



State of Exception, Human Rights and the 2018 Federal Intervention in Rio de Janeiro¹

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Abstract: In 2018, for the first time after the military dictatorship in Brazil, President Michel Temer signed a decree that allowed federal intervention in the state of Rio de Janeiro, taking the security policy out of the state control and placing it in the hands of a military general. The intervention lasted for ten months, and in exchange for a minor reduction in criminal activity, there was a significant rise in homicides perpetrated by members of the police and in the violation of numerous human rights. This article derives its argument from the socio-criminologist analyses of the complex public security challenges in the state of Rio de Janeiro as well as thorough political and legal analyses of the aforementioned federal intervention. It will be concluded that the creation of the “war scenario” in certain urban areas of Rio de Janeiro by constant and unjustified usage of the exceptional measures has caused massive damage to democracy and the rule of law, undermining basic human rights of the people living in and around those areas. Therefore, the federal intervention in Rio de Janeiro can only be understood through legal and political rationality of exception, where this intervention as the exceptional measure was applied in the already existing state of exception. Finally, the usage of exceptional measures for prolonged periods of time, without justification in the inefficacy of the existing laws, not only does maintain governing based on exceptional rationality, but it also disables possibilities to balance between human rights and their efficacy in Rio de Janeiro.

Keywords: Public Security. Police Violence. Urban Violence. State of Exception. Federal Intervention.

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Introduction

Both former president's Michel Temer and president's Jair Bolsonaro governments put their focus on offering a solution for the public security problematic, where the state of Rio de Janeiro represents a steppingstone for any new public security program. President Temer clearly showed this aspiration by invoking – for the first time in the democratic history of Brazil – the state of federal intervention (the Intervention) over public security in the whole state of Rio de Janeiro. Besides the obvious exceptionality of this political decision, the federal intervention in Rio de Janeiro can only be perceived through “exceptional legal rationality” (MACHADO, 2017, p. 7). As part of this rationality, application of the exceptional legal measure, such as federal intervention, in the domain of public security in Rio, represents an exception employed to solve already existing state of exception. State of exception for another state of exception. Moreover, as the product of an illegitimate government that came on power after the illegal impeachment of the former president Dilma Rousseff, this intervention also needs to be observed as the part of the political rationality of exception. In the intersection between these rationalities is where this intervention can be seen as not only part of the ongoing militarization of the public security that is stimulated by laws and numerous presidential decrees, but as well as the product of political interests and goals.

Their intersection, point Carl Schmitt (2005), finds in the sovereign decision. More importantly, by remaining outside of the norm while simultaneously defining it, the state of exception creates the paradox which Agamben (2005, p. 23) calls “a zone of indifference”. In this zone, the constitution represents the legal sphere and an act of resistance represents the sociopolitical sphere. The relation between these spheres is a game of exclusion and inclusion. Moreover, the



jurisprudence cannot conceptualize extreme cases because chaos cannot be governed by rules of law. The way Schmitt (2005) defines the state of emergency (which can also be seen as the product of political crises) and exceptional measures (which are the product of political activity) enters into the core of the modern political and legal paradox, and for authors such as Giorgio Agamben (2005, p. 14), “the declaration of the state of exception has gradually been replaced by an unprecedented generalization of the *paradigm of security* [emphasis added] as the normal technique of government”. The paradigm of security that is based on the state of exception, therefore, simultaneously produces and corresponds to a *paradigm of government* [emphasis added] (AGAMBEN, p. 7), which can be seen as a “technique of government” (AGAMBEN, p. 14). For McLoughlin (2015), this paradigm is part of the modern governance that we can observe through different “forms of intervention” that defines “a shift from laws that apply to juridical subjects to security measures that intervene in a milieu” (MCLOUGHLIN, 2015, p. 122). These “interventions” correspond to what this paper calls “state of exception”, which can be grasped in the following deconstruction of legal and political exceptional rationality during the federal intervention in Rio de Janeiro.

In order to better convey these arguments, I will firstly demonstrate the main features of criminality in the favela zones of the city of Rio de Janeiro. This section will have its goal set on showing the specificity of organized crime in favelas that is grasped in the exclusion and creation of the proper “favela discourse” outside of “general” discourse. The social subject “*favelado*” (resident of favela), is economically, socially, racially and morally excluded and marked due to the crime and violence in favela zones. Her position creates a “spiral of violence” in these zones of poverty, to which the official policy of the state of Rio de Janeiro is based on the public policy of claiming and fighting over lost territories. This state of exception is product of numerous factors that are affecting the local population for



many years, and therefore, it has many layers. However, the goal of the first part of this article is also to show that these layers are not only approached by public security policies as state of exception, but that through their operational “war like” logic, are being maintained in their exceptionality.

The following step will consider the legal and political examinations of the proclaimed federal intervention, taking into account normative and political factors that preceded it. The complexity of the political situation in Brazil nowadays is also full of layers, and, especially in the last years, the fastest way to gain political points is through the politics of power and enemy. Finally, in the clash between state of exception and society, the first victims are always the human rights and, as this article argues, in Rio 2018 Intervention, these victims are its main consequence. Instead of clearly demonstrated efficacy, the main outcomes of the normalization of exceptional measures in Rio de Janeiro are militarization of public security and the violation of human rights.

1. Urban violence in Rio de Janeiro

The change from the 20th to 21st century has brought a general reduction in political violence in whole Latin America, but others forms have increased, as point out Auyero and Sobering (2017, p. 3):

(e.g., interpersonal violence, drug-related violence, domestic abuse, child abuse, and sexual assault). This violence, analysts agree, is not evenly distributed socially or geographically but instead concentrates in the territories where the urban poor dwell – known as favelas, shanty-towns, barrios, comunas, or villas in different countries of the subcontinent.

Similarly, the genealogy of violence in favelas, according to what can be called “political sociology of violence” reveals the plurality of new forms of



violence against local residents, which originate from both criminal organizations and the police. Specificity of the criminal landscape in Rio de Janeiro can be found exactly within the lines of the above-exposed arguments: it does not only provoke vast violence, but, in its operability, defines the zones of favelas as anomaly zones.

There are two major criminal groups in favelas – drug gangs and *milícias* (paramilitary gangs, usually led by serving and former police members) – and they maintain one of the biggest drug markets in Latin America, causing turf wars, arms trafficking, racketeering crimes, among others. The drug sale network in favelas does not work like *mafias* or *cartels*, that are organized vertically and strategically, from which is differentiated by its “relative local organization, its proto political pretensions, its capacity to re-organize locally, and mainly to establish horizontal networks for mutual protection” (MISSE, 2017, p. 73). In other words, from the top to the bottom, the whole structure of the drug sale network is local, it remains in the favela. The members of drug gangs are an important part in defining particular favela discourse, and through force and illegal job market control, they maintain strong bounds with the local population.

Present and latent violence produced by criminal groups, on the one hand, has established itself as a normality in the favelas of Rio de Janeiro. On the other hand, violence and repression dished out by public security forces establish a continuous antagonistic relation to the population that they are supposed to protect. These antagonisms are tightly related to socioeconomic and racial factors. People living in the most violent favelas, also called “territories of poverty” (SILVA, 2010, p. 284), are predominantly coming from the lower socioeconomic classes and they mostly sustain themselves informally. This sensitive economic position is extended to their particular cultural identity, which is strongly connected to the racial configuration of “*favelados*”, consisting mostly of non-white people. In



consequence, it is mostly non-white, young people that are being killed or arrested³.

The reality of state's fight to secure these areas are composed by civil and military police security actions, as well as armed forces operations, which are marked by the free access to the houses of their residents on a daily basis, shooting without clear engagement rules and punishments against stray bullets, while many operations are often defined by the individual decisions of the members of the armed forces, who are aware of their legal protection. Even a greater problem is that civil and military police, and armed forces, operate in different ways, without institutional and operational integration. Moreover, corruption that has become the *modus operandi* of members of the civil police, particularly, is the most basic link between gang groups and militias on the one side, and politicians and public officials on the other. In other words, police agents, together with drug gangs and militias are an active actor in the fight for the monopoly over violence in certain territories in Rio de Janeiro. By observing the history and development of this triangle of violence and understanding social concepts of "violent sociability" (SILVA, 2010) and "social accumulation of violence" (MISSE, 2017), the small or insignificant efficacy of this public security strategy becomes more understandable.

For Machado da Silva (2010, p. 293), "the core of the social conflict began to focus on the relationship between the spiral of police and criminal violence and the interruptions in daily routines, thus constituting a vicious circle". Additionally, according to the sociologist, the security situation in the favelas does

³ In Brazil, the increase in deaths from firearms in general from 1980 to 2014 was 592.8%, but when analyzing only the portion of the population between 15 and 29 years, there is a dizzying increase of 699.5%. Young people in this age group represent approximately 26% of the Brazilian population, while their share of deaths caused by firearms reaches an impressive 58%. Also, when analyzing cases of firearms homicides, there is a huge disparity between the white and black populations: considering the white population between 2003 and 2014 there was a drop of 26.1%, while in the same period, there was an impressive increase of 46% in firearms-related homicides within the black population.

See: http://www.mapadaviolencia.org.br/pdf2016/Mapa2016_armas_web.pdf.



not merely belong to the violent crimes which he defines as “a collection of violent, deviant, interminable, interstitial, and always referent practices of the dominant order” (SILVA, p. 286), but it is grasped in the combination of the urban violence and “violent sociability”, or better put, in the apprehension of the violent sociability by the urban violence. Therefore, the notion of “violent sociability” for Machado da Silva (2010, p. 286) depicts the usage of physical force which becomes the goal for itself, and thus, operates not as “means of action” but as as a “principle of coordination”. Following this argument, urban violence can be used to explain class conflicts in “territories of poverty”, but only via the recognition and deconstruction of its relation to the “violent sociability” is it possible to come to the core of this problematic, to its specific grammar or language, where the main argument is placed between the state and society.

Sociologist Michel Misse (2017, p. 76) introduces another phenomenon that he uses for understanding urban violence in Rio de Janeiro: the social accumulation of violence. This concept tends to explain the logic of the differentiation between the criminalizable (individuals and firms) and un-criminalizable actors (state, social institutions, the so-called “social factors”). Accordingly, the main actor of the process of a social accumulation of violence is the state, “in particular, the authorities responsible for criminal justice, especially the police, and their object of action, the subjects of violence, which are usually criminalizable” (MISSE, 2017, p. 75). The un-criminalized social agents through their violent activities in favelas, create a stigmatized “social type” that can be potential criminal, even before the crime has occurred, what Misse (2017, p. 76) calls “criminal subjection”. According to the sociologists, social accumulation of violence is a concept that has many socio-legal layers and that has been developing in urban zones of Rio since the 1950’s. Even though the violence was oscillating in each decade, Misse (2017, p. 76) observes that in Rio de Janeiro “the



extra-legal prevalence of this process is generalized. It is not an exception, but a rule”.

Both Brazilian sociologists provide an understanding of urban violence as a very particular type of violence, and both agree that current public policies are not demonstrating efficacy and solutions in a long term. In this ecosystem of violence, the “*favelado*” begins to represent “the Other”, that is, criminalized and excluded, and with these war-like actions, such as Rio 2018 Intervention or military occupation of favelas, he or she needs to be excluded in order to bring the state back to the stateless areas of the city. The fetishization of the crime in Rio and of the poor social classes of “*favelados*” produced a rise in both criminal and police violence. As the result, the frame of the social and criminal environment in favelas became the epicenter of the society-state detachment. In other words, instead of making a “security with others”, the Brazilian government is promoting “security in spite of others” (BAUMAN cited in SILVA, 2010, p. 288). More importantly, these policies are legitimizing, and as it will be shown later, legalizing, the rising of the police violence. Regarding this, Misse (2017, p. 74) rightly states that:

the problem of police violence is not limited to the operation of bad agents who infringe the norms of their institutions. Even the protocols of institutionalized action are propitious to violations of civil rights of citizens and instigate violence. These are highlighted by frequent confrontations between the police and criminal suspects, which spark shootouts in public spaces of the city, particularly in the favelas, and result in lethal victims. The majority of them are due to an official crime fighting strategy, based on police operations aimed at imprisonments and seizures.

The sensitivity of the “poverty territories”, on the one hand, is deeply rooted in the social exclusion, especially among the younger population; however, on the other hand, it defines proper social identities. According to Peruvian psychoanalyst Cesar Rodríguez Rabanal (1990, np.), for younger members



coming from poor, abandoned urban zones, “the future cannot be conceived as the projection of individual and social history; the individual is far from feeling active subject of his story and, therefore, feels that things happen to him, he does not produce them”. In these areas it is obvious that, “*la patria* [the homeland] is an abstract entity charged with sentimentality, not a symbol of true integration” (RABANAL, 1990, np). The ecosystem built on fear⁴ from both “local sovereigns” and public security forces, causes the local population to rationalize their decisions using basic survival arguments, aiming at avoiding further violence and developing strategies of survival.

Another fact that maintains the social detachment between state and favela is the traditionally law political representation. That is why cases such as the killing of Marielle Franco⁵ and her driver mean a great backlash to the process of the political integration of favelas. More importantly, even though a retired military police officer and another former police officer were arrested as part of the investigation into her murder, Brazilian justice still hasn’t answered the question on “who ordered Marielle’s assassination?”. This question attributes a public demand for treating her killing as a political assassination directly related to her critique of militias and police violence in favelas. It reveals the ongoing exclusion and unpunished killing of the black population, especially black women from favelas, creating an increased fear of engaging with free speech and political participation as its main backlashes.

⁴ For example, in the report “Rio under intervention 2” (*Rio sob intervenção*), made by the Brazilian Forum of Public Security and *Datafolha*, 843 interviewed residents of favela zones in Rio de Janeiro showed a high index of fear during the Rio 2018 Intervention. For example, more than 80% of respondents feared having their residence invaded and their property stolen or destroyed. See <http://www.forumseguranca.org.br/wp-content/uploads/2019/02/Rio-sob-Intervencao-2-v2.pdf>.

⁵ Franco was a human rights defender and activist, a City Councilor member of the Socialism and Liberty Party (PSOL), an influential public figure, advocate for victims of police abuse and defender of the rights of women and African-Brazilian citizens, as well as a strong and open critical of militias. She was brutally killed on March 14, 2018, when a car pulled up beside hers, and she was shot four times in the head.



Finally, the social discontinuation between city and favelas is usually addressed more seriously only after major killing catastrophes or political assassinations. However, the favelas' detachment in Rio de Janeiro from the rest of the city represents everyday reality for their residents and is marked by the violation of their basic human rights. As Pedro Strozenberg (cited in JUNQUEIRA, 2018), General Ombudsman of the Public Defender's Office of Rio de Janeiro, observed, the distance between slums and the city is also based in law, and he believes that the public security organs should be more transparent and open to communication, because the favela should be treated as part of the city. Favelas in Rio, however, have become the melting pot of the social, political and legal exclusion, thus normalizing certain levels of the state of exception that governs the lives and deaths of its residents, in stark contrast to their understanding as the equal part of the city, that was made all the more clear during the Intervention.

2. Plurality of public orders

"How to govern the unruly?" is perhaps the best question to ask when considering public security in Rio de Janeiro. Most of Rio's state governments approached to this problem similarly to the strategy of former governor Sérgio Cabral, whose policy was based on "the state's reconquest of the lost territories" (CABRAL cited in LEMOS, 2010, para. 4). Therefore, the state strategy in the battle against crime and violence in favelas was almost always founded on using more violence and showing more power, creating a war environment inside poor urban neighborhoods. Both the civil and military police, with special military police units created to fight "urban warfare", were recruited in what Cabral deemed "war against criminals" (CABRAL cited in BAIMA; GRANCHI, 2010, np.). By creating and promoting a war logic based on the clear image of an enemy, this politics simplifies urban violence, reducing it to the dispute of double sovereignty.



For criminologists Arias and Barnes (2017), criminal groups that operate in favela zones produce different public orders that are based on a different type of relation between social disorganization and social control⁶. In other words, two main organized armed groups in favelas usually generate different types of crime and public order (ARIAS; BARNES, 2017, p. 452-453), forming a type of “local sovereignty”⁷. For example, drug gangs are more connected to the police and engage in more conflict due to the nature of drug trafficking, which includes constant bribes, territory claims and connection to the local community members. Militias, on the other hand, tend not to engage in conflicts with the police because their members are usually former or current police officers that continue their close relation to the law enforcement agencies. However, these groups are enforcing more social control than drug gangs, since their main criminal operation is not drug trafficking, but racketeering crimes, which include extorting money from the local population in exchange for security, services such as gas supplying, transportation etc., as well as for good ties with the local government. As a product of the activity of both criminal groups, Arias and Barnes (2017, p. 451) observe numerous “localized security orders” in the metropolitan zone of Rio de Janeiro, which contains over than 1000 favelas that can be seen as the part of forming a type of “local sovereignty”⁸.

The separation of the favelas from the city has been seen throughout the history of Rio as one of the main reasons for the emerging violence. However, Arias (2006, p. 4) believes that:

⁶ According to these authors, in the *Zona Norte* of the city of Rio de Janeiro, the main creators and “protectors” of public order are drug gangs, while in another favela zone, *Zona Oeste*, militias are mostly responsible for the organization of the favela. See Arias and Barnes, 2017, specifically p. 455-459.

⁷ This is a classic debate among Brazilian sociologists, whose most prominent author is Bonventura. Based on the argument of the “second State”, authors such as Roberto Lyra Filho developed the thesis of the Law Found on the Street (*Direito Achado na Rua*).

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by beginning from the premise of a modern democratic state that is absent from and unable to penetrate poor communities dominated by traffickers, the 'divided city' does not go far enough in examining how the deep interconnections among state officials and favela leaders contribute to the violence affecting Rio. The conflict in Rio's favelas does not occur because favelas are cut off from the state but, rather, because of the way the state is present in those communities and the relationships state actors maintain with criminals who operate in them.

Indeed, the state is highly present in favelas zones, perhaps much more than in other parts of the city. However, according to Auyero and Sobering (2017), besides legal forms of state intervention, we need to observe numerous forms of illicit intervention in these poor zones. "Those living at the urban margins are sometimes 'abandoned' by the state and other times are overpoliced (and brutalized) by it" (AUYERO; SOBERING, 2017, p. 3).

On that point, the system of relations between politicians and favela leaders is marked by a quasi-feudal relation, or what Arias (2006) calls "neo-clientelism", which is the main product of the fragile monopoly over violence. Criminals in favelas develop strong inside links with the civil society, and they are extremely careful and closed with regards to external connections, with the awareness that their relation to the police and politicians is necessary in order to maintain their power and business. The latter connections can be described as "collusions" between politics and violence, where criminal violence is used to provoke a certain type of state of emergency where the local governance is jeopardized, and "as a result, criminals and their allies play a significant role in deciding what happens in a particular neighborhood. When [for example] the state makes decisions about what types of project to build, officials make those decisions in consultation with civic leaders allied with drug dealers" (ARIAS, 2006, p. 192). In other words, these "collusions" between police and traffickers, as well as between militias and both police and politicians, are the way violence is privatized



and used as the means for favela leaders to interact with members of civil society or with the state.

However, even though the existence of the proper legal system in favelas presents a very compelling argument that it has a potential to introduce certain sociological findings into legal theory, in my opinion, we cannot talk about proper legal systems in favelas, but rather about systems of rules that are bound to the monopoly over violence and that can produce certain “sovereign-like” power formations. Similarly, as it was shown, the lack of the state in these areas is also a plausible argument, due to presence of public institutions in favelas (schools, hospitals etc.), and, regarding public security units, we can often talk about “too much state” in favelas, instead of “the lack of state”.

Arias (2006) agrees with Machado da Silva (2010) that the metaphors of reconquest of the lost territories and war against crime don't suit the urban conditions in favelas. The above examined double bounded triangle of violence, defines favelas in the state of Rio de Janeiro as ruptures within Brazilian democracy, proper state of exception of that democracy, which are continuously governed by employing exceptional security means. In the Introduction it was presented the main theoretical ground points of the state of exception. However, in order to become a socially valid category, a state of exception has to exist in the exchange between politics and law, a process that was grasped in all its complexity in favelas zones during the first federal intervention.

Federal Intervention balancing between constitutional rights and duties

Several times before 2018, the state of Rio de Janeiro showed severe problems in fulfilling its main constitutional duties. In these situations, Rio's government used for several times another type of intervention, the state of calamity. For example, in 2005, former president Luis Inácio Lula signed the



decree No. 5.392 to declare state of calamity in the area of health, allowing the Ministry of Health to intervene in certain hospitals in the state of Rio de Janeiro. Another intervention of this kind, but in the area of public finances, was expected to last until the end of the Intervention. In June 2016, previous vice Governor of Rio de Janeiro, Franciso Dornelles, in order to get additional 2,9 billion reais for the organization of 2016 Summer Olympic Games, signed a decree which proclaimed “the state of financial calamity” (Decree No. 45692). The state law No. 7483/16, confirmed it, and in art. 2 set the 31st of December 2017 as the limit date of the extension. Later, another State Law No. 7627/17 altered this article, setting December 31, 2018, as the final date of the state of financial calamity.

However, different from the state of calamity, a federal intervention needs to be based on reasons of apparent and undisguised gravities of a threat for the whole Federation. Its constitutional nature is grounded in the exception, and as any other exceptional measure, it is activated solely by the executive power. Accordingly art. 84 lists the Duties of the President of the Republic, and in para. X it prescribes to the President the exclusive power⁹ to “decree and enforce federal intervention”, just like in instances where a state of defense and/or a state of siege is put into place. The 1988 Constitution of the Federative Republic of Brazil (the Constitution) does not use the terminology “state of emergency” or “state of exception”. Title V - The defense of the state and of the democratic institutions of

⁹ Under art. 36(I), the power to issue a decree of intervention is given to the legislative or executive power when item IV of art. 34 [to guarantee the free exercise of any powers of the units of the Federation] is considered, while in the case of item VII [to ensure compliance with the following constitutional principles: a) republican form, representative system and democratic regime; b) rights of the human person; c) municipal autonomy; d) rendering of accounts of the direct and indirect public administration; e) the application of the minimum required amount of the revenues resulting from state taxes, including revenues originating from transfers, to the maintenance and development of education and to health actions and public services], art. 36(III), the Attorney-General of the Republic can submit the petition to the Supreme Federal Court. The latter is disposed in 2011 by Law No. 12562, which places the power over federal intervention solely on the hands of the president. Art. 11 of this law states that after deciding upon federal intervention in item VII, the President of the Supreme Federal Court has to bring it to the attention of the President of the Republic.



the Constitution defines two exceptional situations: the state of defense and the state of siege. Under the same title, chapter III, art. 144, public security is in the power of the State (both the Union and federal states), and it is “the right and responsibility of all”. The same article lists five public agencies that serve to protect and maintain public order: federal police, federal highway and railway police, civil police and military police and military fire brigades. Federal Intervention, on the other hand, is defined under Title III – The organization of the State, Chapter VI, art. 34. This constitutional institution serves only to correct certain problems and to preserve the existence and functioning of the Federation itself. Therefore, art. 34 clearly states that “the Union shall not intervene in the states or in the Federal District, except” in seven situations listed by the same article. The main threats that allow declaring a federal intervention are listed in art. 34, and they are related to national integrity, security and sovereignty (items I, II, III), and to the protection of the federal law, surveillance and administration (items IV, V, VI). Under item VII of this article, the Union has the right to intervene in the states or in the Federal District in order “to ensure compliance” with several constitutional principles, among which are “the rights of the human person” (art. 34, VII(b)). Therefore, one of the risks that can be used to justify employing a federal intervention is the violation of human rights in one of the federal states. Despite numerous human rights crises in several federal states, especially those considering environmental crisis, organized crime and prison system crises¹⁰, the federal intervention was used for the first time in Rio 2018 Intervention under the para. III of art. 34 - “to put an end to serious jeopardy to public order”.

¹⁰ One of the most terrifying examples is the Carandiru massacre that happened on October 2nd, 1992, when the military police killed 111 prisoners. Overcrowded Brazilian prisons continue to violate numerous basic human rights and put all prisoners’ lives at risk. To this day, the prison conditions in Brazil continue to worsen, for example, in 2018, 729,551 people were arrested and distributed among 368,049 places in prison, which means more than 2 inmates per one place. See the 13° *Anuário Brasileiro de Segurança Pública*/13th Brazilian Yearbook of Public Security, <http://www.forumseguranca.org.br>.



3. Political and legal context of the militarization of the public security

A complex political situation that preceded this intervention is very important for its understanding. Albeit, the most polemic facts about the Intervention are grounded in its military character, duration and efficacy, all of which provoked important and irreversible impacts on the structures of human rights protection. In the relation between political arguments, keeping in mind the balance between constitutional duties and rights, it is possible to observe the anti-constitutional character of this intervention, and more importantly, the path towards using the state of exception as a normal means for combating crime and protecting public security.

For Peterke (2019, p. 90), political background of the Intervention can be observed as the part of the modern power politics, and as another evidence for the country's institutional and political crisis after 2016 impeachment of President Rousseff. Through analyses of media contents and discussions in both Parliament and Senate before the interventionist decree was signed, Peterke (2019) manages to illustrate Temer's government as a failing project, but one which in that moment still had aspirations to run for the next term. The most polemic political moment was Temer's ongoing proposal for public pension system reform that wasn't gaining support in the Federal Parliament. With the Intervention under way, this proposal was put on hold because, according to the art. 60, para. 1, the Constitution cannot be amended during federal intervention. In such way, Temer had a chance to take the public focus away from his failing project in the Parliament and try to collect political points by offering solutions for the problems of public security.

From the beginning of its short term, Temer's government was focused on offering a new project for public security. In June 2018 "Single System of Public Security" (SUSP) was created (Law 13.675/18). The main idea of SUSP



is derived from the art. 144 of the Brazil's Constitution where the public security is described as "the right and responsibility of all". This represents the constitutional base for the integrated and joint action of all federal units under coordination of the independent Ministry of Public Security (Law 13.690/2018) that became separated from the Ministry of Justice. Moreover, on December 27, 2018 Temer signed a decree that sanctioned a 10-year "Public Security and Social Defense National Plan" (PNSP). Both SUSP and PNSP were introduced as the new pillars for modernized, united and prioritized Brazilian public security policy. Even though the idea to create integrated public security system as a counterpart to the already existing unique health and educational system was welcome by many politicians, both SUSP and PNSP were never fully implemented.

In July 2017 President Temer signed a decree that authorized the employment of the Armed Forces for the Guarantee of Law and Order in support of the actions of the PNSP in the State of Rio de Janeiro, for the period between July 28, 2017 and December 31, 2018. Expectedly, security operations during the Intervention were performed through the Law and Order Guarantee Operations (GLO - *Operações de garantia da lei e da ordem*) that by the definition of the Ministry of Defense are used only "in the cases where traditional public security forces are depleted, in serious situations of disruption of law and order" (MINISTÉRIO DA DEFESA, p. 1). The subsidiary and exceptional character of their function is defined in the Complementary Law No. 97/1999, most precisely in the art. 15, paras. 2, 3 and 4. Therefore, during the Intervention, function of the GLOs was supposed to be only complementary to the police forces. Accordingly, the Intervention was organized through the activities of two "axes" - the Public Security Axe that was supposed to be guided by police forces, while the Defense Axe was under military command.

However, already a second article of the interventionist decree named General Braga Netto as the main actor (or "intervener") to command over



all police forces in Rio de Janeiro and its prison system. The following article states that the intervener “is subordinated to the President of the Republic and is not subjected to state regulations that conflict with the measures necessary to carry out the intervention”. Naming exclusively military personnel in the charge of the Intervention¹¹ can be seen as the part of the militarization of the Intervention, even though the intervenor and other officials were negating such conclusion, calling upon art. 144 of the Constitution that includes Armed Forces as public security protectors. However, for many experts, the militarization was obvious, and it was not a novelty. Criminologist Fernando Augusto Fernandes sees it as a part of “a continuous and reiterated unconstitutionality” (RODAS, 2018, para 18) initiated at Eco 92 (the United Nations Conference on the Environment) and repeated at major events, such as the 2014 World Cup and the 2016 Olympics. Therefore, it is not possible to grasp exclusively exceptional character of the Intervention in its military character through, for example, the employment of GLO operations, since, opposite to their definition, they were already a constitutive part of the regular protection of public security in favelas in Rio¹².

Besides obvious political stimuli, militarization of the public security had an important legal push in 2017 by the law No. 13.491. This law was sanctioned in October 2017 by the president Temer, and according to it, intentional crimes against lives of civilians, listed by both Military and Criminal Penal Code (art. 2, para. 9 of the Law), will be judged by military courts in the case if they were committed by the members of Armed Forces. In a case of the members of military police committing such crimes, they would be judged by the civil courts. Keeping in mind that GLO operations, as well as the Intervention, are coordinated and

¹¹ Besides the Intervenor, a head of the Federal Intervention Office was General Nauro Sinott Lopes, while General Richard Fernandez Nunes was a State Secretary of Public Security.

¹² In the period between June 28, 2017 and the beginning of the Intervention, 19 GLOs were registered in the state of Rio. During the Intervention there were at least 49 GLOs (data taken from RODRIGUES; ARMISTRONG. *A intervenção federal no Rio de Janeiro e as organizações da sociedade civil*. 2019. *Relatório de Pesquisa*, p. 13-15).



executed by the members of Armed Forces, any crime that they commit inside of favelas, such as murder or attempted murder or any human rights violations, will be treated by military justice. This is not only dangerous due to the lack of transparency of these trials that can facilitate impunity for the members of Armed Forces, but by clearly dividing criminal treatment for the members of military police from those of armed forces, this law stimulates further militarization of the public security. Armed forces are, thus, being called to operate on more regular and routine bases in favelas, normalizing their exceptional measures. This was obvious during Rio 2018 Intervention when military operations were performed in that manner, demonstrating the shift away from penalization and into militarization as the public security strategy.

Peterke (2019) also points out the role of national mass medias whose sensationalist reporting in the days before the Intervention had features of an organized pro-intervention campaign, focusing solely on the increased violence in the city, building a uni-dimensional image of the situation. When, for example, just two days before the Intervention, ISP (*Instituto de Segurança Pública*) published that at the moment there was actually a 35% decrease in violent crime compared to the Carnival days in 2015 until 2017, many medias decided not to give it a full attention (PETERKE, 2019, p. 102). Likewise, in her message to the Congress, the rapporteur of the “Constitution, Justice and Citizenship Commission”, Federal Deputy Laura Carneiro, cites data from an online journal about an estimated 117% increase in shooting in Rio at the beginning of 2018 (CARNEIRO, 2018, p. 12). She also defined the situation of public security in Rio as “an authentic war between gangs and between the State and these criminal organizations”, stating that the letter “will not be defeated until the public security forces occupy the land now dominated by macro-criminality and until the State is not present again in the fulfillment of its duties towards its citizens” (CARNEIRO, 2018, p. 13). During discussion between the Council of Republic and the National



Defense Council on February 19, Federal Deputy José Guimarães, a minority leader in the Council of Republic, pointed out that the Council was supposed to be consulted before the interventionist decree was written, not after¹³. He also added that the Government did not present a plan of the intervention, grounding reasons for its justification solely in the newspapers' material (XAVIER, 2018). For Peterke (2019), usage of media reports as the justification for the Intervention is part of what he calls “media democracy *à brasileira*” which “is based on an alliance between a handful of powerful media entrepreneurs and representatives of the political class, which can basically be assigned to the right spectrum” (PETERKE, 2019, p. 112).

4. Human rights situation during the Intervention

One of numerous “war-like” methods used during the Intervention was the so-called registration of residents, which basically meant the creation of a ‘database’ of people entering or leaving the favela by photographing them holding their IDs. Army tanks as well as helicopters were making free movement impossible for the civil society, while numerous residents and civil organizations working in the area ensured that in a few cases, the police opened fire from their helicopter against targets on the ground. In one of the military interventions in *Complexo da Maré*, the city’s largest group of favelas, in which helicopter shootings were reported, a bullet shot killed Marcos Vinicius da Silva, a 14-year-old

¹³ Similar argument had Federal Deputy Ivan Valenke who, on the same day when the Intervention was approved by both councils, called Federal Supreme Court (STF) for a temporary injunction to prohibit the Intervention. One of his main objections was that the decree should not have been voted without prior consultation of the Constitutional Council and the National Defense Council. The STF Justice Celso de Mello rejected the application on the same day, within a few hours, clearly demonstrating that STF wanted to stay out of this political crisis. More about this on the web page of the Federal Supreme Court. <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=370019>. Accessed: 11 February 2020.



boy who was on his way to school¹⁴. The practice of shooting from a helicopter is allowed only when there aren't civilian lives in direct danger. Besides their illicit character during the intervention, they have provoked terror in the local population, endangering the lives of civilians who were trying to have a normal life in the middle of a combat zone, which for certain public schools in *Complexo da Maré* means they still need to have a sign that is visible from the air reading "School, don't shoot"¹⁵.

According to the partial report of the Public Defender Office, entitled Partial Report "Favelas' Circuit for Rights" (*Relatório parcial Circuito de Favelas por Direitos*), 30 types of violations of rights committed by the Armed Forces and the police during the period of the federal intervention were identified. The report divides them in five blocks: Home Invasion, Approach by Law Enforcement, Lethality caused by the State, Police Operation and Impacts. The militarization of civil activity also stands against international treaties, not only because it facilitates excessive abuse of powers, but also because it "violates all jurisprudence within the inter-American system with regard to military justice, which is a highly limiting jurisprudence especially in situations involving civilians" (CONCI cited in JUSTIFICANDO, 2018, para. 4). Besides strong domestic critiques, there were numerous international reactions as well. In the press release by the Inter-American Commission on Human Rights (IACHR) and the United Nations Office of the High Commissioner for Human Rights (OHCHR) in March, 2018, both

¹⁴ PHILLIPS, Dom. Brazilian teenager dies after police helicopter strafes favela. *The Guardian*. 2018. Available: <https://www.theguardian.com/world/2018/jun/21/brazil-latest-death-teenager-favela-raid-police-marcus-da-silva>. Accessed: 21 May 2021.

¹⁵ In May 2019, therefore not during the intervention, another illegal shooting took place from the helicopter on a resident's property, more specifically on the improvised place for praying in favela *Angra dos Reis*. During that civil police operation, Governor Wilson Witzel was streaming a live video shared on his social networks. See: BARBON, Júlia. Helicóptero com Witzel a bordo atirou em lona de oração em Angra, dizem moradores. *Folha de São Paulo*. 2019. Available at: <https://www1.folha.uol.com.br/cotidiano/2019/05/helicoptero-com-witzel-a-bordo-atirou-em-lona-de-oracao-em-angra-dizem-moradores.shtml>. Accessed: 21 May 2021.



organizations expressed their “deep concerns” about the then ongoing intervention, specifically regarding the interventionist decree that

does not sufficiently specify its scope and implementation terms, nor the conditions that justify adopting an exceptional measure of this nature. (...) Without these safeguards, the implementation of a federal intervention can result in serious violations of human rights, in particular the rights to life and personal integrity (ORGANIZATION OF THE AMERICAN STATES, 2018, para 3).

Also, after the petition of twenty social organizations, the IACHR is currently holding hearings on both the Rio 2018 Intervention and Marielle Franco’s execution. Moreover, as a member of the Organization of the American States, Brazil is obliged to respect the provisions coming from the American Convention on Human Rights (ACHR; 1969), that at the art. 27 recognizes the right of the state to derogate human rights during state of emergency. In one of the interpretations (Advisory Opinion OC-8/87, para. 20) of art. 27 of ACHR, the Inter-American Court of Human Rights said that “the suspension of guarantees lacks all legitimacy whenever it is resorted to for the purpose of undermining the democratic system”. In other words, a state of exception can never imply “a temporary suspension of the rule of law, nor does it authorize those in power to act in disregard of the principle of legality by which they are bound at all times” (para. 24). In spite of clear and serious violation of human rights, there was no official declaration of derogation from the ACHR by the Brazilian government.

Another report, “Rio under intervention 2”¹⁶, also concludes that

if it is a fact that the Federal Intervention managed to reduce some indicators of crime and invest in capacity building in the management of processes, purchases and people of the state

¹⁶ This report had two editions – one in 2018 and another in 2019. Both are products of the research made by the Brazilian Forum for Public Security (*Forum Brasileiro da Segurança Pública* – FBSP) and the Research Institute “*Datafolha*”.



police, it is also true, according to data from the second *Datafolha* survey, completed in February [2019], that the panorama and context of public safety in Rio was not changed in its macro-level (FBSP/*Datafolha*, 2019).

Therefore, it is wrong “to believe that the intervention will solve state security problems in the short, medium and long term” (MOURA, 2018, p. 2), mostly because it is supposed to react to an exceptional state, and not to the normal state of affairs, of which organized crime in Rio de Janeiro is an essential part. Hence, between February and July 2018 alone, 736 people were killed by the armed forces and the civil and military police (CESEC, 2018). By the end of the intervention, there were 1375 death caused by state agents, which is 33.6% more compared to the same period in the previous year (RAMOS, 2019, p. 5). In some parts of Rio, like in the up-country, the number of murders was 82.6% higher compared to the year 2017, and two regions had almost half of all killings (48.9%) perpetrated by state agents during the intervention (RAMOS, 2019, p. 6).

Conclusion

Public security in Rio before the federal intervention, and especially after, has shown the tendency to use criminal and military policies as the main strategy of public security. Moreover, current tendencies in world politics demonstrate how “criminal policy conjugates with criminal law of the enemy when public policies are redefined as national security policies” (HERNÁNDEZ, 2014: 134). Converting public security into national security is based on the clear definition of the enemy, and it operates using the state of exception that not only legally defines an action as outside of law, but also defines the enemy as outside of society. For the sociologist Misse (2018) “the militarization of security goes against the desired modernization of the criminal justice system” (para. 4), and



numerous problems, such as of corruption of members of civil police, has never been resolved by the military interventions, because as soon as the armed forces go out of the favelas, criminal activities return to its normal pace.

This work has shown certain specificities of the constitutional definition of federal intervention, that begin with its topological distance from other two exceptional measures in the Constitution and continue with the lack of definition of the exceptional situation and its duration, which makes the balance between constitutional rights and duties even harder. During the Rio 2018 Intervention numerous violations of constitutional rights took place, some of which this article has demonstrated. The aforementioned example shows that the Brazilian (as in the case of many other South American and European countries)¹⁷ public security strategy openly and strongly prioritizes security over human rights. These policies are perhaps most visible in favelas, but not only during the federal-mandated intervention.

In Rio de Janeiro, the war-like activities of “re-conquering” favela areas were not only taken in action by former governor Cabral’s policy. Governor Wilson Witzel¹⁸, said in an interview “that Rio security forces were authorized to use lethal force against suspects (...) [and] that Rio needed its own version of Guantánamo Bay prison camp to free society of criminals who he described as ‘terrorists’” (KAISER, 2019, para. 3 and 4). By cancelling what he deems to be the “romantic” treatment of criminals (KAISER, 2019: para. 6), his office will treat them as they deserve, as combatants and terrorists. This rhetoric comes from the post-09/11 “war on terror” national security strategy, which, for example, former Colombian President Álvaro Uribe Vélez incorporated in his 2002 Policy of Democratic Security (*Política de Seguridad Democrática*).

¹⁷ For more on the comparative legal study about human rights efficacy and public security, see GRUJIĆ, V. The Balance between Human Rights and Efficacy. In *Evidence-Based Work with Violent Extremists: France as a case example*, 253-269, 2019, Maryland: Lexington Books.

¹⁸ Wilson Witzel was a governor of Rio de Janeiro from January 1, 2019 until his impeachment on April 30, 2021.



These governmental policies were in several occasions described as the war against terrorists, and for example, in his inauguration speech, Uribe said that guerillas should be called what they are – terrorists, going as far as to say that Colombia is an even more dangerous menace to the world than Iraq (HUMAN RIGHTS WATCH, 2004: para. 12 and 13). In the Brazilian counter-terrorism legislature that is included in both the Penal Code and in the so-called “Anti-Terrorism Law” (Law No. 13.260/2016), very unclear definitions of a terrorist act can enable the interpretation of organized crime as terrorism crime¹⁹. Moreover, current proposals for changing the second paragraph of this law threaten to exclude protection for social and political movements’ activities from the definition of terrorist groups.

With this in mind, the Governor’s “zero tolerance” policies and declarations, like the ones mentioned above, become even more alarming. With the record of 1444 deaths caused by state agents in Rio de Janeiro during the year that was marked by ten months of federal intervention, the inefficiency in the reduction of organized and most violent crimes in favelas, without any strategic plan for fighting corruption and paramilitary groups, with the low accountability of the security forces members, it is obvious that the model of “war against criminal” fails to offer an efficient policy. Finally, understood in this way, national public security policies allow for the violation of basic rights and the use of illicit measures as a part of normalizing the state of exception. This very same normalization led to the death of Ágatha Félix, an eight-year-old girl, the fifth young child murdered by the police in 2019, shot in her back inside the favela of *Complexo de Alemão* by a bullet from a police officer’s rifle. Her murder was followed by political silence from

¹⁹ For more on this, see CAMBI, E. A. S.; AMBROSIO, F. A. R. “Ameaça aos direitos fundamentais e à democracia: a lei antiterror do Brasil”. *Espaço Jurídico*, v. 18, n. 1 2017, p. 185-212. SANTOS, F.F.P.V.; PONZILACQUA, M. H. P. “*Lei antiterrorismo no Brasil e criminalização de movimentos sociais*”, 2017. Available at <https://sites.usp.br/pesquisaemdireito-fdrp/wp-content/uploads/sites/180/2017/01/flavio-felipe.pdf>.



the highest officials in both state and federal sectors, a silence that is an integral part of the violence of the ongoing public security policies.

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