



**DO DOMÍNIO AUTORITÁRIO MILITAR PARA A DEMOCRACIA
CONSTITUCIONAL: UMA VISÃO GERAL DAS POLÍTICAS DE DIREITOS
HUMANOS ATRAVÉS DA REDEMOCRATIZAÇÃO BRASILEIRA**

**FROM MILITARY AUTHORITARIAN RULE TO CONSTITUTIONAL DEMOCRACY:
AN OVERVIEW OF THE POLITICS OF HUMAN RIGHTS THROUGH THE
BRAZILIAN RE-DEMOCRATISATION**

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Resumo

O presente artigo, resultado de investigações e discussões teóricas realizadas no Programa de Pós-Graduação em Direito e no Centro para Cidadania, Sociedade Civil e Estado Democrático de Direito (CISRUL) da Universidade de Aberdeen no Reino Unido, tem como escopo principal analisar o processo histórico e sócio-político brasileiro de transformações de direitos humanos durante a saída do país do domínio autoritário militar e sua chegada à democracia constitucional, sob a perspectiva da teoria do modelo espiral de mudança de direitos humanos (*spiral model*) desenvolvida por Risse, Ropp and Sikkink (2013; 1999). Além disso, com base no conceito de autoritarismo social desenvolvido por Dagnino (2014; 2000; 1998; 1993), o artigo explica porque apesar de o Brasil ter se transformado em uma democracia constitucional, há ainda um cenário generalizado de violações de direitos humanos no país. Por fim, o artigo argui pela necessidade de se mudar as bases materiais da sociedade brasileira, de forma a possibilitar a construção de um novo projeto de sociedade, mais igualitária e na qual haja a efetivação dos direitos humanos.

Palavras-chave: Direitos Humanos; Democracia; Teoria de Mudança de Direitos Humanos em Espiral (*Spiral Model*); Autoritarismo Social.

Abstract

The paper, the result of research and theoretical discussions in the Postgraduate Program in Law and the Centre for Citizenship, Civil Society and Rule of Law (CISRUL) of the University of Aberdeen in the UK, has as main purpose to analyse the Brazilian historical and socio-political process of human rights developments during the

output of the country's military authoritarian rule and its arrival at a constitutional democracy from the perspective of the *spiral model* of human rights change theory developed by Risse, Ropp and Sikkink (2013; 1999). In addition, based on the concept of *social authoritarianism* developed by Dagnino (2014; 2000; 1998; 1993), the paper explains why even though Brazil has been transformed into a constitutional democracy, there is still a widespread scenario of human rights violations. Finally, the paper let us reason together by the need to change the material basis of Brazilian society, in order to enable the construction of a new project of society, more egalitarian and where there is the realization of human rights.

Key-words: Human Rights; Democracy; Spiral Model of Human Rights Change. Social Authoritarianism

1. INITIAL CONSIDERATIONS

This paper provides an overview of the politics of human rights (hereafter HR) through three periods in Brazil's recent history: authoritarian rule, transition and democracy. Such a historical approach helps us understand why despite Brazil having become a constitutional democracy, there is still a generalised scenario of HR violations nationwide. In this regard, the paper draws on theoretical approaches to comprehending HR change in Brazil. More specifically, the analysis relies on the *spiral model* of HR change developed by Risse, Ropp and Sikkink (2013 and 1999) but it also indicates the limits of the model in explaining Brazil's current complexities.

The study explores the political, economic and socio-cultural context of the Brazilian transition to democracy, and asks questions about the social and political structures that have hindered HR development. The analysis proceeds from the assumption that violence and inequality are structural problems that directly influence "the way international HR norms are observed in contemporary Brazil" (PICQ, 2004, p. 77). Thus, to understand contemporary Brazil, particularly the reception and influence of international and regional HR law into the legal system and their impact on its internal politics, it is necessary to consider determining factors that point to the undercurrents of social and political development in the country (PICQ, 2004).

The reconstruction of this historical trajectory under the theoretical framework of the *spiral model* helps trace the path towards democracy, the improvement of HR conditions and social justice. The second section presents the *spiral model* of HR change, and explains its usefulness for this study. The third section approaches structural problems such as violence and inequality as constants in Brazilian history.

The fourth section analyses the socio-political and economic context in authoritarian Brazil (1964-1985) and places the country within the theoretical framework of the *spiral model*. The fifth section assesses whether continuity or discontinuity with the authoritarian structures of the dictatorship prevailed in transitional Brazil (1985-1990), and locates the country within the *spiral model*. The sixth section examines whether the structures inherited from the dictatorship changed since the Brazilian transition to democracy (1990-2010) in order to clarify some of Brazil's current contradictions. It also positions the country within the *spiral model* framework. The seventh section identifies the problem(s) that prevent further HR progress and explains why Brazil has not yet reached phase 5 of the *spiral model*.

2. THE SPIRAL MODEL OF HUMAN RIGHTS CHANGE

In order to assess HR change in Brazil, a transitional theory is a useful starting point. This section presents the *spiral model* of HR change developed by Risse, Ropp, and Sikkink (1999 and 2013) as such a theory, and applies it to the Brazilian case. Its primary attraction in this context is that it draws on Latin American studies regarding the impact of international HR norms on domestic structural change.¹ It has already been applied to Latin American case studies such as Chile and Guatemala (ROPP and SIKKINK, 1999, p. 172-204).

Two concepts are particularly important for comprehending the *spiral model*. First, the so-called “boomerang effect” which was first described by Keck and Sikkink (1998), and that refers to a situation in which social agents (*viz.* civil society organisations and social movements) that are under oppression in a repressive state seek international support from international organisations and HR mechanisms. They put pressure on the authoritarian state with a view to bringing about political change. They usually circumvent the state and directly reach out to transnational advocacy networks (TAN) and UN and OAS HR mechanisms in order for the latter to exert pressure on the state from above (outside). The financial assistance and political support coming from these international networks increases the power of domestic opposition, organised civil society and social movements to exert pressure on the national government from below (inside). International and domestic pressures

¹ Such as Brysk (1993); Sikkink (1993); and Osiel (1986). See also Brysk (2013, 2009, 2005, 2002, 2000 and 1994); and Sikkink (2011 and 2004).

combined usually lead to HR change. In fact, as argued by Risse and Sikkink, the *spiral model* “consists of several ‘boomerang throws’ with diverging effects on the human rights situation in the target country” (1999, p. 18). Second, the so-called “process of socialisation” refers to a process in which the acceptance or entrance of a new state into the international community is conditioned upon HR norms internalisation into its domestic jurisdiction (RISSE and SIKKINK, 1999, p. 11). Thus, the *spiral model* appropriates the concept of “socialisation” to explain how norms are transmitted by the international society to its members (through their internalisation). It seeks not only the identification of the prominent “mode of social interaction (strategic adaptation, argumentation, and institutionalisation)”, but also, and more importantly for this study, the specification of “the causal mechanisms by which international norms affect domestic structural change” (RISSE and SIKKINK, 1999, p. 19).

The theory offers a dynamic causal model in which the process of HR change can be explained in five (not necessarily linear) phases in authoritarian countries. The first, *repression and activation of network*, refers to a repressive situation in which the internal political opposition is kept under oppression and, therefore, unable to induce regime change. In the second phase, *denial*, the norm-violating state is brought to the attention of the transnational HR advocacy networks due to its practices violating HR. The release of information on HR violations makes the state a target of the attention of the international public. The norm-violating state is then forced to respond to the accusations of HR violations brought against it in the international sphere. Usually, it denies all charges on the ground of the doctrine of sovereignty. Not all states pass through this phase.² In the third phase, termed *tactical concessions*, as the international pressure mounts, the norm-violating state “seeks cosmetic changes to pacify international criticism” (RISSE, ROPP, and SIKKINK, 1999, p. 25). If the pressure is sustained, this might lead to further concessions. They can reach the level where the HR rhetoric infiltrates the governmental discourse. Nevertheless, a backlash is possible. If the state’s response is more repression, this can paralyse the “spiral” process. If not, it will facilitate social mobilisation in the norm-violating state. In the fourth, *prescriptive status*, the norm-violating state faces a well-articulated HR network and the internalisation of international HR norms reaches a tipping point where the liberalisation

² It is important to note that the model is not deterministic, that is, it is not the case that once the process of change has started it is inevitable that the country will end up in phase 5. In fact, as I explain later on, Brazil could not yet make it to phase 5. It indeed did not get stuck in phase 3, but in phase 4.

of governmental policies and practices become irreversible. This might lead to regime change. Finally, in the fifth phase, *rule-consistent behaviour*, governmental practices come to abide by international HR norms. As we see, the *spiral model* is designed to “explain the variation in the extent to which national governments move along the path toward improvement of human rights conditions” (RISSE and SIKKINK, 1999, p. 18).

Notwithstanding its shortcomings,³ it is argued here that the usefulness of the *spiral model* for analysing Brazil is still valid.⁴ Thus, the paper will draw on the *spiral model* in order to provide an overview of the politics of HR in Brazil’s recent history. Nonetheless, a more complete approach towards explaining persistent structural problems that have prevented a domestic HR regime from fully developing will require addressing the issue of social authoritarianism.⁵

3. THE RELEVANCE OF STRUCTURAL PROBLEMS IN BRAZIL

As I have indicated, the *spiral model* has its limitations. For example, it is deliberately narrowed down to development in terms of civil and political rights (RISSE and SIKKINK, 1999, p. 3). It is unlikely that its narrow focus can be fully adequate to explain contemporary Brazil, especially concerning the entrenched inequality that affects the enjoyment of economic, social and cultural rights.⁶

This study argues that Brazil has not reached phase 5 (rule-consistent behaviour) of the *spiral model* and that it is unlikely to do so in the near future. Despite the progress regarding civil and political rights, there is still the residual problem of police violence. Entrenched inequality is another pivotal issue that reflects historical

³ For an updated analysis of the *spiral model* that reveals its strengths and weaknesses as well as for references of critical literature as to its valid usefulness see Risse, Ropp, and Sikkink (2013). See also Landman (2005) and Pace (2001).

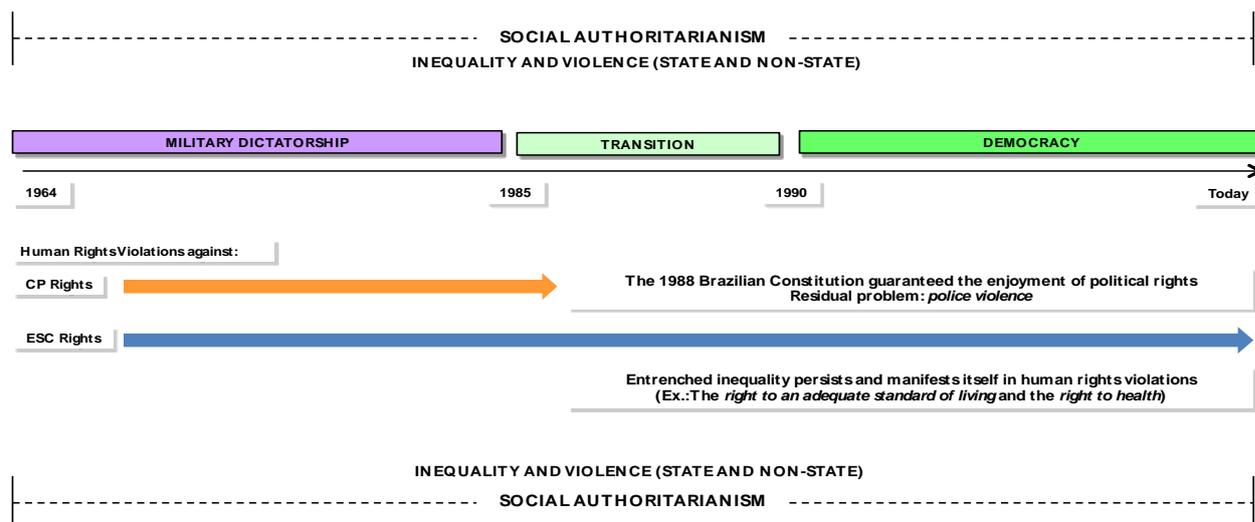
⁴ “[...] the spiral model still remains valid for the universe of cases for which it was designed, i.e. the impact of personal integrity rights in authoritarian, repressive states with little political legitimacy but considerable state authority, hardly any experience of transnational advocacy, and with material and social vulnerability [...]. Specifically, it can still claim to explain the process of human rights change for the first three stages of the model. [...]”, in Anja Jetschke and Andrea Liese, ‘The power of human rights a decade after: from euphoria to contestation’, in Risse, Ropp, and Sikkink (2013, p. 27). Furthermore, the “spiral model” still remains valid for Brazil’s case also because its phase 4 (prescriptive status) refers to ratification of international and regional HR treaties. Brazil has ratified the majority of UN and OAS HR treaties, but there remains the “compliance gap” problem since Brazil commits to international HR treaties but does not always comply with the standards contained in them. For more details see Dai (2013, p. 88) Simmons (2010, 2009, and 1998).

⁵ See Section 7 (Why has Brazil not reached Phase 5 of the Spiral Model yet?) below

⁶ For indicators see IBGE <<http://www.ibge.gov.br/home/>> accessed 2 January 2017 and IPEA <<http://www.ipea.gov.br/default.jsp>> accessed 2 January 2017. For an analysis of the relationship between inequality and the protection of personal integrity rights see Landman and Larizza (2009).

problems regarding the satisfaction of basic needs (*viz.* food, housing, health) for the majority of Brazilians.⁷ Therefore, it is unclear when – if ever – Brazil is going to move from commitment⁸ to compliance⁹ with international HR law (RISSE, ROPP, and SIKKINK, 2013 and 1999).

Figure 1 - Human Rights Change throughout the Brazilian Transition to Democracy



It may be useful to look into the factors that are not captured by the “spiral model”. The formation of Brazilian society has been marked by a variety of tensions regarding, for instance, the killing of indigenous peoples, sometimes resulting in the elimination of entire ethnic groups; enslavement of Africans and native indigenous peoples by Portuguese colonisers; social exclusion; political and economic domination exercised by elite groups that have controlled vulnerable groups etc.¹⁰ Such problems of violence and inequality persist today.¹¹

⁷ *ibid.*

⁸ “By ‘commitment’, we mean that *actors accept international human rights as valid and binding for themselves*”, in Risse, Ropp, and Sikkink (2013, p. 9).

⁹ “‘Compliance’ is defined as *sustained behaviour and domestic practices that conform to the international human rights norms*, or what we called ‘rule-consistent behaviour’ in the original spiral model”, in Risse, Ropp, and Sikkink (2013, p. 10). See Simmons (2010, 2009 and 1998); Risse and Sikkink (1999). See also Koh (2010); Finnemore and Sikkink (2010); Sikkink (2010).

¹⁰ For a more detailed analysis of Brazilian history see Martins Filho (2011); Meade (2010); Del Priore and Venâncio (2010) Bueno (2010); McCann (2008); Luna and Klein (2006) Gaspari, (2003); Davis and Pereira (2003); Campos (1988).

¹¹ For more details on this point see Carlos (2014); Mawdsley (2014); Silveira and Meyer-Pflug (2012); Almeida (2011); Pinheiro and Milani (2011); Amorim (2010); Maués (2009); Macaulay (2007); Pereira (2005, 2003, 2001, and 1998); Carbonari (2007); Flynn (2005); Picq (2004); Koerner (2003 and 2002); Abramovay et al (2002); Cavallaro (2002); Pinheiro (1999 and 1998); Panizza and de Brito (1998); Skimore (1988); Smith (1987); O’Donnell and Schmitter (1986); Stepan (1986); Sarney (1986); Arns (1985); Britto and Cunha (1985); Goés and Camargo (1984); Viana Filho, 1975); and US Department

Poverty and social exclusion are common causes of violence in Brazil (MOSER and MCILWAINE, 2006). This (state and non-state) violence has compromised, for instance, the work of human rights defenders and thwarted HR development.¹² From 1980 to 2010 there was an increase of 259% in homicides in Brazil (WASELFSZ, 2011, p. 18). The Brazilian population also increased from 119 to 190,7 million, but not with the same proportion as the homicide rate in the same period (WASELFSZ, 2011, p. 18-19). Even considering population growth, the homicide rate changed from “11,7 homicides in 100 thousand inhabitants in 1980 to 26,2 in 2010”, that is, there is “a real increase of 124% in the period or 2,7% per year” (WASELFSZ, 2011, p. 19). *Figure 2* below describes this phenomenon by tracing the increase of homicides in Brazil from 1980 (13.910=11,7 in 100.000) to 2010 (49.932=26,2 in 100.000).



Source: Waiselfisz (2011).

Inequality has been particularly high throughout the transition to democracy, despite recent progress achieved with governmental poverty reduction programmes.¹³ Despite the visible reduction in poverty levels during the two Lula Administrations (2003-2010), poverty and social exclusion are still high in Brazil (NERI, 2012). The Multidimensional Poverty Index (MPI) identifies many deficiencies at the individual level vis-à-vis education, health and standard of living (OPHI, 2015). Brazil's Multidimensional Poverty Index (MPI) value of 2011 (based on 2006 available survey data), for example, is 0.011 (OPHI, 2015). Other Latin American countries present

of State's Country Reports on HR Practices for 1976 to 2010. The U.S. Department of State <<http://www.state.gov>> accessed 2 January 2017.

¹² The analysis here is general. For a more detailed discussion see Terto Neto (2016); Silva et al (2015); Gupta (2012); Adorno (2002); Farmer (2004); Gullo (1998); Silva (2002); Galtung (1969).

¹³ For an account of these programmes see Hall (2006); Fenwick (2009). See also Skidmore (2004).

similar or worse MPIs such as Argentina (0.011), Bolivia (0.089), Colombia (0.022), Ecuador (0.013), Paraguay (0.064) and Uruguay (0.006).¹⁴

Inequality generates tensions and conflicts in any society. Violence and inequality have posed a huge problem since colonial times in Brazil. To control their positions, elite groups have used state and non-state violence also against human rights defenders (TERTO NETO, 2016; UN A/RES/60/251 and A/HRC/4/37/Add.2).¹⁵ This violence can be traced back to poverty and social exclusion in the country (NERI, 2012; PERES, 2002; WIEVIORKA, 1997; PINHEIRO and ALMEIRA, 2003).

Figure 3 below describes an increase in Brazil's Human Development Index (HDI) since the 1980s. The data indicate averages per period (1980-2014). These averages are not always accurate. This is because HDI might not represent inequality in the distribution of human development across the population domestically (UNDP).¹⁶ As a result, the analysis should also consider the Inequality Adjusted Human Development Index (IHDI), which "combines a country's average achievements in health, education and income with how those achievements are distributed among country's population"¹⁷ or takes into account inequality in all three dimensions of the HDI by "'discounting' each dimension's average value according to its level of inequality"¹⁸. In other words, the HDI shows the potential development, whereas the IHDI shows the actual development in a specific country.¹⁹

¹⁴ Oxford Poverty & Human Development Initiative (OPHI) <<http://www.ophi.org.uk/multidimensional-poverty-index/mpi-2015/mpi-country-briefings/>> accessed 2 January 2017.

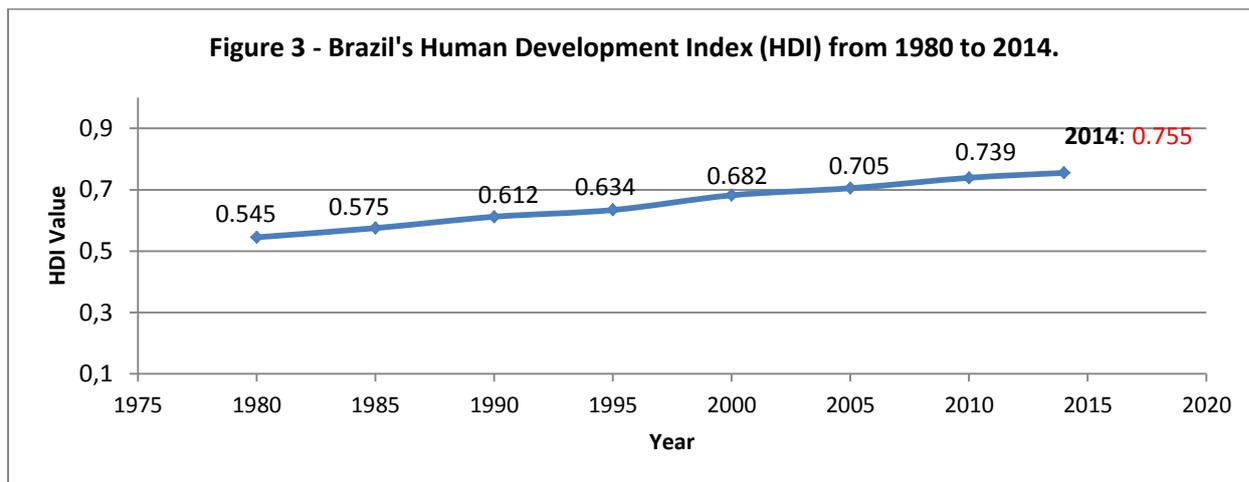
¹⁵ The United Nations (UN) <<http://www2.ohchr.org/english/>> accessed 2 January 2017.

¹⁶ The United Nations Development Programme (UNDP) <<http://hdr.undp.org/en/countries/>> accessed 2 January 2017.

¹⁷ The United Nations Development Programme (UNDP) <<http://hdr.undp.org/en/content/inequality-adjusted-human-development-index-ihdi>> accessed 2 January 2017.

¹⁸ *ibid*

¹⁹ *ibid* (n 16).



Source: UNDP <<http://hdr.undp.org/en/countries/profiles/BRA>> accessed 9 April 2016

Brazil's 2014 HDI value, for instance, is 0.755 (scale 0.1 to 1.0). Deducing the losses due to inequality in life expectancy at birth, education and income, all of which represent a total loss of approximately 26.3% (of 0.755), Brazil's IHDI value falls to 0.557, which represents the actual development measured in the country.²⁰ Currently Brazil ranks 75th in the world.²¹ Considering Latin America, Brazil is behind Argentina (40th, 2014 HDI 0.836 and IHDI 0.711), Chile (42nd, 2014 HDI 0.832 and IHDI 0.672), and Uruguay (52nd, 2014 HDI 0.793 and IHDI 0.678).²² This also unveils the existence of entrenched inequality, which usually compromises democratic institutions and values (WAYLAND, 1996; PICQ, 2004). It follows that "inequality is not only a matter of economic justice; it also impacts negatively on participation in the social and political life of Brazil" (PICQ, 2004, p. 82).

4. HUMAN RIGHTS IN AUTHORITARIAN BRAZIL (1964 TO 1985)

Let us see the trajectory of HR development in Brazil in more detail.

International HR law has made an impact on Brazil since the 1940s. The country has been an active participant in the process of creating international HR law at the UN.²³ Civil society as much as state agents have proclaimed their importance and

²⁰ The United Nations Development Programme (UNDP) <<http://hdr.undp.org/en/countries/profiles/BRA>> accessed 2 January 2017.

²¹ *ibid.*

²² The United Nations Development Programme (UNDP) <<http://hdr.undp.org/en/countries/>> accessed 2 January 2017.

²³ United Nations <<https://www.un.int/brazil/>> accessed 2 January 2017.

advocated an effective domestic HR regime.²⁴ Internationally, Brazil has supported the *OAS American Declaration of the Rights and Duties of Men*²⁵ as well as the *UN Universal Declaration of Human Rights*²⁶. However, HR development has always raised challenges. Brazil is a post-colonial society with a historical legacy of social authoritarianism.²⁷ With the fall of democracy in the 1960s, Brazil became infamous for grave HR violations. It was only in the late 1970s that the country started its return to democracy, and HR could once again rise on the agenda (VIANA FILHO, 1975; SMITH, 1987; SKIDMORE, 1988). Despite considerable progress since its re-democratisation (1985), there still remains much to be done, especially if we consider economic, social and cultural rights.²⁸

Phase 1 of the Spiral Model: repression and activation of network

Military intervention in politics has occurred with relative frequency throughout the development of Brazilian society.²⁹ There has always been an authoritarian culture within the Brazilian armed forces.³⁰ This authoritarian culture is a big part of the explanation for the 1964 *coup d'état*.³¹

The main factors that led to the military overthrowing President João Goulart (1961 to 1964) were the political instability generated by strikes and political demonstrations; the population facing the growing cost of living; promises of agrarian reform and radical changes in economy and education (public policies) by the Goulart government; middle class fears that socialism could be established in Brazil; the support from conservative sectors of the Catholic Church, the middle class and, more

²⁴ It is understood here in the same way as in Avritzer (2006) and Olvera and Avritzer (1992). According to Pereira (1993, p. 370): “adequate analysis of transitions to democracy in underdeveloped regions should employ the concept [of civil society] to assess the nature and profundity of the political changes in question. [...]”

²⁵ Organization of American States (OAS) <http://www.hrcr.org/docs/OAS_Declaration/oasrights.html> accessed 2 January 2017.

²⁶ United Nations (UN) <<http://www.un.org/en/documents/udhr/>> accessed 2 January 2017.

²⁷ This point is developed in Section 7 (Why has Brazil not reached phase 5 of the spiral model yet?).

²⁸ Economic, social and cultural rights can be seen here as those related to the family life, work place, social security, participation in national cultural manifestations, access to housing, access to integral health, access to potable water, access to public quality education, among others. See UN FACT SHEET N.º 33 (2008).

²⁹ *ibid* (n 10).

³⁰ *ibid*. “In Brazil, the military never ruled directly in the twentieth century until the 1964 coup [...]” in Pereira (2003, p. 32).

³¹ This explains why Brazil is still trying to consolidate its democratic institutions as well.

decisively, by the US government to the Brazilian armed forces.³² Therefore, the *coup's* main motivations were to (1) predict the communist strategy to seize power as well as defend military institutions and (2) reinstate order for legal reforms to be carried out (SKIDMORE, 1988; VIANA FILHO, 1975).

After the military takeover, General Castelo Branco (1964 to 1967) eventually became president (SKIDMORE, 1988; VIANA FILHO, 1975). The *operação limpeza* (operation “clean-up”) followed the *coup*, which targeted “subversive” or “communist” leaders, certain (progressive) Catholic organisations, political parties (*viz.* the Communist Party and the Trotskyite Revolutionary Marxist Organisation/Workers’ Politics), leftist military officers, and labour activists (SKIDMORE, 1988; VIANA FILHO, 1975).³³ There was ruthless oppression (*viz.* illegal arrests, torture, and cruel, inhuman, or degrading treatment or punishment) that paralysed effective opposition. The Castelo Branco government established indirect elections for the presidency, dissolved the existing political parties, suspended the political rights of members of (federal and state) parliament and instituted the two-party system. The *Aliança Renovadora Nacional* (National Renovating Alliance, or ARENA) became the governmental party, whereas the *Movimento Democrático Brasileiro* (Brazilian Democratic Movement, or MDB) was the opposition party, but with no real influence on the government (SKIDMORE, 1988; VIANA FILHO, 1975). A “new Constitution” was imposed in January 1967 in order to adjust the constitutional system to the military regime’s practices (SKIDMORE, 1988; VIANA FILHO, 1975).³⁴ All this made democratic political activism difficult. In this period, international network pressures were either weak or non-existent (ROPP and SIKKINK, 1999, p. 181).

The military dictatorship was consolidated via the implementation of an economic model based on concentration of income, wage reduction and

³² For a detailed account of the origins of the military regime see Viana Filho (1975); Skidmore (1988, chapters I and II).

³³ “The military regime created in the wake of the 1964 coup in Brazil was always concerned with repressing its perceived ideological enemies. This entailed prosecuting opponents and dissidentes for their expression. of “subversive” ideas and not merely acts against the regime”, in Pereira (2005, p. 164). Moreover, as argued by Pereira (1998, p. 43), “repression under the Brazilian regime was particularly legalistic in the sense that the number of killings was relatively low but the rate of judicial prosecution high”.

³⁴ “The leaders of the military regimes in Brazil and the southern cone were concerned with the legality of their rule. Despite the fact they had all come to power through force, these leaders strove mightily to frame their actions with a scaffolding of laws, a mixture of the old and the new. In all of their regimes there was a realm of extrajudicial state terror, on the one hand, and an area of routine, well-established legality on the other. [...] Another tactic in the struggle to make repression lawful was ‘political justice’, or the prosecution of the regimes’ opponents in courts of law for offences against national security. [...]” in Pereira (2005, p. 18). See also Pereira (2002 and 2001); Ungar (2002).

“denationalisation”³⁵ of the economy (ARNS, 1985; SKIDMORE, 1988; VIANA FILHO, 1975). This economic model was used as a justification for authoritarian and repressive measures undertaken by the military governments throughout the dictatorship (ARNS, 1985; SKIDMORE, 1988). For that economic model to succeed, the legal system needed to be reformed and tightly controlled, the repressive apparatus strengthened, and the relations among the executive, legislative and judicial branches reorganized (ARNS, 1985; SKIDMORE, 1988; PEREIRA, 2005 and 2001).

General Castelo Branco was succeeded by General Costa e Silva (1967 to 1969), who was then succeeded by General Emílio Garrastazu Médici. The Médici government (1969 to 1974) ushered in the most violent and repressive period of the whole dictatorship, when the suppression of civil liberties was particularly violent, a strong security apparatus was created, and the guerrilla activities were stymied (ARNS, 1985; SKIDMORE, 1988; VIANA FILHO, 1975; PEREIRA, 2005 and 2001). It often meant eliminating the guerrillas themselves. As the regime became even more oppressive, HR violations by state agents became routine. At this stage, the security apparatus conducted not only illegal arrests and torture, but also killings and forced disappearances to consolidate the dictatorship. Democratic political activism became almost impossible.

The rise of General Ernesto Geisel (1974 to 1979) represented the return of *castelistas*³⁶ to power (SKIDMORE, 1988, p. 161). One of the main goals of this new government was an ultimate going back to democracy, despite not being clear about what type (SKIDMORE, 1988). The Geisel-Golbery³⁷ project pursued a “gradual and highly controlled opening” that led to a confrontation with hardliners throughout the transition to democracy (SKIDMORE, 1988, p. 167). They managed the project’s circuitous development until other factors outside their control (*viz.* economy, civil society, social movements) came into play that turned the project into an irreversible process of political opening.

The Catholic Church (SKIDMORE, 1988; SMITH, 1987), the *Ordem dos*

³⁵ For an explanation of the term see Benayon (2005).

³⁶ Political group within the military dictatorship with connections to the first military president General Castelo Branco, who argued that the power should be returned to civilians. For an account regarding the “*castelistas*” see Smith (1987, pp. 188-189).

³⁷ General Golbery was the politically strongest member of General Geisel’s cabinet.

Advogados do Brasil (Brazilian Bar Association, or OAB),³⁸ and the *Associação Brasileira de Imprensa* (Brazilian Press Association, or ABI) “assumed the leadership in catalysing and channelling elite disaffection and in openly criticizing the regime’s policies” and, thus, raised important issues such as censorship, HR violations, political amnesty and indigenous rights (SMITH, 1987, p. 195). In spite of HR violations perpetrated by state agents of the security apparatus, the socio-political activism of civil society³⁹ organisations achieved various partial victories that had a “multiplier effect and raised the costs of repression for the regime and lowered the costs of organisation and activities for other groups” (SMITH, 1987, p. 196). Democratic political activism became less difficult.⁴⁰ Although the military regime had signed (1966) and ratified (1968) the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD)⁴¹, which entered into force in 1969, international network pressures were still either weak or non-existent (ROPP and SIKKINK, 1999, p. 181). Consequently, the hardliners could react with repressive actions by the police apparatus. On April 1st, 1977 Geisel dissolved Congress and, using the *Ato Institucional n. 5* (Institutional Act 5, or AI-5)’s powers, “announced a series of major constitutional changes (dubbed the “April package”, or *pacote de abril*), all aimed directly or indirectly at making ARENA unbeatable in future elections” (SKIDMORE, 1988, p. 191).⁴²

Phase 2 of the Spiral Model: denial

The election of Jimmy Carter (USA) in 1976, and especially his decision to thwart Brazil’s ambitions to acquire nuclear technology, created tensions between Brazil and the USA. The external pressures exerted by the USA on Brazil helped Geisel acquire popular support for his nationalist rhetoric in the domestic political arena, as well as the support of the military for his government position on HR, which was one of

³⁸ “[...] beginning in the 1970s, judicial (and some military) dissent against the national security laws began to develop within the system. The Brazilian Bar Association became a prominent critic of national security laws and aspects of the repression, for example”, in Pereira (2003, p. 7).

³⁹ *ibid* (n 24).

⁴⁰ During this time there were some reactions from civil society organisations. They demonstrate the activation of network. The reactions were strongly repressed not long afterwards, that is, more repression came from the dictatorship. This kept the country still in phase 1 of the *spiral model*.

⁴¹ The United Nations Human Rights Treaties <<http://www.bayefsky.com/>> accessed 2 January 2017.

⁴² It should be noted that “[...] authoritarian regimes use the law and courts to bolster their rule all the time, in ways that a simplistic distinction between *de facto* and constitutional (or *de jure*) regimes obscures. [...]”, in Pereira (2005, p. 6). This is very good study on authoritarian legality in Latin America.

silence or denial regarding HR violations. The dictatorship was particularly hostile to the US State Department's "annual report on the state of HR in any country receiving US military assistance" (SKIDMORE, 1988, p. 195). In the report for 1979, there was significant criticism of the alarming HR situation in Brazil (U.S. DEPARTMENT OF STATE'S COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, 1979, pp. 262-268). Attempting to avoid "any occasion for future State Department reports on HR in Brazil" (SKIDMORE, 1988, p. 197), the dictatorship cancelled all military cooperation projects with the USA.⁴³

But Brazil's government could not avoid the consequences of the explosion of international HR activism in the 1970s (MOYN, 2010, p. 121). Especially the pressure exerted by the Carter Administration forced the dictatorship to reserve significant space for HR in Brazil's statement at the *Opening of the 32nd Session of the United Nations General Assembly* in 1977. Despite explicit reference to HR, the approach was evasive. There were concerted efforts to avoid an open discussion on HR violations in Brazil. In order to deflect attention from the Brazilian situation, the statement pushed two arguments: (1) the nuclear weapons race and existing inequalities in the world prevent the full realisation of HR globally; and (2) it is the exclusive competence of States to deal with HR problems in their domestic jurisdiction.⁴⁴

Phase 3 of the Spiral Model: tactical concessions

The confrontation between *castelistas* and hardliners came to a head when the issue of Geisel's succession arose. After marginalising hardliner candidates, Geisel chose (and imposed) General João Figueiredo as his successor. He thought the opening project could still be kept moving gradually, at a controlled, slow pace. He did not have the ear to the voices from civil society demanding regime change. Indeed, the Catholic Church, the OAB, and the ABI increased their demands for a faster transition to democracy and the reestablishment of the rule of law (SMITH, 1987, p. 201). The *Movimento Custo de Vida* (Cost of Living Movement), the university student movement

⁴³ The strategy did not prevent the US Department of State's Country Reports on Human Rights Practices for 1980-1985 from reporting on the human rights situation in Brazil. The Hathi Trust Digital Library <<http://babel.hathitrust.org/cgi/pt?seq=1&id=mdp.39015014188273&page=root&view=image&size=100&orient=0>> accessed 2 January 2017.

⁴⁴ For representative passages that reveal the efforts to avoid an open discussion on the existence of HR violations in Brazil see Correa (1995, pp. 338-339).

and the amnesty movement⁴⁵ mobilised the population during the 1978 presidential election and “played an important role in civil society’s reactivation, thereby further undermining the regime’s legitimacy” (SMITH, 1987, p. 201; SKIDMORE, 1988). The business community joined later. Democratic political activism became a reality, and international network pressures strengthened due to the fact that TAN and international HR policies became much more structured and organized (ROPP and SIKKINK, 1999, p, 181; MOYN, 2010).

Further, the *new unionism* movement⁴⁶ joined forces with other civil society organisations in their calls for change (SKIDMORE, 1988). This included some sections of the entrepreneurial class, which by 1978 had already begun distancing “themselves, albeit very cautiously and tentatively, from the military’s authoritarian excesses” (SMITH, 1987, p. 204). The now united voices of civil society indicated that the opening project would soon turn into an irreversible and speedy process towards re-democratisation. General Golbery’s reaction was to restructure the party system, changing it from a two-party system (ARENA and MDB) to a multiparty one, and taking occasional repressive measures to keep civil society organisations quiet and in compliance with the regime’s own, more restricted political liberalisation plan (SMITH, 1987; SKIDMORE, 1988).

The amnesty movement had ample popular support when the Figueiredo government (1979 to 1985) was set up (SKIDMORE, 1988, p. 202). Thus, in August 1979 the amnesty bill was approved by Congress. In its final version, the amnesty law was a “political trade-off. The opposition leaders knew that they could move toward an open (democratic) regime only with the cooperation of the military” (SKIDMORE, 1988, pp. 202, 207 and 219). The amnesty law allowed the return of important political figures (*viz.* Leonel Brizola, Luís Carlos Prestes, and Miguel Arraes) who had been forced into

⁴⁵ It was a movement for the complete amnesty for those who fought against the military dictatorship. UOL <http://www2.uol.com.br/historiaviva/noticias/a_luta_pela_anistia.html> accessed 2 January 2017.

⁴⁶ “The political significance of the new unionism was at its height under the military regime. In the late 1970s, its leaders protested the military regime’s manipulation of inflation data to push down wages and its suppression of the right to strike. As the movement gathered momentum, it challenged and successfully removed the most arbitrary of the state’s claimed rights to intervene in union affairs. The repressive policies of the military regime forced unions into political confrontations with the regime itself, not just particular employers or government policies. In the process, the new unionism attracted support from other segments of society and came to symbolize opposition to the military regime’s despotic power. However, its “social movement” characteristics diminished as the transition to civilian rule proceeded, repression eased, the activities of political parties and other organisations increased, and the main links between the state and unions were preserved”, in Pereira (1996, p. 102). For detailed accounts see Smith (1987) and Skidmore (1988).

exile previously.⁴⁷ Although their return was considered by the government as consistent with Golbery's plan to restructure the party system (SMITH, 1987), it was indeed a tactical concession made by the Figueiredo government in response to internal and external pressure by national and transnational advocacy networks (BRYSK, 1993; RISSE, ROPP and SIKKINK, 1999 and 2013). Another tactical concession occurred when the government allowed the visit of the representative of *Amnesty International*⁴⁸ in August 1979 regarding allegations of HR violations in Brazil (U.S. DEPARTMENT OF STATE'S COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, 1979, p. 268). This event helped bring improvements in HR protection in the country.⁴⁹ National and transnational activism was growing strong and joining forces (KECK and SIKKINK, 1998, pp. 8-9).

The upcoming 1982 election was a governmental priority. The control of (state and federal) political institutions was crucial for Golbery's plan regarding the opening project. Given that governors would be elected directly for the first time since 1965, "a party reform bill effectively abolishing the two-party system was forced through Congress in December 1979 to implement Golbery's dictum to splinter the opposition front" (SMITH, 1987, p. 209). Six new parties emerged.⁵⁰ The Figueiredo government carried on with the fragmentation of the opposition into PMDB, PP, PDT and PT in the hope of keeping control of the opening project and presidential succession (SMITH, 1987; SKIDMORE, 1988). However, the escalation of right-wing terrorism and the events of the 1982 election would demonstrate the government's miscalculations regarding the challenges to its slow, gradual and controlled liberalisation plan (SMITH, 1987; SKIDMORE, 1988). Figueiredo's reluctance to punish those responsible for the Riocentro bombing⁵¹ and, more importantly, Golbery's forced resignation confirmed the fault lines within the armed forces, and marked the end of the Geisel-Golbery's opening project (SKIDMORE, 1988, p. 228). It turned into a political process no longer controlled

⁴⁷ For a detailed account of the amnesty law approval see Skidmore (1988).

⁴⁸ The Amnesty International Annual Report Archive <<http://onlinebooks.library.upenn.edu/webbin/serial?id=aireport>> accessed 2 January 2017.

⁴⁹ "[...] The long-term improvement in HR protection and observance began with political, legal, and institutional changes during the late 1970's; [...]", in U.S. Department of State's Country Report on Human Rights Practices (1982, p. 421).

⁵⁰ The government's party ARENA turned into the *Partido Democrático Social* (PDS); the opposition party turned into the *Partido do Movimento Democrático Brasileiro* (PMDB); the *Partido Popular* (PP) and had as one of its prominent leaders Tancredo Neves; the pre-1964 *Partido Trabalhista Brasileiro* (PTB) with veiled support from Golbery; the *Partido Democrático Trabalhista* (PDT) with Leonel Brizola as its main leader; and the genuinely bottom-up-created *Partido dos Trabalhadores* (PT) with Luiz Inácio da Silva (Lula) as its main leader. See Smith (1987); Skidmore (1988).

⁵¹ For details see Smith (1987).

by the dictatorship (GOÉS and CAMARGO, 1984, p. 190; SMITH, 1987, p. 211).

In 1983, recession hit Brazil hard and, under pressure from the IMF, the government imposed austerity measures (SKIDMORE, 1988). One in particular (modifications to the 1979 wage law) exposed the dictatorship's loss of legitimacy, and demonstrated that the military government was becoming isolated (SMITH, 1987, pp. 213-214). The economy certainly had an influence on Figueiredo's succession. Divisions within the ruling PDS became evident. This and health problems explain Figueiredo's decision not to interfere in his succession (SKIDMORE, 1988). Due to the protracted controversy over the nomination within the PDS, many of its moderate members became reluctant to support Paulo Maluf.⁵²

Voices from civil society organisations and social movements became stronger. Widespread popular mobilisations around the *Diretas Já!* (Direct Elections Now!) Campaign occurred from January to April 1984 (U.S. Department of State's Country Reports on HR Practices, 1984). Prominent political figures such as Tancredo Neves and Ulysses Guimarães (PMDB), Leonel Brizola (PDT), Luiz Inácio "Lula" da Silva (PT), artists and intellectuals campaigned nationally. Social movements (*viz.* union, peasant, and women), HR groups, and neighbourhood organisations mobilised and assured crowded events (SMITH, 1987; SKIDMORE, 1988). Even PDS dissidents joined the *Diretas Já!* Campaign, which meant a crucial split within the ruling political elite (SMITH, 1987; SKIDMORE, 1988). The media projected an image of national unity throughout the campaign. As TAN had become better structured and organised by this time, international network pressures could have a stronger impact (KECK and SIKKINK, 1998; RISSE and SIKKINK, 1999; ROPP and SIKKINK, 1999).

Ratifying the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)⁵³ in 1984 was another tactical concession by the dictatorship (signed in 1981). Since the political, legal, and institutional changes that occurred during the late 1970s, there had been improvements in HR protection and observance. As a result, "the state of HR generally continued to improve in 1984, reinforcing the long term trend" (U.S. DEPARTMENT OF STATE'S COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, 1984, p. 440). It became evident that the transition to democracy was irreversible. Nonetheless, the dictatorship's repressive tactics impeded the approval of

⁵² He was at the time Federal Deputy (member of the lower house) and former governor of São Paulo. Maluf is said to have received support from the civilian and military hardliners and, surprisingly, gotten General Golbery to back him as PDS' presidential candidate. See Smith (1987); Skidmore (1988).

⁵³ The United Nations Human Rights Treaties <<http://www.bayefsky.com/>> accessed 2 January 2017.

the bill on direct election of the president in Congress. Yet, it “received 298 votes (62 per cent), including 55 from the PDS. This fell 22 votes short of the required 320” (SMITH, 1987, p. 216). The next president was to be elected by the Electoral College.

The socio-political and economic context changed considerably. The opposition grew strong by blaming the government for the recession, and arguing that a rapid return to democracy was the only way to solve the socio-political and economic problems (SMITH, 1987). This generated two crucial initiatives in the Electoral College. First, the PMDB united around Tancredo Neves to follow the course of indirect election by negotiation and conciliation (SMITH, 1987; SKIDMORE, 1988). Second, Vice-president Aureliano Chaves and Senator Marco Maciel withdrew their candidacies, and, together with José Sarney, who resigned the PDS presidency, “organised the PDS dissidents in a new party, the *Partido da Frente Liberal* (Liberal Front Party, or PFL)” (SMITH, 1987, p. 217). Then, PMDB and PFL formed a strategic alliance to win the indirect elections: the *Aliança Democrática* (Democratic Alliance). On August 1984, Maluf was finally nominated as the presidential candidate for the PDS. The following day, the *Aliança Democrática* confirmed Tancredo Neves (PMDB) and José Sarney (PFL) as candidates, for president and vice-president respectively (SMITH, 1987; SKIDMORE, 1988). On January 5th 1985, the Electoral College elected Tancredo Neves with 480 votes, with “271 votes from the PMDB, 113 votes from the PFL, 38 votes from the PDT and the PTB, and 3 votes from PT delegates disobeying their party’s official position and 55 votes from PDS defectors” (SMITH, 1987, p. 218). Paulo Maluf got 180 votes from the PDS. Assured that the new government would pursue no *revanchismo*⁵⁴, the leaders of the military dictatorship decided they should go back to their barracks. With this, the military rule came to an end.

The Brazilian path towards re-democratisation can be characterised as a process of “undetermined social change” (SMITH, 1987, pp. 183-184). It resulted not only from an elite orchestrated project, but also from pressures exerted by reactivated civil society organisations in combination with emerging social movements in the 1970s and 1980s (O’DONNELL AND SCHMITTER, 1986; GOHN, 2012 and 1997; SMITH, 1987). Although “Brazil is a clear case of liberalisation commencing under the aegis of the military-as-government” (STEPAN, p. 1986, p. 75), this complex process involved mutual concessions and negotiations between the regime and opposition which, under the influence of pressures for change coming from national and transnational advocacy

⁵⁴ Literally it means “vindictiveness”. See Smith (1987, p. 217).

networks, led finally to a political compromise towards regime change.

5. HUMAN RIGHTS IN TRANSITIONAL BRAZIL (1985 TO 1990)

The *Nova República* (New Republic) dreamed up by Tancredo Neves would be based on “civilian rule, national reconciliation, and social justice” (SMITH, 1987, p. 218; SILVA, 1998). He did not live to fulfill it. His mysterious illness and subsequent death allowed the vice-president-elect José Sarney to be sworn in as president on March 15th, 1985 (BRITTO AND CUNHA, 1985; GONÇALVES, 2000; DORIA, 2009). The surge of the *Nova República* marked the demise of the authoritarian regime. However, the question remained whether continuity or discontinuity with the dictatorship’s authoritarian structures prevail in Brazil. This section analyses the transitional period of the Brazilian path towards democracy.

The removal of the debris of the old authoritarian institutions occurred relatively rapidly (SMITH, 1987, p. 219). Setting up the constituent assembly proved a far more complex task due to the fact “those sectors favouring the limitation of popular participation in the process of constitutional reform” remained in control of administrative-political institutions (SMITH, 1987, p. 220). Nevertheless, civil society organisations (the Catholic Church, OAB, ABI, and others) and social movements (HR, environment, race, gender, housing, and others) played an important role in guaranteeing the inclusion of their demands for HR, democracy and social justice in the new democratic Constitution (1988). The protection against state and non-state violence would become a central issue and the problem of social justice and citizenship a national priority in the new constitutional framework. (U.S. DEPARTMENT OF STATE’S COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, 1988, pp. 469-482). In reality, however, despite improvements regarding political rights, “problems remained in other HR areas in 1986, notably in the treatment of common criminals and Indians [indigenous peoples]” (U.S. DEPARTMENT OF STATE’S COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, 1986, p. 416). In response to pressures exerted by national and transnational advocacy networks (BRYSK 1993; RISSE, ROPP and SIKKINK, 1999 and 2013), the Sarney government (1985 to 1990) made a tactical concession by allowing a visit from the representative of *Amnesty International* in October 1986 “to investigate torture and ill-treatment in various prisons and police stations in four major cities” (U.S. DEPARTMENT OF STATE’S COUNTRY REPORT

ON HUMAN RIGHTS PRACTICES, 1987, p. 405). Another tactical concession was the reactivation of the *Council for the Defence of the Rights of the Human Person* (CDDPH),⁵⁵ which had been inactive during the dictatorship (U.S. DEPARTMENT OF STATE'S COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, 1988, p. 422). No doubt, national and transnational activism now became stronger and more interconnected.

Phase 4 of the Spiral Model: prescriptive status

As representatives of all parts of society were present, the National Constituent Assembly (1987) and the respective promulgation of the new Brazilian Constitution (1988) occurred through a democratic and participative process (BARROSO, 2003, p. 42). The new Federal Constitution “demarcates, in the legal sphere, the process of re-democratisation of Brazil, once it consolidates the rupture with the military authoritarian regime that had been installed in 1964” (PIOVESAN, 2008, p. 21). This was a true watershed in Brazil's recent history, for the 1988 Federal Constitution introduced various constitutional guarantees, designed to protect fundamental rights, which either were ignored or did not exist during the military regime (BARCELLOS, 2002; AZEVEDO, 2002; ALEXY, 1999). In fact, the 1988 Federal Constitution bolstered state obligations concerning public policies to promote human rights.⁵⁶

Under the Sarney government, the seeds for a *governmental culture of human rights* were planted,⁵⁷ especially when it came to foreign policy (PINHEIRO, 1999, p. 5). Having overcome a dictatorship that denied HR violations in the country, Brazil needed to reconstruct its image in order to claim a place among the democratic nations (PANIZZA and DE BRITTO, 1998). Despite this ambition, the government's responses to international and nongovernmental investigations of alleged HR violations were inconsistent (U.S. DEPARTMENT OF STATE'S COUNTRY REPORT ON HUMAN

⁵⁵ Later converted into the *National Human Rights Council* (CNDH) by Lei nº 12.986/2014. Secretaria de Direitos Humanos da Presidência da República <<http://www.sdh.gov.br/sobre/participacao-social/cddph>> accessed 2 January 2017.

⁵⁶ As for instance the legal aid public policy. See Terto Neto (2010).

⁵⁷ The *governmental culture of human rights* refers to the cultivation of administrative practices in state institutions that consider international human rights norms. It is interpreted here as a final stage in the process of socialization as described by Risse, Ropp, and Sikkink (1999). In other words, it is when international or regional HR norms are “incorporated in the ‘standard operating procedures’ of domestic state institutions” (RISSE, ROPP, and SIKKINK, p. 17). Although there are many other state institutions in the executive, judicial and legislative branches, this paper focuses on HR practices regarding institutions that exercise Brazil's Federal Executive Power.

RIGHTS PRACTICES, 1988, p. 477).

The *Aliança Democrática* showed the first signs of internal rupture in the municipal elections of November 1985 (SKIDMORE, 1988; SMITH, 1987). The PMDB remained the largest party and conservative parties (PFL, PDS, and PTB) continued losing electoral support (SKIDMORE, 1988; SMITH, 1987). The PT saw a significant increase in its electoral support – given that “its share of the total national vote was 11 per cent, almost as much as the PDS (4 per cent) and the PFL (9 per cent) together” (SKIDMORE, 1988, p. 394, footnote 23). The Sarney government resisted significant HR changes, revealing its conservative nature. As a reaction, Fernando Henrique Cardoso, the government’s spokesperson at the time, resigned arguing that the new republic was no different from the old one under the dictatorship (SMITH, 1987, p. 228). Some of the authoritarian structures built up during the dictatorship certainly remained in place. Continuity prevailed in transitional Brazil (SMITH, 1987, p. 231). Moreover, the economy presented formidable challenges such as external debt and inflation (SARNEY, 1986; SMITH, 1987; SKIDMORE, 1988). The Sarney government attempted to address them by launching the two *Cruzado* Plans (FLYNN, 1986). Despite their initial positive impact, both plans failed to tackle the economic problems. National and transnational advocacy networks kept applying domestic and foreign pressure, which eventually led to the Sarney government ratifying the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment* (CAT)⁵⁸ and the *Inter-American Convention to Prevent and Punish Torture* (ICPPT).⁵⁹

The Sarney government faced increasing “disenchantment with the new political order” (PANIZZA, 2000, p. 80) due to its ineffective management of the economy (hyperinflation persisted), complex internal politics (negotiations regarding constitutional reforms and the consolidation of the transition to democracy), and the realisation that its HR initiatives were predominantly rhetorical. This led to a crisis of representation. It became one of the reasons for the surge of support for Fernando Collor de Mello, a charismatic, neo-populist leader (SOARES, 1990; PANIZZA, 2000). Presenting himself as the only candidate capable of establishing a new and economically stable order (PANIZZA, 2000, p. 177), Collor became the first civilian president directly elected after the authoritarian period, and “assumed the presidency

⁵⁸ It was signed on 23 September 1985 and ratified by Brazil on 28 September 1989. The United Nations Human Rights Treaties <<http://www.bayefsky.com/>> accessed 2 January 2017.

⁵⁹ It was signed on 24 January 1986 and ratified by Brazil on 09 June 1989. The Organization of American States <<http://www.oas.org/>> accessed 2 January 2017.

with a high degree of legitimacy” (PANIZZA, 2000, p. 183). Collor’s election under the rules of the 1988 Federal Constitution, and in compliance with electoral law, completed the shift from authoritarianism to democracy (SMITH, 1987; SKIDMORE, 1988; PIOVESAN, 2008). However, it is clear that continuity with the dictatorship’s authoritarian structures prevailed throughout the Brazilian transition to democracy, despite some progress regarding the removal of the authoritarian debris (U.S. DEPARTMENT OF STATE’S COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, 1988, p. 469; SMITH, 1987; SKIDMORE, 1988; PEREIRA, 2005; PIOVESAN, 2008).

6. HUMAN RIGHTS IN DEMOCRATIC BRAZIL (1990 TO 2010)

In light of this analysis, I can try to answer the question I posed above: has continuity or discontinuity with the dictatorship’s authoritarian structures prevailed in the post-1990 democratic governments in Brazil?

Under the Collor government (1990 to 1992), further HR progress was made. In response to transnational NGO reports⁶⁰ on the situation of gross HR violations in the country and being aware of the negative effects of NGOs’ “naming and shaming” strategy on Brazil’s image abroad (HAFNER-BURTON, 2008), the Collor government took action ensuring the investigation of all cases of alleged HR violations. This “constituted a departure from previous policy, whereby federal authorities would refuse to investigate HR violations on the grounds that it was the responsibility of state and local authorities to do so” (PANIZZA and DE BRITTO, 1998, p. 27). Human rights were included in the presidential political agenda. One should perceive the Collor government’s efforts, which also resulted in the ratification of regional and international HR instruments,⁶¹ as “largely defensive and based on the ‘politics of shame’” (PANIZZA and DE BRITTO, 1998, p. 27). Although the Collor government was more willing than previous governments to investigate HR violations (U.S. DEPARTMENT OF STATE’S COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, 1992, p. 349), major problems remained such as “the high incidence of extrajudicial killings and death threats against rural activists by landowners and their agents, and extrajudicial killings

⁶⁰ Particularly those provided by Amnesty International <<http://www.amnesty.org/en>> accessed 2 January 2017.

⁶¹ For a list of international and regional HR instruments ratified/acceded by the Collor government go to the UN HR Treaties <<http://www.bayefsky.com/>> and OAS<<http://www.oas.org/>> accessed 2 January 2017 respectively.

of criminal suspects and minors by vigilant groups and the police” (U.S. DEPARTMENT OF STATE’S COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, 1992, p. 344). Improvements in HR were still difficult to come by (U.S. DEPARTMENT OF STATE’S COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES, 1990-1992).

The Collor government’s key policy was the modernisation of the Brazilian economy (*viz.* combating inflation, Collor Plans, privatisation and liberalisation). However, it was pursued by the risky strategy of accepting no political negotiations about its economic and political agenda (PANIZZA, 2000). This eventually led to Collor’s downfall. In fact, in a new political system in which national and transnational civil society organisations possessed significant influence, the Collor government’s failure to stabilise the economy, coupled with unsuccessful attempts to implement a neo-populist political agenda, led to an impeachment process by the Brazilian Congress (PANIZZA and DE BRITTO, 1998). In any case, the increased importance of HR in Brazil’s domestic and foreign politics under the Collor government occurred “because Brazil could not seriously pursue an influential role in multilateral institutions if it continued to disregard human rights” (PINHEIRO, 1999, p. 12). Consequently, the seeds of a *governmental culture of human rights* planted under the Sarney government started germinating during the Collor period. Their flourishing would occur later on under the Cardoso and Lula administrations.

In spite of the impeachment process against President Collor, the just-reborn democracy did not destabilise, even though concerns about a return of military rule were manifest (OEA’S IACH’S REPORT ON THE SITUATION OF HUMAN RIGHTS IN BRAZIL, 1997, paragraph 9). In fact, the opposite proved true, for “Collor’s impeachment was an exercise in democratic accountability that showed the considerable strength of civil society as a check on personalist rule” (PANIZZA, 2000, p.189). This means that when the vice-president, Itamar Franco, was sworn in as President of Brazil, the HR discourse was already well established, despite HR violations still occurring all around the country (U.S. DEPARTMENT OF STATE’S COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, 1992). Thus, some progress under the Franco government (1992 to 1994) concerning a *governmental culture of human rights* occurred. The Franco government “demonstrated a clear commitment to the continuing process towards greater transparency and more pro-active HR policies” (PINHEIRO, 1999, p. 15). Pressured by national public opinion concerning, for instance,

the Candelária⁶² and Yanomani⁶³ massacres, as well as influenced by global echoes from the Vienna Conference on HR (1993),⁶⁴ the Franco government attempted to implement serious reforms regarding HR programmes and policies, including measures such as the launching of a National Programme for the Promotion of Citizenship and to Combat Violence,⁶⁵ the restructuring of the CDDPH,⁶⁶ and a set of bills in Congress.⁶⁷ Regardless of the seriousness of the Franco government's attempts, they did not manifest themselves in concrete changes that could really challenge the historical culture of violence and inequality in Brazil (MOSER and MCILWAINE, 2006). Perhaps also due to President Franco's well-known nationalist political outlook, his government "remained largely reactive, consisting primarily of exercises in damage limitation after particularly serious HR crimes" (PANIZZA and DE BRITTO, 1998, p. 28). It did not ratify any regional or international HR instruments. The Franco government's most significant achievement was the stabilisation of the Brazilian economy, which eventually assured the election of his successor, Fernando Henrique Cardoso.⁶⁸

Under the Cardoso governments (1995 to 2002), the *governmental culture of human rights* advanced considerably (PINHEIRO, 1999). From the beginning, the Cardoso administration not only included HR in the official agenda and presidential public statements, but also undertook concrete steps to combine official HR discourse and state practices (PANIZZA and DE BRITTO, 2000; PINHEIRO, 1999). President Cardoso's understanding that non-compliance with international HR standards would jeopardise Brazil's aspirations to become a bigger player in world trade and politics led his government to engage in transparent dialogue with civil society actors (RISSE and SIKKINK, 1999, p. 30), as well as open the country to monitoring of rights mechanisms by both global (UN) and regional (OAS) organisations (CAVALLARO, 2002; PANIZZA and DE BRITTO, 2000; PINHEIRO, 1999).

The key features of the Cardoso government were boosting the economy by

⁶² The Candelaria massacre refers to summary executions of children and adolescents (eight in total) by police that occurred in 1993 nearby the Candelaria Church in Rio de Janeiro, RJ, Brazil.

⁶³ The Yanomani or Haximu massacre refers to armed conflicts between the Yanomani indigenous people and miners that occurred in 1993 in Roraima, Brazil, from which many members of the Yanomami Haximu-teri tribe and a few miners were killed.

⁶⁴ The Vienna Declaration and Plan of Action can be found at: The United Nations <[http://www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en)> accessed 2 January 2017.

⁶⁵ It was not advanced due to political factors that prevented legislative proposals (bills) that would enhance it from being passed into Law by the Congress. See Pinheiro (1998).

⁶⁶ *ibid* (n 55).

⁶⁷ They were never analysed as of April 2016 by Congress. See Panizza (2000).

⁶⁸ Fernando Henrique Cardoso was the Ministry of Finance under Franco Administration.

way of neoliberal economic reforms;⁶⁹ transparency and dialogue with civil society on HR matters; submission of various bills on the protection of HR, particularly directed at reorganizing the CDDPH,⁷⁰ creating a witness protection programme and typifying torture as a criminal offence (PANIZZA and DE BRITTO, 2000, p. 29); the launching of an Annual HR Prize;⁷¹ the launching of the National Programme for HR (PNDH);⁷² and the ratification of regional and international HR instruments;⁷³ among others (PANIZZA and DE BRITTO, 2000; PINHEIRO, 1999).⁷⁴ The Cardoso government “did put in place significant institutional domestic architecture for human rights” (MACAULAY, 2007, p. 31 and 39). Its administrative-political efforts advanced the Brazilian *governmental culture of human rights* (US DEPARTMENT OF STATE’S COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, 1998). In fact, under the two Cardoso governments the 1988 Federal Constitution became operational for state actions directed to face HR violations, which were still occurring on a massive scale.⁷⁵

The victory of Luiz Inácio “Lula” da Silva in the October 2002 Brazilian presidential election represented a break with the traditional (elitist) political paradigm (DE PAULA, 2011; PAIVA, 2006). Having lost the presidential elections of 1989, 1994, and 1998, Lula won in 2002 and became the first President who did not come from a traditional elite group (PARANA, 2009). Regardless of Lula and the PT having already given signs of their shifting from a radical agenda to a moderate one, the fact is that Lula embraced the nation’s hopes for democracy, HR and social justice (FLYNN, 2005). Never before in Brazilian history had a President had as much popular support as Lula did (DE PAULA, 2011, p. 8). He came to power with unprecedented potential to implement real structural changes in Brazil (FLYNN, 2005, pp. 1222 and 1248).

⁶⁹ “The process of neoliberal transformation took place in very different ways in different countries in the region. [...] In Brazil reform basically got under way in the mid-1990s, 10 years after the end of military rule [...]”, in Margheritis and Pereira (2007, p. 27).

⁷⁰ *ibid* (n 55).

⁷¹ SDH/PR <<http://www.sedh.gov.br/clientes/sedh/sedh/promocaoadh>> accessed 2 January 2017.

⁷² It was created according to recommendations by the Vienna Declaration on HR and respective Programme of Action (1993). The United Nations <[http://www.unhcr.ch/huridocda/huridoca.nsf/\(symbol\)/a.conf.157.23.en](http://www.unhcr.ch/huridocda/huridoca.nsf/(symbol)/a.conf.157.23.en)> accessed 2 January 2017.

⁷³ For a list of international and regional HR instruments ratified/acceded by the Cardoso governments go to the UN HR Treaties <<http://www.bayefsky.com/>> and the OAS <<http://www.oas.org/>> accessed 2 January 2017 respectively.

⁷⁴ Although recognising that the Cardoso government brought some “democratizing changes”, Pereira (2003, pp. 41-42) stresses “the continuity of the Cardoso government’s policies with the past. In this interpretation, a look behind and beyond land redistribution reveals policies that disproportionately benefit a small number of politically powerful, large producers, and a series of missed opportunities to benefit the rural poor”.

⁷⁵ For a more detailed account see the U.S. Department of State’s *Country Report on HR Practices for 2002*. The U.S. Department of State <<http://www.state.gov>> accessed 2 January 2017.

Nonetheless, the first Lula government, instead of changing the pre-existing structures, got trapped by them (FLYNN, 2005, p. 1235; AMARAL, 2010, p. 117).⁷⁶

In spite of corruption scandals that prevented the implementation of important structural changes, the first Lula government did not only make serious efforts on HR policies, but also achieved concrete results (FLYNN, 2005; BALÁN, 2014; RENNO, 2007; LIBY, 2006). In fact, the paralysis of the first Lula government concerning tackling Brazil's persistent structural problems (corruption, nepotism, inequality, violence) did not impede progress towards improving HR conditions. Poverty reduction programmes are good examples of progress in social policies under the first Lula government, particularly the *Fome Zero* and *Bolsa Família* programmes (HALL, 2006; FENWICK, 2009). Another significant example is the creation of the *Brazilian Programme for the Protection of Human Rights Defenders* in 2004 (TERTO NETO, 2016). However, the very fact the first Lula government focused on *programmes* more than structural *reforms*, as well as "Lula's subsequent pleas for patience reflected growing awareness of how hard it might be to change Brazil [...]" (FLYNN, 2005, p. 1229). Besides,

[w]hile Cardoso's was a government of *reforms*, Lula's has been a government of *programmes*, a qualitative difference. The reform path pursued by the Cardoso government required entering into lengthy negotiations and achieving high-threshold votes in Congress in order to implement unpopular policies, such as privatizing state firms, breaking up monopolies, and amending labour laws. The Lula government's social policy accomplishments are programmes controlled by the executive, which do not require legislative wrangling to be enacted. Targeted social policies, moreover, produce more immediate electoral returns than the structural reforms of the Cardoso years, and their very nature – being so concrete, visible, and immediately beneficial – invites far wider credit claiming by politicians. Lula has proven most adept in this regard. By sharing the day-to-day operation of *Bolsa Família* with Brazil's 5,500 municipal mayors, the president has allowed local elites to reap some of the benefits of this hugely popular programme. (HUNTER and POWER, 2007, pp. 17-18)

Despite corruption scandals, and mainly due to the first Lula government's economic success, as well as social programmes, President Lula was re-elected in 2006 (HUNTER and POWER, 2007, p. 24). The second Lula government (2007 to 2010)⁷⁷ did not have the same favourable conditions to implement structural changes that the first one enjoyed at the beginning of his first term (FLYNN, 2005). The concessions made in order to enhance President Lula's chances for re-election and the

⁷⁶ For an account of the remaining HR problems see the *U.S. Department of State's Country Reports on HR Practices for 2006*, page 1. The U.S. Department of State <<http://www.state.gov>> accessed 2 January 2017.

⁷⁷ From 01 January 2007 to 31 December 2010.

coalitions formed with right-wing and centrist parties demonstrate that Lula and the PT had already completed the shift to a more moderate and pragmatic approach towards keeping power. The ethical and ideological aspect seemed no longer to be a pivotal element in deciding strategies for Lula and the PT to win elections (AMARAL, 2010). The second Lula government set out to continue the successful management of the economy. It improved social policies and poverty alleviation programmes for the poorest Brazilians (HALL, 2006; FENWICK, 2009). Regarding HR policy, it ratified international HR treaties,⁷⁸ passed significant anti-discrimination legislation on race and ethnicity (*Mandatory Teaching of “Afro-Brazilian and Indigenous Peoples History and Culture” Law – Lei n. 11.645/2008*) and on human rights defenders (*National Policy for the Protection of Human Rights Defenders – Decreto n. 6.044/2007*), and set up the *National HR Plan III* (Decreto n. 7.037/2009). While pursuing effective foreign policy with the use of so-called “presidential diplomacy” internationally (AMORIM, 2010, p. 239; VILELA and NEIVA, 2011), it advanced the *governmental culture of human rights* domestically.⁷⁹ All of which contributed to strengthening the democratic institutions internally and confirming Brazil’s ambitions to become a bigger player in political and economic global affairs (DE PAULA, 2011; SILVEIRA and MEYER-PFLUG, 2012; POWER, 2010; STEINER, ALSTON and GOODMAN, 2008; GOODMAN and JINKS, 2005, 2004, and 2003).

Despite the efforts of various post-1985 governments, the fact is that the necessary structural changes towards a less violent and more egalitarian Brazilian society are yet to come (DAGNINO, 2014, 2008, 2007, 2006, 2005, 2001, 1998, 1993; MOSER AND MCILWAINE, 2006; PICQ, 2004).⁸⁰

⁷⁸ For a list of international HR instruments ratified/acceded by the Lula governments go to UN HR Treaties <<http://www.bayefsky.com/>> accessed 2 January 2017. There was no ratification of HR instruments at the regional level (OAS) by the Lula governments. The Organization of American States <<http://www.oas.org/>> accessed 2 January 2017.

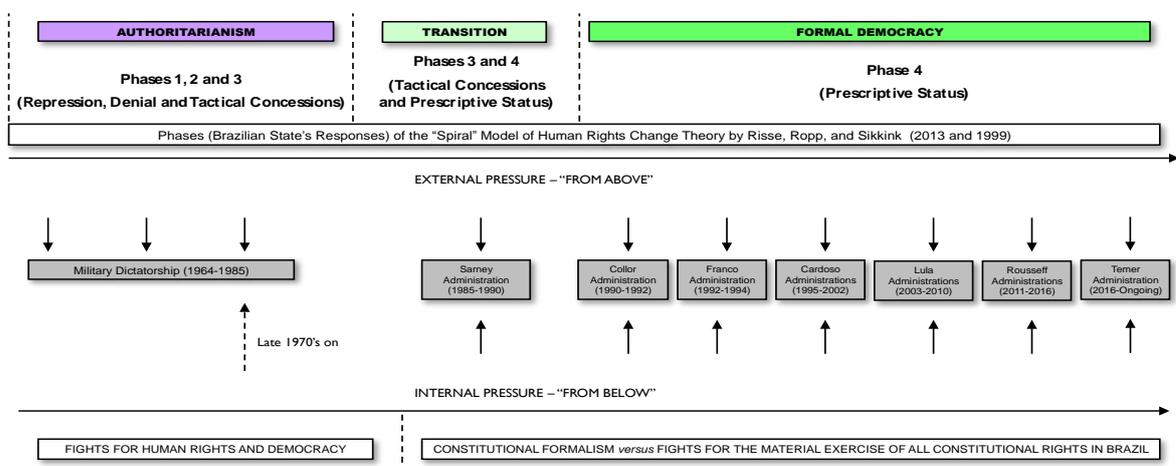
⁷⁹ Overall, participation of civil society in decision-making process increased and some HR progress was achieved during the two Lula governments, but major HR problems remained. See the *U.S. Department of State’s Country Reports on Human Rights Practices for 2010*, page 1. The U.S. Department of State <<http://www.state.gov>> accessed 2 January 2017. See also Dagnino and Teixeira (2014).

⁸⁰ “Just as there was much legal continuity from democracy to authoritarianism, however, the transitions to democracy in the 1980s did not entirely dismantle the repressive legal apparatus that had been constructed under the military rule. For example, the verdicts of the political trials in Brazil and Chile were never repudiated by the state, even after the transitions to democracy. Some of the laws on which the trials were based – and the institutions that prosecuted and tried political defendants – still exist”, in Pereira (2005, p. 8).

7. WHY HASN'T BRAZIL REACHED PHASE 5 OF THE SPIRAL MODEL YET?

The socio-political and economic situation by the end of the transition from authoritarianism to democracy implied that many challenges would need to be faced and structural problems confronted if improvements in HR conditions, democracy and social justice were to be really made. *Figure 4* below provides an overview of the Brazilian transition to democracy in light of the *spiral model*.⁸¹

Figure 4 – Recent History of Brazil under the “Spiral Model” (Risse; Ropp; Sikkink, 2013 and 1999)



I argue that Brazil is currently in phase 4 (prescriptive status) and still far from reaching phase 5 (rule-consistent behaviour) of the *spiral model*. Although progress has been made concerning governmental practices directed at the improvement of HR conditions, it could not be argued convincingly that respect for HR is genuine in all levels of government. It is still unclear whether Brazil is going to move from commitment to full compliance with international HR law (RISSE, ROPP, and SIKKINK, 2013, pp. 9 and 10; RISSE, ROPP and SIKKINK, 1999). As argued earlier, this might depend also on the effective implementation of economic, social and cultural rights.

Thus, a question that remains unanswered: *Why has Brazil not reached phase 5 of the “spiral model” yet?* Brazil is no longer a transitional country and, therefore, a transitional theory such as the *spiral model* loses its explanatory force when it comes to the current situation. If we want to understand the obstacles to further HR development,

⁸¹ For the analysis in the figure, I have drawn on Smith (1987); Skidmore (1988); Panizza and de Brito (1998); Pinheiro (1999 and 1998); Macaulay (2007); Risse, Ropp and Sikkink (2013 and 1999); Piovesan (2008); Vilela and Neiva (2011).

we need to look deeper into Brazil's current complexities. For that, we need a different analytical framework. I draw on Dagnino's work⁸² to look into Brazil's complexities regarding HR changes towards democracy and social justice. In this regard, I argue that Brazil's current situation should be analysed in a context in which HR activism – under human rights defenders' leadership – is seeking new roles such as (1) fighting for improving democratic institutions, and (2) addressing the structural problems such as poverty, social exclusion, inequality and violence or, simply put, *social authoritarianism* (DAGNINO, 1993, p. 240; ALVAREZ, DAGNINO, and ESCOBAR, 1998). The analysis proceeds from the assumption that democracy and law *per se* have not yet been enough to bring about meaningful structural changes. Brazil is still too deeply marked by *social authoritarianism*. Dagnino coined the term to conceptualise the fight for redefining Brazilian democracy. According to her,

[a]s an exemplary case which can be easily generalised for Latin America as a whole, Brazilian society is one in which economic inequality and extreme levels of poverty have been only the most visible aspects of the unequal and hierarchical organisation of social relations as a whole – which can be called a social authoritarianism. Class, race, and gender differences constitute the main bases for a social classification which has historically pervaded Brazilian culture, creating different categories of people hierarchically disposed in their respective “places” in society. Underneath the apparent cordiality of Brazilian society, the notion of social places constitutes a strict code that reproduces inequality in social relations at all levels [...] (DAGNINO, 1993, p. 240)

It follows that “the achievement of full citizenship is possible if the structural constraints to citizenship are overcome” (PINHEIRO, 1998, p. 22; GUDAVARTHY, 2012, p. 10). Notwithstanding the ratification of UN and OAS HR instruments⁸³ by democratic governments, HR norms have not yet been socialised into all governmental practices to make Brazil fully compliant with international HR law (rule-consistent behaviour), making for a new citizenship,⁸⁴ because the structures of social authoritarianism have so far frustrated efforts to build the political will to affect (bringing

⁸² Dagnino (2014, 2008, 2007, 2006, 2005, 2001, 1998, 1997, 1994, and 1993).

⁸³ The military dictatorship (1964-1985) ratified only two UN HR instruments (CERD and CEDAW). On the other hand, the post-1985 democratic governments ratified/acceded several HR instruments from the UN (CAT, CRC, CCPR, CESCR, CEDAW-OPT, CRC-OPT-AC, CRC-OPT-SC, CAT-OPT, CRPD, CRPD-OPT, CCPR-OPTI, CCPR-OPT2, and CPED) and the OAS (ICPPT, ACHR, ICPPEVAW, AP-ACHR-ESCR, and OP-ACHR-ADP) systems. See the UN HR Treaties <<http://www.bayefsky.com/>> and the Organization of American States (OAS)<<http://www.oas.org/>> accessed 2 January 2017 respectively.

⁸⁴ In this sense, understanding that “the thinking of citizenship as always, everywhere, unfinished/imperfect is a powerful way of keeping the location of citizenship in practices and processes visible” so that this new project of citizenship via social struggles is imaginable, possible, and achievable in Brazil's case, in Clark, Coll, Dagnino, and Neveu (2014, p. 11). The authors draw on the point of “citizenship as imperfect” by Balibar (2001). See also Brinks (2008); Somers (2008); Isin (2002).

further) HR (progress) nationwide.

8. FINAL CONSIDERATIONS

The reconstruction of the politics of HR in authoritarian, transitional and democratic Brazil with the help of the *spiral model* revealed that social struggles for democracy and HR fused and led to Brazil's re-democratisation. The country has nonetheless become a flawed constitutional democracy. Notwithstanding Brazil's historical complexities, a *governmental culture of human rights* has been developed. This has happened as a result of both internal (organized civil society and social movements) and external (HR transnational advocacy networks) pressures. In addition, the country's political influence and economic power increased abroad – at least until the end of Lula's second term once Rousseff's first and second terms were marked by economic disasters and the latter was paralysed as a result of an unprecedented political crisis regarding corruption scandals that led to her impeachment by the Congress. By and large, it can be argued that the HR situation has been progressively improving since the late 1970s, despite the fact problems regarding social authoritarianism have not been resolved yet. Consequently, structural changes must be carried out in Brazilian society if a domestic HR regime were to be ever effective.

It is thus evident that Brazil's constitutional democracy has not been enough to bring about real structural change. In this regard, it should be clear that the fight for the right to have (fully enjoy) fundamental rights means a fight against a widespread culture of social authoritarianism. Accordingly, effective structural change will occur through altering the material bases of Brazilian society in order to construct a new project of society, with a new cultural politics that reflects democratic values and allows for the achievement of social justice. This way, the consolidation of democratic institutions and the protection, promotion and respect of HR are key issues in the pursuit of a new cultural politics in Brazil.

Recent socio-political changes that have been occurring emphasize the fact that struggles for democracy together with the force of the HR doctrine have contributed to social and popular movements' intents of constructing a *new citizenship* as a project towards a *new sociability* in the country, that is, they seek not only the effective enjoyment of political rights, but also the construction of a genuinely egalitarian society. In this scenario, due to its politically and culturally changing characteristics, the

achievement of a project towards a *new sociability* will require enormous efforts from organised civil society and the Brazilian Government itself. This is due to the fact that the responsibility to tackle social questions that reflect a culture of social authoritarianism relies on both State and organised civil society. Poverty, exclusion, violence, and inequality are structural problems that directly weight Brazil's governmental disregard for HR norms and constitutional guarantees. The promotion, protection and respect of such norms and guarantees demand the carrying out of social struggles (organised civil society) and the elaboration and implementation of successful public policies (State).

In such a context, it is important to consider the reception and influence of international HR law into Brazil's legal system and the respective impact on its internal politics. The *positivisation* (legal-formal procedure through which international norms are implemented into national legal systems) and *socialization* (socio-political process through which international norms are socialized within national States) of international HR law into Brazil's legal system can play a decisive role in pursuing the aforementioned *new sociability* as well, particularly in light of handling determining factors that point to the undercurrents of socio-political development in the country as well as in the making of a venue for a standardised domestic HR regime.

In a broad sense, therefore, it should be borne in mind that the world recognition of Brazil as an emerging power depends not only on the strengthening of its democratic institutions, but also, and more importantly, on its taking effective measures to promote, protect and respect HR. In this sense, it is paramount that the Brazilian State's HR rhetoric be in alignment with its HR practices.

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