

## **Transitional justice and the realization of SDG 16: input regarding Brazil**

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### **Introduction**

Sustainable Development Goal 16 (SDG 16) refers to promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. On 26 September 2019 the United Nations Human Rights Council (HRC) passed [Resolution 42/17 on Human Rights and Transitional Justice](#). The Resolution recognized, in its Preamble, that transitional justice can contribute to SDG 16 “through its objectives of combating impunity, granting access to justice and transforming conflict.”<sup>1</sup>

Paragraph 9 of the Resolution requests the Office of the High Commissioner for Human Rights (OHCHR) “to examine in a report how addressing a legacy of gross violations and abuses of human rights and serious violations of international humanitarian law through transitional justice measures can contribute to sustaining peace and the realization of Sustainable Development Goal 16.”<sup>2</sup>

Operative paragraph 10 of the Resolution requests the OHCHR, in preparing the report, “to consult with States, relevant United Nations mandate holders, other relevant entities of the United Nations Secretariat, relevant United Nations agencies, funds and programmes, intergovernmental organizations, national human rights institutions, non-governmental organizations and other relevant stakeholders, including practitioners.”<sup>3</sup>

Following these dispositions, the OHCHR issued a [call for input](#) requesting relevant stakeholders to submit information concerning:

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\* Facts and Norms Institute is an independent, international research institution based in the Global South, with members present in all continents. The Institute’s mission is straightforward: to promote a rational, human rights-based approach to social issues in the public debate. For more information, please visit [www.factsandnorms.com](http://www.factsandnorms.com)

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<sup>1</sup> United Nations. [Resolution 42/17. Human rights and transitional justice](#). Adopted by the Human Rights Council on 26 September 2019. UN Doc. A/HRC/RES/42/17. 7 October 2019, Preamble.

<sup>2</sup> United Nations. [Resolution 42/17. Human rights and transitional justice](#). Adopted by the Human Rights Council on 26 September 2019. UN Doc. A/HRC/RES/42/17. 7 October 2019, paragraph 9.

<sup>3</sup> United Nations. [Resolution 42/17. Human rights and transitional justice](#). Adopted by the Human Rights Council on 26 September 2019. UN Doc. A/HRC/RES/42/17. 7 October 2019, paragraph 10.

- The contribution that transitional justice measures, policies and strategies adopted and/or supported at the local, national and/or regional level - to address a legacy of gross human rights violations and serious violations of international humanitarian law - have made to sustaining peace and the prevention of human rights violations, violence and conflict. Please highlight information on measures that address root causes of conflict, violence and human rights violations (e.g. discrimination, inequality, corruption, and impunity). Please also identify or include related public reports in this regard.
- The contribution of such transitional justice measures, policies and strategies to the realization of the 2030 Sustainable Development Agenda, in particular Sustainable Development Goal 16, on promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. Please highlight coordination with relevant policy areas (e.g., prevention of violence, economic development, poverty reduction, promotion of rule of law, access to justice, good governance, fight against corruption, and security and justice sector reform), specific results in the contribution to development, and key elements that contributed to their success.
- Examples and results of gender-responsive transitional justice processes - including specific measures to ensure full, effective and equal participation of women and girls, increase their role in decision-making, and contribute to their empowerment - and their contribution to sustaining peace and development.
- Transitional justice policies that have strengthened and opened up space for civil society, and their impact on sustaining peace and development.
- Challenges and successful experiences in enhancing linkages between transitional justice, peace and development, and increasing effective cooperation among relevant stakeholders in related policy areas. Kindly provide specific examples.
- Information pertaining to other aspects of the mandate set out in resolution 42/17, including regarding the situation and perspectives of women, youth, children, older persons, persons with disabilities, as well as other relevant gender and intersectional dimensions.

The present Report was elaborated in attention to the above-mentioned call for input. It aims at contributing to the work of the High Commissioner by presenting relevant information regarding Brazil.

### **State violence and impunity**

During the dictatorship period that began in 1964 in Brazil there were thousands of arbitrary suspensions of political rights, thousands of arbitrary detentions and torture, and hundreds of confirmed executions or forced disappearances, among other systematic human rights violations. At the same time, arguments of prescription and amnesty, among others, barred due investigation and accountability once the dictatorship was over.<sup>4</sup>

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<sup>4</sup> Corte IDH. *Caso Gomes Lund e outros (Guerrilha do Araguaia) Vs. Brasil*. Exceções Preliminares, Mérito, Reparações e Custas. Sentença de 24 de novembro de 2010. Série C No. 219, paragraphs 85 *et seqs.*; Corte IDH. *Caso Herzog e outros Vs. Brasil*. Exceções Preliminares, Mérito, Reparações e Custas. Sentença de 15 de março de 2018, paragraph 107. As stated in official documents, the serious human rights violations committed during the military dictatorship were part of a policy of repression planned and carried out by the State, through the Armed Forces, the Military and Civil Police, and the Judiciary, with the purpose of eliminating any resistance to the coup d'état and the established regime. As in other regimes in force at the same time in the region, the dictatorship in Brazil articulated a "gigantic repressive apparatus" based on the "Doctrine of National Security". CIDH. Relatório No. 71/2015. Caso 12.879. Mérito. Vladimir Herzog e outros vs. Brasil. OEA/Ser.L/V/II.156, 28 de outubro de 2015, paragraph 57. See, also, CIDH.

Despite the successful installation of a constitutional democracy, Brazil still suffers from high-levels of violence – expressed, *inter alia*, in high homicide rates and widespread practices of torture and ill-treatment<sup>5</sup>, especially against afro-descendants and the poor.<sup>6</sup>

What could explain the permanence of widespread practices of torture and ill-treatment after more than three decades of democratic times?

A 2018 study by Trejo, Albarracín and Tiscornia suggests that the incidence of violence in different nations is directly linked to the adoption of transitional justice processes to deal with the authoritarian past. According to the study, countries that have installed effective truth commissions tend to be far less violent; countries that have adopted amnesty laws tend to be more violent.

This is explained, *inter alia*, by the tendency of specialists in violence who repressed political dissidents under governments to play, in democracies, crucial roles in the operation of criminal markets and in the production of criminal violence. The latter occurs in various ways, such as the departure of these State agents to become armed agents of criminal organizations in conflict with other organizations and with the State; the actions of these members within the State in favour of criminal organizations; the abusive and disproportionate use of state power in fighting crime (marked by extrajudicial executions, torture, extortion and other crimes).

In countries where transitional justice processes have been adopted to expose, trial and punish members of the state forces for serious human rights violations committed during the authoritarian era, there is a redefinition of the criteria of state coercion that prevents members of the armed forces and the police to become the main actors in the production of criminal violence. In short, public measures and policies aimed at breaking impunity for past violations of human rights strengthen new democracies and make them less vulnerable to epidemic violence.<sup>7</sup>

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*Relatório sobre Segurança Cidadã e Direitos Humanos*. OEA/Ser.L/V/II. Doc. 57. 31 de dezembro de 2009, paragraphs 33-34.

<sup>5</sup> V.g., United Nations. Civil and Political Rights, including the questions of torture and detention – Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights Resolution 1998/38. Doc. E/CN.4/1999/61, 12 January 1999; United Nations. Civil and Political Rights, including the questions of torture and detention – Report of the Special Rapporteur, Sir Nigel Rodley, submitted pursuant to Commission on Human Rights Resolution 2000/43 Adendum – Visit to Brazil. Doc. E/CN.4/2001/66/Add.2, 30 march 2001; United Nations. [Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil](#). UN Doc. A/HRC/31/57/Add.4, 29 January 2016.

<sup>6</sup> Inter-American Commission on Human Rights. [Situation of Human Rights in Brazil](#). OEA/Ser.L/V/II. Doc. 9 February 12, 2021, paragraph 152, 162. These practices are especially – though not only – found in prisons and comparable institutions, such as the juvenile “socio-educational” system and the so-called “therapeutic” communities. According to the IACHR 2021 Report, “the State has been unable to guarantee the protection that institutionalized persons need” in the prison system, the socio-educational system, and the therapeutic communities”, “be those institutions public or private”, as “[c]ases of torture and maltreatment [...] have been documented in all of them”. “[T]he absence of State supervision in those facilities, the consequent self-governance and the deplorable detention conditions in deprivation of liberty institutions lead to clashes and tensions that create high levels of violence and harm both lives and personal integrity.” “[T]he deaths that have occurred form part of a systematic context of repeated acts of violence, which has prompted the granting of precautionary and provisional measures” by IACHR or by the Inter-American Court of Human Rights. Cf. Inter-American Commission on Human Rights. [Situation of Human Rights in Brazil](#). OEA/Ser.L/V/II. Doc. 9 February 12, 2021, paragraph 156.

<sup>7</sup> Trejo, Guillermo; Albarracín, Juan; Tiscornia, Lucía. Breaking state impunity in post-authoritarian regimes: why transitional justice processes deter criminal violence in new democracies. *Journal of Peace Research*, v. 55(6), p.787-809, 2018.

“By dealing with the human rights abuses committed by the previous regime, new democracies can improve the quality of human rights practices in the future and contribute to lower crime levels.” This idea is mentioned by a 2020 study by Bates, Cinar, Nalepa and Olimpieva as an implicit assumption in the transitional justice literature. The study implies, however, that the assumption is not necessarily correct when it comes to post-authoritarian “thorough” purges. According to Bates *et al.*, by removing entire networks of former authoritarian state officials from office, thorough purges can help lay foundations for the establishment of clandestine criminal organizations, which can, paradoxically, increase crime levels, contrary to the intentions of policymakers in new democracies.<sup>8</sup>

The Inter-American Court of Human Rights found Brazil internationally responsible for human rights violations related to the 1964-1985 Dictatorship in different occasions.

In the first case, *Gomes Lund et al. (“Araguaia Insurgency”) v. Brazil*, the Court held the State responsible for practices of arbitrary detention, torture and forced disappearance of seventy people in a military operation carried out by the Brazilian Army with the aim of eliminating the “Araguaia Insurgency”, a group that was organized to resist the dictatorship. The State was also found responsible for not investigating, prosecuting and sanctioning these facts, with the legal basis of an Amnesty Law – Law No. 6.683/1979.<sup>9</sup> The Court reiterated its caselaw to affirm that enforced disappearances are violations that last over time and negatively affects the personal integrity of family members of the missing persons. The Court also acknowledged that the Brazilian Amnesty Law prevented investigation and accountability of serious human rights violations and was, therefore, incompatible with the provisions of the American Convention on Human Rights.<sup>10</sup> In light of the above, the Court ruled that the State was obligated to provide different measures of reparation and non-repetition, such as efforts to determine the whereabouts of the disappeared, the provision of medical and psychological treatment to the victims, the systematization and publication of all information on violations of rights during the military dictatorship (1964-1985) and the creation of an independent Truth Commission.<sup>11</sup>

In the second case, *Herzog et al. Brazil*, the Court held the State responsible for not investigating, prosecuting and sanctioning the facts related to the arbitrary detention, torture and execution of journalist Vladimir Herzog on 25 October 1975, at the headquarters of DOI-Codi in São Paulo, Brazil (the State agency responsible for

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<sup>8</sup> Bates, Genevieve; Cinar, Ipek; Nalepa, Monika; Olimpieva, Evgenia. [What is the effect of Personnel Transitional Justice on Crime?](#). Transitional Justice and Democratic Stability Lab, University of Chicago, January 2020.

<sup>9</sup> Corte IDH. *Caso Gomes Lund e outros (Guerrilha do Araguaia) Vs. Brasil*. Exceções Preliminares, Mérito, Reparações e Custas. Sentença de 24 de novembro de 2010. Série C No. 219, operative paragraphs 4-5.

<sup>10</sup> Corte IDH. *Caso Gomes Lund e outros (Guerrilha do Araguaia) Vs. Brasil*. Exceções Preliminares, Mérito, Reparações e Custas. Sentença de 24 de novembro de 2010. Série C No. 219, paragraph 172.

<sup>11</sup> Corte IDH. *Caso Gomes Lund e outros (Guerrilha do Araguaia) Vs. Brasil*. Exceções Preliminares, Mérito, Reparações e Custas. Sentença de 24 de novembro de 2010. Série C No. 219, operative paragraphs 8-20.

repressing political dissidents).<sup>12</sup> The Court considered that the violations perpetrated against Herzog are imprescriptible, since they have the nature of crimes against humanity. The Court also considered, for a second time, that the Brazilian Amnesty Law was one of the mechanisms that prevented the investigation, prosecution and punishment of the perpetrators. The resulting impunity of abhorrent crimes was read by the tribunal as contrary to the rights to judicial guarantees and judicial protection of Herzog's relatives, as well as to their right to personal integrity, for all the suffering that the situation gives rise to.<sup>13</sup> In terms of reparation, the Court indicated, *inter alia*, that the State was obligated to pay damages to the Herzog family and to investigate, identify and punish the ones responsible for Herzog's detention, torture and execution. The Court again regarded the Amnesty Law as non-applicable.<sup>14</sup>

The Inter-American Court of Human Rights also condemned Brazil for acts of State violence taken place in democratic times. In the *Favela Nova Brasília* case, the Court examined facts from 1994 and 1995 that included acts of torture and extrajudicial killings committed by police forces.<sup>15</sup>

In its 1997 Report on Brazil, the IACHR noted that: i) Brazilian security forces have been repeatedly accused of systematically violating people's rights; there is a history of practices violations of the police, as proved by the Brazilian justice and recognized by the Government itself; ii) there is a system that ensures impunity for these violations; iii) the military police commonly justify the accusations made to them about the multiple deaths with the argument that they are caused in self-defence or in the strict fulfilment of duty.<sup>16</sup> Similar remarks were made by the IACHR in its most recent Report on Brazil, in 2021.

In a study concluded in 2018, researcher Samira Bueno Nunes examined the main military police in the country with the aim of understanding why lethality in police action persisted even in periods of decrease in the total number of homicides. These are some of its findings and conclusions:

- i) it is common that the formalization of the lethal operation in a police report is made only by the same police officers who were part of it –usually by the most experienced, to ensure a single narrative and carefully designed to legitimize the action (i.e., to generate impunity);
- ii) the police documents themselves “may contain biases and make the recognition of those responsible for the occurrence invisible”;
- iii) deaths caused by police officers are very often formalized in some category that excludes illegality;

<sup>12</sup> Corte IDH. Caso Herzog e outros Vs. Brasil. Exceções Preliminares, Mérito, Reparações e Custas. Sentença de 15 de março de 2018, operative paragraph 3.

<sup>13</sup> Corte IDH. Caso Herzog e outros Vs. Brasil. Exceções Preliminares, Mérito, Reparações e Custas. Sentença de 15 de março de 2018, operative paragraphs 3-4.

<sup>14</sup> Corte IDH. Caso Herzog e outros Vs. Brasil. Exceções Preliminares, Mérito, Reparações e Custas. Sentença de 15 de março de 2018, paragraph 138; operative paragraph 3.

<sup>15</sup> Corte IDH. *Caso Favela Nova Brasília vs. Brasil*. Exceções Preliminares, Mérito, Reparações e Custas. Sentença de 16 de fevereiro de 2017.

<sup>16</sup> CIDH. “Capítulo III: A violência policial, a impunidade e o foro privativo militar da Polícia”. In: *Relatório sobre a Situação dos Direitos Humanos no Brasil*. 29 de setembro de 1997, par. 1, 8.

iv) police officers employ strategies to circumvent ammunition control and ballistics examinations and also resort to “cold” ammunition and/or weapons;

v) organs of control, such as the departments of internal affairs of the police, sometimes congratulate the police after these occurrences, and “both the civil police and the Public Ministry tend to ratify the actions of the military police in occurrences that result in death”;

vi) “[the] few cases that reach the popular jury also tend to be legitimized by society when the victim of the police action is not the prototype of the good citizen”;

vii) the police, their command and department of internal affairs, as well as the Public Security Secretariat have data on where the most deaths caused by police occur and “could prioritize actions to reduce lethality in the battalions most involved in resistance occurrences”; however, this does not occur in environments where the logic of normalized violence is institutionalized;

viii) there is a professional ethos among police officers which is guided by the belief that the mission of the police is to hunt down criminals and that they understand the practice of homicide as an efficient form of crime control – i.e., homicidal disposition appears not as a deviation, but as a central element of police activity;

ix) this professional culture permeates the admiration for courageous police officers, understood as those willing to pull the trigger; the guidance of younger officers by older officers on how to act on the streets; and the socialization of police officers in specialized units according to the idea that they are special criminal hunters;

x) the homicidal disposition does not appear as a deviation or crime, but as central to the police activity, and this is fed back by the corporation through strategies that include the construction of the criminal subject's image, and by the interaction with society through social media;

xi) special battalions, such as shock battalions – which are stationed in other countries and only activated in extreme cases –, are often employed in ostensive policing; their use is trivialized, and this generates political benefits due to a certain social legitimacy of extrajudicial killings [about this “legitimacy”, see also Section “A pervasive view against human rights” *infra*];

xii) there are continuities between lethal police action during the 1964-1985 dictatorship and during democratic times in terms of *modus operandi* and of a doctrine based on “the elimination of the enemy” that was very much informed by the previous “national security ideology”; xiii) there is an uneven distribution of deaths caused by police officers – these are concentrated in the poor suburbs and favelas.<sup>17</sup>

### A pervasive view against human rights

The qualitative work of social scientist Teresa Caldeira points to a possible factor or aspect regarding the perpetuity of violence in general, and torture in particular: the presence, in the Brazilian national context, of a pervasive view against human rights under the false idea that they would be equal to privileges for undeserving outlaws. Caldeira identifies the transition from the 1964-1985 dictatorship to the recent democratic times as the moment where this view was particularly cultivated among the general public.<sup>18</sup>

<sup>17</sup> Nunes, Samira Bueno. *Trabalho sujo ou missão de vida?: persistência, reprodução e legitimidade da letalidade na ação da PMESP*. 2018. 225 f. Tese (doutorado) - Escola de Administração de Empresas de São Paulo. São Paulo, 2018, *passim*, p. 34-35, 74 *et seqs.*, 196-197, 200-204.

<sup>18</sup> Caldeira, Teresa Pires do Rio. Direitos Humanos ou “Privilégios de Bandidos”? Desventuras da Democratização Brasileira. *Novos Estudos CEBRAP*, n.º 30, pp. 162-174, julho de 1991.

Combining a review of literature with the conduction and analysis of interviews during the first years of the new Brazilian constitutional democracy, Caldeira noted that, among the various aspects associated with the violence, “one stands out for its political importance and its absurd character: the general population’s support for a campaign against human rights” that started in the 1980s.<sup>19</sup>

The language of “rights” was central in the political debate in Brazil since the mid-1970s, and in the democratization process. During this period, the struggle for human rights was able to receive support from different societal segments. First, with a discourse against the torture and illegal detention of political prisoners, against censorship and in favour of basic rights and freedoms, such as the right to vote and the freedom of expression. Second, with the struggle of minorities, popular classes and social movements throughout the 1970s and 1980s. The multiplication of their specific demands for day care centres or basic public services and a growing process of political mobilization ended up legitimating an agenda for the rights to health, housing, transport, control over the body and sexuality, ethnic difference and so on.<sup>20</sup>

During the 1980s, there was an expansion in human rights, and important victories were achieved – including the possibility of the population to elect state governors in 1982 and the formal end of the dictatorship a few years later. In this context, there were also attempts to humanize the conditions imposed on common prisoners to defend their basic human rights, as it was known that they were “crowded into the worst conditions in overcrowded prisons” and “constant victims of torture and all sorts of ill-treatment”. These attempts were mainly articulated by segments of the Catholic Church, human rights movements and commissions and part of the democratic political class. They were met by the opposition of members of the police, right-wing politicians and segments of the press (v.g. popular broadcast programs dedicated to crime-related news).<sup>21</sup>

The successful defence of political prisoners against torture and ill-treatment was a struggle on behalf of the civil and political rights of activists coming from the middle and upper classes, whose “crime” was to disagree with the powerful, and on behalf of the political rights of the whole national community that were suspended during the military regime. The common prisoners, however, were mostly people from the lower classes who were accused of committing some sort of regular crime and, for that reason, had their citizenship restricted. This is why they were defended under the label of “human rights”, i.e., according to their basic humanity.<sup>22</sup>

Yet, according to the general perception, this elementary humanitarianism was denied to common prisoners. Caldeira’s analysis suggest that this denial has roots in prevalent acts and perceptions of class and racial discrimination.

That the population has turned against this humanitarian idea is related, in my view, to another characteristic of common prisoners: the fact that they are poor and victims of a whole series of prejudices and discriminations in Brazilian society, which are associated with stereotypes about criminals. It is also crucial to understand that the stereotype of the criminal was extended by the population to all cases considered by human rights defenders. They have spoken out against countless types of arbitrariness, a large part of which is committed against people with no proven guilt — other than perhaps the fact that they do not have what is called a “good look” —, but the reception of their speech seems to have eclipsed

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<sup>19</sup> Caldeira, Teresa Pires do Rio. Direitos Humanos ou “Privilégios de Bandidos”? Desventuras da Democratização Brasileira. *Novos Estudos CEBRAP*, n.º 30, pp. 162-174, julho de 1991, p. 162.

<sup>20</sup> *Ibid.*, p. 162-163.

<sup>21</sup> *Ibid.*, p. 164-165.

<sup>22</sup> *Ibid.*, p. 165-166.

that fact. According to the reactions against the defense of human rights, all persons to whom these rights refer to are criminals, and all rights to be guaranteed are for prisoners. Although prisoners were an important focus of the human rights campaign, they were not the only focus and, it goes without saying, at no point did this campaign defend criminal activities.<sup>23</sup>

It is difficult to conceive of a collective claim movement whose members share a distinctly negative identity—that of common prisoners, and therefore, criminals. It would be difficult to get social legitimacy to support their claims [...]. Several minorities, such as gays, for example, affirmed an identity once seen as negative as a means of denouncing the discrimination they suffered so as to demand rights. But in the case of common prisoners, this process of reversal and positivation was impossible [...].<sup>24</sup>

[Those against the human rights of common prisoners] had no scruples in abusing the images, stating that [human rights defenders] wanted to offer luxury, a good life, a five-star hotel, everything for bandits who made fun of honest good men and the latter's struggle to survive with dignity. Once the association "human right=privileges for bandits" was made, it was easy to destroy the legitimacy of the rights that were being claimed, and of their defenders, treated as "protectors of bandits". Not even the humanitarianism contained in the defense of human rights for people who were being tortured and living under the worst conditions was able to reverse the campaign. The problem is that, in addition to the fact that the population does not look down on the use of force against "bandits", the stereotypes available in Brazilian society about criminals consider them at the limit not only of society, but also of humanity. [...] The image of criminals was more than emphasized. They have been painted in the strong colours of prejudice, social discrimination and deviance as being at the edges of both society and humanity. In speeches against human rights suspects are always criminals, and criminals are always murderers or rapists (both less than human), destroying the honour and property of honest workers and good men.<sup>25</sup>

The policy of human rights and the humanization of prisons intended to extend certain minimum rights to everyone. But the majority of society seems to have wanted to point out that some were outside of it, and for that it did not hesitate to place them almost outside of humanity. [...] Although the rights that were defended were not only for criminals, but for anyone facing arbitrary, it was the image of the criminal that was marked and that was associated exclusively with human rights. In defending criminals, it appears that human rights defenders have touched a limit to the acceptable. The idea is that, by exceeding this limit, the entire social order would be threatened. [...]

When talking about crime and violence, the discourse against human rights is a discourse about social disorder and about the maintenance of privileges. Disorder can be interpreted in many ways, but something easily associated with it is social change. And the fact is that the discourse against human rights was conveyed in a context of change, when the first elected governor in two decades took office, when social movements were legitimized as interlocutors of the State, when they tried to reform the police accustomed to the discretion of the military regime, and when the State itself attributed the role of generator of new rights for the "others". [...]

It is not difficult to see, behind the discourse against human rights and the insecurity generated by crime, the outlining of a diagnosis that everything is changing for the worse, that people no longer behave as expected, that the poor want rights (privileges, it's good to remember) and, supreme abuse, proof of total disorder, they even want to give rights to criminals.<sup>26</sup>

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<sup>23</sup> *Ibid.*, p. 166.

<sup>24</sup> *Ibid.*, p. 167.

<sup>25</sup> *Ibid.*, p. 169.

<sup>26</sup> *Ibid.*, p. 169.



Once a synonym for civil, political and socio-economic rights defended by large segments of the population, the category of “human rights” regrettably became, throughout the 1980s, a synonym for “rights” or “privileges” of violent criminals. The idea of “rights” in general was not questioned, but only that of “human rights”. Medical care, education, day care centres, etc. were cherished rights. The notion of human rights, however, was dissociated from them.<sup>27</sup>

Opposition to human rights, associated with a diagnosis of social disorder, ends up giving rise to suggestions on how to recover this threatened order. [...] On the one hand, it turns its back on the [constitutional] State, seen as incompetent and a defender of criminals, and it privileges the privatization of the means of preventing violence. On the other hand, the use of physical force against prisoners and criminals is increasingly defended. [...] It is argued that this brutality is only equivalent to the brutality of those who have passed the limits of humanity. That is why, in addition to being against what is called "good treatment" of criminals, a considerable portion of the population demands the death penalty, turns a blind eye to police abuses and disrespect for human rights, [...] requires "toughness" against the bandits or their elimination outright, in a speech that is also highly diffused. It is also in this context that the "punishers" who work in popular neighbourhoods are supported. [...] Social discrimination expressed in the discourse of violence, support for the use of force and the emphasis on privatization, in my view, are much broader issues than those of crime and security, but there they find an excellent means of expression.<sup>28</sup>

## Violence, inequality and transitional justice

Inequality has been reported as a very strong predictor to violence. A prominent scholar of psychology, neuroscience and behaviour, Martin Daly argues that inequality predicts homicide rates better than any other variable.<sup>29</sup> Even psychologist Jordan Peterson, a popular figure in the English-speaking developed world who regularly criticizes “the political left” and its drive for more equal societies, has affirmed in a publicly available lecture that inequality unequivocally explains violence by a huge margin, especially violent crimes. “[T]he more unequal you let your society get, the higher the probability of death, roughly speaking, through violent causes”, he said. Peterson claims that the measured effects of the Gini coefficient (a standard index for income inequality) on male-on-male homicide, for instance, are among the strongest ever to be found in the whole range of social sciences.<sup>30</sup>

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<sup>27</sup> *Ibid.*, p. 163-164.

<sup>28</sup> *Ibid.*, p. 171-172.

<sup>29</sup> As quoted by Szalavitz, Maia. “[The surprising factors driving murder rates: income inequality and respect](#)”. *The Guardian*, 8 December 2017; Szalavitz, Maia. “[Income Inequality’s Most Disturbing Side Effect: Homicide](#)”. *Scientific American*, 1 November 2018. See, also, Daly, Martin. “[Income inequality \(still\) rules in explaining variations in homicide rates](#)”. Annual meeting of the Homicide Research Working Group, June 2010; Daly, Martin. *Killing the Competition: Economic Equality and Homicide*. London: Transaction Publishers, 2016 (arguing that income and wealth inequality have effects on violence and refuting the counterarguments to the claim that the relationship between inequality and homicidal violence is causal).

<sup>30</sup> Peterson, Jordan. “[2016 Lecture 06 Maps of Meaning: Part I: The primordial narrative](#).” Jordan P. Peterson [YouTube Channel], 2016: “[J. Peterson:] [T]he relationship between the Gini coefficient and male-on-male homicide is not 0.2 or 0.3, which is the correlation that you would get if you were predicting something like that using personality. It is like 0.8 or 0.9. [...] It is *the explanation*. It is a huge effect, it is so big an effect that you can basically say that, “Oh, well, we figured that out.” [...] [I]f you don’t accept the Gini coefficient-aggression data, that’s like, you might as well throw the rest of social sciences out the window, because the effect is unbelievably powerful. [Student:] What geographical area does this take place in? [J. Peterson:] It depends... you can do it on any level of analysis. You can do it by county, you

Brazil has a history of deep social inequality that precedes and succeeds the Estado Novo dictatorship and the 1964-1985 dictatorship. Yet, empirical data indicates that the 1964-1985 dictatorship reversed a previous trend of decreases in inequality during the democratic interregnum of 1945-1964; and that the legacy of inequality perseveres until the present.<sup>31</sup>

One additional layer of historical context is instrumental to understand these indications. The 1964 military coup removed then President João Goulart from office when he was attempting to advance a nationalistic, pro-social agenda of “basic reforms” (Reformas de Base”) that included measures such as an education reform to combat adult illiteracy and raise government spending on public education; a tax reform to increase progressivity in the income tax and to limit the remittance of profits by multinational companies to foreign countries (so as to incentivize reinvestments in Brazil); an electoral reform to grant voting rights to illiterate people and low-ranking military officers; and a land reform to expropriate and redistribute large, non-productive properties. Despite being measures that were adopted by developed capitalist societies before, the basic reforms were framed by the military as signs of a communist plot so as to justify the coup.<sup>32</sup>

In democratic times, there has been progress in terms of social inclusion. Yet, the country remained marked by inequality and social exclusion<sup>33</sup>, and common sensical distributive measures, such as land reform or progressive taxation, were not yet implemented.

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can do it by city, you can do it by state, and you can do it by country, and it works on all of those levels. [Student:] Like, it predicts aggression, almost? [J. Peterson:] You bet. Yeah. And that’s a great question. I mean, the methodologically sophisticated studies have done exactly that, to ensure that it’s actually this phenomenon rather than other factors that might be operative in that particular geographical area. So, countries with a higher Gini coefficient are more violent, and cities within that country that have a higher-than-average Gini coefficient for that country are more violent on average. It’s a very, very robust finding.”

<sup>31</sup> Souza, Pedro Herculano Guimarães Ferreira de. *A desigualdade vista do topo: a concentração de renda entre os ricos no Brasil, 1926-2013*. Tese – Doutorado, Departamento de Sociologia, Universidade de Brasília – UnB. Brasília, Setembro de 2016, p. 266 (indicating, in brief, that i) inequality increased significantly in the Estado Novo and especially during World War II; ii) with the end of the dictatorship and the exceptional conditions of war, the concentration cooled, and after a few years of stability, inequality declined consistently in the last years of the democratic interregnum of 1945-1964, especially in the second half of the 1950s, when it reached the lowest values in the historical series; iii) the 1964 military coup marked a turning point and reversed the previous trend; iv) from the late 1980s onwards, inequality decreased during the first decades, but remained very high nonetheless, and virtually unaltered from 2006 onwards.).

<sup>32</sup> See, e.g., Schwarcz, Lilia M; Starling, Heloisa M. *Brasil: uma Biografia*. São Paulo: Companhia das Letras, 2015, p. 437 *et seqs.*; Wikipedia contributors. "[Military dictatorship in Brazil](#)." *Wikipedia, The Free Encyclopedia*. Wikipedia, The Free Encyclopedia, 14 Oct. 2021; Wikipedia contributors. "[João Goulart](#)." *Wikipedia, The Free Encyclopedia*. Wikipedia, The Free Encyclopedia, 27 Oct. 2021.

<sup>33</sup> Schwarcz, Lilia M; Starling, Heloisa M. *Brasil: uma Biografia*. São Paulo: Companhia das Letras, 2015, p. 502. According to IACHR’s 2021 Report regarding the Situation of Human Rights in Brazil, since the restoration of democracy, Brazil has made significant progress with forging institution and public policies aimed at tackling structural inequalities and human rights violations. These included the promulgation of a new Constitution, the ratification of regional and universal human rights treaties, the modernization of domestic laws regarding several human rights-related areas, the consolidation of structures endowed with powers to promote and defend human rights, the realization of periodic elections and the creation and strengthening of institutions providing social participation and oversight of government actions. Despite all that, the Commission voiced its concern with how the country is still characterized by discrimination and structural inequality. See: Inter-American Commission on Human Rights. [Situation of Human Rights in Brazil](#). OEA/Ser.L/V/II. Doc. 9. February 12, 2021, paragraphs 518, 1, 6, 15, 20-149.

In its 2021 report about human rights in Brazil, the Inter-American Commission on Human Rights (IACHR) emphasized how the country is marked by historical inequality and discrimination against persons of African descent, including quilombola communities; women; indigenous peoples; peasants and humble rural workers; landless and homeless people; inhabitants of favelas (shantytowns) and persons living on the outskirts of cities. The many human rights violations suffered by those individuals and communities guard a close connection to longstanding social exclusion, lack of access to land and property rights and the *de facto* denial of their economic, social, cultural, and environmental rights. Class and ethno-racial discrimination impose, on those living in poverty and extreme poverty, precarious or extremely precarious housing, precarious and even slavery-like conditions of labour *and a greater exposure to violence*.<sup>34</sup>

Considering all the above, it would therefore be sensible to suggest for the agenda for peace and transitional justice to include considerations about inequality and how it can be directly related to the continuance of violence despite regime change.

## Conclusions

SDG 16 refers to promoting peaceful and inclusive societies for sustainable development.

[Resolution 42/17](#) recognized that transitional justice can contribute to SDG 16 through combating impunity, granting access to justice and transforming conflict.

During the 1964-1985 dictatorship in Brazil, there were numerous human rights violations, including arbitrary suspensions of political rights and detentions, torture, extrajudicial killings and forced disappearances.

At the same time, arguments of prescription and amnesty, among others, barred full investigation and accountability of such violations.

Despite the successful installation of a constitutional democracy, Brazil still suffers from high-levels of violence, including regular practices of torture and extrajudicial killing mainly targeted at afro-descendants and the poor.

Contemporary violence could be linked to the limits of transitional justice in Brazil. There is evidence suggesting a continuum of lethal police action and a parallel between current doctrines of “eliminating the enemy” and past doctrines of national security. There is also evidence suggesting that transitional processes can redefine the criteria for state coercion: when they expose, trial and punish state agents for serious human rights violations committed during authoritarian eras, these processes could help preventing abusive and disproportionate use of state power in fighting crime.

According to different researchers, there is a certain social legitimacy of extrajudicial killings among Brazilian society; and, at the heart of it, a pervasive view against human rights under the false idea that they would be equal to privileges for undeserving outlaws.

The transition from the 1964-1985 dictatorship to democracy was interpreted as the moment where this view started being successfully cultivated among the general public.

Inequality is also central to the debate concerning violence and transitional justice in the country. Inequality has been reported as a very strong predictor to violence – perhaps the strongest of factors.

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<sup>34</sup> Cf. Inter-American Commission on Human Rights. [Situation of Human Rights in Brazil](#). OEA/Ser.L/V/II. Doc. 9 February 12, 2021, paragraphs 2, 20-149.

Brazil has a history of deep social inequality that precedes and succeeds the dictatorship. Yet, empirical data indicates that the dictatorship reversed a previous trend of decreases in inequality during the democratic interregnum of 1945-1964.

The 1964 military coup prevented the elected President from adopting a pro-social agenda that included distributive reforms regarding land, taxes and other areas.

In democratic times, progress was made in terms of social inclusion. The country remains, however, deeply marked by poverty and inequality. Common sensical distributive measures that were adopted by developed capitalist nations in the past, such as land reform or progressive taxation, are yet to be fully implemented.

It is therefore sensible for the agenda for peace and transitional justice to walk together with the agenda for equality and social justice.

Washington DC, 29 October 2021