



Article

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ASSESSMENT AND REGULATION OF HIGHER EDUCATION IN BRAZIL: IMPASSES AND CHALLENGES¹

Avaliação e regulação da educação superior no Brasil: impasses e desafios

Evaluación y regulación de la educación superior en Brasil: impases y desafíos

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Abstract: The combination of certain characteristics of the higher education system in Brazil, such as its large size and the predominance of private institutions and of distance education (DE), makes it highly specific vis-à-vis other higher education systems worldwide, particularly those in Latin America. Considering the current configuration of the Brazilian system, this paper aims to present the regulatory framework that supports this system, namely, the legal and identify the main challenges involved in these processes. This paper draws on studies in the relevant research field, statistical data, and legal documents available from public sources. Among the results, it points out the need to review evaluation procedures and regulatory norms for higher education institutions and courses in Brazil, while not questioning the progress represented by the existence of a national evaluation system or the role of the public sector in the evaluation and regulation of higher education courses and institutions.

Keywords: higher education; regulation; evaluation; Brazil.

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Resumo: A combinação de algumas características do sistema de educação superior no Brasil, como a sua grande dimensão e os predomínios da oferta privada e da modalidade de ensino a distância (EaD), confere-lhe grande especificidade *vis-à-vis* outros sistemas de educação superior do mundo e, notadamente, os da América Latina. Considerando-se a atual configuração do sistema brasileiro, o artigo propõe apresentar o quadro normativo que lhe dá suporte, e indicar os principais desafios que envolvem os processos de avaliação e regulação. O artigo mobiliza estudos do campo de pesquisas pertinente, dados estatísticos e documentos legais disponíveis em fontes públicas. Dentre os resultados, indica-se a necessidade de rever procedimentos de avaliação e normas da regulação de instituições e cursos de ensino superior no País sem, no entanto, questionar o avanço que representa a existência de um sistema nacional de avaliação nem o papel do poder público na avaliação e regulação de cursos e instituições de ensino superior.

Palavras-chave: educação superior; regulação; avaliação; Brasil.

Resumen: La combinación de algunas características del sistema de educación superior em Brasil, como su gran tamaño y el predominio de la oferta privada y la educación a distancia (EaD), le confiere una gran especificidad frente a otros sistemas de educación superior en el país, mundo y en particular, los de América Latina. Considerando la configuración actual del sistema brasileño, el artículo propone: i. presentar el marco normativo que lo sustenta, es decir, las disposiciones legales – leyes, decretos, ordenanzas – que establecen los principios y procedimientos para su evaluación y regulación; ii. Indican los principales desafíos que involucran estos procesos en el país. El artículo moviliza estudios del campo de investigación relevante, dato estadísticos y documentos legales disponibles em fuentes públicas. Entre los resultados se señala la necesidad de revisar los procedimientos de evaluación y normas de regulación de las instituciones y carreras de educación superior en el país.

Palabras clave: educación superior; regulación; evaluación; Brasil.

1 INTRODUCTION

The uniqueness of the higher education system in Brazil lies in the combination of at least four characteristics: its large scale - with around 10 million students spread across approximately 2,600 higher education institutions (HEIs); the predominance of the private sector, which accounts for 79% of total enrollments and 88% of facilities; the rapid growth in the offer of undergraduate courses in distance education (DE), which today serves 63% of the nearly 4 million students who enrolled in 2023 (INEP, 2024); and the existence of a public sector made up almost exclusively of federal and state universities, which are free of charge for students, and generally more academically selective, with a strong link to research and extension.

The evaluation and regulation of higher education are responsibilities of the government, through the Ministry of Education (MEC) and its specific agencies involved in the regulatory process. The federal system - regulated by the MEC - includes federal universities and technological institutes maintained by the Union, as well as a vast private sector made up of isolated colleges, universities, and university centers. In this sector, colleges represent 94% of the total number of HEIs (INEP, 2024). These data confirm both the scope and consolidation of the evaluation system and regulation of HEIs, as well as the centralized control the MEC holds over this system.

This article has two objectives. The first is to present the specificity of the Brazilian higher education system and the regulatory framework that supports it, that is, the legislation - laws, decrees, and ordinances - that establish the constitutional principles of higher education and the procedures for its evaluation and regulation. The second objective, considering the transformations the Brazilian higher education system has undergone in recent decades, is to point out the main challenges of evaluation and regulation. Among these challenges, we highlight four: i) the limits of an evaluation model originally conceived, in its fundamentals, instruments, and operationalization, for application to a smaller system with less diversity in terms of courses, teaching modalities, and types of HEIs; ii) the extensive and slow regulatory flow, which, due to the nature of regulatory acts and their complexity, can involve up to five administrative units of the MEC and take years to reach a decision; iii) the operationalization of evaluation, which involves a large number of evaluators not always qualified to apply the evaluation instruments; iv) the intertwining of evaluation and regulation of higher education, which does not always result in actual improvements in quality.

In addition to engaging with classical studies in the field of higher education research and more recent works addressing transformations in higher education in Brazil in the last decades, this article uses statistical data and normative documents available from official sources. The text is organized into three sections, in addition to this Introduction. The first, drawing on contributions from the literature, presents the main characteristics of the Brazilian higher education system to support the following sections. The second section addresses the legal framework for the foundations of

evaluation and regulation in Brazilian higher education, detailing the norms that establish the evaluation procedures and the current regulatory flow. The final section contains concluding remarks, presenting what we consider today to be the main impasses and challenges of evaluation and regulation in higher education in Brazil.

2 NOTES ON HIGHER EDUCATION SYSTEMS AND THE BRAZILIAN SYSTEM

In a strict and conventional sense, Clark (1983) defines a higher education system as a group of institutions under a common legal framework, including in this definition "all those who engage in postsecondary education activities: regulators, organizers, workers, or consumers". To illustrate, the author mentions education legislation committees, public employees handling such matters, members of a patronage when acting as such, administrators, professors, and students. By incorporating the different actors that make it up, Clark (1983) innovates the notion of higher education system: from being a closed and abstract concept, it becomes broader and more diffuse. As Brunner (2015) - with whom we agree - notes, Clark (1983) formulation highlights that higher education is influenced by a wide range of diverse internal and external demands and expectations, which it is unable to satisfy in full.

National higher education systems, in most cases, are mixed or dual, that is, they include both a public and a private sector, although the private sector varies widely from country to country. Levy (1986) and Geiger (1986) propose characterizing the type of private sector by two variables: its scale within the national system - whether it is the predominant sector or not - and the public or private origin of its funding. From this perspective, the differences between private sectors arise from how these two variables combine in each national system.

When researching different higher education systems at the end of the last century, Geiger (1986) explained the division between the public and private sectors as a result of the sum of individuals' choices within the structural possibilities allowed by society: the individual demand and preferences for higher education; the interests of specific groups; the State's supply of higher education; and the possibility of private sector provision. According to the author, these four forces operate recurrently and always in a dependent manner in defining the most common types of private sector - the "peripheral," the "parallel," and the "mass" (Geiger, 1986). Regarding the origin of private sector funding, the most common form is the payment of tuition fees by students and/or their families (Geiger, 1986).

Before moving forward, two observations are worth making. The concepts of mass private sector (Geiger, 1986) and the "market-oriented private sector" (Levy, 1986) were formulated before the expansion of higher education in most Latin American and Asian countries and before the Bologna Process established a common European Higher Education Area (De Wit, 2008). At the end of the last century, most national systems - as certainly was the case in Brazil - could not even be considered "mass

systems" in the definition given by Trow (2007)⁴. Therefore, what the notions of Levy (1986) and Geiger (1986) suggest is, above all, the existence of a complementary relationship between the public and private sectors in national systems, allowing one sector to remain more selective and focused on elite career training, while the other sector serves the growing demand for higher education. Moreover, mass higher education - whether public or private - does not necessarily imply equitable access and inclusion in the predominant sector (Dubet, 2015). Regarding the origin of funding (public or private) of the private sector as a defining variable of its type, it should be noted that in some national systems, public funding for tuition fees of students in private institutions has become common. These are the cases of Chile and Brazil in recent decades. In Chile, unlike Brazil, where public higher education is free, both public and private Chilean institutions charge tuition fees - which are considered among the highest in the world - which, according to some scholars, represents one of the significant factors of family indebtedness (Delisle; Bernasconi, 2018)⁵. In Brazil, the adoption of public funding programs for students enrolled in private institutions, including for-profit HEIs, as we will discuss later, has added further complexity to the idea that the origin of funding could be a defining variable of the types of private sector in different national systems. Indeed, the expansion and diversification of higher education systems in the 21st century have prompted us to rethink typologies and classification methods for institutions and higher education systems beyond the categories of public and private, since these would no longer be sufficient to capture the variety of existing institutional arrangements and student financing mechanisms (Schwartzman; Silva Filho; Coelho, 2021; Harris; Ellis, 2020; Thornton; Ocasio, 2008; Frølich *et al.*, 2013).

In Brazil, the dominance of the private sector began in the mid-1960s, when it responded more quickly and intensively than the public sector to two complementary demands: the students' demand for higher education and the labor market's demand for individuals with higher education diplomas. This favorable context for the development of a private sector in the country was linked to broader processes of modernization in Brazilian society, particularly the expansion of pre-higher education levels and the urbanization and industrialization of the country (Schwartzman, 1988). In addition to these factors, a University Reform (1968) was underway, which sought to modernize the organizational structure of public universities and strengthen, with

⁴ This definition derives from the classification made by the author into elite systems, mass and universal systems, uses a quantitative indicator which is the net enrollment rate, that is, the percentage of young people between 18 and 25 years old enrolled in this level of education. In this classification, a mass system is one that serves between 16% and 50% of young people in this age group; when it exceeds this percentage it becomes a universal system.

⁵ The payment of high tuition fees in Chilean higher education, identified as a serious social problem in the country, led the then presidential candidate Michele Bachelet to include in her government program a reform of higher education in which she proposed a broad financing program for students from the 60% of Chilean households with the lowest Family income.

robust resources, research and postgraduate programs established during democratic governments in the previous decade. Despite the violence - including purges, imprisonments, torture, and murders - that the civil-military dictatorship (1964-1985) inflicted on professors and students, Brazilian public universities, after the 1968 Reform, continued their trajectories following a Humboldtian-inspired research university model that Brazil had adopted through the U.S. (Schwartzman, 1998). In this effort, the State was responsible for ensuring resources to develop the postgraduate system, reshape the teaching career, expand research, and maintain tuition-free education for its students. On the other hand, the private sector, which already had a network of religious and secular institutions relatively widespread, at least in the more developed regions of the country, offered itself as an alternative to meet the demand for higher education and since then has continuously expanded and diversified the range and conditions for offering higher education courses, particularly in the evening shift, which remained untouched by public universities (Sampaio, 2000).

By the mid-1990s, the private sector accounted for 58% of the approximately 1.6 million higher education enrollments and 75% of around 850 higher education institutions (HEIs) in the country (Sampaio, 2000). Since then, the sector, which was already characterized by its great heterogeneity, was organized by the 1996 LDB (Law of Guidelines and Bases of National Education) and complementary laws into three administrative categories: for-profit private HEIs, non-profit private HEIs, and community HEIs. Regulated by Law No. 12.881/2013, certified community HEIs enjoy some prerogatives that bring them closer to public HEIs, such as access to calls for proposals from government funding agencies aimed at public institutions; receiving budgetary resources from the government for the development of activities of public interest, among others. In 2023, community higher education institutions (ICES) had approximately 460.000 students enrolled, which represents less than 5% of the total enrollment in the country (INEP, 2024). Their low quantitative relevance in the system contributes to making them little known. Furthermore, there is a scarcity of available information, since INEP does not publish disaggregated data for this administrative category, including it in the private non-profit segment (Fioreze *et al.*, 2025). These administrative distinctions within the private sector lead each segment to develop its own strategies to meet market demands for higher education and its relationship with the State.

In effect, in just over 30 years, the private sector accounted for 79% of nearly 10 million enrollments and 88% of around 2,600 HEIs; of a total of 2,300 private HEIs, 65% are for-profit (INEP, 2024). The rise of the private sector's dominance in the Brazilian higher education system, especially for-profit HEIs, is unparalleled in the global scenario. This process, which literature calls the commercialization and/or privatization of higher education, began more than half a century ago in the country, and we can identify two phases, each with its own dynamics in the relationship between higher education, the State, and the market (Brunner *et al.*, 2021).

In the first expansion of the Brazilian system in the 1970s, the increased demand for higher education, the existence of private alternatives to meet this demand, and the decision by the State and interest groups to keep public universities more restrictive and research-oriented were key factors in elevating the private sector to the status of a mass private sector, as defined by Geiger (1986). The second expansion, which began in the first decade of this century, differs from the previous one. Although the demand for higher education had recovered in those years due to improvements in the educational flow and the increased number of high school graduates, it was the State, during the three terms of the Partido dos Trabalhadores [Workers' Party], that led the way through policies aimed at expanding access and student retention (Sampaio, 2014).

The adoption of the Reuni Program by federal universities in 2007 resulted in the expansion of these institutions' infrastructure and a significant increase in the number of their students, which grew from 1.3 million in 2010 to just over 2 million in 2023 (INEP, 2024). Starting in 2012, with the implementation of the Quotas Law at federal universities, as a result of decades of struggle by the Black movement, the student body became more diverse in terms of socio-economic and ethnic-racial backgrounds (Senkevics; Mattioli, 2019; Heringer, 2024).

For the private sector, the MEC allocated two programs aimed at expanding access and ensuring student retention in higher education: the University for All Program (Prouni), in 2005, and the Higher Education Student Financing Fund (Fies), which, although created in 1999, was reformed and expanded in 2010. Prouni offers scholarships for students enrolled in private HEIs, which, in return, are exempt from federal tax payments. Fies is a student loan program. By transferring public funds to finance students enrolled in private institutions, these programs, especially Fies, became the main factor in the growth of enrollments in the private sector—at least until 2015—and indirectly triggered processes of oligopolization and financialization in higher education (Sampaio, 2014; Scudeler; Pires; Tassoni, 2023). With the decline of Fies, for-profit private institutions began to increase their enrollments in the distance education format, taking advantage of the relaxation of rules for offering this modality, which started under the Temer administration (2016-2018) (Scudeler *et al.*, 2024). In 2022, eight educational groups already accounted for more than half of the enrollments in higher education, the majority of which were in undergraduate courses offered in the DE format. In fact, of the 4.9 million students who entered higher education in 2023, 66% did so in the DE format (INEP, 2024).

Although Brazil's higher education system is the largest in Latin America in terms of student numbers and HEIs, its net enrollment rate is one of the lowest in the region—25.5% in 2023 (INEP, 2024). The dominance of the private sector in the system, the concentration of enrollments in a few large educational groups, the rapid and recent expansion of course offerings, incoming students, and enrollments in the DE modality, and the great heterogeneity of institutions in terms of academic profile and student demographics are the most striking features of the Brazilian system and the origin of

the significant challenges for evaluation and regulation processes, which we will address in the following sections.

3 STATE, EVALUATION, AND REGULATION OF HIGHER EDUCATION IN BRAZIL

National states provide formal cohesion to their higher education systems by establishing a set of laws and specific regulations that govern their development and oversee their operation. When discussing the relationship between State and higher education, Martin and Talpaert (1992) use the term "system coordination," which encompasses actions of planning, monitoring, resource allocation, and oversight through which central or regional governments and their bureaucracies shape and supervise their respective higher education systems. According to the authors, national states ideally play three roles in relation to the systems: direct and/or indirect financier of institutions; shaper, by defining guiding models for higher education and the types of institutions so as to give the system coherence; and regulator, overseeing the functioning of institutions in providing a public good—higher education—by detailing their rules and regulatory flows. The ways in which each national state performs these three roles result in various types of coordination for their higher education systems. In France, since the reforms undertaken by Napoleon, the State has tended to occupy a central place in the structure and organization of higher education, while in the United States, despite public investment in research, this place has tended to be occupied by the market. Unlike these two countries, in the United Kingdom, until the 1960s, it was difficult to recognize the existence of a national system, since universities such as Cambridge and Oxford, for example, functioned almost as a system in themselves, as autonomous, self-governing and elite communities of scholars and well-selected students (Spagnolo, 2005).

However, events of the 1980s changed this global scenario. The demands of what became known as the "knowledge society," pressures for expanded access to higher education from students coming from historically excluded groups, the fiscal crisis of national states—and the consequent disputes over the maintenance of public funding for goods and services—impacted the relationship between national states and higher education in many parts of the world. In this global scenario, the issue of the quality of higher education gained greater prominence in the debate about the role of higher education in contemporary societies, bringing the theme of the evaluation of institutions and higher education courses to the forefront of policy agendas in the field.

It is in this context that the first national systems of higher education evaluation emerged in Europe in the second half of the 1980s. On one side of a continuum, there was the English model, characterized by strong state control, the radical nature of the changes, and the speed with which it broke with the liberal tradition in a short period of time. On the other side, there was the Dutch model, where universities, resisting state interventions, sought to maintain control of the evaluation under the

coordination of the country's rector council. Following the trends of these changes in various European countries, which were generally led by central governments, Neave (1994) coined the term "evaluative state," understanding it as an alternative to the bureaucratic nature of existing regulation. Since then, the term has also been used to refer to situations in which national states explicitly mark their presence, controlling systems that were previously relatively autonomous and starting to demand results in the form of quantifiable and standardized academic products (books, articles, conferences, etc.). The evaluation of national systems revealed the "interventionist state" aspect of national states (Neave; Van Vugt, 1994).

Brazil and other Latin American countries became part of this movement (Marquis, 1994; Schwartzman, 1996). The first initiative for evaluating higher education in Brazil took place in 1983, with the creation of the University Reform Evaluation Program (Paru)⁶. Through questionnaires sent to the academic community, the goal was to evaluate the 1968 University Reform (Bandeira; Sartori; Megassi, 2021; Nascimento *et al.*, 2024). In addition to highlighting the studies resulting from this pioneering initiative, Martins (2005) identifies it as the installment of a concern about the need for ongoing evaluation within institutions, in fact following an international trend in this direction. The second initiative took place in 1985 with the creation of the Executive Group for Higher Education Reform (Gepes) by the Ministry of Education. The Group, which became known as the "Commission of Notables," produced a report that

Proposed an evaluation based on three central pillars: the individual evaluation of students, the evaluation of undergraduate courses, and the evaluation of institutions, linking the results of these evaluations to the distribution of financial resources by the State (Pinto, 2023, p. 4).

Throughout the 1980s, Brazil, reflecting the zeitgeist, hosted many seminars, many of which were funded by governments and representative entities from university communities and the private sector, on the evaluation of higher education. Among these events, Martins (2005) highlights the international seminar promoted by the MEC in 1987, in Brasília, with the presence of Brazilian specialists and experts from various countries.

With the promulgation of the Federal Constitution in 1988, the quality of higher education was established as a constitutional principle. Alongside others, such as the universality of education, autonomy (for universities), and gratuity (in public institutions), the 1988 Federal Constitution maintained the principle that "education is

⁶ Although the issue of higher education assessment emerged strongly in Brazil in the 1990s, since the 1960s, the issue had been circulating among institutions and undergraduate courses. It is Worth noting, however, that at that time, assessment was very much mixed with regulation. This relative precocity may be associated with two events: the implementation of the system for authorizing and recognizing undergraduate courses and accrediting *stricto sensu* graduate courses (Law n° 5540 of 1968 and Decree-Law n° 464 of 1969); and the construction of the graduate system by the Coordination for the Improvement of Graduate Personnel (Capes) from the mid-1970s.

open to private enterprise" (which was already in the first Constitution of the Republic, from 1893), subject to the following conditions: compliance with the general norms of national education and authorization and quality evaluation by public authorities (Article 209, items I and II). Therefore, these principles must be contemplated within the regulation of higher education (Martins, 2005).

However, it was in the 1990s that the effort to build a national system for evaluating higher education gained momentum in Brazil. In 1993, the MEC, with the support of several associations linked to higher education, established an advisory committee to develop the Institutional Program of Brazilian Universities, known as Paiub. Launched in the second semester of 1994, the program, which involved the voluntary participation of institutions, was based on three phases: internal evaluation; external evaluation; and re-evaluation, in which the results of the previous phases were used to establish corrections, goals, courses, and programs (Pinto, 2023). The creators of the Paiub evaluation proposal articulated concepts like "globality" (evaluating institutions in all their dimensions), "comparability," and rejected ideas of rewarding or punishing institutions based on their results in the evaluation (Ristoff, 2024). It is important to remember that the evaluation model conceived by Paiub was only intended for federal universities, which at the time numbered about 39 HEIs (Bittar, 2001). As we will see later, some concepts from this evaluation proposal were partially incorporated when the Sinaes was formulated a decade later.

In 1996, the Law of Guidelines and Bases of National Education (LDB, Law 9394) established the guidelines for evaluation and regulation, introducing an important change in the regulatory framework: the renewal of authorization and recognition of courses and accreditation of institutions would depend on periodic evaluation processes. The mention of "periodic evaluation processes" in the 1996 LDB referred to the provisions of Law No. 9131, from 1995. Altering the provisions of the 1961 LDB and anticipating the 1996 LDB, which had been under discussion in Congress for years, Article 3 of Law 9131 established that it was the responsibility of the Ministry of Education "to carry out periodic evaluations of higher education institutions and courses, using procedures and criteria that encompass various factors determining the quality and efficiency of teaching, research, and extension activities." Paragraph 1 of this article established the National Course Exam (ENC), to be taken by all students nearing graduation, which became known as "Provão" [Big Test]. Under the law, the "Provão" taken by graduating students was one of the necessary procedures for the periodic evaluations of HEIs and higher education courses (Sampaio, 2000). The "Provão," which lasted from 1996 to 2003, did not incorporate the evaluative principles of the Paiub, but it made the evaluation of higher education courses and institutions, both public and private, an unavoidable issue for the regulation of higher education in the country.

The constitutional principles, the LDB, and the set of regulations established in the 1980s and 1990s formed the foundations for the State to establish a national evaluation system directly tied to the regulatory process (Ristoff, 2024). Even before

the end of the 20th century, the foundations of the evaluation-regulation binomial for higher education were already established in the country. During the evaluation process, if deficiencies in the institution and/or course were identified, the institution was required to address them within a specified period. If it failed to do so, the institution would be subject to supervision, which could imply the temporary suspension of its autonomy rights, in the case of a university, or its de-accreditation as an institution. This meant that evaluation results would influence regulation, although there was no proper evaluation system.

In the first months of President Luiz Inácio Lula da Silva's first government (2003-2006), the MEC established, within its Secretariat for Higher Education (Sesu), the Special Evaluation Commission (CEA), whose task was to propose changes to the evaluation and regulation policies in place at the time. After four months of work, the commission presented the first proposal for the creation of the National System for the Evaluation of Higher Education (Sinaes), which took many - although not all - principles from Paiub. Two other proposals were also presented before the Sinaes was enacted, indicating the existence of disputes among different evaluative concepts at that time (Oliveira; Rothen, 2024). In any case, it was clear that some principles from Paiub, such as the voluntary participation of institutions, could not be applied, given that this was now the establishment of a national evaluation system with hundreds of institutions with different administrative natures (public and private, for-profit and non-profit) and academic formats (universities, university centers, and isolated schools) and thousands of courses.

However, there were other differences between the Commission's proposal and what the Sinaes Law came to establish: while the Commission proposed setting benchmarks to distinguish quality levels achieved, prioritizing the educational character of self-regulation through internal comparisons, the Law establishes the application of concepts on a five-level scale to express evaluation results of HEIs, courses, and student performance. The adoption of a scale from 1 to 5 faced criticism when implemented. Some experts view it "as a shift in meaning since it facilitates rankings and, therefore, external comparisons between institutions and courses" (Weber, no date); others still see the scale of concepts as a remnant of the National Course Exam ("Provão"), established during President Fernando Henrique Cardoso's government (1995-2003), since it would, according to this understanding, enable rankings of courses and institutions, a procedure they reject (Barreyro; Rothen, 2011).

3.1 The Sinaes and regulation

Law No. 10.861, of April 14, 2004, which created the Sinaes, summarizes its objectives in Article 1: "improvement of the quality of higher education, guidance of the expansion of its offer, and permanent increase in its academic and social effectiveness and efficiency, promotion and deepening of the social commitments and responsibilities of the HEIs." In Article 2, single paragraph, it establishes that the results

of the evaluation referred to in the main section "will constitute the basic reference for the processes of regulation and supervision of higher education." Article 6 establishes, within the Ministry of Education and linked to the Minister's office, the National Commission for the Evaluation of Higher Education (Conaes). Comprised of representative bodies of the Ministry of Education, students, professors, administrative technicians linked to HEIs, and members of the community appointed by the Minister of Education, this coordinating and supervising body of Sinaes has the following tasks: a) propose and evaluate the dynamics, procedures, and mechanisms for institutional, course, and student performance evaluation; b) establish guidelines for organizing and appointing evaluation committees, analyzing reports, preparing opinions, and forwarding recommendations to the competent authorities; c) formulate proposals for the development of higher education institutions based on the analyses and recommendations produced during evaluation processes; d) collaborate with state education systems to establish common actions and evaluation and supervision criteria for higher education (Brazil, 2004).

Sinaes comprises three evaluative processes: institutional evaluation, course evaluation, and student performance evaluation (Enade). Institutional evaluation includes both self-evaluation and external evaluation, with the latter being carried out by the INEP. Regarding institutional evaluation, the law provides for 10 dimensions: mission and institutional development plan; policies for teaching, research, postgraduate education, extension, and their respective operationalization; the institution's social responsibility; communication with society; personnel policies, careers of faculty and administrative staff; organization and management of the institution; physical infrastructure; planning and evaluation; student support policies; and financial sustainability (Brazil, 2004). Among the various instruments developed by the INEP, one is focused on the evaluation of the recognition and the renewal of recognition of on-campus and distance education courses. This instrument includes three dimensions: didactic-pedagogical organization, faculty profile, and physical facilities (Bandeira; Sartori; Menegassi, 2021). The evaluation carried out by the INEP led to the creation of a National Bank of Sinaes Evaluators (BASis), from which the INEP recruits evaluators who, in pairs, must fill out, either in person or remotely, an extensive instrument assigning concepts to about 60 indicators. For each indicator, the evaluator must assign a concept (from 1 to 5) in a cumulative logic. Concept 1 includes fewer attributes, and 5 includes the most.

Over the course of its twenty years of existence, the Sinaes has become a complex and robust evaluation system. Not all countries have standardized evaluation processes and unified regulation that directly influence the daily activities of almost all institutions. As Silke Weber (no date) observes, with the enactment of the Sinaes Law, evaluation has become a basic reference for the processes of regulation and supervision of higher education. The Sinaes Law serves two simultaneous functions: it both clarifies the demarcation of areas of action and responsibilities of the entities involved in evaluation, and it makes clear the understanding that evaluation, as a

judgment of merit and value of the education provided, is a basic reference for the supervising and regulatory actions of the State in its task of ensuring the quality of educational offerings (Weber, no date).

In Latin America, there is no higher education evaluation system similar to Brazil's. In Argentina, for example, the option was to build frameworks for evaluation and regulation that only partially interfere with institutions, either because they have some degree of autonomy or because they belong to a specific subsystem of higher education. It should be noted that both Argentina's and Chile's higher education systems are organized into two subsystems: the university subsystem, where institutions enjoy greater autonomy, and the technical-professional subsystem, where institutions are more regulated (Unzué; Emiliozzi, 2013).

The implementation of the Sinaes, starting in 2004, became a "difficult and, for many, disappointing" process, as Verhine (2015, p. 609) notes. Right at the beginning, institutions created their own Internal Evaluation Commissions (CPAs), and the evaluation of students (Enade) continued without major issues due to the large-scale evaluation experience accumulated during the years of the National Course Exam ("Provão"). However, the external phase of institutional and course evaluation, to be carried out by on-site evaluators, took a while to begin. The expectation of a triennial evaluation cycle began to make it clear that the external on-site evaluation of such a large and diverse higher education system would be a difficult task (Verhine, 2015).

The solution to address this challenge came through the creation of the Preliminary Course Concept (CPC) and the General Course Index (IGC), both regulated through ministerial ordinances: Normative Ordinance No. 40, from 2007, and Normative Ordinance No. 12, from 2008. According to Griboski (2013, p. 78):

Everything starts with the evaluation of students (Enade), which enables the calculation of inputs to form the preliminary course concept (CPC). With the average of CPCs, the quality indicator of the institution (IGC) is calculated, and then on-site evaluations are conducted, which may or may not confirm the results achieved in the evaluation and provide a full view of the quality standard of the higher education offerings⁷.

Under the new regulations, only courses and institutions with a score below 3 would have compulsory on-site evaluations; the others could request a visit from the MEC within a set period if they wanted to improve their score. In the view of Barreyro and Rothen (2014), "the Sinaes Law passed during Lula's first government was disrespected by a normative act of lower legal hierarchy: an ordinance" (p. 69).

For some authors (Verhine, 2015; Nascimento, 2021), the conception of formative and holistic evaluation has given way to an evaluation centered on grades and rankings. Verhine (2015), for example, considers the use of indices like CPC and IGC for regulatory purposes problematic, arguing that they are weak indicators, limited

⁷ The IGC calculation is done by the weighted average of the CPCs and grades of the postgraduate programs.

by the lack of data. Furthermore, he argues that since the distribution of grades on the 1 to 5 scale is done via a normal Gaussian curve, there will always be about 25% of courses and institutions with grades of 1 and 2, regardless of their quality (Verhine, 2015; Nascimento, 2021).

Indeed, the Enade has become one of the main inputs for calculating the CPC and IGC. Every three years, all students in undergraduate courses who have completed 80% or more of the required credit hours must take a comprehensive exam with both general and specific questions. Since the Enade exam is not composed of standardized items, the difficulty levels of the exams vary and do not allow for comparisons between evaluation cycles. Additionally, since it is a common exam, institutions cannot adopt specific strategies to strengthen their courses in particular markets. The content and skills of the specific component of the exams are published by the INEP, often going beyond those outlined in the Curriculum Guidelines for the courses. Given these weaknesses, Nascimento (2021) questions whether it is worthwhile to apply such an expensive large-scale exam, which presents more obstacles than quality to the evaluation/regulation process. As an alternative, the author proposes replacing the exam with a combination of administrative quality records, such as flow indicators, employment rates, and the proportion of graduates entering postgraduate studies, among other indicators sensitive to the characteristics of each course.

3.2 Acts, instances, and regulatory flows

In Brazil, as we have seen, it is up to the public authorities to set the rules for the organization and operation of higher education and to verify and ensure their compliance. According to Martins (2005), these activities involve three dimensions: the normative, the verifying, and the controlling dimension, with the first one establishing the general framework within which the others develop. The frameworks of this general picture, as we have seen, are the 1988 Constitution, the 1996 LDB, and the 2004 Sinaes Law.

To create a higher education institution and/or offer a new undergraduate course at a college that does not have autonomy - which does not apply to universities and university centers - the MEC must issue an authorizing act in advance, as established by Article 209 of the 1988 Federal Constitution and Article 46 of Law 9.934, from 1996, which we have already discussed.

According to the overarching principle, there are two types of authorizing acts: for the operation of HEIs and for offering undergraduate courses. The former includes the stages of accreditation and re-accreditation of HEIs⁸. The authorizing acts for offering undergraduate courses, in turn, involve authorization and recognition of

⁸ It should be noted that public institutions are created by decree as universities or federal institutes. Private institutions are authorized to operate as colleges; however, as they progress through the stages-accreditation and, later, re-accreditation of HEIs-and meet specific requirements established by law, they may request to be transformed into university centers and, later, into universities.

courses and renewal of recognition. University centers and both public and private universities do not need authorization to create their courses, but they must comply with the subsequent steps.

Each type of authorizing act follows its own flow, is guided by specific norms, and passes through different administrative units of the MEC, and occasionally also the Ministry of Health in cases involving courses in that field. Some professional councils, particularly in health, law, engineering, etc., may also be consulted in the regulatory flow of the respective acts.

Within the MEC, five administrative units participate in the regulatory flow: the Secretariat of Regulation and Supervision of Higher Education (Seres), which conducts the authorizing acts of the decision-making process through a specific directorate; the INEP, which evaluates courses and HEIs through its own directorate and is responsible for administering the Enade to graduates; the National Education Council (CNE), which advises the MEC in decision-making regarding the accreditation and re-accreditation of HEIs; the Secretariat for Higher Education (Sesu), and the Secretariat for Technological Education (Setec), whose roles are restricted to the re-accreditation of HEIs and recognition of courses at federal universities and institutes.

In 2023, around 20,000 processes related to different authorizing acts were in progress within Seres. To illustrate, consider the act of course recognition in the period from 2019-2023. Of the 4,480 processes for this act, 2,302 were in the Seres, and the rest was in the CNE, which is activated as an appellate instance, or the INEP, which conducts the Enade and evaluation visits at HEIs. In acts related to health, law, and engineering courses, other professional bodies must be consulted, such as the National Health Council (CNS), the Federal Council of Medicine (CFM), and the Brazilian Bar Association (OAB).

3.3 Legal Framework of Regulation

In addition to the general framework provided by the Federal Constitution of 1988, the 1996 LDB, complementary laws, and the Law of Sinaes, the regulation of higher education today is guided by norms established in two decrees from 2017 - Decree No. 9.057 and Decree No. 9.235 - and by a set of ministerial ordinances. This set of norms is more or less comprehensive and interconnected.

Decree No. 9.057, from 2017, governs the offering of undergraduate courses in the Distance Education (DE) modality, and Ordinance No. 1, published one month later, details how this offering should be structured. When these regulations were published, the DE modality accounted for 21.8% of the total enrollments in higher education (INEP, 2017). Decree No. 9.235, also from 2017, addresses the activities of evaluation, regulation, and supervision of higher education. In December of the same year, six ordinances were published with the aim of detailing these acts and the procedures involved, as well as establishing their flows between the competent bodies of the MEC. Ordinance 19 details the evaluation conducted by the INEP; Ordinances 20, 21, 22, and

23, in turn, establish respectively the decision-making standards for regulation, the system for registering HEIs in e-MEC (the system through which institutional representatives submit processes related to authorizing acts), the supervision of HEIs by the Seres, the flow of authorizing acts, and the regulatory calendar.

One of the measures of Decree 9.057 was to allow the accreditation of HEIs for courses only in the DE modality; that is, a HEI can be created offering courses exclusively in the distance education modality. This flexibility has been pointed to as one of the factors that contributed to the significant growth of the DE modality in the country, especially during and after the COVID-19 pandemic, which certainly also acted as a catalyst for this growth (Sampaio; Amaral; Carneiro, 2023).

Regulation procedures and decision-making processes are now intertwined with evaluation. The best image is that of a tangle of norms that define in advance the possibilities and prerequisites for the success or failure of HEIs in the regulatory flow. In turn, institutions prepare themselves and know how to obtain the appropriate ratings in the expected evaluation criteria.

4 CONCLUDING REMARKS: CHALLENGES OF EVALUATION AND REGULATION OF HIGHER EDUCATION IN BRAZIL TODAY

Over decades, Brazil has developed a national evaluation system coupled with the regulatory process of institutions and undergraduate courses. This system, shaped by the Federal Constitution of 1988 through laws, decrees, and ordinances, gives the public authorities a gigantic and difficult – to – accomplish task, which has generated much dissatisfaction in recent years.

This dissatisfaction generally weighs the efforts made by the public authorities in this task against the results achieved and is voiced by a wide range of actors that make up the higher education system – representative associations of public and private regulated entities, the academia, bodies belonging to the MEC itself, such as the CNE, and sectors of the National Congress – all motivated by various interests.

Returning to the objectives of this article, we saw that a model of evaluation and regulation, originally conceived in its fundamentals, instruments, and operationalization to be applied to a smaller and less diverse higher education system, has generated various criticisms. We highlight three⁹.

The first is regarding the morosity of public authorities in handling the processes of authorizing acts for the operation of institutions and the offering of courses. Due to the nature of the authorizing acts and their internal procedures, as we saw, the task can involve up to five administrative units of the MEC and take years to reach a decision. The second criticism pertains to the evaluation model, which many consider homogenizing, as it does not provide incentives to recognize – and foster – quality in

⁹ Another type of criticism refers to the operationalization of the evaluation rather than the model itself. Due to the involvement of a large number of evaluators, they are not always sufficiently trained to apply the instruments.

different types of institutions, acknowledging the diversity of their missions. The third criticism concerns a supposed contamination of regulation in the evaluation process, which, according to this understanding, would prevent the progressive improvement of courses, HEIs, and higher education in general.

The criticism of the morosity of processes is the most widely agreed upon. As already observed, the Seres accounts for a huge backlog of decision-making processes, which tends to worsen due to the number of courses and HEIs and the limited structure of the State.

Despite the predominance of colleges - as we saw, they account for just over 12% of the total enrollments - these HEIs depend on public authorization to open and close courses, increase and decrease spots, unlike universities and university centers, which enjoy autonomy and do not require these authorizing acts, accounting for 84% of the total higher education enrollments. A consistent evaluation and regulation system should take this disparity into account and develop more sensitive tools to address both the "giants" and the "minnows" of the Brazilian higher education system.

Regarding the criticism of the homogenizing evaluation model, indeed, many of the evaluative principles of the Sinaes were conceived to primarily evaluate public universities, which, at the time of the creation of this evaluation system, were fewer in number and more homogeneous. Despite the size and heterogeneity of the current higher education system in Brazil, these principles have remained.

Although the evaluation/regulation system generates, through its various instruments, an immense amount of qualitative and quantitative data, regulation does not have the technologies or staff to process them in a way that identifies, in diverse types of institutions, qualities that are also diverse and could be fostered to improve the quality of higher education offerings. Take, for example, the mass of information in the self-evaluation reports periodically produced by HEIs through their Internal Evaluation Committees (CPAs).

At the operational level, the evaluation as it occurs today also presents other challenges. We saw that for the accreditation and re-accreditation of courses, INEP evaluators (professors recruited from the Sinaes Evaluators' Bank) must respond to an extensive evaluation form with around 60 indicators, divided into three dimensions. However, filling out this assessment gives the evaluator considerable discretionary power, which, at its limit, can compromise the comparability principle of the evaluation. In some indicators, assigning the maximum score (5) depends on adopting "provenly successful and innovative practices," which are often difficult to prove and/or standardize in terms of understanding among the evaluators themselves (along with a high degree of subjectivity). Despite the INEP's efforts to improve its evaluation instruments, the challenge remains of adequately training tens of thousands of evaluators to fill out a complex instrument in a standardized manner that applies to all undergraduate courses.

Finally, regarding the criticism of the evaluation/regulation binomial, it is observed that, although it was promising in the past for promoting the quality of higher

education offerings, today it faces a deadlock: regulation, according to its critics, contaminates the evaluation, rendering it ineffective in promoting an improvement in the quality of courses and institutions. According to this view, often shared by both the regulated entities and certain sectors of the MEC itself, regulation is limited to observing "bureaucratic norms and criteria to be followed by institutions without any expansionist or impact-generating criteria" (CES/CNE, 2023, p. 3). According to the report by the Evaluation Commission of the CNE's Higher Education Chamber,

[...] regulation is more concerned with defining which indicators lead to the institution's failure and inspecting Inep's work, normatively interfering with internal monitoring and evaluation bodies such as the CTAA, rather than establishing consistent criteria for the development of higher education as a national development factor (CES/CNE, 2023, p. 2).

Undoubtedly, this is a relevant issue to guide higher education policies; however, equally important is discussing the direction of higher education expansion that is desired for the country. Today, around 40% of HEIs in Brazil are considered small and medium-sized - with up to 300 enrolled students - yet they account for only 1% of the total enrollments. The other side of this phenomenon is the concentration of enrollments in just eight private, for-profit educational groups, revealing levels of privatization and oligopolization in Brazilian higher education that are unique in the world (Nascimento, 2021; Scudeler; Gouveia *et al.*, 2024).

Many of the criticisms made today to the evaluation/regulation system implicitly - which is concerning - present a view that the public authorities are ineffective and that state bureaucracy is an obstacle to promoting the expansion of higher education offerings with decentralization and fostering innovation in courses and institutions.

The Sinaes is completing 20 years, and its existence is a great achievement for the Brazilian State, especially when compared to other countries. Undoubtedly, evaluation can improve its set of indicators and instruments, and regulation should be more agile in process flows, using indicators that are more sensitive to the different qualities of courses and HEIs. However, this does not imply dismantling a national evaluation system or dispensing with a regulatory structure with agency.

Finally, it is worth noting that any change in the evaluation/regulation process requires significant alignment between the Executive and Legislative branches, as it requires changes in the legal framework - such as altering laws and revoking decrees - which, as is known, is not an easy task. However, alternative routes can be considered. Is it worth making efforts to evaluate all undergraduate courses in Brazil as is done today, or, alternatively, evaluate only certain strategic courses, as is already done in Argentina and Chile? This is a good debate that requires further research, with the collection of qualitative and quantitative data, to weigh potential innovations.

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