorable to the reduction of social authoritarianism, what was seen in practice was a neutralized dynamic of denial of the right, with irruption in the political scene of collective subjects and with the thematization of fundamental issues (such as the right to health, housing, child protection, minority rights and so on) becoming more mature in the public sphere, in a Habermasian sense.

The author states that the overcoming of a relationship between the State and popular demands took place in a context of recurring exclusion of popular participation in political decision-making processes, which gives rise to a new social pact, an inflection in Brazilian political culture that prints a rationality of the right to have rights, always reinforcing that a language of rights does not guarantee real equality. Given this, he states and asks:

Numa sociedade tão desigual quanto a brasileira a conservação de um modelo representativo montado sobre bases elitistas, serve apenas a reprodução de tal desigualdade. O desenvolvimento histórico nos possibilitou alguns mecanismos que, se não capazes de superar essa realidade, ao menos poderiam minorá-la, entre eles, os Conselhos de Direito e de Política, as Conferências, os orçamentos participativos. Embora conquistas importantes no rumo da democratização da nossa sociedade, não deixam de estarem sujeitos àqueles que legislam. No cenário atual essa constatação assume ares ainda mais problemáticos, pela imposição de reformas restritivas, pela disseminação de um ideário minimalista quanto aos direitos outrora conquistados. Mais do que nunca, os sentidos da representação partidária sob uma democracia burguesa (em si mesmo limitada), passam a ser questionados. Quem, de dentro do poder, de fato nos representa? (SEPÚLVEDA, 2020, p. 829).

Now, there are numerous factors that contribute to this crisis of representation and the removal of possible leaders from the political arena. Such factors are not accidental, but the result of a country project, guided by neoliberal ideas, in which the existence of representation implies a risk for elites, eager to maintain power and with contempt for consistent forms of inclusive social transformation.



Ruviaro da Silva (2014), in this sense, argues that the legitimacy of participation is still one of the greatest challenges in the contemporary context of Brazil and Latin America as a whole, since states that have less social capital tend not only to participate less than the dominant social classes and layers, as they are also in advantageous conditions, tending to be reflected within participatory spaces, contributing to a heterogeneous sociopolitical reality, which hinders the level of participation of socially marginalized strata. In the same sense, Santos Paixão and Gonçalves Saliba (2021) identify that social inequality serves as a driving force for inequality of political representation:

(...) a pesquisa traz como síntese conclusiva que a existência de um sistema político democrático é necessária, porém, não é suficiente para assegurar a igualdade política substantiva, pois esta depende de avanços estruturais e de transformações sociais que sejam capazes de quebrar os degraus que desnivelam os cidadãos e hierarquizam as relações na vida em sociedade. Assim, fica aqui lançado um manifesto à igualdade como forma de ampliar os horizontes da democracia, e de suplantar toda condição de vulnerabilidade humana. E quiçá um dia as sociedades caminhem para mais perto de uma democracia ideal (SANTOS PAIXÃO; GONÇALVES SALIBA, 2021, p. 122).

In their study, the aforementioned authors reached important conclusions for the discussion about the crisis of social representation in the context of socially vulnerable individuals and groups, which are presented in a summarized way: a) the people are considered the key piece in architecture democratic regimes and political systems; b) it is not possible to state categorically and in a generalized way that all citizens are receiving the opportunity to exercise power equally; c) plural and globalized societies, in which new demands and groups with conflicting and minority interests emerge, it is challenging to define and clarify the generic face of a people; d) it is equally challenging to discuss the degree of fairness of the convenience and viability of the majority consensus rule in the face of voices that are suffocated and silenced during the deliberative process; e) there are relationships prior to political relationships that compromise the participation and representation of vulnerable people, which calls democratic values into question; f) economic relations are known to influence political and public debates, making it difficult for groups to access public arenas of deliberation; g) there is an imbalance in the distribution of wealth, resulting in an equal distribution of political resources; h) political equality and democracy itself can be understood in terms of formal and substantive dimensions, and the formal (technical) dimension displayed by it has not been sufficient to overcome political inequality in its material dimension; is that; i) due to economic influence and multiple relations of inequality, conditions are generated that disintegrate society, eroding the foundations of the democratic political system, with real democracy being compromised and ideal democracy remaining distant.

In the view of the author of the present study, all these points are confirmed in practice, based on the references previously used to prepare the chapter. When considering argument IV, mentioned above, it is possible to cite the example of slavery: for many, many years, slavery was considered an appropriate practice, including a form of ostentation for white people, with Africans not being understood as human beings, but rather as objects, which is established in the studies of Vasconcelos (2012), in which, when treating the slave as a thing (or as an “animal”), being deprived of rights, explores Roman Civil Law, which provided for a common category in which it was possible to classify both animals and slaves (*res mancipii* or *mancipia*), which included property objects that could be bought and sold. The thing (*res*) did not constitute any proper or subjective right, being an object at the disposal of its masters.

Understanding this normalization is a key factor in deconstructing the myth that the will of the majority creates conditions of fairness: due to differences, the white man elevated the African man into the category of animal or thing, completely depriving him of his humanity. Slenes (1999) states that it was necessary to make a long historical effort to change this paradigm, since the social impositions of the time often made slaves see themselves as 'things', which echoed over the centuries.

Other arguments could be used to reaffirm the ills of a supposed majority democracy, in which for a long time women did not even have the right to vote. Sepúlveda (2020) recognizes that important advances have been made in what we understand as ideal democracy, but that we are still far from it, largely due to the almost absolute absence of sociopolitical representation, in which vulnerable individuals and groups have few voices that effectively represent.

This ideal democracy, also analyzed by Santos Paixão and Gonçalves Saliba (2021), thus seems like a distant dream, almost a utopia, even with a broad demand from such people and groups for more representation in politics. Understanding the current political and social scenario and understanding the historical roots that end up influencing it and undermining the possibility of sociopolitical representation is fundamental to tackling problems in favor of vulnerable groups. Among these possibilities within the democratic game is the object of this study: collective mandates. That said, it is crucial to understand that the crisis of political representation of the vulnerable is a multifaceted process and an intentional effort to maintain political and social elites (dominant classes) to the detriment of minorities.

The false notions of real and ideal democracy, in this conception, must be considered in investigations to explore the problems of this crisis of representation. In the following chapter, the phenomenon of collective mandates will be discussed as a possibility for achieving expanded representation of vulnerable groups and individuals.

3 COLLECTIVE MANDATES: QUALITATIVE (AND QUANTITATIVE) ANALYSIS FOR THE EXPANDED REPRESENTATION OF SOCIALLY VULNERABILIZED GROUPS

Xerez (2019, p. 15) states that the first milestone to be considered for an understanding of collective mandates consists of their emergence as "political strategies inserted in a democratic order and whose nature is based on official mechanisms of representation, even if relatively innovative way", with key reflections involving the achievement of advances in the fields of social and political rights, especially when considering the participation of minorities in the scope of public debate. For the author, the popularization of the collective mandate format only occurred in more recent electoral elections, being "a considerably tender issue, a fact that also ends up interfering in the incipient level of academic debate" (XEREZ, 2019, p. 18).

The aforementioned author points out that the two political modalities of collective representation that are best known and discussed today are collective mandates and shared mandates. Shared mandates are experiences in which the candidacy, from the beginning, presents itself as linked to a specific subject, who undertakes to guide his parliamentary performance, if elected, based on what is decided by a group of citizens to which he is linked. . Collective mandates, the focus of this study, can be defined as follows:

(...) seriam aquelas candidaturas nas quais um grupo de pessoas se posiciona como pleiteante, em conjunto, a um mesmo cargo público. É dizer, embora a vaga em almejo seja apenas uma e a candidatura também seja uma, seus componentes são múltiplos. Nessa segunda modalidade, o candidato durante a campanha aparece como sendo o próprio coletivo formado por diferentes pessoas, e não como apenas um postulante individual que se compromete a tomar decisões pautado no que for decidido por um grupo ao qual aquele se vinculará (XEREZ, 2019, p. 20).

Now, the perspective of collective mandates, in a summary way, can be presented as the conception in which the collective of vulnerable people themselves seeks a candidacy, so that the groups can achieve political representation in a more equitable and fair way. Trotta (2020, p. 1,293) states that "collective mandates emerge as a new format to decentralize and depersonalize politics", constituting arrangements that emerged as responses to the dissatisfaction of political interest from 2016 onwards, intensifying in the election 2018, given the need for greater socio-political representation of groups such as women, black people, indigenous people, LGBTQIA+ people and people with disabilities, relating to the struggles of social movements and waves of political renewal.

Sepúlveda (2020, p. 829) highlights that “collective mandates are born, in this way, of political urgency, especially disbelief in parties and their traditional characters”, being a recent instrument and still without legal apparatus, demanding monitoring of the process of its implementation in practice, its limits and potential, as well as the implications of possible formalization. The author defends them as “an instrument in favor of the socialization of politics, at the same time a reaction in the progressive field to the Organic Crisis, which began in Brazil from the second term of the Dilma Rousseff government” (SEPÚLVEDA, 2020, p. 821).

According to Rossini (2021, p. 42), collective mandates in the strict sense “consist of a few people, around a political ideology or by some specific agendas since the pre-election phase and allow broad debates in the search for consensus, often taken in face-to-face meetings”, not to be confused with shared mandates, in which there is a composition generally above 100 people, which are independent of political ideologies, with decisions taken by generic electronic means or by the parliamentarian representing the group, with each interested party having the same voting weight.

The aforementioned author contemplates ten dimensions that must be analyzed considering the qualitative situation of collective and shared mandates: 1) the initiative refers to the authors or author of the proposals (group of people or individual); 2) the size via accounting for the number of co-parliamentarians; 3) eligibility involves the formal requirements for the participation of people in the group; 4) access permeates the moment when co-parliamentarians begin to participate (whether, from the beginning of the campaign, the beginning of the mandate or throughout its course) 5) permanence includes rules for maintaining the status or not as a parliamentarian; 6) the distribution of power, as the name itself indicates, determines the role played by the group in relation to the mandate; 7) the scope of sharing delimits the situations in which co-parliamentarians can exercise their powers; 8) the sharing of costs and benefits can involve everything from the mandate to the particularities of its exercise, such as office budgets and salaries; 9) the decision-making process involves the search for consensus or simple decisions; and, finally, 10) the interaction mechanism between co-parliamentarians is defined, involving the use of information technologies or face-to-face meetings.

It is considered that:

os mandatos coletivos costumam constituir-se de poucas pessoas, que se unem desde a campanha por uma ideologia política ou por algumas pautas específicas, como a defesa de minorias excluídas ou dos direitos dos animais não-humanos; seus tamanhos reduzidos permitem debates amplos e busca de consensos, muitas vezes tomados em reuniões presenciais (ROSSINI, 2021, p. 48).

Secchi and Leal (2020) carried out a study on collective candidacies in the Brazilian municipal elections in 2020, descriptively analyzing the proposals for a research agenda on collective mandates at a national level. In table 1, below, the list of collective candidacies present in the election is presented:

NAME OF CANDIDATE / SPOKESMAN	CREATED NAME OF THE PROPOSAL	NUMBER OF COVERAGE RS	BROKEN	STATE
Silvia Ferraro	Feminist Bench	5	PSOL	SP
Elaine Mineiro	Peripheral Quilombo	6	PSOL	SP
Adriana Gerônimo	Our Face	3	PSOL	CE
Sonia Lansky	From the Collective	-	PT	MG
Laina Cirsóstomo	Services for Salvador	3	PSOL	BA
Josymary Pires Gomes	Elas Collective	5	PCDOB	BAD
Juliana Gomes Curvelo	Activez	-	PSOL	SP
Gilmar Santos	Shared Mandate	1	PT	FOOT
Cintia Mendonça	Coletiva Bem Viver Floripa	5	PSOL	SC
Judeti de Freitas Pimenta Zilli	Popular Collective	-	PT	SP
Ramon Fernandes Faustino	“All Voices” Collective	6	PSOL	SP
Paulo Camolesi	Shared Mandate	1	PDT	SP
Josiane Kieras	More Collective	-	PSOL	PR
Fatima Maria	We will have time	5	PT	LOL
Marcelo Yoshida	DiverCidade Collective	3	PT	SP
Andressa Daiany da Silva Asantes	Our voice	4	PT	MG
Silvia Maria Morales	The city is yours	3	PV	SP
Sander Castro da Conceição	Rochinha Collective Mandate	9	WE CAN	SP
Moacir Vieira	Shared Mandate	100	MDB	SC
Antônio Ferres Chacon	Head of the Collective	-	MDB	SP
Marcia Gomes	Women's Collective	21	PT	SP
Ailton Gomes	Collective Mandate We Are	5	PSDB	SP
Henny Freitas	Permaculture Collective Mandate	4	NETWORK	GO

Table 1 - List of collective candidacies present in the 2020 municipal elections in Brazil. **Source:** Adapted from Sechi and Leal (2020, p. 29-30).

It can be seen, based on the information presented in Table 1, that the existence of claims for collective mandates includes different minorities, such as women, quilombolas, indigenous people, among others.

Now, with a demand for greater political representation, there was a significant relevance of vulnerable groups and subjects in the 2020 municipal elections – especially on the ideological spectrum or on the left or center-left, especially parties such as PT and PSOL, in several municipalities in Brazilian states.

Table 2, below, shows the increase in the number of collective applications per four-year period, starting in 1994:

QUADRENNIUM	NUMBER OF APPLICATIONS	NUMBER OF ELECTED MANDATES
1994-1997	1	1
1998-2001	1	1
2002-2005	1	1
2006-2009	1	1
2010-2013	4	4
2014-2017	74	18
2018-2021	341	28

Table 2 – Collective applications in Brazil Brazil. **Source:** Adapted from Sechi and Leal (2020, p. 20).

It is clear that collective claims began to be more present in the electoral context from 2010 onwards, intensifying in the 2014-2017 four-year period and exploding in the 2018-2021 four-year period. This diagnosis allows us to correlate the increase in the crisis of political participation among social groups made vulnerable after the *impeachment* of Dilma Rousseff in 2016. Although collective candidacies are understood as a recent phenomenon, there are reports of their presence in the political arena even in the 1990s. , naturally, in smaller numbers, since discussions about representation are still considered quite recent.

Xerez (2019, p. 68) states that in recent years a scenario has emerged made up of political experiences that "are proliferating across the country, a context in which collective mandates are inserted, groups of people who have run together for legislative positions in various federative units of the country". In this sense, it is important to recognize that the existence of collective candidacies does not necessarily represent the existence of collective mandates, given the absence of their regulation in the national legal system:

(...) é importante se proceder a uma diferenciação de termos e notar que, mais do que efetivamente um “mandato coletivo”, pode-se trabalhar na verdade com a noção de “candidatura coletiva”, do ponto de vista fático, uma vez que apesar de o conjunto de pessoas transmitir ao eleitor de forma *prima facie* a ideia de que um grupo de pessoas está postulando conjuntamente um cargo, no fundo só um deles será legalmente reconhecido como exercente do mandato. Em que pese tal afirmação, deve-se reconhecer que tal constatação não significa a impossibilidade de surgimento e adoção futura de outras soluções jurídicas para o caso, capazes de resguardar o cunho plural das iniciativas políticas em apreço e não necessariamente originárias da aprovação de projetos legislativos específicos (XEREZ, 2019, p. 67).

Collective mandates are significant for issues related to the sociopolitical representation of vulnerable groups in the Brazilian case, which has generated the existence of projects being processed in the Brazilian Legislature, which will be analyzed in the following chapter. However, it is necessary to consider that the current legal structure does not yet regulate the existence or proper functioning of collective mandates in the event of an election. Such experiences, still recent, must necessarily undergo a legislative approach, including with regard to the impacts of collective mandates in terms of participatory democracy in a concrete way.

Secchi and Leal (2020), however, analyze that this discussion is still quite superficial, especially due to the fact that in the 2020 elections, only 7.03% of candidacies (displayed in Table 1) were successful in the election. On the other hand, the authors analyzed that a large part of the candidacies reached the substitute position, a phenomenon that should intensify in the next electoral elections:

Quanto aos resultados alcançados pelas candidaturas coletivas no pleito eleitoral das eleições municipais de 2020, (...) 22 candidaturas coletivas obtiveram votos suficientes para serem eleitas, representando um êxito percentual de 7%. Entre as demais candidaturas que não obtiveram êxito, 129 ficaram na posição de suplentes (41,2%) e 12 foram anuladas *sub judice*, indeferidas ou renunciaram (4,2%). Comparando a taxa de êxito das candidaturas coletivas em 2020 (7%), com a taxa de êxito de todas as eleições para vereador no Brasil em 2020 ($58.112 \text{ vagas} / 518.329 \text{ candidatos} = 11,2\%$), pode-se perceber um desempenho ligeiramente inferior das candidaturas coletivas, quando comparado com a totalidade das candidaturas, que neste ano viram seu número expandir consideravelmente diante da mudança de regra eleitoral que, ao proibir coligações nas eleições proporcionais, precipitou uma maior fragmentação e, consequentemente, maior número de candidaturas entre os partidos. Vale ainda considerar o relativo sucesso eleitoral das candidaturas coletivas, pois 41,2% delas ficaram como suplentes. É possível também conjecturar sobre o menor sucesso eleitoral em relação às candidaturas tradicionais. Uma das hipóteses é que de que as candidaturas coletivas podem ter sido utilizadas majoritariamente por pessoas que estão se candidatando pela primeira vez ou que estavam sendo reeleitas (SECCHI; LEAL, 2020, p. 17-18).

Thus, the authors who supported the analysis of the present study point to a tendency towards an increase in the number of collective candidacies during the next elections, as vulnerable groups aim for greater representation in the political arena, which makes the discussion even more relevant to the Let us consider projects pending in the Legislature, which will be presented and analyzed in the following chapter.

4 CRISIS OF DEMOCRATIC REPRESENTATIVENESS AND ITS REFLECTS ON THE PROTECTION OF FUNDAMENTAL RIGHTS OF VULNERABLE GROUPS

In this section, without the slightest intention of exhausting the subject, some practical examples will be analyzed that demonstrate the impacts of the crisis of democratic representation with regard to the realization of the fundamental rights of vulnerable groups.

From this perspective, we can observe, for example, Law No. 14,021, of July 7, 2020 (BRASIL, 2020b), which provided for social protection “to prevent contagion and the spread of Covid-19 in indigenous territories” and created “the Emergency Plan to Combat Covid-19 in indigenous territories”, stipulating “support measures for quilombola communities, artisanal fishermen and other traditional peoples and communities to combat Covid-19”.

According to the standard, indigenous peoples must be guaranteed, among other measures: a) universal access to drinking water (art. 5, I); b) the “free distribution of hygiene, cleaning and surface disinfection materials to villages or indigenous communities, whether officially recognized or not, including in the urban context” (art. 5, II); c) “access to rapid tests and RT-PCRs, medicines and appropriate medical equipment to identify and combat Covid-19 in indigenous territories” (art. 5, IV); d) the “emergency supply of hospital beds and intensive care unit (ICU)” (art. 5, V, “a”); e) the “emergency hiring of health professionals to reinforce support for indigenous health” (art. 5, V, “c”).

It is noteworthy that the provision of access to drinking water, the free distribution of hygiene, cleaning and surface disinfection materials and the emergency supply of hospital and intensive care unit (ICU) beds, had been vetoed by the President of the Republic who were overthrown by the National Congress, reinforcing the need to give greater representation to these vulnerable groups.

There has been an increasing concern regarding the quality of democracies in the face of the “renewal of the ongoing wave of democratic erosion”, represented by the “use of emergency powers to concentrate functions, violate human rights and increase social inequalities” (POSSOLO; LOPES, 2020, np).



This is all aggravated by the impact of technology, such as the use of social networks, on democracy, which has been causing the “collapse of parliamentary democracy”, due to the “transformation of the visibility of power” (KANG, 2012, np).

Not infrequently, the lack of representation of vulnerable groups before the legislature needs to be addressed by the Judiciary through the exercise of so-called judicial activism with intervention by the courts “in issues involving public policies and the political decision-making process, previously reserved to the Legislative and Executive” (ZANFERDINI; MONTES NETTO; NUNES, 2020, p. 156).

Não raras vezes, o ativismo judicial supera os limites impostos por uma visão mais clássica do papel do Judiciário em situações que revelam a atuação deficitária dos demais poderes, especialmente na promoção da proteção de grupos minoritários ou vulneráveis. (ZANFERDINI; MONTES NETTO; NUNES, 2020, p. 156)

From this perspective, another vulnerable group that deserves to be highlighted is the LGBTQIA+ population, where it was up to the Federal Supreme Court (STF), in the Claim of Noncompliance with Fundamental Precept (ADPF) nº 132 (BRASIL, 2011), to recognize the possibility of a stable union between persons of the same sex, through the adoption of an interpretation technique in accordance with the constitution, with the Supreme Court ruling that:

(...) a preferência sexual se põe como direta emanção do princípio da “dignidade da pessoa humana” (inciso III do art. 1º da CF), e, assim, poderoso fator de afirmação e elevação pessoal. De auto-estima no mais elevado ponto da consciência. Auto-estima, de sua parte, a aplinar o mais abrangente caminho da felicidade, tal como positivamente normada desde a primeira declaração norte-americana de direitos humanos (Declaração de Direitos do Estado da Virgínia, de 16 de junho de 1776) e até hoje perpassante das declarações constitucionais do gênero (BRASIL, 2011).

In ADPF nº 54/DF (BRASIL, 2012), the Praetorian Excelso ruled that the interpretation typified in arts 124, 126 and 128, I and II, of the Penal Code, the termination of pregnancy with an anencephalic fetus, with authorization not yet being required for the doctor to carry out the procedure.

On the occasion of the judgment of the Direct Action of Unconstitutionality by Omission (ADO) nº 26 (BRASIL, 2019), proposed by the Popular Socialist Party, in view of the legislative inertia attributed to the National Congress which, according to the applicant “would be frustrating the processing and assessment of legislative proposals presented with the aim of criminalizing all forms of homophobia and transphobia”, failing to “provide effective legal and social protection to members of the LGBTTT (Lesbian, Gay, Bisexual, Transvestite, Transsexual and Transgender)

community” , the STF recognized the state of unconstitutional delay and established that until autonomous legislation comes into force, homophobia and transphobia must be classified within the criminal types defined in Law No. 7,716/89, qualifying homotransphobic practices as species of the racism genre.

It is also possible to observe the federal legislature's delay in several other sensitive issues involving vulnerable groups, such as the LGBT population who are serving sentences in Brazilian prisons, leading the National Council of Justice to issue Resolution No. 348 of 13, of October 2020 (BRASIL, 2020), which “Establishes guidelines and procedures to be observed by the Judiciary, in the criminal sphere, in relation to the treatment of the lesbian, gay, bisexual, transsexual, transvestite or intersex population that is in custody”.

The issue has already been the subject of the IDH Court Resolution of November 28, 2018 on the Curado Penitentiary Complex, which stated that the Brazilian State does not provide adequate treatment to the incarcerated LGBT population (CORTE IDH, 2018).

With regard to the Brazilian prison system in general, in ADPF nº 347/MC/DF (BRASIL, 2015), the STF recognized the existence of inhumane custody conditions that cause massive violations of fundamental rights, characterizing these structural flaws as the so-called unconstitutional state of affairs, expression”, used for the first time by the Constitutional Court of Colombia in case SU-559:

(...) no qual quarenta e cinco professores dos municípios de María la Baja e Zambrano alegaram que não estavam afiliados a nenhum fundo de serviço social, permanecendo sem cobertura pelo sistema de saúde, tendo o mencionado tribunal reconhecido que a situação estava em desacordo com a Constituição Colombiana (NUNES; MONTES NETTO; FERREIRA, 2020, p. 264).

As highlighted by Rios and Silva (2015), “Facing discrimination experienced by individuals and groups requires tools suited to the different situations in which it arises”, which reinforces the need for adequate representation of these groups in the Legislative Branch, aiming to realize their rights. fundamental.

Vulnerable groups should not depend exclusively on the Judiciary to enforce their fundamental rights, and it should also be highlighted that members of the Judiciary are not elected by vote and that judicial activism has been the subject of criticism around the world, even causing the emergence of a movement in the opposite direction called judicial self-restraint, which advocates the reduction of judicial interference in issues that are the responsibility of other Powers, leaving the deepening of these issues beyond the limits of the present study, and should constitute the object of new academic work.

5 LEGISLATIVE ANALYSIS OF COLLECTIVE MANDATES AS A FORM OF EXPANDED REPRESENTATIVENESS OF VULNERABLE GROUPS

Given a greater understanding of collective mandates and the observation of their significant increase in the past decade, it is necessary to promote an analysis of the projects being processed in the Legislature, with the potential to discipline the phenomenon in legal, political and electoral terms. The first to be analyzed consists of Bill (PL) n.1422/2021 ², which provides for a collective mandate applicable to the positions of Federal, State or District Deputy, as well as Municipal Councilor. In its article 2, the PL determines that the collective mandate will be exercised by a collegial body, called "Parliamentary Collective", which is formed by three members, with the following composition: a) a representative member formally elected under the terms of the Constitution and electoral legislation, acting as a representative of the Collective at the house; and, b) by two member-participants, who must be affiliated to the same political party and must assist the member-participant in exercising the collective mandate.

The justification for PL n.1422/2021 consists of providing regulation of collective mandates in proportional elections, mainly by giving it constitutional normativity, since the institution exists in an infra-constitutional scope. Article 4 provides for the guarantees granted to members of the Board, which involve: I) the enjoyment of parliamentary immunities; and II participation in decisions related to the exercise of the collective mandate, respecting the rules established in its constitutive act, with criteria defined by the statute of the respective political party and the prevalence of the will of the representative member in case of dissent. Another project to be analyzed consists of the Proposed Amendment to the Constitution (PEC) 379/2017 ³, which seeks to insert into the text of article 14 of the 1988 Constitution a provision that enables collective mandate within the scope of the Legislative Power. Nascimento (2021) recognizes the 2017 PEC as an important instrument to provide consent to collective mandates at a national level, equating them with individual mandates in the constitutional text. About its processing:

No dia 09 de novembro de 2017, a Deputada Renata Abreu do PODE-SP apresentou Proposta de Emenda Constitucional – PEC visando acrescentar parágrafo ao art. 14 da Constituição Federal para institucionalizar o mandato coletivo no âmbito do Poder Legislativo. Bastante simples, ficaria assim: “Art. 14, § 12. Os mandatos, no âmbito do Poder Legislativo poderão ser individuais ou coletivos, na forma da lei.” A proposta foi devolvida pelo relator sem manifestação, Deputado Chico Alencar do PSOL-RJ, e arquivada em 21 de janeiro de 2019; foi desarquivada e teve como último despacho, em 02 de julho

²Available at <https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=2017181> Access: May 17th. 2022.

³Available at <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2162014>> Access: May 17th. 2022.

do mesmo ano, o envio à Comissão de Constituição e Justiça e de Cidadania – CCLJC, e nova nomeação de relatoria, a Deputada Shéridan do PSDB-RR, atualmente aguardando apreciação do plenário (ROSSINI, 2021, p. 50).

It is clear that PEC no. 397 seeks to authorize collective mandates in a simplified way by enshrining them in article 14 of the current Constitutional Diploma, without establishing rules that distinguish them from traditional mandates. In this way, there could be a complementary law to provide legislative depth and the 'rules of the game' for its operation, or even the laws that fall under individual mandates could be applied. In this context, there are consistent legislative initiatives to promote the advent of collective mandates in a formalized manner.

The Complementary Law Project (PLP) 112/2021 ⁴provides in its article 1 the intention of establishing a Code to establish material, procedural and procedural standards aimed at ensuring the functioning of representative and participatory democracy with the full exercise of political rights and the rights of political parties. Section I of article 21 of the PLP provides, among the general purposes of the parties, the contribution to the construction of a plural public opinion on topics of collective interest, as in the very existence of collective mandates. In this way, this already accepted meaning for the definition of parties involves precisely their ability to articulate actions in favor of the legislative effort to determine the context of collective mandates in Brazil.

In turn, PL nº 4724/2020 ⁵, which establishes rules for the registration and electoral propaganda of collectively promoted candidacies, as well as for their operation:

Com 16 artigos, o projeto pretende regular o mandato coletivo, nomenclatura que esclarece compreender todos aqueles que forem exercidos de forma coletiva, compartilhada, colaborativa, cooperativa ou participativa, no âmbito das três esferas legislativas, municipal, estadual e federal. Da mesma forma que o PL 4475/2020, estabelece que as prerrogativas e obrigações do cargo ficam em nome do parlamentar eleito, inovando, porém, ao submeter seu exercício os estritos termos do estatuto do mandato, “acordo formal que delimita os elementos fundamentais do vínculo contratual entre o parlamentar e os coparlamentares” (ROSSINI, 2021, p. 51-52).

In the view of Rossini (2021), PL 4475 is considered the most complete in progress in the legislature, seeking to determine all the criteria that involve collective mandates, framing it in the national legal system. However, it presents certain limitations, such as the definition of a maximum of five people in the collective mandate (1 parliamentarian and 4 co-parliamentarians) and its link to a political party, so that all co-parliamentarians must belong to the respective electoral domicile and be affiliated to the same party. , being chosen together with the candidates

⁴Available at < <https://www.camara.leg.br/propostas-legislativas/2263417>> Access: May 23. 2022.

⁵Available at < <https://www.camara.leg.br/propostas-legislativas/2262090>> Access: May 23. 2022.

for the position. PL nº 4475/2020 ⁶, also analyzed by the author, aimed at amending Law nº. 9,504/97, seeks to specifically regulate the registration of collective candidacies for the Legislative Branch and their electoral advertisements, given that:

a ideia do proponente é simplesmente ressaltar que tanto o registro quanto a propaganda ficam vinculadas ao nome do candidato ao cargo, podendo, apenas, mencionar o nome do grupo ou coletivo social de forma acessória. A proposta chegou à Comissão de Constituição e Justiça e de Cidadania - CCJC em 10 de fevereiro de 2021 e aguarda designação de relator, não havendo qualquer nova ação legislativa registrada no site oficial da Câmara dos Deputados que, inclusive, informa não haver tramitação no Senado Federal nem na Presidência da República (ROSSINI, 2021, p. 51).

Thus, there are consistent proposals that seek to regulate collective mandates in the Brazilian legal system, each with its own particularities and establishing different criteria for candidacies and the exercise of mandates in the event of a positive election. With the significant increase in collective demands in the last elections, legislatively formalizing collective mandates with the approval of projects is essential for them to be operationalized, as this is a political reality present in the country as a way of increasing representation and vulnerable groups .

6 FINAL CONSIDERATIONS

In Brazil and Latin American countries in general, colonization processes generated a 'Eurocentric' view of the Legislative Branch, which ended up being historically composed of white men, excluding women, black people, indigenous people, quilombolas, LGBTQIA+ people, people with disabilities, among other minorities in electoral races and in the public debate itself. This generates an unrepresentative political arena, which in the present study was called political inequality, as a reflection of social inequalities and the social exclusion of marginalized groups, including minorities, the vulnerable, historically disadvantaged people and the underprivileged.

Important advances were made to transform the reality experienced by subjects and groups of vulnerable people after Brazil's redemocratization process in 1988. However, participatory democracy remains a 'myth', since mere formal equality of political participation does not is confirmed in practice, and this is a result of an effort by the elites to maintain their power. For elites, it is appropriate to give vulnerable people partial and fragmented representation, since their permanence at the top of the structure and power depends on the weakening of these groups. In fact, in the view of the author of the present study, in a manner corroborated by the

⁶Available at < <https://www.camara.leg.br/propostas-legislativas/2262090> > Access: May 23. 2022.

contributions of other authors, the increase in the representation of vulnerable groups is seen as a danger for the dominant classes.

In this way, possibilities begin to be envisioned to generate expanded representation, such as collective mandates, which can be conceptualized as an elected candidacy in which a group of people positions themselves as candidates, jointly, for the same public position, something which intensified in the 2010s, especially after the *impeachment* of Dilma Rousseff, and which showed significant growth in the municipal elections in 2020. This increase in the number of collective candidacies is a portrait of facing the crisis of political representation in favor of groups vulnerable, such as the feminist and quilombola candidacies in the 2020 elections, among other groups, video table 1 presented in the present study. Collective elections, as seen in table 2, were of little significance in other periods of Brazilian political reality, but their expansion denounces the tendency for collective elections to increase in the electoral context.

However, in the Brazilian case, collective mandates have not yet been subject to legislative conclusion to regulate them, even with proposals and projects being processed in the Legislature (PL n.1422/2021, PEC n. 379/2017, PL n. 4724/ 2020 and PL No. 4475/2020). In the view of the author of this study, each proposal ends up having its own particularities, such as the PEC of 2017, which seeks to merely amend article 14 of the 1988 Constitution to admit collective mandates in the same way as traditional individual mandates, the PL 4475, considered the most complete in progress in the legislature, seeking to determine all the criteria that involve collective mandates, framing it in the national legal system, and PL n.1422/2021, which provides for collective mandate applicable to the positions of Federal Deputy, State or District, as well as Municipal Councilor, determining that the same will be exercised by a collegial body, called "Parliamentary Collective", which is formed by three members, and bringing general rules for its operation.

Given the analysis of the main points and foundations of collective mandates as instruments for increasing the representation of vulnerable groups and the understanding of the existence of a movement to intensify collective candidacies, there is an emergency nature to formally discipline and legitimize collective mandates. . This is a reality that has been observed in municipal elections, and it is up to the Legislature to find the best option and promote it to make collective mandates a more predictable and secure instrument, preventing them from being distorted in their objective of promoting expanded representation of vulnerable groups of people.

In this way, there is an urgent need to monitor and evolve the Law on issues involving the need to expand political and social representation – giving a voice in parliaments – to vulnerable people, implementing the constitutional mandate of Human Dignity , Political Pluralism and the

very notion of representative democracy, which essentially involves a rapid assessment of the analysis of the aforementioned bills in progress. The electoral arena is the genuine form of access to power and since, among the initiatives analyzed in this study, the oldest dates back to 2017, the Legislative Branch – within its primary mission – can resolve the issue of representation so that vulnerable groups can act on collective mandates and consolidate them as instruments of representation, within legality, a cornerstone of Brazilian law.

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