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PUBLIC POLICIES ON DRUGS IN BRAZIL: A CRITICAL LOOK AT THE IMPACTS OF THE DRUG LAW AND THE CHALLENGES OF THE PUBLIC SECURITY SYSTEM IN BRAZIL[1]

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Public Policies on Drugs in Brazil: A Critical Look at the Impacts of the Drug Law and the Challenges of the Public Security System in Brazil

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Abstract

The study analyzes the impacts of the 2006 Drug Law (Law No. 11.343/2006) on the public security and criminal justice system in Brazil, highlighting the challenges and consequences of the prohibitionist approach. The STF's decision on the constitutionality of article 28, which deals with the possession of marijuana for personal consumption, is discussed in contrast to common sense about the criminalization of use. The research points out that the repressive posture resulted in an increase in incarceration, mainly affecting small traffickers and perpetuating social and racial inequalities. The lack of objective criteria to distinguish users from traffickers and the inefficiency in cooperation between security forces and the judiciary have aggravated the problem, favoring the rise of criminal factions. Using literature review and qualitative analysis, the study consulted scientific articles, books, and statistical data through platforms such as Google Scholar. Documentary compilation and syntopical reading techniques were applied to identify convergences and divergences in the arguments. The work rescues the trajectory of drugs, the first regulations influenced by international guidelines and the debate of organized civil society. In summary, it questions the effectiveness of the current policy and exposes the need for alternatives focused on public health and social justice, recognizing the limits of the current model without proposing a new policy. The reflection seeks to stimulate a critical debate on the direction of drug policies in Brazil.

Palavras-chave: Racial inequality, Drug Law, Public policies, Prohibitionism, Criminal justice system.

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1. Introduction

The Drug Law of 2006 replaced the old legislation of 1976, bringing significant changes in the approach to the use, trafficking and production of narcotics in Brazil. The new legislation introduced the National System of Public Policies on Drugs (SISNAD), focusing on both prevention and repression. Although the law promised improvements, the practical results highlighted serious flaws, such as increased incarceration and persistent racial inequalities in the application of justice.

In the midst of numerous sensationalist news items placing the use and abuse of illicit drugs at the center of the most perverse criminal practices, the STF issues a decision on the constitutionality and applicability of article 28 of Law 11.343/06 dealing with the possession and possession of illicit drugs for personal consumption, specifically 'marijuana', contrary to what was already instilled in the popular common sense of prohibition because it is a crime.

This article explores the effects of the 2006 Drug Law (Law No. 11,343/2006) on the public security and criminal justice system in Brazil. The main challenges faced by the institutions involved are discussed, including the overlapping of functions, the increase in incarceration for trafficking, especially of small traffickers, racial bias, that is, the perpetuation of social and

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racial inequalities in law enforcement, and the growing influence of criminal factions. The study addresses how the lack of cooperation between security forces and the Judiciary negatively influences the efficiency of the justice system, the adoption of the prohibitionist model as the main approach to dealing with drug-related issues in Brazil.

The study seeks to analyze the national public policy on drugs with a view to highlighting the directions taken by it and its eventual effectiveness, in addition to bringing alternatives presented by social segment. Seeking to understand the impacts of the 2006 Drug Law and the challenges faced by the Brazilian public security system, the research brought to light the trajectory of drugs, their first regulations, the adoption of a repressive posture influenced by international guidelines and the debate promoted by organized civil society.

The central analysis of the work addresses the impacts of the 2006 Drug Law (Law No. 11.343/2006) in Brazil and discusses the ineffectiveness of the Brazilian prohibitionist model, the negative effects of the Drug Law on the vulnerable population and the public security system, in addition to bringing reflections on the need for alternative policies that consider public health and social justice. The study did not have the power to concisely propose a new public policy on drugs, but

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rather to bring a reflection on how the theme is being treated and, in this context, answer key evaluative questions regarding the effectiveness of the adopted model.

Currently, in common sense and in the media discourse, the use and trafficking of illicit drugs are often associated with violent crime, being pointed out as factors that feed practices such as robberies and homicides. These actions often occur in disputes over territories of action or in confrontations with the forces of repression. In addition, drug trafficking is responsible for the movement of billionaire figures, as evidenced by official data.

The issue of drugs is presented in an intricate way, since the absence of a clear and objective definition of the term, which varies according to the context in which it is used. One can attribute to the concept meanings related to the use of medicine, recreational, festive, religious, legal or marginal. Historically, the consumption of psychoactive substances has accompanied humanity for centuries, but the history of drug repression is relatively recent, 2 based on different arguments, the main one being the protection of the user's individual health and public health.

Under the justification of health protection and influenced by the American stance, from the middle of the twentieth

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century, the tendency to adopt repressive measures against both drug trafficking and drug use spread globally. This approach resulted in the categorization of different substances as licit or illicit, according to specific criteria.

Public policies based on the North American model, under the argument of protecting public health – including those implemented in Brazil – are widely classified as repressive, also known as prohibitionist, currently predominating in most countries.

It should be noted that this study did not have the power to encourage, defend or foster the use or trafficking of illicit or licit drugs, nor to affirm that the use of these substances is safe or that it does not affect the user's health.

The purpose of this study was to examine the foundations that sustain drug policy in Brazil, evaluating whether the criminal anti-drug policy model has been effective in fulfilling its objectives of protecting public health. In addition, it sought to analyze the impacts of this legislation on the public security system, as well as to discuss the challenges faced by criminal justice, including the overcrowding of the prison system, the perception of impunity, and the strengthening of criminal factions.

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To carry out the study, a qualitative approach was adopted through bibliographic research as the main source of analysis. Initially, the compilation of materials that presented correlation with the pertinent themes was carried out, based on a textual reading and synthesis for content selection and exclusion. Then, the syntopic reading technique was applied, culminating in a narrative review of the literature.

The research was based on the analysis of journalistic articles, government statistical data and specific scientific works. To collect the materials, open access search platforms such as *Google and Google* Scholar were used . Keywords such as "public policies on drugs", "drug prohibitionism", "health of drug users", "annual report on drugs", "efficiency of drug policies", "criminal factions", "criminal justice system", "flagrant", "perception of impunity", "military police", "racial inequality", "drug trafficking" were used.

The selection of texts was based on the titles and abstracts that were most aligned with the proposed theme, followed by a detailed reading to abstract the central ideas, later reorganized and interpreted according to the objectives of the study.

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2. Brief History of Drugs and Early Regulations

As mentioned, the term "drugs" lacks an objective and clear definition, and its meaning is highly dependent on the social context in which it is used and the prism of the area of knowledge addressed. For this study, we restrict our analysis to the perspective of the social and legal sciences, focusing on the socio-historical processes that contributed to the prohibition of the use, production, and commercialization of various substances in different countries around the world.

The World Health Organization (WHO) recognizes that the harmful use and dependence of drugs, whether licit or illicit, constitute a public health problem of international scope, worrying governments and societies around the world. This problem profoundly affects cultural, social, economic and political values. The WHO defines drugs as: 'any natural or synthetic substance, which, introduced into the living organism, modifies one or more of its functions, regardless of whether it is licit or illicit' or 'any substance not produced by the organism that has the property of acting on one or more of its systems causing changes in its functioning'. (WHO, 1993)

However, these conceptualizations are broad and generic, which can lead to limited or imprecise interpretations on the subject. In this sense, several substances that do not pose

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significant health risks could be classified as drugs under this definition. On the other hand, from more specific perspectives, drugs can be conceptualized and classified based on different criteria, such as their chemical composition, active ingredients and characteristic effects, or even according to their legality or legislative regulation in certain contexts.

At the national level, **Law No. 11,343/2006**, in the sole paragraph of article 1, defines drugs as: "For the purposes of this Law, substances or products capable of causing dependence, as specified by law or listed in lists periodically updated by the Executive Branch of the Union, are considered to be drugs". (Brazil, 2006)

The use of psychoactive substances dates back to the dawn of humanity, ranging from alcohol consumption to opium use. There are historical records that indicate that civilizations such as the ancient Egyptians, Greeks and Romans used these substances for both religious and recreational purposes. In addition, Roman, Arab, and English physicians employed the tincture of opium in the treatment of dysentery and other diarrheal syndromes, highlighting the therapeutic use of these substances in historical contexts. (Duarte, 2005)

Until the middle of the fourteenth century, both the production, commercialization and consumption of various

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substances now classified as drugs, such as cocaine, opium and their derivatives, were widely disseminated.

How did substances that were widely consumed, culturally accepted and recognized for their medicinal benefits come to be seen as a problem? Berridge and Edwards (1981) point out that it is not about the potentiality of each substance in its pharmacological property, which remains the same over time, but rather the social and economic context and the purposes of specific use without forgetting the frequency, which were sometimes associated with inappropriate use with deaths derived from it, causing doctors to question free consumption.

Still when dealing with substances that alter the state of consciousness, senses and perceptions, it is essential to mention alcohol and marijuana. The latter, considered one of the exotic spices that aroused great interest from Europeans, occupies a prominent place in this context.

Shecaira (2014) teaches us that, in the United States, traditional sectors with a strong religious inclination, organized in the so-called "temperance movement", intensified, at the end of the nineteenth century, the campaign for the prohibition of the consumption of alcoholic beverages. This effort culminated in the implementation of control policies, culminating in the so-called Dry Law, between 1919 and 1933. Although the

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Prohibition Law has been overcome, the prohibitionist spirit has remained rooted in the popular imagination, now focused on what is conventionally called "drugs". In this context, the next target of prohibitionism was marijuana, which became the target of restrictive legislation and repression campaigns.

In Brazil, still in the slavery period, there are reports, according to studies carried out by Carneiro (1958), regarding the use of the herb, which had other names, such as 'liamba' or 'pito de panga', or 'diamba', was consumed among the enslaved, especially in moments of sadness or longing for Africa.

Curiously, and even before the end of slavery, Brazil was a pioneer in prohibiting the use and sale of marijuana, establishing a specific norm as early as 1830, in Rio de Janeiro, through the Code of Municipal Postures. The text of the rule mentioned that "The sale and use of pito de pango, as well as its conservation in public houses, is prohibited. The offenders will be fined, namely: the seller in 20$000, and the slaves and other people, who use him, in three days of jail". (Mott, 1986, p. 131).

This regulatory framework reflects the first initiatives to control psychoactive substances in the country, highlighting a

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context in which cultural, social, and racial aspects profoundly influenced public policies at the time.

It is evident that the norm of the time not only sought to regulate the use of marijuana, but also functioned as a form of social control of the black population, since consumption was culturally associated with marginalized groups. In addition to being a pioneer in the prohibition of marijuana, Brazil has played an active role in the spread of prohibitionism at the international level. A striking example was his contribution during the II Pan-American Scientific Congress, held in December 1915. On the occasion, José Rodrigues Dória, professor of Law and Medicine from Bahia, presented the work entitled *"Marijuana smokers: effects and evils of addiction",* reinforcing the criminalization of the substance and helping to consolidate the prohibitionist discourse in international forums.

People usually interpret the world, starting from what is familiar to them, creating a belief of uncontested truth, whose interpretations promote a kind of wisdom of social navigation, which in literature is known as common sense. This, common sense, according to Anthony Giddens (2012) is everything that the subject shares in his culture, habit and social practice, when inserted in a certain social reality, forming consensus. In this context, common sense adopts a simplistic and naturalizing

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logic, often devoid of scientific foundation and strongly impregnated with prejudices. With regard to the topic of drugs, the massification of the idea that "drugs kill and do harm" has consolidated itself as an indisputable truth in the popular imagination, creating a real terror around the subject.

According to Line Beauchesne (2015), this generalized perception is far from protecting individuals and the community from the real damage that these substances can eventually cause.

On the contrary, common sense consolidates a strong belief in the exclusively harmful character of drugs, even when this understanding lacks complete scientific support. This simplistic view, by disregarding the nuances and complexities involved, perpetuates myths and prejudices, making debates less balanced and making it difficult to find effective solutions to problems related to the use of psychoactive substances.

3. International Prohibitionist Trend

Negotiations for the prohibition of the production, commercialization and consumption of various substances, such as cocaine and morphine, began in 1912, in The Hague, led by England and the United States. However, this process was only consolidated in 1919, with the Treaty of Versailles,

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marking the beginning of the modern system of international control of substances considered drugs, under the strong influence of US policy. (Scheerer, 1993).

According to Rodrigues (2012), technological advances and the development of means of transport in the post-World War II period significantly facilitated the movement of people and goods, contributing to the expansion of drug trafficking. This phenomenon, driven by the high profits generated, gave rise to a transnational narcotics market, which reinforced the thoughts and efforts aimed at strengthening prohibition policies.

This movement, centered on the so-called "drug problem", resulted in increasingly restrictive measures, consolidated internationally through a triad of conventions that established the prohibitionist paradigm. Under the leadership of the United Nations (UN), these conventions have come to guide the formulation of drug laws in more than 170 signatory countries, reinforcing a global approach to control and repression.

The aforementioned conventions began in 1961, with the Single Convention on Narcotic Drugs, considered by Karam (2015) as the most important of the century. This convention established that the signatory states should criminalize the cultivation, production, commercialization and consumption of

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certain substances classified as narcotics, consolidating the bases of the prohibitionist paradigm at the international level:

> "... cultivation and the production, manufacture, extraction, preparation, possession, offers in general, offers for sale, distribution, purchase, sale, delivery of any kind, brokerage, shipping, shipment in transit, transportation, import and export of narcotics."

This convention also defined the substances that would be submitted to control, establishing a classification based on the degree of danger and the potential to cause dependence, with the creation of four distinct control groups. In addition, it established a body responsible for overseeing the implementation of these measures, the International Narcotics Control Board (INCB). According to Alarcon (2012), this was a fundamental initiative to structure the international drug control system. The first convention was hosted and financed by the United States, a country that led the global consolidation of the prohibitionist paradigm (Fiore, 2012).

The second convention took place in 1971, called the Convention on Psychotropic Substances, and in general repeated the guidelines of the 1961 Convention, however, it gave more specificity in the classification of substances according to the potential to provoke dependence and therapeutic value of each one of them. That same year, U.S.

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President Richard Nixon gave a speech on the issue of substances considered illicit and inaugurated what became known as the 'war on drugs', advocating that drug policy should be centered on the repression of use and trafficking, supported by international police and military interventions (Araújo, 2017)

Seventeen years after Nixon's speech, his rhetoric directly influenced the third international convention, held in 1988 and entitled the Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The main objective of this convention was to strengthen international cooperation in the fight against drug trafficking, expanding joint efforts among signatory countries to address the problem on a global scale.

These premises sedimented in the triad of Conventions influenced the elaboration of public policies and legal statutory in most countries, including, obviously, Latin America.

Sociologist Campos (2019) listed five consequential points that resulted from the paradigm of the international conventions mentioned, the first being a model of uniform control of prohibited substances with restricted therapeutic use, followed by the defense of the criminalization of drug use and trade as the main option for imprisonment, and third, he mentions that there was no prioritization of treatment or prevention of the use of illicit drugs, Continuing with pointing out the rejection of penal

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alternatives as harm reduction measures and in the end, he points out that the rights of indigenous communities and peoples regarding the use of traditional products were not recognized, opting for the goal of eradicating plantations and traditional culture.

It is important to highlight that the internationalization of the repressive and austere fight against drugs has had direct impacts on the social, economic and political spheres of Latin American countries. This approach promoted the idealization of a world divided into blocs: on the one hand, the producing countries, often stigmatized as third world nations and blamed as the main culprits of the drug problem; on the other, the consumer countries, mostly developed, which have positioned themselves as victims of the expansion of the use of narcotics. This division reinforced inequalities and stereotypes, further aggravating tensions between these regions.

4. National Drug Policy in Brazil

As mentioned earlier, the first regulation on drugs in Brazil occurred in 1830, when the City of Rio de Janeiro established specific rules in the Municipal Code of Postures, Brazil was one of the precursor countries in the prohibition of marijuana called

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'pito de pango', as well as also making the plant definitively illegal in 1932, even preceding the United States itself.

It is important to note that Brazil is a signatory to the three Conventions mentioned, in addition to all international agreements under the aegis of the UN regarding drugs, therefore, the international prohibitionist model is what has been governing drug policies in Brazilian lands. Even before them, and inspired by the resolutions approved by the International Opium Conference (1911) and the International Opium Convention (1915), Brazil issued two decrees, one in 1914 and the other in 1915 with measures to prevent the circulation of opium and its derivatives.

Through Decree 20.930 of January 11, 1932, there was a criminalization for the trade and possession of drugs such as '*cannabis indica'* and cocaine, however, there was a differentiation of penalty and bailability between user and dealer (Brasil, 1932).

Eight years later, the Penal Code came into force, which began to provide in its article 281 (Brasil, 1940) the conduct of trafficking, maintaining the differentiation of treatment to the considered user, however, this article received a new wording in the middle of the military dictatorship, through Decree-Law 385 of December 26, 1968, when the user was equated to the

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trafficker, with the provision of the same sentence for both (Brasil, 1968).

In the 1960s, *Cannabis*, already commonly known as 'marijuana', aroused the interest of a social layer composed of intellectuals, university students, artists and the middle class, culminating in an increase in drug criminalization investigations, reaching middle-class youth in convictions (Batista, 2003)

According to Silva (2014), although the State had consolidated a mobilization throughout society on strategies for control, repression and prevention of drugs, involving the family, media and school, there was in the seventies, an intensification of drug use by middle-class young people, increasing the discussion about medicalization, bringing the psychiatric discourse closer to the criminological one, originating the change in the legislation that came with Law 6.368/76, operating the differentiation in the criminal treatment given to users and traffickers.

The equivalence of custodial sentences provided for the trafficker and the user was applicable until the entry into force of the legendary Law 6.368 of October 21, 1976 (Brasil, 1976), when the user's conduct began to be provided for in article 16 and although still punished with deprivation of liberty, its

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quantum was much lower than the provision made in article 12 for behaviors classified as trafficking, Let's see:

> Article 12. Importing or exporting, shipping, preparing, producing, manufacturing, acquiring, selling, exposing for sale or offering, supplying, even if free of charge, having in storage, transporting, bringing along, keeping, prescribing, administering or delivering, in any way, for consumption a narcotic substance or that determines physical or mental dependence, without authorization or in disagreement with legal or regulatory determination;
> Penalty – Imprisonment, from 3 (three) to 15 (fifteen) years, and payment of 50 (fifty) to 360 (three hundred and sixty) days-fine.
> ...
> Article 16. Acquire, store or bring with you, for your own use, a narcotic substance or one that determines physical or mental dependence, without authorization or in disagreement with legal or regulatory determination:
> Penalty – Detention, from 6 (six) months to 2 (two) years, and payment of (twenty) to 50 (fifty) days-fine. (Brazil, 1976)

During the government of Fernando Henrique Cardoso, in an apparent gesture of rapprochement with pro-legalization activists, **Law 10.409/2002** was enacted. However, the law suffered so many vetoes that it ended up becoming a true legislative "Frankenstein". This occurred because criminal offenses related to drugs continued to be governed by **Law 6.368/76**, without any significant modification. The new legislation dealt only with procedural procedures related to

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crimes involving drugs, without bringing substantial changes to the existing criminal framework.

In the historical sequence, in the midst of the political process of reelection of the then President Luís Inácio Lula da Silva, Law 11.343 of August 23, 2006 was sanctioned, which ended the provision of deprivation of liberty for users of illicit drugs, but on the other hand, maintained the repressive paradigm and the fight against substances. while there was a substantial increase in the penalty for those considered to be perpetrators of trafficking (Brasil, 2006)

This is the current Law in force in the country on the confrontation of issues related to illicit drugs, basically dealing with four aspects, instituting the National System of Public Policies on Drugs (SISNAS), prescribing measures for the prevention of misuse, care and social reintegration of drug users and dependents, establishing rules for the repression of unauthorized production and illicit drug trafficking and defining crimes related to illicit drugs with their respective procedural framework.

Marcelo Campos (2019) describes that during the processing of the bill that culminated in the current Law 11.343/06, there was an attempt to detach the figure of the user from the criminal scenario to the need for health treatment,

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which was partially achieved, by only abstracting the deprivation of liberty from his responsibility. He also states that to the behaviors dedicated to trafficking, there was an approximation of the labeling 'organized criminals'.

A recurring criticism of **Law 11.343/06** is the alleged absence of objective criteria to differentiate the conducts of drug use and trafficking, which has generated distortions in its application. As pointed out by Criminal Law researcher Luciana Boiteux (2009), this lack of clarity allows subjective interpretations, often resulting in inconsistent judicial decisions and possible injustices, especially against individuals in situations of social vulnerability.

It should be noted that the legal object of drug-related crimes is formally identified as **"Public Health".** However, in this author's view — in a process of continuous construction by experience and cognition over time — and based on the analysis of debates and materials on the evolution of the theme, it is perceived that the effective protection of **"Public Health"** is the least discussed or prioritized aspect in each historical phase. At most, the focus falls on the individual health of the user, relegating the broader concept of collective health to the background.

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The National Drug Policy (PNAD) is based on the annex approved by Decree 9,761 of April 11, 2019 (Brasil, 2019). In the same year, two months later, Law 13,840 of June 5 was enacted, which amended, among other norms, Law 11,343/06 itself, to deal with the National System of Public Policies on Drugs, as well as care for users and dependents (Brasil, 2019).

Due to the changes promoted and mentioned above, in 2021, the National Council on Drug Policies (CONAD) approved the National Plan on Drug Policies (PLANAD), with projections valid between 2022 and 2027. According to the initial presentation in PLANAD itself, the participation of society, representatives of public agencies and institutions is mentioned there, *in verbis*:

> The proposal for the National Plan on Drug Policies (PLANAD) was approved by the National Council on Drug Policies (CONAD), on August 3, 2021 and submitted to public consultation, held from September 3, 2021 to December 12, 2021 (100 days), exclusively through an electronic tool, through which contributions from 127 participants of the Society were received, the federal public agencies that make up CONAD and the Institutional Representatives of Drug Policies. Likewise, Planad was submitted to the Public Hearing held on 11/29/2021, in order to promote broad social participation. On this occasion, anyone (including members of public policy councils, civil society organizations and other agents of the states, the Federal District and municipalities) could present proposals and contributions about the plan. In view of the above, the National Plan on Drug Policies

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> (PLANAD) is the result of the integration and convergence of efforts of various agencies and entities (public and private), and had broad participation of civil society in its elaboration, which we submit to your appreciation, with the hope that the National Plan on Drug Policies (PLANAD), is an important tool in the coordination of government efforts to confront the issue of drugs in the country and promotes the changes desired by society in this area. (Brazil, 2022)

It can be inferred from the aforementioned legislative edicts that the Brazilian National Drug Policy is expressly based on the three international conventions within the United Nations and already mentioned here as a triad, constituting the international legal framework on drug control.

The PLANAD is seen as an instrument of a State policy and not of the government, it lists seven central problems related to the issue of drugs to be faced, namely, the consumption of illicit drugs and abusive or harmful consumption of alcohol, the trafficking and unauthorized production of drugs, smoking, the prolonged use of benzodiazepines, the fragility of governance and integration of drug policy, the insufficiency of management of assets seized from drug trafficking, the low availability of statistics and assessments. (Brazil, 2022)

Based on these identified problems and in line with the PNAD, the strategic objectives were defined, organized into five axes, namely:

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i. Prevention: involves preventive education actions focused on the individual and his or her sociocultural context, seeking to discourage the initial use of drugs, promote abstinence, and raise awareness and encourage the reduction of risks associated with the use, misuse, and dependence on licit and illicit drugs;
ii. Treatment, Care and Social Reintegration: covers actions of attention, care, support, mutual help, recovery, treatment, protection, promotion, and social reintegration of users and dependents of alcohol and other drugs;
iii. Supply Reduction: consists of actions to repress unauthorized production and illicit drug trafficking, in addition to the regulation of controlled substances and sustainable development actions;
iv. Research and Evaluation: encompasses actions to expand scientific knowledge, development of indicators, statistics and evaluation of policies, programs and projects;
v. Governance, Management and Integration: includes coordination and integration actions, in addition to promoting transparency and accountability of drug policy to society. (Brazil, 2022. p. 25)

In an apparent contradiction to the objectives and assumptions recommended by **the PNAD** (National Drug Policy) and PLANAD, on June 25, 2024, the Federal Supreme Court (STF) concluded the judgment of Extraordinary Appeal (RE) 635,659, establishing that the possession of small amounts of marijuana for personal use does not constitute a

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crime, but constitutes an administrative infraction. This decision implies that while possession of marijuana for personal use remains prohibited, it does not result in criminal sanctions, such as a criminal record. The applicable penalties include warning about the effects of the drug and participation in educational programs or courses, according to items I and III of article 28 of the Drug Law. (STF News).

The Supreme Court also defined objective criteria to differentiate users from traffickers, assuming that the possession of up to 40 grams of marijuana or the cultivation of up to six female plants characterizes personal use. However, this presumption is relative and can be challenged if there is evidence of trafficking intent, such as the presence of scales, packaging, or sales records. (Federal Supreme Court)

This decision represents a milestone in drug policy in Brazil, aligning with approaches that prioritize public health and education to the detriment of the criminalization of the user. However, the consumption of marijuana remains illegal, and administrative measures aim to discourage its use, promoting awareness of the possible associated harms.

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4.1 Brazilian Drug Policy Platform – An Organized Social Movement

Composed of Civil Society Organizations and academic associations, the Brazilian Platform on Drug Policies (PBPD) is a national network with the aim of producing political and technical advocacy in favor of drug policy reform in Brazil, proclaiming the reduction of inequalities and the guarantee of human rights to people and communities harmed by the 'war on drugs'.

Contrary to the current drug policy, the PBPD presented in 2022 an emergency agenda for the end of the war on drugs in Brazil and in this year 2024 the Brazilian Agenda for Drug Policy was prepared, with propositions arising from listening and collective dialogues with people who use psychotropic drugs, with activists, researchers and members of Civil Society Organizations related to drugs, human rights, health and safety. They emphasize that their proposals are in line with the democratic rule of law, advocating the broad participation of civil society for national consultations and conferences.

They set the objective of stimulating policies that will guarantee the dignity and citizenship of drug users, who should have the effective right to health and treatment in freedom, guaranteeing their autonomy.

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In this regard, they present as argumentative, guiding and grounding principles, the failure of the repression policy, which would not have achieved the objective of reducing the consumption and trade of drugs in the name of protecting the health of the population, and therefore defend: i) the change of focus from the substance to the user, prioritizing actions aimed at harm reduction; ii) broad social participation in the formulation, implementation and evaluation of policies and programs, promoting a qualified debate based on scientific evidence; iii) respect for freedom and the individual with guidance on what is a human right, prioritizing the promotion of public health, social and economic development, education and reduction of all types of violence (Platform website, 2024).

5. The Public Security System, Criminal Justice in Brazil

The public security system in Brazil is made up of a wide range of institutions, each with different responsibilities. The law that established the Unified Public Security System (SUSP) in 2018 reorganized the functions of the police and the Ministry of Justice and Public Security (MJSP). The SUSP is composed of the Federal Police, Federal Highway Police, Military and Civil Police, in addition to the Criminal Police and Municipal Guards.

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These institutions, however, face major challenges of coordination and cooperation. A clear example of this is the division between the Military Police, which acts in a preventive and ostensive manner, and the Civil Police, responsible for investigations. The lack of integration between these institutions often results in overlapping efforts, waste of resources and, in many cases, conflicts of competence.

One of the main structural problems of the Brazilian public security system is the lack of effective communication between police institutions and the judiciary. This results in a widespread public perception of impunity. Expressions such as "the police arrest, the justice system releases" reflect this sentiment, which is fueled by cases of violent crimes where those responsible are rarely punished.

Despite the increase in incarceration, especially for drug trafficking, many violent crimes remain unpunished due to the difficulty of investigation. Crimes caught, such as drug trafficking, are more likely to result in conviction, while crimes that require in-depth investigations, such as homicides, often go unsolved. This dynamic strengthens the sense that the criminal justice system is ineffective.

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6. Impacts Of Licit and Illicit Drugs: Individual, Social and Public Health Costs

The individual harmful effects resulting from drug use cannot be attributed only to illicit drugs, since personal health is affected by both licit and illicit substances, causing physical, mental and psychological damage to the user. Add to this the social damage related to drug use, such as physical aggression, car accidents, unemployment, cost and overload on the health network. In this vein, Nutt (2010 *apud* Baldini, 2023) concludes that alcohol, a legal drug, is the most harmful.

Another licit drug, but no less harmful is tobacco, which according to the Pan American Health Organization (PAHO) in a report on the control of the substance in the region of the Americas (2022), represents a risk factor for four of the most prevalent diseases in the world, in addition to transmissible ones, namely, cardiovascular diseases, diabetes, cancer, and chronic respiratory diseases.

Ronaldo Laranjeira (2010) states that dependence, seen as a disease, results from the initial voluntary use and culminates in the compulsion that destroys the quality of the person himself and corrodes his family relationships and with society. It argues that the affectation in brain mechanisms modifies mood, memory, perceptual cognition and emotional states, however, it

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rejects the stigmatization of the user as a defenseless victim without responsibility, on the contrary, because it understands that dependence is the result of a voluntary onset, the addict has great responsibility for his behavior and for his own recovery.

Analyzing the data recorded in the II Brazilian Report on Drugs (2021), it is possible to see the evidence of several pathologies and mortality associated with the use of licit and illicit drugs with a correlation of costs to public health. As a single example, in 2015, the number of deaths associated with the use of illicit drugs, adding all types of substances, represented only five percent of the total, where the other ninety-five percent were associated with the use of alcohol and tobacco.

7. The Role of Drug Law in Increasing Incarceration And The Impact of Impunity

The Drug Law of 2006 aimed to reduce the incarceration of users, by decriminalizing the possession of drugs for personal use. However, the practical effect was the opposite: incarceration increased significantly, especially among small-time traffickers. The distinction between "user" and "trafficker"

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is often subjective and depends on the interpretation of the police officers involved.

Elements such as the amount of drugs, the type of drug, the form of packaging, the presence of money and the place of the flagrante are used by the authorities to classify whether a person is a user or a trafficker. In many cases, this classification does not take into account individual circumstances, resulting in a disproportionate application of the law, which hits young black people from the peripheries hardest.

The research by Maria Gorete Marques de Jesus (2018) highlights how military police officers are often the main witnesses in trafficking cases, since there are no direct victims as in other types of crimes. In this way, the reports of the police officers are decisive for the conviction.

Impunity in violent crimes in Brazil is one of the most critical problems facing the criminal justice system. Studies show that crimes such as homicides and violent assaults have low resolution rates, which is due, in part, to the complexity of investigative processes. These crimes require detailed investigations, robust evidence, and long investigation periods, which makes it difficult to conclude the judicial process until conviction.

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On the other hand, crimes caught, such as drug trafficking, follow a simpler procedural flow, with high conviction rates. In these cases, the main evidence is the flagrante delicto itself, in which the police officers who make the arrest become the main witnesses in the trial. This results in a differential treatment between violent crimes and caught crimes, which contributes to the disparity in resolution rates.

In addition, the concentration of efforts by security forces on crimes that involve immediate flagrante delicto, such as the trafficking of small amounts of drugs, ends up neglecting more serious and violent crimes that require more complex investigations. This imbalance in the treatment between flagrantly discovered crimes and those that require investigation contributes to the perpetuation of violence in the country and to the public perception of the ineffectiveness of the justice system.

The consequences of this impunity are wide-ranging. It reinforces the population's sense of distrust in public institutions, fuels disbelief in the State's ability to control crime and, in many cases, leads to the search for extralegal solutions, such as the increase in private security mechanisms.

The rise of criminal factions in Brazil, such as the Red Command (CV) and the First Capital Command (PCC), is

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directly related to the failures of the Brazilian prison system. These criminal organizations emerged inside prisons in the 1970s and 1980s, initially as a response to inhumane conditions inside prisons, and later expanded to control drug trafficking.

The strengthening of these factions is one of the biggest challenges for public security in Brazil. Prisons have become a conducive environment for the expansion of these organizations, which use the lack of state control as an opportunity to recruit new members and organize their operations. Drug trafficking, which is one of the main sources of financing for these factions, continues to fuel high rates of violence in the country.

8. Results and Discussion

The central discussion of the work addresses the impacts of the 2006 Drug Law (Law No. 11.343/2006) in Brazil, with a critical look at the following points:

Effects of the Drug Law on the Criminal Justice System:

- Although the Law has decriminalized the use of drugs for personal consumption, in practice, it has increased incarceration, especially of small dealers.
- The lack of objective criteria to differentiate users from dealers has generated subjective interpretations on the

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part of the authorities, which has disproportionately affected black and poor young people from the peripheries.

Racial Bias and Social Inequality:

- The application of the law reflects structural racism in Brazil, where the black population is the most impacted by the criminalization of drug use and trafficking, highlighting inequalities in the criminal justice system.

Impact of Prohibitionism:

- The prohibitionist policy focused on repression failed to achieve its objectives of reducing drug consumption and trade.
- The repression has strengthened criminal factions, which use the prison system as a space for recruitment and organization.

Challenges of the Public Security System:

- The lack of integration between police institutions and the judiciary generates inefficiency in the fight against violent crimes.
- The concentration of efforts on crimes caught, such as the trafficking of small amounts of drugs, neglects more complex investigations, such as homicides, reinforcing the sense of impunity.

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Proposed Alternatives:

- Social movements, such as the Brazilian Platform on Drug Policies (PBPD), defend a model based on harm reduction, with a focus on public health, social shelter and the guarantee of human rights.
- The recent decision of the Federal Supreme Court (STF), which decriminalized the possession of small amounts of marijuana for personal use, is highlighted as a milestone in the attempt to reduce the negative effects of criminalization.

The work discusses the ineffectiveness of the Brazilian prohibitionist model, the negative effects of the Drug Law on the vulnerable population and the public security system, in addition to bringing reflections on the need for alternative policies that consider public health and social justice.

Final Considerations

This study aimed to present a comprehensive view of the issue of drugs, focusing on public policies adopted at the national and international levels, correlating them with health. A brief history of the beginning of the regulations was outlined, the current public policy was explored, the social movements

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involved were discussed and the harm associated with drug use was analyzed.

In this context, it was observed that the national drug policy is strongly influenced by the global trend of an interventionist State, with emphasis on repression and prevention, based on the prohibition of substances. At the same time, organized social movements propose alternative models, advocating differentiated approaches to treatment and a drastic change in the direction of current policies.

Furthermore, this work does not intend to determine which model is the most appropriate or correct, nor to defend any specific approach. The objective is only to present clarifications and arguments that allow a broader understanding of the different ways of facing the problem.

Elements were presented that aim to stimulate a critical reflection on the model currently recommended in the standards and written plans, confronting it with the reality of its practical application. This comparison allows us to ponder on the effectiveness of the current policy and to assess whether it is effectively achieving the objectives it proposes.

It is indisputable that issues related to drugs, whether licit or illicit, are harmful to health. As initially mentioned, this work was not intended to encourage or promote drug use, nor drug

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trafficking, but rather to foster a critical and informed discussion on the subject.

In summary, two main approaches to dealing with the drug issue were identified: one with an emphasis on criminal justice, focused on repression and control, and another focused on public health and social welcoming. The choices between these strands are profoundly influenced by moral values, public policies and criminological perspectives, especially with regard to the phenomenon of violence associated with drug trafficking.

The 2006 Drug Law, despite its initial intention to reduce prison sentences for users, resulted in a substantial increase in incarceration, particularly of small-time dealers. In addition, the law exacerbated racial inequities in the criminal justice system, with Black and poor people disproportionately affected.

The challenges faced by the Brazilian public security system are numerous: lack of coordination between institutions, perception of impunity, overcrowding of prisons, and the strengthening of criminal factions. The country needs to rethink its drug policies and seek more effective solutions to address these structural issues that compromise justice and public security.

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