

## **Public Policies and Affirmative Actions in Higher Education: a Brazilian Contemporary Experience<sup>1</sup>**

**Kelly Gianezini, PhD**

Professor

Universidade do Extremo Sul Catarinense (UNESC)  
Brazil

### **Abstract**

*The access of students in higher education has occurred through different forms of ingressión around the world. This article presents a Brazilian experience reporting its main characteristics and quandaries. In this study, it was possible to collect and to analyze social-historical documents and statistic data related to the Prouni – Programa Universidade Para Todos (University for all program). In this context, the following question comes up: Is it possible to identify the existence of strategies of university management to attract and to keep students respecting their ethnic, social and cultural backgrounds? If so, is it possible to consider that such characteristics promote the cultural diversity without causing conflicts in universities? In terms of methodology, the research adopted a descriptive character, by means of conducting a theoretical and empirical research. It was noticed that although there were some marks of resistance from some students and professors, these marks have been overcome by the perseverance and success obtained by those who have been contemplated by the public policies.*

**Keywords:** University management; Programa Universidade Para Todos

### **1. Introduction**

Since the beginning of this century, public policies (including affirmative actions) have been created with the intention of modifying the social inequality in Brazilian universities, covering a parcel of the population which historically has had few conditions of social and economical equity for the access and permanence in higher education. Hence, the Brazilian students' access to higher education has been occurring through different forms of ingressión, including the experience of affirmative action described in this article.

In terms of methodology, this research adopted a descriptive character, by means of conducting a theoretical and empirical research in social, historical and statistical documents related to the PROUNI – Programa Universidade Para Todos (University for all Program).

Considering the theoretical and empirical perspectives, the following investigations emerged: is it possible to identify the existence of strategies for the university management to attract and to keep university students respecting their ethnic, social and cultural backgrounds? If so, is it possible to consider that these characteristics promote the cultural diversity without causing conflicts in universities?

This article was organized in three parts. In the first one there is a brief contextualization of the main aspects that contemplate the subject and the object of study. In the second part, we present the Programa Universidade Para Todos – PROUNI. In the third part, some empirical evidences were highlighted and the main considerations reached with the present research were revealed.

### **2. The “Universidade Para Todos” (University for all) Program - PROUNI: The Social Context and the (Inter) National Influence**

Before discussing about the PROUNI, it is necessary to expose three clarifications. The first one is related to some terminological issues.

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<sup>1</sup>This paper is one of the results obtained in the studies developed in the doctoral studies in the Graduation Program in Education of the Federal University of Rio Grande do Sul (UFRGS-PPGEDU) and the University of California, Los Angeles (UCLA).

The use of “black” (“negro”, in Portuguese) is in accordance with the classification used in the text of the “PROUNI’s Law” which came into force in 2005 and which presents the expressions “afro-Brazilian” (“afro-brasileiro”, in Portuguese) and “afro descendent” (“afrodescendente”, in Portuguese) as synonymous<sup>2</sup>. Regarding the first term previously cited (black), the categories of “color” and “race” used by the Instituto Brasileiro de Geografia e Estatística – IBGE (Brazilian Institute of Geography and Statistics) do not contemplate the expression “black”, because this would cover people with black skin (“pretos”) and of mixed race (“pardos”). The categories covered by the IBGE are: white, black (“preto” and not “negro”, although they both mean “black” in English), mixed race (“pardo”, which constitutes a variety of miscegenation and subcategories, such as “mulata”, “mestizo”, “caboclo”, “cafuza”, etc.), yellow (Asian) and indigenous (native-Brazilians). In regards to the term “race”, also used here, its use is justified because we understand it to be a relevant concept for the study of the ethnic-racial minorities. Therefore, this term was used as a sociological concept as social construction tied to the identity of determined groups. It is known that the perspectives of biological sciences refuted the term “race”. However, in the same way that the terms “Indian” and “black”, the concept “race” are part of political and social construction. Hence, all these terms are also used under the sociological perspective.

The second one is related to the problems encountered in the empirical data collecting during the field research. Some authors (CATANI; HEY; GILIOLI, 2006; CARVALHO, 2006; PERFEITO, 2013; SILVEIRA, 2013) point out the difficulties of access and the lack of transparency of the data related to the Universidade Para Todos Program, as much in the Ministry of Education (MEC) website.<sup>3</sup>

The third clarification refers to a chronological inversion, since we started displaying the most recent event about the PROUNI even before presenting the program itself and its statistical data in Brazil. This option was made for understanding that the judgment of Supremo Tribunal Federal – STF (Supreme Federal Court) has grounded the whole process of implantation of the Program.

## 2.1 The Treatment and Interpretation of the Judiciary on the PROUNI

In Brazil, the 21st century was inaugurated with serious quarrels on the social and racial inequalities. In the public sector, the system of quotas<sup>4</sup> gained notoriety and, in the private sector, the prominence was for the PROUNI. Recent studies<sup>5</sup> have aimed to analyze and discuss the inclusion in higher education, besides contributing to place the researchers in a contemporary debate, pointing categories of analysis that provide an understanding of initiatives of this nature (studied here as public policies).

Thus, considering the purposes of this subsection, it was taken into account the study of Gianezini, Oliven and Allen (2013) for showing that the existing tension in Brazilian society caused by this process “has proved to be a conflicting force around the support of the fundamental rights and guarantees” (p. 129). The results of the debates on the PROUNI and on

[...] the inclusion policies of ethnic and racial minorities and sub-represented groups in Brazilian higher education demanded that the Supremo Tribunal Federal – STF (Supreme Federal Court) took a stand before the controversial subject of the university racial quotas that are contained in a bigger policy called affirmative or positive policy (GIANEZINI, OLIVEN, ALLEN, 2013, p. 129).

<sup>2</sup> Relying on authors who make a distinctive analysis between ethnicity and race, Nunes (2007, p. 123) tries to “find some similarities that qualify as reflection that leads us not only to choose but to relate both concepts towards the fact being studied.”

<sup>3</sup> It is important to say that in the Program's website there are no detailed and important information about the scholarship holders and the IES. **Regarding students contemplated and scholarships**, it lacks information about the courses in which the scholarships were filled and the type of degree (bachelor, teaching or technological); age of the students; vacant scholarships; dropouts; reason for ending the scholarships; scholarships distributed to freshmen or not; and, if it was a quota holder, if the scholarship was a remaining one. **Regarding the data related to the IES**, information about the academic organization is missing; costs of PROUNI scholarship; costs of tuition for non-grant students; and the tax exemption attributed to the IES that have joined the program.

<sup>4</sup> Gianezini, Oliven and Allen (2013, p. 118) found that in Brazil, “because of its controversial nature, the issue of quotas in Brazilian universities was debated at a public hearing held in March, 2010 with 38 experts - between researchers and representatives of civil society organizations - that presented the pro and con arguments of the quota system in public and private universities. “A transcription of the public hearing (in Portuguese) can be found at: [http://www.stf.jus.br/arquivo/cms/processoAudienciaPublicaAcaoAffirmativa/anexo/Notas\\_Taquigrafica\\_s\\_Audiencia\\_Publica.pdf](http://www.stf.jus.br/arquivo/cms/processoAudienciaPublicaAcaoAffirmativa/anexo/Notas_Taquigrafica_s_Audiencia_Publica.pdf)”. Accessed on June, 18<sup>th</sup>, 2013.

<sup>5</sup> Gianezini (2012a) conducted a survey on several affirmative action policies in Brazil and the United States. This is the final monograph for the Law course entitled “Law and Society: comparative analysis of affirmative action policies in the Brazilian and American legal systems”.

Faced with the arguments presented by the Brazilian ministers of the STF, Gianezi, Oliven and Allen (2013) had developed a comparative study to analyze the policies of affirmative actions in Brazil and in the United States through the judgment of cases based on the jurisprudence of the two countries.

The authors questioned themselves if it was possible to identify the influence of the United States system of quotas in the Brazilian system of quotas. They had discovered that “despite delayed, and only at the initial moment, there were an inspiration by that system, however, after some intense debates in several sectors of the Brazilian society, the STF adopted a distinct system, improving the North American experience, taking into account the national context” (GIANEZINI; OLIVEN; ALLEN, 2013, p. 131). The authors considered the specificities of both countries analyzed and they also concluded that both had created distinct strategies of access to the higher education, in order to guarantee a more reasonable system.

Moreover, “the racial quotas in Brazil have been considered constitutional, whereas in the United States they had been considered unconstitutional, although race can be one of the factors to be taken into account as a standard in the process of selection of candidates to universities” (GIANEZINI; OLIVEN; ALLEN, 2013, p. 131). However, India was the first country to have an experience of affirmative action besides being, until today, the longest in history and having been implanted when the country was still under the English domain.<sup>6</sup>

In their research, the authors have taken six judgments as their analysis instrument: three Americans and three Brazilians. In Brazil, the debate on affirmative policies for place reservation following social and racial criteria has reached the private universities after the creation of the PROUNI. This study is mainly motivated by the analysis carried through on one of the judgments: the Ação Direta de Inconstitucionalidade (a direct challenge brought on grounds of unconstitutionality - ADI) 3330.<sup>7</sup>

This ADI contests the legality of the Programa Universidade para Todos, having been reported by the then president of the STF, the minister Ayres Britto<sup>8</sup>, and a petition was filed by the Confederação Nacional dos Estabelecimentos de Ensino – CONFENEN (National Confederation of the Establishments of Education), by Democratas Party (DEM) and by the Federação Nacional dos Auditores Fiscais da Previdência Social National – FENAFISP (Federacy of the Fiscal Auditors of Previdência Social). The ministers preliminarily had considered that the FENAFISP lacked an active legitimacy to propose the action.<sup>9</sup>

The CONFENEN argued that the provisional remedy that originated the PROUNI did not take care of to the requirements of relevance and urgency for its edition, foreseen in the article 62, §1º and §2º, of the Brazilian Federal Constitution, offending, thus, “the constitutional principle of the isonomy between the Brazilian citizens, besides misrepresenting the constitutional concept of beneficent entity of social assistance” (GIANEZINI; OLIVEN; ALLEN, 2013, p. 124).<sup>10</sup>

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<sup>6</sup> In 1947, when India was already independent from England, affirmative actions were ratified

<sup>7</sup> According to Gianezi, Oliven and Allen (2013, p. 124), “the other two actions, ADI 3314 and ADI 3379, were appended to the ADI 3330”, because they had similar content (contesting PROUNI).

<sup>8</sup> According to Gianezi, Oliven and Allen (2013), it was the first plenary judgment of the management of Ayres Britto, who took office as President of the Supreme Court on April 19, 2012, leaving his post because he reached the age limit (seventy years) for the compulsory retirement of public servants, on November 16 the same year. His successor was the Minister Joaquim Barbosa, who took office on November 22, 2012, being the first black minister to take over the presidency of the Court of the Supreme Court. Note that the possession occurred in the week that celebrates, in Brazil, the day for Black Awareness (November 20). Joaquim Barbosa retired on July 31, 2014.

<sup>9</sup> According to Gianezi, Oliven e Allen (2013), “only the following people or entities can propose this action: the President of the Republic; the Officers from the Federal Senate, Chamber of Deputies, Legislative Assembly; State Governors, Office of the Attorney General, Federal Council of the Brazilian Bar Association, a politic party with representation in the National Congress, and a Union Confederation or class entity that has a national cover” (p. 124).

<sup>10</sup> Gianezi, Oliven and Allen (2013) suggest the videos: FEDERAL SUPREME COURT - STF. Full - Supreme declares constitutionality of ProUni (1/2). Brasília, 2012 (in Portuguese) Available at: <<https://www.youtube.com/watch?v=xbpx8xdvI9E>>. Accessed on: 18 June 2013; and FEDERAL SUPREME COURT - STF. Full - Supreme constitutionality of ProUni states (2/2). Brasília, 2012 (in Portuguese) Available at: <<https://www.youtube.com/watch?v=ZSM1SMouYd4>>. Accessed on: June, 18<sup>th</sup>, 2013.

Gianezini, Oliven and Allen (2013) highlight that in 2008 the court reporter of this topic took the action to be judged in the plenary sitting. The minister Ayres Britto refuted all the arguments against the program, judging the ADI 3330 as unfounded and considering PROUNI constitutional because he understood that the program to be an efficient form to fight against inequality situations and to promote social balance. Afterwards, the STF Plenary sitting judged unfounded the order made in ADI 3330, filed by the CONFENEN.

It is important to mention that the judgment was interrupted by an order from the minister Joaquin Barbosa – this is an usual procedure when the ministers want to better study the process. After the analysis, the minister refuted all the arguments of the CONFENEN and the DEM Party, supporting that the PROUNI was consistent in relation to several constitutional devices that foresee the reduction of social inequalities.

Amongst the ministers who had followed the court reporter and had considered the ADI 3330 unfounded, three ministers' considerations are highlighted here, being important for this analysis: Rosa Weber, who argued there was no unconstitutionality, since the system only stimulates the adherence to the Program giving priority to the transfer of resources and “creating stimulation mechanisms to the participation in an important program of social inclusion”; Luiz Fux, who pondered the PROUNI, which represents a public policy subsidized with federal resources, of voluntary adhesion and it does not violate the free initiative nor the federative pact, being an “expressive example of the public promotion of relevant particular activities”; Gilmar Mendes, which affirmed that the system adopted for the PROUNI, with concession of scholarships by private IES with the exemption of some tributes, is “an ingenious model that favors over a million students and that it should be extended to other sectors”.

Despite the favorable arguments we have previously cited, one of the ministers of the STF disagreed with the majority. Marco Aurélio Mendes de Farias Mello voted against the norm that instituted the PROUNI, stating the following argument: “my commitment is not with the politically correct. I have a commitment with the politically correct if it is, according to my point of view, in harmony with the Constitution [...] the government should invest in public universities instead of oblige the private companies to do what the government should do”.

This issue was controversial and the result of the judgment was not unanimous, but the agreement prevailed, which had been defended some years before by parliamentarians and intellectuals such as Darcy Ribeiro<sup>11</sup>. Although this last one has not witnessed the distinct manifestations (against and on favor) on the implantation of the affirmative policies in the country - which happened some years after his death - the author, after analyzing the formation and the direction of Brazil in his work “the Brazilian people”, already perceived that

The social distance between the ruling classes and the subordinates increases, and between these and the oppressed ones, aggravating the oppositions to accumulate, underneath the ethnic-cultural uniformity and national unit, dissociative tensions of a traumatic character. In consequence, the leading elites, first the Portuguese, later Portuguese-Brazilians and, finally, Brazilians, have always lived and still live under the terror panic of the rise of the oppressed classes. Good example of this terror panic is the repressive brutality against any insurgency and the authoritarian predisposition of the central power that does not admit any alteration in the existing order (RIBEIRO, 1997, p. 23-24).

When considering the constitutionality of the affirmative actions in Brazilian higher education, the STF breaches with the “terror panic” of part of the Brazilian society, that sub-represented minorities reached higher education by means of diverse claims and manifestations throughout the first decade of the twenty-first century.

Even so, this recent event (and all the debate that surrounds it) reiterates the topicality and the relevance of this subject, “and requires analyses that promote understanding from different perspectives concerning the social, educational and legal inequalities” (GIANEZINI; OLIVEN; ALLEN, 2013, p. 115), although the quarrel does not stay on the contrary opinions or in favor of such affirmative policies anymore.

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<sup>11</sup> Darcy Ribeiro was born on October, 26<sup>th</sup>, 1922 in Montes Claros (MG) and died in Brasilia on February, 17<sup>th</sup>, 1997.

## **2.2 On the Origins of the PROUNI**

From the legal point of view, the Programa Universidade para Todos was instituted by the Provisional measure nº 213/04, converted into the Law nº 11,906, of January, 13<sup>th</sup>, 2005. This law determines that, in order to receive the benefits from the PROUNI, the private IES must reserve a percentage of their vacancies (integral and partial scholarships) for the ones who have finished their studies on Ensino Médio (similar to High School) in public institutions or private ones in the condition of integral scholarship holder. Besides, some vacancies must be granted to students who recognize themselves as being of mixed race, black, indigenous and to people with special needs (GIANEZINI, 2012b).

Thus, the program is also aimed to those students without any diploma of higher education; registered in a private IES; with low income; teachers of public institutions; besides the ones who are taking under graduation courses or courses with a specific training focus.

The selection of the students who are to be contemplated with the scholarships occurs in two stages. The first one is based on the results and the social and economical profile presented by the ENEM; the other stage is carried out by the IES, which defines the final list of the chosen ones from the names sent by the Ministério da Educação (Ministry of Education).

The counterpart given to the IES occurs through the tax exemption and contribution in the Program's validity period. The main taxes are: Imposto de Renda de Pessoa Jurídica – IRPJ (Corporate Income Tax), Contribuição Social sobre Lucro Líquido – CSSL (Social Contribution on Net Income), Contribuição para o Financiamento da Seguridade Social – COFINS (Contribution for Social Security Financing) and the Programa de Integração Social – PIS (Social Integration Program), proportionally to the number of active scholarships.

Regarding its nature and merit, the PROUNI is inserted in the scope of the public policies<sup>12</sup> conceived in order to democratize the access to the education by means of the valuation of the student's merit, being granted integral or partial scholarships in private higher education institutions.

Hence, scholars of this thematic also consider the program to be an affirmative action policy since “these policies aim to promote the equality of chances and to diminish the inequalities that the universal policies do not get to solve” (ESTACIA, 2009, p. 190). Oliven (2007, p. 30) endorses this statement by assuring that “the term affirmative action refers to a set of public policies that protect minorities and groups that have been discriminated in the past by a certain society”. This reinforces the Program's public policy nature, since its main objective is to create conditions to the access to private higher education for students without resources to pay for the costs of a private college.

The PROUNI was created, then, with the intention to meet old social yearnings, including “some potentially competent young people, who come from less privileged layers who desire to enter an university, but wouldn't even dream of competing for a vacancy in a [public] university” (BELLO, 2011, p. 39).

Therefore, the program contributes by giving the chance of access to higher education, but also helps by encouraging the students' permanence. In respect of this aspect, Silva and Veloso (2010, p. 222) affirm that:

[...] the permanence makes sense of the access, configuring the continuity of the formation trajectory; the expansion is related to (and has an impact on) the access, in the proportion of the quantitative growth (institutions, vacancies, registrations, professors, financing) and of its characteristics (free/public education, academic organization, course, evaluation/quality).

Although the Program has the intention to serve students without any financial resources or those from an specific ethnic group, and so possess an unquestioned social relevance; there are also some scholars who were contrary to the PROUNI at the time of its implantation. Scholars such as Catani, Hey and Gilioli (2006) and Carvalho (2006) are part of this group. The first critic is based on concerns with the students themselves.

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<sup>12</sup> The implementation of PROUNI and the establishment of ten federal universities and 49 new campuses increased the number of vacancies in higher education. It is noteworthy that these actions were intended to meet the goals of the National Education Plan, launched in 2001, which sought to attain 30% of the population aged 18-24 years old in higher education by 2010.

[...] the PROUNI promotes a public policy of access to higher education with few worries about the permanence of the student, basic element for democratization. It is oriented by the conception of social assistance, offering benefits and not rights to the scholarship holders. The offered superior courses in private and philanthropic IES have, in majority, a questionable quality and are focused on the market's immediate needs (CATANI; HEY; GILIOLI, 2006, p. 126).

Some other comments have been also pointed out, such as the fact that there were some modifications in the original project, favoring the private IES with the fulfilling of open vacancies of these institutions and fiscal resignation, in 2005, of R\$ 52 million (CATANI; HEY; GILIOLI, 2006).

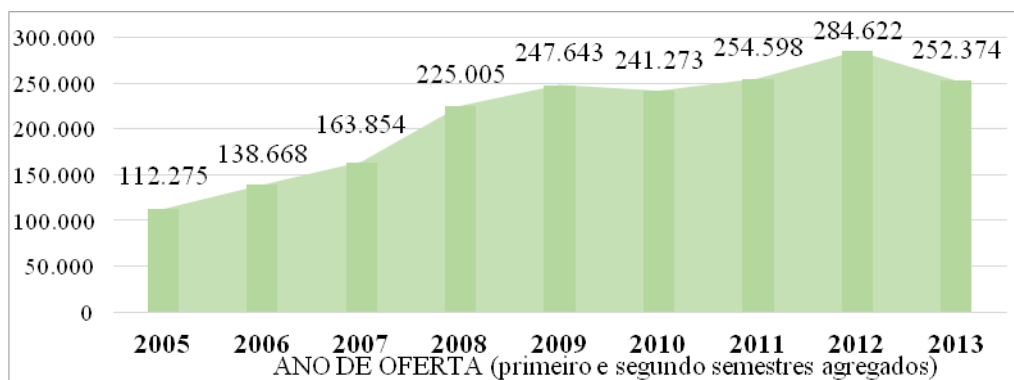
In 2006 there were some expectations from the academic community of the public universities for investments provided by the federal government in the public sector. It is important to say that this sector had been neglected in the decade of 1990. Therefore, the manifestations expressed by these authors are understandable. Moreover, each fragile aspect they detached in the PROUNI was revised and some new adjustments were carried out in order to improve it.

We believe that this criticism might become a way to qualify this model of program. Hence, these comments are welcome because we consider that they might contribute to consolidate policies of this nature, not debunking the paper they propose to execute. It is important to point out that, even though there still are fragilities in the Program, the governmental action to accept the critics and to reevaluate the program, correcting its mistakes and surpassing its fragilities, demonstrates the due respect for the academic community, that until then had not been taken into consideration by previous governments.

### 2.2.1 Statistical Scene of the Higher Education: the PROUNI in Brazil

In this sub-section, some data on the evolution of the PROUNI in Brazil are presented. Thus, the data of Brazil are observed, where, from Figure 1, it is possible to verify the evolution of offers of scholarships since the beginning of the program, in 2005.

**Figure 1: Annual Number of Scholarships Offered by PROUNI - 2005 the 2013**



Source: Elaborated from MEC/SISPROUNI data (2013).<sup>13</sup>

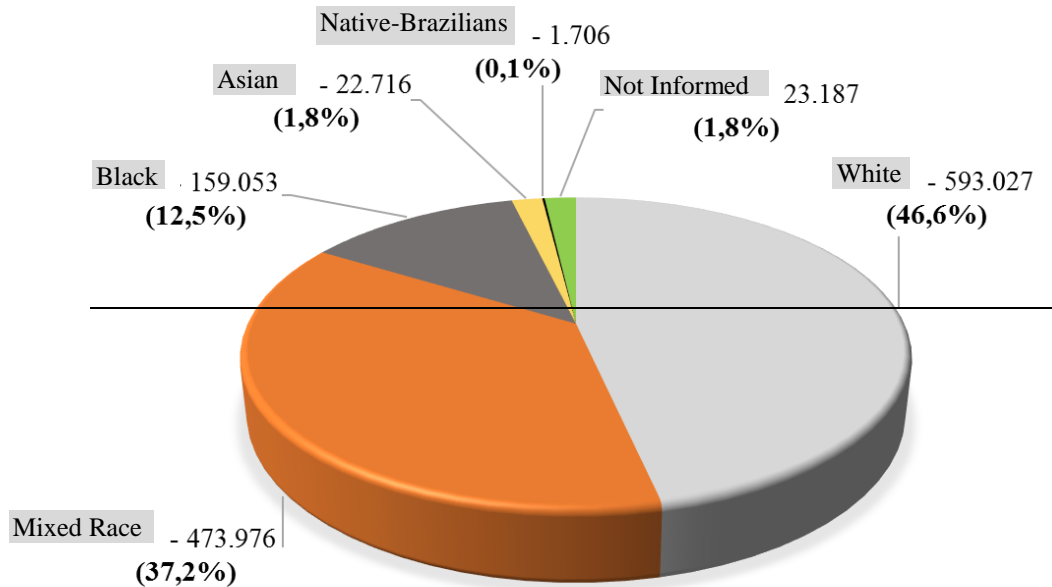
In January 23<sup>th</sup>, 2012, it was disclosed in the main medias that the PROUNI had reached the number of 1 million scholarships distributed in 2011 since its creation (CORREIO DO POVO, 2012, p. 12).<sup>14</sup>

A mark of significant relevance when the distribution data of these scholarships by ethnicity are observed (Figure 2), the unequal distribution of scholarships in the period is observed.

Despite knowing that the program aims to attend students with lower income, and that the results follow the Brazilian ethnic composition, we understand that this program represents the existent framework, which has been slowly reverted with the adoption of quotas for the program.<sup>15</sup>

<sup>13</sup> SISPROUNI: Data related to PROUNI of 2005-2013, 11/06/2013 (in Portuguese). Available at: <[http://prouniportal.mec.gov.br/index.php?option=com\\_content&view=category&id=26&Itemid=147](http://prouniportal.mec.gov.br/index.php?option=com_content&view=category&id=26&Itemid=147)>. Accessed on November, 20<sup>th</sup>, 2013.

<sup>14</sup> The ceremony in which President Dilma Rousseff and the then Minister of Education Fernando Haddad, together with several authorities and students celebrated in the Palácio do Planalto an open ceremony is available at: <<http://www.youtube.com/watch?v=8UUt12PRVU>>. Accessed on January 24<sup>th</sup> 2012.

**Figure 2: Total Number of Scholarship Holders of the PROUNI, by Color/Race, Brazil - from 2005 to 2013**

Source: Elaborated from MEC/SISPROUNI data (2013).

Thus, it is possible to conclude that, in terms of percentage, the indigenous and afro-Brazilian populations are less reached by the PROUNI, despite the program intends to attend students of all ethnical groups. A probable cause for this fact, beyond the favorable social and economical conditions, is the low quantitative number of students of these two ethnicities that finish the Ensino Médio (High School), since it constitutes an essential requirements to access the higher education.

### 3. Conclusions

Since the beginning of this century, public policies (including affirmative actions) have been formulated with the intention to modify the social inequality in Brazilian universities, contemplating a parcel of the population that historically had meager conditions of social and economical equity to the access and permanence in higher education.

It must be pointed out that the public policy (PROUNI) has been studied in a Brazilian universities which had taken the lead in the process to include the excluded ones in higher education. This vanguard process allowed the performance of the university's role, assuming its social function by means of an integrated and diverse education.

In respect to the experience of PROUNI, it was possible to notice that this consolidated program which has been acting for almost a decade and has a proposal that reaches all of the country's states, having thus a national and multiethnic scope, creating a state policy without any prediction to an end. This study can be improved emphasizing the relations established between the universities and the students. This relations are ambivalent, marked by difference and equality.

Finally, by taking into consideration the main characteristics of this program we have analyzed in this research, it was possible to notice that: a) the experience have contributed for the growth in school registrations of college students from sub-represented ethnical groups; (b) there was a cultural diversity increase; (c) although there were some marks of resistance from some students and professors, these marks have been overcome by the perseverance and success obtained by those who have been contemplated by the public policies.

<sup>15</sup> The PROUNI reserve scholarships for those ones with disabilities and who are self-identified as indigenous, black or brown. Remember that the shareholder nominee must also frame in the other selection criteria Program. Available at: <[http://prouniportal.mec.gov.br/?option=com\\_content&view=article&id=228:o-prouni-reserva-cotas-para-afrodescendentes-indnas-e-para-as-pessoas-com-deficiia&catid=23:informas-aos-candidatos](http://prouniportal.mec.gov.br/?option=com_content&view=article&id=228:o-prouni-reserva-cotas-para-afrodescendentes-indnas-e-para-as-pessoas-com-deficiia&catid=23:informas-aos-candidatos)>. Accessed on: December, 12th, 2013.

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