



**An oppressed majority:
The need for reparative policies to address the
imbalances and minorization process faced by Black
Brazilians**

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Abstract

This thesis addresses the under-researched dynamic in Brazil where black Brazilians despite being the demographic majority in the country are oppressed, facing systemic human rights violation and disproportional imbalances. This study aims to fill this gap in two parts. The first is by exploring the Brazilian history since the slavery period, identifying the historical violations endured by the black population in the country and how the State, through the abolition process and post-emancipation period, had a discriminatory agenda towards black Brazilians. Through its laws and population-whitening strategies, instead of creating reparative policies to integrate the former enslaves in the new society, the State created obstacles to their access to fundamental human rights. To explain how this cycle of violations cascaded into a current reality where black Brazilians are the majority but the oppressed, I employ the minorization process theory alongside with the structural racism and intersectionality theory. After this analysis, I conclude that the State's discriminatory agenda and omissions in creating reparative policies to integrate Black people into society have perpetuated a cycle of structural racism rooted in the slavery era. This cycle is powerful enough to minorize a demographic majority in terms of accessing their fundamental rights. In the second part, I explore how the legal framework in the country and the transitional justice framework support the implementation of reparative measures to address the disproportionate imbalances faced by black Brazilians as a slavery legacy. I conclude arguing that the Brazilian State has the legal obligation in implementing reparative policies to guarantee the fundamental rights of black Brazilians. As well, I argue that the mechanisms of the transitional justice model can help the Brazilian State to create policies that address the imbalances in a holistic way and focusing on the root causes of the structural racism and minorization process.

Key words: structural racism; minorization process; Brazil; black people; people of African descent; reparations; policies; transitional justice; reparative measures.

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List of Abbreviations

Abbreviation	Definition
CF	Constituição da República Federativa do Brasil de 1988 (<i>Federal Constitution of 1988</i>)
FBSP	Fórum Brasileiro de Segurança Pública (Brazilian Public Security Forum)
IACHR	Inter-American Commission on Human Rights
IBGE	Instituto Brasileiro de Geografia e Estatística (Brazilian Institute of Geography and Statistics)
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRRI	Inter-American Convention Against Racism, Racial Discrimination and Related Forms Of Intolerance
INEP	Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira (National Institute of Educational Studies and Research Anísio Teixeira)
IPEA	Instituto de Pesquisa Econômica Aplicada (Institute of Applied Economic Research)
MS	Ministério da Saúde (Ministry of Health)
PDSPT	Política Nacional de Desenvolvimento Sustentável dos Povos e Comunidades Tradicionais (National Policy for Sustainable Development of Traditional Peoples and Communities)
RQ	Research Question
SDA	Secondary Data Analysis
UDHR	Universal Declaration on Human Rights
UN	United Nations
US	United States of America

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1. Introduction

Human rights violations that occurred during past historical events often shape current realities, affecting the descendants of the victims and the power dynamics and imbalances which currently structure the society. That is the case of black people living in Brazil, who experience social inequalities and racism as a legacy of the slavery period, harms that persisted across multiple generations as a result of the State's failure to integrate this population in the society during the abolition and post-emancipation period (Ribeiro, 2018, p. 48).

Brazil, as a former colony of Portugal, received about 5 million enslaved African people (Rossi, 2018), which represents 36% of the 14 million enslaved people trafficked by European countries to the Americas (Allen & Chrisman, 2001, p. 50). This scenario is crucial to understand why Brazil is the country, outside the African continent, with the largest black population in the whole world (Carvalho, 2021), since black Brazilians¹ represent 56,1% (about 117,5 million) of the general population of the country - which is a total of 209,5 million people according to the Brazilian Institute of Geography and Statistics – IBGE (2022, p. 2).

In this scenario, Brazil portrays a very particular dynamic in which, on one hand, black Brazilians are the demographic majority while, on the other, is one of the most oppressed groups in the country. The roots of this oppression and odd social dynamic started in the slavery period, which started in the country around 1550, passing through to the abolition process, which took place only in 13 of May of 1888 and turned Brazil into the last country in the Americas to legally end the slave trade (Fernandes, 2008, p. 30). The oppression towards this population was extended through the post-abolition period occurred through the XX century, and cascaded into the current imbalances faced by black Brazilians on different layers of the social fabric, from education to work, health to the right to adequate housing, from representation in power spaces to their right to life. Black Brazilians face discrimination, inequalities and human rights violation for over four centuries and addressing those issues should be an urgent matter for the Brazilian government.

Due to that, this thesis has a dual focus of investigation, the first intends to analyze and explain how Black Brazilians are socially oppressed in spite of being the demographic majority in the country. For this propose, in chapter 3 I analyze the Brazilian historical context from the slavery to the post-abolition period, the discriminatory policies created by the Brazilian State

¹ An important note regarding this data is that IBGE classifies as black people the population that self-identify as 'preto', that are black people with dark skin, and 'pardos', that are mixed-race people with the predominance of black features (IBGE, 2022, p. 1).

and its omissions when it comes to the integration of black Brazilians in the society, and in chapter 4 I investigate how this historical context cascaded into the current inequalities faced by black Brazilians, by analyzing the social indicators and reported human rights violations regarding this population. The second focus of investigation is portrayed in chapter 5 and intends to analyze the need for reparative policies to address the imbalances reported through this thesis and to propose the transitional justice model as an adequate guide for policy making on the matter. Finally, chapter 6 presents the conclusions of the research conducted and recommendations for policy making, practice and further research.

1.1. Problem formulation and justification

Racial equality is a human rights issue with international recognition and protection, and the debate on the need for reparative policies to address the imbalances faced by minorities due to racism is not a novel theme. However, as enhanced above, Brazil faces a very particular social dynamic, where the oppressed ones are not a minority group, but, in fact, the demographic majority in the country. Owing to the historical injustices that will be exposed through this thesis, black people in Brazil currently experience different forms of social imbalances, being on the lowest level of the social structure regarding the indicators which represents social development and on the peak of this social structure regarding those indicators which represents social inequalities. In this scenario, policies to address this scenario are urgent, in order to provide to black Brazilians, and also to their future generations, the possibility of enjoyment of their rights and equal access to opportunities in the country. Therefore, this thesis is an opportunity to explore and denounce this situation and also to propose a framework to serve as a guideline for policy making on the matter.

Moreover, it is imperative to also mention that the political context currently taking place in Brazil is appropriate for the development of this thesis, since the Brazilian government recently created, in January 2023, an independent Ministry of Racial Equality – which in the previous government was only a secretariat under the Ministry of Human Rights. In addition, the referred Ministry has a secretariat which focuses essentially on the creation and monitoring of reparative policies to black people, named the Secretariat for Affirmative Action Policies and Combating and Overcoming Racism² (Ministério da Igualdade Racial, 2023). Hence, the currently political

² Called ‘A Secretaria de Políticas de Ações Afirmativas, Combate e Superação do Racismo’ in Portuguese.

context is an important opportunity to the dialogue about reparative policies for black Brazilians, enabling the possibility of this thesis to contribute to the discussion and hopefully to the policy making process on this matter.

1.2. Research questions and aims

Through the research conducted in this thesis, I aim to contribute to the debate of racial equality by exploring and denouncing the historical imbalances faced by black Brazilians, demonstrating that the legacy of slavery in Brazil and the discriminatory agenda sponsored by the government through the post-abolition process was potent enough to establish and ground a social dynamic where a demographic majority is the oppressed group. In addition, I intend to contribute to the reparative policies debate by proposing the use of the transitional justice framework to guide the policy making on the matter.

In this sense, I aim to respond the following three Research Questions [RQ]:

RQ1) “Why black Brazilians are oppressed, in spite of being the demographic majority in the country?”

RQ2) “Why reparative policies must be adopted by the Brazilian State to address the imbalances faced by black Brazilians?”

RQ3) “Why the transitional justice model is suitable to guide the policy making process of reparative policies for black Brazilians?”

1.3. Methodology

To answer the three proposed research questions, I felt the need to find methods which could allow me to expose a history of oppression under decolonizing lens, enhancing the knowledge produced by those who belong to the oppressed group – here black Brazilians. To best suit this aim, I decided to conduct qualitative research by mixing three methods for collecting and analyzing the data to be used on this thesis, which are historical analysis, secondary data analysis (SDA) and documentary analysis, as explained through the following sections.

1.3.1. Historical analysis

As conceptualized by Berg (2012, p. 315), historical analysis is a qualitative method that intends to recapture, in a systematic and organized way, the nuances of past events that have influenced and shaped the current reality. Is often used to uncover the unknown or to tell the hidden parts of history that are crucial to the understanding of present social dynamics, such as race relations, being a useful method for social scientist from different areas and not only historians (Berg, 2012, p. 315). Therefore, owing to the need to delineate the historical context which culminated into the minoritization process and oppression faced by black Brazilians, this method is suitable to the scope of this thesis, mainly providing the means to answer RQ1. For this purpose, the historical research method will be used in chapter 3.

In chapter 3, this thesis builds on secondary sources of history, which are described by Berg (2012, p. 319) as written documents, such as texts, books, articles or newspaper stories that provide the knowledge on historical events and are produced by authors who, in spite of not being immediately present on the given event, have the knowledge and credibility to account those events. For Whitaker and Fitzpatrick (2021, pp. 296-297), this credibility relates to a ‘methodological distrust’, a process that should be adopted by researchers to avoid reproducing narratives that perpetuate the perspectives and interest of the powerful. In decolonial studies, this critical engagement with the literature is a must, to introduce other perspectives in the production of knowledge and to challenge homogeneous academia canon of white, male and global north scholars, which was for many years – and still is – considered as the primary legitimate sources of knowledge (Hooks and West, 2016; Ribeiro, 2012; Trapp, 2019). Hooks (1989, p. 22) also focus on bringing decolonial perspectives to the production of knowledge by accounting for the perspectives of those in the margins, not only to talk about their pain but also about their resistance.

Therefore, the historical context presented in chapter 3 of this thesis will be primarily based on the literature and secondary data from previous research produced by black Brazilian authors, women and men who contributed to narrate the Brazilian history through the perspective of the invisibilized (Santos, 2020, p. 97), and, as supporting literature, will rely on contributions of reports from the Interamerican Commission on Human Rights [IACHR] and non-black authors that adopt a decolonial perspective. To interpret the data collected through these sources, I will employ the theoretical framework of the minorization process, structural racism and intersectionality – detailed in chapter 2.

1.3.2. Secondary Data Analysis (SDA)

For collecting the data for chapter 4, in which I will investigate how the historical context delineated in chapter 3 cascaded into the current inequalities faced by black Brazilians, I will have as my main sources the data of official census published by the government's bodies and research institutions, as the Institute of Applied Economic Research³ [IPEA], the Brazilian Public Security Forum⁴ [FBSP], the Brazilian Institute of Geography and Statistics⁵ [IBGE], the National Institute of Educational Studies and Research Anísio Teixeira⁶ [INEP], the Ministry of Health⁷ [MS], and also the reports from the Inter-American Commission on Human Rights [IACHR], the United Nations [UN] and non-governmental institutions working in the protection of human rights in the country. I will also draw on supporting data from literature and newspaper articles. I will conduct SDA to interpret the data obtained, considering that is a suitable method for analyzing data from census statistics and reports (Sarantakos, 2013, p. 304) and also since, for the scope and time framing of the present thesis, it would not be feasible for me to collect my own data as primary source. In addition, I will interpret the data obtained by engaging with the theoretical framework of the minorization process, structural racism and intersectionality.

1.3.3. Documentary research

Documentary research is a method in which documents are used as the raw data, is a method that is differentiate from the literature review one since, in addition to reviewing the content provided by the sources, the researcher also conducts a secondary analysis of the content and attach significance to the findings by engaging with the theoretical framework proposed (Whitaker and Fitzpatrick, 2021, p. 285). This method will be employed in chapter 5, allowing me to examine how the Brazilian legal framework supports the creation of reparative policies for the black population and how the transitional justice framework can guide the policy making on the matter. My main sources will be domestic legal documents, international conventions ratified by the country, the different reports on transitional justice provided by the UN and also

³ Called 'Instituto de Pesquisa Econômica Aplicada' in Portuguese.

⁴ Called 'Fórum Brasileiro de Segurança Pública' in Portuguese.

⁵ Called 'Instituto Brasileiro de Geografia e Estatística' in Portuguese.

⁶ Called 'Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira' in Portuguese.

⁷ Called 'Ministério da Saúde' in Portuguese.

the existent policies created by the government to address the imbalances faced by black Brazilians. I will engage with the findings obtained through the analysis of those documents by employing the transitional justice framework and supporting literature on reparative policies.

2. Theoretical framework

2.1. Previous research on racism in Brazil and reparations for black people

Due to the colonial history of Brazil, the studies around racism and racial dynamics in the country have been conducted for over a century, although the contribution of black authors to the issue have been invisibilized through Brazilian history (Santos, 2020, p. 89). Those contributions are the base and starting point for this thesis and, in that sense, I will not only engage with the literature produced but collaborate with it by addressing some of the gaps that I identified through my research, which will be further outlined. I will also engage with non-Brazilian and non-black authors as supporting literature, as international black authors which contributed to the understanding of racial power dynamics experienced by black people worldwide.

Firstly, different studies from black authors explain how the process of abolition took place in the country as a *quasi*-freedom, since on one hand, the slavery was formally abolished but, on the other, black people continued to be treated as subhumans (Nascimento, 1978; Ribeiro, 2018; Gonzalez, 2020). They explain how this process was conducted with no creation of integration policies, situation that pushed the former enslaved population to the margins of society not only geographically, which triggered the creation of the favelas, but also socially, creating obstacles for black people to access labor, education and dignity (Fernandes, 2008; Gonzales and Hasenbalg, 1982; Sodré, 2023). Other studies complement those by explaining how the Brazilian government, through the XX century, relied on racist theories to create policies regarding the access to work, lands and public security, creating obstacles for black people's development in that new economy model (Schwarcz, 1993; Carneiro, 2018).

Different authors introduce to the debate an analysis of the State's discourse and positioning during the past century, enhancing how they had a denial narrative regarding the racism taking place in the country by justifying that, since there were no segregation laws in the country – as the Jim Crow laws in the US or Apartheid in South Africa –, Brazil was a country where there

were equal opportunities to all races, what is considered by different authors as a myth of racial democracy (Carneiro, 2011; Nascimento, 1978; Domingues, 2005). This denial positioning cascaded into a cycle of neglect towards black Brazilians and the consequent imbalances historically faced by this population.

I noticed through my literature review that the studies that were mainly produced in the past century or in the early 2000's did not recognize – or explicit stated – that the black population was and is a demographic majority in the country, and in great part of them this population is portrayed as a minority. This can be due to the fact that the racial census in that period had limitations when it comes to reporting the racial identity of the population, due to the disinterest of the government to produce and provide this information and also due to the ideological process of 'whitening' of the population that occurred in the country, where, by relying on eugenic theories – further explored on chapter 3 - the government aimed to portrait Brazil as a white country (Piza and Rosemberg, 1999, pp. 132; Nascimento, 1978, pp. 74-75). However, despite the lack of accurate data regarding the racial identity of the Brazilian population during the past century, studies demonstrate that, since 1872 – the first census in the country after the independence – it is possible to attest that the black population was the demographic majority in the country (Westin, 2022; Nascimento, 1978).

Hence, nevertheless the crucial contribution of the mentioned literature to expose the history through decolonial lens, and the importance of the knowledge produced regarding the racial dynamics occurring in the society since the slavery period, there is a gap in the literature to expose this peculiar and harmful social dynamic in which a population in spite of being the demographic majority is the oppressed group, and to explain how racism in Brazil was – and still is – a structuring factor of the society in a sense that can create a dynamic of minorization of an entire population⁸. One literature that is considered a pioneer in that sense is the book entitled “Maioria Minorizada: um dispositivo analítico de racialidade” – free translated to Minorized Majority: an analytical tool of raciality – by the sociologist Richard Santos (2020). In this book, the author introduces the minorization process as an analytical tool for understanding and interpreting the racial dynamics that takes place in Brazil, in which the black population is historically oppressed in spite of being the demographic majority, a process that

⁸ Recent studies started to recognize this dynamic, by addressing to the black population no longer as a minority, but as a “minoritized group” or a “political minority” in an attempt to portrait social groups – as women and black people – that, in spite of not being a numerical minority, are historically excluded from power spaces and have barriers to the full enjoyment of their human rights, being therefore a minority in those contexts (Magalhães, 2021; Akotirene, 2019). However, besides the recognition of black Brazilians being the demographic majority by this new literature, the gap still remains.

was researched by him during his masters' and doctoral theses (Santos, 2020, p. 21), theory that I will engage through this thesis as detailed in section '2.2.'

Through my literature research I also identified another gap, related to the one referred above. I identified that, since few studies adopt this process of minorization to explain the imbalances currently faced by black Brazilians, is scarce the scholarship that approach the need of reparative policies to address this particular dynamic. I understand that this is an important gap to be addressed, since the debate around reparative policies to address past and present wrongs often portraits as the target beneficiaries a racial group that is a minority in that scenario, such as indigenous peoples across the globe (Gómez and Aguilar, 2011, p. 271) and black people in the US (King and Page, 2018, p. 739). Therefore, I intend to address this gap by demonstrating that reparative policies are also needed in this context and that the transitional justice framework is suitable for the case of Brazil and to guide the policy making on the matter.

It is important to state that, throughout this thesis, I employ the term reparative policies to encompass all the policies needed to repair the harmful legacy of slavery, including affirmative actions, special measures and the mechanisms of the transitional justice model – that I will delineate in section '2.3.' and chapter 5 –, not only reparations *per se*. I here make this differentiation because, although some authors (such as Domingues, 2018; Sant'Anna, 2022; Carvalho, Durans and Santos, 2020; King and Page, 2018) use the term reparations in a broader meaning in order to encompass all the measures and policies needed to address the imbalances faced by black people worldwide, reparations *per se* is a mechanism of the transitional justice framework, therefore employing it as a broad concept could create a misunderstanding for the reader.

The debate about reparative policies for black Brazilians is not new. The first movement to address this agenda in the country was the Movimento Pelas Reparações – Movement For Reparations in a free translation –, created in 1990 (Domingues, 2018, p. 334). The movement popularized the term 'reparations' and brought it to the forefront of the national debate on the racial equality (Domingues, 2018, p. 339). After this movement and hitherto in Brazil, the debate around the topic surround different forms of reparative measures, from financial reparations to affirmative actions (Sant'Anna, 2022; Ribeiro, 2018; Nascimento, 1978). However, I could not identify scholarship (i) addressing the topic accounting for the particular dynamic of Brazil, where a majority is the oppressed group, and (ii) demonstrating that reparative measures are also needed in that case. In that sense, I intend to address this gap on

the present thesis, by using the transitional justice model as a framework for justifying the suitability and for guiding the creation of reparative policies for black Brazilians.

2.2. The minorization, structural racism and intersectionality theories

The minorization theory will be the main analytical framework of this thesis, with the aim to interpret the racial dynamics taking place historically in Brazil. This concept was first used in the past century by the philosopher and anthropologist Lélia Gonzalez, who referred to the black population as a ‘minorized majority’ in an attempt to explain the dynamics faced by this population in the country, where they are a demographic majority but the minority when it comes to power and social spheres, such as work, housing and education (Rodrigues, 2022). This concept was scrutinized by the sociologist Richard Santos, who transformed the ‘minorized majority’ in an analytical tool of raciality, introducing to the academia the idea of the minorization process, which is a theoretical device to interpret the power relations, race and racism in the Brazilian society (2020, p. 47). As state by Santos (2020, p. 23), black Brazilians face a minorization process in the extent that they are the demographic majority in the country and, yet, are a minority regarding the access to human rights, public services and to political and economic representation.

Santos (2020, pp. 47-48) introduces three levels of analysis inside this theory, in order to understand how the minorization process operates. The first one is related to what he titles as ‘black corporeality’ and is the level where it is analyzed the data of the presence – or representation – of black people in different social and power spaces, such as the academia and decision-making positions in public, political and private institution. It is also the level that is employed to identify how the State historically creates obstacles for the access of black people to these spaces through its actions and omissions, reserving to them merely the access marginalized spaces. The second one is the ‘individuality’ level and relates to the analysis on how the racism impacts one’s psyche and how the State’s agenda of oppression is harmful for black people’s identity and mental health. The third one relates to ‘citizenship’, not in a sense of political participation *per se* but related to the access and enjoyment of rights, being employed to identify how the State’s structures, actions and omissions create obstacles to their access to fundamental rights and a cycle of human rights violations towards black people in the country, marginalizing them.

Alongside with those levels of analysis, in order to support the understanding of the racial oppression faced by black Brazilians in the country, I will also employ the structural racism theory, under the lens of the philosopher and academic Silvio de Almeida (2019). For the author (Almeida, 2019, p. 15), structural racism is a social theory that aims to understand the imbalances faced by black Brazilian by analyzing how the racial dynamics structure the social organization of the country. He argues that, since the racism in the country is a root element of the society's formation, a racist formation that organizes the power dynamics at the economic and political spheres of the society, racism cannot be understood as a mere pathology or as a social moral deviation, it must be seen as a structural factor of the social order in Brazil (Almeida, 2019, p. 15). For Almeida (2019, p. 37), the structural racism organizes the society and is manifested through Brazil's history in four levels: the ideological level, the political level, the legal or rights level, and the economical level.

The ideological level relates to the social imaginary that is created and reproduced through the country's history. This social imaginary is based on beliefs and stereotypes that are rooted in the ideologies of racial inferiority and supremacy originated during the slavery period and the post-abolition period through the eugenics theories that took place in the country – that will be explored in chapter 3. The author (Almeida, 2019, p. 47) states that the permanence of racism requires, firstly, the creation and recreation of a social imaginary in which certain phenotypical characteristics or cultural practices are associated with race and, secondly, that social inequality is naturally attributed to the racial identity of black individuals, reason why the society become indifferent to the way in which certain racial groups hold privileges based on its racial identities.

The political level on the structural racism theory relates to how the State, as the political form of contemporary society, historically reproduces and maintain racism through its institutions. According to Almeida (2019, p. 71), the political level of racism was reproduced and supported – and still is – by the Brazilian government through its sovereignty and the power originated from it. The author (Almeida, 2019, p. 71) explains that the State had the power to institutionalize racism in its political form, firstly creating a division of human species during the slavery period, introducing hierarchies and distinctions according to the classification of races, then establishing which group is superior and inferior, which group deserves to have policies to its development and which group is disposable.

The legal or rights level turn the lens to the legal institutions that reproduce the political power in a racist society. For Almeida (2019, p. 83), if the laws, norms and policies are produced by the institutions that are controlled by the political and racial group that detain the power, it

means that they are an extension of this power and reproduce the racism and biases existent in those institutions. However, the caveat introduced by the author (Almeida, 2019, p. 83) is that the laws and policies are mechanisms for social cohesion and, therefore, can also be used as a mechanism to correct or as a remedy to combat racism, for instance through reparative policies.

As the last level for analysis inside the social theory of structural racism, there is the economic level. In this level, the author (Almeida, 2019, p. 96) states that, when analyzing the social fabric and the social dynamics in Brazilian, one must consider that race serves as a determining marker of economic inequality. It is a marker since it portrays the economic dynamics in a racist society, where racism makes poverty to be ideologically incorporated almost as a natural or inherent condition of black and indigenous people, naturalizing the insertion into the labor market of a large number of people identified with these social groups with lower wages and precarious working conditions, almost legitimizing the inequalities faced by them (Almeida, 2019, p. 105).

For this analytical framework, Almeida (2019, p. 32) considers that these four levels of structural racism must be considered when analyzing the racial dynamics taking place historically in Brazil, and a caveat is made by the author once he highlights the importance of considering intersectionality through the referred analysis. The intersectional theory to be used for the analysis of the different layers of racism experienced by black Brazilians in this thesis will be guided by the studies of the black Brazilian feminist and researcher Carla Akotirene (2019). Akotirene's work is suitable for the analysis to be conducted in this thesis since she does not rely only on the disproportionate harms that women face when racism intersects with gender, she also enhances how transgender people (Akotirene, 2019, p. 16) and men (Akotirene, 2019, p. 31) are affected by different tentacles of racism and how the harms are mutated and aggravated, enhancing different oppressions according to the intersection of one's race and gender (Akotirene, 2019, p. 25). Therefore, I will employ those theories through chapter 3 and 4 to explain the historical minorization process and current imbalances faced by black Brazilians.

2.3. The transitional justice framework

Different justice theories have been proposed and conceptualized by scholars that aim to provide a guideline or a feasible framework for addressing social inequalities and repairing past wrongdoings. From philosophical conceptualizations of justice (Rawls, 1999; Murphy, 2017)

to the theoretical frameworks there are often human rights-based, as the transformative, distributive, restorative and transitional justice models (Boraine, 2006, p. 18; Gready and Robins, 2020, p. 281), different approaches have been proposed in order to guide and justify the need for reparations for victims of those wrongdoings (Hellsten, 2018, p. 173). In this scenario, having a wide range of approaches that could serve as a framework for this thesis, the transitional justice one is the most suitable for this thesis.

Firstly, it is suitable since the transitional justice framework is the model that seeks to address the legacies of massive human rights past and present abuses (De Greiff, 2012, p. 34; King and Page, 2018, p. 739) in order to provide social transformation in a context of social and political transition from a period of violations to a period of equality (Murphy, 2017, p. 195). It is important to highlight that the concept of transition inside this model has been evolving and continuously expanding through the years (Hellsten, 2018, p. 169) overcoming that primarily idea of transition as a post-conflict period, to a wider and holistic one (Boraine, 2006, p. 18). In that sense, I adopt for this thesis a conceptualization that merges different scholarship on the matter (Gómez and Aguilar, 2011; Murphy, 2017; Boraine, 2006; King and Page, 2018), to understand that the term signifies the process within a period that emerges from an old order of historic injustices, exclusion and violence to a new order of equality and fairness that had not yet been born. Hence, the framework on this first level will allow me to analyze – alongside with the minorization theory – how the legacy of slavery created a scenario where black Brazilians still not have the full enjoyment of their human rights, living in a transitional period that must be addressed to achieve equality for this population.

Secondly, the suitability of this framework relates to the mechanisms provided by it. According to King and Page (2018, p. 746), the transitional justice is the model of justice theories that is more focused on the root causes that gave rise to the harmful legacies of rights violations, not only identifying the effects of the past events, but also addressing the causes of it and the different levels of social imbalances through its mechanisms. Those mechanisms are composed by measures that can encompass justice and accountability, truth-telling, memory, reparations, guarantees of non-repetition and institutional reforms or a combination thereof (United Nations Security Council, 2004, p. 4; De Greiff, 2012, p. 34).

Therefore, I will thoroughly explore this framework in chapter 5 in order to guide my analysis regarding the existent legal framework in the country to support the creation of reparative policies, the measures already adopted by the government and the gaps in that sense,

and will allow me to propose the employment of the transitional justice model to guide the creation of reparative policies to address the racial imbalances taking place in the country.

3. The slavery legacy and the [non]integration process of black people in the society

As introduced in the methodology section ‘1.3’, I conducted my historical data collection and analysis having as my main sources the scholarship produced by black Brazilian authors, in order to tell the story of Brazil through the lens of the oppressed, to give voice to the unheard and to give visibility to black authors from the global south as valid and credible sources of knowledge. The importance of telling the history of black Brazilians through the lens of black authors is to break the imposed discourse regarding the Brazilian history, which has been always told by white scholars who lacked the awareness and interest to engage with the racial dynamics that structured the country (Gonzales, 1984, p. 231). Also in that sense, the Nigerian feminist author Chimamanda Ngozi Adiche (2019, p. 9) argues that the danger of reproducing a single story, through the lens of those in the power, is to reproduce the biases and stereotypes of the dominant group regarding the oppressed ones, not acknowledging the multiple and valid perspectives regarding different historical events. Bearing that in mind, I narrate below the country’s history acknowledging the resistance and contributions of black Brazilians to the formation of the country.

3.1. Slavery context in Brazil:

The colonization process in Brazil started in 1500, by Portugal, and it is estimated that the arrival of the first enslaved people, removed from the African continent, in the country was in 1550 (Nascimento, 1978, p. 49). It is a challenge to attest how many enslaves arrived in the country during the slavery period, since in 1891 – three years after the abolition of slavery in Brazil – the Minister of the Treasury, Rui Barbosa, commended the burning of all the official documents related to the slave trade. Nevertheless, is estimated that up to 5 million Africans (Nascimento, 1978, p. 50; IACHR, 2023, p. 11; Rossi, 2018) were trafficked to Brazil from

1550 to the end of the slavery period, in 1888, what makes Brazil the country in the Americas which received more Africans as enslaved (IACHR, 2023, p. 11).

In order to validate and justify the enslavement of Africans, the catholic church and the colonizing states – such as Portugal – promoted a discourse of dehumanization of black people, categorizing Africans as subhumans or savages (Gonzales, 1984, p. 230; Nascimento, 1978, p. 61). Based on this discourse, black enslaved people were considered inferior beings and nothing more than property, being subjected to different forms of violence to guarantee the subservience of this population in relation to the white enslaver owners, being violence a form of control and domination of the enslaved (Fernandes, 2008, p. 73).

Different forms of violence were faced by the black enslaved, violences that are currently recognized as human rights violations (Ribeiro, 2018, p. 42) and crimes against humanity (*Durban Declaration and Programme of Action* [Durban], 2002, p. 16), and that were conducted by the enslaver owners as a mechanism of control of black people. This violence was not only physical but also psychological and the forms of harms were different towards women and men. I do not aim to cover all forms of violence and domination experienced by the enslaved in this chapter. Instead, it will focus on specific instances to better understand the historical injustices and minorization process against black Brazilians.

Firstly, as a birth control measure, the distribution of men and women at the plantations was purposely disproportionate, there were more men than women so they could not reproduce in a fast pace (Nascimento, 1978, p. 61). However, since they wanted to profit and have more enslaved, the black women were constantly raped by the enslaver owner and, when they got pregnant, the babies were then sold to a different farm to, on one hand, punish that woman, and on the other, so the owners could profit with the sell (Gonzales, 1984, p. 230). In parallel, due to the inhuman treatment received by the enslaved, such as the lack of proper nutrition, the physical assaults and the extensive workload, the mortality among the enslaved was excessively elevated, the average life expectancy was of 33 years and the rate of child mortality was 88% (Nascimento, 1978, p. 58). The suicide rates were also high among the enslaved, and those who tried to escape or rebel against the system were killed by the enslaver owner (Nascimento, 1978, p. 59).

The black enslaved also had their individuality and culture suppressed by the colonizers. The enslaved were prohibited of practicing their faith and African religions, being forced to be baptized as soon as they arrived in the country and punished when caught worshipping their

religions (Nascimento, 1978, p. 101). As stated by Nascimento (1978, p. 70) the different forms of violence towards the black enslaves were not only a mechanism of domination, but a strategy to control the demographic growth of the black population. This control stemmed from the discourse of white supremacy and the colonists' fear of Brazil becoming a predominantly black nation. For them, the growth of the black population could represent not only a sign of underdevelopment in the country, but mainly it could represent a potential threat of rebellion and the seize of the power from the enslave owners (Nascimento, 1978, p. 71).

The government and enslave owners sponsored the enslaves' social and physical death, suppressing their culture, religion and identities, by not providing the adequate nutrition and workload, by raping the woman and girls and selling the babies, by punishing them with physical injury and killings and many other forms of destruction and domination of black people. It is possible to attest that the individuality level of the minorization theory is present, since the State and slave owners oppressed black people's culture and religion by all means, and due to the white supremacy ideology, treated black people as subhumans and property. The ideological level of structural racism has its roots in this period and continued through the post-abolition period as further explored. Also, the political level of structural racism is rooted here, where the State through its standards and institutions threatened black lives as disposables. It is also important to highlight how the intersection of race and gender operates as a factor to culminate different forms of oppression during the slavery (Akotirene, 2019, p. 31), since the form of punishment towards black women and men were different, while the male enslaves were often punished by starvation and physical injury, the female enslaves were punished by raping (Carneiro, 2018, p. 49).

Due to all the harms faced by the black enslaves, rebellions and escapes were conducted throughout the slavery period. Those enslaves who managed to escape formed the Quilombos, which were communities formed by those escapees, communities that still exists in Brazil and represent the resistance and protection of African-Brazilian culture (IACHR, 2023, p. 9). It is imperative to also state that the black workforce was imperative for the economic survival and growth of Brazil as colony and, as stated by Nascimento (1978, p. 49) and Ribeiro (2018, p. 48), without the enslaves the economic structure of the country would have never existed and neither its independence from Portugal. In spite of that, they were never compensated for their contribution for the creation of the country, neither integrated in the society after the abolition, as I will delineate below.

3.2. The abolition process and the lack of integration policies

The abolition in Brazil was a process that arose both from the pressure of the international community, due to the Industrial Revolution and the need of salaried workforce for the new economic model through the emergence of consumer markets (IACHR, 2023, p. 12), and from the abolitionist movement in the country. This movement had as significant leaders former slaves such as Luiza Mahin, a black woman who led different insurrections in the country and her son Luiz Gama, who is considered the first black lawyer and was responsible for freeing many slaves during the abolition process, as the black abolitionist André Rebouças, that was the main actor to claim for an agrarian reform to allocate lands to the former slaves, and also the Quilombos, which played an important role on rebelling and supporting the abolition cause (Nascimento, 1978, p. 59).

Notwithstanding the pressure for the abolition, Brazil was the last country in the Americas to proceed with it (IACHR, 2023, p. 12) and it was a long process that took almost 40 years to be completed through the implementation of laws⁹ that progressively ceased the slave trade in the country, however, this process disregarded the integration of black people in the new economic model. In 1888, through the Law Áurea, the abolition of slavery was formally enacted, nevertheless, such law did not provide any reparative measures or guarantees of fundamental rights to this population, such as the rights to housing, education or work in adequate conditions (IACHR, 2023, p. 10), neither to address and compensate the physical and psychological harms endured by them (Ribeiro, 2018, p. 48) or to address the racism, stigmatization and the white supremacy discourse rooted in the social imaginary (Nascimento, 1978, p. 65).

According to different authors (Nascimento, 1978, p. 65; Fernandes, 2008, p. 30; Ribeiro, 2018, p. 48; Magalhães, 2021, p. 21), the abolition of slavery was not a freedom act, but the beginning of a new era of oppression, where black people were thrust into a society that lacked the desire to integrate them or recognize their humanity. Instead of providing lands or any form of compensation for the former slaves, the State created a policy of monetary compensation for the former slave owners, in order to balance their loss of workforce in their plantations (Fernandes, 2008, p. 30). Without any support or lands provided by the State or the former

⁹ See IACHR, 2023, p. 10 and Nascimento, 1978, pp. 64-65 for more information on how those laws that were implemented during the abolition process were disingenuous, lacking any effective measures to truly end the regime of oppression towards black people.

enslave owners, the black population had to find means to survive and started to locate themselves in the margins of the city, in regions that were considered not adequate for housing, lacking infrastructure, access to public services and basic sanitation, regions that are currently known as Favelas or slums (Ribeiro, 2018, p. 48). In addition to the housing issue, in a scenario where the racist ideology of inferiority of black race remained in the country, the society was unwilling to hire and pay for a workforce that had previously been unpaid. As a result, to find means to survive, the black population had to accept subordinate positions in similar conditions as those of the slavery, being underpaid and having an unreasonable workload (Fernandes, 2018, p. 32).

According to Nascimento (1978, p. 65), the lack of integration policies was an agenda of social cleansing by the State¹⁰, in order to control the black population growth by denying them the access to basic means to survive and develop in the new economic model. The Interamerican Commission on Human Rights (IACHR, 2023, p. 12) states that the abolition of slavery meant only the end of forced labor carried out by the Afro-descendant population, but its legacy persisted, since the stigmatization and differential treatment continued to hinder their full access to fundamental rights. This scenario can be understood through the citizenship level of minorization, where the State's omissions in integrating black people in the society created obstacles to their access and full enjoyment of their fundamental human rights, what perpetuated through generations the cycle of violations towards this population, destinating them to the margins of the society geographically, in the Favelas, and socially by not accessing their fundamental rights, as explored below.

3.3. Post-abolition period: from eugenics theory to the myth of racial democracy

The non-integration of black people in the society was not the only strategy of the government to proceed with the minorization of this population. The state also implemented different policies and laws that privileged the integration and development of white people, Brazilians and Europeans, over the black population. Before mentioning the main

¹⁰ The author also refers to it as a form of genocide, concept that will not be employed in this thesis but might be acknowledged as a denounce to the historical and systemic violations endured by black Brazilians.

discriminatory laws and policies, is a must to uncover the ideologies that were behind the State's agenda.

As delineated above, the beliefs of black inferiority that arose during the slavery period remained in the society through the abolition process and the government did not proceed with any measures to dismantle this racist imaginary in the society. This cascaded in an ideology that guided different laws and discriminatory dynamics faced by black people through the twenty century and it was introduced in the country as a scientific theory, called the eugenics theory. As described by Nascimento (1978, p. 67) and Magalhães (1999, p. 21), the eugenics theory aimed to explain through science the inferiority of the black race. For the eugenics theorists, one of the reasons that the inferiority of black race could be attested was through the miscegenation of both races, since the white race would prevail over the black genes, starting a process of whitening of the population (Nascimento, 1978, p. 71).

According to authors such as Nascimento (1978, p. 71), Rangel (2015, p. 18), Magalhães (2021, p. 21) and Munanga (1999, p. 53), the eugenics theory served as a mean to legitimize on the State's agenda of whitening of the population by incentivizing the white Europeans migration to the country. For the eugenicists, a developed country could not have a large black population, reason why this agenda was considered an strategy to clean the country from what some eugenicists politicians from the last century called 'the black stain' – referring to the black population (Nascimento, 1978, p. 71). This strategy was in fact adopted by the State, which enacted on 28th June of 1890 – two years after the abolition – the Decree n. 528, which determined that it was free the entrance in the country of all people capable of working, with the exception of black and brown people from African or Asian descent, which had to have an special authorization from the National Congress to be accepted in the country (Nascimento, 1978, p. 71). It is estimated that until 1900 Brazil received 803.000 European migrants (Prudente, 1988, p. 140).

A second law on the matter was enacted on 18th September of 1945, the Decree n. 7967, in which the president Getúlio Vargas determined that, during the admission of immigrants in the country, the government should proceed in order to preserve and develop the European ascendancy of the Brazilian population (Nascimento, 1978, p. 71). These laws served both to foment the immigration of white workforce to the country, to substitute black people, and as an attempt to make the white population grow demographically, overcoming the growth of the black population (Rangel, 2015, p. 18). It is important to highlight that the incentive of immigration of white Europeans was not only through the laws mentioned above, but the

government also conceded lands as incentives for them, better taxes, as well as jobs opportunities (Ribeiro, 2018, p. 48) while created obstacles to the acquirement of lands by the black freed population, such as setting higher taxes and higher prices to them (Oliveira, 2021, p. 168).

The State also tried to minorize the black population by criminalizing African Brazilians and their culture, and by creating barriers to their access to basic rights like land, work, and education. Regarding the criminalization of black culture, there was the persecution of Afro Brazilian religions – such as Umbanda and Candomblé – by the government, which incarcerated leaders from these religions in an attempt of erasing from the country a religion that they considered no to be compatible with the white European standards (Nascimento, 1978, p. 102; Gonzales, 1984, p. 236). The black culture was also criminalized through the Criminal Codes of 1830 and then of 1890 – two years after the abolition – that criminalized the practice of Capoeira, a martial art mixed with dance moves, which is now considered a symbol of resistance of black culture but in this period was a crime, and whoever was caught practicing it was imprisoned (Carneiro, 2018, p. 75).

In addition, due to the racism that remained in the society, the employers preferred white workers over black ones, due to that, black people had only access to informal work and positions that had conditions analogue to slavery, that were low paid and had a heavy workload (Fernandes, 2008, p. 91). As another strategy to minorize black people, the crime of vagrancy¹¹ was created, which authorized the police to arrest the black population – mainly black man – that could not prove being employed¹² (Sodré, 2023, p. 52). The access to education was also difficult to black people. During the slavery, the black population was forbidden to attend to schools (Araújo and Silva, 2005, p. 68) and after the abolition, and with no integration policies, some schools still did not accept black people as students and, when they did, it was a hostile environment to black people because of the racism that they faced and, also, because of the eugenics ideologies that were taught in the schools (Oliveira, 2020). In addition, black people's economic situation made some of them work in earlier ages, not being feasible for them to conciliate it with the school times (Silva and Araújo, 2005, p. 72).

¹¹ the crime of vagrancy started to be enforced in 1830 and became a Law in 1941, through the Decree n. 3.688 (Sodré, 2023, p. 52).

¹² According to Gonzalez (2020, p. 40) this was one of the cruelest mechanisms of persecution of black people, since they were the ones who struggled to find jobs in that new economy model, due to the lack of integration policies, being imprisoned when did not succeed to find opportunities against all the odds.

Regarding their right to be part of the political life in the country, although there was no explicit law prohibiting black Brazilians to vote or being elected after the abolition, one of the requirements to allow someone to vote or become a politician was to be literate (Arantes, 2018, p. 13). However, considering the obstacles in accessing education, a significant part of the black population was illiterate, being estimated that less than 30% of the black Brazilians were considered literate by the year of 1940 (Rosemberg and Piza, 1996, p. 117). Due to this restriction, the participation of black people in the political life of the country was limited.

Those processes can be understood through the individuality level of minorization, since the State, through its policies and laws, associated black Brazilians' identities and culture with inferiority, criminality, marginalization and vagrancy, functioning as an attempt of erasure of black Brazilian culture and identity. Their criminalization can also be analyzed through the black corporeality and citizenship level of minorization, since the State did not created policies to their full enjoyment of rights or to include them into social spaces such as schools and political spheres, what created a structure that merely reserved to them the access to marginalized spaces such as the prisons and Favelas. Also, the economic level of structural racism can be perceived through the policies and social dynamics that privileged white workers over black ones.

In parallel with the discriminatory practices, there was also the State's denial to acknowledge the racism and the racial imbalances taking place in the country. This denial is interpreted by black authors (Gonzalez, 1984, p. 226; Nascimento, 1978, p. 63; Ribeiro, 2018, p. 73; Carneiro, 2018, p. 59) as the 'myth of racial democracy', a narrative adopted by the state to portrait Brazil as a country that had equal opportunities and treatment to all races, since there was no segregation laws as the Jim Crows in the US and the Apartheid in South Africa. This narrative was a maneuver of the government to evade its responsibility to create policies to repair the imbalances endured by the black population due to the slavery period (Trapp, 2019, p. 59). Also, during the dictatorship in the country [1964-1985], the government framed the debate about race as an act of discontent with the government and prohibited it (Nascimento, 1978, p. 79).

Those discriminatory laws and policies represent the political and rights level of structural racism, demonstrating that the State reproduced and maintained the racism through its institutions, institutionalizing racism through its actions and omissions in addressing and recognizing the racial inequality in the country and in integrating the black population in the society after the abolition, not guarantying their access to basic fundamental rights. In addition,

the ideological level that started in the slavery period, persisted through the past century through the eugenics theory and cascaded into the myth of racial democracy through the denial of government to acknowledge the racial imbalances in the country and its responsibility to address them

The myth of racial democracy remained as the official position of the government until the democratization process and only started to shift after the *Federal Constitution of 1988* [CF] in which, after the pressure of the black movements in the country (Rodrigues and Gomes, 2018, p. 930), was included the protection of Quilombos, racial equality and the responsibility to combat racism, discrimination and marginalization – as further explored in chapter 5. However, the shift on the narrative was not enough to fully integrate the black Brazilians in the society, to allow the full enjoyment of their fundamental rights or to dismantle the racism rooted in the society.

3.4. Structural racism as a slavery legacy

Although there were no segregation laws in the country, the lack of integration policies, the discriminatory laws that privileged white people over the former enslaved, and the government's denial regarding the racism existing in the country created a context in which the black Brazilians were virtually excluded from the society. They were marginalized and minorized, not having effective access to fundamental rights such as education, housing and work, and being criminalized for practicing their faith, culture or when they were unemployed. As Nascimento (1978, p. 93) argues, the racism in Brazil was so powerful that it was not even necessary to have an official segregation system to exclude an entire population from the society and the full enjoyment of rights, since the racial discrimination was effectively institutionalized by the government as well as diffused into the social, psychological, economic, political and cultural fabric of the country's society, being almost a masquerade apartheid.

The minorization process and structural racism are a consequence of the historical omissions regarding the integration of black people in the society after the abolition, and of all the racist ideologies and institutionalized policies in the country that privileged the integration of white people and migrants over the black population. In that sense, the IACHR (2023, p. 12) stated that the socioeconomic vulnerability that black people face in Brazil to this day derives from the institutional and systemic violence and historical omission suffered by them, which are a

slavery legacy and a consequence of the State's failure in integrating this population in the society. Through all the actions and omissions of the State, and the racist ideologies rooted in the society, the black population was and still is deeply marginalized and minorized, in spite of being the demographic majority in the country.

4. The majority yet the oppressed: inequalities currently faced by black Brazilians

The UN (2021, p. 07) assert that black people are marginalized and more likely to be poor and suffer disproportionately from violations of human rights. They (UN, 2021, p. 07) also state that due to the historical dehumanization of people of African Descent, rooted in the colonial times and sustained and cultivated until now, black people face racially motivated violence and criminalization by the society and official institutions. As I will explore below, in spite of being the demographic majority in the country, representing 56,1% of the general population (IBGE, 2022, p. 2), black people face disproportional imbalances when compared to white people, that represents 43,5% of the population (IBGE, 2023, p. 41).

4.1. Social imbalances and human rights violations

As narrated in the previous chapter, the historical discrimination and marginalization of black people in the country created a dynamic where black people are the oppressed ones in spite of being the demographic majority. This dynamic is a minorization process that persist to this date, where structural racism is rooted in different levels of the social fabric, creating obstacles for black people to access and fully enjoy their fundamental rights. As stated by Carneiro (2018, p. 22), to understand the Brazilian society one must understand that raciality is an important dimension of the social dynamics, since being white or black in the country is associated with polarities of privileges and imbalances resulting from belonging to each one of these races. In that sense, I outline below some of the main imbalances faced by black people in Brazil. It is important to notice that the human rights here outlined are all interrelated, but I chose to separate them to help the reader to understand the varying degrees of violations faced

by black Brazilians and how they face a minorization process in different levels of the social fabric.

4.1.1. Life and violence

Regarding black Brazilians' rights to life and personal security¹³, the government fail by action and omission to protect them, as recognized by the IACHR (2023, p. 39). This can be attested by the data regarding violence and the impacts to black Brazilians life in the country. Regarding the violence rates in the country, black Brazilians are 2.9 times more likely to be killed in the country compared to white individuals (IPEA, 2023, p. 55). The amount of black Brazilian that were victims of homicide from 2011 to 2021 is 445.527, which means that 4.22 black people are killed every hour in the country (IPEA, 2023, pp. 53-59). This higher risk of homicide can also be perceived when there is an intersection with gender. Brazil is the country with the higher rates of homicide of transgender people in the whole world (Associação Nacional de Travestis e Transexuais [Antra], 2024, p. 6), and among the victims 79,8% were black people, while this rate decreases to 20% regarding white people (Antra, 2024, p. 43). Black women and girls are also the majority of victims of feminicide, being 61.1% of them, and of sexual violence, being 56.8% of them (Fórum Brasileiro de Segurança Pública, 2023, pp. 15-16).

Regarding police lethality, black people are 83.1% of the victims and from this group, young black men and boys from 12-25 years old are 75% of the victims (FBSP, 2023, p. 32). Black people are also the majority of the incarcerated people, being 68.2% of them, and men represent 95% of this group (FBSP, 2023, p. 17). Concerning the rates of suicide, the risk of a black male teenager to be a victim of suicide is 45% higher than of a white male teenager (Ministério da Saúde [MS], 2018, p. 29), and the rate among black boys are 5.5 times higher than among black girls.

4.1.2. Economic and Political Participation

¹³ Rights protected in article 5 of the Brazilian Federal Constitution [CF], article 3 of the Universal Declaration on Human Rights [UNDHR] and articles 6 and 9 of the International Covenant on Civil and Political Rights [ICCPR].

Regarding the economic¹⁴ reality experienced by black Brazilians, they represent more than 70% of those living below the extreme poverty line (IBGE, 2022, p. 1), while white people represent more than 70% of the richest people in the country (IBGE, 2019, p. 4). Regarding the income, the average per capita household income of the white population – R\$ 1,866 – is about the double of the average income of the black population – R\$ 955 (IBGE, 2022, p. 5). When comparing income by sex and race, we see that black women are affected by the greatest inequality, receiving less than half of what white men earn, meaning only 44.4% of the income received by them. In this sector, white women have an advantage not only in relation to black women, who receive only 58.6% of their salary, but also in relation to black men, who receive proportionally to 74.1% of their income (IBGE, 2019, p. 3). Black people are also the majority of the unemployed and sub-employed in the country, representing 54.1% of this group whereas white people are only 35.2% (IBGE, 2022, p. 3). They only occupy 29.5% of the executive positions in private and public institutions, while for the white population these rate increases to 69% (IBGE, 2022, p. 1).

Regarding the political¹⁵ sphere, they are only 24.4% of the parliament, in spite of being the demographic majority in the country, while white individuals are 75.6% of this group (IBGE, 2019, p.1). The situation exacerbates when considering the representation of black women that, in spite of being the larger population in the country, representing 28% of Brazilians (Ministério da Igualdade Racial, 2023, p. 5), they appear as only 2.5% of the Brazilian congress whereas white men represent 62.6% in spite of being only 20.3% of the population (Instituto Pólis, 2022).¹⁶

4.1.3. Housing and Environment

The UN (2021, p. 6) attests that people of African descent across the globe are more likely to lack the access to adequate housing and live in hazardous and segregated neighborhoods, and

¹⁴ Right protected in article 3, III of the Brazilian CF, article 22 of the UNDHR, article 1 of the ICCPR and articles 1 and 3 of the International Covenant on Economic, Social and Cultural Rights [ICESCR].

¹⁵ Right protected in article 14 of the Brazilian CF and article 3 of the ICCPR and article 6 of the ICESCR.

¹⁶ The lack of political representation of black Brazilians are rooted in different factors linked to structural racism. One refers to financial resources, since electoral success is known to be closely linked to the number of resources available to finance campaigns, which is an obstacle to the black population that are economic vulnerable in the country (IBGE, 2022, p. 15). A different one regards to the racist ideology that black people, mainly black women, are not capable of being in power positions that require knowledge and expertise (Ribeiro, 2018, p. 73). For more information on the matter, I recommend the reading of Pinheiro, 2023 and Gaspar, 2017.

that is also the case of Brazil. The IACHR (2023, p. 22) states that there are over 5 million homes located in Favelas, where the majority of population is black – due to their economic vulnerability – and lack access to adequate housing, security, basic services, peace and dignity, elements necessary to guarantee the full exercise of the right to adequate housing¹⁷. It is estimated that almost 70% of the population living in the Favelas are black, and those are the communities more vulnerable to be disproportionately affected by environmental disasters (Instituto Brasileiro de Análises Sociais e Econômicas, 2022). It is important to notice that Quilombolas are also affected by the lack of access to drinking water and basic sanitation in their communities, and also victims of illegal activities such as illegal mining, land grabbing and installation of megaprojects on their lands, which affect their health, environment, right to land and natural resources (IACHR, 2023, p. 23)

According to the Intergovernmental Panel on Climate (2022, p. 12), people living in vulnerable neighborhoods in South America, such as the Favelas in Brazil, are 15 times more likely to die from floods, landslides and storms than people that live outside these regions. Across the country, including vulnerable communities that are not Favelas, black people remain being the majority – 62% – living in regions that are disproportionately affected by higher risks of landslides and floods (Nunes, 2023). As exposed in the previous section, black people face economic vulnerability in the country, and the intersection with this social injustice with the lack of access to adequate housing creates a phenomenon called environmental racism¹⁸, which indicates that environmental degradation and climate emergency disproportionately impact black people in the country (Rangel, 2016, p. 137).

4.1.4. Health

The lack of access to adequate housing, basic sanitation and water was a risk factor for the vulnerable black population during the pandemic, which could not proceed with the hygiene recommendations or with the social distancing measures due to the overpopulation and poor condition of their houses (Instituto Pólis, 2022). This was one of the factors that contributed for

¹⁷ Right protected in article 6 of the Brazilian CF, article 25 of the UNDHR and article 11 of the ICECSR.

¹⁸ The right to a safe, clean, healthy and sustainable environment is protected in article 225 of the Brazilian CF and in the UN Resolution A/HRC/RES/48/13 of 2021.

a scenario where the mortality rate among black people due to Covid was 5 times higher than among the white population (Conselho Nacional de Saúde, 2021).

Although the country has a public health care system – called Sistema Único de Saúde (SUS) –, it is neglected by the government and it lacks proper infrastructure and personnel (Ehmann, 2020), what affects intensely the black people in the country, since they are 80% of the population that depends on this free health care (IACHR, 2021, p. 23). They face disproportionate imbalances when accessing their right to health¹⁹. Only 20% of the black population have access to private quality health care, whereas about 40% of white people can access it (IBGE, 2019, p. 30). Black people face higher rates of early deaths, of maternal and infant mortality, higher prevalence of chronic and infectious diseases and high rates of violence, and the racism experienced by them has a negative impact on these indicators and creates obstacles for their access to the healthcare system (MS, 2017, p. 23). Also, black women face the highest rate of motherhood mortality, that is 60% among them compared to 34% among white women (MS, 2017, p. 23). They also suffer disproportionately from obstetric violence and discrimination in the system, being neglected regarding their pain during labor and having their rights violated in different stages of their pregnancy (Curi, Ribeiro and Marra, 2020, p. 163).

4.1.5. Education

Regarding the right to education²⁰, the illiteracy rate among black people in Brazil is 9.1%, what is over the double of the rate among white people, 3.9% (IBGE, 2019, p. 1). Regarding the rates of access to the basic education, only 48.3% of black people had graduated from high school, while this rate increases to 61.8% among white people (IBGE, 2024, p. 3). The rate of early leavers from basic education are also higher among black people, that represents 71,5% of this group compared to only 27,4% of white individuals (IBGE, 2024, p. 3). One of the factors that justifies this scenario is the economic vulnerability of black students and their need to prioritize work over studies (Silva and Alves, 2023, p. 7). A different factor is the racial discrimination faced by them in schools and the school curriculums that focus on Eurocentric standards, not appreciating the contributions of the black community to the country's history, what reinforces the marginalization stereotypes around this population (Serafim, 2022, p. 27).

¹⁹ Right protected in article 6 of the Brazilian CF, article 25 of the UNDHR and article 12 of the ICESCR.

²⁰ Right protected in article 6 of the Brazilian CF, article 26 of the UNDHR and article 13 of the ICESCR.

Trough that, members of the black population feel psychologically discouraged and do not have the support from the government to continue their studies (Almeida, 2019, p. 100).

Another imbalance regards to the access to quality education. Although there is an expansion of the public education service in the country, its quality is inferior when compared to private education and is estimated that less than 10% of all students in the twenty best private schools in Brazil are black (Campos, 2021, p. 2). As consequence, the chances of white students from private schools being approved on higher education institutions are 2.6 times greater than black students from public schools (INEP, 2020, p. 35). This reflects on the access to higher education, since among the population of 25 years old only 9.3% of black people had graduated in this level of education whereas the rate is 22.9% among white individuals (Silva, 2020, p. 23).

4.1.6. Afro-Brazilian culture and religion

Religious intolerance²¹ in the country victimizes disproportionately people that belongs to Afro-Brazilian religions, such as Umbanda and Candomblé, and racism is the motive behind the high rates of violence against members and leaders of these religions, that are demonized for not conforming with the Christian hegemonic standards (Nogueira, 2020, pp. 44-45). The number of denounces regarding religious intolerance raised in 106% during Bolsonaro mandate, the former Brazilian president which had a discourse against those religions, and there was an increase on reports of violation of temples, persecution and murder of leaders from Afro-Brazilian religions (Bernardo, 2023).

Regarding black Brazilian culture²², if in the past century Capoeira was criminalized, in this century is Funk music that faces stigmatization and prosecution. Funk music is a genre that arises from the Favelas as a cultural expression to denounce, trough the song's lyrics, the violations faced by their population and the reality lived in those regions (Carvalho, 2012, p. 195). Although those events are not formally criminalized currently in Brazil, this stereotype persisted and remain justifying police incursions on the Favelas during the Funk parties. In 2019, nine teenagers were murdered and several others were injured during a police incursion

²¹ The right to freedom of religion is protected in article 5, VI of the Brazilian CF, article 18 of the UNDHR and article 18 of the ICCPR.

²² Right protected in article 215 of the Brazilian CF, article 27 of the UNDHR, article 27 of the ICCPR and article 15 of the ICESCR.

during one of the most well-known Funk parties in São Paulo called “Festa da DZ7”, and still up to this date the police officers involved in the case were not held accountable (Alessi, 2019).

4.2. The outcome of a minorization process: an extended transitional period

Due to this scenario, the IACHR (2021, p. 21) raised its concern regarding all the imbalances and the high violence and homicide rates among black people in the country, stating that the State’s negligence in addressing the issue suggests that there is in the country a process of social cleansing aimed at exterminating sectors of the society that are considered undesirable, marginal or potentially delinquent. The IACHR (p. 21) also declares that the cycle of racial violence is rooted in cultural patterns of ethnic-racial inferiorization and subjugation disseminated in Brazilian society, generating historical structural discrimination, prejudice and inequality, which, in turn, result in maintenance of a perverse culture of racial domination in an endless cycle of violations. That is an expression of the ideological, political, rights and economical level of structural racism, in which the state reproduces racism through its institutional power by its negligence and omissions on protecting and guaranteeing the access and full enjoyment of basic human rights by black Brazilians, and also by its action when creating policies to criminalize them and through the police lethality.

Santos (2020, pp. 47-48) in his theory explains that, in the country, structural racism is powerful enough to create a process of minorization of an entire population that, despite of being the demographic majority, face disproportionate and rooted oppressions in many levels of their lives that causes them to be the minorities when it comes to representation in power spaces and access to rights. The minorization levels of black corporeality, individuality and citizenship were conducted by the State through the last century and persist to this day, where the State remain creating obstacles, through its actions and omissions, to black people accessing power spaces and decision making positions and to the enjoyment of their basic fundamental rights, victimizing the black population through its police violence and also by not addressing racism, which impacts black people’s mental and physical health. Also, it is important to account for how the intersection of race and gender dictates how black women, men and transgender people will be victims of different tentacles of racism, since the intersectionality under black feminist lens demonstrate that, in the country, gender is a determinant factor to decide to which form of violence a black person will be the target.

In this scenario, the Brazilian historian and anthropologist Lilia Schwarcz (2019, p. 30) states that, by not providing any kind of integration or reparation policies to black people in the past century, the Brazilian State created an extended transitional period, since black Brazilians still experience violations of their rights as a legacy of slavery, waiting for integration and reparative policies to access their fundamental rights in the same way that white people in the country do.

5. The need of reparative policies for black Brazilians

Almeida (2019, p. 83) states in the rights level of his structural racism theory that, if laws and policies can reproduce the racism, it also can be a tool to dismantle it and be used as a mechanism to remedy imbalances and correct the racism in the country. As previously mentioned, the lack of integrations and reparative policies in the past created an extended transitional period currently experienced by black Brazilians, who still face social imbalances as a legacy of slavery. Corroborating, the UN (2021, p. 21; 2019, p. 8) states that the imbalances currently faced by people of African descent is a continuation and transgenerational damage rooted in the colonial times and in the failure of States in effectively remediate the harms historically faced by this population.

In this scenario, considering that the Brazilian State, through its omissions and actions, did not provide any integration policies to black Brazilians during the post-abolition period, I argue that there is a need for the government to proceed with reparative policies in a holistic form – through all the social levels of imbalances – in order to address the imbalances delineated on the previous topic and to bring equality to black people in the country, ending the historical cycle of violations towards this population. Therefore, in this chapter I will explore the existent legal framework to support the responsibility of the government to create reparative policies to black Brazilians and how the transitional justice model can guide the policy making on the matter. I highlight that although the responsibility of European colonial powers, such as Portugal, has been recognized internationally regarding the human rights violations committed against black people in colonial contexts (UN, 2019, p. 12), the scope of this thesis focusses on the responsibilities of the State of Brazil which, as an independent State, perpetuated those violations and has the current legal duty to promote and protect the rights of black Brazilians.

5.1. Legal framework to support the need for reparative policies

Brazil went through a process of democratization after the end of the dictatorship and, as a result, the *Federal Constitution of 1988*²³ was created, and after the pression of the Black Movement in the country, the obligation of the State to combat racism, marginalization and discrimination became a constitutional matter (Magalhães, 2021, p. 31). In its article 3, it asserted that the State has the responsibility to eradicate poverty and marginalization, reducing the social imbalances and promoting the welfare of all its population, without any discrimination of race, color, origin and gender (*Constituição Federal [CF]*, 1988). In its article 5, 6 and 14 is stated that everyone is equal before the law with no discrimination, being entitled of the fundamental rights to life, freedom, equality, security, property, housing, political rights, culture, work and income, and constitute racism as non-bailable and imprescriptible crime (*CF*, 1988). In its article 68 the Quilombos communities have their right to land protected and the obligation of the State to issue the respective property titles (*CF*, 1988).

Although there is no explicit mention in the Constitution regarding the obligation of the State in creating reparative policies, through the previous chapter was possible to attest that black people in the country are having their constitutional rights violated. In this scenario, the government has the constitutional responsibility to implement measures to eradicate their marginalization and to protect their fundamental rights.

Brazil has also ratified the UN core human rights instruments (UN, 2024), and the obligation of the State to create reparative measures to remedy human rights violations are provided through different conventions, in particular articles 8 of the Universal Declaration of Human Rights, 2 of the International Covenant on Civil and Political Rights and 6 of the International Convention on the Elimination of All Forms of Racial Discrimination (UN, 2005, p. 2). Regarding this last convention, on its General Recommendation n. 34, the Committee on the Elimination of Racial Discrimination (UN, 2011, pp. 2-3), has stressed that all the States parties have the duty to urgently implement all the reparative policies and implement the necessary national strategies in order to overcome the structural imbalances and discriminations rooted in the regime of slavery and endured until this day by people of African descent.

Another important document that was a milestone regarding the obligations of the States to act against racism and the imbalances faced by black people was the *Durban Declaration and*

²³ Called 'Constituição da República Federativa do Brasil de 1988 - CF' in Portuguese.

its Programme of Action. The Black Movement in Brazil had an important participation in the regional and global discussions and elaboration of the Declaration, and different measures were adopted by the Brazilian government in the domestic level based on this document – as further explored (Conectas Direitos Humanos, 2021). On paragraph 108 of the Declaration, it is recognized the obligation of the States to implement reparative policies for black people, to ensure the full enjoyment of their fundamental rights and to guarantee their appropriate representation in educational, health care, social services, housing, political parties, parliaments and employment, in the judiciary and all levels of the social fabric (*Durban*, 2001, p. 41). In the Programme of Action, paragraph 166, is stressed the obligation of the States to adopt the measures to ensure the adequate reparations for victims of racism and to prevent the repetition of those acts (*Durban*, 2001, p. 109). Due to the State’s commitment after signing the Declaration, an important post-Durban achievement in Brazil was the adoption of the Statute of Racial Equality²⁴, in 2010.

The Statute was a milestone for the protection and promotion of the rights of black people in Brazil, and it was the first document to introduce, in its article 4, the obligation of the government to create reparative policies to equally integrate black Brazilians in the society. In this article is explicitly stated that the government must implement policies to repair the social imbalances and discriminatory practices historically faced by black Brazilians in public and private life, and to promote their equal access to education, health care, culture, security, work, housing, media, public loans, land and justice (*Estatuto da Igualdade Racial*, 2010). It is also asserted on article 53 that the State has the obligation to adopt measures to hinder the police violence against black people.

In addition, the country has ratified and recently included in its domestic framework, through the Decree n.º 10.932/2022, the *Interamerican Convention Against Racism, Racial Discrimination and Related Forms of Intolerance (ICRRI)* and, due to the legislative process regarding human rights conventions in the country, the referred convention has now status of constitutional amendment, which means that the country has the constitutional obligation to promote and protect the rights stated in that document (Conselho Nacional de Justiça, 2022). Therefore, due to the articles 5 and 6 of that convention, the Brazilian State has the explicit and constitutional responsibility to create reparative policies to guarantee the full enjoyment of the fundamental rights by the black people in the country, promoting their full integration in the

²⁴ Called ‘Estatuto da Igualdade Racial’ in Portuguese.

society, creating equal access to social and political opportunities and combating racism and discrimination towards this population in all levels of the social fabric (*ICRRI, 2013*).

However, despite the legal framework to support the creation of reparative policies in the country, few measures were implemented and are insufficient to address the multifaceted social imbalances experienced by black Brazilians, as I'll delineate below.

5.1.1. Progresses and gaps on the matter

Besides the Statute, the country adopted other measures after signing the Durban Declaration and Programme of Action. The first one was through the Law 10.639 of 2003, that determined the inclusion on the schools' curriculum studies about the African history, the Black movement and culture in the country and the contributions of this population to the country's history (*Lei do Ensino Afro-Brasileiro, 2003*). However, after more than twenty years, schools in more than 70% cities in the country had not included the obligation in their curriculums (Pimentel, 2023). Another reparative measure was the National Comprehensive Health Policy for the Black Population²⁵, that was created to provide the guidelines to be implemented in all the levels of the public health care system in order promote the integral health of the black population, to eliminate the imbalances and discrimination faced by them when accessing the health care system (MS, 2013), nevertheless, the IACHR attested that only 28% of the cities apply this policy (IACHR, 2021, p. 20).

An impactful reparative measure that might be acknowledge is the Quota Law n. 2.711 of 2012, which created quotas of 20% for the access of black and economic vulnerable students to public universities and, also, created programs to facilitate and provide scholarships for those students to access private universities in the country, called Higher Education Student Financing Fund and University for All Program²⁶ (Gife, 2022). After these policies, there was an increase of 400% of black students accessing the higher level of education (Gife, 2022), what is an important advance for black people in Brazil. Also, the impacts of the Quota Law extend to the economic sphere of the black population. Research conducted by non-governmental institutions (Empodera and Box 1824, 2022) in the country concluded that the access to the higher education allowed the Quota beneficiaries to have access to less precarious jobs, which

²⁵ Called Política Nacional de Saúde Integral da População Negra in Portuguese.

²⁶ Called 'Fundo de Financiamento ao Estudante do Ensino Superior' and 'Programa Universidade Para Todos' in Portuguese.

contributed to the financial improvement of their families. However, as I delineated in section ‘4.1.5’, black Brazilians still face disproportionate imbalances regarding their access to education, work and income when compared to white people in the country.

A last reparative measure that might be mentioned is the Decree n. 6.040 of 2007 which created the National Policy for Sustainable Development of Traditional Peoples and Communities - PDSPT²⁷, in order to protect indigenous and Quilombolas communities, their right to culture, to health, to food security and to lands and natural resources (PDSPT, 2007). However, as stressed by the IACHR (2021, p. 24) less than 7% of the Quilombos’ land titles were issued by the government and other violations of their rights have been committed.

Through that, it is possible to attest that there was some progress when it comes to reparative policies to black Brazilians, however the few policies implemented by the government are still not enough to dismantle the imbalances and minorization faced by the black population and there is a need to adapt and monitor the implementation of them in order to guarantee their efficacy. Despite the legal framework mandating the State to promote equality for black Brazilians and implement measures to eliminate the discrimination and marginalization faced by them, there is still a lack of reparative policies in many different social levels, such as security and the combat of police violence, basic education, the access to economic and political participation, the protection of their religion and culture, and their right to adequate housing, work and income, as I exposed in the previous chapter.

Regarding the gaps on the legal framework to effectively address the human rights violations endured by black Brazilians, the UN Committee on the Elimination of Racial Discrimination (UN, 2022b, p. 15) on its last observations to the periodic reports submitted by the country, stated that despite the anti-discrimination laws and policies created by the government, there is still a lack of implementation of broad-based reparative policies to address the different levels and root causes of structural racism faced by black Brazilians as a legacy of colonialism and slavery. Throughout the document (UN, 2022b), the body stressed its concerns regarding the lack of effective policies and programmes to address the imbalances regarding access to adequate housing, political representation, work and poverty, education, health and also the racially motivated homicides and persistent impunity for many forms of racial discrimination occurring in the public and private spheres in the country. The Committee (UN, 2022b, pp. 7-8) recommended that the State should adopt and strengthen the use of reparative policies to

²⁷ Called ‘Política Nacional de Desenvolvimento Sustentável dos Povos e Comunidades Tradicionais’ in Portuguese

address the imbalances faced by black Brazilians in the enjoyment of their human rights, and that the State is responsible for designing, implementing and carrying a thorough assessment of the policies, laws and programmes implemented on the matter.

The UN (*Durban*, 2002, p. 32; 2023, p. 8) stresses that the lack of political will and moral courage by the States are the greatest barriers to the creation of reparative policies to overcome the legacies of the colonialism and slavery faced by people of Afro descent worldwide. Nonetheless, after centuries of discrimination towards black Brazilians, an important step on the matter was the creation of the Ministry of Racial Equality in 2023 and its special secretariat [SEPAR], as mentioned in section 1.1., which has an agenda for the creation of reparative policies for black Brazilians (Ministério da Igualdade Racial, 2024). Although the development and implementation of those strategies are still ongoing, this is a milestone and an opportunity to push for the creation of effective reparative measures on the matter.

Hence, there is a need and an opportunity for the creation of reparative policies to overcome the imbalances and the minorization process faced by black Brazilians, in order to repair the State's omissions and historical marginalization towards this population and to comply with their current obligation stated in the country's domestic and international legal framework. The IACHR (2023, p. 23) stated that the Brazilian State need to create policies that address in a holistic way the imbalances and the root causes of the structural racism faced by the black population in the country, in order to effectively bring equality to this people. In that sense, I propose the employment of the transitional justice model for the creation of reparative measures on the matter.

5.2. The transitional justice model and its suitability for the case of Brazil

As explained in section '2.3.', the transitional justice model provides a framework that focuses both on the root causes of human rights violations and the contemporary effects of them, since it provides measures to address in holistic way the different levels of imbalances faced by victims of gross violations of human rights. My contribution to the debate of reparative policies to black Brazilians in the country is to demonstrate that the transitional justice model serves both to provide a guide to policy making on the matter, but also as framework to justify the need for those policies to address the imbalances faced by black Brazilians.

That is needed since there is a remaining discourse in the country, both in the political and social spheres, that the imbalances faced by black Brazilians is a mere consequence of class imbalance and not racism, and for them creating reparative policies would not be reasonable since it would not contemplate white Brazilians that also face imbalances, reason why they argue for development measures for all Brazilians (Ribeiro, 2018, p. 82). However, as explained by Almeida (2019, pp. 114-116), class and race in Brazil are socially overdetermined elements, since historically racism was and still is a factor of division between and within classes, determining who will have disproportionate obstacles to the full enjoyment of their rights and who will have privileges according to their race, reason why policies that specially focus on this population are needed.

It is important to also mention that in Brazil, some argue that the violations endured by black people during the slavery were not considered crimes during the colonialism, as to justify that the State would not have an obligation to repair the harms committed against this population (Sant'Anna, 2022, p. 72). Employing the transitional justice framework helps to provide legitimacy to the need of reparative measures by overcoming the alleged intertemporal principle as a hurdle. According to the UN (2019) extensions in time for international responsibility occurs when “(a) an act is ongoing and continues to a time when international law considered the act to be a violation; or (b) the direct ongoing consequences of the wrongful act extend to a time when the act and its consequences are considered internationally wrongful” (p. 13), and both those exceptions apply for reparative measures related to the violations committed during the slavery and post-emancipation period, due to the continuing legacies of imbalances currently endured by black people in Brazil.

In that sense, considering that the *Durban Declaration* (Durban, 2002) on its paragraph 13 stated that “slavery and slave trade are a crime against humanity and should always have been so” (p. 16) and that the currently imbalances and gross violation of human rights endured by black people worldwide are rooted in that period, the UN (2021, p. 5; 2019, p. 15) recognized in different reports the suitability of the transitional justice model and the legitimacy of reparative policies to address the mentioned imbalances currently faced by people of African descent. They also recognize that people of African descent were the victims of the slave trade in the past and that, currently, people of African descent remain to be the victims of the discrimination, racism and disproportionate imbalances as a consequence of the slavery period (UN, 2023, p. 3) and of the failure of the states in addressing the harms and promote their integration during the post-emancipation period (UN, 2019, p. 5). In those reports (UN 2021,

p. 5; 2023, p. 6) is stated that the transitional justice model provides a framework through its mechanisms to address the root causes of colonial violence and the consequent current discrimination and imbalances faced by black people worldwide.

The mentioned mechanisms are accountability, truth telling, reparations, memorialization and guarantees of non-repetition. It is imperative to mention that there is no one-size-fits-all model to apply these mechanisms, reason why they should be adapted according to the specificities of the context of each country (UN, 2023, p. 8). In the case of Brazil, is important to bear in mind the particularity of the minorization process, to say that the victims of the imbalances are a demographic majority. Notwithstanding, the UN (2021, p. 5) explains that the mechanisms are suitable to address the imbalances currently faced by black people worldwide, presenting the key forms in what those mechanisms should be applied to the creation of reparative policies. Also, reparative measures alone cannot overcome racial discrimination and all its impacts, however, are an important step to address the social imbalances faced by black people and towards equality for this population (UN, 2019, p. 6) and an urgent measure that need to be adopted to address the harms of minorization process currently endured by black Brazilians.

It is imperative to mention that I do not intend to propose which policies might be implemented by the government, but to enhance how the mechanisms of the transitional justice model can provide a pathway and the key points that the government must consider to create effective reparative policies that are able to address the different levels and root causes of the human rights violations faced by black Brazilians. In order to do so, I will combine the guidelines provided by the UN in its reports, the concerns raised by Brazilian authors regarding the need of reparative policies for black Brazilians, alongside with the needs I identified on my findings through chapter 3 and 4.

Firstly, a caveat must be made regarding the guidelines proposed by the UN. The body (UN, 2014, p.11; UN, 2021, p. 14) stresses that development programmes, those that invest in basic services that will impact not only the victims but the whole population, cannot be considered reparative policies since they do not target victims specifically. However, due to the specificity of the case of Brazil, where the victims are in fact the majority of the country, I argue that development programmes that focus on basic services can be considered reparative policies when they focus in addressing the needs of the black population when accessing those services. That is because, as I demonstrated so far, the black population rely primarily on the public services available in the country, such as the public education and health care system, therefore,

policies that invest in those basic services will mainly affect the access of this population. In this scenario, the key points delineated below touch upon measures that need to be addressed by the State also within development programmes, such as in the public education and health care system, accounting for the imbalances faced by black Brazilians when accessing those and other fundamental rights.

The first mechanism relates to justice and accountability regarding the obligation of the State to investigate and punish the perpetrators of the violations of human rights committed towards black people, in order to bring justice for the victims and prevent that such crimes remain overlooked (UN, 2021, p. 7). Owing to the extended time that had elapsed since the slavery and the abolition process, the prosecution of the perpetrators is no longer an option (UN, 2021, p. 9), however, the impunity of those that commit racism and violations of black people is a reality in the country, in special regarding police agents, and perpetrators of acts of religious and cultural intolerance, creating a normalization of the violence and death of black people, as their life and identities were disposable (Almeida, 2019, p. 71). The implementation of the justice and accountability mechanism bring to the Brazilian State an attention to the need of holding accountable the perpetrators by creating reparative measures that can address the impunity and prevent others to perpetrate such violations of human rights.

Truth telling is the mechanism that focus on gathering information about the past violations in a way that encompass the reality of harms and discrimination historically committed by the country towards black people, and also how the past violations perpetuated and have implications in the present (UN, 2021, p. 11; *Durban*, 2002, p. 37). That is needed to combat misconceptions and marginalization stereotypes rooted in the social imaginary regarding this population (UN, 2023, p. 10). Black Brazilian authors raise the concern that part of the society still support the myth of racial democracy and there is still a lack of awareness regarding how the past neglect and wrongdoings committed by the State cascaded into the current reality faced by black Brazilians, and also the contributions of this population to the country's history are still invisibilized (Carvalho, Durans and Santos, 2020, p. 600; Domingues, 2018, p. 340; Batisti, 2013, p. 37). This mechanism can help the State to create reparative policies that allow the population to have open access to the true history of the country's formation and to combat the racist stereotypes that still remain on the social imaginary.

Reparations regards to the measures needed to remedy the harms endured by black people in different levels of the social fabric, by restitution, rehabilitation, satisfaction and compensation (UN, 2021, p. 23). Restitution focuses on restoring the rights of a population, and

for people of African descent that remain experiencing the legacies of slavery and colonialism, it refers to mechanisms that can restitute their lands, culture and natural resources (UN, 2021, p. 23). For the case of Brazil, considering the lack of policies in the post-abolition process to guarantee lands to the former enslaves, I argue that reparative measures of housing and land distribution, in safe and adequate areas, might be implemented as a restitution measure, also accounting for the right to lands and natural resources of the Quilombolas.

Rehabilitation regards to the need of addressing the mental and physical health of the victims of human rights violations (UN, 2021, p. 16) and I enhance the need of the adopting an intersectional perspective by the State when creating such measures, accounting for the different root causes and effects that black men, women and transgender people face. Satisfaction focuses on the need of public apologies and recognition, by the State, of the violations committed towards black people, not only as a symbol but also to acknowledge its responsibility in addressing and avoiding the continuation of these harms (UN, 2021, p. 16). Compensation is understood by the UN (2021, p. 17) as the level that aim to repair economically all the assessable damages caused by the violations. In the case of Brazil, due to the history of minorization and marginalization, I understand that reparative measures of compensation should not only address the income imbalances faced by the black population, but also compensation when it comes to the access to services that can enhance their economic development, such as access to quality education and policies that can address the school evasion, as well as equal access to jobs and decision making positions in private and public spheres.

Memorialization is the mechanism that serves to recognize the contributions of black people to the history of the country and give them visibility, and also to respect the harms endured by them, what can be done through national celebration days, measures related to public spaces such as monuments and also media initiatives (UN, 2021, p. 18). This mechanism brings the State's attention to the need of public recognizing the importance and the essential contributions that black figures had to the country's history and culture, which, alongside with truth telling, helps to dismantle racist stereotypes rooted in the social imaginary (UN, 2023, p. 13).

Guarantees of non-repetition are the mechanism that provide the measures to reform the oppressive standards and structures of the State in order to prevent present and future violations (UN, 2021, p. 16). Those reforms must reach all public procedures in order to dismantle the root causes of discrimination and oppression against black people, with a special attention to the judicial and police-security apparatus, the political sphere and civil services that remain

perpetrating human rights violations against black people, to prevent and dismantle present and future harms to this population (UN, 2019, p. 119). In the case of Brazil, I argue that reparative measures might be implemented particularly inside the security institutions, to identify and address the root causes that maintain the cycle of violence and lethality towards black people.

Also, based on my findings, I understand that special attention needs to be directed on creating reparative measures in other public procedures such as the health care system, political and private institutions, to create structures that integrate black people, giving them representativity in those power spaces and also dismantling the obstacles and discrimination faced by them when trying to access those services. I also identified that the implementation of reparative policies that already exist are not being monitored or guaranteed by the government. Therefore, when creating reparative measures there is a need to focus on monitoring the creation, implementation and impacts of those measures to guarantee their effectivity, also making viable their adaptation when needed. Also, the UN (2022a, p. 21) states that the States must make necessary budget allocation to the implementation of those measures, also allowing the participation of other actors such as private institutions that acknowledge their involvement with the colonialism and international donors. Regarding this last one, I understand that it could be an opportunity to involve the State of Portugal in the reparations accountability and founding of reparative policies.

The UN (2021, p. 20) also stresses the need of the effective participation of black people through the whole process of creation, implementation and evaluation of the reparative policies, as well as the need of making accessible to all the victims the information about how to access the reparative measures (UN, 2005, p. 6; UN, 2023, p. 7). Lastly, through all the findings so far, I argue that the State must have an intersectional perspective when designing the programs, accounting for the different needs of black women, men and transgender people.

Corroborating to the suitability of this model, in different opportunities the UN (2021, p. 6; 2019, p. 10) attested that the transitional justice model is suitable to address the situation of people of African descent in Brazil, since the government has a history of institutionalized discrimination against this community and has preserved the racial hierarchies created by the slavery through its omission in including the former enslaves in the society and their agenda to promote the ‘whitening’ of the population during the past century. This resulted in the current human rights violations and disproportionate imbalances currently faced by them, reason why there is a need for the State to urgently address those salient legacies of slavery through reparative policies, not only to address the past wrongdoings but to guarantee a present and a

future of equality (UN 2021, p. 6; UN 2019, p. 10). As narrated in the previous chapter, the State's neglect towards the integration of the former enslaves indeed cascaded in a reality where black Brazilians remain facing disproportionate human rights violations, living in an extended transitional period. The State must urgently address those imbalances and employing the transitional justice mechanism can guide the policy making on the matter and also provide a legitimacy for the creation of reparative justice measures.

6. Conclusions

As delineated in the introduction chapter, this thesis had a dual focus and aim of investigation, the first was to analyze and explain the peculiar social dynamic where black Brazilians are socially oppressed in spite of being the demographic majority in the country, by exploring the imbalances currently faced by them as a legacy of slavery and a consequence of the discrimination and the neglect agenda sponsored by the government through the post-abolition process, what was explored in chapters 3 and 4. The second one was to analyze the need for reparative policies to address those imbalances and to propose the transitional justice model as a suitable framework to guide the policy making process on the matter, explored in chapter 5. From that, three research questions were proposed and addressed through this thesis.

The first one was [RQ1] *“Why black Brazilians are oppressed, in spite of being the demographic majority in the country?”* and was answered through chapters 3 and 4. Chapter 3 served to demonstrate that the harms committed through the slavery period towards black people were not addressed during the abolition and post-abolition process, that the State neglected the integration of black Brazilians in the post-abolition society, by not providing them any reparative policies to guarantee their access to fundamental rights, such as to an adequate housing, education, health and work, or to eradicate the racism and the ideology of inferiority of black race. Instead, the government sponsored an agenda through laws and policies that privileged white people over the former enslaves and, also, promoted eugenics ideologies and denied the racism occurring in the country through the narrative of the myth of racial democracy, as means to evade from its responsibilities towards the black population.

In chapter 4 I exposed how this cascaded into a currently reality where black lives are treated as disposable, where the government exterminate black lives either through the lethality of their police force or by not providing means for the black population to fully enjoy their fundamental

rights, since currently they face disproportionately imbalances in several social levels when compared to white people in the country due to structural racism, what makes them to be the demographic majority in the country but a minority regarding the access and protection of their rights. The minorization theory, alongside with the structural racism and intersectionality theory helped to interpret those findings and to answer the *RQ1* by understanding that the State historically created obstacles for the access of black people to power spaces and the full enjoyment of their rights, by not creating policies to integrate them in the society and by reproducing racism through its standards and institutions, which created a process of minorization of this population which resulted in a social dynamic where black people are the oppressed ones in spite of being the demographic majority in the country.

The second research question [RQ2] of “*Why reparative policies must be adopted by the Brazilian State to address the imbalances faced by black Brazilians?*” was answered by a combination of the findings of chapters 3, 4 and 5. Firstly, regarding to the answers provided by chapter 3 and 4, reparative policies must be adopted since the government failed to create policies to integrate black people in the society during the abolition and post-emancipation process, which cascaded into the current disproportionate imbalances faced by them. Secondly, chapter 5 served to demonstrate that the State has the legal responsibility, through its domestic framework and ratified conventions, of ensuring that black people have full access to those rights and to create all reparative policies needed to overcome those imbalances and to effectively fulfill its obligation. The transitional justice framework helped to justify the need of reparative policies by demonstrating that the harms committed during slavery and colonialism were gross violations of human rights which cascaded into the racial imbalances currently faced by the black population worldwide, reason why the State have the obligation to implement reparative policies to address this slavery legacy. Therefore, to sum up, those findings helped to answer *RQ2* by demonstrating that the State must adopt reparative policies to overcome the imbalances faced by black Brazilians since it is the government’s legal obligation to ensure their effective access and enjoyment of their fundamental rights and to implement all measures and policies needed to this end.

In that sense, the third and last research question [RQ3] of “*Why the transitional justice model is suitable to guide the policy making process of reparative policies for black Brazilians?*” was answered in chapter 5. As previously mentioned, the findings of this chapter helped to demonstrate that the current imbalances faced by black Brazilians are rooted in the slavery period and in the failure of the State in integrating this population during the past

century, and the transitional justice model is suitable to address violations in this context. The transitional justice framework is the framework which provides mechanisms of accountability, truth telling, reparations, memorialization and guarantees of non-repetition which, in a holistic way and accounting for the participation of black Brazilians and an intersectional perspective when implementing those mechanisms, can serve to address the root causes and effects of the harms resulted from gross violations of human rights. The suitability of those mechanisms to address the slavery legacy was internationally recognized, being considered a tool that can be implemented to overcome the State's failure in integrating black people in the post-emancipation society.

For the case of Brazil, it was possible to see that the measures implemented so far by the government are not enough to dismantle the disproportionate imbalances faced by this population and that there is a need of creating policies that can address in a holistic way the root causes and effects of the violations of human rights currently faced by black Brazilians. In that sense, to answer *RQ3* it was demonstrated that the transitional justice model is suitable to guide policy making on the matter since it provides the mechanisms that helps to address the root causes and effects of the imbalances faced by black Brazilians in a holistic way, focusing on measures to be implemented in different levels of the society to overcome the different imbalances faced by this population.

Furthermore, it is important to attest that through the findings of this thesis I understood that in Brazil there was centuries of violations committed towards black people, which started in the slavery period, continued through the post-emancipation period and cascaded into the current reality of disproportionate imbalances faced by this population in the country. Those violations are strong enough to create a process of minorization of an entire population, they evolved and mutated throughout the time, always making the black population in the country to be the minority regarding the full enjoyment of their rights and the main target of institutionalized racism and lethality, which is considered a process of social cleansing by different authors and by the IACHR as exposed in chapter 4.

In that sense, I acknowledge that reparative measures alone are not enough to dismantle centuries of oppressions and all the transgenerational imbalances faced by black Brazilians, but still, through the lessons of the reports and transitional justice documents here analyzed, also considering the example of the successful outcome of the Quotas Law – outlined in section '5.2.1.' – in including black Brazilians in the higher education system, I argue that reparative policies is an important and urgent step to be taken by the government towards equality for

black Brazilians and that the State must implement, monitor and evaluate those policies and all measures needed to overcome the disproportionate imbalances faced by this population. It is the State's legal and moral responsibility towards a population that was imperative to the country's economy, culture and history.

6.1. Recommendations and further research

1. Firstly, the main recommendation that can be made based on this thesis is for the Brazilian State to fulfill its legal obligation of protecting the human rights of the black Brazilians, by creating reparative policies that are holistic and effective in addressing the imbalances faced by this population in many different social levels. With the creation of the Ministry of Racial Equality and its agenda on addressing the imbalances faced by the black population in the country, there is an opportunity for the debate and implementation of reparative policies to black Brazilians. Hence, I recommend that the Brazilian State implements the transitional justice framework and its mechanisms to guide the policy making process on the matter, accounting for the participation of black Brazilians in all levels of implementation, monitoring and evaluation of those policies, accounting for an intersectional perspective when designing them, in order to create reparative policies that are effective and able to address the root causes and the effects of the imbalances faced by black Brazilians.
2. The focus of this thesis was to expose the Brazilian State's responsibility to create reparative measures to address the historical violations of human rights committed towards black Brazilians. However, as mentioned in chapter 5, the responsibility of the former colonial powers on providing reparations for black people worldwide regarding the violations committed during colonialism and slave trade was recognized internationally by the UN. Therefore, the Brazilian State should (i) proceed with negotiations with Portugal to enforce their responsibility and also (ii) invest in research to attest the extension and amount of the reparations to be provided by Portugal on the matter. In addition, I recommend that the payment of those reparations is destined specifically to fund the implementation of reparative policies to black Brazilians, what will contribute to the budgetary allocations that must be made by the Brazilian State for the implementation of those policies.

3. As mentioned in chapter 5, the biggest obstacle for the implementation of such policies is the political will of the State. Therefore, further research should be conducted in order to understand how to overcome this hurdle inside of the Brazilian context, by tackling down what are the current narratives present both in the social and political spheres that present obstacles for the support and implementation of reparative policies, and by presenting strategies that can be adopted to overcome these narratives.
4. As mentioned in chapter 4, I focused on the main imbalances currently faced by black Brazilians, but, since those rights are interconnected, there might be other imbalances that might be addressed alongside those in order to guarantee to black Brazilians the full enjoyment of their human rights. Therefore, further research should focus on analyzing other imbalances and its relations to the ones present in this thesis. Finally, there is a need to conduct further research on other imbalances that might arise from the intersection of race, gender, gender identity, class, sexuality, disabilities and nationality and on how to address them in the context of Brazil.
5. Lastly, due to the particular case of Brazil, this thesis did not focus in conducting case study regarding the reparative policies implemented worldwide and its suitability for Brazil's context. However, I acknowledge that the Brazilian government can learn from the experiences of other countries in implementing reparative policies and reparations for people of African descent. Therefore, I recommend further research to explore how reparative policies implemented by other States can be adapted to Brazil's context. Additionally, I suggest that the Brazilian government initiate dialogues with countries that have implemented reparative policies, in order to learn from their experiences.

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