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The Simone André Diniz case and the reality of black domestic workers in Brazil: an analysis from the coloniality of power and the intersectionality of race, gender and class

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Abstract: The present paper deals with a critical analysis of the labor (and human) rights of black domestic workers in Brazil. The general objective of this study is to discuss, based on decolonial criticism and black feminism, the place of paid domestic work in Brazil, valuing the intersectionality of race-class-gender power structures and having as a paradigm “Case 12,001: Simone André Diniz vs. Brazil”, judged by the Inter-American Commission on Human Rights. The research problem is: to what extent have the labor rights of domestic workers in Brazil been promoted and what is the relationship between this enshrinement of rights and power structures? The initial hypothesis is that, although there are currently formal legal guarantees provided to domestic workers in the country, the fact is that the debate is greater, encompassing the intersection between gender, race and class. The methodology used is deductive research, with bibliographical research and literature review on the subject, of an exploratory and descriptive nature. It is inferred that the majority of domestic servants, who are poor black women, live on the margins of the realization of rights, which is a reflection, among other aspects, of the long past of Brazilian slavery, which rooted both structural and institutional racism in the country. It is concluded that there is an intersection of structures such as gender, race and class in the situation of Brazilian domestic employment - which, within the coloniality of power, represent the basis of discrimination that has not yet been overcome. Valuing, therefore, decolonialism and the readings of the works of Kimberlé Crenshaw, Lélia Gonzalez, and Gayatri Chakravorty Spivak, we intend to contribute to this discussion, which demands a sensitive, renewed look and with the intention of emancipation for this work that is very marked by violence. and by exclusion.

Keywords: Simone André Diniz vs. Brazil; Domestic Work; Intersectionality; Coloniality of Power; Descoloniality.

O caso Simone André Diniz e a realidade das empregadas domésticas negras no Brasil: uma análise a partir da colonialidade do poder e da interseccionalidade de raça, gênero e classe

Resumo: O presente texto versa sobre uma análise crítica dos direitos trabalhistas (e humanos) das empregadas domésticas negras no Brasil. O objetivo geral deste estudo é discutir, a partir da crítica descolonial e do feminismo negro, o lugar do trabalho doméstico remunerado no Brasil, prezando pela interseccionalidade das estruturas de poder raça-classe- gênero e tendo como paradigma o “Caso 12.001: Simone André Diniz vs. Brasil”, julgado na Comissão Interamericana de Direitos Humanos. O problema da pesquisa é: em que medida os direitos trabalhistas das empregadas domésticas no Brasil têm sido promovidos e qual a relação desta consagração de direitos com estruturas de poder? A hipótese inicial é de que, embora atualmente haja garantias jurídicas formais asseguradas às empregadas domésticas no País, fato é que o debate é maior, englobando a intersecção entre gênero, raça e classe. A metodologia empregada é de pesquisa dedutiva, com pesquisa bibliográfica e revisão da literatura sobre o tema, de natureza exploratória e descritiva. Infere-se que a maioria dos empregados domésticos, que são mulheres negras pobres, vivem à margem da efetivação de direitos, sendo isso reflexo, entre outros aspectos, do longo passado escravocrata brasileiro, que enraizou tanto o racismo estrutural quanto o institucional no País. Conclui-se que há intersecção de estruturas como gênero, raça e classe na situação do emprego doméstico brasileiro - que, no interior da colonialidade de poder, representam a base de discriminações que ainda não foram superadas. Prezando, então, pelo descolonialismo e pelas leituras das obras de Kimberlé Crenshaw, Lélia Gonzalez, e Gayatri Chakravorty Spivak, pretende-se contribuir com esta discussão, que demanda um olhar sensível, renovado e com intenção de emancipação para este labor muito marcado pela violência e pela exclusão.

Palavras-chave: Simone André Diniz vs. Brasil; Trabalho doméstico; Interseccionalidade; Colonialidade do Poder; Descolonialidade

Introduction

The statistical data presented today highlight the significant sexual and racial division of domestic work that is still prevalent in the national labor market. According to data from the Continuous National Household Sample Survey (PNAD-Contínua) of the Brazilian Institute of Geography and Statistics (IBGE), collected in the fourth quarter of 2021, the absorption presented by the labor market for black women occurred mainly through informal vacancies (self-employed, in the private sector without a formal contract and in domestic work without a formal contract).¹

The data revealed a majority presence of black women in domestic work with a formal contract (56.3%) and without a formal contract (60.8%), much higher than their participation in the total number of employed people (22.6%).² The document reveals that, for black women, in this period of one year, the private and public sectors with a formal contract increased their participation (from 28.8% to 30.4% for the private sector with a formal contract and from 1.1% for 1.5% for the public sector with a formal contract), which was well received. However, it was also reported that unregistered private sector employment (from 9.2% to 10.2%) and unregistered domestic employment (from 12.0% to 12.8%)³ increased, which could enhance the vulnerabilities of this group.

1 FILLETI, Juliana de Paula; GORAYEB, Daniela Salomão. Mulheres negras no mercado de trabalho no 4º trimestre de 2021. **Boletim NPEGen Mulheres Negras no Mercado de Trabalho**, Campinas, v. 2, n. 4, mar. 2022, p. 4. Available at: https://www.facamp.com.br/wp-content/uploads/2022/04/2021_4T_BMNMT.pdf. Accessed on: 10 jan. 2023.

2 Ibidem, p. 16.

3 FILLETI, Juliana de Paula; GORAYEB, Daniela Salomão. Mulheres negras no mercado de trabalho no 4º trimestre de 2021. **Boletim NPEGen Mulheres Negras no Mercado de Trabalho**, Campinas, v. 2, n. 4, mar. 2022, p. 18. Available at: https://www.facamp.com.br/wp-content/uploads/2022/04/2021_4T_BMNMT.pdf. Accessed on: 10 jan. 2023.

These gender and racial divisions of paid domestic work in Brazil point to the historical persistence of the colonial era, the enslavement of African people and the subalternization of domestic workers, combined with their vulnerability. Considering the relevance of this reality, then, this work is justified and has the general objective of discussing, from a theoretical perspective based on decolonial criticism and black feminism, the place of this domestic work, valuing the intersectionality of power structures and race. -class-gender, and using “Case 12,001: Simone André Diniz vs. Brazil”, analyzed by the Inter-American Commission on Human Rights.

The problem of this research, therefore, focuses on the following question: to what extent have the labor rights of domestic workers in Brazil been promoted and what is the relationship between this enshrinement of rights with power structures such as race, gender and class?

The initial hypothesis of this study is that, although there are currently formal legal guarantees guaranteed to domestic workers in the country, the fact is that the debate is greater, encompassing the intersection between gender, race and class, in a context of oppression and violence that has erupted since colonialism.

The research methodology of this work is based on the legal-dogmatic aspect, with a deductive approach method and bibliographic-doctrinal research technique, employing a literature review on the topic. The exploratory technique was also used to read and interpret the case indicated above.

After this methodological exposition, the way in which this study was structured is detailed, based on its specific objectives, which begins with the approach to Brazilian paid domestic work in the light of decolonial theory and the coloniality of power. In the following topic, a relationship will be established between this theoretical material and the works of black feminist intellectuals, such as Kimberlé Crenshaw and Lélia Gonzalez, and with complementary notes on subalternity made by the Indian postcolonial writer Gayatri Chakravorty Spivak.

Subsequently, there will be a topic to present a summary of the facts and merits of the “Simone André Diniz Case” mentioned above, with the aim of dealing with the aspect of racism in the Brazilian labor market, intersecting with elements of gender and class, present especially in paid domestic work. Subsequently, there will be another final topic in which legislative and historical aspects of the legal protection of the aforementioned work will be exposed, in order to evaluate the intersectionality of these elements throughout the History of the Country and in the legal construction of the current provisions.

The relation between domestic work in Brazil and the coloniality of power

In this topic, we intend to align considerations about decolonial theory (or decolonialism) and the coloniality of power in the first sub-item, in the desire of this theoretical framework to support the discussion about paid domestic work in Brazil and, in the following sub-item, to make notes on intersectionality of race, gender and class, valuing the critique of black feminism and subalternity for a better understanding of the subject.

The debate on Brazilian paid domestic work in the light of decolonial theory and the coloniality of power

Dealing with the problematizations inherent to paid domestic work in Brazil involves the idea that it is essential to value local choices, contexts and traditions, especially when it comes to economic, social and cultural⁴

4 SQUEFF, Tatiana Cardoso. Descolonialismo como matriz teórica para a fundamentação dos Direitos Humanos. In: SQUEFF, Tatiana; BIELSCHOWSKY, Raoni; BORGES, Rosa. (Org.). **Anuário do Programa de Pós-Graduação em Direito da UFU**. São Paulo: 2022, p. 132.

rights, for the best theoretical and practical treatment of the subject.

More than that, it is urgent to awaken other perspectives for the construction of tools capable of overcoming inefficiencies - in this case, the lack of effective guarantee of human rights for Brazilian domestic workers, plagued by racism, sexism and socioeconomic inequality - beyond the Eurocentric interpretation of this theme.

This time, it is worth considering that the Global South, a region in which Latin American countries such as Brazil are located, is a space generally overlooked when it comes to “the formation of ideas or the provision of contributions that help to think about ways of reversing problems relating to the realization of human rights”⁵.

In this sense, it is necessary to promote an “other paradigm”, that is, it is necessary to introduce new ideas, guaranteeing other subsidies to remedy, in a specific way, the problems of the South, moving away from Europeanized epistemologies and opening space for a “hegemony of diversity” or “diversity as a universal project”, in the words of Argentine professor Walter Mignolo. This means maintaining that it is appropriate to adopt a “paradigm shared by those who have experienced or learned trauma in the body, the lack of unconscious respect, ignorance”⁶.

To achieve this aim, in this study, we chose the decolonial theory or decolonialism, coming from the debates that took place in the modernity/coloniality Group, which, in turn, was founded after the dismemberment of the Latin American Group of Subaltern Studies, in due to “divergence among some of its members regarding the continued use of European authors as main theoretical instruments”⁷.

This theoretical contribution defends the existence of duly territorialized and inclusive human rights, bringing together “the parties that present similar situations, so that constructive exchanges can be constructed”⁸ so that, in these ways, there is a break with the relationship of Eurocentric domination of interpretation of the world. This theoretical orientation is largely justified with the following explanation about its own origin:

Decolonialism emerges as a counterpoint to colonialism that began between the 15th and 16th centuries, especially from the year 1492 onwards - the date that marks the birth (of the myth) of modernity for (de) colonial studies exactly through the principle of a process of concealment of the non-European, as Enrique Dussel states. This is because, with the ‘discovery’ of America, ‘Europe interprets itself [...] as the center of human events in general and, therefore, develops its particular horizon as a universal horizon (Western culture),’ of so that everyone should follow the European model, since it is considered (in itself) the center of global modernity and, therefore, seen (also by itself) as a missionary of civilization, removing any element and/or meaning that the native (American) could originate.⁹

Decolonialism, therefore, aims to overcome the premise that European thought would be the only modern and civilized paradigm to be followed.¹⁰ This theory has interfaces that are equally conceptualized and debated in scientific literature, namely; the coloniality of power, knowledge and being. In fact, the coloniality of power

5 Ibidem, p. 132.

6 MIGNOLO, Walter apud SQUEFF, Tatiana Cardoso. Descolonialismo como matriz teórica para a fundamentação dos Direitos Humanos. In: SQUEFF, Tatiana; BIELSCHOWSKY, Raoni; BORGES, Rosa. (Org.). **Anuário do Programa de Pós-Graduação em Direito da UFU**. São Paulo: 2022, p. 133.

7 SQUEFF, Tatiana Cardoso. Descolonialismo como matriz teórica para a fundamentação dos Direitos Humanos. In: SQUEFF, Tatiana; BIELSCHOWSKY, Raoni; BORGES, Rosa. (Org.). **Anuário do Programa de Pós-Graduação em Direito da UFU**. São Paulo: 2022, p. 133.

8 Ibidem, p. 134.

9 Ibidem, p. 135.

10 Ibidem, p. 135.

encompasses the last two mentioned above¹¹ and it is the coloniality of power that this investigation focuses on, given the structural oppressions present in Brazilian society and in the reality of the category of domestic employment - namely, racism, sexism and classism - are interconnected and greatly affect the lives of the professionals involved.

The coloniality of power means the maintenance of the power matrix established in 1942 by Europeans, with their arrival in the Americas, being characterized by the ethnic-racial hierarchy of people, directly reflecting on the international division of labor and the accumulation of capital.¹²

According to Aníbal Quijano, one of the fundamental axes of this coloniality is the social classification of the world population in racial terms. This axis was structured during the colonial period and survived the colonialism that gave rise to it. For this Peruvian author, permanence is the element of coloniality in the contemporary power model. He considers that roles and places in the global work structure are organized based on race markers, which are associated with and reinforce, in a mutual and structural way, the division of labor and racial classification, systematizing the racial division of labor.¹³

Quijano's writings highlight the process by which the dominant groups on the American continent tried to prevent the decolonization of their societies while fighting for the constitution of independent states. In this context, independent states and colonial societies were formed, in which the coloniality of power was adapted to the new institutional bases. According to Ana Julieta Teodoro Cleaver interpretation of Quijano approach:

The author points to the problem of the nation-state in the Americas when referring to the difficulty of recognizing the true citizenship of the population of African origin in countries like Brazil, given the discrimination and colonial domination over the black population. In effect, as the author puts it, domination is a requirement for exploitation, with racial hierarchization being its most effective instrument of domination. Hence, the social marker of race serves as a universal classifier of the current model of capitalist power operating in national/colonial states.

For Quijano, furthermore, enslaved people in the Americas were deliberately categorized as commodities to produce for the benefit of the world market, thus meeting the purposes and needs of capitalism. The coloniality of power, then, supports domination through the super-exploitation of work, especially with regard to its racial division. "The process of democratization of colonial societies is, therefore, limited and made unfeasible by the perpetuation and reproduction of the instruments of coloniality of power", such as exploitation and racial division of labor.¹⁴

Using decolonial theory and these reflections on the coloniality of power to discuss the work of domestic workers in Brazil, we move on to explore ideas put forward by authors aligned with black feminism and post-colonialism in order to gain a better understanding of the subject.

11 SQUEFF, Tatiana Cardoso. Descolonialismo como matriz teórica para a fundamentação dos Direitos Humanos. In: SQUEFF, Tatiana; BIELSCHOWSKY, Raoni; BORGES, Rosa. (Org.). **Anuário do Programa de Pós-Graduação em Direito da UFU**. São Paulo: 2022, p. 143.

12 QUIJANO, Aníbal. Colonialidade do poder, Eurocentrismo e América Latina. In: **A colonialidade do saber: eurocentrismo e ciências sociais. Perspectivas latino-americanas**. Buenos Aires: CLACSO, Consejo Latinoamericano de Ciencias Sociales, 2005, p. 117-118. Available at: http://biblioteca.clacso.edu.ar/clacso/sur-sur/20100624103322/12_Quijano.pdf. Accessed on: 05 jan. 2023.

13 QUIJANO, Aníbal apud CLEAVER, Ana Julieta Teodoro. Colonialidade do poder e precariedade governamental: Uma reflexão sobre o Estado brasileiro à luz do trabalho doméstico remunerado. **Cadernos de Campo**: Revista de Ciências Sociais, nº 32, p. 114, jan./jun. 2022, Pensamento político e social no Brasil, áreas em interseção. Available at: <https://periodicos.fclar.unesp.br/cadernos/article/view/15787>. Accessed on: 20 dez. 2022.

14 Ibidem, p. 117.

The intersectionality of race, gender and class from the perspective of black feminism

For Joaze Bernardino-Costa, the concept of coloniality of power allows us to visualize “a more static pattern of power, which originated in colonial administrations and continues to the present day”¹⁵. To complement this concept, another can be used: intersectionality. According to this Brazilian sociologist, intersectionality “brings us to a more dynamic dimension of production, maintenance, struggles and resistance to inequalities and stigmatized and subalternized identities”¹⁶, which is very much in line with the debate in this article.

A relevant text for this consideration is Kimberlé Crenshaw’s “Document for the Meeting of Experts on Gender-Related Aspects of Racial Discrimination”. Crenshaw is an American researcher and activist in the fields of civil rights, African-American legal theory and feminism. She is also responsible for the theoretical development of the concept of the intersection of race and gender inequalities - which is extensively addressed in the text under analysis.¹⁷

In the aforementioned article, the professor makes the following theoretical point: the gender aspects of racial discrimination, as well as the racial aspects of gender discrimination, are not fully understood by human rights discourses.¹⁸ For this reason, in this manuscript she proposes “a provisional model for identifying the various forms of subordination that reflect the interactive effects of race and gender discrimination” and a provisional protocol “to be followed in order to better identify situations in which such interactive discrimination may have occurred”¹⁹. Crenshaw also defends the responsibility of all human rights institutions to deal with the causes and consequences of this discrimination.²⁰

Crenshaw pointed out that, formally, the principle of gender equality was advanced with its inclusion in the United Nations Charter and the Universal Declaration of Human Rights, as well as in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and other world conferences. The “relevance of gender difference in the project to broaden the scope of women’s human rights”²¹ has been recognized over time.

She argued that the application of human rights without gender distinction marginalized women’s rights in a regime that aspired to universal application. This universalism was based on the experiences of men. “Consequently, despite the formal guarantee, the protection of women’s human rights was compromised to the extent that their experiences could be defined as different from those of men”.²²

15 BERNADINO-COSTA, José. Decolonialidade e interseccionalidade emancipadora: a organização política das trabalhadoras domésticas no Brasil. **Revista Sociedade e Estado** - Volume 30, Número 1, Janeiro/Abril 2015. Available at: <https://www.scielo.br/j/se/a/tjznDrswW4TprwsKy8gHzLQ/abstract/?lang=pt>. Accessed on: 20 dez. 2022.

16 Ibidem, p. 151.

17 Kimberlé Crenshaw ‘s biographical data is taken from: OBSERVATÓRIO POPNEGRA. **Kimberlé Crenshaw**. Available at: <https://www.nesp.unb.br/popnegra/index.php/biblioteca/author/6-kimberle-crenshaw>. Accessed on: 04 nov. 2022.

18 CRENSHAW, Kimberlé. Documento para o Encontro de Especialistas em Aspectos da Discriminação Racial Relativos ao Gênero. **Revista de Estudos Feministas**, n. 1, p. 171. Available at: https://edisciplinas.usp.br/pluginfile.php/4123084/mod_resource/content/1/Crenshaw%202002%20revista%20estudos%20feministas.pdf. Accessed on: 04 nov. 2022.

19 Ibidem, p. 171.

20 Ibidem, p. 171.

21 Ibidem, p. 172.

22 Ibidem, p. 172.

She said that over the last decade, as a result of women's activism, both at various world conferences and in the field of human rights organizations, a consensus has developed that women's human rights should not be limited only to situations in which their problems, difficulties and vulnerabilities are similar to those suffered by men.²³ This statement attests to the understanding that the incorporation of the gender perspective (or "gender mainstreaming" - the view that, since gender is important, its differential effects must necessarily be analyzed in the context of all human rights issues - has contributed to the fact that "today, the difference of women indicates the responsibility that any human rights institution has to incorporate a gender analysis into its practices".²⁴

Crenshaw pointed out that the Universal Declaration of Human Rights also reinforced the principle of non-discrimination based on race, which was further formalized in the International Convention on the Elimination of All Forms of Racial Discrimination. However, even though world conferences have been held on this issue, at the time of writing this text (2002), "nothing equivalent to the commitments made in Vienna and Beijing, in terms of incorporating gender, has been done in the context of race and racial discrimination".²⁵

She went on to say that this coincidence in the respective trajectories of gender and race in the context of human rights actions is, on the one hand, the result of a ten-year strategy that culminated in the incorporation of the gender perspective and, on the other hand, is the beginning of new strategies to deepen the commitment to eliminate racial discrimination and other forms of intolerance.²⁶ This overlapping of trajectories favors thinking about the interaction between race and gender discrimination in two fundamental ways. The first is that, for Crenshaw, the incorporation of gender into the context of the analysis of racism not only brings racial discrimination against women to light, but also allows for a deeper understanding of the specific ways in which gender shapes the discrimination also faced by men.²⁷

In addition, the fact is that all women are in some way subject to the burdens of gender discrimination; linked to this sentence, other factors related to the social identities of these women, such as class, caste, race, color, ethnicity, religion, national origin and sexual orientation, are "differences that make a difference" in the way various groups of women experience discrimination. According to Kimberlé Crenshaw: "Both the logic of incorporating gender and the current focus on racism and related forms of intolerance reflect the need to integrate race and other differences into the gendered work of human rights institutions".²⁸

There is, then, an intersectional vulnerability²⁹, which Non-Governmental Organizations (NGOs) and other institutions must engage to investigate³⁰ and inhibit/repair abuses. Among different examples, Crenshaw touched on another key point in this debate, which is the realization that intersectional discrimination is "particularly difficult to identify in contexts where economic, cultural and social forces silently shape the background [structure] in a way that puts women in a position where they end up being affected by other systems of subordination".³¹

23 Ibidem, p. 172.

24 Ibidem, p. 172.

25 Ibidem, p. 173.

26 Ibidem, p. 173.

27 Ibidem, p. 173.

28 Ibidem, p. 173.

29 Ibidem, p. 174.

30 Ibidem, p. 174.

31 Ibidem, p. 176.

Continuing this discussion, Kimberlé Crenshaw presented the expensive concept of intersectionality in her presentation:

The association of multiple systems of subordination has been described in various ways: compound discrimination, multiple burdens, or as double or triple discrimination. Intersectionality is a conceptualization of the problem that seeks to capture the structural and dynamic consequences of the interaction between two or more axes of subordination. It deals specifically with the way in which racism, patriarchy, class oppression and other discriminatory systems create basic inequalities that structure the relative positions of women, races, ethnicities, classes and others. In addition, intersectionality deals with how specific actions and policies generate oppressions that flow along these axes, constituting dynamic or active aspects of disempowerment.³²

With this definition, Crenshaw placed different axes of power - race, ethnicity, gender and class - as categories that can overlap and intersect, “creating complex intersections in which two, three or four axes intersect”³³, which aggravates women’s vulnerability. She also pointed out that intentional discrimination extends to other fields, such as employment and education - women with fewer educational opportunities or fewer years of study compared to men in their group or women from the elite exemplify this discriminatory bias.³⁴

Recognizing and accepting this problem, for Kimberlé Crenshaw, requires intersectional protocols to focus primarily on contextual analysis. In this way, attention to intersectional subordination requires a strategy that undertakes an analysis “from the bottom up, starting with questioning the way women live their lives”³⁵. In the meantime, the scholar proposes drawing up a special research protocol, with the participation of experts from various fields and applying the methodology of feminist theorist Mari Matsuda, which makes use of the policy of “asking other questions” about the intersectional dimension of vulnerabilities.³⁶

Intersectional theory has a lot to do with decolonial discussions in the Global South, such as the one promoted by Brazilian feminist and black activist Lélia Gonzalez (1935-1994). In addition to being inferior to white people, Gonzalez said that the role of black people is permeated by guilt and other relegations that go beyond the intellectual sphere. It’s an explanation of the myth of racial democracy, which ignores the racism and sexism present in the oppression of the black trajectory in Brazil.

Gonzalez says that “the texts only told us about black women from a socio-economic perspective that elucidated a series of problems posed by race relations”³⁷. But the notions of mulatto, domestic and black mother remained unnoticed. Inspired by her reading of psychoanalysis (Sigmund Freud and Jacques Lacan), she questioned the logic of domination that left black people “in the garbage can of Brazilian society”, speechless and infantilized.³⁸

Black people are considered incapable, fit for poverty, without intellectual capacity; the veiled racism in the country does not allow it to be admitted that black people have occupied marginalized places in Brazilian society, branded as thieves, “pickpockets” (as children) or in trades that are not socially valued, as is the case with domestic women. To analyze in particular the role of black women in this process of cultural formation, the author set out to address two notions: consciousness and memory.

32 Ibidem, p. 177.

33 Ibidem, p. 177.

34 Ibidem, p. 179.

35 Ibidem, p. 182.

36 Ibidem, p. 183.

37 GONZALEZ, Lélia. Racismo e sexismo na cultura brasileira. In: **Por um feminismo afro latino americano** - Ensaios, intervenções e diálogos. Organização: Flávia Rios e Márcia Lima. Rio de Janeiro: Editora Zahar, 2020, p. 68.

38 Ibidem, p. 69.

For Lélia Gonzalez, consciousness represents “the place of ignorance, concealment, alienation, forgetfulness and even knowledge”. This is where ideological discourse is present”. Memory, on the other hand, would be “the not knowing that knows, this place of inscriptions that restore a history that has not been written, the place where truth emerges, this truth that is structured as fiction”³⁹. Memory speaks of the “blunder” of the discourse of consciousness (dialectic) and it is in this movement that consciousness makes for black history to be forgotten that the author’s theoretical question rests.

Gonzalez addressed the trajectory of black women in Brazil, to demonstrate that racial democracy is mythical and racism has persisted since slavery. She looked at the role of black women in Brazilian society - from the mulattoes acclaimed at Carnival (but discriminated against on a daily basis) to the old *mucamas* and the “*bás*”, who even served their white masters sexually.

In the meantime, Gonzalez stressed that it is necessary to pay attention to the process of enslavement in Brazil in order to understand the place of black women in Brazilian society. She then began by describing the historical role of the *mucama*.⁴⁰ Gonzalez said that the black mother in Brazil participates in the narrative of family romance, a mechanism that strengthens the beliefs and values of the Brazilian people. For her, the race, gender and class discrimination experienced by black Brazilian women culminates in their place in the workforce, that is, in the constitution of a growing marginal mass.

Lélia Gonzalez concludes that black women play a highly negative role in today’s Brazilian society, both because of the type of image attributed to them and because of the forms of super-exploitation and alienation that surround them.⁴¹ “Black women are seen by the rest of society in terms of two types of ‘professional’ qualification: domestic and mulatto”.⁴²

Added to this is the usually fateful fate of the husbands or sons of these women - victims of police persecution or in prisons. There is a naturalization of the space reserved for black people. There is a racial division of this space - from the slave quarters to the slums, tenements, invasions, flooded areas and “housing”⁴³ complexes - just as there is a racial and sexual division of labor (certain jobs are not occupied by black women, for example).

At another point in the text “Racism and sexism in Brazilian culture”, González used the myth of origin reproduced in Mário de Andrade’s “Macunaíma”. In this literary work, Macunaíma was born black, “straight black and son of the fear of the night”. “Then he whitens up like a lot of Creoles we know, who, if they fool around, want to become Nordic”⁴⁴ as the author wrote.

39 Ibidem, p. 70.

40 In the original: “[...] *cabia-lhe a tarefa de manter, em todos os níveis, o bom andamento da casa grande: lavar, passar, cozinhar, fiar, tecer, costurar e amamentar as crianças nascidas do ventre ‘livre’ das sinhazinhas. E isto sem contar com as investidas sexuais do senhor branco [...]. Após o trabalho pesado na casa grande, cabia-lhes também o cuidado dos próprios filhos, além da assistência aos companheiros chegados das plantações, engenhos, etc., quase mortos de fome e cansaço*” (GONZALEZ, Lélia. **Primavera para as rosas negras**: Lélia Gonzalez em primeira pessoa. São Paulo: Diáspora Africana, 2018, p. 39).

41 Ibidem, p. 49.

42 Ibidem, p. 45.

43 Ibidem, p. 75.

44 Ibidem, p. 79.

In this context, we can also see another problem for black people in Brazil: the ideology of whitening, “the logic of domination that aims to dominate black people through the internalization and reproduction of white Western values”⁴⁵. This is even reflected in the linguistic prejudices against words of African origin and the vocabulary of black people.

Lastly, and in a way connected to the theoretical expositions outlined above, the studies on subalternity by the Indian Gayatri Chakravorty Spivak can be used. The preface to Spivak’s work entitled “Can the subaltern speak?”, Sandra Regina Goulart Almeida, stated that one of the central concerns in Gayatri Spivak’s writings is to challenge hegemonic discourses, as well as the beliefs of the readers and producers of knowledge themselves. Her main intention is to “think of critical theory as an interventionist, engaged and contesting practice”⁴⁶.

Spivak’s critique has Marxist, post-structuralist and deconstructionist foundations, and is associated with theoretical positions that address contemporary feminism, post-colonialism and, more recently, theories of multiculturalism and globalization.⁴⁷ In her writings, the author adopted the work of the Italian Marxist philosopher Antonio Gramsci (1891-1937) on the “subaltern class” and the productions of the so-called “Subaltern Study Group”, which brought together intellectuals who studied this subject. Spivak also used the approaches of Indian critics such as Ajit K. Chaudury and Ranajit Guha⁴⁸ to deal with the subalterns, a category removed from power, especially in the South Asian context. In this sense:

For Spivak, (...) the subaltern studies group needed to reflect on a question present in post-colonial studies: can the subaltern as such actually speak? This question, based on a critique of Gramsci’s emphasis on the autonomy of the subaltern subject as an essentialist premise, leads to Spivak’s concern with theorizing about a subaltern subject that cannot occupy a monolithic and undifferentiated category, since this subject is irreducibly heterogeneous.⁴⁹

Gayatri Chakravorty Spivak seeks to re-signify the term “subaltern” in Gramsci, considering those whose voices cannot be heard, i.e. the lower layers of society constituted by specific modes of exclusion from markets, political and legal representation and the possibility of becoming full members of the dominant social stratum.⁵⁰

One of Spivak’s interests is to make visible the medical and legal mechanisms that permeate history - something that imperialism intentionally undermines - and which can make the individual vocal, allowing for psychological, psychoanalytic or linguistic analyses of subjects.⁵¹ Thus, the central problem of this author is to analyze how the subject of the so-called Third World is represented in Western discourse, based on the criticisms of Karl Marx (1818-1883) and Jacques Derrida (1930-2004).⁵² She argues that the speech of the subaltern and the colonized is always mediated by the voice of a third person, a “representative” who puts himself in the position of claiming something on behalf of someone else.⁵³

45 Ibidem, p. 79.

46 ALMEIDA, Sandra Regina Goulart. Prefácio - Apresentando Spivak. **Pode o subalterno falar?** Belo Horizonte: Editora UFMG, 2010, p. 8.

47 Ibidem, p. 8.

48 SPIVAK, Gayatri Chakravorty. **Pode o subalterno falar?** Belo Horizonte: Editora UFMG, 2010, p. 62-67.

49 ALMEIDA, Sandra Regina Goulart. Prefácio - Apresentando Spivak. **Pode o subalterno falar?** Belo Horizonte: Editora UFMG, 2010, p. 11.

50 Ibidem, p. 12.

51 SPIVAK, Gayatri Chakravorty. **Pode o subalterno falar?** Belo Horizonte: Editora UFMG, 2010, p. 61.

52 ALMEIDA, Sandra Regina Goulart. Prefácio - Apresentando Spivak. **Pode o subalterno falar?** Belo Horizonte: Editora UFMG, 2010, p. 20.

53 Ibidem, p. 14.

This brings up another point that Spivak problematizes extensively in “Can the subaltern speak?": the use of the term “representation”, based on the German words “*Vertretung*” (the act of taking the place of the other politically) and “*Darstellung*” (performance or staging, from an aesthetic point of view). The author argues that the speech process is characterized by a discursive position, a transaction between speaker and listener, and thus infers that this space for dialogue does not materialize for subalterns, who are not invested with any form of agency.⁵⁴

In the meantime, the role of the postcolonial intellectual is to create spaces through which the subaltern can speak, so that they can be heard in this moment of expression. For Spivak, you can't speak for the subaltern, but you can work “against” subalternity, creating spaces in which the subaltern can articulate and, as a consequence, also be heard.⁵⁵ Finally, Spivak is constantly reasoning about the need to develop a theory of ideology as a substrate for the “material production of institutionality”⁵⁶ and the role of women, of the subaltern feminine, is even more obscure in this debate.

These points, added to the exploration of diverse social realities beyond the Western/European vision in the critique of imperialism, prove to be a rich contribution of Gayatri Chakravorty Spivak's studies to scientific literature and even to legal studies. This is because she manages to structure a theory that answers her research problem and alerts us, along the way, to the construction of the “Other of Europe”, of the subalterns, opening up spaces for new reflections on what we understand as a “place of speech” and political emancipation/creating a political identity - crucial points for paid domestic work carried out by black women and its problematization.

The Simone André Diniz case and domestic work in Brazilian society

In this topic, historical elements and the legislative construction of the Brazilian legal system will be presented, with a focus on paid domestic work in the country, in order to indicate possible weaknesses of the national model in the light of decolonial theory, as well as to observe the presence (or absence) of intersectionality in the assessment of domestic work in Brazil. Based on these reflections, the “Case 12.001: Simone André Diniz vs. Brazil”, heard by the Inter-American Commission on Human Rights, will be presented in the following sub-item to illustrate the reality of the coloniality of power that still exists and the need for legal approaches that have decolonial and intersectional perspectives.

Legislative and historical aspects of paid domestic work in Brazil

Brazilian historiography points to the fact that, from the colonial period until the abolition of slavery, formally established in 1888, domestic work in the country was carried out by a majority of people from Africa. African slaves worked either in the sugar mills and gold mines, like many male slaves, or inside the house as *mucamas*, cooks and wet nurses, if they were considered more aesthetically pleasing.⁵⁷

54 Ibidem, p. 13.

55 Ibidem, p. 14.

56 SPIVAK, Gayatri Chakravorty. **Pode o subalterno falar?** Belo Horizonte: Editora UFMG, 2010, p. 27.

57 ANDRADE, Daphne de Emílio Circunde Vieira; TEODORO, Maria Cecília Máximo. A colonialidade do poder na perspectiva da interseccionalidade de raça e gênero: análise do caso das empregadas domésticas no Brasil. **Revista Brasileira de Políticas Públicas**, Volume 10, nº 2, ago. 2020, p.573. Available at: <https://www.arqcom.uniceub.br/RBPP/article/view/6855>. Accessed on: 18 dez. 2022.

With the abolition of slavery, the black population continued to work informally and the lack of social protection for domestic workers persisted. The discipline of this work was dealt with in the Ordinances of the Kingdom and, later, in the Civil Code of 1916 in the provisions on leasing services. However, there were no specific rules and principles: the focus was on “the activities that characterized the profession and the rules of coexistence between employers and employees”, without a “minimum list of rights to protect this type of employment relationship”.⁵⁸

It is worth noting that the political organization of domestic workers began in the 1930s, when Laudelina de Campos Melo founded the first organization in Santos, the Professional Association of Domestic Workers. The aim of this institution was to gain the legal status of a union, since union organizations could negotiate legal recognition for the category and win labor rights. As early as 1930, Laudelina was developing a relationship with the union-class movement and the black movement, especially the *Frente Negra Brasileira*,⁵⁹ which demonstrates the continuous struggles and resistance of these workers for their rights.

The Consolidation of Labor Laws was published by Decree No. 5,452, of May 1, 1943, establishing the beginnings of the institutionalization of Labour Law in Brazil - without, however, providing for domestic and rural work. Domestic work was only regulated in 1972, with the advent of Law No. 5,859, which has now been repealed. Although this law did not guarantee a wide range of rights, it did provide important legal guarantees, such as paid annual leave of twenty working days after every twelve months of work, the annotation of the work card and the employee's registration as a compulsory insured person with the Official Social Security.⁶⁰

In this context, it is worth emphasizing the following timely criticisms of this analysis by Joaze Bernardino-Costa:

What we see from the 1960s to the mid-1980s is the predominance of a class-based interpretation of the condition of domestic workers. This is not to say that racialized and gendered interpretations were not present, but rather that the political articulation revolved around demands to be recognized as belonging to the working class and, consequently, equal in terms of rights to other workers. This was a natural consequence of the fact that domestic workers had only been recognized by labor legislation in 1972, still in an extremely restrictive way, and at the time they were granted the basic right to a work permit, the right to vacations and Social Security. In this sense, the struggle was about making these few rights effective and winning other rights already shared by other professional categories.⁶¹

The enactment of the 1988 Brazilian Constitution provided for more guarantees for domestic workers. By ensuring, among the principles of the Democratic State of Law, the dignity of the human person and the social value of work (article 1, items III and IV), setting as one of its objectives the promotion of the good of all, without prejudice of origin, race, sex, color, age and any other forms of discrimination (article 3, item IV) and enshrining legal equality in its article 5, “caput”, the constitutional text continued to innovate in the legal protection of domestic workers,

58 Ibidem, p. 574.

59 BERNARDINO-COSTA, Joaze. **Saberes subalternos e decolonialidade**: os sindicatos das trabalhadoras domésticas no Brasil. Brasília: EdUnB, 2015.

60 ANDRADE, Daphne de Emílio Circunde Vieira; TEODORO, Maria Cecília Máximo. A colonialidade do poder na perspectiva da interseccionalidade de raça e gênero: análise do caso das empregadas domésticas no Brasil. **Revista Brasileira de Políticas Públicas**, Volume 10, nº 2, ago. 2020, p.574. Available at: <https://www.arqcom.uniceub.br/RBPP/article/view/6855>. Accessed on: 18 dez. 2022.

61 BERNADINO-COSTA, José. Decolonialidade e interseccionalidade emancipadora: a organização política das trabalhadoras domésticas no Brasil. **Revista Sociedade e Estado** - Volume 30, Número 1, Janeiro/Abril 2015, p. 156. Available at: <https://www.scielo.br/j/se/a/tjznDrswW4TprwsKy8gHzLQ/abstract/?lang=pt>. Accessed on: 20 dez. 2022.

providing for various labor rights to them in its article 7.⁶²

The optional inclusion of domestic workers in the Guarantee Fund for Length of Service (FGTS, in the Portuguese acronym) program, for the granting of unemployment insurance, was later guaranteed by Law 10.208/2001.⁶³ On the other hand, the stability of pregnant women, the right to thirty days' vacation, the ban on discounts for utility and the right to public holidays came into force with Law No. 11.324/2006.⁶⁴

In the intervening period, the struggles and resistance of the black population for their rights have reached international heights which, in the field of law, have resulted in arduous but new conquests, as Joaze Bernardino-Costa has pointed out:

From the mid-1990s until today, we have seen the consolidation of alliances between black movements, feminist movements and class movements. In addition to the consolidation of these alliances, we see the construction of a network with international actors, governments and international organizations. The approval of Convention No. 189 and Recommendation No. 201 on Decent Work for Domestic Workers at the 100th International Labor Conference of the International Labor Organization (ILO) on June 16, 2011 highlights this transnational network formed by domestic workers. The approval of this convention and recommendation was preceded by three years of dialogue between domestic workers from different regions of the world. (...) As a by-product of Convention 189, which had to be voluntarily ratified by ILO member countries for it to be legally validated, the issue of domestic work was put on the country's political agenda and began to occupy the media. Thus, in dialogue with domestic workers, feminist and anti-racist NGOs, unions from other categories, international organizations and state secretariats, a group of parliamentarians proposed an amendment to the Federal Constitution, with changes to an article that restricted the application of social and labor rights to domestic workers. On April 2, 2013, the National Congress unanimously approved the vote of the rapporteur, Congresswoman Benedita da Silva, and put an end to a legal segregation that was rooted in Brazil's Federal Constitution.⁶⁵

62 BRASIL. [Constituição (1988)]. **Constituição da República Federativa do Brasil, de 5 de outubro de 1988**. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: 20 dez. 2022.

63 BRASIL. Lei nº 10.208, de 23 de março de 2001. Acresce dispositivos à Lei nº 5.859, de 11 de dezembro de 1972, que dispõe sobre a profissão de empregado doméstico, para facultar o acesso ao Fundo de Garantia do Tempo de Serviço - FGTS e ao seguro-desemprego. **Diário Oficial da União**, Brasília, 23 mar. 2001. Available at: http://www.planalto.gov.br/ccivil_03/leis/leis_2001/10208.htm. Accessed on: 20 dez. 2022.

64 BRASIL. Lei nº 11.324, de 19 de julho de 2006. Altera dispositivos das Leis nºs 9.250, de 26 de dezembro de 1995, 8.212, de 24 de julho de 1991, 8.213, de 24 de julho de 1991, e 5.859, de 11 de dezembro de 1972; e revoga dispositivo da Lei nº 605, de 5 de janeiro de 1949. **Diário Oficial da União**, Brasília, 20 jul. 2006. Available at: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/11324.htm. Accessed on: 20 dez. 2022.

65 BERNADINO-COSTA, José. Decolonialidade e interseccionalidade emancipadora: a organização política das trabalhadoras domésticas no Brasil. **Revista Sociedade e Estado** - Volume 30, Número 1, Janeiro/Abril 2015, p. 158-159. Available at: <https://www.scielo.br/j/se/a/tjznDrswW4TprwsKy8gHzLQ/abstract/?lang=pt>. Accessed on: 20 dez. 2022.

Then, in 2013, Constitutional Amendment no. 72 was published, which gave new wording to the sole paragraph of art. 7 of the Brazilian Constitution of 1988, stating the following:

Art. 7 These are the rights of urban and rural workers, in addition to others aimed at improving their social condition:

(...)

Sole paragraph. The category of domestic workers is guaranteed the rights provided for in items IV, VI, VII, VIII, X, XIII, XV, XVI, XVII, XVIII, XIX, XXI, XXII, XXIV, XXVI, XXX, XXXI and XXXIII and, subject to the conditions established by law and with due regard for simplifying compliance with tax obligations, obligations arising from the employment relationship and its peculiarities, those provided for in items I, II, III, IX, XII, XXV and XXVIII, as well as their integration into social security.⁶⁶

It should be noted that part of these rights — those contained in sections I (“employment relationship protected against arbitrary dismissal or dismissal without just cause, under the terms of a complementary law, which will provide for compensatory indemnity, among other rights;”), II (“unemployment insurance, in case of involuntary unemployment;”), III (“service time guarantee fund”), IX (“higher pay for night work than for day work;”), XII (“family allowance paid on account of the dependent of the low-income worker under the terms of the law;”), XXV (“free care for children and dependents from birth to five (5) years of age in nurseries and pre-schools;”), and XXVIII (“insurance against accidents at work, at the employer’s expense, without excluding the compensation to which the employer is obliged, when he is guilty of intent or fault;”) — were subject to compliance with the “conditions established by law” and measures to “simplify compliance with the main and ancillary tax obligations arising from the employment relationship and its peculiarities”.

Many of these guarantees came into force with the enactment of Complementary Law No. 150/2015. This legislation offered better legal protection to domestic workers, defined as follows:

Art. 1 The provisions of this Law shall apply to domestic employees, considered to be those who provide services on a continuous, subordinate, onerous and personal basis and for a non-profit purpose to a person or family, in their residential environment, for more than two (2) days a week.

⁶⁶ The following became labor rights for domestic workers: “Art. 7. These are the rights of urban and rural workers, in addition to others aimed at improving their social condition: (...) IV - minimum wage, set by law, nationally unified, capable of meeting his basic vital needs and those of his family with housing, food, education, health, leisure, clothing, hygiene, transportation and social security, with periodic adjustments that preserve its purchasing power, being prohibited its binding for any purpose; VI - irreducibility of salary, except as provided for in a collective agreement; VII - guaranteed salary, never less than the minimum, for those who receive variable pay; VIII - thirteenth salary based on full remuneration or the value of the pension; XV - paid weekly rest, preferably on Sundays; XVI - remuneration for overtime work is at least fifty percent higher than for normal work; XVII - paid annual leave with at least one third more than the normal salary; XVIII - maternity leave, without prejudice to employment or salary, for one hundred and twenty days; XIX - paternity leave, under the terms set by law; XXI - prior notice proportional to the length of service, with a minimum of thirty days, in accordance with the law; XXII - reducing the risks inherent in work, through health, hygiene and safety standards; XXIV - retirement; XXX - prohibition of differences in salaries, in the performance of duties and in hiring criteria on grounds of sex, age, color or marital status; XXXI - prohibition of any discrimination with regard to salary and hiring criteria for disabled workers; XXXIII - prohibition of night, dangerous or unhealthy work for minors under the age of eighteen and any work for minors under the age of sixteen, except as an apprentice from the age of fourteen;”. (BRASIL. [Constituição (1988)]. **Constituição da República Federativa do Brasil, de 5 de outubro de 1988**. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: 20 dez. 2022.)

Sole paragraph. It is forbidden to hire minors under the age of 18 (eighteen) to perform domestic work, in accordance with Convention No. 182 of 1999 of the International Labor Organization (ILO) and Decree No. 6,481 of June 12, 2008.⁶⁷

The abovementioned Law, therefore, regulates the category of domestic workers with the last labor rights mentioned above and others such as: guaranteed minimum wage; wage irreducibility, except as provided for in a collective bargaining agreement; payment of thirteenth salary; wage protection; normal working hours of no more than eight hours a day and forty-four hours a week, with the option of compensating working hours and reducing working hours, by means of a collective bargaining agreement or convention; paid weekly rest; overtime pay, paid annual leave, maternity leave and paternity leave; notice; compliance with health, hygiene and safety standards; and retirement.⁶⁸

Daphne de Emílio Circunde Vieira Andrade and Maria Cecília Máximo Teodoro assert that the lengthy process of regulating domestic work ratifies the perception that the domination of colonial times was not limited to the imaginary of the subjects: such domination continued in the structure of both Brazilian society and other peripheral countries. Psychologically, these conditions have gone beyond interpersonal relationships to collective relationships and cut across the entire social structure, maintaining a state of inferiority and inferiority of black people in relation to white people.⁶⁹

In addition, we cannot fully believe that the conquest of rights for domestic work has fully overcome the recurring difficulties for this type of labor. Although there is a provision for limiting the working hours of domestic workers in the Complementary Law no. 150/2015, there have been complaints, received by the National Federation of Domestic Workers (FENATRAD), that this provision has not been properly complied with: during the Covid-19 pandemic, reports of exhausting working hours, restriction of movement and private imprisonment of domestic workers were received by this organization.⁷⁰

It is also important to note that such Law does not include day laborers in the legal protection of domestic employment⁷¹ which violates the provisions of ILO Convention 189 and reinforces the informality and socioeconomic

67 BRASIL. Lei Complementar nº 150, de 1º de junho de 2015. Dispõe sobre o contrato de trabalho doméstico; altera as Leis no 8.212, de 24 de julho de 1991, no 8.213, de 24 de julho de 1991, e no 11.196, de 21 de novembro de 2005; revoga o inciso I do art. 3º da Lei no 8.009, de 29 de março de 1990, o art. 36 da Lei no 8.213, de 24 de julho de 1991, a Lei no 5.859, de 11 de dezembro de 1972, e o inciso VII do art. 12 da Lei no 9.250, de 26 de dezembro 1995; e dá outras providências. **Diário Oficial da União**, Brasília, 2 jun. 2015. Available at: https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp150.htm. Accessed on: 20 dez. 2022.

68 BRASIL. Lei Complementar nº 150, de 1º de junho de 2015. Dispõe sobre o contrato de trabalho doméstico; altera as Leis no 8.212, de 24 de julho de 1991, no 8.213, de 24 de julho de 1991, e no 11.196, de 21 de novembro de 2005; revoga o inciso I do art. 3º da Lei no 8.009, de 29 de março de 1990, o art. 36 da Lei no 8.213, de 24 de julho de 1991, a Lei no 5.859, de 11 de dezembro de 1972, e o inciso VII do art. 12 da Lei no 9.250, de 26 de dezembro 1995; e dá outras providências. **Diário Oficial da União**, Brasília, 2 jun. 2015. Available at: https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp150.htm. Accessed on: 20 dez. 2022.

69 ANDRADE, Daphne de Emílio Circunde Vieira; TEODORO, Maria Cecília Máximo. A colonialidade do poder na perspectiva da interseccionalidade de raça e gênero: análise do caso das empregadas domésticas no Brasil. **Revista Brasileira de Políticas Públicas**, Volume 10, nº 2, ago. 2020, p. 575-576. Available at: <https://www.arqcom.uniceub.br/RBPP/article/view/6855>. Accessed on: 18 dez. 2022.

70 TOKARSKI, Carolina; PINHEIRO, Luana. Trabalho doméstico remunerado e Covid-19: aprofundamento das vulnerabilidades em uma ocupação precarizada. **Boletim de Análise Político-Institucional**, n. 26, p. 55 – 64, mar. 2021. Available at: <https://repositorio.ipea.gov.br/handle/11058/10521>. Accessed on: 20 dez. 2022.

71 ACCIARI, Louisa; PINTO, Tatiane. Praticando a equidade: estratégias de efetivação de direitos no trabalho doméstico. **Estudos Avançados**, v. 34, n. 98, p. 78, 2020. Available at: <https://www.scielo.br/j/ea/a/SPzW9K9TGXmfT4QDJSzP43b/?lang=pt>. Accessed on: 28 dez. 2022.

vulnerability of the category. Another obstacle for the improvement of the legal protection of domestic work was that, in the political sphere, the Complementary Law no. 150/2015 was enacted during a period of crisis and deregulation of labor law, which affected the implementation of these legal guarantees.⁷² The resistance of many domestic employers to these formalized rights for this professional category was also notorious, and this could be seen in the speeches about the rising cost of living for middle-class families.⁷³

As Daphne de Emílio Circunde Vieira Andrade and Maria Cecília Máximo Teodoro summarize:

In the labor market, black workers are often employed informally and, consequently, whites occupy more formal jobs, which ends up having a major impact on their pay. Black people, whether men or women, occupy the lowest paid positions in the Brazilian labor market, which are usually filled by people with low levels of education. This creates a vicious circle of relations of domination, which are aggravated by the legacy of patriarchy and have profound consequences for non-white women, especially black and brown women, in terms of the division of labor (...).⁷⁴

Establishing a conjunctural comparison of these data and considerations with contemporary slave labor – although this is another topic, not addressed in this study – in August 2022 the newspaper “Correio Braziliense” published the news that the Ministry of Labor had received 38 complaints about this crime. What is appropriate about this report for this debate is that, as the Labor Prosecutor of Rio de Janeiro, Juliane Mombelli, explained, most of these cases do not constitute slave labor, but violations of rights in domestic service.

According to the prosecutor, this situation reveals a lot about the Brazilian culture of thinking that domestic service should not be paid for. “They say that the maid is almost part of the family, but she’s not. She is a worker like any other category and needs to have her rights guaranteed,” she said.⁷⁵ Juliane Mombelli emphasized that structural racism is noticeable in this context, given that the majority of domestic workers are women and that around 60% of them are black.⁷⁶

In his conceptualization of structural racism, Sílvio de Almeida pointed out that racism stems from the social structure itself, from the “normal” way in which political, economic, legal and even family relations are constituted. This phenomenon is not, therefore, a social pathology or an institutional disorder.⁷⁷ It is forged organically in our society, in a marginalization and subalternity constituted since the time of colonial Brazil, with the enslavement of the African people.

72 ACCIARI, Louisa; PINTO, Tatiane. Praticando a equidade: estratégias de efetivação de direitos no trabalho doméstico. **Estudos Avançados**, v. 34, n. 98, p. 78, 2020. Available at: <https://www.scielo.br/j/ea/a/SPzW9K9TGXmft4QDJSzP43b/?lang=pt>. Accessed on: 28 dez. 2022.

73 ACCIARI, Louisa. “Foi difícil, mas sempre falo que nós somos guerreiras” – o movimento das trabalhadoras domésticas entre a marginalidade e o empoderamento. **Mosaico**, v. 7, n. 11, p. 124-147, 2016. Available at: <http://bibliotecadigital.fgv.br/ojs/index.php/mosaico/article/view/64780>. Accessed on: 22 dez. 2022.

74 ANDRADE, Daphne de Emílio Circunde Vieira; TEODORO, Maria Cecília Máximo. A colonialidade do poder na perspectiva da interseccionalidade de raça e gênero: análise do caso das empregadas domésticas no Brasil. **Revista Brasileira de Políticas Públicas**, Volume 10, nº 2, ago. 2020, p.576. Available at: <https://www.arqcom.uniceub.br/RBPP/article/view/6855>. Accessed on: 18 dez. 2022.

75 MARTINS, Thays. Brasil registra seis casos de trabalho escravo doméstico em um mês. **Correio Braziliense**, 06 ago. 2022. Available at: <https://www.correiobraziliense.com.br/brasil/2022/08/5026899-brasil-registra-seis-casos-de-trabalho-escravo-domestico-em-um-mes.html>. Accessed on: 28 nov. 2022.

76 Ibidem.

77 ALMEIDA, Sílvio. **Racismo estrutural**. São Paulo: Editora Jandaíra, 2020, p. 50.

In this respect, structural racism is closely linked to what is known as institutional racism, embedded in the intricacies of the state, in conditions seen in the composition of the workforces of public bodies, in the targeting of police actions, in the decisions of the judiciary, in the mass incarceration of the black population and in the neglect of reparation actions by the public authorities.⁷⁸

In this sense, according to interviewee Camilo Onoda Caldas, director of the Luiz Gama Institute, “the majority of cases [of contemporary slave labor] involve black women, which shows that Brazil has not managed to break with its slave heritage”.⁷⁹ This implies that, historically, the profession of domestic worker is closely linked to the period of slavery, and is also historically carried out by mostly unpaid or underpaid black women.⁸⁰ From this discussion, Bianca Caroline Bento Menezes inferred:

Thus, given the situation outlined, we highlight the following legal challenges regarding paid domestic work: (a) gender coloniality; (b) a high degree of informality and legal, economic and social vulnerability; and (c) systematic violation of rights. These challenges are not watertight, but overlapping and interrelated. They are also related to legal subalternity, as they result from the intertwined oppressions of race, class and gender at work and the silencing of subaltern knowledge and voices.⁸¹

In order to better analyze the reality of paid domestic work in Brazil, based on the above understanding that it is intersectional, that is, it is mostly carried out by black women, many of them on low incomes, we addressed the relationship between this professional category and decolonial theory and black feminist criticism in the previous topic and then moved on to a brief analysis of the “Simone André Diniz” case before the Inter-American Commission on Human Rights.

Notes on the Simone André Diniz case before the Inter-American Commission on Human Rights

The Simone André Diniz case is emblematic in Brazil’s legal history because it was the first international litigation against the country on racial discrimination under international human rights law. This decision is relevant for two reasons: firstly, because few cases on this issue have been processed in the Inter-American system, despite the growth of jurisprudence in its sphere in terms of equality.⁸² Secondly, because the case has a clear social scope, since it elevated the individual discrimination suffered by the victim Simone Diniz “to a standard of racial discrimination, with special attention to the national legislative and jurisprudential obstacles that prevent victims from remedying the violations they have suffered”.⁸³

78 TST. **Racismo institucional**: o que o Brasil aprendeu com o caso Simone Diniz. Available at: <https://www.tst.jus.br/-/racismo-institucional-o-que-o-brasil-aprendeu-com-o-caso-simone-diniz>. Accessed on: 28 nov. 2022.

79 MARTINS, Thays. Brasil registra seis casos de trabalho escravo doméstico em um mês. **Correio Braziliense**, 06 ago. 2022. Available at: <https://www.correiobraziliense.com.br/brasil/2022/08/5026899-brasil-registra-seis-casos-de-trabalho-escravo-domestico-em-um-mes.html>. Accessed on: 28 nov. 2022.

80 Ibidem.

81 MENEZES, Bianca Caroline Bento. O espaço doméstico como categoria de exceção reprodutora da subalternidade no Direito do Trabalho. **Dissertação (Mestrado) da Faculdade de Direito da Universidade Federal de Minas Gerais**. 2022, p. 26.. Available at: <https://repositorio.ufmg.br/handle/1843/46802>. Accessed on: 20 dez. 2022.

82 ARANTES, Paulo de Tarso Lugon. O caso Simone André Diniz e a luta contra o racismo estrutural no Brasil. **Revista Direito e Sociedade**, n. 31, jul./dez.2007, p. 128. Available at: <https://revistades.jur.puc-rio.br/index.php/revistades/article/view/264>. Accessed on: 15 dez. 2022.

83 Ibidem, p. 128.

The aforementioned case concerns a situation experienced by Brazilian citizen Simone André Diniz, who was looking for a position as a domestic worker in the city of São Paulo, and, when looking through the classifieds of the newspaper “A Folha de São Paulo”, came across the following advertisement: “Housekeeper. Home. To live at work. With experience. All routine, childcare, with documents and reference; preferably white, no children, single, over 21. Gisele”.⁸⁴

Simone Diniz called the number indicated in the advertisement and was informed that, as she was black, she did not meet the requirements for the position offered. She then appealed to the Black Subcommittee of the Brazilian Bar Association of São Paulo (OAB/SP, in the Portuguese acronym) to denounce the discrimination suffered.⁸⁵ Diniz also went to the Racial Crimes Police Station to file a crime report, and a police investigation was launched to investigate possible violations of article 20 of Law no. 7,716/1989, which defines the practice of discrimination or prejudice based on race as a criminal offense. On this occasion, the police officer in charge of the procedure took the statements of the alleged perpetrator of the rape and her husband, the alleged victim and witness and the lady who answered Simone Diniz’s phone call.⁸⁶

The police authority drew up a report on the crime and sent it to the competent judge. This magistrate informed the representative of the Public Prosecutor’s Office of the case, who opined that the case should be closed. The judge therefore issued a ruling that the case should be closed, accepting the arguments of the Public Prosecutor’s Office. Irritated, Simone Diniz turned to black activist organizations to take the case to the Inter-American System.⁸⁷

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The complaint was submitted by the Center for Justice and International Law (CEJIL, in the Portuguese acronym) and the Black Subcommittee of the Human Rights Commission of OAB/SP. These petitioners asked the Inter-American Commission to declare violations by the Brazilian state of articles 1 (general obligation to guarantee rights), 8 (judicial protection), 24 (equality before the law), 25 (judicial guarantees) of the American Convention on Human Rights (ACHR).⁸⁹

Likewise, pursuant to Article 29 (rules of interpretation) of this Convention, the petitioners requested that it declare violations of Articles 1 (definition of discrimination), 2.1.a (prohibition of support for discriminatory practices) and, on the basis of Article 29 of the ACHR, Articles 1, 2(a), 5(a)(I) and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The complaint was received by the Inter-American Commission on October 7, 1997.⁹⁰

84 OEA. Comissão Interamericana de Direitos Humanos. **Relatório nº 66/06 - Caso 12.001. Simone André Diniz**. 2006. Available at: <http://www.cidh.org/annualrep/2006port/BRASIL.12001port.htm>. Acesso em: 15 dez. 2022.

85 Ibidem.

86 Ibidem.

87 Ibidem.

88 Ibidem.

89 Ibidem.

90 Ibidem.

After the proceedings, the Inter-American Commission on Human Rights issued Report No. 66/06, in which it recognized, in principle, the international responsibility of the Brazilian state in the case, even though it involves a relationship between private individuals. The state's obligation is to ensure that such interaction takes place under the aegis of the human rights of the parties, with the aim of preventing a violation from occurring, or, if such a transgression does occur, "to seek diligently to investigate, prosecute and sanction the perpetrator of the violation, in the terms required by the American Convention".

Following this recognition, a team from the Commission visited the country in 1995 and reported its impressions of black experiences in Brazil in the report under review:

During this visit, the Commission was informed that in Brazil, in general, Afro-Brazilians find themselves in a situation of vulnerability as subjects of human rights and particularly in a situation of power differential with the white population. Even today, differences persist which are far from a minimum acceptable level of equality, discrimination which in many cases translates into patterns which violate human rights, especially equality, non-discrimination and the right to dignity.⁹¹

This team noticed, both by being present "*in loco*" and from official data, the socio-economic inequalities experienced by the black population, the gaps in education and the high infant mortality rates among these people, the mass incarceration of these individuals, as well as the strong police violence perpetrated against them. In addition, discrimination in the labor market on the basis of skin color was a latent fact, from the moment people were hired in all types of jobs, whether among domestic workers, general services or professional workers.⁹²

Despite recognizing the evolution of anti-racism legislation in the Brazilian legal system, in the "Simone André Diniz case", the members of the Inter-American Commission on Human Rights considered that the Brazilian state had violated the right to equality before the law, judicial protection and judicial guarantees, enshrined respectively in Articles 24, 25 and 8 of the American Convention, to the detriment of the victim.⁹³

The Commission also determined that the Brazilian State had violated its duty to adopt provisions of domestic law, in accordance with Article 2 of the American Convention, and also violated its obligation under Article 1.1 to respect and guarantee the rights enshrined in the Convention.⁹⁴ For these reasons, the commissioners proposed the following recommendations to Brazil:

1. To make full reparation to the victim Simone André Diniz, considering both the moral and material aspects, for the human rights violations determined in the merits report and, in particular,
2. Publicly acknowledge international responsibility for human rights violations against Simone André Diniz;
3. Grant financial support to the victim so that they can start and complete a higher education course;
4. Establish a monetary amount to be paid to the victim as compensation for moral damages;
5. Make the necessary legislative and administrative changes to make anti-racism legislation effective, in order to remedy the obstacles demonstrated in paragraphs 78 and 94 of this report;
6. Carry out a complete, impartial and effective investigation into the facts, with the aim of establishing and sanctioning responsibility for the facts related to the racial discrimination suffered by Simone André Diniz;

91 Ibidem.

92 Ibidem.

93 Ibidem.

94 Ibidem.

7. Adopt and implement measures to educate justice and police officials in order to avoid actions that imply discrimination in the investigation, prosecution or civil or criminal conviction of complaints of racial discrimination and racism;
8. Promote a meeting with organizations representing the Brazilian press, with the participation of the petitioners, in order to draw up a commitment to prevent the publication of racist allegations, all in accordance with the Declaration of Principles on Freedom of Expression;
9. Organize state seminars with representatives of the judiciary, the Public Prosecutor's Office and local public security departments with the aim of strengthening protection against racial discrimination and racism;
10. Ask state governments to create specialized police stations to investigate crimes of racism and racial discrimination;
11. Request the State Public Prosecutor's Offices to create Specialized State Public Prosecutor's Offices to combat racism and racial discrimination;
12. Promote publicity campaigns against racial discrimination and racism.⁹⁵

Although not all the recommendations made have been complied with in the course of time, the decision in the “Simone André Diniz case” highlighted the issue of racism and the discrimination inherent in it in Brazil, which occurs in a veiled but commonplace way, and which has obstacles to due punishment in the criminal sphere.

As far as this work is concerned, the figure of this victim - a woman, black, from a less favored social class - draws the profile of the majority of paid domestic workers in the country, which calls for a better reflection - decolonial and intersectional - considering these power structures even to build and consolidate greater legal protection for them, as has been considered so far.

Conclusion

Based on the analysis of the case “Case 12.001: Simone André Diniz vs. Brazil”, heard by the Inter-American Commission on Human Rights and marked by the issue of racial discrimination, especially in the labor market, this study was undertaken in order to investigate the hypothesis that, although there are currently formal legal guarantees for domestic workers in the country, the fact is that the debate is broader, encompassing the intersection between gender, race and class, in a framework of oppression and violence that has been triggered since colonialism.

Statistical data proves the preponderance of paid domestic work done by the poorest black women in Brazil, a legacy of the slave-owning past and with traces of the structural and institutional racism that permeates Brazilian society. The legislative delay in guaranteeing the minimum rights for these workers, won through their individual or collective struggle and resistance, attests to the fact that there is still a structure of colonial power that needs to be countered by the science of the intersectionality of race-gender-class elements (with Kimberlé Crenshaw), as well as by the black feminist critique of women like Lelia Gonzalez and even by the post-colonial thinking of subalternity recognized in Gayatri Spivak.

Joaze Bernadino-Costa shows, based on her studies of the formation of domestic workers' unions as a decolonial movement, that their actions, in conjunction with the feminist and black movements, enable the so-called “emancipatory intersectionality”, which corresponds to a mobilization of the elements of race, class and gender in

⁹⁵ Ibidem.

favor of a political solidarity capable of establishing new decolonial projects.⁹⁶

This implies that the intersection of these power structures does not necessarily equate to oppression and inequality - even though, as we have seen in this study, these have been constant points in the history of black women in Brazil and in the category of domestic workers itself. Depending on the historical context, these modern power structures can interconnect in favor of democratic forms of political agency.⁹⁷ It is with this inspiration, which must be absorbed by the state and demanded with the strength of all women and society, that we aim to build a less unjust and more equal social environment in the present and in the coming decades.

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