

## The Rio 16 Olympic Games: no gold medal for human rights respect

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**Summary:** *Introduction; 1. State of exception and human rights suspension; 2. Mega-events: human rights vs. Private interests; 3. A golf course in the Atlantic Forest; 4. Municipal Complementary Law n. 125/2013: the itinerary of the state of normative exception and the hidden real estate interests; Conclusion; Notes; References.*

### ABSTRACT

Mega-events are singular moments for States to improve their reputation and status to the international level, and to governments to gain support to the domestic level, showing their competence to organize and host an international event. Although it has public appeal, public money, and a global public good, they are mainly fostered by private organizations, which are sponsored and associated with private transnational corporations. Consequently, the World Cup, the Olympic Games and other sports mega-events are a very interesting point of rights controversies between domestic-constitutional law and transnational-global stateless regulations. Specially in Brazil, those mega-events have showed an impressive case of suspension of human rights in favor to the mega-event accomplishment as the violation of labor rights, political freedom, corruption, the costs of the stadiums, the emergency infrastructure, the tax privileges, environmental laws, and the displacement of vulnerable families. The research question aims to perceive the configuration of how the sports mega-events manage to build the state of exception around it, specially concerning the Brazil's case. The objective of the paper is to explore the impact of transnational mega-events in domestic Law, where the demands of these mega-events, especially those concerning the lasts World Cups and Olympic Games are suggesting patterns of human rights and constitutional Law suspension. The theoretical approach aims to dialogue with the perspectives of biopolitics theory and the state of exception conceptions.

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**Keywords:** State of Exception; Mega-events; Environmental Law; 2016 Olympic Games; International Law.

## **LOS JUEGOS OLÍMPICOS RÍO 16: NO HAY MEDALLA DE ORO PARA EL RESPETO DE LOS DERECHOS HUMANOS**

**RESÚMEN:** Los megaeventos son momentos únicos para que los Estados mejoren su reputación y estatus a nivel internacional, y para que los gobiernos ganen apoyo al nivel nacional, revelando su competencia para organizar y ser la sede de un evento internacional. Aunque tiene atractivo público, dinero público y un bien público mundial, son fomentados principalmente por organizaciones privadas, que están patrocinadas y asociadas con corporaciones transnacionales privadas. En consecuencia, la Copa del Mundo, los Juegos Olímpicos y otros megaeventos deportivos son un punto muy interesante de controversias sobre derechos entre el derecho constitucional interno y las reglamentaciones transnacionales globales sin estado. Especialmente en Brasil, esos megaeventos han presentado un caso impresionante de suspensión de los derechos humanos a favor del logro del mega evento como la violación de los derechos laborales, la libertad política, la corrupción, los costos de los estadios, la infraestructura de emergencia, los privilegios en los impuestos, leyes ambientales y el desplazamiento de familias vulnerables. La pregunta de investigación tiene como objetivo percibir la configuración de cómo los megaeventos deportivos logran construir el estado de excepción a su alrededor, especialmente en relación con el caso de Brasil. El objetivo del artículo es explorar el impacto de los megaeventos transnacionales en el derecho interno, donde las demandas de estos megaeventos, especialmente las relacionadas con la última Copa del Mundo y los Juegos Olímpicos, proponen estándares de derechos humanos y la suspensión de la Ley constitucional. El enfoque teórico tiene como objetivo dialogar con las perspectivas de la teoría de la biopolítica y las concepciones del estado de excepción.

**Palabras-Clave:** Estado de Excepción, Mega Eventos, Derecho Ambiental, Juegos Olimpicos de 2016, Derecho Internacional.

### **INTRODUCTION**

The article aims to analyze and report a new biopolitical behavior of normative state of exception due to the legal structure established to support the realization of mega-events in Brazil, the World Cup and, specially, the Rio 2016 Summer Olympic Games. The political and structural burdens undertaken to host the event demonstrate some serious violations of environmental policies and the consequent disregard of the fundamental right to a sustainable environment. In

particular, we develop an analysis over the environmental legislative amendment of the city of Rio de Janeiro, especially the construction of the Olympic golf course.

The campaign of the city of Rio de Janeiro for the 2016 Olympic Games was received with great enthusiasm by the members of the Rio 2016 Candidacy Committee and the Brazilian<sup>3</sup>. On the occasion of the 121<sup>st</sup> Session of the International Olympic Committee [IOC] in Copenhagen, Denmark, the *Marvelous City* were crowned chosen to host the 31<sup>st</sup> Olympics of the Modern Era of the Olympic and Paralympic Summer Games, and the first Olympics of the South American continent. In fact, Rio de Janeiro launched a mega-project to prepare the city for the biggest Olympic event in the world. Among the numerous challenges were the construction and adaptation of spaces for sports activities. It were stemmed 10,500 athletes from 205 countries to compete in 42 sports species, among 306 forms of evidence spread over 33 venues in the four major sports complex built and adapted to the Games [*Barra, Deodoro, Copacabana and Maracanã*]<sup>4</sup>. Nearly a hundred years away from the world-wide contest, golf was back in the Rio 2016 Olympics. The only times of the sport took place were in Paris in 1900 and Sant Louis in 1904. A total stemmed of 60 athletes from 30 countries, Golf was played for only eight days, four for men and four for women<sup>5</sup>.

Although Rio has two professional golf courses, *Gávea and Itanhangá*, the alteration of the delimitations of the Marapendi Environmental Preservation Area, through Municipal Complementary Law [LCM] n. 125, dated January 14, 2013<sup>6</sup>, made it possible for the international private owner of the land near the area to carry out the construction of the new golf course. Thus, the construction of the golf course for the games competition had become one of the main justified outbreaks of controversy and resistance. The reasons include the law amendment that allowed the

<sup>3</sup> According to the Transparency Portal of the Federal Government, officially Rio de Janeiro had its application approved at a cost of R\$91,052,265.24. See PORTAL OF TRANSPARENCY. Rio 2016 Games. *Expenditures Rio 2016*. Available at: <<http://www.portaltransparencia.gov.br/rio2016/gastos-candidatura/>>. Accessed on 10 March 2015.

<sup>4</sup> COMMITTEE RIO 2016. *Olympic Games*. Available at <<http://www.rio2016.com/os-jogos/olimpicos>>. Accessed on 25 March 2015.

<sup>5</sup> BRAZIL 2016. *Official Portal of the Federal Government on the Olympic and Paralympic Games 2016*. Golf. History. Available at: <<http://www.brasil2016.gov.br/pt-br/megaeventos/olimpiadas/modalidades/golfe>>. Accessed: May 24, 2015.

<sup>6</sup> RIO DE JANEIRO. Municipal Executive. Supplementary Law no. 125, dated January 14, 2013. Changes the wording of Complementary Laws No. 74 of January 14, 2005 and No. 101 of November 23, 2009, establishes conditions for the installation of Olympic Golf Course and gives other measures. In: Official Diary of Rio de Janeiro, Rio de Janeiro, RJ, January 15. 2013. Available at: <<http://www.camara.rj.gov.br/>>. Accessed on: Dec 20. 2015.

reduction of the Environmental Preservation Area (APA) of the *Marapendi Reserve Municipal Natural Park* to make possible the construction of the Olympic Golf Course in *Barra da Tijuca* to the constraining evidence of privileges to certain private interests and for building real estate projects. The field, at first, would serve to the luxury condominium erected in the place, but under the tutelage of the Public Administration the enterprise gained strength and is in an advanced state of completion to receive the Olympic disputes, even in the face of serious criticisms of the social movements like the *Golf for whom?* and *Occupy Golf*.

In view of the numerous illegalities of it, as the irregular reduction of APA, one of the last strongholds of Atlantic Forest, and unreasonable elevation and alteration of the jig for building construction, in 2014, the Public Prosecutor of Rio de Janeiro filed a Public Civil Action [PCA], Case n. 0273069-88.2014.8.19.0001, assured by the 7th Public Court of the District of Rio de Janeiro, in the face of the Municipality of Rio de Janeiro and *Fiori Empreendimentos Imobiliários Ltda*. The purpose of the procedural measure was to annul the environmental license, paralyze the works and demand the recovery of environmental damages resulting from the irregular interventions carried out in the area.

Given this context, through the analytical-deductive method of case study, it is proposed to carry out a reading of the state of exception taking as a basis the violations of fundamental rights of environmental issues existing in the Olympic Games Rio-2016 and the biopolitical manifestation in counterpoint To the prohibition of retrocession as a general principle of Environmental Law. Aiming at the concentration of the research object, the article will be limited to verify the existing questions regarding the construction of the Olympic Golf Course.

Biopolitics is a theoretical conception of the analysis of the behavior of democratic states in relation to the government paradigm, which includes the study of the state of exception, according to the proposition of Giorgio Agamben and others. In order to dialogue with the environmental issue under analysis, it is associated with the non-regression principle to human rights. To base and conclude this study, the manifestations of state of exception that involved the approval of Municipal Complementary Law [LCM] n. 125, dated January 14, 2013 and the decision-making of the Public Administration, validating the premises launched around the exceptional regime that demarcates large events, such as Rio 2016.

## 1. STATE OF EXCEPTION AND HUMAN RIGHTS SUSPENSION

“The sun rises for everyone, but not with that view”<sup>7</sup>

In part, the academic production of Giorgio Agamben, an Italian jurist and philosopher, faces how biopolitics has behaved in contemporary democratic states. Intellectual successor of Walter Benjamin, responsible for the Italian edition of his works, and taking charge of carrying forward the work of Michel Foucault, Agamben reveals that the typical measures of state of emergency or exception has not begun in authoritarian regimes<sup>8</sup>. Rather, they are shaped in public spaces whose democratic flow is usually happening<sup>9</sup>. Therefore, contrary to the common sense, it is not only in authoritarian regimes, but also specially in democratic regimes, that it is the framework of an area of indeterminacy where it is no longer feasible to distinguish between absolutism and democracy.

The repeated use of legislative powers (emergency powers and/or full power) by the Executive contributes as a strong feature to the democratic meltdown, also adding up the circumstantial removal of Judicial, Executive and Legislative constraints. To that end, hyper-globalization (Rodrick) and liquid society (Bauman) have brought to the forefront of the rule of law a serious aggravation: it is possible to demote it by the state of exception.

Always with the justification of necessity and emergency, today the new mask of a better good is the transnational mega-event, where various suspensions of human rights and violence are legitimized through legal, albeit illegitimate, measures. Historically, legality and constitutionality have been suspended for different reasons: defense of sovereignty, national security, and the well being of the population or of

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<sup>7</sup> Slogan real estate development “Riserva Golf - Vista Mare Residenziale” RJZ Cyrela, the *site* [www.riservagolfbarradatijuca.com.br](http://www.riservagolfbarradatijuca.com.br), referring to the luxury condominium under construction in environmentally protected area in Barra da Tijuca, overlooking the pond Marapendi and exclusive access to Olympic Golf Course. The slogan was taken down after the article. In: VIGNA, Anne. “*The sun rises for everyone, but not with this view.*” Public Agency Reporting and Investigative Journalism 23 February 2015. Available at: <<http://apublica.org/2015/02/o-sol-nasce-para-todos-mas-nao-com-essa-vista/>>. Accessed: May 25, 2015.

<sup>8</sup> Martins, Jasson da Silva. *Biopolitics and governmentality*. In: Ethics, Politics and Law: philosophical inflections. São Leopoldo: New Harmony, 2008, p. 161.

<sup>9</sup> Alexis de Tocqueville was surprised by the American democracy, but the United States has fostered the state of exception projection, such as the *Military Order* of 13 November 2001 and the *USA Patriot Act* of October 26, 2001. On this subject, see AGAMBEN, Giorgio. *State of emergency*. Translation Iraci D. Poleti. 2. ed. São Paulo: Boitempo 2004.

the public institutions themselves. These factors open a normative gap in the legal system, creating a suggestive *locus* of anomie, to the extent that the rules of exception are self-applying the very legal orbit over which fall their effects, creating a very sensitive legal paradox: how to incorporate the rule that excepted you?

The evidence of this teratology remains on the suspension of the law itself, through the state of exception, be taken over by the legal order<sup>10</sup>. Thus, Agamben asks whether the exception is inside or outside it, which would not be the central problem, since the most relevant point is to verify the basis of the state of exception itself. This *by-pass* rule rests possible through the rhetorical that achieving certain rights depend on the suspension or deletion of others or even the suspension is necessary for asserting rights. For seeing this alternative, it is that the state of exception propagates through the ordinance, however, opposing any justifiable rationality.

Indeed, certain governmental actions would be surrounded by a persistent political practice compared to regimes of exception, making exceptionality the norm. The new biopolitical paradigm of government would be food, the exception. For Carl Schmitt, “Sovereign is the one who decides on the state of exception”<sup>11</sup>. However, to admit this conception of sovereignty today confronts the constitutional framework of the Democratic Rule of Law. This is because the pretension of constitutionalism on the one hand is to define the limits of power and on the other to establish a fundamental nucleus of inalienable rights made possible by the resulting structural coupling between politics and law.

In this way, the state of exception cannot be understood as mere exceptionality, since it would directly confront the very constitutional ideal in modern democracies. Their alternative is to infiltrate the order, amalgamating themselves to the point that their deleterious effects are no longer evident by being in “conformity” with what today is called democracy, accepting as common their exceptional incursions into the legal order. The current state of emergency takes a rule to transpiring as the “constitutive paradigm nature of the legal system”<sup>12</sup>, which would admit to a certain extent, his association with the rule of law. The state of emergency

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<sup>10</sup> AGAMBEN Giorgio. *State of emergency*. Translation Iraci D. Poleti. 2. ed. São Paulo: Boitempo, 2004, p. 39.

<sup>11</sup> Schmitt, Carl. *The crisis of parliamentary democracy*. Translation Inês Lohbauer. São Paulo: Scritta, 1996, p. 87.

<sup>12</sup> AGAMBEN Giorgio. *State of emergency*. Translation Iraci D. Poleti. 2. ed. São Paulo: Boitempo, 2004, p. 18.

conforms to the legal habitat to protect its survival with the objective of not being prey but predator, founding an idea that suspension of rights and exception are normal manifestations of the normative framework.

Hence, the legality granted to the emergency regime, when availing itself of the legislative process, would allow its transit with the democratic order without provoking bragging or even instability that jeopardize the foundations of social peace. However, the risk of this cover-up is to be the politician to achieve a zero degree, making the human being a nondescript object, which can be sacrificed, *homo sacer*<sup>13</sup>. The strengthening of Parliament and civil society, legitimate democratic instances, would present themselves as mechanisms of social network inhibition preventing the corrosive expansion of the state of exception. But the absence of a political-social system in which the situation/opposition code clearly evidenced in the political debate is committed not only to public institutions but also to the social space itself, the stage of true transformations.

In this sense, democratic deficiency tends to inflate the use of the legislative process as a mere practice of legitimation by the procedure or even attribution of legality to the state of exception. This measure highlights the fragility that can affect the very strong rights as the constitutional body, or even human rights that were protected also as fundamental rights on many constitutions. Exceptional measures on suspensions of human rights have been seen on the excuses of the economic field and the protection of national security.

## **2. MEGA-EVENTS: HUMAN RIGHTS VS. PRIVATE INTERESTS**

The complexity of successfully hosting a mega-event is a challenge for institutions and public management throughout the country. There is a varied management of executable orbits necessary for planning, organizing and holding the event. This complexity is transferred to states in two images: economic costs and suspension of (human) rights. On the one hand, the costs are quite high, only for the project and the application dossier, the government invested R\$91,052,265.24

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<sup>13</sup> “Just as the sovereign exception, the law applies in fact to the exceptional case desapplicando up, withdrawing from this, just as the *homo sacer* belongs to God in the form of insacrificabilidade and is included in the community in the form of matabilidade”. See AGAMBEN, Giorgio. *Homo Sacer: sovereign power and bare life I*. Translation Henrique Burigo. Belo Horizonte: UFMG, 2002, p. 90.

(US\$27.47 billions) from the public treasury<sup>14</sup>. On the other hand, although the costs call much attention, the rights that are suspended are impossible to be measured in numbers, as **the violation of labor rights, political freedom, corruption, the costs of the stadiums, the emergency infrastructure, the tax privileges, environmental laws, and the displacement of vulnerable families**. Even in the face of constitutional and legal protection aimed at protecting the human rights, mega-events have become the *state of necessity*, that is, the legal justification for a new state of exception, and the suspension of human rights for mega events. Therefore, as a legal *by-pass*, the mega-events have been postulating a legal structure created specifically to support their needs. In this way, the appropriate framework for the insertion of exceptional measures in the legal system is formulated, supplanting the public policies and legal actions that the State proposes to preserve the human rights.

In this sense, Brazil, and namely, the city of Rio de Janeiro have been the scene of countless mega-events of international scope since the last decade. Integrates this inventory the following: 2007 Pan American Games, 2011 World Military Games, 2012 United Nations Conference on Sustainable Development [Rio +20], 2012, 2013 World Youth Day, 2013 FIFA Confederations Cup<sup>15</sup>, 2014 FIFA World Cup<sup>16/17</sup> and, lastly, the 31<sup>st</sup> Olympics of the Modern Era of the Olympic and Paralympic Summer Games, held 2016.

Those mega-events, entangled among transnational orders of economy and sport have generated contradictory expectations: the prestige of the idea of mega events like the World Cup and Olympics, at the same time the imputation of

<sup>14</sup> Transparency Portal. Rio 2016 Games *Expenses Candidacy Rio 2016*. Available at: <<http://www.portaltransparencia.gov.br/rio2016/gastos-candidatura/>>. Accessed on 10 March 2015.

<sup>15</sup> The Confederations Cup host cities were: Belo Horizonte, Brasília, Fortaleza, Recife, Rio de Janeiro and Salvador. See COPA PORTAL. Brazilian Federal Government website on the World Cup FIFA 2014. *FIFA confirms six venues for the Confederations Cup*, 08 November 2012. Available at: <<http://www.copa2014.gov.br/pt-br/noticia/fifa-confirma-seis-sedes-para-copa-das-confederacoes/>>. Accessed on 20 March 2015.

<sup>16</sup> The host cities of the World Cup were: Belo Horizonte, Brasília, Cuiaba, Curitiba, Fortaleza, Manaus, Natal, Porto Alegre, Recife, Rio de Janeiro, Salvador and São Paulo See IG WORLD CUP. *Host cities*. Available at: <<http://copadomundo.ig.com.br/cidades-sede/>>. Accessed on 20 March 2015.

<sup>17</sup> There was also the possibility of Brazil to host the America's Cup 2015, organized by CONMEBOL [CONMEBOL], but the mega event was transferred to Chile, which just would host in 2019, the year that the country- headquarters will be Brazil Cf. Confederacion Sudamericana de FÚTBOL [CONMEBOL]. *Copa America 2015 Chile to compete from June 11 to July 4*, February 12. 2014. Available at: <<http://www.conmebol.com/pt-br/content/copa-america-chile-2015-se-disputara-de-11-de-junho-4-de-julho>>. Accessed on 20 March 2015. Also: CERDA, Claudius. *Chile will host the Copa America 2015; Brazil gets 2019*. Estadão. General. Reuters 24 March 2014. Available: <<http://www.estadao.com.br/noticias/geral,chile-will-seat-of-the-cup-of-america-2015-Brazil-is-with-2019.852823>>. Accessed on 20 March 2015.

suspension of rights. As a central argument, the objective of this case study is to analyze the parliamentary diplomacy in the relationship between FIFA - Fédération Internationale de Football Association – and Brazil in the establishment of new legislation, notably the *World Cup General Law*, we intend to show the relation of transnational order with other national, having had to FIFA the power of legislative initiative in the World Cup General Law.

The host country's election for the World Cup results of a previously established process which requires a number of commitments and guarantees of the national government, even prior to the choice of the host country. This process is called by the FIFA as Bidding Process. After the period of opening to the proposition of candidates, the FIFA sends the Form of Hosting Agreement (or Form Guarantees). This is a form that contains legal criteria and materials in which the government must undertake if it is chosen to host the World Cup. The Form of Hosting Agreement is part of a larger document, which is called Bid Book, containing a series of Bidding Documents and Bidding Agreement. These documents are sent to the Associate Member.

Successful in its third Olympic campaign and the only South American country to host the Olympic Games, Brazil took on the task of being the showcase of mega-events for the world, since it had been also country of the 2014 FIFA World Cup. Immediately after the official announcement, on October 2, 2009, the city of Rio de Janeiro signed the *Host City Agreement* with the International Olympic Committee. In this way, the country drafted significant symbolic capital by attracting the multiple sports events of the world to national soil, contributing to its international visibility. However, while calculating the benefits and reputation brought by the Olympic Games, Brazil has called itself an onerous responsibility, since exposure to the new duties served as a changing factor for decision-making by the Public Administration. In addition to the image of Brazil and the city of Rio de Janeiro, the act of joining Brazil to host the World Cup and the Olympic Games had a significantly undemocratic character.

The Olympic Charter and the Host-City Agreement contain a number of requirements that must necessarily be met in accordance with the standards required by the International Olympic Committee. This movement is accompanied by a series of public and private economic interests, which carries the risk of transforming the

city of Rio de Janeiro into a city-enterprise, which leaved a substantial venue for sanitizing the social space with the removal of families to make way for real estate mega-projects, which eventually collide with environmental standards<sup>18</sup>.

Indeed, it is a well-known fact that no city by itself is capable of receiving the title of Olympic city without first undergoing an intense and profound transformation. However, this should not be a margin for violations of human rights. The multiplicity of works to adapt the Olympic city *status* should had walked on the legality of environmental law and the existing standards in the world, as established by the International Olympic Committee (IOC) documents. For this reason, when presenting its Application Dossier, the city of Rio de Janeiro assumed specific objectives focused on the environment (planet), quality of life [people] and economy (prosperity), through what it called the Plan of Sustainability Management (PSM)<sup>19</sup>.

According to the PSM, the environmental actions, chosen as priorities, the games would focus on water conservation, renewable energy, carbon neutral and waste management, and social responsibility. All actions were accompanied by the report *Our Common Future*, proposed by the United Nations, and ironically ratified by the World Environment Summit Rio (de Janeiro) 92<sup>20</sup>. Among others measures that should be adopted by the games, is the increase of green areas in the city, aiming to protect the ecosystem and the soil. However, to the full opposing to the proposal dossier, the city of Rio de Janeiro has caused the reduction of areas of environmental preservation to fulfill its responsibility in providing the necessary facilities for the Olympic Games and at the same time, to the real estate sector.

### 3. A GOLF COURSE IN THE ATLANTIC FOREST

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<sup>18</sup> International Olympic Committee. *Agreement of the Host City of the XXXI Olympiad in 2016*. Sworn translation by Leniza Kautz Menda. Porto Alegre, Rio Grande do Sul 15 October 2009. Available at: <[http://www.cidadeolimpica.com.br/wp-content/uploads/2013/09/Contrato\\_da\\_cidade\\_sede\\_dos\\_jogos\\_olimpicos\\_do\\_rio\\_de\\_janeiro.pdf](http://www.cidadeolimpica.com.br/wp-content/uploads/2013/09/Contrato_da_cidade_sede_dos_jogos_olimpicos_do_rio_de_janeiro.pdf)>. Accessed on 15 April 15. Also, in the official English version: See COMMITTEE RIO 2016. Documents. Available at: <<http://www.rio2016.com/jogo-aberto/documentos>>. Accessed on 26 April 2015.

<sup>19</sup> DOSSIER OF RIO DE JANEIRO bid to host the Olympic and Paralympic OF 2016 v. 1, p.103/107. *Theme 6 - Environment and Meteorology*. Available at: <<http://www.rio2016.com/jogo-aberto/documentos>>. Accessed on 23 April 2015.

<sup>20</sup> Approved the text of the Convention by the National Congress on February 3, 1994, promulgated by the president on March 16, 1998.

Legal modern environmental law has been understood in the human rights' category<sup>21</sup>. Its greater purpose is the protection of life and the existence of favorable conditions for the human progress of the present and future generations for being united to the principle of sustainable development, umbilical comprehended in the semantics of the dignity of the human person. The constitution of a state of exception on Environmental Law inevitably affects man, hence the concern to avoid, at all costs, exceptional measures that will consolidate the achievements already established and progressively consolidated. In Brazil, the right to an environmentally balanced environment is assured on article 225, of the Federal Constitution of 1988, and several others treaties in which safeguards healthy environment and the protection of the Atlantic Forest.

Despite the Rio de Janeiro City has two world championship golf courses, *Gávea* and *Itanhangá*, the latter recognized as the 100th world's best field, the City Administration forwarded the proposal to build an additional golf course in *Barra da Tijuca*<sup>22</sup>. To that end, the environmental preservation area of the *Municipal Natural Park of Marapendi* had to be reduced by means of legislative modification, which was protected by City Law, since it contained a Permanent Preservation Area (PPA), with endangered species such as the alligator yellow face, the white-tailed lizard and the peregrine falcon<sup>23</sup>. The construction of the Olympic Golf Course was authorized only after the legislative amendment of the area at the edge of the Lagoon of Marapendi, whose sporting modality will be carried out for eight days, four days for men and four days for women.

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<sup>21</sup> "... the objective environmental law protect, promote and prevent environmental degradation is therefore strongly to curb downgrading that is a violation of human rights and a violation of fundamental rights". MOLINARO, Carlos Alberto. *Prohibition of environmental downgrading*, p.79. In: The principle of environmental backlash ban. Federal Senate. Commission for the Environment, Consumer Protection and Inspection and Control. International Conference on the Principle of Environmental Reverse Ban. Brasília, DF, 2012. Available at: <<http://www2.senado.leg.br/bdsf/item/id/242559>>. Accessed: May 25, 2015.

<sup>22</sup> GOLF DIGEST. *100 Best Courses Outside the US*, May 2007. Available at: <<http://www.golfdigest.com/golf-courses/golf-courses/2007-05/100greatestinternational>>. Accessed: May 26, 2015.

<sup>23</sup> "The venue for the golf course will occupy one million square meters of Atlantic Forest, bordering the Marapendi Lagoon in Barra da Tijuca. A mixture of fragile wetlands, marshes and sand banks; the area contains about 300 species identified, from herons to capybaras and lazy animals, including species at risk of extinction [...]". See RIO ON WATCH. Rio Olympics Neighborhood Watch. *Costs Social and Environmental Olympic Course River Golf*. Available at: <<http://rioonwatch.org.br/?p=12232>>. Accessed on: 26 May 2015. Also: Philippi, Leonardo. *Olympic golf course faces environmental and legal issues*. Sport Globe, Rio de Janeiro 05 December 2013. Available at: <<http://globoesporte.globo.com/olimpiadas/noticia/2013/12/campo-de-golfe-olimpico-enfrenta-questoes-ambientais-e-juridicas.html>>. Accessed: May 26, 2015.

The responsible authorities, IOC and the city's golf courses diverge in the motivation to build a third professional golf course in the city. The city's administration claims that the International Olympic Committee and the International Golf Federation have ruled out the possibility of using the existing fields to conduct the competitions do not meet the required minimum standards, beyond the need for public investment<sup>24</sup>. However, in a statement, the *Itanhangá Golf Course* reported that “has not been probed by agency involved in organizing the 2016 Olympic Games on the possibility of hosting the Olympic Golf” and “Golf Club Itanhangá would be able to meet the structural requirements to host the golf competitions of the Olympic Games in 2016”<sup>25</sup>. In contrast, the Mayor of the city of Rio de Janeiro, Eduardo Paes, spoke out saying, “I hate to have done this golf course. For me, I would not have done this golf course ever. But unfortunately, Gávea Golf neither Itanhangá would serve (for the Games)”<sup>26</sup>. But rebutting criticism, Thomas Bach, IOC President, said he was “surprised by the statements of the mayor, because as everyone knows the mayor pushed hard for the construction of it”<sup>27</sup>. Despite the existence of contradictory justifications, the Municipal Complementary Law (MCL) n. 125, dated January 14, 2013, suppressed 58,485.00 square meters of the Municipal Nature Reserve of the Marapendi Reserve, incorporating them indirectly to the private property contiguous to the APA.

The evidence of legal and unconstitutionality irregularities of MCL n. 125/2013, the Public Prosecutor of the State of Rio de Janeiro<sup>28</sup> proposed a Civil Public Action (CPA) process. 0273069-88.2014.8.19.0001, in the face of the

<sup>24</sup> KONCHINSKI, Sousa. *You do not agree with the Olympic golf? Paes has a lot to say to you*. UOL 2016 Olympic Games, Rio de Janeiro, 26 March. 2015. Available at: <<http://olimpiadas.uol.com.br/noticias/2015/03/26/nao-concorda-com-o-golfe-olimpico-paes-tem-muita-coisa-a-dizer-a-voce.htm>>. Accessed: May 26, 2015.

<sup>25</sup> LYRA, Felipe. *In a letter, Itanhangá Golf Club reveals that it was not sought to host Olympics-2016*. ESPN.com.br, Rio de Janeiro 20 December 2012. Available at: <[http://espn.uol.com.br/noticia/299984\\_em-carta-itanhanga-golf-club-revela-que-nao-foi-procurado-para-sediar-olimpiada-2016](http://espn.uol.com.br/noticia/299984_em-carta-itanhanga-golf-club-revela-que-nao-foi-procurado-para-sediar-olimpiada-2016)>. Accessed on: 26 May 2015. [Highlights in original]

<sup>26</sup> RANGEL, Sergio. *Rio Mayor says “hate” have made Olympic golf course*. Folha de Sao Paulo, Rio de Janeiro 24 February 2015. Available at: <<http://www1.folha.uol.com.br/esporte/2015/02/1594154-prefeito-diz-que-campo-de-golfe-da-rio-2016-e-peso-e-hates-have-feito.shtml>>. Accessed on: 26 May 2015. Also: CABELLERO, Miguel; GRILLO, Marco. *Eduardo Paes: ‘I hate to have done this golf course. For me, it would never’*. The Globe 24 February 2015. Available at: <<http://oglobo.globo.com/esportes/eduardo-paes-odeio-ter-feito-esse-campo-de-golfe-por-mim-nao-faria-nunca-15425495>>. Accessed: May 26, 2015.

<sup>27</sup> Caballero, Miguel. *OC president Paes rebate on the golf course*. The Globe 25 February 2015. Available at: <<http://oglobo.globo.com/esportes/presidente-do-coi-rebate-paes-sobre-campo-de-golfe-15436353>>. Accessed: May 26, 2015.

<sup>28</sup> The public civil action was filed by the Group of Specialized Expertise in Environment (GAEMA) and the 4th Prosecutor's Office of Collective Protection of Environment Capital.

Municipality of Rio de Janeiro and the company *Fiori Empreendimentos Imobiliários Ltda.*, Responsible for the construction of the field, fluent by the 7th Public Treasury Court of the District of Rio de Janeiro. The central argument of the CPA firm up the fact that “the lowering of protection was not preceded of proper technical studies”<sup>29</sup>, standing as aggravating the lack of the study and an environmental impact report - EIA/RIMA, provided for in § 2 of art. 6, of Federal Law n. 7.661/1988.

Aggregates was also the arguments of the Public Prosecutor the principle of non-regression<sup>30</sup>, inserted as a general principle for human rights and for environmental law standards, for confronts in its essence the very concept of human dignity, the foundation of the Brazilian Republic, the item III content, art. 1, of the Constitution of 1988. This is because the fence to environmental regression finds its axiological load implied in the own human rights. It is a fundamental right both the individual and the community the right to an ecologically balanced environment in which sustainable development is not entangled by capitalist economic pressures<sup>31</sup>.

However, Michel Prieur, referring to the non-regression principle, points out the existence of some obstacles to its greater projection and applicability, especially in the legislative sphere, since the admission of “an acquired right over the laws” is still difficult. In the name of the sovereignty of the legislature “what the law can do, another can undo the law”<sup>32</sup>. In other words, accepting the non-regression principle of environmental matters would be the same as indirectly interfering in legally autonomous, because the Legislative Power would be unable to promote changes that reduce the degree of environmental protection, lacking material legitimacy.

<sup>29</sup> RIO DE JANEIRO. Public Ministry of the State of Rio de Janeiro. *Golf Course in Barra*. Civil action. Available at: <[http://publicacao.mprj.mp.br/improbidade/campo\\_golfe02/sumario/files/assets/common/downloads/publication.pdf](http://publicacao.mprj.mp.br/improbidade/campo_golfe02/sumario/files/assets/common/downloads/publication.pdf)>. Accessed on 15 April 15.

<sup>30</sup> There is considerable diversity of terminologies associated with the principle of non-retrogression: the principle *stand still* (immobility), effect *cliquet* (lock), rule of *anti-retour cliquet* (hangs backstop), intangibility, irreversibility clause *status quo*, *eternity clause*, *entrenched clause*, *prohibición regresividad of the setback*. See PRIEUR, Michel. *Principle of environmental backlash ban*. In: The principle of environmental backlash ban. Federal Senate. Commission for the Environment, Consumer Protection and Inspection and Control. International Conference on the Principle of Environmental Reverse Ban. Brasília, DF, 2012, p. 13-14. Available at: <<http://www2.senado.leg.br/bdsf/item/id/242559>>. Accessed: May 25, 2015.

<sup>31</sup> ROLLEMBERG, Rodrigo. *Presentation of the International Colloquium on the Principle of Environmental Reverse Ban*. Federal Senate. Commission for the Environment, Consumer Protection and Inspection and Control. Brasília, DF, 2012, p. 08. Available at: <<http://www2.senado.leg.br/bdsf/item/id/242559>>. Accessed: May 25, 2015.

<sup>32</sup> PRIEUR, Michel. *Principle of environmental backlash ban*. In: The principle of environmental backlash ban. Federal Senate. Commission for the Environment, Consumer Protection and Inspection and Control. International Conference on the Principle of Environmental Reverse Ban. Brasília, DF, 2012, p. 11. Available at: <<http://www2.senado.leg.br/bdsf/item/id/242559>>. Accessed: May 25, 2015.

This logic results from the different idea of human rights not allowing to be understood to a regular concept of law. The rules on environmental law exist not because they were established by virtue of a legal act, but because of a more comprehensive value that has been recognized through a (global) public good. Thus, what one environmental law prohibits cannot subsequently permit another, especially because of the greater goal of Environmental Law to prevent the degradation of the environment. In this way, any measure tending to suspend or even suppress environmental policy rules is inconceivable, since they are impinged by the non-regression principle as an expression of the material realization of sustainable environmental development. Fitting into the environmental standards in the harvest of human rights, inviolability granted such rights would provide the environmental law a different *status*, denying any deregulation mechanism to what occurs with human rights.

The case of the golf course of the city of Rio de Janeiro portrays exactly the opposite of what is happening in the International Environmental Law, configuring a true state of human rights suspension and state exception. Through legislation, the *Marapendi Reserve* was registered as an environmental preservation area and with a permanent preservation belt, but the lowering of environmental protection was due to another law, aiming at allowing the area to be disconfigured to make way for the Olympic Golf Course. Indeed, *Marapendi Reserve* was not characterized the CPA level because the law only<sup>33</sup>, but the technical and scientific recognition that their protection would contribute to the development and human progress. Thus, it is not acceptable to remove the legal shield previously recognized in view of the grounds that are covered by the legal act that assigned the Reserve the quality of preservation area.

In this measure, the idea of a state of exception is attributed to the Olympic Games, when at least one of its works, namely the Golf Course, breaks with the idea of the non-regression principle on environmental law. The *anti-retour* trigger carries with it the idea that the regulatory environmental matters, the legislature would not have the possibility to reduce the protection spectrum due to a “lock” established by the *sui generis* own systematic given to the legal treatment of the environment. The

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<sup>33</sup> Regulated by Decree. 11,990 / 1993, Decree. 10,368 created the Environmental Protection Area - APA Marapendi Zoo and Botanical Park, encompassing the Permanent Preservation Areas [APP] of Marapendi Lagoon and its surroundings, and the Permanent Preservation Area [APP] the Zoo and Botanical Park Marapendi, located in Barra Tijuca.

existing alternatives would be to remain at the level already achieved or to proceed further, seeking more and more to prevent the degradation or depletion of natural resources.

In this way, changes leading to a reduction in environmental protection are an infringement of the original purpose of legal texts. They can not be permissible norms that suppress areas environmentally protected on behalf of haggling, clear or hidden, taken by the higher interests linked to environmental protection<sup>34</sup>. The occurrence of mega-events and a legal architecture specially constituted to support them, as has occurred with Rio 2016, allow atypical factors to be incorporated into the ordering, and which, like the environmental non-regression, are supplanted by a state of exception.

#### **4. MUNICIPAL COMPLEMENTARY LAW N. 125/2013: THE ROUTE OF REGULATORY EXCEPTION AND THE HIDDEN AVOIDANCE OF REAL ESTATE INTERESTS**

“Having a golf course like the entrance of his own home”

Gil Hanse<sup>35</sup>

Among the main justifications offered for the construction of the Olympic Golf Course in Barra da Tijuca is its proximity to the Olympic Village, the dimensions compatible with the Olympic modality (number of holes), the easy access, in addition to the previous project of Private golf course of a luxury condominium (Riserva Uno), which would reduce the expense of public investment. Endorsed by the Rio 2016 Games Organizing Committee and the International Golf Federation (IGF), the Municipal Administration continued the project. However, just like the 2014 FIFA World Cup, the Rio-2016 proved to be fertile soil of exceptional legal steps revealing that statehood is founded on the state of emergency<sup>36</sup>. Sheltering under

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<sup>34</sup> Prieur, M. Op. Cit. 2012, p. 18.

<sup>35</sup> Architect Gil Hanse phrase, one of the greatest experts in the construction of golf courses, which was the author of the winning project selected in the international competition that qualifies the Riserva Golf advertising (RISERVA GOLF, 2015).

<sup>36</sup> KONCHINSKI, Sousa. *You do not agree with the Olympic golf? Paes has a lot to say to you*. UOL 2016 Olympic Games, Rio de Janeiro, 26 March. 2015. Available at: <<http://olimpiadas.uol.com.br/noticias/2015/03/26/nao-concorda-com-o-golfe-olimpico-paes-tem-muita-coisa-a-dizer-a-voce.htm>>. Accessed: May 26, 2015.

the “democratic complex” lays a broad spectrum of actions that shape an emergency state.

In this sense, contrary to the provisions of the Sustainability Management Plan contained in the Rio Candidature Dossier, government actions for the construction of the Barra da Tijuca Golf Course have moved towards environmental damage and irresponsibility. The Municipal Complementary Law [MCL] n. 125/2013, of January 14, 2013, the main legal instrument that made possible the construction of the field, was voted in the extinguishing of the lights of 2012, in an **extraordinary session**, dated **December 27**, during the parliamentary recess.

No public hearings, neither consultation with environmental protection agencies of civil society or previous studies, the legislative process has handled an extremely exceptional situation<sup>37</sup>. The Message n. 219, dated November 5, 2012, of the Executive, who accompanied the PLCM n. 133/2012, on the environmental matter mentioned that:

Other equipment of great importance for the accomplishment of these events will be the Olympic Golf Course, that will host this sport activity newly included in the Games, and that is characterized by being a wide green area with very low constructive rates. In this context, in order to facilitate its installation, it is necessary through this Complementary Law Project to include this activity among those allowed in the Environmental Protection Area of Marapendi, adapting the Environmental Zoning to the reality of the area, greatly altered by previous anthropic activities, as well as You must change the limits of the Municipal Natural Park of Marapendi.<sup>38</sup>

To host the Olympic Golf Course, with about 1,200,000 [one million and two hundred thousand] square meters, between Avenida das Américas and Lagoa de Marapendi, the Municipality needed to insert golf among the activities allowed in the Environmental Protection Area Marapendi<sup>39</sup>. The limits of the Municipal Natural Park of Marapendi were also reduced, in a violent act against the environment. In addition,

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<sup>37</sup> It originated from the Municipal Complementary Law Project [PLCM] n. 133/2012, authored by Executive Branch.

<sup>38</sup> RIO. Municipal Executive. *Message No. 219 of November 5, 2012*. Available at: <<http://www.camara.rj.gov.br/>>. Accessed: May 27, 2015.

<sup>39</sup> Decree n. 11,990 / 1993 seals that prevents or hinders the natural regeneration of native vegetation [Art. 10], assuming the Wildlife Conservation Zone (ZCVS), scientific activities, management and control environmental, educational, recreational and leisure [article 11]. However, the introduction of exotic plants in the APA [eg, grass] not amoldam the legal permissions, logo, golf remains prohibited activity to be practiced.

there was the need for lowering the environmental protection zoning, on the grounds that the site would be totally anthropic<sup>40</sup>.

The reduction of 58.485.00 (fifty-eight thousand, four hundred eighty-five) square meters of PPA Marapendi<sup>41</sup> was transformed into a wildlife protection area for the purpose of to admit the integration to the particular contiguous area, construction site of the particular pointed golf course. In fact, the integration of the reduced area by MCL n. 125/2013 resulted in real disaffection of public good, without the demonstration of public interest, causing also damage to municipal coffers.

Even with the problematic situation of lawsuits discussing ownership of the land on which would be built the golf course<sup>42</sup>, the City entered into informal public-private partnership with Fiori Empreendimentos Ltda., Whose exact terms were never made public. This company, owned by Pasquale Mauro himself, took charge of building the golf course, valued at R\$60 million, reinforcing the administration's argument that the project would not have any public investment.

The obscure aspects bordering the Golf Course were not limited only to these events. Although the Technical Report of the Municipal Environment 406/2008 inform you that the project would take up protection zones for wildlife and wildlife conservation, the City issued Municipal Preliminary License [MPL] n. 146/2008 in favor of *Fiori Empreendimentos Ltda.* Exhausted their expiry date, in 2012 *Fiori* proceeded to new application for prior license. Already in 2013, after the sanction of MCL n. 125/2013, in spite of the administrative process is the request for prior license, the City granted Installation Municipal License [IML], after only 15 days after the Fiori have made such a request. The City gave Installation Municipal License [IML], after only 15 days after the *Fiori* have made such a request.

Upheld the IML, the licensing conditions existing as detailed inventories of local fauna and flora, mapping and demarcation of the Permanent Preservation Areas,

<sup>40</sup> The allegation of deterioration and degradation, human disturbance setting, do not suppress the legal protection of the area, as the art. 3, item II, of Law n. 12.651 / 2012. In: BRAZIL, Op. Cit. 2012.

<sup>41</sup> The total length of the Environmental Protection Area [APA] Marapendi is 1.157 million [one million, one hundred and fifty-seven thousand] square meters. However, within the APA there is an extensive range of Permanent Protection Area [APP] approximately 450,000 [four hundred and fifty thousand] square meters, corresponding to the entire margin of Marapendi lagoon where mangrove attendance were checked and fixing dunes sandbank, and several species of fauna and flora in danger of extinction. The 58485.00 m<sup>2</sup> deleted from the APA integrated conservation area, the result of "free donation area signed between the State of Guanabara and Holophernes Castro and his wife, on December 10, 1973 (published in the DO of December 18, 1973)".

<sup>42</sup> Discusses not only the property of the Olympic golf course terrain, but countless others in the name of Pasquale Mauro, gave rise to the opening of several CPI's to the Legislative Assembly and the City Council, but investigations remained unsuccessful.

management studies, etc., could no longer be performed due to the start of work with suppression of native vegetation. On the other hand, the assumption of Fiori construction of the field stemmed from mere commitment to the development of golf, sport top and select audience. The LCM n. 125/2013, changed the template of the region that was 06 to 22 floors, according to art. 2 of the Decree. 36.795 of 20 February 2013<sup>43</sup>. It is estimated that raising the feedback and the possibility of construction of 23 buildings have provided the Pasquale Mauro superior economic advantage to one billion reais, not keeping any relationship with the principles of fairness and administrative efficiency<sup>44</sup>. The increase feedback caused the concrete possibility of a higher density in a region already battered by the high number of people.

Not only the negligence of the municipality as the non - recovery of Pasquale Mauro Property tax, he assumed the burden of payment Vegetation Suppression rate of R\$1.860,312,60, determined in the administrative case n. 14/201.250/2012, regarding the environmental licensing for implementation of the Olympic Golf Course<sup>45</sup>. This stemmed rate undue suppression 61,661.00 m<sup>2</sup> of exotic vegetation before the Public Administration choose the location to be the official golf course of the Olympic Games. This was also led the prosecution of the State of Rio de Janeiro to propose Public Action against the City and *Fiori*, seeking to nullify the environmental license, paralyze the works and require recovery of environmental damage resulting from irregular interventions effect in the area. The process is still in progress without final decision, even after the Olympics.

On the other hand, the joint owners of “Riserva Golf - Vista Mare Residencial” enjoy exclusive access to a “golf course like the entrance of his own home”, because, the sun rises for everyone, but not with the privileged view the “Marapendi reserve”, even at the cost of environmental sustainability.

<sup>43</sup> RIO. Municipal Executive. *Decree No. 36795 of February 20, 2013*. Available at: <<http://www.camara.rj.gov.br/>>. Accessed: May 27, 2015.

<sup>44</sup> VIGNA, Anne. “*The sun rises for everyone, but not with this view.*” Public Agency Reporting and Investigative Journalism 23 February 2015. Available at: <<http://apublica.org/2015/02/o-sol-nasce-para-todos-mas-nao-com-essa-vista/>>. Accessed: May 25, 2015.

<sup>45</sup> The environmental licensing process includes the acts of public civil action, case no. 0273069-88.2014.8.19.0001, consisting of fl. 1303 decision of Mayor Eduardo Paes: “[...] I grant the applicant’s request of 14.3.2013, recognizing, by mere exception without setting precedent, the right to have rebalanced the other hand, assuming the municipality paying the fee charged here. [...]”. RIO DE JANEIRO. Municipal Executive. *Decree No. 36795 of February 20, 2013*. Available at: <<http://www.camara.rj.gov.br/>>. Accessed: May 27, 2015.

## CONCLUSION

The state of exception quietly presents itself today as a new paradigm of governmentality. The exception has become the rule in the face of indiscernibility zone constituted by exceptional measures allocated on an anomic space between absolutism and democracy. In this sense, to preserve the contemporary states, the state of exception has become a “constituent paradigm of law.” That is, through its incorporation into the legal system reside permanent guarantee of the preservation of their species.

In the face of numerous mega-events that Brazil has welcomed, some of them requiring the construction of a separate legal architecture, such as the Rio-2016, there is considerable expectation of state of exception projection. These great events have the ability to increase real estate speculation and promote urban sanitation giving vent to economic power, a fact that tends to produce systemic corruption in the field of law. Accordingly, the Environmental Law and the related laws are inevitably present if threatened by in completely the opposite direction to capitalist ideals.

As left evidenced, for the construction Olympic Golf Course the City of Rio de Janeiro promoted legislative amendment lowering the level of environmental protection area protection of Marapendi Reserve, actually colliding with the perspective that the International Environmental Law comes expropriating. Not enough, the environmental licensing process has serious illegality of evidence. Moreover, the elevation of the area feedback promoted the possibility of greater density of the Barra da Tijuca area. The non-regression principle, as a general principle of human rights, is the mechanism that can hinder the advancement of exceptional measures in environmental law, supporting the integrity of the constitutional set of environmental protection standards through *the anti-retour* paradigm.

Thus, the Environmental Law does not comply with reducing the level of protection or the legally protected area reduction when it affects the essence of environmental policies. The state of exception as a paradigm of government, through the law degradation generates an unsustainable level of environmental degradation, which did not only compromises the present generation but also future.

## NOTES

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