

# Extermination of Black People and Violation of the Constitutional Principle of the Presumption of Innocence

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## Abstract

Brazil's 2020 police fatalities reveal a stark bias against Black victims, urging expanded research. This paper examines the presumption of innocence regarding Black individuals, assessing its compliance and barriers in judicial contexts and as a treatment norm. The hypothesis challenges the inobservance of this principle for Black people's pre-trial procedures. Investigating the racialized lens of Brazil's penal system, it weighs the principle of innocence against Black people's real fierce experiences and the judiciary's role in fighting this violence. Employing a deductive approach, it reviews doctrine and laws through SciELO, Public Domain, and Google Scholar for PPGD/FDV databases. Findings expose structural violence erasing Black innocence; thus, sentencing has to align with lawful and factual bases. Rectifying racial disparities demands focused judicial research on countering institutionalized violence and ensuring social justice. The results show that structural violence kills Black people in Brazil not only by avoiding giving them any reasonable doubt about their guilt but also by violating the principle of presumption of innocence. In case any anticipation of the performance of the sentence, which is not based on legitimate legal reasons and concrete facts, occurs, the execution of the penalty shall not happen. To conclude, public security is one of the fundamental fields of social and state action to correct the racial inequalities that make Black people more vulnerable in Brazil. The judiciary must conduct further research on episodic and concrete surveys of the resulting regu-

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lation—of a norm so as to base their convictions on an ideal of social justice to combat institutionalized structural violence that kills Black people in Brazil without giving them the benefit of the doubt.

### Keywords

Extermination, Black People, Presumption of Innocence, Constitutional Principle, Vulnerability

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## 1. Introduction

The human rights situation for Black people in Brazil remains a significant concern, with disparities in housing, job and education rates, income, incarcerated population, and violent death. Since 2012, Brazil has implemented racial quotas and affirmative action policies to increase the representation of Black students in higher education (Bó et al., 2023). As a result, the number of Black students at university has increased by 400% within a decade, and they now represent half of all students in higher education. However, racial inequalities persist in the education system, which, as a fact, impacts social human development, economic rates, and capacities (Monde, n.d.). Regarding high school graduation rates, in 2018, the graduation rate for Black or brown individuals was 61.8%, compared to 76.8% for white individuals. Illiteracy rates have decreased, but they remain high among Black and brown individuals, particularly in the elderly population and the Northeast region of Brazil. Black women in Brazil earn about 40% of what the white population makes.

According to the 2022 Brazilian Forum on Public Security (FBSP) yearbook, 68.2% of the incarcerated population in Brazil is Black (*Incarcerated Black Population Sees Highest Level in Record*, 2023). The Northeast is home to 55.3% of all Brazilians aged 15 or over who cannot read and write. Illiteracy in the region reaches 11.7% of the population. In the North, they are 6.4%. The other areas, Midwest (4%), South (3%) and Southeast (2.9%), have rates below the national average (*IBGE Revela Desigualdade No Acesso À Educação E Queda No Analfabetismo*, 2023).

Furthermore, Black people are disproportionately affected by police violence, with young Afro-Brazilian men and women from poor communities being the primary victims (Wanzinack et al., 2022) (Araújo et al., 2020). In that scenario, the Brazilian government has implemented some initiatives to address these disparities, such as setting aside half of the places in public universities for public high school students, primarily benefiting Afro-Brazilian students, and the national congress and security authorities are discussing proposals encouraging the use of cameras in cars and police uniforms, in addition to reviewing the training of agents and suggesting new approach protocols by the security forces. According to the last Brazilian Yearbook of Public Security, from 2022, blacks and

browns account for 77.6% of deaths from violent causes, compared to 21.7% of white victims. The classification includes intentional homicide, robbery, and bodily injury followed by death. Of the total number of violent deaths in the period, 12.9% occurred in police actions. However, the human rights situation for Black people in Brazil has mainly been affected by police violence and prejudice resulting from discriminatory social profiling.

When a news article has the headline “Navy Sergeant kills black neighbor and says he mistook him for a thief” (Campbell, 2022), it is necessary to consider the principle of non-guilty in Brazil. It is observed that, concerning blacks, judgments do not even reach the courts, as required by the application of the due process of law. In the episode mentioned in the headline, although the supposed thief was not even charged, he was sentenced to death at the crime scene, a penalty which is not included in the Brazilian penal code.

The case in the headline mentioned above focuses on 38-year-old Durval Teófilo Filho, who killed his neighbor when arriving home from work. The piece of news spread throughout the country due to comprehensive social media and news coverage. However, cases like this are repeated every day: when thousands of blacks die because they are suspects of any crime, whether in “public safety” actions at the hands of a civilian, with legal possession of a firearm, or by police officers. Therefore, this study justifies the need to expand research in Brazil on measuring the frequency and the principle of presumption of innocence that is transgressed when a black person is involved in a situation of violence—being the primary inducer for the accomplishment of this work, a critical exercise on the structural violence that kills blacks in Brazil.

The disclosure of the citizen’s situation, Durval Teófilo Filho, 38, arrived home from work, moved to the country, and gained comprehensive coverage in the press. However, cases like this are repeated every day: when thousands of blacks die because they are suspects of any crime, whether in “public safety” actions at the hands of a civilian, with legal possession of a firearm, or by police officers. Therefore, this study justifies the need to expand research in Brazil on measuring the frequency and the principle of presumption of innocence that is transgressed when a black person is involved in a situation of violence—being the primary inducer for the accomplishment of this work, a critical exercise on the structural violence that kills blacks in Brazil.

Additionally, as underlined above, there are chronic issues with police violence and abuse of power, including extrajudicial killings by police and mistreatment of detainees, especially among black citizens (Wanzinack et al., 2022). Homicide case resolution rates in Brazil are consistently below 20% in states where the clearance rate is known, indicating low success rates in solving criminal cases. Concurrently, there are sensitive drawbacks issues regarding our accusatory systems, such as systemic corruption, a major problem in Brazil, and it is likely that weak enforcement of laws against white-collar crimes is one of the contributing factors. The Brazilian criminal justice system is facing structural problems, such as a lack of resources, overburdened forensic investigators, crime

scene manipulation, and flaws in investigations (Amnesty International, 2015). Recently (August 2023) the Brazilian Supreme Court adjourned under judicial review proceedings the constitutional enforcement of *the warranties judge or investigating judge*, correspondently to the Italian *Giudice per le indagini preliminari*. The National parliament approved the respective statute n. 13.964/2019 (as Anticrime Law Reform), but it was stricken by four different *judicial review* case actions ADIs (Ação Direta de Inconstitucionalidade n. 6298, 6299, 6300, and 6305).

The office of the public prosecutor is tasked with overseeing police operations from an external standpoint under constitutional provision article 129, VII, and under Federal Law provision n. 8625/93. This is achieved through specialized units that implement both preventative and responsive measures. These measures encompass administrative actions aimed at combating misconduct and deviations, criminal actions designed to prosecute cases of abuse and crimes against the public administration, and civil penalties such as revoking public privileges. According to the amendment introduced in the Code of Criminal Procedure (CPP), in up to twelve months, the warranties judge shall act in the police investigation phase and be responsible for controlling the legality of the criminal investigation and safeguarding the individual rights of those being investigated (Supremo Tribunal Federal-STF, 2023), enforcing the police activities accountability and ethical standards.

Based on this picture, the objective of the research is to verify if the principle of presumption of innocence is being respected when black people are involved either in conflicts with public security agents or in armed ones with other civilians, as well as to identify if there are any mechanisms which might favor or hinder such principle, in a clipping also of the respect of the due process. The principle is valid not only at the time of the judicial decision but also as a rule for treating the suspect, who cannot simply be equal to the guilty because he is effectively a suspect, indicted, accused, or defendant (Varalda, 2007).

To achieve this objective, a descriptive and analytical bibliographic review was carried out, with searches conducted in the SciELO, Public Domain, and Google databases, as well as in Research Gate, and the productions of the PPGD/FDV, identifying the development of the principle of presumption of innocence according to the instruments of doctrine and legislation in force, based on the following steps: selection of databases for research; establishment of criteria for the selection of doctrine and articles; partial reading of studies for final selection; analysis and interpretation of studies; data compilation and writing.

## 2. Principle of Presumption of Innocence

Although the Brazilian constituent has expressly adopted the Italian interpretation orientation based on the idea of transconstitutionalism defended by Marcelo Neves, the Brazilian constitutional normative system also harbors the principle of the presumption of innocence. For Silva Júnior (2018: p. 153) “logical and even legal issues lead to the need to make a distinction between the two

principles, not being pertinent or correct to confuse one with the other, as is done in most of the doctrine”.

“Presumption in a technical sense is defined as the mechanism through which, from a known fact, another, unknown fact is accepted, without the need to resort to any means of proof” (Brasil, 2016: p. 392). (sic).

The presumption of innocence is a crucial entitlement, encompassing a procedural framework that is communicated to all members of society. This principle asserts that individuals remain innocent until proven guilty in a definitive verdict. Consequently, it is the responsibility of the Courts to enforce this principle, preventing any deviation from this essential public order tenet that holds paramount importance and is applicable across all legal domains (Romero-Arias, 1985: pp. 48-50).

In this sense, the presumption of innocence collides with the guaranteeing logic of the criminal system. Silva Júnior (2018: p. 151), to circumvent, even if only doctrinally, all this divergence, argues that there is not, in a way, the consecration of a form of presumption of innocence but of a legal form in which the person is innocent until he is judicially convicted, through a sentence, which, in turn, would not prevent the imposition, during the process, of measures based on the presumption of guilt.

“In the modern sense, the first Declaration of Fundamental Rights was the Declaration of the Good People of Virginia, which was one of the thirteen English colonies in America, dated January 12, 1776” (Brasil, 2016).

This right not to be found guilty, while there is still doubt whether the citizen is guilty, has been inserted among Virginia’s human rights declarations. The principle was enshrined in art. 8, with the following diction: “In all criminal proceedings or those involving the death penalty, the defendant has the right... to be promptly tried by an impartial jury..., which can only consider him guilty by the unanimity of its members...” (Silva Júnior, 2018: p. 147).

The Declaration of Virginia underscored foundational aspects of human rights, notably safeguarding the right to a defense in criminal proceedings and a prompt trial by an unbiased jury. This declaration emphasized that no individual should lose their freedom except through lawful means or the verdict of peers. Embracing the essence of due process, it upheld the necessity of a fair legal procedure. Additionally, the declaration prohibited the issuance of general search or arrest warrants without explicit details and evidence of the underlying crime. Notably, this prioritization emerged to avoid assuming an absolute presumption of guilt, instead recognizing the possibility of the citizen’s innocence, thus modulating the legal standard apud Brasil (2016: p. 378).

Subsequently, the principle of presumption of innocence contained in the Declaration of the Rights of Man and Citizen of 1789 referred mainly to the treatment of the accused during the process. He was presumed innocent until the Declaration of a judicial sentence, in which there would be a decision of conviction or acquittal (Varalda, 2007: pp. 20-21). This led to situations involving limitations on the restrictions of individual rights, especially precautionary

measures during the instructional phase.

The transition from the inquisitorial process to the accusatory criminal process involves distinct phases: a preliminary written stage, covert and devoid of contradiction, followed by an instructive phase characterized by orality, transparency, and contradiction. This transformation shifts from subjecting the accused to societal, moral, and physical restraints to treating them as innocent. Consequently, measures limiting rights began to be seen as sanctions, representing a prelude to the penalty (Varalda, 2007: pp. 20-21).

Nonetheless, this paradigm shift from the inquisitorial procedural model to the accusatorial framework is not immune to critical evaluation. While the transition aims to augment transparency, fairness, and the presumption of innocence in criminal proceedings, its efficacy is subject to scrutiny. The accusatory system's pronounced reliance on oral proceedings and public disclosure introduces a potential conundrum—vulnerability to trial by public sentiment, possibly culminating in premature judgments and jeopardizing the accused's reputation. Moreover, the reclassification of specific rights-constraining measures as pre-emptive sanctions raises valid concerns about the potential erosion of due process safeguards and the propensity for unwarranted curtailment of individual liberties. Consequently, despite its substantive transformational implications, the new procedural framework necessitates an incisive appraisal of its operative mechanics, associated implications, and conceivable pitfalls.

According to Beccaria (1997: p. 61), it is unfair to label someone as guilty before a judge gives a verdict. Only after it is confirmed that they have breached their agreements can society withdraw public protection from them. But if there is doubt about their culpability, it raises concerns about the judge's power to punish a citizen. Are there any other reasons for this punishment besides the use of force?

During the late 19th and early 20th centuries, there was a significant shift in the perception of the presumption of innocence. This fundamental principle, which asserts that individuals are to be regarded as innocent until proven guilty, faced a crisis. It began to be seen as conflicting with the prevailing societal interests of that time. This change in perspective, as noted by Ferrajoli (2002: p. 505), underscores how the perception of legal concepts can evolve in response to shifting societal values and priorities.

In the post-World War II period, the principle re-emerged as one of the first-generation fundamental rights. It was included in the Universal Declaration of Human Rights of 1948 (article 11, first part): "Every person accused of a criminal act is presumed innocent until his culpability is legally proven during public proceedings. All the necessary guarantees of defense are assured".

Following this perspective, the Universal Declaration of Human Rights, endorsed by the UN in 1948, underscored in Article 11(1) that "Any person accused of a criminal act is presumed innocent until his guilt is legally proven in the course of a public process in which all the necessary guarantees of defense are assured" (Silva Júnior, 2018: p. 148).

Similarly, the International Covenant on Civil and Political Rights, ratified on December 91, 1966, Article 14(2) stated, “Every person accused of a crime shall have the right to be presumed innocent until his guilt has been legally proven.” Likewise, the American Convention on Human Rights of 1969, in Article 8(2), first part, emphatically reaffirmed that “Every accused person has the right to be presumed innocent until his guilt is legally proven” (Silva Júnior, 2018: p. 148).

Presently, the contents of this principle are acknowledged as essential requirements within a criminal jurisdiction that adheres to the principles of a comprehensive defense and contradiction. It emphasizes that mere doubt is insufficient to undermine the accused’s presumption of innocence (*in dubio pro reo*). Furthermore, the burden of proof must remain on the prosecution. The accused must be treated as innocent until a conviction becomes final, which consequently restricts the imposition of measures limiting individual freedom during the legal process.

Although the international arena has enshrined the principle of presumption of innocence since the early human rights declarations, it wasn’t explicitly present in the Brazilian legal framework until the 1988 Constitution. Before that, it was implicitly inferred from the due process clause (STF, HC 67707-0/RS, Justice CELSO DE MELLO, First Panel, verdict on 11/07/80, DJ of 08/14/92, p. 12.225 apud. (Silva Júnior, 2018)). It’s noteworthy, however, that discussions about this principle predate the 1988 Constitution.

Article 5, LVII of the Constitution, as pointed out by Mendes et al. (2009), asserts that no one shall be considered guilty until the final judgment of a condemning criminal sentence. Nevertheless, the notable disparity in the number of incarcerated individuals, particularly among the black population, raises questions about whether black citizens might experience injustice when they are swiftly accused and punished without due consideration for their presumed innocence. This inconsistency sparks concern, especially when considering that “no one will be found guilty until the final judgment of a condemning criminal sentence” (Lenza, 2016: p. 1239).

From an extrinsic (formal) perspective, the principle of presumption of innocence (or non-guilt) is a fundamental constitutional right, listed among the fundamental rights and guarantees of individuals (Article 5, CF). From an intrinsic (substantial) viewpoint, it primarily holds procedural implications, profoundly impacting the field of evidence, safeguards, and the treatment of the accused (Brasil, 2016: p. 377).

Mendes et al. (2009) notes that there has been an extensive discourse on the interpretation of the presumption of innocence and non-guilt guarantee in Brazilian law. It is understood as a principle that prevents legal consequences for the accused prior to the criminal sentence becoming *res judicata*. This debate gains further significance when considering the conflict and relativization of the presumption of innocence in the context of experiences faced by black individuals across the nation. Accusations and judgments are often hastily made against

them even before arrest or trial, shedding light on the struggle against necropolitics prevalent in a society that perpetuates the extermination of black lives. The principle of presumption of innocence has been crucial in safeguarding citizens against arbitrary actions (*Coffin v. United States* (1895)). Also, the Rome Statute's (*International Criminal Court, 1998*) Article 66 firmly establishes the presumption of innocence, unequivocally stating that all individuals shall be considered innocent until proven guilty before the Court, strictly adhering to the applicable law.

Furthermore, one cannot fail to mention the influence of capital, whose asymmetry of income and work allows us to state that: "it can be concluded that the sociometabolism of capital is what conditions the development of second-generation social rights" (*Figueiredo Júnior, 2020: p. 764*), among which we can mention security, as explained in the Brazilian Constitution.

However, if what the fundamental norm says is that no one can be tried without having been duly prosecuted, as long as the accused is not found guilty by a decision with the force of *res judicata*, he is considered innocent, the accused has the right to present his defense freely, and to discuss the evidence gathered against him; the evidence is incumbent on the accusing party and in matters of repression restraint must be used and, finally, doubt benefits the accused (*Brasil, 2016*).

### **3. The Principle of the Presumption of Innocence According to the Doctrine and the Reality Experienced by Blacks in Brazil**

*Mendes et al. (2009)* underscores that freedom stands as the paramount value of the citizen, yet the daily reality in Brazilian urban settings sees the freedom and lives of numerous black individuals incessantly disrupted and constrained by both civilian members of society and so-called '(in)security' personnel. *Mendes et al.* further posits that limitations on the right to freedom will only be justifiable if certain criteria are met. Firstly, concrete evidence must be present, capable of casting doubt upon the presumed innocence of the accused. Secondly, the legitimate interest of the collective state entity in achieving thorough elucidation and prompt sanctioning of the responsible individual must exclusively be attainable through the imposition of the suspect's arrest (*Mendes et al., 2009: p. 683*). This underscores the intricate balance between safeguarding individual freedom and societal interests in the context of criminal justice proceedings.

Therefore, it cannot be deemed acceptable for any pre-emptive execution of a sentence to transpire devoid of valid legal rationale and concrete evidence, thereby contravening the constitutional principle of the presumption of innocence. Such action runs counter to the principles of due process of law and comprehensive defense. Despite this, the incarceration and even the imposition of the death penalty upon black individuals in Brazil appear to serve as an unequivocal condemnation solely based on their racial identity.

This predicament is underscored by cases like that of Navy sergeant Aurélio

Alves Bezerra, who was apprehended on the spot after firing three shots and fatally injuring his black neighbor, 38-year-old Durval Teófilo Filho, under the allegation of mistakenly taking him for a robber, according to his statement, although this claim was not confirmed by video surveillance, since the incident was captured by security cameras (Campbell, 2022).

Mendes et al. (2009) asserts that the premature imposition of punitive actions within criminal matters constitutes a grave affront to the concept of human dignity. Friends mourned Durval's death on social media, with some emphasizing his race: "Judged because of color! - I have no doubts"; "The first thing the shooter thought of was the color" (Campbell, 2022). However, the principle of presumption of innocence dictates that "no one can be persecuted except in cases according to the form provided by law" (Brasil, 2016: p. 379).

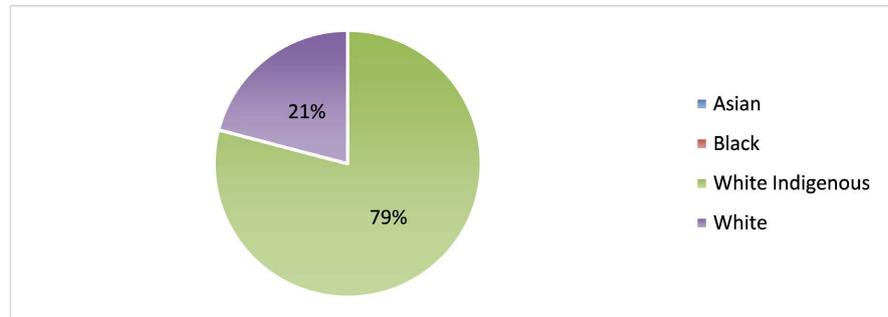
Furthermore, statistics glaringly unveil the stark disparities in the incarceration rates of black and white individuals, reflecting the highest echelons of injustice against black individuals. Addressing this issue, Hélie (1866) contends, "It is easier to formulate an accusation than to destroy it, as it is easier to open a wound than to heal it." This statement succinctly encapsulates the formidable challenge of rectifying deeply rooted systemic biases and inequities within the criminal justice system (Figure 1).

The data reveal a clear trivialization of the lives of black people, and the presumption of innocence is discredited. In an overview of the situation involving victims of police interventions resulting in death in Brazil in 2020, it is evident that there is a clear overrepresentation of black people. It is easy to see that current Brazilian criminal policy is aimed at expanding repression against certain social groups and at the continued use of mass incarceration of blacks. This reaffirms the existence of structural violence that kills blacks in Brazil. According to Chai et al. (2023: p. 8), "it launched blacks into the composition of new plebs, under the direct and indirect effects of this classification."

Zilli (2016: p. 67) highlights that "this concentration of black victims is much higher than the racial composition of the Brazilian population, demonstrating an overrepresentation of blacks among victims of police lethality." There is, therefore, institutional discrimination, configured as a legitimate expression of structural violence, expressed through any discrimination, whether racial, social, or gender, among others. Another way of demonstrating this structural violence in Brazil is the form of housing distribution and social space occupation.

The concentration of the black population occurs in more vulnerable neighborhoods, as shown in a recent study "It was clear that 55% of the residents of the neighborhood settled there before the 1990s. And there have been no records of new residents since 2011. It can be seen that there is a high incidence of residents aged between 51 and 65 and that 65% of the residents of the neighborhood call themselves blacks and browns." (Nunes & Figueiredo Júnior, 2018: p. 908)

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**Figure 1.** Race/color of intervention victims police officers with death result Brazil (2020). Source: Bueno, S., Marques, D., Pacheco, D. (2021) Deaths resulting from police intervention in Brazil in 2020. Brazilian Public Security Yearbook. Available at: <<https://forumseguranca.org.br/wp-content/uploads/2021/07/4-as-mortes-decorrentes-d-e-intervencao-policial-no-brasil-em-2020.pdf>>. Accessed on: 31 Mar. 2020.

the sociometabolism of capital is what conditions the development of second generation social rights” (Figueiredo Júnior, 2020: p. 764), among which we can mention security, as explained in the Brazilian Constitution.

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The case of the murdered neighbor, Durval Teófilo Filho, and many other blacks included in the statistics denote that the nature of the presumption of innocence in our society is quite “controversial”, a word also used by Brasil (2016: p. 382) to define the (in)effectiveness of the principle. This disconnects the principle from its functionality and leads to the protection of inverted values, such as white supremacy.

Obviously, such results are not the outcome of chance or a tendency of the black population to commit crimes, but the work of social construction that has inequality, in general, and racism, as its founding elements (Miranda, 2019).

Ferrajoli’s perspective (2002: p. 446) encapsulates the following understanding: “the acceptance of the principle of pretrial detention, regardless of the rationale attributed to it, fundamentally contradicts the principle of subjection to jurisdiction. This principle does not merely entail the possibility of detention through a judicial order, but hinges upon the capacity to be detained solely on the basis of a judicial decision. Furthermore, any arrest conducted in the absence of a trial undermines the innate sense of justice, being perceived as an act of

force and volition. Indeed, no judicial provision or public authority action instills as much trepidation and insecurity while eroding confidence in the legal system, as does the apprehension of any citizen devoid of due process, instigating a corresponding skepticism”.

If the principle of imprisonment without due process during *res judicata* violates the presumption of innocence, what can be said about cases of homicide? What about instances of summary capital punishment?

At this juncture, the analysis centers on evaluating the operational aspects of the penal system through a racialized lens, predominantly highlighting its adverse impacts on the black population. This scrutiny underscores the notion that the penal system operates conspicuously as a state-driven endeavor aimed at the systematic eradication of the black populace (Flauzina, 2006: p. 41, as cited in Miranda, 2009).

It stands out to demonstrate the situation, the appearance as a way of judging, the so-called “black profiling”: “A study of capital cases in Philadelphia found that when the victim was white and the accused black, defendant who were perceived to have a more “stereotypically Black appearance” were more than twice as likely to receive a death sentence as black people on trial who were perceived as less so. The accused person’s appearance made no difference, however, when both the victim and the accused were black” (Hilton et al., 2018).

Therefore, in the context of applying the principle of presumption of innocence (non-culpability), it becomes fundamental to control eventual conformations or restrictions. “It is the good application of the principle,” in the words of Mendes et al. (2009: p. 685), which refers to the need for the judiciary to act in the implementation of actions contrary to necropolitics, that is, the extermination of black people. Moreover, it also represents a goal to be pursued in moral justice (Zilli, 2016). Since the broader the scope of protection of the principle of presumption of innocence, the less possibility there is for the configuration of a conflict between the State and black individuals.

### **Performance of the Judicial Power against the Extermination of Blacks**

Presumptions indeed represent norms of behavior through which the legislator articulates rules of “ought to be”, grounded in ideological and technical values (Brasil, 2016: p. 377). Hence, it is consistently vital to underscore the significance of solidifying the bedrock of principles and rules to safeguard their existence (Bottini, 2013). “It was with the CRFB/88 that, for the first time in the nation’s history, the notions of equality, freedom, and citizenship were acknowledged as transformative cornerstones of social life” (Figueiredo Junior, 2022: p. 396).

Consequently, in comprehending the purview of the presumption of innocence, its ideological import must be paramount, signifying a legislative orientation: safeguarding the accused’s liberty against the societal objective of law enforcement—criminal law (Brasil, 2016).

Mendes et al. (2009: p. 684) emphasize the normative nature of the protective

extent of this guarantee, attributing the legislator a pivotal role in shaping the principle's assurance. This ensures the absence of a preconceived notion of guilt prior to a definitive judgment, especially when a person's life hangs in the balance of an unjust curtailment.

The International Covenant on Civil and Political Rights, in its article 9, number three (United Nations, 1966), expressly provides for the principle that any individual detained or incarcerated due to a criminal offense must promptly appear before a judge or another legally sanctioned authority. The judicial function's prerogative encompasses the right to be subjected to a fair trial within a reasonable timeframe or to be released. Pretrial detention of individuals awaiting judgment should not be the default measure, although conditional release remains an option. The safeguards in place secure the person's access to attending hearings and participating in all procedural stages, as needed, including the execution of the sentence.

According to Brasil (2016), the extent of safeguarding a fundamental right can influence the potential characterization of any state action as a restriction. As articulated by Brasil (2016: p. 382): "The principle of presumption of innocence is not grounded in an empirical likelihood of conviction. Instead, it embodies a rule of obligation, compelling the legislator to establish a procedural safeguard directed towards safeguarding ideological, political, and technical values: the ideological value pertains to upholding the accused's freedom vis-à-vis the collective interest in criminal repression. In contrast, the technical or instrumental value is reflected in legal certainty, guiding the judge in rendering a decision to avert undesirable outcomes".

To circumvent unfavorable scenarios, the judiciary and legislature have initiated measures exemplified by the State Law of Rio de Janeiro No. 5588 of December 07, 2009, subsequently modified by another State Law of Rio de Janeiro. The enactment of strict regulations regarding the monitoring and documentation of the activities of public security personnel via body cameras was meticulously stipulated. Although the preliminary outcomes are promising, this subject remains relatively novel, and definitive conclusions remain elusive due to the inability to ascertain whether the incidence of criminal activities diminishes as a direct result of camera utilization—Either because law enforcement is subject to heightened oversight or due to instances where officers abstain from certain actions to preempt penalties for transgressions.

Hence, "in any instance, any measure or restriction that involves preconceiving conviction or its execution is prohibited for the legislator" (Mendes et al., 2009: p. 685). According to Zilli (2016), it is unmistakable that public security constitutes one of the pivotal realms of social and governmental endeavors to rectify the racial disparities that render the most marginalized black individuals in Brazil. Considering this, the judiciary should persist in conducting specific and context-based investigations of regulations emanating from norms, endeavoring to steer their verdicts guided by an ethos of social justice.

It should be noted that the Governor-Elect in this last election of October

2022 of the most populous state in Brazil, in his government plan, in the item Public Security, Justice and Citizenship, proposes: “Valorization of the Police Force: Let us protect those who protect us with the valorization of the police force, an increase of the police force, support to the police action, review of the work regime, career and image recovery. Review body camera policy”.

However, in the opposite direction, in the Brazilian Supreme Court, the highest body of the judiciary, in the judgment of the *Arguição de Descumprimento de Preceito Fundamental* (ADPF) no 635. Furthermore, ODS 16, Peace, Justice, and Effective Institutions deals with the use of body cameras by police officers, where it was decided by the full Court of the Supreme Court that: “(...) to grant the request for a precautionary measure contained in item “a” of the initial petition, in order to determine the State of Rio de Janeiro to prepare and forward to the STF, within a maximum period of 90 (ninety) days, a plan aimed at reducing police lethality and controlling human rights violations by the Rio de Janeiro security forces, which contains objective measures, specific timetables and the forecast of the necessary resources for its implementation.”

And still: “(...) to determine that the State of Rio de Janeiro, within a maximum period of 180 (one hundred and eighty) days, install GPS equipment and audio and video recording systems in police vehicles and the uniforms of security agents, with the subsequent digital storage of the respective files, Ministers André Mendonça and Nunes Marques defeated.”

In the case of *Favela Nova Brasília vs. Brazil*, the Resolution of the Inter-American Court of Human Rights on November 25, 2021, highlighted: “involved; access to data, audio and images captured during police investigations, including through cameras on police uniforms, and video monitoring systems; encouragement and training of instruments of lesser offensive potential by the police in compliance with international rules.”

This demonstrates the need for monitoring and inspection of the performance of police power in general, and with particular focus and care when police action affects the most vulnerable strata of society.

Another point to be highlighted, but which must be analyzed very carefully, is the recommendation of the United Nations Human Rights Council - UN for the extinction of the military police in Brazil. This measure, in particular, would aim to reduce the number of executions extrajudicially, however, such a claim is very controversial for the current status of Brazilian public security, but it should be noted that the Brazilian judiciary has been acting to guarantee human rights to the Brazilian population, as in the speech of the Minister of the STF Luiz Fux: “The issue is complex and has structural and historical roots, but it needs to be tackled vigorously. The authorities must train their security forces at the local level, providing them with a manual of ethics and dignity in the approach. The preservation of people’s physical and moral integrity must be prioritized, even when they violate the laws or sanitary rules, so that police action is civilized, with reprimands that comply with the reasonableness of the reaction. The educational and pedagogical character of the police function must also be reinforced.”

This demonstrates the participation of our Supreme Court and the evident willingness of our institutions to try to bring security to the Brazilian population, especially taking the analysis and inspection of the culture of police action seriously, seeking a just and peaceful society.

In conclusion, the presumption of innocence principle, foundational in international and Brazilian legal contexts, underscores the core of due process and human rights. However, the persistent structural violence disproportionately impacting the black population in Brazil contradicts this principle. Comprehensive public policies addressing education, healthcare, housing, and security are imperative to rectify these deep-seated inequities. Recent judicial actions and discussions on police reform further exemplify the commitment to justice. Ultimately, the convergence of legal, institutional, and societal efforts aims to dismantle structural violence, fostering a just and equitable society that upholds the presumption of innocence for all citizens.

#### **4. Conclusion**

In conclusion, the presumption of innocence emerges as a fundamental cornerstone embedded in international frameworks and emphasized within jurisprudential pronouncements as a bedrock of a Rule of Law. This principle holds intrinsic significance within the Brazilian Constitution of 1988, where it contributes to the essence of due process of law and resonates throughout international instruments safeguarding human rights. However, a stark contradiction arises when considering the prevailing structural violence that systematically targets and extinguishes black lives in Brazil, disregarding any presumption of innocence and violating this very principle. Evidently, the black population endures an insurmountable burden, perpetually bearing the label of potential offenders.

In essence, the concept of the presumption of innocence carries a weighty promise of justice, one that champions the freedom of every individual until proven guilty. Nevertheless, this noble principle stands in obvious contrast to the harsh reality faced by many black individuals in Brazilian cities, where civilian actions and those of supposed security agents often disrupt their lives and liberties. The stories of countless Durval Teófilo Filhos remind us that this principle is not equally applied. Despite its lofty ideals, the system often fails these individuals, disproportionately casting shadows of suspicion upon them due to their skin color. This is not happenstance; it results from deeply entrenched biases and structural violence. As we reflect on these issues, it's vital to recognize that change requires more than legal reform—It demands a societal reckoning that acknowledges the systemic inequities black communities face. Only then can we hope to bridge the gap between the principle of presumption of innocence and its real-world implications, fostering a fairer and more just society for all.

Avoiding a reductionist perspective, it is imperative to emphasize that judicial decisions, particularly those counters to the accused, should meticulously uphold the deontological underpinning of the presumption of innocence, to combat the structural violence that disproportionately affects black individuals while erod-

ing their right to a fair defense. Furthermore, this discourse leads to the conclusion that rectifying racial inequalities, particularly with respect to the heightened vulnerability of black individuals in Brazil, demands a concerted effort in the realm of public security. This serves as a core arena for social and state action to initiate the much-needed correction of systemic imbalances.

Considering the enduring specter of structural violence that consistently looms over the lives of the black population in Brazil, it becomes incumbent upon the state and its institutions to implement targeted public policies aimed at mitigating the existential vulnerabilities perpetuated by these systemic inequities. Such policies should encompass various domains including education, health, housing, and security, ultimately fostering a civic response that can dismantle prejudices and racial discrimination embedded within the Brazilian social fabric. A transformative shift in political strategies is essential to disrupt the persistent legacy of an entrenched aristocratic slave mentality that undermines the very principles of justice and equality.

### Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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