



Special Rapporteur on the Promotion of truth, justice, reparation and guarantees of non-recurrence, Mr. Bernard Duhaime

Preliminary Observations. Visit to Brazil (30 March to 7 April 2025)

Rio de Janeiro, 7 April 2025

From 30 March to 7 April 2025, I conducted an official visit to Brazil. I would like to thank the authorities in Brazil for their openness and cooperation during the realization of the visit. I would also like to thank the Regional Office for South America of the Office of the High Commissioner for Human Rights for supporting my team before and during the visit. I visited Brasilia, Sao Paulo and Rio de Janeiro and had the opportunity to make field visits to memory sites, former detention centers and other sites where serious human rights violations took place, as well as places of archival storage. I met with victims and their families, representatives from civil society, international organizations, the diplomatic community and academic experts.

The purpose of the visit was to assess the measures in the areas of truth, justice, reparation, memorialization and guarantees of non-recurrence adopted by the authorities in Brazil to address the serious human rights violations committed during the dictatorship (1964-1985), seeking to have a broad view of the various initiatives taken, identify good practices, gaps and shortcomings, and formulate recommendations in that regard.

During the visit, I met with representatives of the Ministry of Foreign Affairs, Ministry of Human Rights and Citizenship, Amnesty Commission, Special Commission on Political Deaths and Disappearances, Ministry of Justice and Public Security, Ministry of Education, Ministry of Racial Equality, Ministry of Indigenous Peoples, , Supreme Federal Court, Federal Office of the Public Prosecutor, Working Group on Transitional Justice at the Labour Public Prosecutor, Office of the Attorney General of the Republic, Federal Public Defender's Office, Chamber of Deputies (including the Commission on Human Rights, Minorities and Racial Equality), Institute of Legal Medicine, Institute of Forensic DNA Research, Nacional Human Rights Council, Forensic Archaeology and Anthropology Laboratory of Unifesp, National Archives, and Forum on Memory, Truth, Integral Reparation, Non-Repetition and Justice for Indigenous Peoples.

From 1964 to 1985 Brazil was ruled by a military dictatorship. During almost two decades of dictatorial rule, political opposition was suppressed, fundamental rights and freedoms were quashed, vulnerable groups were further marginalized, and serious human rights violations including extrajudicial killings, torture, enforced disappearances, sexual violence and arbitrary detention were committed against a variety of social groups opposing the dictatorship including political opponents, union members and other workers, students, journalists, peasants, indigenous peoples and people of African descent. Violations of economic, labour, social and cultural rights, including access to land and natural resources, underpinned the process. State repression was in many instances fuelled by the political and material support and/or complicity of economic actors and private businesses.

The end of the dictatorship and the return to the rule of law with the adoption of the 1988 constitutional reform initiated a winding process of transition to democracy and the slow adoption of an incipient agenda of transitional justice which saw the establishment of reparation and truth-seeking mechanisms, but neglected criminal accountability and the adoption guarantees of non-recurrence. In recent years, Brazil's democratic order was seriously undermined by the alleged *coup* attempt of 8 January 2023, demonstrating the dangerous effects of an incomplete transitional justice model.

The transitional justice process in Brazil has been shaped by two crucial factors, the country's socio-political history and conjuncture, as well as the country's federal structure comprised of 26 states with their own government, legislature, and constitution, within the framework of the federal constitution. Both elements are taken into consideration in the following analysis.

During my visit, I have assessed the progress made in the five pillars of transitional justice. I will share my preliminary observations in this regard and provide initial recommendations for the way forward. A detailed report of my visit will be presented to the United Nations Human Rights Council in September 2025.

Justice

On 8 August 1979, still under dictatorial regime, Brazil adopted law 6.683 known as the Amnesty Law. The law granted pardon to individuals who had committed political or related crimes in the period from 1961 to 1979. Article 1, paragraph 1 of the law established that amnesty would be granted to "all persons who [...] have committed political crimes or crimes related thereto". While the restitution of arbitrarily detained persons to their status before the dictatorship was a positive development, this provision was later interpreted by a 2010 ruling of the Supreme Federal Tribunal (SFT) as also encompassing pardon for human rights violations attributable to State agents understanding that they were "crimes related" to political crimes. This interpretation opened the doors to impunity for State agents who perpetrated gross human rights violations. This interpretation, which creates two opposing groups subject to pardon, has become one of the most significant obstacles to transitional justice and non-recurrence.

In the same year, a petition was filed to recognise the unconstitutionality of the interpretation of the Amnesty Law that benefited the military and other agents of repression, the so-called *Arguição de Descumprimento de Preceito Fundamental* -ADPF- 153. However, the STF ruled that the Amnesty Law was in compliance with the Constitution and rejected the plaintiff's claims. An appeal, known as ADPPF no. 320, was filed in response to this decision alleging that the decision in ADPPF no. 153 failed to evaluate: (a) the impossibility of granting amnesty for crimes against humanity, in accordance with the jurisprudence of the Inter-American Court of Human Rights, and (b) the fact that the crime of enforced disappearance is not subject to any statute of limitations. This decision is pending examination since.

Since 2012, federal prosecutors have brought charges against former agents of the dictatorship in more than 50 cases. However, the courts have dismissed them invoking this interpretation of the Amnesty Law.

The adoption of the Amnesty Law has permeated the entire justice pillar in Brazil's transitional justice process. Despite its incompatibility with international obligations and incessant national and international pressure, the overturn of the Amnesty Law has been met with resistance, particularly from military and conservative political sectors and remains elusive. As a result, the perpetrators of gross human rights violations committed during the dictatorship have not faced justice. The lack of legal consequences for past abuses has reinforced a culture of impunity and established conditions for

repetition by allowing authoritarian rhetoric and practice to resurface in the political discourse, as evidenced in January 2023's alleged coup attempt.

Faced with domestic impunity, some victims have resorted to the regional human rights protections system to search for justice. In the *Gomes Lund et al. v. Brazil* (Guerrilha do Araguaia case) ruling of 2010 and the *Vladimir Herzog v. Brazil* ruling of 2018, the Inter-American Court of Human Rights condemned the State of Brazil for failing to criminally prosecute and sanction human rights violation committed during the dictatorship. The Court further ruled that the Amnesty Law violated Brazil's international obligation to investigate and punish serious human rights violations by preventing the relatives of the victims of being heard by a magistrate and recalled that enforced disappearances constitute a permanent offense whose effects do not stop until the fate or whereabouts of the victim is revealed.

I call on the authorities to adopt measures to ensure the compatibility of the Amnesty Law with international human rights law, in full compliance with the above-mentioned binding judgements of the Inter-American Court of Human Rights. These measures should remove obstacles to the criminal prosecution of all international crimes committed during the dictatorship, including crimes against humanity. In addition, the domestic criminal prosecution of acts of enforced disappearances, as defined by international human rights law, should not be subject to a statute of limitation, as it is a continuous crime. The typification of this crime must be adequately integrated in Brazil's domestic law.

In addition, the legal principle of *non bis in idem* should not be applied when prior acquittals or convictions were rendered for these crimes in contravention of due process and of the victims' rights to judicial guarantees and judicial protection. The defence of superior orders should never be applicable to international crimes committed during the dictatorship and such crimes should also be prosecuted in accordance with the doctrine of command responsibility. Judicial sanctions for international crimes committed during the dictatorship should be proportional to their gravity and should never be subject to pardons or similar discretionary proceedings.

Reparation

Brazil has offered reparation to victims through administrative procedures. The first transitional justice initiative established in Brazil to address the gross human rights violations committed during the dictatorship was the Special Commission on Political Deaths and Disappearances (CEMDP), created by Law No. 9.140 of 1995 with the aim of recognising, locating and compensating relatives of individuals killed or disappeared due to political reasons between 1961 and 1979 (later extended to 1988). The law placed focus on those who offered direct political resistance to the dictatorship, an inheritance of the 1979 Amnesty Law, rather than on the repressive violence exercised by the regime against society as a whole.

The CEMDP played a pioneering and important role in providing truth and reparation to victims. However its procedural requirements, which until recently placed the burden of proof on family members to satisfy a high threshold of evidence of the violations endured, and temporal restrictions, such as the requirement for claims to be filed within 120 days of the law's ratification (extended only twice for another 120 days each) severely limited the categories of recognized victims.

In addition, the CEMDP's restrictive interpretation of law 9.140 concerning the existence of a political motivation for recognition as victims, left entire categories outside of the scope of the law, such as indigenous peoples, peasants, workers and people of African descent whose harm is not considered to be "politically motivated" even if it was committed by the dictatorial regime. The Commission has issued

rectifications of victim's obituaries to better reflect the causes of death. By 2023, it had recognized around 362 cases of political deaths and disappearances.

Between 2019 and 2022, the functioning of the CEMDP was seriously hampered and its mandate eventually extinguished. The Commission was reopened in August 2024, following intense pressure from victims and civil society, but structural and financial limitations persist.

A complementary reparation mechanism was created by Law 10,559 of 2002 and established in 2002. The Amnesty Commission was mandated to provide official recognition and economic reparations to individuals persecuted by the dictatorship between 1946 and 1988. This commission conducts investigations, requests information, and recommends the granting of pecuniary reparations to victims. From 2007, the Amnesty Commission has also presented official public apologies to victims. In 2023, the institution began to explicitly provide collective reparations to groups of victims. In 2024, it granted collective reparations to the Guarani-Kaiowá and Krenak peoples for the violence that they suffered during the dictatorship.

The Amnesty Commission faces structural and administrative challenges, and its functioning was severely hampered between 2019 and 2022, leading to the rejection of numerous reparation claims during this period.

I welcome the measures adopted by Brazil to provide reparation to victims of the dictatorship through the work of the aforementioned commissions, including the provision of compensation, apologies, and collective reparations to a widening category of victims.

I call on the authorities to ensure legal, institutional and financial stability to both the CEMDP and the Amnesty Commission to ensure their continuity irrespective of political considerations or changes in government or legislature. The 120 days time limitation for the filing of claims at the CEMDP should be abolished, its burden of proof requirements revised and its jurisdiction expanded to ensure the admissibility of all cases of torture, summary, arbitrary or extrajudicial executions and enforced disappearances committed by State agents or in collusion or with the acquiescence of State agents, irrespective of whether the victim suffered oppression for political motivations or because of his/her political activities. Similarly, in addition to continue granting individual compensation claims, the Amnesty Commission should expand the type of measures granted to ensure full psychological, social and medical reparation for victims. Moreover, it should continue and broaden its practice of granting collective reparation measures, of presenting apologies and adopting memorialization actions.

Truth-seeking

Another milestone in Brazil's transitional justice process was the establishment, albeit with remarkable delay, of the National Truth Commission (NTC).

Established by Law 12,528 of November 2011, 26 years after the end of the dictatorship, the CNV was mandated to examine and clarify the gross human rights violations implemented between 1946 and 1988, in order to make effective the right to memory and to historical truth as well as to promote national reconciliation. The National Truth Commission was comprised of seven members appointed by the President.

In December 2014, the NTC published its final report where it established the death and disappearance of 434 persons during the military regime, including 191 deaths, 210 disappearances where the bodies were never located, and 33 disappearances where the bodies were located. It also identified 377 state

agents – 191 of whom were still alive at the time that the NTC report was issued – were identified as holding individual responsibility for gross human rights violations. Volume II of the report also recognized that an estimated 8300 indigenous peoples and over 1000 peasants suffered State repression.

The report provides 29 recommendations to the Brazilian State, aimed at preventing the recurrence of violations and strengthening democracy. Of these, 5 recommendations focused on human rights violations against indigenous peoples and 7 focused on human rights violations against the LGBTQIA+ population. One of the recommendations of the NTC includes the creation of a mechanism to follow up the work of the Commission and to create a truth commission for indigenous peoples. While this proposal was discussed, it has not come to fruition yet. Most of the remaining recommendations were also never implemented.

It is worth noting that the work of the National Truth Commission has inspired the proliferation of similar commissions at the state and municipal levels, as well as at universities, unions, and associations, enlarging the pool of available examinations and recommendations to be considered for legislative and policy making in the country.

I am seriously concerned by the lack of access to archives of armed and security forces which are hampering truth seeking and accountability processes.

In my final report I will also address the issues related to the search for persons subjected to enforced disappearances, including by forensic sciences specialists.

I welcome the creation of the National Truth Commission and several other commissions. Their invaluable work elucidating the circumstances, responsibilities and victims of gross human rights violations provides a solid platform to advance measures for reparation, reconciliation and non-recurrence. I call on the authorities to fully implement the recommendations of the National Truth Commission, to establish a follow up mechanism capable of monitoring this process, reporting periodically and adopting measure to facilitate the implementation of the NTC's recommendations. This mechanism should also consider the findings and coordinate the efforts of the other truth commission established at the state or municipal levels. Finally, as indicated further, I call on the authorities to establish truth-seeking mechanisms to fully address massive State violence committed during the dictatorship against all sectors of the population, irrespective of the victims' political activities or the State's political motive for violating their rights. I urge the relevant authorities to provide unrestrictive access to the archives of the armed and security forces.

Memorialization

Brazil has adopted a series of measures to preserve and memorialize the serious human rights violations committed during the dictatorship. The Amnesty Commission adopted memorialization measures such as the Amnesty Caravans, consisting of hearings of victims' testimonies in locations where human rights violations took place, and the Traces of Memory project, where the memory of victims is told through a collection of oral and audiovisual resources. Similarly, the Special Commission on Political Deaths and Disappearances (CEMDP) established the "Right to Memory and Truth" project to document and disseminate accounts of resistance, the "Places of Memory" project to identify sites related to human rights violations using a geo-referencing system, developed a catalogue of 222 sites of memory, and issued several related publications.

The government also established the National Day of Memory for Political Dead and Disappeared on 28 August, adopted an initiative to rename streets and public buildings named after dictatorship officials,

as well as established the Memorial da Resistência (memorial of resistance), the “Revealed Memories” collection at the National Archives, and the Memorial Vala de Perus in a clandestine mass grave found in 1990 at the Dom Bosco Cemetery, near São Paulo. The latter suffered acts of vandalism in 2013.

Despite these important efforts at the federal level, I note with concern reports about the lack of memorialization in numerous municipalities and states, despite the existence of federal policies in this regard. Relatedly, I note with great concern the lack of preservation and memorialization of sites where gross human rights violations took place, such as the DOI-CODI (Departamento de Operações de Informações - Centro de Operações de Defesa Interna) in São Paulo and Rio de Janeiro, the DOPS (Department of Political and Social Order) in Rio de Janeiro, and the House of Death in Petropolis, which are currently managed by police or armed forces, and are abandoned in dire conditions, or owned by private individuals. I fully endorse the demands from civil society for these premises to be preserved and established as sites of memory, under the jurisdiction of civil authorities. I also note with concern the acts of negationism of past violations and the glorification of the dictatorship carried out during the previous administration.

I acknowledge the existing measures to memorialize the dictatorship and call on federal, state and municipal authorities to ensure that the memorialization of past human rights violations is adequately and sufficiently pursued, and that negationism and glorification of past violations are addressed through comprehensive public policies. I further call on the relevant authorities to ensure that sites of past human rights violations, including the aforementioned ones, are adequately preserved, converted in sites of memory, and placed under the civil jurisdiction.

Guarantees of non-recurrence

Education

The government informed about policies adopted at the federal level to include human rights education, including history teaching about the dictatorship, in school curricula. This is an important tool to prevent the recurrence of past violations. However, authorities at the state and municipal levels do not necessarily follow the framework established by the Ministry of Education, since the country’s federal structure provides autonomy to Brazilian states in policy and legal decisions. As a result, in many parts of the country, children do not receive human rights education or history teaching about the dictatorship. Political resistance from certain groups of society has further challenged these efforts.

In this regard, I noted with great concern the measures adopted during the previous administration to remove references to the dictatorship from school curricula and to censor or even criminalize teachers who educate on these subjects, accusing them of indoctrination. I recall that human rights education and the transmission of memory about past human rights violations are a duty of the State under international standards.

I was further informed that, during the previous administration, a policy of “civic-military schools” was adopted, according to which some public and private schools changed management to be run by military personnel who impose military practices and at times teach classes to civil students, leading to a concerning militarization of education. While the policy was disbanded by the current administration, the schools that had changed management were not reconverted as civic schools.

I call on the authorities to ensure the inclusion of human rights education, including history teaching about the dictatorship, in school curricula. State authorities should also ensure that revisionist or negotiationist theories about the dictatorship not be taught in schools.

Security Sector Reform

During the visit, I heard testimonies from a wide range of sectors of society about the persistence of State violence at the hands of law enforcement and armed forces. Summary executions, torture and arbitrary detention continue to pervade Brazil's society at alarming rates, affecting particularly indigenous peoples, peasants and people of African descent. Accountability for such crimes is rarely pursued which further emboldens and perpetuates such practices.

Concerns particularly focus on the violent operations conducted by the military police and other law enforcement agencies at the state level, with reported acquiescence, and sometimes collusion, of official authorities. The criminal actions of militias or paramilitary groups against these affected populations are also not adequately prevented or prosecuted.

The reform of institutions involved in human rights violations during dictatorship is a crucial tenet of transitional justice aimed at preventing the recurrence of violence, however such processes were not the focus of Brazil's process of transition. I am fully aware that Brazil's federal structure poses challenges to the adoption of reforms that encompass the entire security sector, as states maintain autonomy over law enforcement. However, each state entity and Brazil's nation as a whole are responsible for adopting measures to ensure that the operation of law enforcement agencies fully conform with international standards on the use of force and that any violation is adequately investigated, prosecuted and sanctioned.

I did not receive sufficient information regarding reforms implemented in the security sector and the armed forces after the dictatorship to transform them into institutions fully compliant with the rule of law.

At the federal level, some measures, such as human rights training and attempts to enhance civilian oversight of intelligence and law enforcement agencies, have been introduced. However, reports highlight these efforts as limited, ineffective, or undermined by corruption. While human rights education has been incorporated into police and military training, it needs significant scaling up. No detailed reforms were shared regarding structural or policy changes to prevent recurrence of past abuses, and no information was received from state-level authorities either. I did not receive any information from the state level authorities concerning any such reforms or training in their jurisdictions, but civil society reports indicate the absence of these measures.

I regret that the High Command of the Armed Forces and Ministry of Defence declined to meet, limiting insight into their reform efforts. I encourage them, and all relevant security sector actors, to submit written input by April 2025.

I was not informed of practices in place in security or armed forces to vet officials accused of having committed human rights violations during the dictatorship or afterwards.

The government is currently drafting a promising proposal for constitutional reform aimed at better integrating the security sector at the federal and state levels to overcome current challenges and inconsistencies.

I urge federal and state authorities to reform security and armed forces to align with international standards, ensure human rights training and historical education on past abuses, and implement effective vetting of officials involved in violations.

Indigenous peoples, peasants and people of African descent

The harm suffered by specific sectors of society has not been fully documented nor been the object of adequate contextualized State actions. The CEMPD and the CNV have focused primarily on crimes committed by security agencies against individuals because of their political activities, instead of addressing all States sponsored crimes, irrespective of their motives or of the victims' activities.

This is the case with most of the abuses committed by the State against indigenous peoples and communities not involved in the political resistance against the dictatorial regime. Indeed, while the National Truth Commission has provided an approximation of more than 8300 indigenous victims of State repression, based on a limited number of situations examined, this is the tip of the iceberg, as indicated, by many interlocutors but also in numerous other reports, including the Figueredo report.

In addition to credible allegations of numerous massacres, I have received information regarding mass displacements of indigenous communities, land grabbing, torture, enforced disappearances of children, and forced labour committed by State and non-state actors with the collaboration or collusion of State authorities. Many of these serious human rights violations occurred in the context of expansion of agricultural exploitations, large infrastructure works, and extractive industries

A great number of such violations are said to be exhaustively documented in the archives of the Indian Protection Service and of the National Foundation of Indigenous Peoples (FUNAI). The current legal framework affecting indigenous lands rights (marco temporal), which has led the judiciary to direct the State and indigenous peoples to conciliation efforts, omits to take into account that the dictatorship had already driven many communities out of their lands by the end of the regime in 1985 and requires evidence of indigenous land occupation in 1988.

The National Truth Commission has referred to more than 1000 cases of crimes committed against peasant communities advocating land reform, by State agents during the dictatorship. I have received credible information indicating that State authorities undertook important massive repression operations against peasants in this period. Very few efforts have been undertaken to establish the truth about the abuses that were committed against those sectors of the population, including against the supporters of land reform in the rural areas.

Similarly, very little has been established by the CNV regarding State violence committed during the dictatorship against people of African descent, their communities in rural areas and in the favelas surrounding or in major urban areas, but some investigations are gathered in the documentary collection maintained in the National Archives. In addition, I have received credible accounts of repressive operations, including arbitrary arrests, enforced disappearances, summary executions and torture, directed against this sector of the population by State authorities during the dictatorship. Many have reiterated that, while the violence and racism facing young men and boys of African descent today have increased since the return of democracy, it is a form of State repression that widely existed during the years of the dictatorship.

I call on the authorities to ensure the establishment of truth-seeking mechanism, such as national truths commissions, as well as the initiation of exhaustive *ex-officio* investigations, to address the allegations of gross human rights violations committed by State authorities during the dictatorship against

indigenous peoples, peasants and people of African descent. Criminal and other judicial actions, as well as measures to guarantee proper reparation, memorialization and non-recurrence should also be adopted and implemented promptly, in consultation with and ensuring the consent and participation of these victims.

Final observations

A wide variety of interlocutors pointed out that, throughout its history, Brazil has experienced large scale institutional violence targeted at different sectors of society. This violence has adopted the forms of colonialism, slavery, dictatorship and current instances of institutional violence directed towards the most marginalized sectors of society such as indigenous peoples, people of African descent and peasants. The harm produced by these practices has been experienced throughout the territory of the country and felt across successive generations. This continuum of violence is an indicator of the lack of comprehensive approaches to address serious human rights violations that encompass measures of truth-seeking, justice, reparation, memorialization, and guarantees of non-recurrence.

The insufficient implementation of such policies to deal with the aftermath of the dictatorship has regrettably led to recurrent attacks on democracy, human rights and the rule of law, as evidenced by today's police brutality (particularly the military police) against marginalized groups and by the alleged coup attempt of January 2023.

The Amnesty Law of 1979 -and its interpretation by the Federal Supreme Tribunal- is at the core of many of the challenges experienced since the end of the dictatorship, as it impedes the realization of justice, a critical foundation of any well-functioning society, weakens confidence in the State and among members of society, undermines the rule of law, and emboldens violence and gross human rights violations. Moreover, it has limited the scope of the truth seeking and reparation processes established to address the human rights violations of the dictatorship. This legislation also maintains a social divide between two camps, and undermines the foundations of international human rights law which provides that the State must respect and ensure to all persons under its jurisdiction the free and full exercise of human rights and freedoms, without any discrimination. As long as the right to truth and justice is not ensured for all victims of the dictatorship, this divide may persist and history may repeat itself.

This is compounded by the insufficiency of security sector reforms, the militarization of education in certain parts of the country, and the lack of history teaching about the dictatorship mainly at the state and local levels, all of which have weakened democratic values and have made society less perceptive to the risks of authoritarianism and recurrent violence.

To revert this path, Brazil must urgently implement and expand the transitional justice package proposed in the final report of the National Truth Commission. In my report to the Human Rights Council in September 2025, I will provide a roadmap for the adoption of a comprehensive transitional justice process with specific recommendations addressed to the authorities at federal, state and local levels, as well as civil society. I count on the willingness of these entities and the support of civil society and the international community present in the country to support their implementation to prevent further violence and attacks on democracy, fundamental rights and the rule of law.

I take this opportunity to express my solidarity to the victims and the relatives and to reiterate my willingness to accompany Brazil in its transitional process.

Thank you, Merci, Obrigado.