

## The Anti-Racist Compliance

Veyzon Campos Muniz

Veyzon Campos Muniz, lawyer associated in the Brazilian Bar Association, PhD Candidate in the Doctoral Program in Public Law – Social State, Constitution and Poverty at the Legal Institute of the University of Coimbra (Portugal), Master and Bachelor in Law from the Pontifical Catholic University of Rio Grande do Sul (PUCRS), Specialist in Tax Law and Public Law, Graduate in Regulation and Regulatory Improvement from the National Autonomous University of Mexico, also journalist and civil servant in South of Brazil. <veyzon.muniz@gmail.com>

Received: 15 May 2022,

Received in revised form: 10 Jun 2022,

Accepted: 15 Jun 2022,

Available online: 20 Jun 2022

©2022 The Author(s). Published by AI  
Publication. This is an open access article  
under the CC BY license

(<https://creativecommons.org/licenses/by/4.0/>).

**Keywords—** *Compliance; Institutions;  
Humans rights; Right to development;  
Sustainable development.*

**Abstract—** *Anti-racist compliance is the appropriate set of integrity and compliance techniques for the creation of inclusive institutional environments, capable of diversity and free from racism. Understanding its constitution depends on recognizing the human right to development, in a practical way, and the role of institutions in its implementation, as well as the negative impacts of racism on corporate governance. Thus, it can be said that institutional designs of conformity and integrity committed to the fight against racism give rise to the achievement of sustainable development, human rights and democracy.*

### I. PREFACE

Achille Mbembe in *Critique of Black Reason* (2018, p. 305), when reflecting on democracy and a poetics of race, analyzes and criticizes democratic projects that coexist with racist structures, in the following terms: “The project of a common world based on the principles of ‘equality of parts’ and the fundamental unity of the human race is a universal project [...] Exclusion, discrimination and selection in the name of race remain, however, structuring facts – albeit often denied – of inequality, the absence of rights and contemporary domination, including in our democracies”. Along the same lines, the question is: is the performance of institutions democratic? Is there democracy when there is racism in your spaces? Such questions are essential to reflect on whether the assurance of (most) fundamental rights affects all citizens. In several environments, it is clear that black people are exposed to constant risks of death due to their race or color and face flagrant socioeconomic inequities<sup>1</sup> – which has indelible

reflections on institutional processes of integrity and conformity.

It is understood, in this sense, that one must understand how an ecosystem can be rhetorically committed to anti-racism, but, in practice, also be conniving with it; as well as that institutional relations must be subordinated to the anti-racist ideal, which is an inseparable component of the sustainable development of organizations and, consequently, of the establishment of environments in which a democratic culture prevails. The Sustainable Development Goals (SDG), present in the 2030 Agenda, proposed by the United Nations, in the same vein, help in the perception of the connections established between development as a human right and the

an intersectoral network of inequalities, so that if we were to divide the country in two, white Brazil would have an HDI of 0.814, and black Brazil, with a mixed and black population, would have an HDI of 0.703. If they were two different countries, they would be separated by 61 positions in the human development ranking” (AMORIM; MORAIS, *Strategic Litigation in the Public Defender's Office*, 2019, p. 21).

<sup>1</sup> For example: “[...] the black population of Brazil is poorer, has less access to essential services and education. Racism has fueled

organizational empowerment of black communities as an emerging demand.

Based on the premise that the aforementioned right suffers a deficit in effectiveness when faced with spaces in which racial equity and justice are not observed, it is essential to rethink corporate governance strategies to achieve anti-racism. Thus, anti-racist compliance emerges, as a set of integrity and compliance techniques suitable for the constitution of inclusive institutional realities, capable of diversity and free from racism, as an instrument that induces sustainable development.

The present study is developed with a view to defending the indispensability of the non-rhetorical affirmation of the right to development by institutions, the sensitive perception of the impact of structural issues involving racism, as a complex phenomenon, on the economic dynamics of organizations, and the need to provide opportunities for the full exercise of capacities and freedoms, in spaces without discrimination and free from negative racial stereotypes.

**II. HUMAN RIGHT TO DEVELOPMENT AND THE ROLE OF INSTITUTIONS IN ITS EFFECTIVENESS**

The right to development was declared by the UN (1986) as a human right in the 1980s, and, from its enunciation, it is possible to identify projections of its impact aimed “not only at States and peoples, but also at certain collectives” (ANJOS FILHO, *Right to development*, 2013, p. 256). Through its legal constitution, it is clear that the adoption of measures aimed at eliminating or reducing structural inequalities is now recognized so that its vocation of guaranteeing well-being is effectively met, in a broad way, but also in a specific way for the vulnerable groups in institutional structures.

The normative affirmation that all people are qualified to participate in economic, social, cultural and political development, in order to contribute to and enjoy it, is a task shared by the totality of society. However, undeniably, it is observed that, in several contexts, organizations show little commitment, or even mistakenly threatened, by the recognition of rights to vulnerable collectives, both by an eventual ideological criticism, and by the fear of losing privileged positions in hierarchical systems, which, by itself, generates negative externalities and negatively impacts the effectiveness of the principles of diversity and inclusion inside and outside the institutions.

However, the right to development is an undeniable potentiality for achieving a sustainably developed society<sup>2</sup>, so without a cooperative and shared participation of institutions, it is difficult to reverse the structural conditions that impose obstacles to development, such as institutional racism<sup>3</sup>. The adoption of the SDG, as a corollary, as a form of strategic planning in guiding policies and institutional designs within the scope of the 2030 Agenda, serves precisely to induce the human right to development, establishing, among others, the following goals:

<sup>2</sup>Development as a human right provides opportunities for the self-development of individuals, that is, they provide them with the capacity for self-fulfillment. Changes in people are best achieved when they engage as partners in change processes. Thus, personal development intertwines with organizational development and the notion of participatory democracy, which serve to catalyze people active involvement (cf. TOCH, *Corrections: a humanistic approach*, 1997, p. 36).

<sup>3</sup>It is a phenomenon “that can be experienced and observed in the dynamics of institutions, it necessarily arises from the high degree of naturalization of the racial hierarchy and from the stereotypes that inferiorize a certain group while affirming the superiority of another” (PIRES; LYRIO, *Institutional racism and access to justice: an analysis of the performance of the Court of Justice of the State of Rio de Janeiro in the years 1989-2011*, 2019, p. 6).

Table I – SDG in perspective

SDG-08	Decent employment and economic growth	Promote sustained, inclusive and sustainable economic growth, full and productive employment, and decent work for all	Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation
SDG-10	Reduction of inequalities	Reducing inequality within and between countries	Empower and promote social, economic and political inclusion for all, regardless of age, gender, disability, race, ethnicity, origin, religion, economic or other status
SDG-16	Strong institutions	Promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive	Promote the Rule of Law, nationally and internationally, and guarantee equal access to justice for all; ensure responsive, inclusive, participatory and representative decision-

		institutions at all levels	making at all levels; promote and enforce non-discriminatory laws and policies for sustainable development
SDG-17	Partnerships for the SDG	Strengthen the means of implementation and revitalize the global partnership for sustainable development	Increasing policy coherence for sustainable development

The SDG-08, which establishes the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all, ratifies values contained in the Durban Declaration and Program of Action (UN, 2001). The aforementioned diploma affirms solidarity, respect, tolerance and multiculturalism as morals foundations and inspirations for the global fight against racism and racial discrimination, as well as recognizing that the processes of enslavement and trafficking of enslaved persons were crimes against humanity and are the major manifestations and sources of racism to the present day, inspiring disruptions and perversions of present labor relations.

The SDG-10, in turn, sets the goal of reducing inequalities, clearly aiming at the empowerment of citizens and the promotion of their social, economic and political inclusion. In the Brazilian context, for example, it is important to realize that “the present racial inequities go back to the segregationist model that consolidated and ensured the privileges of a white European dominant class to the detriment of the black and indigenous population” (GIACOIA; SILVA, *Social Exclusion and criminalization of the excluded: a reflection on the selectivity of the Brazilian penal system*, 2013, p. 05), which urges overcoming, within the scope of the integrality of relationships and institutions.

Already, the SDG-16 guides the promotion of societies without violence and with full access to justice, as well as the construction of effective, responsible and inclusive institutions, with breadth of transparency, guarantee of democratic decision-making and sensitive to the promotion and compliance of non-discriminatory laws and policies. Therefore, in line with the logic of disseminating sustainable reasoning, integrity and compliance with good practices of social responsibility and a careful look at the 2030 Agenda as a whole are sought, not only with a view to mitigating risks, but also to its service as an opportunity and performance, in a true process of organizational improvement.

The SDG-17, which establishes the strengthening of the means of implementation and revitalization of the global partnership in favor of the SDG themselves, in turn, is the guiding potential of the *ISO 37301 Certification* (2021), which standardizes

compliance management systems in organizations public and private. Prepared by the Technical Committee 309 of the International Organization for Standardization, the standard specifies requirements and provides guidelines for establishing, developing, implementing, evaluating, maintaining and improving effective integrity and compliance management systems within institutions, considering the needs and expectations for the scope of its sustainability and consolidating the promotion of values, among which anti-racism must appear (and be protagonists).

### III. HARMFUL IMPACTS OF RACISM ON CORPORATE GOVERNANCE

Fania Davis, in *The little book of race and restorative justice: black lives, healing, and US social transformation* (2019, p. 92) very well points out: “race is not real, but racism is very real”. According to past studies (MUNIZ, *Racism: because you cannot simplify a complex concept*, 2020), it is recalled that racism establishes a system of dominance of one race to the detriment of others in multiple fields, resulting in exclusions on access to goods and services and income (economic dimension), management and dynamics in power relations and spaces (political dimension), the construction of narratives and the reproduction of subjectivity in society (psychological dimension) and the regulation of normative mechanisms and the guarantee of rights (legal dimension). It is understood, therefore, that there is a historical point in which institutions are either “healed” or racial injustice “will continue to be replicated *ad nauseum*”.

Furthermore, if corporate governance is the set of leadership, strategy and control mechanisms put in place to assess, direct and monitor institutional management, it can be said that good governance is one that operates in order to achieve the SDGs. The UN that raised decent employment and economic growth, the reduction of inequalities and the constitution of strong institutions and cooperative partnerships as sustainable development goals, through its High Commissioner for Human Rights (OHCHR, 2022), presents the conception of good governance referring to those institutional, planning and execution practices, with full and complete respect for

human rights and the rule of law, characterized by transparency, responsibility, accountability, participation and responsiveness to people's needs. It is a concrete ethical intensification of organizational reality.

If, on the one hand, racism is a complex phenomenon, which imposes multiple forms of violence on the black population, on the other hand, good governance is capable of disseminating anti-racism in institutions, making them capable of empowering people, equity and sustainability, which, in itself, enables programs, projects and practices to combat racism. This possibility, in fact, corresponds to the active exercise of its own social responsibility.

The negative impact caused by the poor treatment of racial issues in the operation of organizations must be recognized and its inevitable repercussion on their own management, which has to (re)affirm their understanding and commitment to the unavailable fight against racism. It should be noted: racism is always a corrosive factor in institutional relations – in all of its environmental, social and economic pillars.

Victor Ray, in *A theory of racialized organizations* (2019, p. 46), argues that organizations are central structures for contesting the social construction of race and stability in the racialized order, since it is through everyday organizational processes and routines and their material resources, that racial schemes delineate subordination and ordering. Thus, it is organizations that expand or inhibit agency, legitimize the unequal distribution of goods, services and incomes, treat whiteness as a credential, and decouple institutional procedures in ways that, as a rule, benefit dominant racial groups.<sup>4</sup> Social movements and demands, together with more “mundane” interests, such as attempts to gain greater market share, can, however, creatively alter the connections between racial and organizational structures.

Therefore, it is asserted that an institutional design, preordained, led by its governance, endowed with real utility and practical applicability, allows progress from a paradigm of correction of racist misconceptions to the promotion of a set of values that ensures both rights as it transforms realities. In this sense, the institutionalization of anti-racist compliance preserves the physical and psychological integrity of employees, consumers and users, assists in the relationship with communities, preserves institutional reputation and image, identifies

commitment to combating racism, and fosters anti-racist ecosystems.

#### IV. INSTITUTIONAL DESIGNS OF ANTI-RACIST COMPLIANCE

Anti-racism is an axiological paradigm that makes institutional environments realize that in ESG, environmental, social and governance are necessarily interdependent and interconnected. And this is, in short, “an ontological choice, which stems from an epistemological choice”, as Michel Troper constructed in *The Philosophy of Law* (2008, p. 154). If the rational choice is to be an anti-racist institution, the way of being is precisely the institutional structuring of its integrity and conformity in a compatible way.

Going through the progression of the ethics paradigm as the foundation of compliance, as a consolidated and universalizable set of values, a sign of the historical and cultural development of organizations, since the 1960s and 1970s, when social movements brought up the struggle for civil rights of vulnerable groups, by gender parity and environmental preservation, we can see the common genesis and the approximation of the themes of sustainable development and human rights. The *Stockholm Declaration on the Human Environment* (UN, 1972), for example, already understood “the protection and improvement of the human environment” as “a fundamental issue” for the achievement of well-being and economic development.

In the same sense, the US normative frameworks that pioneered the concept of compliance as an instrument focused on preventing illegal activities, notably corruption in organizations and deviations in financial operations, introduced the need to rethink practices with a view to explaining truly solid missions and its internal and external realization. On the one hand, if the programs have always brought regulatory compliance as a guideline for their institution, functionally demanding compliance with the applicable norms, on the other hand, ethically sound management decisions have been demanded.

Michael Jensen and William Meckling in *Theory of the firm: managerial behavior, they talk agency costs and ownership structure* (1976), at the time, already taught that compliance can be understood as a cost capable of avoiding conflicts and monitoring actions and movements in the markets. Thus, institutions, incorporating such a cost, must respect the relevant legislation and make use of all appropriate means to positively impact their understanding and application. Therefore, mechanisms to protect the institutional board

<sup>4</sup>Along these lines, Emory University professor of African-American Studies, Carol Anderson (2020), adds: “the system creates winners and losers, regardless of what they do. And this is how he has been redistributing opportunities and resources based on nothing but privilege”.

and investments are constituted for the mitigation of risks due to the lack of understanding and non-compliance with normative and ethical impositions.

Designing a compliance program, in this context, presupposes that institutions create instruments to form a culture of compliance with legal and social norms that seek to eradicate all forms of corruption and ethical deviations and, consequently, corroborate with the elimination of obstacles to protection and improvement of the ecosystem in which they operate. Racism is undoubtedly one of these obstacles to be overcome.

The evolution of the paradigmatic structural vectors of such projects of organizational compliance and integrity, from the 1970s to the mid-2000s, included ensuring the commitment of leaders, directors and managers, the creation of codes of conduct, procedures, ethics and good practices, the training of workers and collaborators, the adoption of communication strategies, marketing and internal controls, the development of assessments and risk management mechanisms, the implementation of complaint channels and ombudsmen, the continuous monitoring, permanent and based on its own structure, internal investigations and disciplinary measures. In the same period, in which compliance was consolidated as a fundamental agenda in the structural changes of organizations, giving effect to the right to development within them, the *World Conferences Against Racism* (WCAR 1978, 1983, 2001 and 2009) marked the construction of a robust international agenda to combat racism, all forms of racial discrimination and xenophobia.

It is precisely the exchange between internal and external policies that raised the ESG to a level of mandatory compliance, so that ecological, economic and social components become equal and intertwined with the achievement of sustainable development. In this way, we can see the emergence of an anti-discriminatory compliance, which aligns organizational practice with the impositions of norms that specifically prohibit organizational discrimination (arising from discriminatory acts against a particular individual or group, based on knowable processes and institutional culture based on reproduction of patterns of excluding social interaction) and structural (originating in the social stratification resulting from the accumulation of socially excluding privileges by a hegemonic racialized group).<sup>5</sup>

Indeed, the global development and anti-racism agendas have contributed to institutional recognition of the negative economic, social and cultural consequences of discrimination and, consequently, to the institutionalization

of anti-discrimination compliance programs, allowing an ethical densification of the “ordinary” compliance strategy. Human rights and fullness of labor rights, environmental aspects, especially ecological and climate aspects, and socioeconomic components, such as financial transparency, the fight against corruption and anti-racist pro-activity, are now incorporated as internal and external relational guidelines in its development. Likewise, according to World Bank (FREDMAN, *Anti-Discrimination Laws and Work in the Developing World: A Thematic Overview*, 2013) notes a thematic risk management, actions for the prevention, detection and correction of inequities, and permanent mechanisms of eradication of discriminatory practices constitute good institutional anti-discrimination practices.

Thus, from the contemporary social and political needs and the assertion of a flagrant picture of racial violence, comes the unavailable concept of anti-racist compliance, “a set of conformity and integrity techniques that, qualifying compliance in general and intensifying anti-discrimination compliance, lead to the creation of inclusive institutional environments, capable of diversity and free from racism” (MUNIZ, *Anti-Racist and Anti-Discrimination Law*, 2021, p. 126).

Which, in turn, requires the training of human resources committed to combating racism, the addition to institutions of a broad understanding of structural racism<sup>6</sup>, and the effective construction of cultures of diversity and inclusion. In short, it is about conformity, with racially anti-discriminatory norms, which generates integrity, expressed in racial justice.

It is explained that such programs are structured in the triad *prevent-detect-response*. Violations of the anti-racist culture are prevented through policies and regulations that provide unequivocal principles and instructions for individual and collective conduct. Activities, operations and expressions of conduct are detected and monitored through audits, reporting channels and other monitoring procedures. We respond vehemently and unequivocally to racist violations, through specific internal and external processes, adoption of improvements and implementation of good practices, such as:

<sup>6</sup>“All racism is structural because racism is not an act, racism is a process in which the conditions of organization of society reproduce the subalternity of certain groups that are racially identified” (ALMEIDA, *Structural Racism*, 2021).

<sup>5</sup> See: MOREIRA, *What is discrimination?*, 2017.

Table II – Good practices for anti-racist organizations

01	Establishing racially diverse or racially and ethnically sensitive corporate leadership at the highest level
02	Treatment of all people, black and non-black, fairly in public and private spaces, respecting and supporting human rights and anti-discrimination
03	Ensuring the safety, well-being and health (especially mental) of all black people
04	Promoting education, training and professional development for black people and critical racial literacy for white people
05	Support and promotion of economic empowerment policies for black people through institutional structures and strategic design
06	Induction of racial equity through local, community-oriented and social activism-sensitive initiatives
07	Measurement, documentation and publication of institutional progress in promoting racial equality and in the effectiveness of anti-racism

Anti-racist compliance is developed in implementation (analysis of activities and risks, establishment of codes and penalties, establishment of a communication plan for constant dissemination of the anti-racist culture, development of training and efficient reporting systems, formation of independent committees), maintenance (advice with independent committees and thematic councils, regular training and permanent groups, development of monitoring systems, investigation and investigation of complaints, establishment of policies of consequences) and management (guaranteeing of necessary human and financial resources and establishment of continuous support from top management). And its positive externalities are perceived to be the preservation of the physical and mental integrity of employees, customers and users, the optimization of the relationship with communities and other organizations, the preservation of its reputation, image and mission, the strong impact on combating racism and the promotion of sustainable ecosystems.

## V. CONCLUSION

Returning to the preface quote, it is necessary, once again, to refer to Achille Mbembe (*Critique of black reason*, 2018, p. 305): “[...] as long as racism has not been eliminated from the life and imagination of our time, it will be necessary to continue to fight for the advent of a world beyond races. It will be necessary to learn to carry and share this burden better”.

Racism is a scourge that corrodes sociability, violates fundamental rights of black people, disrupts institutions and makes sustainable development unfeasible – and, of course, any possibility of implementing adequate

ESG practices in organizations. Therefore, the institution of a racialized compliance program with an express socially transformer objective, a responsive corporate governance and an efficient (and never conniving) management of potential racist events are instruments for inducing a better world and beyond races.

After all, starting from a strategic planning of effective implementation of SDG-08 (decent employment and economic growth), 10 (reduction of inequalities), 16 (strong institutions) and 17 (partnerships in favor of the SDG), one has a potential model of institutional design capable of promoting sustainable development, as well as the recognition of racial equity and justice as inseparable elements of the life of organizations. Finally, it is asserted that the dissemination of anti-racist compliance, in the civilizing development of institutions and of society itself, is a potential for the acceptance of the black community in leadership positions and with wage equity, the elimination of practical obstacles caused by the racist culture. and supremacist, the full socioeconomic development of blackness, and, unequivocally, the effectiveness of human rights and democracy.

## REFERENCES

- [1] OHCHR. *About good governance*(2022). <<https://www.ohchr.org/en/good-governance/about-good-governance>>.
- [2] ALMEIDA, Silvio. *Structural Racism (2021)*.<<https://www.youtube.com/watch?v=ZADKtsNnx74&t=1s>>.
- [3] ANDERSON, Carol. *White Rage: The Truth of Our Racial Divide* (2020). <[https://www.youtube.com/watch?v=6WVX\\_Nw9I4w](https://www.youtube.com/watch?v=6WVX_Nw9I4w)>.

- [4] AMORIM, Ana Mônica Anselmo de; MORAIS, Monaliza Maelly Fernandes Montinegro de. *Strategic litigation in the Public Defender's Office*. Belo Horizonte, CEI, 2019.
- [5] ANJOS FILHO, Robério Nunes dos. *Right to development*. São Paulo, Saraiva, 2013.
- [6] DAVIS, Fania. *The little book of race and restorative justice: black lives, healing, and US social transformation*. New York, Good Books, 2019.
- [7] FREDMAN, Sandra. *Anti-Discrimination Laws and Work in the Developing World: A Thematic Overview* (2013). <<https://openknowledge.worldbank.org/handle/10986/12129?locale-attribute=en>>.
- [8] GIACCOIA, Gilberto; SILVA, Lucas Soares. *Social exclusion and criminalization of the excluded: a reflection on the selectivity of the Brazilian penal system*. In: SANTIAGO, Nestor Eduardo Araruna; BORGES, Paulo César Corrêa; PEREIRA, Cláudio José Longroiva Pereira (Coords.). *Criminal law and criminology*. Florianópolis, FUNJAB, 2013.
- [9] ISO. *ISO 37301: Compliance management systems – requirements with guidance for use* (2021). <<https://www.iso.org/standard/75080.html>>.
- [10] JENSEN, Michael; MECKLING, William. *Theory of the firm: managerial behavior, agency costs and ownership structure*. Journal of Financial Economics, vol. 03(4), 1976.
- [11] MBEMBE, Achille. *Critique of black reason*. São Paulo, n-1 editions, 2018.
- [12] MOREIRA, Adilson José. *What is discrimination?* Belo Horizonte, Letramento, 2017.
- [13] MUNIZ, Veyzon Campos. *Notes on anti-racist compliance*. In: SILVA, Edith Amara Rodrigues da; MUNIZ, Veyzon Campos (Orgs.). *Anti-Racist and Anti-Discrimination Law*. Salvador, Studio Sala de Aula, 2021.
- [14] MUNIZ, Veyzon Campos. *Racism: because you can't simplify a complex concept* (2020). <<https://www.justificando.com/2020/07/09/racismo-porque-nao-se-deve-simplificar-um-conceito-complexo/>>.
- [15] UN. *World Conferences Against Racism (WCAR)*. <<https://www.un.org/WCAR/e-kit/fact2.htm>>
- [16] UN. *Stockholm Declaration on the Human Environment* (1972). <<http://portal.iphan.gov.br/uploads/ckfinder/arquivos/Declaracao%20de%20Estocolmo%201972.pdf>>.
- [17] UN. *Declaration on the Right to Development* (1986). <<http://www.un.org/documents/ga/res/41/a41r128.htm>>.
- [18] UN. *Sustainable Development Goals* (2015). <<http://nacoesunidas.org/pos2015/agenda2030>>.
- [19] PIRES, Thula Rafaela de Oliveira; LYRIO, Caroline. *Institutional racism and access to justice: an analysis of the performance of the Court of Justice of the State of Rio de Janeiro in the years 1989-2011* (2019). <[www.publicadireito.com.br/artigos/?cod=7bf570282789f279](http://www.publicadireito.com.br/artigos/?cod=7bf570282789f279)>.
- [20] RAY, Victor. *The theory of racialized organizations*. American Sociological Review, vol. 84(1), 2019.
- [21] TOCH, Hans. *Corrections: a humanistic approach*. New York, Harrow and Heston, 1997.
- [22] TROPER, Michel. *The philosophy of law*. São Paulo, Martins Fontes, 2008.