

Direct action of unconstitutionality in the context of unfinished transition: repercussions of ADI 282-1/2019 on democratic management and the election of school principals in Mato Grosso

Ação direta de inconstitucionalidade em contexto de transição inacabada: repercussões da ADI 282-1/2019 na gestão democrática e eleição de diretor no Mato Grosso

Marilda de Oliveira Costa¹ , Adriana Rodrigues dos Santos Brito² , Mireni de Oliveira Costa Silva³

¹Universidade do Estado de Mato Grosso – UNEMAT, Programa de Pós-graduação em Educação – PPGEduc, Cáceres, MT, Brasil

²Secretaria de Estado de Educação – SEDUC/MT, Mirassol D'Oeste, MT, Brasil

³Poder Judiciário de Mato Grosso, Cáceres, MT, Brasil

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Abstract

This article approaches the emptying of constitutional principles, such as the democratic management of public education and the election of school principals, in the state and districts of Mato Grosso, given the decision of the *Supremo Tribunal Federal* (Federal Supreme Court) (STF) in 2019. The text aims to map the legislation on democratic management of public education and the election of principals in the state and cities of Mato Grosso and to analyze the legislative changes resulting from the approval of the *Ação Direta de Inconstitucionalidade* (Direct Action for Declaration of Unconstitutionality) (ADI) 282-1/2019 by the STF (Brasil, 2019). In this documentary and bibliographic research, the primary data were collected from official websites, transparency portals and official journals of states and cities; Secondary sources were also used, by means of searches on the Capes website and journals specialized in this field. The results show that ADI-282/2019 influenced both the revocation of legislation and the suspension of direct elections for the position of school principal in the state education network and in 88 cities, thus leading to other forms of filling the position and the weakening of the principle of democratic management of public education.

Keywords: 1988 Constitution; direct action for declaration of unconstitutionality; principal elections; Mato Grosso.

Resumo

Este artigo aborda o esvaziamento de princípios constitucionais, como a gestão democrática do ensino público e a eleição de diretores, no estado e municípios de Mato Grosso, tendo em vista a decisão do Supremo Tribunal Federal (STF) em 2019. O texto tem por objetivo mapear as legislações sobre gestão democrática do ensino público e eleição de diretores no estado e municípios de Mato Grosso e analisar as alterações legislativas a partir da aprovação da Ação Direta de Inconstitucionalidade (ADI) 282-1/2019 pelo STF (Brasil, 2019). Nesta pesquisa documental e bibliográfica, os dados primários foram coletados em sites oficiais, portais da transparência e diários oficiais de estados e municípios; também foram utilizadas fontes secundárias, mediante buscas no site da Capes e em periódicos da área. Os resultados mostram que a ADI-282/2019 influenciou a revogação de legislações e a suspensão da eleição direta para o cargo de diretor escolar na rede estadual e em 88 municípios, apontando outras formas de provimento do cargo e o esvaziamento do princípio da gestão democrática do ensino público.

Palavras-chave: Constituição de 1988; ação direta de inconstitucionalidade; eleições de diretores; Mato Grosso.

***Corresponding author:**
marilda.costa@unemat.br

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INTRODUCTION

This text is the result of a finished research¹ and aims to present the impacts of STF's decisions in democratic management (GD²) and in one of its elements, election of school principals, in the districts in Mato Grosso, starting from 1990. The approached theme refers to the control of constitutionality, a judicial mechanism which aims to identify, correct or eliminate norms which may be at odds with the Brazilian Federal Constitution (CF) of 1998. In this study, the focus is on one of the elements of GD: the election of principals.

Since its approval, on October 5th, 1998, the CF went through 32 amendments, and the last one was approved on December 20th, 2023. Faithful to the unfinished transition from the Dictatorship³ to the "nova República" (New Republic) and the "democracy" which came out of its womb (Fernandes, 1986), almost all of the decisions which alter important constitutional devices were made without the consent of Brazilian society. With the exception of few occasions⁴, referendums, plebiscites, or other types of public consultations in which the people could deliberate, with freedom, knowledge, and autonomy, on issues involving power relations and the promotion of the well-being of the Brazilian population, whose majorite survives at the margin of the consumption of material and cultural goods, given the chronic inequalities which have defined the long path of citizenship in Brazil (Carvalho, 2001).

Amid attempts to break with the dictatorial regime then in place in Latin American countries, including Brazil, in the 1980s (O'Donnell, 2015), an authoritarian neoliberalism emerged as the defining force behind reforms in the core capitalist countries. These reforms oriented the adoption of principles, techniques and values, marketing, goals and results of the own managerialism (New Public Management) in public administration and in the role of the State. The balance of neoliberal policies associated with technological advancement and globalization in the following decades may be found in authors such as Anderson Perry (1995), Ball (2014), Dowbor (2017), Antunes (2020), Levitsky and Ziblatt (2018), amongst numerous others.

METHOD

To develop the theme, we draw on a literature review on the concept of democracy, especially in the capitalist context, and the challenges of its implementation in countries like Brazil. Secondly, we refer to authors who discuss constitutional law and ADI, in order to present the decisions of the STF on the legality of one element of the constitutional principle of GD – the direct election of school principals. This element has been the subject of constant challenges by the governors of some states, who, among other reasons, claim discretionary power for the appointment of public servants, according to Article 37, item II of the CF/1988.

The research was conducted from 2021 to 2023, with 1990 to 2022 being the coverage period. The data collection (documents) involved consultations to official websites, such as that of the STF, and transparency portals of State and Municipal Education Departments. The data was analyzed in light of the adopted frameworks.

The study highlighted the lack of academic work addressing the relationship between the decisions of the Federal Supreme Court and Democratic Management, especially in the context of the current political transition and ADI-282-1/2019. The research identified a gap in this area, emphasizing the importance of analyzing the role of the STF in the consolidation of democracy in the country.

DEMOCRACY, AUTHORITARIANISM, AND INCOMPLETE TRANSITION IN BRAZIL: THE 1988 FEDERAL CONSTITUTION AND THE MANAGEMENT OF EDUCATION

The term democracy is multifaceted and has a long history, from its origins in Ancient Greece (Held, 1987; Wood, 2003), when all free citizens could directly participate in decision-making, to

¹ It is the Master's thesis in Education, developed at PPGEDU/UNEMAT – Cáceres MT, by Adriana dos S. Brito, concluded on March 31st, 2023.

² Stands for *Gestão Democrática*.

³ Brazil underwent an extreme right-wing military dictatorship from 1964 to 1985.

⁴ The referendum on the prohibition of the commerce of firearms and ammunition in the country (2005) and the plebiscite to define the form and system of government in the country (1993). Created by popular initiative, the Lei da Ficha Limpa (Clean Record Law) was approved in 2010 (Lei Complementar nº 135, de 4 de junho de 2010).

elitist-based conceptions where liberal democracy is interpreted as a mechanism for competition among equals, a method to reach power (Schumpeter, 2022). Democracy has undergone various updates and attempts at suppression, as recent history has shown, be it due to the power of corporations and the transnational financial system, which undermine the power of States, or because of the lack of regulation of this system, including big tech companies, whose content can pose a significant risk to democracy (Levitsky; Ziblatt, 2018; Przeworski, 2020).

Democracy is considered the result of historical experiences, which is why we cannot speak of democracy in a generic sense, nor establish comparisons between countries with different social formations. Authors such as Wood (2003, 2007) and Streck (2018), for example, defend that democracy and capitalism are incompatible. In Wood's (2003) interpretation, cited in Pereira (2017)

[...] if democracy is understood in its original sense, that is, as government by the demos, as popular power, it is easy to see that what is called liberal democracy actually represents an emptying of the concept of democracy. And if this is the case, democracy in its substantial sense, and not merely formal, is fully antithetical to capitalism.⁵ (Pereira, 2017).

The current stage of neoliberal capitalism, in all its dimensions (Dardot et al., 2021), associated with neoconservatism (Brown, 2019), in all its complexity, has made democratic political practices unfeasible in many aspects, in several parts of the world, including countries with a long history of liberal democracy. The constant attacks have brought extreme-right governments into the political scene, as seen in Brazil (2018-2022), the United States (2016-2020), Hungary (since 2010), and Italy (2022-2023). In other words, a more aggressive and authoritarian neoliberalism has been imposed over democratic principles (Levitsky; Ziblatt, 2018; Przeworski, 2020; Brown, 2020).

The loss of legitimacy of governments as products of social-democratic experiences began in the 1970s, as they could no longer fulfill the promises of the Welfare State. When discussing the relationship between democracy and capitalism, Streck (2011) argues that the period represented a bought time, meaning that the crisis was "kicked down the road." The legitimacy crises, in the face of successive fiscal crises in the core economies, dominated the reform agenda for pro-market policies in these countries, highlighting, to some extent, the limits of liberal democracy in capitalism. The complex relationships between the state and the market, the dominance of meritocratic values and "entrepreneurship," opposed to bonds of solidarity and rights, and managerial values (Caetano; Costa, 2018) became dominant, draining the concrete possibilities for the revival or adoption of liberal democracy and, therefore, the rights that were once in place in various countries. This situation has led some scholars to refer to the recent period as post-democracy (Lima, 2023; Monedero, 2012).

In Latin American countries, democracy has always been in symbiosis with authoritarianism (O'Donnell, 2015), with the former developing timidly on the formal plane, while the latter has overshadowed it, becoming hegemonic in different countries of the continent at crucial moments in the history of the region. O'Donnell presents eight main characteristics of the bureaucratic-authoritarian state (BA⁶); among them are elements which allow for thinking about authoritarianism beyond the civil-military dictatorships which dominated the countries in the region from the 1960s to the 1980s. Of the characteristics identified which can be applied to authoritarian states in "normal" times, for the purposes of this text, we highlight:

5) It is also a system of economic exclusion of the popular sector, as it promotes a pattern of capital accumulation which is strongly biased in favor of large oligopolistic private capital units and some state institutions, which significantly increases the pre-existing inequalities in the distribution of resources. (O'Donnell, 2015, p. 83).

Brazil, like other Third World countries, did not experience the same economic, political, social, and cultural advances as industrialized democracies – this is due to the formation of Brazilian

⁵ [...] se a democracia é entendida em seu sentido original, ou seja, como o governo pelo *demos*, como poder popular, vê-se facilmente que aquilo que se chama de democracia liberal representa na verdade um *esvaziamento* do conceito de democracia. E se é assim, a democracia em seu sentido substancial, e não meramente formal, se revela plenamente antitética ao capitalismo.

⁶ Referring to the Portuguese term *Estado Burocrático-Autoritário*.

society, which, in its origins, had oligarchic and slaveholding traits. Brazilian democracy, fragile as it is, walks hand in hand with authoritarianism, with concrete examples such as the *República da Espada*⁷ (Republic of the Sword) (1889–1894), the Vargas dictatorships⁸ (1937–1945), and the civil-military dictatorship (1964–1985), which Avritzer (2016) referred to as a semi-legal authoritarian system for allowing the functioning of Congress; and, more recently, the legal-media-parliamentary coup against President Dilma Rousseff in 2016 (Jinkings; Doria; Cleto, 2016), with the rise to power of a far-right candidate in 2018. The persistence of authoritarianism is a striking feature of the transition from dictatorship to “democracy” in Brazil in the mid-1980s (Fernandes, 1986), preserving dictatorial aspects with a view to maintaining political, economic, class, ethnic-racial, and gender privileges, among others analyzed by Schwarcz (2019).

The balance of power between the struggles of academic, union, and popular movements and the economic elite (participants in the coup) in the exit from the dictatorship was marked by the defeat of the *Diretas Já* (Direct Elections Now) movement, which demanded popular participation in the election for the President of the Republic in 1985. The constituent movement enshrined some achievements, including the establishment of the Democratic State of Law and the utopian Welfare State, as outlined in Article 6 of the 1988 Constitution, for example. Chapter III dedicated 10 articles to education, signaling principles and guidelines for the democratization of education, including access, content, and methods, as well as the valorization of teaching work, associated with Democratic Management (GD). Article 206, section VI, establishes the GD of public education, considered a fundamental principle for the organization of public education.

Democratic Management (GD) is a complex category, and although many Brazilian states and districts have regulated democratic management through specific legislation, the materialization of this constitutional principle still has a long way to go, marked by both advances and setbacks. The choice for school principals via elections with the participation of the school community is considered an important mechanism for democratizing education and promoting political citizenship. On its own, the election of principals by direct vote from the school community does not fully or ideally represent the concept of democratic management; however, it is a crucial tool for promoting the democratization of educational management (Barbosa; Pereira; Gomes, 2024). The importance of the participation of the school community in this electoral process is emphasized in order to ensure democratic management in public education, with all people involved actively participating in decision-making and school actions, especially during times of extremism, narrowing curricula, and neglect in scientific, artistic, and civic political education.

Different political and economic influences have impacted the practices of appointing principals, which underscores the need to discuss the role of the school community in this electoral process (Paro, 2003). Furthermore, direct elections are considered one of the most democratic ways to select the principal, for they actively involve the school community in the choice for the manager and lend legitimacy and representation to the position (Scalabrin, 2016). Given this reality, it is essential to understand the relevant transformations in our society, both in education and in the political and economic fields, highlighting the changes which occurred in Brazil during the transition period.

The transition in Brazil took place opposite to what was happening in some countries with conservative right-wing governments, such as in England, with Thatcher, and the United States, with Reagan, in the early 1980s. It did not take long for Brazil to align with the new global reform order, with the 1998 *Plano Diretor de Reforma do Aparelho do Estado* (State Apparatus Reform Master Plan) as a prominent example. The analysis outlined in this plan places responsibility for the economic and fiscal crisis on the state and the 1988 Constitution, and proposes reforms guided by neoliberalism, not only in the economic field and the role of the state but also within the Constitution itself, with Constitutional Amendment No. 19/1998.

⁷ The “República da Espada” (Republic of the Sword) refers to the period in Brazilian history between 1889 and 1894, following the military coup that overthrew Emperor Dom Pedro II and ended the monarchy, establishing the First Brazilian Republic. During this time, the country was governed primarily by military leaders, with the term “Espada” (Sword) symbolizing military power.

⁸ The “Vargas Dictatorships” refer to two distinct periods in Brazilian history when Getúlio Vargas ruled the country as a dictator.

Although rights which have been ensured are still not fully regulated, they are being altered through Constitutional Amendments, such as Amendment No. 95/2016, in judicial actions aimed at questioning the constitutionality of issues related to the 1988 Constitution. Between 1990 and 2022, governments from 26 states and the Federal District, or other collective actors, took the matter to the Federal Supreme Court (STF) to question the constitutionality of issues related to the 1988 Constitution, resulting in 6,889 ADIs. Some of these refer to democratic management and the appointment of school principals through direct elections by the school community.

THE RIGHT TO COMPLAIN AND CONSTITUTIONALITY: A BRIEF LITERATURE REVIEW

In the present time, it has become common sense to debate the role of the STF in Brazil (including in political platforms), especially in light of the constant demands directed to it, including new topics which were previously absent from the national and international debates, such as the “uberization” and precarization of labor, the absence of regulation of big techs, the spread of hate speech, the attacks on democracy, the responsibilities in managing the Covid-19 pandemic, and homeschooling, to name just a few examples. With an extremely important role defined in the constitutional framework, the STF is considered the highest authority in the justice system, the guardian of the CF. When called upon, it must express itself to debate and deliberate on the constitutionality of a variety of topics, including constitutional principles, such as the GD of public education and, among its elements, the election of school principals.

In countries with rigid constitutions, altering the constitutional text requires a special procedure, stipulated in the original constitution itself, which is more difficult than meeting the prerequisites to create general laws. Regarding this type of constitution, it is stated:

A “rigid constitution” has its own specific meaning: in any country in the world where it is more difficult to amend a law, that country can be said to have a rigid constitution. This means then that any new norm created from this constitution must necessarily follow its precepts and principles, under penalty of being removed from the legal system. Here, we therefore have the definition of the so-called “principle of the supremacy of the Constitution”⁹ (Almeida, 2016, p. 15).

In judicial systems with rigid constitutions, where the process of amending the constitution is more complex, formal, and rigorous than that established for creating infraconstitutional legislation (Barroso, 2020; Sarlet; Marinoni; Mitidiero, 2021; Daher; Santana, 2021), the constitution is superior to all other laws. In the event of a conflict between a constitutional norm and an infraconstitutional norm, the constitutional norm must prevail.

In flexible constitution systems, there is no hierarchy between constitutional norms and infraconstitutional norms. The ordinary legislator can modify the constitution using the same procedure adopted for the creation of infraconstitutional legislation (Bonavides, 2018; Barroso, 2020; Sarlet; Marinoni; Mitidiero, 2021). All legal norms hold the same formal value, meaning that new laws revoke or invalidate all previous norms which are incompatible with them, even if they are constitutional.

The Brazilian Constitution of 1988 is rigid and can only be amended through a special legislative process which requires the approval of three-fifths of the members of each house of the National Congress. According to Paulo and Alexandrino (2023), in judicial systems with rigid constitutions, it is necessary to establish a constitutional review mechanism to ensure the supremacy of the Constitution.

The two requirements for constitutional review are: the existence of a rigid constitution, where rigid constitutions are superior to infraconstitutional laws; and the constitutional provision for a mechanism to oversee the validity of laws.

According to Streck (2018), the history of Latin American countries significantly influenced the development of their judicial systems. The discovery of America, colonization, development,

⁹ “Constituição rígida” tem um significado próprio: em qualquer país do mundo no qual é mais difícil se modificar uma lei, neste país pode-se dizer que há uma constituição rígida. Isto quer dizer, então, que qualquer norma nova que seja criada a partir desta constituição deve, obrigatoriamente, seguir seus preceitos e princípios, sob pena de ser retirada do ordenamento jurídico. Aqui, portanto, temos a definição do chamado “princípio da supremacia da Constituição”

and redemptive processes are some of the main historical events which shaped the judicial systems of the region. The colonization of Latin America by European powers brought with it Roman law, which became the foundation of civil law in Latin American countries. Today, almost all of Latin America's judicial systems are based on democracies, or at least claim to be. However, there are still challenges to be overcome, such as social inequality and corruption. Constitutional review can be concentrated, diffuse, or mixed. The main difference between the concentrated and diffuse systems is the authority to declare the unconstitutionality of laws and regulations (Marinoni, 2021). In the concentrated system, the STF is the specialized body for checking the unconstitutionality of a law or regulation. In the diffuse system, a local judge or court can declare the unconstitutionality of laws and regulations. Whilst the mixed system of constitutional review is considered a way to reconcile the benefits of both the concentrated and diffuse systems.

In Brazil, the mixed system is adopted, and one of the ways to exercise constitutional review is through an ADI, a legal action which can be proposed by a group of entities and bodies to challenge the constitutionality of a law or normative act. The list of authorized entities to propose an ADI is set out in the Constitution and includes: the President of the Republic; the Chairs of the Federal Senate, the Chamber of Deputies, and the Legislative Assemblies of the States and the Federal District; the State Governor or Governor of the Federal District; the *Confederação Nacional da Indústria* (National Confederation of Industry) (CNI); the *Confederação Nacional do Comércio de Bens, Serviços e Turismo* (National Confederation of Trade in Goods, Services, and Tourism) (CNC); the *Confederação Nacional da Agricultura e Pecuária do Brasil* (National Confederation of Agriculture and Livestock of Brazil) (CNA); the *Ordem dos Advogados do Brasil* (Brazilian Bar Association) (OAB); political parties with representation in the National Congress; and national union confederations or professional entities (Almeida, 2016).

According to Almeida (2016), only political parties and national union confederations or professional entities should propose ADIs through contracted lawyers. Other authorized entities dispose of full procedural capacity, according to the political-constitutional functions which they perform. To propose an ADI, the authorized entity must present a detailed legal basis for the issues it seeks to have evaluated and clearly point out the evidences of unconstitutionality. There is no deadline for proposing an ADI, and once it is proposed, it cannot be withdrawn.

Since the promulgation of the 1988 CF and the respective State Constitutions, the STF has been called upon through ADIs which question the GD and the election of public school principals, due to disagreements regarding the interpretation of Articles 37, section II, and 206, section VI, of the CF.

CHALLENGES OF DEMOCRATIC MANAGEMENT AND THE ELECTION OF SCHOOL PRINCIPALS IN MATO GROSSO: DIRECT ACTION OF UNCONSTITUTIONALITY AND THE TENSION BETWEEN STATE AND SOCIETY

The 1988 Federal Constitution (CF) and the *Lei de Diretrizes e Bases da Educação Nacional* (National Education Guidelines and Framework Law) (LDBN) No. 9.394/1996 establish fundamental principles for education in Brazil, which include democratic management of public education. The LDBN details how this management should occur in state and municipal education systems, highlighting the importance of school community participation. Despite some debates regarding its scope, democratic management is essential for democratic learning, the formation of the democratic subject (Lima, 2005), and the decentralization of educational management. The *Plano Nacional de Educação* (National Education Plan) (PNE) also emphasizes the importance of democratic management, sets specific goals, and promotes debates on the subject (Souza; Pires, 2018).

The implementation of democratic management laws in districts is crucial for encouraging the active participation of the community in public administration, especially in the field of education. These laws ensure that crucial decisions, such as the selection of school principals and the creation of school councils, are made in a clear and inclusive manner, representing the aspirations and needs of local residents. Furthermore, these laws reinforce the independence of the districts, allowing for more effective management suited to local realities. By promoting

community participation, these laws also contribute to the formation of a more informed and committed citizenship, which is vital for building a fairer and more democratic society (Souza; Pires, 2018; Almeida; Locatelli, 2021).

Through a mapping conducted on the STF website, 25 Direct Actions of Unconstitutionality (ADIs) related to democratic management were found, along with 22 cases about “election of school principals.” Among these ADIs is the subject of this study, the ADI 282-1/2019.

The importance of the STF in the educational field is made evident, particularly in issues related to the election of school leaders and the suspension of articles in state constitutions, as occurred in Mato Grosso. In this text, we discuss the impact of ADI 282-1 on the democratic management of public schools in the municipal networks of Mato Grosso following the publication of the merit of this ADI in 2019.

Mato Grosso is located in the Central-West region of Brazil. It is characterized by hot climates due to its position between the tropics, and by environmental diversity, for it includes the Amazon, Pantanal¹⁰, and Cerrado¹¹ biomes. With a territorial extension of 903,208.361 km², equivalent to 10.6% of the country's area, the state has a low population density, with 3,658,649 people and a population density of 4.05 people per km² (IBGE, 2022).

Since the 1960s, Mato Grosso has experienced a significant migratory flow, driven by agricultural border and informal mining areas, besides the exploration of wood, livestock, and mining. Today, the state stands out as the largest producer of soy, cotton, and corn in the Central-West region, with lands which attract producers from several parts of the country.

Until 2022, the state was composed of 141 districts, organized into regions according to the new regional division (IBGE, 2017). In 2023, the district of Boa Esperança do Norte was emancipated, bringing the total number of districts to 142. It is important to stress that, in this text, we will address the districts as they were until 2022, according to the 2017 Brazilian Regional Division into Immediate and Intermediate Geographic Regions, which reflects the territorial transformations since 1990.

Immediate Geographic Regions are structures based on nearby urban centers, meeting the immediate needs of the population. Whereas Intermediate Geographic Regions correspond to the intermediate level between the Federation unit and the nearest geographical region and are determined by urban hierarchy and the influence of capitals. Regarding the division into Immediate and Intermediate Geographic Regions, Mato Grosso is organized as shown in the following **Table 1**.

The detailed panorama of the Intermediate and Immediate Regions of the state allows for a better understanding of the territorial organization. This table illustrates the administrative division and facilitates the visualization of areas of influence and their respective economic and social characteristics.

In the context of territorial organization, the promulgation of the *Constituição Estadual* (State Constitution) (CE) is highlighted, which took place on October 5, 1989, and was officially published in the *Diário Oficial* (Official Gazette) on October 18, 1989. This legal milestone established the guidelines for public administration and democratic management in the state, coming to directly influence the structure and operation of the Intermediate and Immediate Regions. The following year, this CE was challenged in ADI 282-1, filed in 1990, which sought a ruling from the STF to declare 77 articles of the Constitution of the State of Mato Grosso unconstitutional, including Article 237, sections III and IV. These articles dealt with the valorization of education professionals and democratic management, respectively.

Article 237. The State and the Districts will organize their teaching systems in an articulated manner and in collaboration, aiming for the full development of the human person, for their preparation for the exercise of citizenship based on the following principles:

(...)

III – Valorization of teaching professionals, ensuring, according to the law, a career plan for public educators, with a professional minimum salary, a workweek of no more than

¹⁰ *Pantanal* is the biome which encompasses the world's largest tropical wetland area, as well as the largest flooded grassland, found mostly in Brazil in the states of Mato Grosso do Sul and Mato Grosso, but also extending to their neighboring countries, Bolivia and Paraguay.

¹¹ *Cerrado* is a tropical savanna biome which covers a large area in Brazil.

Table 1. Intermediate and Immediate Geographical Regions of Mato Grosso.

Intermediate Geographic Region	Number of districts	Immediate Geographical Region	Number of districts
Cuiabá	30	Cuiabá	14
		Tangará da Serra	08
		Diamantino	08
Cáceres	21	Cáceres	05
		Pontes e Lacerda/Comodoro	07
		Mirassol d'Oeste	09
Sinop	42	Sinop	12
		Sorriso	09
		Juína	07
		Alta Floresta	06
		Peixoto de Azevedo/ Guarantã do Norte	04
		Juara	04
Barra do Garças	30	Barra do Garças	09
		Confresa/Vila Rica	13
		Água Boa	08
Rondonópolis	18	Rondonópolis	10
		Primavera	04
		Jaciara	04

Source: Brito (2023).

forty hours, half of which being dedicated to planning and extracurricular studies, and admission exclusively through public exams, including written tests and titles, ensuring a unified legal framework for all institutions maintained by the state and districts. (Amended by Constitutional Amendment No. 12, published on September 25, 1998).

IV – Democratic management, at all levels of the educational systems, with direct election of the principals of the teaching units, regional leaders, and the creation of paritary school advisory councils, with the participation of teachers, parents, and students, as specified by law.¹² (Mato Grosso, 1989).

During the 1980s, Brazil underwent a crisis of State representation, with significant political changes at the state and municipal levels, raising questions about the influence of the Federal Government. In the 1990s, the decentralization of the Federal Government resulted in the creation of new bodies and the hiring of new civil servants, who were later incorporated into the structure of the State.

In this context, ADI 282-1 was led by Governor Edison de Freitas Oliveira in 1991; due to the lack of a position from the STF, they requested Petition No. 518-0/170-MT (*Medida Cautelar Incidental*- Incidental Precautionary Measure of ADI No. 282-1 – MT) (Brasil, 1991). The Legislative Assembly and the Government of Mato Grosso requested this measure, arguing the existence of *fumus boni juris and periculum in mora*, due to the exclusion in the ADI and changes in the arguments previously presented. The STF granted the suspension of item IV

¹² Art. 237. O Estado e os Municípios organizarão os seus sistemas de ensino de modo articulado e em colaboração, visando ao pleno desenvolvimento da pessoa humana, ao seu preparo para o exercício da cidadania com base nos seguintes princípios: (...) III – valorização dos profissionais do ensino, garantindo, na forma da lei, plano de carreira para o magistério público, com piso salarial profissional, jornada de trabalho de, no máximo, quarenta horas, sendo metade destinada a planejamento e estudos extraclasse e ingresso exclusivamente por concurso público de provas e títulos, assegurando regime jurídico único para todas as instituições mantidas pelo Estado e Municípios. (Redação dada pela E.C n° 12. D.O.25.09.1998). IV – gestão democrática, em todos os níveis, dos sistemas de ensino, com eleição direta para diretores das unidades de ensino, dirigentes regionais e composição paritária dos Conselhos Deliberativos Escolares, com participação dos profissionais de ensino, pais e alunos, na forma da lei;

of Article 237 of the Constitution of Mato Grosso, based on similar decisions in other states. This ruling was obtained in 1991 and published in December of the same year.

Because this was an ADI which challenged the STF with different articles from the CE, some preliminary rulings were made over the years on different aspects. Regarding Article 237 and its subsections, in this ADI, it took approximately three decades from the publication of the Precautionary Measure through Petition 518 on December 6, 1991, until the final decision on ADI 282/2019, made on November 5, 2019. The ADIs and the rulings made were of great importance in unveiling “a political rhetoric that, while aiming for and promising democracy, also delays it and maintains the vices inherited from an authoritarian period in our society”¹³ (Brito, 2023, p. 142).

During this study, it was found that the STF declared the direct election of school principals unconstitutional in several Brazilian states due to understanding that such a practice does not constitute democratic management and violates the discretionary power of the government manager. This decision was made in various ADIs filed by different states: Amazonas, Ceará, Federal District, Mato Grosso, Minas Gerais, Paraná, Rondônia, Santa Catarina, Rio Grande do Sul, and Rio de Janeiro. In Mato Grosso, the publication of ADI 282-1/2019 entailed significant alterations in GD and the appointment of principals starting in 2019, both in the state network and in the municipal networks, with the approval of new legislation in Municipal Chambers suspending direct election for the position of principal.

To understand how these alterations took place, a mapping of the laws which govern democratic management in the districts of Mato Grosso was conducted, especially regarding the election of principals, taking into account the geographic organization of the districts. The research identified that many districts address democratic management within the *Lei Orgânica Municipal* (Municipal Organic Law) (LOM), the legislation which governs the career plan for education professionals, in addition to specific laws on the subject. After cataloging these laws, the next step was to identify how districts conducted the selection of school principals in the different Immediate and Intermediate Geographic Regions of Mato Grosso. The following table (**Chart 1**) presents the number of laws which addressed GD, considering *Leis Específicas de Gestão Democrática* (Specific Laws for Democratic Management), *Leis Orgânicas Municipais* (Municipal Organic Laws), *Leis de Plano de Cargo e Carreira dos Profissionais da Educação* (Laws on the Career and Position Plan for Education Professionals), and others, located by Immediate Geographic Region.

Based on the **chart 1** above, it was observed that all districts in Mato Grosso had regulated – whether in the Organic Law, Specific Laws, or other related laws – the Democratic Management of Public Education in their laws and, consequently, in most cases, the selection of school principals involved community participation through an elective process, as shown in the following **Graph 1**.

In 127 districts in Mato Grosso, elections for school principals were held until the year of 2019; 11 districts did not conduct the process, and information could not be found for four others. The significant number of districts which selected principals through elections showed that, for decades, local governments, in one way or another, considered the participation of the school community an important factor in the implementation of GD.

In the 1980s, during the waning years of the dictatorship, Mato Grosso stood out by proposing democratic management in its state education network. Popular participation and the election of school leaders gained momentum. In the following decade, there was a temporary suspension, but it was soon followed by a resumption. Regulation came with the passing of Ordinary Laws No. 5,604/1990 and No. 5,655/1990, with focus on direct elections for school leaders and the organization of the school community. These discussions culminated in the educational guidelines of 1998, reflecting the pursuit of a more democratic relation. In the environment of state educational network, Law No. 7,040/1998, which instituted democratic management of public education in Mato Grosso, was amended several times until it was revoked and replaced by Law No. 12,412/2024, which excluded the election of principals and included other elements unrelated to democratic management.

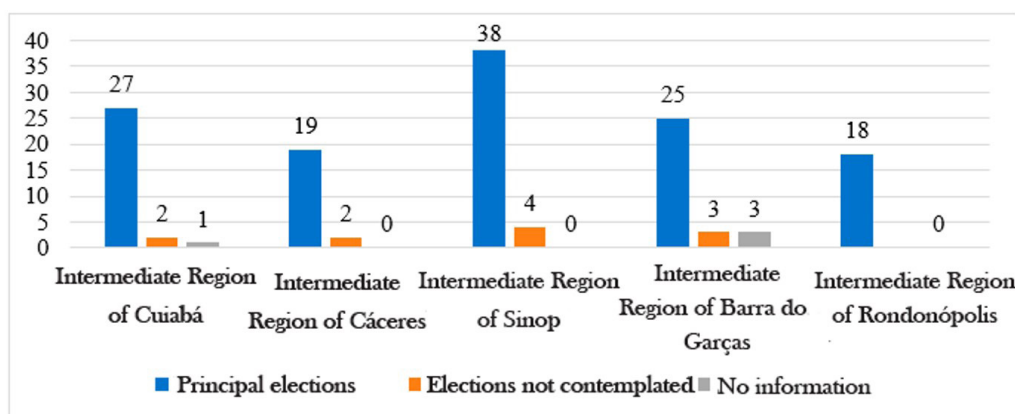
The alterations in the method of appointing school principals occurred abruptly following the decision in the merit of ADI 282-1/2019. Due to this ADI, the Public Ministry of the State of Mato

¹³ “uma retórica política que, ao mesmo tempo que almeja e promete a democracia, também a protela e mantém os vícios herdados de um período autoritário de nossa sociedade”

Chart 1. Number of laws which contemplated Democratic Management until 2019.

Intermediate Geographical Region	Immediate Geographical Region	Municipal Laws on Democratic Management	Municipal Organic Law that contemplated Democratic Management	Career and Position Plan for Education Professionals and others that included Democratic Management	Not located
Cuiabá	Cuiabá	10	02	01	01
	Tangará da Serra	06	02	-	-
	Diamantino	06	02	-	-
Cáceres	Cáceres	04	-	01	-
	Pontes e Lacerda/ Comodoro	07	-	-	-
	Mirassol D'Oeste	04	03	02	-
Sinop	Sinop	04	04	04	-
	Sorriso	07	-	02	-
	Juína	04	02	01	-
	Alta Floresta	05	01	-	-
	Peixoto de Azevedo	03	01	-	-
Barra do Garças	Juara	02	01	01	-
	Barra do Garças	03	02	03	-
	Confresa	02	05	04	-
	Água Boa	04	02	01	-
Rondonópolis	Rondonópolis	06	02	01	-
	Primavera do Leste	02	01	01	-
	Jaciara	03	01	-	-

Source: Elaborated by the authors according to the data presented by Brito (2023).



Graphic 1. Number of districts which carried out elections for school principals in the public schools in Mato Grosso until the year of 2019. Source: Brito (2023).

Grosso and the *Associação Mato-grossense dos Municípios* (Mato Grosso Association of districts) (AMM) manifested, advising districts to suspend elections for school principals. Following the guidelines from the AMM and the Public Ministry, municipal education departments conducted analyses to determine whether the selection processes for principals with the participation of the school community should be “maintained” or “suspended.” Different approaches were then adopted by public authorities in the districts of Mato Grosso regarding the methods for the selection of principals.

Given this advice, it was found that in some districts, the selection process which took place through elections with the participation of the school community, adopting other criteria or, simply, making direct appointments, such as in Poconé (Opinion CME No. 023/2021, Poconé, MT). In other districts, school principals and coordinators who were elected by the community were dismissed, as happened in Tangará da Serra.

ORDINANCE No. 140 OF FEBRUARY 6, 2020

The Mayor of Tangará da Serra, in the exercise of his legal powers, especially those under Article 80, VII, X, XXXV of the Organic Law of the Municipality.

Considering that the third clause of Article 237 of the Constitution of the State of Mato Grosso was declared unconstitutional by the Federal Supreme Court (STF), as per the decision published on November 11, 2019, in the case of ADI 282-1;

Considering Circular Letter No. 062/Presidência/2019 from the Mato Grosso Association of districts (AMM);

Considering that the STF has already issued precedents in cases such as ADI 2997, ADI 640, ADI 573, ADI 578, ADI 123, ADI 2997/RJ, ARE 821611/RS, which understand that School Principals are positions of trust/commissioned roles, with the Executive Head responsible for their designation or appointment;

Considering that decisions made by the STF have binding effects;

Considering that the District applied the same rules to the positions of School Coordinators, which are also commissioned positions;

Considering that the positions of School Principal and Pedagogical Coordinator were created by Law No. 3749/2012 of February 29, 2012, and its subsequent amendments, as commissioned roles under the following codes: Pedagogical Coordinator DAI-IX and School Director DAI-IX, respectively.

RESOLVES:

Article 1: To exonerate the School Principals and Pedagogical Coordinators appointed or named as a result of the electoral process for the Municipal Education Centers listed below, effective from February 7, 2020, the date in which the referred permanent teachers will be required to participate in the process of assignment of classes for the 2020 school year (Prefeitura Municipal de Tangará da Serra, 2020).¹⁴

Regarding the measures taken after the publication of ADI 282-1/2019, justifications to suspend the elections for school principals were frequently provided, based on the effect of the binding summary, with a seemingly uniform pattern used by different districts. Another common aspect observed was the way in which the elected officials were removed from their positions and replaced by other appointed professionals. In general, the appointment process

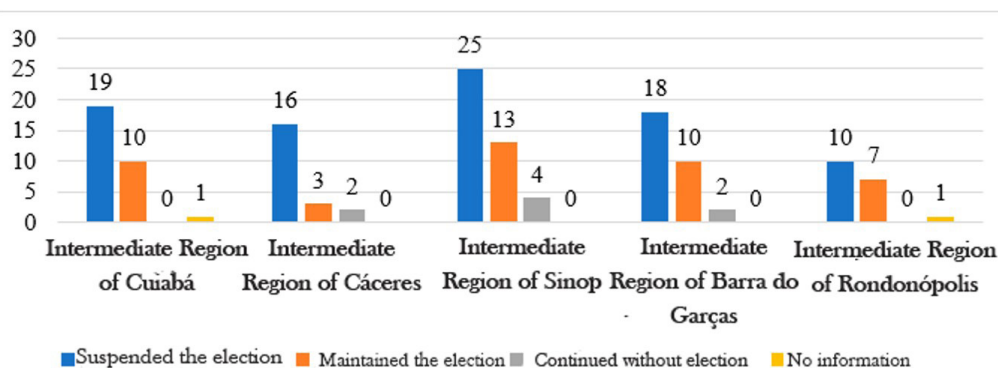
¹⁴ **PORTARIA Nº 140 DE 06 DE FEVEREIRO DE 2020.** O Prefeito Municipal de Tangará da Serra, no uso das atribuições legais especialmente as do art. 80, VII, X, XXXV da Lei Orgânica do Município. Considerando que o inciso III do artigo 237 da Constituição do Estado de Mato Grosso foi declarado inconstitucional pelo Supremo Tribunal Federal, conforme decisão publicada no dia 11 de novembro de 2019, no processo da ADI 282-1; Considerando o Ofício Circular nº 062/Presidência/2019 da Associação Mato-Grossense dos Municípios; Considerando que o STF já possuía precedentes julgados conforme ADI 2997, ADI 640, ADI 573, ADI 578, ADI 123, ADI 2997/RJ, ARE 821611/RS, que entende que os Diretores de escolas são cargos de confiança/comissionados sendo o Chefe do Executivo responsável por sua designação ou nomeação; Considerando que as decisões proferidas pelo STF possuem efeitos vinculantes; Considerando que o Município aplicou as mesmas regras quanto aos cargos de Coordenadores Escolares que também são cargos comissionados; Considerando que os cargos de Diretor de Escola e de coordenador Pedagógico são cargos criados pela Lei nº 3749/2012 de 29/02/2012 e suas alterações posteriores, de provimento em comissão nas simbologias: Coordenador Pedagógico DAI-IX e Diretor de Escola DAI-IX respectivamente. **RESOLVE:**

Art.1º Exonerar os Diretores escolares e Coordenadores Pedagógicos designados ou nomeados decorrentes do processo eleitoral para os Centros Municipais de Ensino abaixo relacionados a partir de 07/02/2020, data em que os referidos professores efetivos deverão participar do processo de atribuição de aulas para o ano letivo de 2020.

as a means of filling the principal position was widely accepted by the municipal mayors in Mato Grosso. The ordinance model was adopted by most districts in Mato Grosso, resulting in the reversal of electoral processes occurring days before the publication of ADI 282-1/2019 in the *Diário Oficial* (Official Gazette), such as in the case of the district of Canabrava do Norte, according to Ordinance No. 196, dated March 16, 2022.

Ordinances were annulled after the elections; in some cities, there was a change of principals, with new appointments made by the mayors. Errors in legal terms and standardized ordinance models, used by several cities, were also frequent. This raises suspicions on the origin of these ordinances, suggesting the hypothesis that they were produced by legal consultancy firms, due to the similarity in content.

Below is **Graph 2** showing the number of districts which suspended elections for school principals after the publication of ADI 282-1/2019 in Mato Grosso.



Graphic 2. Number of districts which suspended the elections since the publishing of the ADI 282 -1/2019 in Mato Grosso (period of 2019-2022). Source: Brito (2023).

After ADI-2019-1/2019, 88 districts suspended elections for school principals; eight had already stopped holding them, and 43 maintained the process. Information could not be obtained for two districts by the end of the study. The consequences of the interruption of the elections for school principals on the promotion of education were made evident through the speed and interest perceived in the actions of mayors to suspend the elections or dismiss the professionals chosen by the community; the loss of autonomy and collective participation of the school community; the criteria for selecting school principals based on merit; and appointments made without prior consultation. In summary, the public sphere disappears as decisions are made further away from where citizens live, breaking the bond of social solidarity and perpetuating social fragmentation and the lack of participatory management.

Aware that most districts followed the recommendations of the AMM and MP, questions arose on the possible reasons and justifications which led other districts not to comply with these recommendations to suspend elections for principals, and these issues should be the subject of future investigations. What we know so far is that districts or states have the ability to restructure their norms in accordance with the Federal Constitution, the *Lei de Diretrizes e Bases da Educação* (Law of Guidelines and Bases of Education), and the *Plano Nacional de Educação* (National Education Plan), with views to ensure participation, autonomy, and collective decision-making.

When analyzing the ADIs in this study, it was possible to observe that the judges based their votes on binding effects and previous decisions, based on precedents. This scenario raises concern, considering the transformations taking place in society since democratization. However, the judicial rulings which address collective issues and democratic management often reflect a post-dictatorship context marked by authoritarianism and conservatism, which has persisted throughout the country's history.

Given Brazil's social formation, leaders of several federative units elected by popular vote tend to avoid popular participation in decision making, preferring to file ADIs, issue draft laws, decrees, and ordinances that subtly undermine rights and the right to participate, as pointed out in the text. These actions significantly and uniquely compromise "the implementation of

fundamental-social rights (substantivized in the democratic text of the Constitution), which appears as a condition for the validity of the Constitution itself, in what it represents as a content-based link which ties politics to law¹⁵ (Streck, 2017, p. 119).

CONCLUSION

What has come to be known as liberal democracy in Brazil, from the end of the Military Dictatorship (1964–1985) to 2016, when the pact of the New Republic was broken, reached its peak during the constituent period (1986), materializing fundamental rights in the 1988 Constitution, in a context of unfinished transition.

While the 1980s were considered to be a lost decade economically, but politically rich due to significant advancements in democracy in the country, the 1990s were marked by significant changes in the Brazilian economy, with privatizations, deregulation, and flexibilization (Maringoni, 2013).

Therefore, the period during which the Federal Constitution was approved was fertile in mobilizations and social participation, and it influenced the constitutional text, including the guarantee of the principle of democratic management of public education. In compliance with Article 206, item VI, of the 1988 Federal Constitution, several Brazilian states approved laws to regulate democratic management, determining direct elections for public school principals. However, after these laws were approved, some state governments contested, in the STF, the constitutionality of the laws which established democratic management, either in whole or in part, specifically concerning the election of school principals by the community.

The main argument for the STF to declare the unconstitutionality of democratic management laws was the violation of the competence of the states to organize their education systems. According to the interpretation of Article 37, item II, of the 1988 Constitution, government managers (governors, mayors) have the prerogative of freely appointing trusted positions, including school principals. In some STF decisions, the ministers also argued that direct elections for public school principals could lead to conflicts between the government and the school community.

Following a national trend, Mato Grosso faced challenges in the democratic environment over the years, with both progress and setbacks. After the creation of the State Constitution, there were challenges in the STF to invalidate articles, including Article 237. Even with the *Lei Específica de Gestão Democrática* (specific Law for Democratic Management) - Law 7.040/1998, after ADI 282-1/2019, there were alterations to the way school principals were appointed. In the municipal networks, both the AMM and the MP issued documents based on ADI-1/2019, justifying the suspension of elections for school principals in districts, impacting Democratic Management.

Decrees were issued, annulling elections, and managers were removed and replaced with new appointees. GD was foreseen in specific laws, career plans, and municipal laws, and the vast majority of districts held elections for principals with the participation of the school community. After the decision of ADI-2019-1/2019, 88 districts suspended elections, eight had already stopped holding them, and 43 maintained the process.

With this study, two interconnected issues regarding the democratic management of public education emerge. The political issue, which promotes the emptying of participation under the argument of the authority and power of the ruler, is supported by the second issue, of a legal nature, which ensures discretionary power for the ruler to make political appointments, such as school principals. Confronted with the theories of democracy discussed in the text, such arguments resemble competitive democracy as a method for reaching power, as pointed out by Schumpeter (2022). In this sense, according to the STF's decision, states and districts can regulate the democratic management of public schools, but they cannot establish direct elections for school leaders. Considering Brazil's social formation and the period following the transition from the Dictatorship to the "New" Republic, the participation of the school

¹⁵ "a implementação dos direitos fundamentais-sociais (substantivados no texto democrático da Constituição) afigura-se como condição de possibilidade da validade da própria Constituição, naquilo que ela representa de elo contencioso que une política e Direito"

community in the selection of principals is crucial for democratic learning and the formation of democratic subjects for political citizenship.

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Authors contribution

MOC: Guidance, Research development, Production of the theoretical basis of the text. ARSB: Research development, Searches, Data analysis. MOCS: Assistance with literature, Legal guidance.

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