



FEDERAL PUBLIC DEFENDERS' OFFICE

# DEFENDERS' REPORT

## SITUATION OF HUMAN RIGHTS IN BRAZIL

2022

A green vest with the DPU logo and text. The logo is a stylized 'D' icon followed by 'DPU' in large white letters. Below it, 'DEFENSORIA PÚBLICA DA UNIÃO' is written in smaller white letters. At the bottom, 'DEFENSORIA PÚBLICA' is written in large white letters.

DEFENSORIA PÚBLICA DA UNIÃO  
DEFENSORIA PÚBLICA

© 2022 Federal Public Defenders' Office All rights reserved. This work may be partially or fully reproduced, provided that the source is mentioned and that it is not for sale or any commercial purpose.

## **FEDERAL PUBLIC DEFENDERS' OFFICE**

Palácio da Agricultura, Bloco F, Quadra 01, Setor Bancário Norte, Brasília/DF -  
CEP nº 70.040-908

### **Federal Public Defender-General**

Daniel de Macedo Alves

### **Federal Public Subdefender-General**

Fernando Mauro Barbosa de Oliveira Júnior

### **Secretary-General of Institutional Articulation**

Gabriel Saad Travassos

### **Secretary of Strategic Action**

Roberta Pires Alvim

### **Secretary of Actions in the Prison System**

Carolina Soares Castelliano Lucena de Castro

### **Special Adviser for High Social Impact Cases**

Ronaldo de Almeida Neto

### **Secretary of Access to Justice**

Murillo Ribeiro Martins

### **National Human Rights Defender**

André Ribeiro Porciúncula

### **Director-General of the National School of the Federal Public Defenders' Office**

César de Oliveira Gomes

## **DPU's Working Groups Coordination**

Lidiane da Penha Segal – **Working Group on Assistance to the Elderly and Persons with Disabilities**

Elisângela Machado Cortês – **Working Group on Housing and Land Conflicts**

Maria do Carmo Goulart Martins – **Working Group for the Assistance of People Experiencing Homelessness**

Carolina Godoy Leite – **Working Group on Healthcare**

Cláudio Luiz dos Santos – **Working Group for The Assistance of Recyclable Material Collectors**

Emanuel Adilson Gomes Marques – **Working Group on Gender Identity and LGBTQI+ Civic Awareness**

Matheus Alves do Nascimento – **Working Group on Migration, Statelessness and Asylum**

Rafaella Mikos Passos – **Working Group for the Assistance of Women**

Thiago Roberto Miotto – **Working Group for the Assistance of Prison Populations and Fight Against Torture**

Haman Tabosa de Moraes e Córdoba – **Working Group for the Assistance of Victims of Labour Analogous to Slavery**

Vivian Netto Machado Santarém – **Working Group for the Assistance and Protection of Human Trafficking Victims**

Célio Alexandre John – **Working Group for the Assistance to Traditional Communities**

Francisco de Assis do Nascimento Nóbrega – **Working Group for the Assistance of Indigenous Populations**

Rita Cristina de Oliveira – **Working Group on Ethnoracial Policies**

Ligia Prado da Rocha – **Working Group on Ensuring Food and Nutritional Security**

## **Coordination of Specialized Thematic Committees**

Ed Willian Fuloni Carvalho – **Basic Citizen Income Committee**

Elisângela Machado Cortês – **Altamira Committee**

Frederico Aluísio Carvalho Soares – **Rio Doce and Brumadinho Committee**

B823

Brazil. Federal Public Defenders' Office

Defenders' Report: Human Rights Situation in Brazil. [electronic resource] / Federal Public Defenders' Office, National Human Rights Defenders' Office – Brasília: DPU, 2022.

37 p., il.

e-ISBN 978-85-67132-44-0.

1. Human Rights 2. Periodic review 3. Rights of vulnerable groups 5. Individual rights and guarantees 6. Evaluation 7. Mechanism for the defence of human rights. I. Title.

CDU: 342.7

Dandara Baçã de Jesus Lima, Librarian, CRB 1/2553

## PROJECT TEAM

Alessandra Rodrigues Oliveira  
Mesquita

Alexandre Mendes Lima de Oliveira

André Ribeiro Porciúncula

Andressa Pellanda

Antônio Carlos Torres de Siqueira de  
Maia e Pádua

Beatriz Abrantes Saraiva

Ben-Hur Daniel Cunha

Camila Dal Lago

Carlos Eduardo Barbosa Paz

Carolina Godoy Leite

Caroline Moreira Oliveira Neves

César de Oliveira Gomes

Daniele de Souza Osório

Elisângela Machado Cortês

Fernanda Queiroz do Espírito Santo

Francisco de Assis Nascimento Nóbrega

Gabriel Cesar dos Santos

Gabriel Saad Travassos

Geórdio Endrigo Carneiro da Rosa

Geysa Victória Costa Silva

Jamilla Odeh Moreira

João Juliano Josué Francisco

João Paulo de Campos Dorini

Joseph Bruno dos Santos Silva

Karina Rocha Mitleg Bayerl

Leonardo Cardoso de Magalhães

Leticia Lebedeff Rocha Mota

Lidiane da Penha Segal

Lígia Prado da Rocha

Maria do Carmo Goulart Martins

Mariana Mendes Lomeu

Marina Mignot Rocha

Murillo Ribeiro Martins

Nara de Souza Rivitti

Natália Von Rondow

Olinda Vicente Moreira

Pedro Renno Marinho

Renan Vinicius Sotto Mayor de Oliveira

Ricardo Figueiredo Giori

Ricardo Russell Brandão Cavalcanti

Rita Cristina de Oliveira

Roberta Pires Alvim

Robson de Souza

Ronaldo de Almeida Neto

Sabrina Nunes Vieira

Sérgio Armanelli Gibson

Thais Aurélia Garcia

Thaíssa Assunção de Faria

Thales Arcoverde Treiger

Tiago Cantalice da Silva Trindade

Vanessa Barossi

Vivian Netto Santarem

Wagner Wille Nascimento Vaz

Wilza Carla Folchini Barreiros

## TABLE OF CONTENTS

<b>1. INTRODUCTION</b> .....	7
<b>2. METHODOLOGY</b> .....	14
<b>3. GENERAL CONTEXT OF HUMAN RIGHTS IN BRAZIL</b> .....	15
<b>4. THE COVID-19 PANDEMIC AND HUMAN RIGHTS</b> .....	19
<b>5. PARTICULAR SOCIAL GROUPS</b> .....	25
5.1. MIGRANTS, STATELESS PERSONS AND REFUGEES.....	26
5.2. INDIGENOUS PEOPLE.....	44
5.3. QUILOMBOLA AND TRADITIONAL COMMUNITIES.....	69
5.4. BLACK POPULATION AND ETHNORACIAL POLICIES.....	78
5.5. VICTIMS OF HUMAN TRAFFICKING .....	93
5.6. COMBATING SLAVE LABOUR AND ASSISTING WORKERS RESCUED FROM SITUATIONS OF SLAVERY.....	111
5.7. GENDER IDENTITY AND LGTBI+ CITIZENS.....	121
5.8. WOMEN AND GENDER PARITY POLICIES .....	129
5.9. PEOPLE DEPRIVED OF THEIR LIBERTY AND THE FIGHT AGAINST TORTURE .....	143
5.10. OLDER PEOPLE AND PEOPLE WITH DISABILITIES .....	194
5.11. RECYCLABLE MATERIAL COLLECTORS .....	213
5.12. POPULATION FACING HOMELESSNESS .....	223
<b>6. CITIZENSHIP AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS</b> .....	239
6.1. HOUSING AND LAND CONFLICTS .....	239
6.2. FOOD AND NUTRITIONAL SECURITY.....	249
6.3. CITIZENS' BASIC INCOME.....	255
6.4. THE RIGHT TO HEALTH AND THE UNIFIED HEALTH SYSTEM .....	265
6.5. THE RIGHT TO EDUCATION IN BRAZIL.....	277
<b>7. SOCIAL AND ENVIRONMENTAL ISSUES, BUSINESS AND HUMAN RIGHTS</b> .....	314
<b>8. CONCLUSION</b> .....	341

## 1. INTRODUCTION

The protection and promotion of human rights in Brazil is one of the main objectives of the 1988 Federal Constitution, recognized as a Political Charter with a democratic, social, leading and normative nature.

The respect for citizenship and human dignity were raised to the condition of foundations of the Republic to achieve the ideal of building a free, just and supportive society, ensure national development, eradicate poverty and marginalization, and promote the good of all, without prejudice to origin, race, sex, colour, age, or any other form of discrimination.

In this sense, the Federal Public Defenders' Office emerged as a national institution responsible for the promotion of human rights. It is permanent and essential to the judicial function of the State, acting throughout the national territory. As an expression and instrument of the democratic regime, it is fundamentally responsible for legal advice, promotion of human rights and the defence, at all levels, judicial and extra-judicial, of individual and collective rights, fully and free of charge, to those in need.

To ensure the fulfilment of its constitutional mission, the Federal Public Defenders' Office has administrative, functional and budgetary autonomy, defined attribution, adequate competences, accessibility, capacity for cooperation and pluralist composition. It acts, among several forms, through judicial and extrajudicial mechanisms for the resolution of conflicts related to human rights.

It thus exercises advisory, monitoring, investigative, promotional and representative functions in international and regional human rights systems. The DPU has several instruments, resources, and powers to carry out these functions, including issuing recommendations, technical notes, opinions, and reports;



requesting documents and measures from public agencies and private entities; influencing legislative processes; convening public hearings; acting in abstract actions in the Brazilian Supreme Court, as *amicus curiae*; and filing public-interest civil actions (collective actions in all instances).

Article 4, item VII, of Complementary Law No. 80/1994 illustrates well this wide range of instruments capable of fulfilling its institutional functions, notably when it states that the Defenders' Office may use all appropriate measures to defend groups in vulnerable situations.

For the construction of this human rights monitoring report in Brazil, data was collected from activities in different institutional areas, especially:

- System of National and Regional Human Rights Defenders
- General Secretariat of Institutional Articulation, Secretariat of Strategic Actions, Secretariat of Access to Justice, Secretariat of Action in the Prison System, Advisory Service for Cases of Great Social Impact, and National Working Groups
- National School of the Federal Public Defenders' Office
- International advice, multilateral and bilateral agreements and partnerships with international bodies, public bodies and civil society institutions
- Bodies to act with the Federal Justice, Electoral Justice, Labour Justice and Military Justice, in all instances

It is worth noting that this institutional action is always carried out in constant dialogue with representatives of civil society organizations in order to construct a diverse set of actions, projects, and measures that positively intervene in public policies to reduce the structural conditions of inequality.

This work is a collective effort of these different areas of the Federal Public Defenders' Office for a broad analysis of the human rights situation in Brazil



based on the recommendations of the Universal Periodic Review, a human rights monitoring mechanism of the United Nations.

The main objective is to consolidate in a single document the technical and legal analysis on the actions and omissions of the Brazilian State in recent years, especially in the context of the COVID-19 pandemic, focusing on specific social groups that deserve special state protection. Based on data, studies, research and the daily actions of defenders, we seek to evaluate the setbacks and progress in public policies related to the promotion and protection of human rights, as well as the right to reparation and the guarantee of non-repetition of human rights violations.

The work follows the United Nations guidelines for analysis of human rights violations, based on the impartiality, impersonality, objectivity, and integrity of information and data<sup>1</sup>.

As highlighted by the Office of the United Nations High Commissioner for Human Rights, a national reporting mechanism can play a key role in strengthening the human rights protection system<sup>2</sup>.

The guide for observers of the human rights situation outlines that monitoring comprises a series of steps that include compiling the information, legal analysis and analysis of the information collected, as well as corrective measures and evaluation<sup>3</sup>.

In the training manual for monitoring human rights, the United Nations High Commissioner for Human Rights (OHCHR) points out as basic principles, among others, i) not to produce or reproduce harm to victims or witnesses; ii) know

---

<sup>1</sup>UNITED NATIONS HUMAN RIGHTS. Manual on human rights monitoring. Chapter 2: Basic principles of human rights monitoring. New York and Geneva, 2011.

<sup>2</sup>UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR). Mecanismos nacionales de presentación de informes y seguimiento: estudio de la colaboración de los Estados con los mecanismos internacionales de derechos humanos. New York and Geneva, 2016.

<sup>3</sup>ALTO COMISSARIADO DAS NAÇÕES UNIDAS PARA OS DIREITOS HUMANOS (ACNUDH). Vigilancia del cumplimiento de la Convención sobre los derechos de las personas con discapacidad: guía para los observadores de la situación de los derechos humanos. Nova Iorque e Genebra, 2010.

the applicable international human rights standards; iii) maintain credibility; iv) respect confidentiality; v) understand the context; vi) ensure participation and consultation with affected people and groups; vii) integrate a gender perspective; viii) preserve impartiality; ix) ensure objectivity; x) act in accordance with fundamental values of integrity, professionalism, and respect for diversity<sup>4</sup>.

In line with the aforementioned paradigms, the Federal Public Defender's Office has already produced Defence Reports on the human rights situation in Pacaraima, Altamira, LGBTQI+ population in the Curado Complex, migrants on the Brazil-Peru border, torture and institutional violence in Brazil, among others.

We started this work by addressing the general context of human rights in Brazil during the COVID-19 pandemic. Next, we promote the thematic outline for specific social groups. At this point, it is important to note that the Federal Public Defenders' Office currently has 15 Working Groups that are assigned to defend and promote the human rights of populations in vulnerable situations: 1) Migration, Statelessness and Refuge; 2) Ethnoracial Policies; 3) Indigenous Communities; 4) Protection of Human Trafficking Victims; 5) Assistance of Victims of Labour Analogous to Slavery; 6) People Experiencing Homelessness; 7) Women; 8) Assistance to the Elderly and Persons with Disabilities; 9) Persons in Situation of Imprisonment and Confrontation to Torture; 10) Housing and Land Conflicts; 11) Guarantee of Food and Nutritional Security; 12) Gender Identity and LGBTQI Citizenship; 13) Healthcare; 14) Recyclable Material Collectors; 15) Traditional Communities.

In 2021, the actions carried out by the Working Groups reached more than 1.8 million people, promoting human rights and carrying out actions to

---

<sup>4</sup>UNITED NATIONS HUMAN RIGHTS. Manual on human rights monitoring. Chapter 2: Basic principles of human rights monitoring. New York and Geneva, 2011.

adequately protect the individual and collective rights of hyposufficient people and groups<sup>5</sup>.

Thus, in this Defence Report, these groups gain a platform to share their experiences about the differentiated impacts that setbacks in human rights can have on specific social groups.

The Working Groups are coordinated by the Secretariat of Strategic Action, part of the General Secretariat of Institutional Articulation (SGAI). The SGAI is also integrated by the Secretariat of Action in the Prison System (SASP), the Secretariat of Access to Justice (SAJ) and the Advisory Service for Cases of Great Social Impact.

The DPU also has the National and Regional Human Rights Defence System (DN/DRDHs System), which has the mission of collective defence of human rights through strategic litigation mechanisms. This system currently consists of a National Defenders' Office and twenty-seven Regional Human Rights Defenders' Offices with operations focused especially on the area of individual freedoms, political, economic, social, cultural and environmental rights. The combined action of the National and Regional Defenders' Offices covers the entire national territory.

Unlike the Working Groups, the Specialized Thematic Committees, which are part of the structure of the Advisory Service for Cases of Great Social Impact, are not linked to specific social groups; they have transversal themes that are found in contexts of great social impact that affect riverside populations, indigenous peoples, traditional communities, among others.

Currently, the Federal Public Defenders' Office has 4 Specialized Thematic Committees: Altamira, Rio Doce and Brumadinho, Pacaraima and Basic Citizen Income. These Committees are coordinated by the Advisory Service for

---

<sup>5</sup>FEDERAL PUBLIC DEFENDERS' OFFICE. Portfolio of the General Secretariat of Institutional Articulation. Brasília, DF, 2020.

Cases of Great Social Impact. The Office of the Federal Public Defenders' Office analyses the Brazilian State's attitude on the subject of firms, large industry groups, and human rights based on the activities of these authorities.

In addition to this structure, the Observatories on Human Rights were created at the DPU. They are channels for receiving complaints, reports, and testimonies on situations of human rights violations. Examples of those observatories are the Observatory on Political and Ideological Intolerance (OIPIs), in the context of the 2018 presidential elections, the Enem Observatory, the Observatory on Racial Quotas, the National Observatory on Human Rights and Hansen's Disease, and the Observatory on Political Violence in the 2022 presidential elections.

The DPU also acts through itinerant missions to serve the most vulnerable population in areas of poverty where the public power does not have a widespread presence. It promotes in these regions actions of legal advice and education in rights. In this context, it has published several educational booklets, such as:

- Actions of the DPU in land conflicts
- The national racial quota policy
- Project DPU in schools
- Social security rights
- Rights of people facing homelessness
- Booklet for persons deprived of liberty
- Defence of migrants and refugees
- Sexual and reproductive rights
- Project Emergency DPU

The DPU's Advisory Office of Social Communication has acted heavily in national human rights campaigns, in order to fulfil its function of promoting the

diffusion and awareness of human rights. Among them are the campaigns Interface of Racism and Zero Eviction.

In turn, DPU units distributed throughout the country function as a decentralized network for listening to and processing the claims of the hyposufficient population and vulnerable social groups. This information was used to choose the subjects that would be discussed in the Report. The primary actions of the Federal Public Defenders' Office in the country for the guarantee, protection, and promotion of human rights will be presented, along with a contextualization of the broad framework of rights violations.

It is worth noting that, in the last report of the Universal Periodic Review of the United Nations (UN, 2017)<sup>6</sup>, Brazil received 246 recommendations, having expressly accepted 242. When the country was reviewed in 2020, the study stated that 142 recommendations (58.68% of the total) were not being implemented and, among these, in 64 recommendations there was a record of serious setbacks. This means that, in addition to not complying with more than half of the recommendations, Brazil was against complying with almost one third of all the recommendations of the 3rd cycle of the UPR<sup>7</sup>.

This Defender's Office Report attempts to systematically convey the demands made by the people and social movements before the Federal Public Defenders' Office in recent years, with the goal of collaborating with international monitoring. Likewise, it is intended to make public the data that indicates sensitive points of vulnerability in human rights in Brazil, thus enabling the adoption of strategies for prevention, protection, adequate reparation and guarantee of non-repetition.

---

<sup>6</sup>Extra-conventional mechanism of the UN Human Rights Council for monitoring and protecting human rights in member countries.

<sup>7</sup>Report on the situation of human rights in Brazil in the context of the Covid-19 pandemic, prepared in 2020. Available at: [https://plataformarpu.org.br/storage/publications\\_documents/pf8qPxasVS5ad6V3FRP7zzhgyNaZzJ6RK5Hkts2y.pdf](https://plataformarpu.org.br/storage/publications_documents/pf8qPxasVS5ad6V3FRP7zzhgyNaZzJ6RK5Hkts2y.pdf). Accessed on 18/11/2021.

## 2. METHODOLOGY

The methodology for this work included primary and secondary data collecting, qualitative and quantitative analysis of the literature on the issue, and an empirical approach based on the DPU's ongoing contact with civil society, government agencies, and partner organizations.

A deadline was opened for contributions to be offered in each matter according to the area of activity within the scope of the Federal Public Defenders' Office. We invested in dialogue with partner entities that work monitoring human rights. We took advantage of the continuous monitoring that the DPU carried out during the hearings of the Parliamentary Observatory of the Universal Periodic Review. We sought to perform a cross-sectional reading of national public policies in the light of the commitments made by the Brazilian State in international human rights treaties and the recommendations accepted in the third cycle of the UPR.

For this analysis, in light of the principle of federation, the acts of the Constitutive Powers (Judiciary, Legislative, and Executive) are evaluated as acts of the Brazilian State. Therefore, actions and omissions are always analysed as acts of the Brazilian State, even if there has been no formal conviction in this regard. According to this paradigm, the Brazilian State must respond when any of its agents or public agencies fail to take adequate action in the face of human rights violations.

From the information obtained, the data and analysis were consolidated into a single document. In each topic we seek to identify the correlation with the recommendations of the UPR, the evolution or involution of national public policies, conclusions and recommendations for the promotion and protection of human rights, as well as for the reparation and guarantee of non-repetition of violations.

### 3. GENERAL CONTEXT OF HUMAN RIGHTS IN BRAZIL

In the words of Celso Lafer, human rights are the juridical expression of the *value* of the human person as the source of the order of life in society<sup>8</sup>. Hannah Arendt noticed in the middle of the past century that human dignity could not be defined by nation-states, since the rights associated with it were unenforceable whenever people who were not citizens of a sovereign state appeared<sup>9</sup>.

In the context of Latin America, it is not possible to deal with human rights without knowing and recognizing the process of colonization of bodies, minds, and beings that followed the path of material exploitation of colonized peoples. Therefore, in addition to the violence caused by an economic model that is based on exploitation and inequality, the challenge of thinking and implementing human rights in Latin American countries crosses the confrontation with structural forms of racism and sexism.

Citizenship and the dignity of the human person are the foundations of the democratic rule of law. The Universal Declaration of Human Rights (Resolution 217-A/III/AG-UN) asserts freedom and equality in dignity and rights for all human beings. The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights embody the international community's commitment to respect and the realization of human rights.

Alongside these treaties that are recognized as integral to the International Charter of Human Rights, the United Nations (UN) system has produced in recent decades several international treaties and mechanisms for

---

<sup>8</sup>LAFER, Celso. A reconstrução dos direitos humanos: a contribuição de Hannah Arendt. In: Estudos Avançados, 11 (30), 1997, p. 55-65.

<sup>9</sup>ARENDT, Hannah. As origens do totalitarismo. Trad. Roberto Raposo, São Paulo: Companhia das Letras, 1989, p. 327.



monitoring and promoting the human rights of groups in situations of vulnerability. Examples include the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, and many others.

These treaties, in addition to recognizing inalienable and imprescriptible rights, establish mechanisms for monitoring the position of States with regard to their commitment to human rights. This requires more than a passive stance of abstention, but also an active stance of construction, whether through positive actions by the State or through affirmative policies in favour of historically discriminated groups excluded from economic, social and cultural policies.

As Flávia Piovesan argues, the protection of human rights must not be reduced to the reserved domain of the State, that is, to national jurisdiction or to exclusive domestic jurisdiction, because it involves a subject of legitimate international interest<sup>10</sup>. Hence the need to overcome the notion of absolute state sovereignty in order to recognize the human person as a subject of rights in the international sphere, so that there are binding obligations imposed on states subject to international monitoring and accountability.

In 2019, Brazil occupied the 73rd position in the world ranking of the Human Development Index (HDI), with a coefficient of approximately 0.7, while it was in 9th place in the comparison related to the Gini Index, measured on the basis of social inequality factors<sup>11</sup>. The research report of the United Nations Development Programme (UNDP) revealed that Brazil is one of the current leaders in maldistribution of income, second only to Qatar. In 2021, the country returned to the UN hunger map, with more than 61 million people below the poverty line,

---

10 PIOVESAN, Flavia. A Constituição de 1988 e os tratados internacionais de proteção dos direitos humanos. In: Revista de Direito do Constitucional e Internacional • RDCI 23/79 • abr.-jun.(1998).

<sup>11</sup>UNDP – UN. Relatório do desenvolvimento humano 2019. Além do rendimento, além das médias, além do presente: as desigualdades no desenvolvimento humano no século XXI. 2019. page 303

according to a reference value of ½ (half) minimum wage used by the Unified Registration system<sup>12</sup>, and an unemployment rate of 14.7%, a record when compared with recent years since 2012<sup>13</sup>.

One of the means of confronting this situation of high social inequality is, without a doubt, education. However, university scholarship programmes were reduced based on low attendance and performance in remote education, without taking into consideration that these people live in a condition of digital vulnerability, frequently lacking access to the internet to follow lessons.

The National High School Exam (Enem), created to evaluate student performance and as a bridge to the consolidation of the Unified Selection System (SiSU), became responsible for reaching a significant contingent of higher education entrants by lowering the financial cost of selection processes for both students and Higher Education Institutions, and is now used by 60 of the country's 63 federal universities<sup>14</sup>. In 2021, however, the exam registered the lowest number of registrants since 2007, with a drastic reduction mainly among black, brown and indigenous students: 51.7% fewer registrations of brown people, 53.1% of black people and 54.8% of indigenous people<sup>15</sup>.

Also, the factors related to basic education directly influenced the situation of the labour market for people with disabilities who were unable to complete the studies due to the absence of public policies aimed at the sector. In Brazil, 60.4% of the population without disabilities has some form of occupation,

---

<sup>12</sup>IBGE. Síntese de indicadores sociais: uma análise das condições de vida da população brasileira : 2020 / IBGE, Coordenação de População e Indicadores Sociais. - Rio de Janeiro: IBGE, 2020, page 66. Available at <https://biblioteca.ibge.gov.br/visualizacao/livros/liv101760.pdf>. Accessed on 29/05/2021.

<sup>13</sup> IBGE – Pesquisa Nacional por Amostra de Domicílios Contínua - PNAD. Indicadores mensais produzidos com informações do trimestre móvel terminado em março de 2021. Rio de Janeiro, 2021. Available at [https://agenciadenoticias.ibge.gov.br/media/com\\_mediaibge/arquivos/49e558eb5b0e3bb0dd9d5801400c4c2d.pdf](https://agenciadenoticias.ibge.gov.br/media/com_mediaibge/arquivos/49e558eb5b0e3bb0dd9d5801400c4c2d.pdf). Acesso em 29/05/2021

<sup>14</sup> FREITAS, Jefferson B. de; PORTELA, Poema E.; FERES JÚNIOR, João; BESSA, Águida & NASCIMENTO, Vivian. As Políticas de Ação Afirmativa nas Universidades Federais e Estaduais (2003-2018). *Levantamento das políticas de ação afirmativa (GEMAA)*, IESP-UERJ, 2020.

<sup>15</sup> SOUZA, Viviane. Enem 2021: número de pretos, pardos e indígenas inscritos cai mais de 50%. *GI, Educação*, August 27, 2021. Available at: <https://g1.globo.com/educacao/enem/2021/noticia/2021/08/27/enem-2021-cai-negros-pardos-indigenas-inscritos.ghtml>.

whether formal or informal, while only 25.4% of the population with any disability has a job.

Likewise, the increase in domestic violence statistics shows a worrying indicator that victims may be at greater risk of violence and vulnerability, especially those subjected to sexual exploitation and forced domestic labour. On the subject, the Inter-American Commission on Human Rights stated in its 2021 Report that:

Despite progress in respect of laws and public policies, the Commission ascertains that violence against women continues at a dramatic rate, with alarming numbers of women murdered in Brazil because of their gender. According to data of the Economic Commission for Latin America and the Caribbean (ECLAC), 40% of all murders of women in LAC are committed in Brazil. In the same vein, according to data provided by Security Secretariats, there were 4,539 reported murders of women in Brazil in 2017, 1,133 of which were classified as femicide. That was a 6.1% increase over 2016, when the number of registered murders was 4,245 (929 femicides). In 2019, despite the reduction in the number of homicides of women, 1,314 femicides were registered, an increase of 7.3% in relation to the previous year. These statistics also point to more-than-average victimization of women of African descent. Those data corroborate the disproportionate impact of violence and insecurity on groups already historically subject to structural discrimination<sup>16</sup>.

---

<sup>16</sup> OEA/SER.L/V/II. Doc 9. February 12, 2021. Original: Português. Available at <https://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>.





## 4. THE COVID-19 PANDEMIC AND HUMAN RIGHTS

In 2020, the first cases of COVID-19 appeared in Brazil. In view of the number of affected countries, as well as the high number of people infected simultaneously, with numerous deaths, the World Health Organization (WHO) has declared it a global pandemic, warning about the peculiarity of the new disease and sanitary measures to be taken by the Heads of Government<sup>17</sup>.

Combating the new disease required the adoption of several interventions in order to reduce the virus' transmission and halt its advance. Among the measures indicated by the WHO, the use of face masks, cleaning hands with 70% alcohol and the adoption of social isolation were some of the most recommended. Despite all the recommendations, reports produced by scientific institutes and public bodies indicate positions of the Brazilian State that contradicted the guidelines established by international organizations.

Amidst the growing number of hospitalizations and the shortage of medical-hospital resources, the Brazilian health system found itself in a chaotic situation, with no vacancies for all patients and no supplies to treat those already hospitalized. News of people dying in public hospitals without have oxygen spread in the newspapers,<sup>18</sup> and it was necessary to transfer patients to other states of the federation, build field hospitals. To carry out public health policies, such as requests for ICU beds and oxygen, the judiciary had to intervene. These measures included the intense participation of the Federal Public Defenders' Office<sup>19</sup> in monitoring available beds and taking actions to acquire the necessary resources.

In Manaus, the general lack of oxygen forced families to buy it on their own, given the disorganization in the management of resources for the Pandemic

---

<sup>17</sup> Available at: <https://news.un.org/pt/story/2020/03/1706881>. Accessed on 01/02/2022.

<sup>18</sup> Available at: <https://g1.globo.com/am/amazonas/noticia/2022/01/14/ha-um-ano-manaus-enfrentava-caos-por-falta-de-oxigenio-nos-hospitais-veja-fotos.ghtml>. Accessed on 01/02/2022.

<sup>19</sup> Recomendações da DPU acerca da divulgação da ocupação e requisição de leitos de UTI (SEI): 4340331, 4335208, 4373635.

by States and Municipalities. In January 2021 alone, more deaths were registered than in the entire year 2020. FIOCRUZ, a science and research foundation focused on health promotion and social development, reported that:

[...] in the midst of the chaos, solidarity came from organized civil society, artists, journalists, famous and anonymous people, who mobilized to help. Extra cylinders of oxygen were sent to Manaus even by the Venezuelan government. In the first days of January, 1,654 more people died in the State of Amazonas than between April and December of last year. Data from the end of the month (27/1) showed that, in total, more than 7,000 people had already died from Covid-19 in the state [...].<sup>20</sup>

In this context, a Parliamentary Commission of Inquiry was set up after a decision by the Federal Supreme Court, which investigated the conduction of the work to combat the pandemic in Brazil. The agency concluded, in its final report, that the federal government acted to discourage the population from adopting non-pharmacological measures that would contribute to avoiding infection by the Sars-Cov-2 virus, assuming that the contagion would follow a natural course and induce collective immunity, so that economic activities could be resumed<sup>21</sup>.

The insufficient public policies to confront Brazil's pandemic also reached the economic and social spheres. The informal economy and the service sector, responsible for the income of a large part of the poorest population, were directly impacted. As already observed, the Emergency Aid, although it injected R\$ 220 billion into the economy in 2020<sup>22</sup> and R\$ 154 billion in 2021,<sup>23</sup> and although the Brazil Aid has a forecast of R\$ 92.5 billion in 2021 and 2022<sup>24</sup>, they

---

<sup>20</sup> Available at: <https://g1.globo.com/am/amazonas/noticia/2022/01/14/ha-um-ano-manaus-enfrentava-chaos-por-falta-de-oxigenio-nos-hospitais-veja-fotos.ghtml>. Accessed on 01/02/2022

<sup>21</sup> Available at: <https://legis.senado.leg.br/comissoes/mnas?codcol=2441&tp=4>, pp. 283-380. Accessed on 01/02/2022.

<sup>22</sup> Available at: <https://www.gov.br/pt-br/noticias/assistencia-social/2020/12/auxilio-emergencial-japagou-mais-de-r-288-bilhoes-para-garantir-protecao-social-aos-brasileiros-1>. Accessed on 19/03/2022

<sup>23</sup> DA available at: [https://www.poder360.com.br/governo/custo-do-auxilio-brasil-vai-superar-3-anos-de-bolsa-familia/#:~:text=O%20aux%C3%ADlio%20emergencial%20\(chamado%20no,recebia%20s%C3%B3%20o%20mais%20alto\)](https://www.poder360.com.br/governo/custo-do-auxilio-brasil-vai-superar-3-anos-de-bolsa-familia/#:~:text=O%20aux%C3%ADlio%20emergencial%20(chamado%20no,recebia%20s%C3%B3%20o%20mais%20alto)). Accessed on 19/03/2022.

<sup>24</sup> Idem.

were still insufficient to cancel the effects of the pandemic in the lives of millions of people in Brazil.

From the infectiology perspective, although the vaccination reached 164 million people with the first dosage in March 2022, the introduction of new variations has resulted in a considerable number of new infection cases and fatalities, which totalled more than 628,000 deaths since the beginning of the pandemic in February 2022<sup>25</sup>.

The current information or registration society, as it has been called, was marked, during the Pandemic, by a shock of disinformation in Brazil and in the world. News spread that vaccines would be pernicious<sup>26</sup>, experimental or control instruments whose adverse effects could lead to death or cause side reactions in a disproportionately large number of people. The wide dissemination of news by certain social media has irresponsibly spread fear, doubts, and questions in the population about the effectiveness of vaccines.

After the vaccinations were certified by the National Health Surveillance Agency (ANVISA), the necessity to prioritize vulnerable populations such as quilombolas, indigenous people residing in urban areas, pregnant women, and persons in jail was recognized. The DPU issued recommendations for the inclusion of such groups, which were included in the list of the new Immunization Plan and received the immunizer with priority.

ANVISA approved the immunizers and authorized the start of vaccination of children between 5 and 11 years of age. Various information contrary to the recommendations of the Brazilian Health Surveillance Agency began to be disclosed, especially regarding the high risk of death for children, which led many parents and guardians to question the obligation to vaccinate children. The Ministry of Health established a public consultation with civil

---

<sup>25</sup> Available at: <https://covid.saude.gov.br/>. Accessed on 02/02/2022.

<sup>26</sup> Available at: <https://g1.globo.com/fato-ou-fake/coronavirus/noticia/2021/01/27/e-fake-que-vacina-contr-a-covid-19-tem-chip-liquido-e-inteligencia-artificial-para-controle-populacional.ghtml>. Accessed on 01/02/2022



society that concluded that parents should not be required to vaccinate their children, as well as that there would be a need to sign a prior consent form.

The aforementioned reached the Supreme Court, which, on 14/02/2022, judged the sixteenth incidental provisional relief in the Argument for Non-Compliance with Fundamental Precept (ADPF) no. 754.

On the occasion, the reporting Minister Ricardo Lewandowski stressed that the requirement for vaccination of children and adolescents stems directly from the law, according to article 14, paragraph 1st combined with article 249, both of the Statute of the Child and Adolescent, which provide for the “vaccination of children in cases recommended by the authorities”, establishing pecuniary penalties for those who, intentionally or culpably, fail to comply with “the duties inherent to family power or arising from guardianship or custody” of the infants.

The Minister highlighted that, in addition to Law 6,259/75 itself, which regulates the National Immunization Program, Law 13,979/2020 provided for vaccination against COVID-19, with its validity extended until the end of the pandemic, by the Supreme Court, in ADI 6,625-MC/DF:

Article 3 – In order to address the public health emergency of international importance dealt with in this Law, the authorities may adopt, within the scope of their powers, among others, the following measures: [...] III – determination of compulsory performance of: [...] d) vaccination and other prophylactic measures.

In addition, the STF established, in Theme 1.103 of the General Repercussion, that “it is constitutional to require immunization by means of a vaccine that, registered with a health surveillance agency, (i) has been included in the National Immunization Program, or (ii) has its mandatory application determined by law or (iii) is the object of determination by the Union, State, Federal District or Municipality, based on medical-scientific consensus. In such cases, there is no violation of the freedom of conscience and philosophical

conviction of parents or guardians, nor of family power”. (STF, Appeal to the Federal Supreme Court (ARE) 1.267.879-RG/SP, Judge-rapporteur Roberto Barroso, j. 17/12/2020).

And finally, it decided:

“to the Ministry of Health and the Ministry of Women, Family, and Human Rights that include, as soon as summoned to this decision, in Technical Note 2/2022-SECOVID/GAB/SECOVID/MS e1 /2022/COLIB/CGEDH/SNPG/MMFDH, the interpretation conferred by the Federal Supreme Court to art. 3, III, d, of Law 13,979/2020, in the sense that (i) 'compulsory vaccination does not mean forced vaccination, as it always requires the consent of the user, but can be implemented through indirect measures, which include, among others, the restriction to the exercise of certain activities or the frequency of certain places, provided that they are provided for by law, or resulting from it', also clarifying that (ii) 'such measures, with the limitations exposed, can be implemented both by the Federal Government and by the States, Federal District and Municipalities, respecting the respective spheres of competence”, giving wide publicity to the rectification imposed herein.

It also ordered the Federal Government to refrain from using the 'Call 100' complaints channel outside its institutional purposes, failing to encourage, through official acts, the sending of complaints related to the restrictions of rights considered legitimate by the Federal Supreme Court.

The DPU issued Recommendations and Technical Notes<sup>27</sup>, reiterating the mandatory vaccination of infants, as decided by the Federal Supreme Court in relation to the vaccination of adults against COVID-19 in ADI 6856.

---

<sup>27</sup> Nota Técnica dispondo sobre a inexigibilidade de termo de consentimento dos pais para vacinação de crianças (SEI) 4959963



## 5. SPECIFIC SOCIAL GROUPS

### 5.1. MIGRANTS, STATELESS PERSONS AND REFUGEES

#### 5.1.1. Contextualization of the theme

##### 5.1.1.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations regarding migration, statelessness, and refuge:

9. Sign and accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Sierra Leone);
10. Consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Chile) (Indonesia) (Sri Lanka);
- 11 Step up the procedure for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Their Families (Togo);
12. Promptly ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Guatemala);
13. Sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (El Salvador);
14. Accelerate efforts towards ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Domestic Workers Convention, 2011 (No. 189) (Philippines);

17. Ratify the International Labour Organization (ILO) Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and finalize the domestic procedures to accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Ecuador);

244. Implement the recently approved new Migrants Law and its human rights perspective on the migration issue (Timor-Leste);

245. Implement the new Migrants Law fully (Greece);

246. Expand government-funded resettlement services to newly arrived refugees and ensure a right to an adequate standard of living through the establishment of a National Plan of Local Integration (Canada).

### **5.1.2. Context of migrations in Brazil**

With regard to immigration legislation, the Brazilian State has diplomas aimed at the protection of migrants, stateless persons and refugees, such as Law no. 13,445/2017 (Migration Law) and Law no. 9,474/97 (Refuge Law). The current Migration Law, adopted in 2017, provides for authorization and regulation in addition to ordinary situations – such as family reunion, work and study, and health treatments – also including specific residence permits for migratory policy reasons (article 30, III c/c art. 142, III of Decree no. 9,199/2017).

Although all people are affected, directly or indirectly, by the health crisis resulting from the Covid-19 pandemic, refugees and immigrants are especially impacted, especially from the responses adopted by governments to

contain it<sup>28</sup>. Often, their rights are more easily denied under the justification of containing health emergencies<sup>29</sup>.

Since the beginning of the Covid-19 pandemic, with the publication of Ordinance No. 120 of March 17, 2020, the Brazilian State has adopted an exceptional regime of borders, which remained mostly closed exclusively to the terrestrial or waterborne flow of people. Several Interministerial Ordinances were issued with the objective of imposing exceptional and temporary restrictions on non-nationals of any nationality in the country.

The Parliamentary Observatory of the Universal Periodic Review promoted a debate on the topic through a public hearing held in November 2021<sup>30</sup>. At the time, the compliance (or lack thereof) with the recommendations of the UPR was discussed, such as the ratification of the Convention on the Protection of the Rights of All Migrant Workers and their Families, which was submitted to the National Congress, but has not yet had its ratification process started.

The preliminary report on the stage of compliance with the recommendations pointed out that 6 of the 10 recommendations directly related to the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families were considered **unfulfilled** precisely because of the lack of appreciation.

The participants also stressed the importance of training and capacity building of Brazilian civil servants to serve migrants on an equal basis with Brazilians, in accordance with the principle of non-discrimination, based on the Federal Constitution and the Immigration Law, encouraging free access of migrants to public services.

---

<sup>28</sup>KABIR, Mehwish et al. **COVID-19 economic cost; impact on forcibly displaced people**. Travel Medicine and Infectious Disease, 2020.

<sup>29</sup>MARTUSCELLI, Patrícia Nabuco. Como refugiados respondem ao COVID-19 no Brasil? **Caderno de Debates Refúgio, Migrações e Cidadania**, [S.L.], v.15, n.15, p. 89-110, out. 2020.

<sup>30</sup>Available at: <https://www.camara.leg.br/evento-legislativo/63894> Acesso em 28 de janeiro de 2022.



In addition, the event reinforced actions that prevent the regression to the rights already guaranteed through international commitments to protect humanitarian rights.

At the event, the representative of the DPU defended the ratification of the international treaty and defended the active action of the country. It also emphasized the principle of non-criminalization of migration, that is, the fight against actions of systematic denial of the fundamental rights of people in situations of mobility.

In this regard, a theme of great relevance is the position adopted by the Brazilian State on the migratory issue during the COVID-19 pandemic. Ordinance no. 120, of March 18, 2020, the first to be published in the Federal Official Gazette, provided for the immediate deportation of the offending agent and the disqualification of asylum application as a sanction. Such rules were maintained until June 23, 2021, when Interministerial Ordinance no. 655 authorized the execution of emergency assistance measures for reception and migratory regularization, under the terms of current migratory legislation, to people in situations of vulnerability due to migration flow caused by a humanitarian crisis.

Interministerial Ordinance no. 655 observed recommendations of the Federal Public Defenders' Office that pointed out the unconstitutionality of summary deportation measures and disqualification of the request for asylum. At the time, the risk situation to which people in vulnerable situations such as the elderly, indigenous people, pregnant women and children were exposed, was highlighted.

Despite the flexibility for entry in the case of humanitarian operations – as is the case of Operation Acolhida – the Ordinance maintained the disqualification of the request for asylum and summary deportation, sanctions that can be applied in other regions of the country. Such measures were understood by the DPU as being in conflict with the Federal Constitution, the International



Convention on the Status of Refugees, the New York Declaration, the Global Compact for Migration and domestic legislation.

The DPU proposed three (3) public civil actions to seek the declaration of unconstitutionality of these sanctions and filed thousands of individual actions to ensure the entry of migrants and asylum seekers.

An important example was the case of the suspension of the collective deportation of 55 Venezuelan indigenous people of the Warao ethnic group in January 2021, following a court decision in response to a collective action filed by the DPU and the MPF. At the time, the DPU and the MPF were informed that 55 people, 32 of them children, were awaiting immediate deportation, without any type of analysis of their personal conditions, such as health and nutrition, or other specific vulnerabilities. According to reports, these people came walking from the Venezuelan state of Monagas for 18 days and arrived in Pacaraima in poor health, food and hygiene conditions. Thus, after several attempts at an extrajudicial solution, the DPU and the MPF filed a collective action and managed to stop the practice of any acts of deportation of those indigenous people<sup>31</sup>.

An important aspect of the entry restriction is the multiplication of situations of irregular documentation in the country. As they did not undergo migration control during their entry into the country, migrants and refugees currently have difficulties in issuing documents and sometimes in accessing public services, which violates the Migration Law.

During the pandemic, the DPU identified a number of restrictions on access to basic rights such as health, education, social assistance, work, and banking. Among the main reasons for such restrictions are (i) the delay in the process of migratory regularization and (ii) doubts or lack of knowledge about the validity of the documents displayed by immigrants, especially by asylum seekers.

---

<sup>31</sup> Available at: <https://www.anadef.org.br/noticias/ultimas-noticias/item/dpu-e-mpf-impedem-deportacao-sumaria-de-55-indigenas-warao-em-rr.html>. Accessed on 27/01/2022.

Regarding the delay in migratory regularization, in the States of Rio Grande do Sul, Santa Catarina, and Amazonas, among others, migrants of various nationalities reported difficulties in getting an appointment for asylum application and migratory regularization during the COVID-19 pandemic, especially with difficulties with the electronic scheduling system of the Federal Police.

Currently, it is estimated that Brazil has numerous undocumented migrants, more than the Federal Police has the capacity to regulate. As a result, there is an effort on the part of the DPU and partner entities to publicize the valid identification documents for migrants.

Although the Federal Police issued two Ordinances in 2021 extending the validity of identification documents (CRNM – National Migration Registration Card, previously called CIE/RNE – Foreigner's Identity Card/National Foreigner's Registration, DPRNM – Provisional Document of National Migration Registry and Refuge Application Protocol), immigrants and asylum seekers found it very difficult to access essential public services and the labour market.

In this sense, another concern of the DPU concerns the labour exploitation of migrants. In 2021, through the Operational Group to Combat Slave Labour, the DPU and the Regional Labour Superintendence of São Paulo signed a term of agreement for a conduct adjustment agreement with a carrier, which provides service to two multinationals in Brazil, aiming at reparation for 49 Venezuelan migrants and 1 Haitian rescued from a work situation in conditions analogous to slavery.

With regard to social rights, the DPU has acted both in individual cases and in collective demands of sanitary or social security nature. In March 2021, the Court recognized that migrants are entitled to INSS (National Social Security Institute) assistance benefits, after a public civil action filed by the DPU. In April 2021, after recommendation of the Intersectoral Committee for Attention to Refugees, Stateless Persons and Migrants of the State of Rio Grande do Norte (CERAM/RN) and the Federal Public Defenders' Office (DPU) in Rio Grande do

Norte, the vaccination of Warao indigenous Venezuelan refugees was carried out<sup>32</sup>.

In the field of education, the DPU adopted measures to ensure that educational institutions enrolled migrant children regardless of documentary regularity, based on article 4, item X, of the Migration Law.

There is also a direct effect in Brazil of the migration crisis that occurred at the United States border. Recently, the deportation of forty-seven Brazilian children to Haiti was reported. According to the International Organization for Migration (IOM), most of these children are up to three years old and were accompanied by their Haitian parents. These families made the migratory journey starting in Brazil, crossing South and Central America to the Mexico–US border.

Having become a host destination after the devastating 2010 earthquake, several Haitians settled in Brazil and formed families on national soil. Thus, because they were born in Brazilian territory, children are automatically considered natural-born and most have only Brazilian documentation. The DPU issued a specific recommendation to address the situation of these children and assist their families.

Several units of the DPU received requests in 2021 for defence from Haitian migrants who informed the difficulty of their families to obtain a visa from the Embassy of Brazil in Haiti, which violates the right to family reunion. The institution has been working with the Ministry of Foreign Affairs (MRE) to guarantee the right to family reunion to Haitian migrants.

Due to the difficulty of obtaining a visa, many Haitians are travelling to Brazil without a visa and are subject to deportation. In this sense, the DPU prevented about 80 Haitian migrants from being deported or repatriated after

---

32 Vacinação de indígenas Warao após recomendação da DPU. Available at: <https://www.dpu.def.br/noticias-rio-grande-do-norte/150-noticias-rn-slideshow/61748-warao-sao-vacinados-no-rn-apos-recomendacao-do-ceram-e-da-dpu>. Accessed on 17/12/2021.

landing irregularly in Manaus (AM) in September 2021 at Eduardo Gomes International Airport.

In response to this situation, the Working Group on Migration, Statelessness, and Refuge (GTMAR) issued Technical Note No. 09 – DPGU/SGAI DPGU/GTMR DPGU. The topic was also discussed in previous note no. 08 – DPGU/SGAI DPGU/GTMR DPGU (October 2020), in which it is clarified that the migratory condition does not interfere with access to basic rights. Thus, the Federal Government, as well as the States and Municipalities, have a duty to ensure that regular and irregular migrants have access to these rights while on national territory, and organizations must be permitted to provide social support services, which cannot be defined as unlawful acts.

Currently, the regime of closing borders does not prevail, although health precautionary measures are maintained. As decided by the Federal Supreme Court in the Argument of Fundamental Precept no. 913, the proof of vaccination was required to enter the Brazilian territory. Nevertheless, there was an express exception in cases of low vaccination coverage in the country of origin and due to humanitarian issues, which encompass the large influx of migrants and refugees in Brazil.

### **5.1.3. Measures adopted by the Federal Public Defenders' Office**

In addition to the actions already mentioned, the DPU adopted other extrajudicial and judicial measures in the defence of migrants, stateless persons, and refugees throughout 2021. The following are the main measures:

- **Recommendation no. 4657520/21 – DPGU/SGAI DPGU/GTMR DPGU<sup>33</sup> – Rescue and humanitarian reception for Afghans**

---

33 Available at: <https://promocaodedireitoshumanos.dpu.def.br/recomendacao-4657520-2021/>. Accessed on 24/12/2021.

In a recommendation addressed to the Minister of Foreign Affairs, Ministry of Defence, Ministry of Justice and Public Security, and the Minister of Labour and Welfare, the DPU requested the issuance of the visa for humanitarian reception in favour of Afghan nationals (article 14, paragraph 3, of Law 13,445/2017, combined with article 36 of Decree 9,199/2017), observing the possibility of identification with the documents available to the immigrant (article 20 of Law 13,445/2017), regardless of the available documentation; as well as the granting of humanitarian reception in favour of the group of 400 Afghans (rescue by aircraft mobilization).

• **Recommendation no. 4717172/2021 – DPGU/SGAI DPGU/GTMR DPGU<sup>34</sup>** – Documentation of Afghans requesting asylum in Brazilian Embassies

The DPU requested clarification on consular information regarding visa applications by Afghans at embassies in Islamabad, Tehran, Moscow, Ankara, Doha, and Abu Dhabi. In addition, it recommended abstaining from any measures requiring health and dental insurance, costing of revalidation of diplomas or Portuguese courses, proof of financial resources for housing and food, letter of commitment or any form of sponsorship for humanitarian reception by non-governmental organizations, or the revocation of any instructions already transmitted in this regard. It also recommended the ostensible and clear disclosure of the possibility of obtaining a humanitarian reception visa on the website of the aforementioned consular posts in Portuguese, English, and Afghan Dari/Persian, indicating the operational procedures, the right to free visa, and list of documentary requirements, within the limits established by Joint Ministerial Ordinance no. 24. It was also recommended to establish instructions to the consular posts already indicated for the issuance of Brazilian laissez-passer to nationals of Afghanistan,

---

<sup>34</sup> Available at: <https://promocaodedireitoshumanos.dpu.def.br/recomendacao-4717172-2021-acolhida-humanitaria-para-nacionais-do-afeganista%cc%83o/>. Accessed on 24/12/2021.

or recognition of laissez-passer issued by third countries, with affixing of the humanitarian reception visa.

- **Recommendation No. 4730734/21 – DPGU/SGAI DPGU/GTMR DPGU<sup>35</sup>** – Brazilian children born to Haitians who were deported from the USA

In view of the large number of Brazilian children (offspring of Haitian parents) in situation of deportation in the USA, the Federal Public Defenders' Office, based on article 44, item X, of Complementary Law no. 80/94 requested detailed information on the actions of the Ministry and the Brazilian diplomatic representation in the United States. It also recommended promoting emergency documentation for Brazilian children; the alternative of deportation to Brazil and not Haiti (in the case of previous residence in Brazil); the return of Brazilian children from Haiti to Brazil; ensuring the best interest, respect and dignified treatment of children and their parents.

- **Presentation of technical note/circular letter – No. 4689107/2021 – DPGU/SGAI DPGU/GTMR DPGU<sup>36</sup>** – Suspension of renewal of documents, and labour rights of migrants

The DPU presented a circular letter to inform employers about the Federal Police's decision to suspend the requirement for renewal of legal documents by migrants due to the COVID-19 pandemic.

- **Presentation of Technical Note/Circular Letter – no. 4430260/2021 – DPGU/SGAI DPGU/GTMR DPGU<sup>37</sup>** – Denunciation of reports of refusal of civil registration of Brazilian children

---

<sup>35</sup> Available at: <https://promocaodedireitoshumanos.dpu.def.br/recomendacao-a-atuac%cc%a7a%cc%83o-consular-especifica-junto-aos-estados-unidos-para-promover-a-documentac%cc%a7a%cc%83o-emergencial-de-crianc%cc%a7as-brasileiras-sem-carater-de-colabor/>. Accessed on 24/12/2021.

<sup>36</sup> Available at: <https://promocaodedireitoshumanos.dpu.def.br/oficio-circular-4689107-2021-atualizacao-sobre-o-exercicio-de-direitos-por-parte-de-migrantes-internacionais-durante-a-pandemia-de-covid-19/>. Accessed on 25/12/2021.

<sup>37</sup> Available at: <https://promocaodedireitoshumanos.dpu.def.br/oficio-circular-no-4430260-2021-dpgu-sgai-dpgu-gtmr-dpgu/>. Accessed on 20/12/2021.

The DPU presented a circular letter regarding the growing number of reports of difficulties in the civil registration of births of Brazilian children born to immigrants. This phenomenon accompanies the increase in irregular and undocumented migrants in Brazilian territory and requires immediate action, considering that the denial of civil registration occurs due to lack of Brazilian documents/non-acceptance of passports or foreign identities as means of civil identification, expiration of the document, or allegation of irregular migratory status.

#### **5.1.4. State of the recommendations addressed to the Brazilian State**

With regard to the recommendations addressed to the Brazilian State on the subject, these can be divided into three groups: a) signing and rectification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Recommendations 09 to 15; b) implementing the Migration Law and its human rights perspectives on the migration issue (Recommendations 244 and 245); c) expanding resettlement services for newly arrived refugees and ensuring the right to a dignified standard of living through the establishment of a National Local Integration Plan (Recommendation 246).

Concerning the signing and ratification of the International Convention on the Rights of Migrant Workers and Members of their Families, until the preparation of this report there had been no progress in the legislative process regarding the matter. The international treaty, adopted by the UN General Assembly on December 18, 1990, has not yet been signed nor ratified by the Brazilian State<sup>38</sup>. Therefore, the recommendations have not been met. The last progress on the matter was Message n. 696, of December 13, 2010, forwarded by

---

<sup>38</sup>Current status available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4). Accessed on 27/01/2022.



the Presidency of the Republic to the National Congress suggesting the approval of the text by the rite of Proposal of Constitutional Amendment<sup>39</sup>.

With regard to the implementation of the Migration Law and its human rights perspectives on the migratory issue, it appears that the legal provisions currently support several demands made by the Federal Public Defenders' Office to guarantee non-discrimination and access to individual and collective rights of the migrant population. Despite this, with the advent of the Covid-19 pandemic, as previously stated, there was a setback in compliance with the Migration Law, more specifically with regard to summary deportations and inability to apply for asylum applied to people entering national territory with irregularities in their documentation.

Finally, with regard to Recommendation 246, it should be noted that resettlement is the transfer of refugees from one host country to another State that has agreed to admit them and ultimately grant them permanent settlement<sup>40</sup>. The Brazilian State does not adopt resettlement as a migratory policy, preferring to welcome and accommodate migrants and refugees. In this sense, Operation Acolhida was instituted in 2018 by the federal government to ensure care for Venezuelan refugees and migrants in the state of Roraima, the main gateway for migrants and refugees originating from Venezuela. Currently, Law No. 13,684/2018 and Decree No. 9,970/2019 regulate the work of the Operation from a Federal Emergency Assistance Committee. According to the latest information published in the general report of August 18, 2021, 54,430 immigrants were internalized to 645 municipalities, 50,124 by air and 4,306 by land. The internalization process is supported by the International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR) and the Ministry of Defence<sup>41</sup>.

---

<sup>39</sup>Available at: <https://concordia.itamaraty.gov.br/detalhamento-acordo/10125?tipoPesquisa=2&TituloAcordo=trabalhadores%20migrantes&TipoAcordo=BL.TL.ML>. Accessed on 27/01/2022.

<sup>40</sup>UNCHR. UNCHR Resettlement Handbook. Geneva, July 2011, p. 36.

<sup>41</sup>BRAZIL. 5º Relatório Geral da Operação Acolhida. Available at: <https://www.gov.br/casacivil/pt-br/acolhida/transparencia/relatorios>. Accessed on 27/01/2022.

Currently, about 7,161 people are housed in official Operation Acolhida shelters in the state of Roraima<sup>42</sup>. It is estimated that approximately 260,000 Venezuelan refugees and migrants currently live in Brazil<sup>43</sup>.

### 5.1.5. Pacaraima Committee

Due to the seriousness of violations of the rights of migrants and refugees in the Venezuelan migratory flow, the Federal Public Defenders' Office established the Specialized Thematic Committee for monitoring and defending the rights of vulnerable migrant and refugee people and groups in the context of the Venezuelan migratory flow in Pacaraima/Roraima (GABDPGF ORDINANCE DPGU no. 10, of January 7, 2021).

The purpose of the Thematic Committee is to coordinate and implement strategic and structural actions, enter into dialogue with other institutions, civil society, companies, and government spheres, technically subsidize the action of the implementing bodies, maintain institutional memory and appoint members to represent the Federal Public Defenders' Office in inter-institutional committees.

The migration crisis in Venezuela, the largest in South America's history, has reached more than 5.4 million people, according to updated data from the United Nations High Commissioner for Refugees (UNHCR)<sup>44</sup>.

According to data from the International Organization for Migration, between January 2017 and March 2022, the Federal Police counted more than

---

<sup>42</sup>Available at: <https://app.powerbi.com/view?r=eyJrIjoiZTRhOWVlOTgtYTk2MS00YmY3LWVlY2YtMGM1Y2MzOEFjMmVjIiwidCI6ImU1YzZMOTgxLTY2NjQtdEzNC04YTBjLTY1NDNkMmFmODBiZSIsImMiOiJh9&pageName=ReportSection2f742043b456c18852a1>. Accessed on 27/01/2022.

<sup>43</sup>Available at: <https://www.gov.br/pt-br/noticias/assistencia-social/2021/06/operacao-acolhida-j-interiorizou-mais-de-50-mil-venezuelanos#:~:text=O%20Governo%20Federal%20estima%20que,venezuelanos%20vivem%20atualm ente%20no%20Brasil>. Accessed on 27/01/2022.

<sup>44</sup>Available at: <https://www.acnur.org/portugues/venezuela/#:~:text=Cerca%20de%202%2C5%20milh%C3%B5es&text=Mais%20de%204%20milh%C3%B5es%20de,de%20deslocamento%20no%20mundo%20atualmente>. Accessed on 20/11/2022.

717,000 entries of Venezuelans into Brazil, with more than 330,000 people staying in Brazil<sup>45</sup>.

In February 2018, Brazil declared the Venezuelan migratory flow a humanitarian crisis in Decree No. 9,285, of February 15, 2018, recognizing the need for humanitarian reception of people from the Bolivarian Republic of Venezuela.

Brazil, as the main response for receiving, sheltering and internalizing the Venezuelan population, constituted the Humanitarian Logistic Task Force (Operation Acolhida), linked to the Civil House.

The Pacaraima Specialized Thematic Committee carried out the following actions in 2021, in response to violations of rights of the Venezuelan migrant and refugee population:

- Preparation of the 1st Defenders' Office Report: Monitoring Report on the Human Rights of Migrants and Refugees in Roraima, with suggestions for referrals to UNHCR, the Public Defenders' Office of the State of Roraima, the Federal Public Defenders' Office, the Federal Police, the State of Roraima, the Brazilian Army, UNICEF, the Municipality of Boa Vista, the Municipality of Pacaraima, the Ministry of Citizenship, the Ministry of Health, the Public Prosecutors' Office of the State of Roraima, the IOM, the Judiciary Branch of the State of Roraima, and the Civil Police of the State of Roraima.
- Support in the preparation of Public Civil Action No. 1001365-82.2021.4.01.4200 by which the Judiciary

---

<sup>45</sup>Available at: <https://brazil.iom.int/pt-br/news/protecao-e-integracao-de-venezuelanos-oim-ja-realizou-cerca-de-240-mil-atendimentos-de-regularizacao-migratoria#:~:text=Migra%C3%A7%C3%A3o%20venezuelana%20%2D%20Segundo%20dados%20do,pessoas%20tendo%20permanecido%20no%20Pa%C3%ADs>. Accessed on 20/11/2022.

recognized Brazil's duty to receive and shelter migrants and refugees, even in the context of a pandemic. The sentence won the “Premio de Sentencias 2021: Acceso a la Justicia de Personas Migrantes o Sujetas de Protección Internacional”.

- Contact with the Labour Prosecution Service with the objective of suggesting monitoring the flow of internalization of migrants and refugees through Operation Acolhida, in the specified job vacancy modality, in order to curb practices of submission of workers to the condition analogous to slavery.
- Issuance of Official Letters regarding the absence of issuance of the General Registry ID Card in Pacaraima/AM, which hinders the documentation of migrants and Brazilians in the Municipality.
- Request for action by the National Council of Justice to ensure the mobility of migrant children facing bureaucratic impediments adopted by the National Civil Aviation Agency.
- Conducting an institutional mission, on 23.11.2021 to 27.11.2021, in Pacaraima/Roraima and Boa Vista/Roraima, with meetings with civil society, international organizations (UNHCR, IOM and UNICEF, International Committee of the Red Cross), public agencies such as Federal Police (PF), Public Defenders' Office of the State of Roraima (DPE/RR), Brazilian Army (EB), National Indian Foundation (FUNAI), Federal Revenue Service, totalling 21 meetings. In addition, visits were made to migrants at the First Assembly about Migrants in Sorocaima 1; at the Occupancy Vila Nova Esperança and the Janokoida Indigenous Shelter; at the Ka'ubanoko

Occupancy in Boa Vista; at the Pacaraima and Boa Vista Screening Posts.

- Conducting an institutional mission, from 22.02.2021 to 26.02.2021, with a report, with 11 (eleven) referrals for the Federal Public Defenders' Office to act on the migratory issue during a pandemic situation.
- Issuance of Notices, based on TECHNICAL NOTE no. 9 – DPGU/SGAI DPGU/GTMR DPGU, to the Municipality of Pacaraima/RR, UNHCR, IOM, Federal Police, ANVISA and Caixa Econômica Federal.
- Support in the preparation of Public Civil Action No. 1000073-62.2021.4.01.4200, which prevented the deportation of 55 indigenous people, 32 of whom were children.
- Meetings with the Civil House, in order to reconcile safe access to the national territory of migrants, especially those in vulnerable situations, and refugees, with the necessary health control in the pandemic context.
- Support in the preparation of the Collective Writ of Mandamus no. 10012497620214014200 (PAJ No. 2021/005-00282), which aims for the Federal Police to refrain from carrying out any deportation without prior notification from the Federal Public Defenders' Office, in cases where the deporting person does not appoint a lawyer, which must occur soon after the notification of the migrant provided for in article 50, paragraph 1, of Law no. 13,445/2017, assuring this institution the right to provide due legal assistance in the acts necessary for the immigration regularization of the person being deported and, when necessary, to present a technical defence and file an appeal with suspensive effect, within the deadlines

provided for in Decree No. 9.199/2017 or another rule that replaces it.

- Support in the preparation of Public Civil Action No. 10310130320214013200), which seeks to ensure access to the Individual Taxpayer Identification Number as a resident to migrants residing in Brazil, overcoming unnecessary bureaucratic hurdles.
- Request for information from ANVISA on the justifications and technical opinions to subsidize the discriminatory treatment aimed at Venezuelan nationals.
- Request for information from the Federal Police about the number of entries into Brazil by air and land, and the number of people benefiting from “exceptional admission”.
- Support in Interlocutory Appeal no. 1026771-32.2020.4.01.0000, with participation of the Committee in a hearing with the Judge-Rapporteur.
- Support in the Request for Measures no. 0005116-79.2021.2.00.0000, filed with the National Council of Justice, with the objective of ensuring the birth certificate of Brazilian children who are offspring of non-nationals, regardless of their migratory condition.
- Support in the preparation of a Collective Action for the Concession of Protective Measures in order to ensure the migratory regularization of children and adolescents sheltered in Boa Vista/Roraima (Case no. 08038.017343/2021-21 and PAJ no. 2021/005-00567).
- Notes for the improvement of this Welcoming System, in order to allow the identification and migratory regularization of migrant children and adolescents sheltered by Operation Acolhida.

- Request for information from the Federal Police on the number of people deported or repatriated by Brazil in the pandemic context.

### **5.1.5. Conclusions and recommendations**

Despite the advanced legislation, the implementation of the Brazilian migration policy still needs to be improved to comply with the rights and guarantees provided by law. The pandemic situation was presented as justification for a prolonged regime of exception at the border that resulted in violation of the rights of migrants and refugees. The withdrawal of the Brazilian State from the Global Compact for Migration and the non-adherence to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families denote the insufficiency of the actions currently underway on the subject.

Other issues exposed in the recommendations and technical notes confirm the contradictory nature of actions taken by public agencies and the need for changes to respect the civil, economic, cultural and political rights of migrants in national territory. The DPU is active and involved in the processes, observing and monitoring cases to better defend this social group.





DPU  
LIGADA LINHA

SORIA  
CA



## **5.2. INDIGENOUS PEOPLE**

### **5.2.1. Contextualization of the theme**

#### **5.1.1.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)**

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations regarding the protection of the rights and guarantees of indigenous peoples:

35. Continue efforts to enhance public awareness on issues of ethnic and racial equality and to combat violence against indigenous peoples (Uzbekistan);

36. Carry out specific legislative reform to strengthen measures against discrimination on the basis of gender and ethnicity (Uganda);

46. Strengthen measures to prevent and punish racism, discrimination and violence against indigenous peoples and people of African descent and violence against women and girls (Rwanda);

47. Strengthen policies related to the fight against discrimination against indigenous and Afro-Brazilian children and others in vulnerable situations from an integral and intersectoral perspective (Chile);

48. Further promote ethnic and racial equality, building on the important policy measures already taken (Greece);

51. Develop a national action plan on business and human rights in order to prevent development projects from violating the rights of traditional populations, indigenous peoples and workers and causing damage to the environment, and in order to ensure an effective remedy with meaningful consultations with the affected communities (Netherlands);

102. Establish a mechanism to allow for speedy and correct judicial decisions under strict observance of constitutional and international law regarding the territorial rights of indigenous peoples (Austria);

121. Take further steps to protect human rights defenders, including those working in relation to the rights of indigenous, including through ensuring impartial, thorough and effective investigations into all attacks, harassment and intimidation

against human rights defenders and prosecution of all alleged perpetrators of such offences; and further, fully implement the national programme to protect human rights defenders through the adoption of a specific legal framework, allocation of a budget and the setting up of multi-disciplinary teams to implement it (Ireland);

168. Continue implementing high-quality intercultural education (Peru);

175. Set up plans promoting inclusive education of ethnic minorities, which have high levels of school dropout (Paraguay);

217. Develop and implement policy to address child mortality, malnutrition, health, education and access to sanitation, of indigenous people (South Africa);

218. Adopt effective measures to support Indigenous Peoples, including by ensuring food, health services, schools, and access to sanitary services and by creating conditions for higher incomes (Russian Federation);

222. Continue proactive measures to promote rights of indigenous peoples as well as of the Afro-Brazilian population and ensure their well-being (Bangladesh);

223. Guarantee the constitutional rights of Indigenous peoples including by ensuring the National Indian Foundation has the necessary resources to carry out its work, particularly relating to the demarcation of Indigenous lands, and take measures to conclude investigations into all killings of Indigenous Peoples (Canada);

224. Ensure that indigenous peoples and other minorities are protected against all forms of discrimination (Philippines);

225. Establish mechanisms to eradicate stigma and discrimination against indigenous groups and ethnic minorities, including awareness-raising among public officials, accountability and redress mechanisms (Mexico);

226. Ensure that the rights of indigenous people and respect of the environment and biodiversity are taken into due consideration in economic activities (Holy See);

227. Strengthen coordination between the Brazilian Institute of the Environment and Renewable Natural Resources and the Brazilian National Indian Foundation (Maldives);

228. Take measures to combat violence and discrimination against indigenous peoples (Togo);

229. Establish and implement a clear procedure for free, prior and informed consultation that would ensure full participation of indigenous peoples in the decision-making process regarding any major project impacting on their way of life (Republic of Moldova);

230. Guarantee adequate consultation and full participation of indigenous peoples in all legislative and administrative measures affecting them, protect indigenous people including indigenous human rights defenders from threats and attacks, and protect their land rights, in particular by strengthening protection programmes, completing pending land demarcation processes and providing adequate funding and capacity to the Indian National Foundation (FUNAI) (Germany);

231. Continue its efforts to establish effective consultation processes with indigenous communities with respect to any project that may affect the land or livelihoods of indigenous peoples (El Salvador);

232. Ensure an effective consultation process with indigenous peoples in all decision-making that might affect them (Estonia);

233. Ensure indigenous peoples adequate consultation as well as full participation in all legislative or administrative measures affecting them (Iceland);

234. Ensure that indigenous peoples are protected from threats, attacks and forced evictions (Norway);

235. Continue to invest in poverty alleviation policies and to ensure more effective and targeted implementation, so as to reduce social and economic inequality, in particular for rural populations and indigenous peoples (Singapore);

236. Adopt an effective plan of action for the demarcation of indigenous lands and provide the necessary financial resources to ensure an effective policy for the protection of the rights of indigenous peoples and to prevent land-related conflicts (Switzerland);

237. Continue its process of demarcation of indigenous lands (Peru);

238. Take necessary measures to resolve and prevent conflicts related to land issues and to complete the land demarcation processes deriving from Article 231 of the 1988 Constitution (France);

239. Speed up through executive action the processes of demarcation and protection of the lands of indigenous peoples and protect their respective rights (Cabo Verde);

240. Advance with the agenda for the indigenous peoples' right to free, prior and informed consent (Norway);

241. Strengthen human rights protection mechanisms for Indigenous Peoples, with special attention to ensure the human rights of indigenous girls and boys (Paraguay);

242. Develop and implement a comprehensive strategy on fighting discrimination and marginalization of indigenous peoples (Republic of Moldova);

243. Continue efforts aimed at fostering inclusive social dialogue with all ethnic groups in Brazilian society (Holy See);

### **5.2.1.2. Indigenous peoples in Brazil and the COVID-19 pandemic**

According to data collected by the National Committee of Indigenous Life and Memory<sup>46</sup>, since the first case of Covid-19 contamination among Brazilian indigenous people, on March 25, 2020, about 60,600 indigenous people have already been infected, with 1,228 deaths and 162 native Brazilian peoples affected.

As a result of the Public Health Emergency of National Importance declared due to the Covid-19 pandemic, a set of political parties and the Articulation of Indigenous Peoples of Brazil (APIB) joined the Federal Supreme Court (STF) with an Argument for Non-Compliance with Fundamental Precept (ADPF n. 709) given the Federal Government's failure to present effective and specific measures to confront the aforementioned pandemic among indigenous peoples.

The precautionary measure required in that ADPF was granted by the Judge-rapporteur, Luís Roberto Barroso, in July 2020, a decision that was ratified by the plenary of the Supreme Court in August of that year. Among its

---

<sup>46</sup> [https://emergenciaindigena.apiboficial.org/dados\\_covid19/](https://emergenciaindigena.apiboficial.org/dados_covid19/)

determinations are: i) the elaboration and monitoring of the execution of the Covid-19 Pandemic Response Plan for Indigenous Peoples in Brazil, and ii) the installation of sanitary barriers to control the spread of the virus in indigenous lands and villages of isolated and recently contacted peoples. In order to comply with these measures, with a view to establishing an intercultural dialogue, a National Situation Room coordinated by the Institutional Security Bureau of the Presidency of the Republic (GSI/PR) was created, with the participation of the DPU.

The Federal Public Defenders' Office, acting *as amicus curae*, analysed the four versions of the Covid-19 Pandemic Response and Monitoring Plan for Indigenous Peoples in Brazil. The agency concluded that, despite the persistence of some failures, considering the urgency of the constituent measures, the Plan should be partially approved. At the same time, however, the DPU presented a set of recommendations (food security, payment of aid, comprehensive and differentiated assistance, territorial protection, etc.).

As a result of these negotiations, and in recognition of their greater vulnerability to contagion by infectious diseases and greater difficulty in implementing non-pharmacological measures, indigenous peoples were included among the priority beneficiaries of the National Plan for the Operationalization of Vaccination against Covid-19 launched in December 2020. However, a limitation had been made to indigenous people assisted by the Subsystem for the Attention to Indigenous Healthcare; that is, only those who were in homologated indigenous lands (IL).

Once again, the DPU, together with the APIB and other organizations, challenged in the Supreme Court the measures of the federal government that exposed the indigenous populations to serious and irreversible harm. Only after a monocratic decision by the rapporteur, issued on 16 March 2021, indigenous people over 18 residing in non-approved IL and in urban areas, based on self-declaration, were also included as a priority audience for the 1st Phase of vaccination against Covid-19.

Due to the changes incorporated into the PNI because of the ADPF 709, today, as revealed by data from the Ministry of Health<sup>47</sup>, 81% of indigenous people over 18 years of age (331,657 people) are completely immunized.

In parallel, the National Situation Room has been meeting biweekly since October 2020 to discuss the implementation of sanitary barriers that limit the access of external agents to the territories of isolated and recently contacted indigenous peoples. It was from the debates held in this space, with emphasis on the considerations and records made by APIB and the Institutions of Justice, that Contingency Plans were prepared, and some sanitary barriers were installed in strategic areas of access to indigenous villages and territories in situations of voluntary isolation.

However, due to the recalcitrance of the federal bodies, the protection of those lands and indigenous people from the risk of contact with agents that could facilitate the dissemination of the new coronavirus did not meet expectations and did not take place effectively. The criticisms made by the Justice Institutions and by the APIB were ignored and that alienated the indigenous leaders who participated in the National Situation Room, frustrating the implementation of intercultural dialogue as proposed by the Judge-rapporteur Luís Roberto Barroso.

It is noteworthy that most of the structures now identified as sanitary barriers by the Brazilian State – the Bases of Ethno-environmental Protection (BAPE) – already existed before the Covid-19 pandemic. These bases are coordinated by the National Indian Foundation (FUNAI), but there is no evidence that they have adopted the necessary health protocols. According to sanitary physicians who advise the APIB, such protocols imply access restriction measures, measures for actions in trespass, sanitary measures in the communities surrounding the villages and compensation and awareness measures on the protection of isolated groups that share their territories with contacted groups.

---

<sup>47</sup> Available at: [https://qsprod.saude.gov.br/extensions/imunizacao\\_indigena/imunizacao\\_indigena.html](https://qsprod.saude.gov.br/extensions/imunizacao_indigena/imunizacao_indigena.html)

Some BAPes operate from mobile, itinerant units. This allows the supervision of the areas of access and circulation of external agents only intermittently.

Another worrying highlight is the absence of professionals from the Special Secretariat of Indigenous Health of the Ministry of Health (SESAI/MS), through its Special Indigenous Sanitary Districts (DSEIs), in the sanitary barriers. This factor reinforces the finding that they are not functioning properly, since FUNAI technicians do not have expertise in relation to the indigenous health agenda.

In the last quarter of the year, taking into account the determination of the Minister Rapporteur, the participants in the National Situation Room defined mechanisms for monitoring and verifying the installation of barriers and the execution of the necessary sanitary measures.

### **5.2.2. The situation of indigenous peoples in Brazil**

At the beginning of 2021, more precisely in March, indigenous and indigenist organizations took part in the 46th Ordinary Session of the United Nations Human Rights Council. In that occasion, the situation of indigenous peoples in Brazil was denounced.

In November 2021, the denunciations were reinforced by the speech of the young indigenous leader Txai Suruí, during the COP26 Leaders Summit, a global event that discussed measures to contain the climate crisis. She highlighted the urgency of defining a new path for the so-called development, while shedding light on the reality of threats suffered by the indigenous leaderships in Brazil.

In this context, the State's inefficiency in safeguarding the rights of indigenous peoples and the setback in the matter are discussed, notably from the review of once uncontroversial points about indigenous policy and the worsening of the scenario in the context of the COVID-19 pandemic.

As already mentioned, the Brazilian State only adopted a minimum set of measures to protect indigenous peoples in the context of a pandemic, after the admission and establishment of ADPF no. 709 by the Supreme Court. Also in relation to coping with COVID-19 with indigenous territories, Law no. 14,021, of July 7, 2020, provided for the distribution of food, drinking water and hygienic materials to the villages, as well as the reservation of hospital beds and mechanical respirators for indigenous people. However, the President of the Republic vetoed such provisions. The new law also provided for the permanence of religious missions in indigenous territories, even in those where the indigenous people live isolated or were only recently contacted<sup>48</sup>.

In turn, Provisional Measure no. 870/2019 tried to transfer to the Ministry of Agriculture matters of the National Indian Foundation (FUNAI)'s responsibility, such as licensing on indigenous lands, although conflicts between livestock producers and indigenous peoples are notorious.

By means of another Provisional Measure (no. 910/2019), rejected by the National Congress, the Executive Branch intended to perform the land title regularization of public lands, which would affect indigenous territories not yet demarcated<sup>49</sup>. Despite the rejection, the Draft Law no. 2,633 was presented at the National Congress, dubbed the “Land Grabbing Bill”. Its content poses a serious risk of invasions of indigenous or public lands, facilitating their registration as property by invaders. The basic text of this bill was approved by the Chamber of Deputies in August of this year<sup>50</sup>.

In 2020, through Normative Instruction no. 09<sup>51</sup>, FUNAI removed from the Land Management System (SIGEF) database all indigenous lands that were not approved, which suddenly made hundreds of territories invisible.

---

<sup>48</sup> Available at: <https://www.camara.leg.br/noticias/674455-sancionada-com-vetos-lei-que-preve-aco-es-para-prevenir-covid-19-entre-indigenas-e-quilombolas/>.

<sup>49</sup> Available at: <https://www.correiobraziliense.com.br/politica/2021/04/4919105-mpf-alerta-para-retrocessos-na-politica-indigenista-no-governo-bolsonaro.html>.

<sup>50</sup> <https://www.redebrasilatual.com.br/cidadania/2021/08/contra-indigenas-governo-bolsonaro-promove-retrocesso-de-400-anos/>

<sup>51</sup> <https://www.in.gov.br/en/web/dou/-/instrucao-normativa-n-9-de-16-de-abril-de-2020-253343033>



Through Bill No. 490, in addition to hindering the process of demarcation and approval of indigenous lands – which after the technical opinion of FUNAI would have to be submitted to the analysis and approval of a bill by the National Congress, also bringing the requirement of the time frame<sup>52</sup> – the indigenous lands already demarcated are put at risk, as it opens these areas for commercial exploitation, whether for agribusiness, for mineral exploration or other enterprises, allowing contracts to be made with non-indigenous third parties.

This proposal proves to be unconstitutional, as it contravenes the provisions of paragraph 2 of article 231 of the Federal Constitution, which establishes that the “*lands traditionally occupied by the Indians are intended for their permanent possession and **exclusive use** of the riches of the soil, rivers, and lakes in them.*” (emphasis added).<sup>53</sup>

The lands considered traditionally occupied by the indigenous include not only the areas in which they reside, but also those necessary for their physical and cultural reproduction. The rights of indigenous peoples on their lands are original and imprescriptible<sup>54</sup>, as well as, in accordance with the understanding of the Superior Courts, inalienable and unavailable. It is therefore a fundamental right.

---

<sup>52</sup>In other words, in order to have the right to demarcation of their lands, the indigenous people will have to prove that they have been living there at least since 5 October 1988, the date on which the Federal Constitution was promulgated. This, however, means "closing one's eyes" to the long history of alienation that the indigenous people have suffered and still suffer in relation to their lands, coveted by landowners, lumberjacks, land-grabbers, prospectors, mining companies and extractive, monoculture and infrastructure enterprises.

<sup>53</sup>However, in July 2021, PL 490 was approved in the Constitution and Justice Commission of the House of Representatives and is ready to be analyzed by the plenary of the House.

<sup>54</sup>"[...] indigenous peoples cannot be removed from their lands due to other interests - including economic, political, environmental - other than in cases of catastrophe, epidemics and/or in the interest of the country's sovereignty, with the referendum of the National Congress, guaranteeing, in any of the aforementioned cases, the immediate return of the indigenous population to their land as soon as the risk ceases (Article 231, paragraph 5)." <https://cimi.org.br/2018/05/terra-tradicionalmente-ocupada-direito-originario-e-a-inconstitucionalidade-do-marco-temporal/>

However, some legislative proposals had the support of the Executive Branch, even though they imply a setback in the human rights of indigenous peoples, such as the non-demarcation of any indigenous lands<sup>55</sup>.

The integrationist policy of the Brazilian State – and the omission that is imbricated with it – has been responsible for the increase in deforestation on indigenous lands<sup>56</sup>, an increase in the number of indigenous people killed violently<sup>57</sup>; an increase in the number of cases of violence against indigenous people; an increase in the presence of prospectors on indigenous lands<sup>58</sup>, among other situations that make this population even more vulnerable.

This scenario motivated Brazil to be cited for the first time at the United Nations Human Rights Council for “risk of indigenous genocide”, on the occasion of the presentation of a report at its 47th Regular Session<sup>59</sup>, held in June 2021.

### **5.2.3 Non-compliance with the Recommendations of the last Universal Periodic Review (UPR)**

In 2017, Brazil submitted to the UN Human Rights Council the third cycle of evaluation of the internal situation of human rights, the Universal Periodic Review (UPR) and, in the end, voluntarily accepted 242 recommendations. Specifically in relation to indigenous peoples, 25 recommendations were accepted.

---

<sup>55</sup>Available at: <https://agenciabrasil.ebc.com.br/politica/noticia/2019-08/bolsonaro-diz-que-nao-fara-demarcacao-de-terras-indigenas>. Accessed on 27/01/2022.

<sup>56</sup>In November 2019, a 74% growth in the area deforested on indigenous lands was recorded (<https://g1.globo.com/natureza/noticia/2019/11/28/terras-indigenas-tem-alta-de-74percent-no-desmatamento-area-mais-afetada-protege-povo-isolado.ghtml>).

<sup>57</sup>"The homicide rate of indigenous people grew by 22% in Brazil in a decade, jumping from 15 deaths per 100,000 inhabitants in 2009 to 18.3 in 2019 - while the murder rate for the population as a whole fell by 20%, from 27.2 per 100,000 inhabitants in 2009 to 21.7 in 2019. The unpublished data appears in the Atlas of Violence 2021." (<https://www.dw.com/pt-br/assassinatos-de-ind%C3%ADgenas-no-brasil-crescem-22-em-uma-d%C3%A9cada/a-59045753>)

<sup>58</sup>Available at: <https://oglobo.globo.com/um-so-planeta/em-dois-anos-garimpo-aumenta-em-363-degradacao-da-terra-indigena-munduruku-25040162>

<sup>59</sup>Available at: <https://observador.pt/2021/06/29/brasil-citado-na-onu-como-caso-de-risco-de-genocidio-indigena/#:~:text=O%20Brasil%20foi%20citado%20pela,esta%20segunda%20feira%20a%20imprensa.&text=Paulo%2C%20a%20men%C3%A7%C3%A3o%20ao%20Brasil,de%20um%20relat%C3%B3rio%20na%2047>.

In 2012, the Brazilian State had received 15 recommendations specifically aimed at the indigenous agenda and, in the review, it informed the UN that it had not yet implemented most of them, but that those not yet met were being implemented. However, this is not what is seen from the current situation.

Dividing 14 of the 25 recommendations into three main areas, to jointly address them in this topic (I – combating violence and discrimination against indigenous peoples; II – the need to demarcate indigenous lands and protect their territories; III – guaranteeing the right to prior, free and informed consultation, under the terms of Convention no. 169/ILO), the current state of non-compliance with all of them is evident.

• **Area 1: Combating violence and discrimination. Recommendations nos. 35, 228 and 234.**

*35. Continue efforts to enhance public awareness on issues of ethnic and racial equality and to combat violence against indigenous peoples (Uzbekistan);*

*228. Take measures to combat violence and discrimination against indigenous peoples (Togo);*

*234. Ensure that indigenous peoples are protected from threats, attacks and forced evictions (Norway);*

In this first area, the three recommendations listed converge on the need to implement effective measures to combat discrimination and violence against indigenous peoples, whether these are carried out through threats, attacks, invasions, evictions, etc.

In this sense, the existence, within the scope of the Federal Police, of the Service for Repression of Crimes Against Indigenous Communities and Agrarian Conflicts (SRCCI) stands out, a specific division aimed at repressing illicit acts and conflicts that victimize indigenous peoples. Although it deserves praise for the existence of this space, this service, according to a document sent by

the Federal Police to the DPU in July/2021, it currently has only 1 (one) Delegate, 1 (one) clerk and 1 (one) police officer, which proves to be insufficient to carry out the expected task.

Also in 2021, audio messages attributed to the FUNAI Coordinator in the Javari Valley (AM) came to light, in which the spread of hate speech and incitement to commit crimes against isolated indigenous peoples are heard<sup>60</sup>. The case is still under investigation, with the DPU even sending a representation to the MPF and MPM to request its investigation. The mere idea that incitement to violence against indigenous peoples could have come from within FUNAI itself shocked the country.

Also on this topic, the systematic omission of the Federal Government to adopt effective measures to combat the illegal activities of prospectors, loggers, and invaders in the Munduruku Indigenous Land was reported in the records of ADPF 709/DF. In March of this year, there was depredation and fire at the headquarters of the *Wako Borun* Association of Munduruku Women and there were numerous reports of armed people within the IL. Dramatic situation also reported to the Federal Supreme Court in relation to the IL Piripkura, not yet officially demarcated. Satellite images attached to the records reveal a frightening growth in deforestation and IL invasions within the short period of a year.

Another very serious fact concerns the organization of paramilitary groups with the participation of police agents in the murder of Pataxó indigenous people in the south of the state of Bahia. Gustavo Pataxó, a teenager of just 14 years of age, was executed with a shot to the head from a large calibre weapon. The circumstances of death are the planned invasion against Aldeia Alegria Nova, in the Barra Velha Indigenous Land. On the occasion, hooded agents arrived in the

---

<sup>60</sup>Available at: [https://www.socioambiental.org/pt-br/blog/blog-do-monitoramento/massacre-anunciado-coordenador-da-funai-ameaca-meter-bala-em-isolados-no-vale-do-javari-am#:~:text=do%20Javari%20\(AM\)-,Massacre%20anunciado%20da%20Funai%20amea%C3%A7%C3%A3o%20de%20meter%20bala%20em,no%20Vale%20do%20Javari%20\(AM\)&text=Fala%20de%20C3%B3dio%20se%20referia,no%20Fique%20Sabendo%20dessa%20semana.](https://www.socioambiental.org/pt-br/blog/blog-do-monitoramento/massacre-anunciado-coordenador-da-funai-ameaca-meter-bala-em-isolados-no-vale-do-javari-am#:~:text=do%20Javari%20(AM)-,Massacre%20anunciado%20da%20Funai%20amea%C3%A7%C3%A3o%20de%20meter%20bala%20em,no%20Vale%20do%20Javari%20(AM)&text=Fala%20de%20C3%B3dio%20se%20referia,no%20Fique%20Sabendo%20dessa%20semana.)

village in two pickup trucks and started shooting randomly at the entire indigenous community, causing women and children to rush to take shelter in the woods and in the village's only school<sup>61</sup>.

The Federal Public Defenders' Office, the National Human Rights Council and the Brazilian Committee of Human Rights Defenders, through Resolution no. 29, of November 11, 2022, issued a joint report on the situation of the Pataxó People in the Far South of Bahia, pointing out serious human rights violations against the indigenous communities in the region<sup>62</sup>.

• **Area 2: Land demarcation / territorial protection.**  
**Recommendations no. 223, 236, 237, 238 and 239.**

*223. Guarantee the constitutional rights of Indigenous peoples including by ensuring the National Indian Foundation has the necessary resources to carry out its work, particularly relating to the demarcation of Indigenous lands, and take measures to conclude investigations into all killings of Indigenous Peoples (Canada);*

*236. Adopt an effective plan of action for the demarcation of indigenous lands and provide the necessary financial resources to ensure an effective policy for the protection of the rights of indigenous peoples and to prevent land-related conflicts (Switzerland);*

*237. Continue its process of demarcation of indigenous lands (Peru);*

*238. Take necessary measures to resolve and prevent conflicts related to land issues and to complete the land demarcation processes deriving from Article 231 of the 1988 Constitution (France);*

*239. Speed up through executive action the processes of demarcation and protection of the lands of indigenous peoples and protect their respective rights (Cabo Verde);*

---

<sup>61</sup>Available at: <https://ponte.org/presos-3-policiais-suspeitos-de-matar-adolescente-indigena-na-bahia/>. Accessed on 20/11/2022.

<sup>62</sup>Available at: <https://www.gov.br/participamaisbrasil/blob/baixar/19589>. Accessed on 20/11/2022.

In this area, five recommendations focus on the urgent need for demarcation of indigenous lands, initiating new processes and following those already underway, adopting effective action plans capable of protecting territories and avoiding conflicts over land. It is known that there are many cases in which indigenous peoples wait for decades for the official recognition of their lands by the Brazilian State. They are not to blame for this delay and, obviously, any consequences cannot be incurred by them, for the suppression of any right or protection to the indigenous population due to the State's delay in recognizing, demarcating and ratifying their lands is completely illegal and unconstitutional.

It should be noted that the demarcation of indigenous lands is a constitutional obligation imposed on the Federal Government that should have been completed 5 years after the promulgation of the Federal Constitution (article 67, ADCT, CRFB).

In this sense, the magnitude of the indignation and the feeling of injustice experienced by the indigenous people when they perceive initiatives of the public power specifically aimed at embarrassing their rights is understandable, as noted in the edition of AGU Normative Advisory Opinion No. 01/2017, which deals with the unconstitutional thesis of the “time frame”, of Normative Instruction No. 09/2020 (MJ-FUNAI), of Opinion No. 763/2020, also of AGU, of PL 490/2007. These positions violate the recommendations of the UPR and promote a real setback in the protection of these rights.

It is unnecessary here to point out the level of violation of the rights of indigenous peoples that the “time frame” represents by imposing on the indigenous people, historically massacred and expelled from their lands, the burden of proving the occupation of the reclaimed area on 5 October 1988. The aforementioned advisory opinion 01/2017, which represents all this setback in the protection of territorial law and is currently suspended by the Supreme Court, was deliberately

adopted by the Executive, even generating the paralysis of advanced demarcation processes, such as, for example, that of IL Tupinambá de Olivença (BA).

As if it were not enough, it is also important to emphasize the interpretation given by FUNAI, in several lawsuits, about the decision of Minister Edson Fachin, of the Federal Supreme Court, issued in 2020, against the background of the coronavirus pandemic. The decision ordered the “national suspension of judicial proceedings, notably possessory actions, annulment of demarcation processes, as well as the appeals linked to these actions, without prejudice to the territorial rights of indigenous peoples.”

For the FUNAI, this decision would also result in the suspension of the demarcation processes in progress (and the prohibition of initiating others) until the judgment of the case, and such understanding is embodied in Advisory Opinion 763/AGU. As a consequence, we saw, by way of example, the stoppage of the demarcation process of the IL Nandeva Tekoha Jevy (RJ), which was already in the process of sending the procedure to the Ministry of Justice, as the Circumstantiated Identification and Delimitation Report had already been finalized. There was also a pause in the process of homologation, demarcation and action in trespass of the IL Paquiçamba and the action in trespass of the IL Cachoeira Seca, both located in Volta Grande do Xingu/PA, affected by the Belo Monte Hydroelectric Power Plant and which have territorial protection as a condition imposed on the entrepreneur.

It is also worth mentioning that the Normative Instruction 09/2020, edited by FUNAI, which, by amending the regime for issuing the “declaration of recognition of limits” and by determining that only homologated indigenous lands are included in the SIGEF (Land Management System), imposed on indigenous peoples the unconstitutional burden for the state delay in not homologating their lands. SIGEF is an INCRA database that stores information on the limits of rural properties. When excluding from it the ILs with a demarcation process not yet finalized, the occupation, sale and all kinds of transactions with the indigenous



areas are allowed. This measure adopted by the Federal Executive, instead of promoting protection, exposes and makes more precarious the indigenous peoples' right to their territory, in direct violation of the recommendations of the UPR.

**Area 3: prior, free and informed consultation (ILO Convention 169).  
Recommendations no, 229, 230, 231, 232, 233 and 240.**

*240. Advance with the agenda for the indigenous peoples' right to free, prior and informed consent (Norway);*

*229. Establish and implement a clear procedure for free, prior and informed consultation that would ensure full participation of indigenous peoples in the decision-making process regarding any major project impacting on their way of life (Republic of Moldova);*

*230. Guarantee adequate consultation and full participation of indigenous peoples in all legislative and administrative measures affecting them, protect indigenous people including indigenous human rights defenders from threats and attacks, and protect their land rights, in particular by strengthening protection programmers, completing pending land demarcation processes and providing adequate funding and capacity to the Indian National Foundation (FUNAI) (Germany);*

*231. Continue its efforts to establish effective consultation processes with indigenous communities with respect to any project that may affect the land or livelihoods of indigenous peoples (El Salvador);*

*232. Ensure an effective consultation process with indigenous peoples in all decision-making that might affect them (Estonia);*

*233. Ensure indigenous peoples adequate consultation as well as full participation in all legislative or administrative measures affecting them (Iceland);*

The six recommendations condensed in this axis demand special attention due to the current scenario of attacks experienced by them in Brazil, in an intensity probably unprecedented. The right to free, prior and informed

consultation embodied in Convention 169/ILO (internalized in Brazil by Decree no. 5051/2004) is reaffirmed and highlighted in each of these recommendations, acquiring actual legal *status*, given its importance for indigenous peoples.

Despite the crucial relevance of this right, some political agents have publicly defended the intention to withdraw the Brazilian State from the aforementioned Convention. It should be noted that Bill of Legislative Decree (PDL) No. 177/2021 was recently filed, through which the Legislative Branch would authorize the President of the Republic to denounce Convention 169, releasing the country from its obligation to follow it. The PDL is currently in progress and awaits the appointment of a rapporteur in the Committee on Foreign Relations and National Defence (CREDN).

Earlier, in 2019, a Working Group to revise AGU Opinion No. 01 of 2006, which deals with Convention 169, was established within the scope of the Chief of Staff of the Presidency of the Republic.

As a recent example of disrespect for this right, it was reported by the media that, without consultation with the indigenous people of TI Apyterewa (PA), the recovery of a road within the indigenous land would have been authorized, and such work would primarily serve the interests of illegal occupants of the IL<sup>63</sup>.

Although still lacking a more robust regulatory framework, the right to consultation has been sanctioned by the judiciary in some cases. In this sense, we point out the judicial suspension of the installation licence of the Volta Grande Project, headed by the Canadian mining company *Belo Sun*, until the preparation of an ECI and free and informed consultation with the indigenous people affected by the procedure, in accordance with the respective consultation protocol.

---

<sup>63</sup> Available at: <https://noticias.uol.com.br/colunas/rubens-valente/2021/07/24/terra-indigena-para-autorizacao-funai-obra.htm>. Accessed on 27/01/2022.

#### **5.2.4. Extrajudicial and judicial measures adopted by the Federal Public Defenders' Office and other human rights defence institutions**

Faced with such a situation, throughout 2021, the Federal Public Defenders' Office, through the Working Group for the Assistance of Indigenous Populations (GTCI), prepared a set of technical manifestations in response to the growth of threats to the rights of indigenous peoples and, in partnership with the National School of the Federal Public Defenders' Office, carried out training activities with a view to training its defensive body in legal assistance with a view to defending indigenous individual and collective rights.

Among the various actions performed by the GTI, some deserve to be highlighted.

- **Technical Note on licensing for mining activity in the State of Roraima – State Law 1,453/2021**

Through Technical Note No. 2 - DPGU/SGAI DPGU/GTI DPGU, the GTI, after prompting by APIB<sup>64</sup>, looked into State Law 1,453/2021 – which was the result of a bill authored by the current State Governor and sanctioned in February 2021 – and it identified a series of flaws and irregularities in the law, which made it imperative to recognize its illegitimacy and illegality.

In the wake of projects by the Federal Government to facilitate and regulate mineral exploration in indigenous territories, the head of the State of Roraima advanced on the Federal Government's powers in an attempt to dispose of mining rights.

Among the most serious points in the aforementioned State Law are (1) the simplification of the environmental licensing process for mining concessions, reduced to the single phase, without the requirement of previous environmental

---

<sup>64</sup>By means of Official Letter no. 04/2021 - AJUR/APIB, the Articulation of the Indigenous Peoples of Brazil requested the issuing of a technical opinion in order to (i) "*elucidate the factual and legal reasons why State Bill (RR) no. 201/2020 is unconstitutional*"; (ii) clarify "*the risks that a Bill of this nature offers to indigenous peoples who are constantly affected by the impacts that mining and prospecting activities bring*"; (iii) "*as well as the affront to international treaties that deal with the rights of indigenous peoples, since there was no Free, Prior and Informed Consultation about a normative instrument that directly interferes with our territorial rights*".

impact studies for the operation of mines in the State. This provision contravenes CONAMA Resolution no. 237/1997 and Complementary Law No. 140/2011, which regulate at the Federal level the environmental licensing procedure of projects or activities that use environmental resources or that are potentially polluting; and (2) the authorization for the use of mercury for the extraction of gold in “closed-loop” licensed mines.

On this point, the GTI/DPU considered that it was a reckless authorization, since it involves metal known to be harmful to the environment, which can contaminate the soil and water resources, and human health, and exposure to it can cause damage to the nervous and digestive systems, as well as problems in the heart, lungs, and kidneys. In addition, it is an unconventional measure, as it violates international commitments made by Brazil on the ecologically balanced environment and on the rights of indigenous peoples.

This law was approved by the Legislative Assembly of Roraima without any discussion with organized civil society nor any hearing with the technical bodies. Mining activity in the State occurs very close to indigenous lands, and sometimes illegally within these lands, a fact that generates direct and indirect negative impacts on indigenous peoples<sup>65</sup>. As a result, the DPU concluded that State Law 1,453/2021 may encourage an increase in unlawful mining on indigenous lands, owing to the lack of inspections in mining sites. Also, there is the concern about the spread of the COVID-19 pandemic among indigenous communities.

For these reasons, the GTI/DPU attested the unconstitutionality of State Law No. 1.453/2021 for violating article 22, XII (exclusive competence of the Federal Government to legislate on mining rights); article 24, VI, VII and VII, (concurrent competence to legislate on forests, hunting, fishing, fauna, nature

---

<sup>65</sup> Even if mining does not take place within the boundaries of an Indigenous Land, according to Interministerial Ordinance No. 60/2015, if it occurs within the radius of the so-called area of direct influence, according to its Annex I, this licensing procedure must be accompanied by FUNAI, as well as the undertaking and the specific impact studies must be submitted for consultation with the affected indigenous peoples.

conservation, defence of soil and natural resources, protection of the environment and pollution control; protection of historical, cultural, artistic, tourist and landscape heritage; liability for damage to the environment, the consumer, goods, and rights of artistic, aesthetic, historical, tourist and landscape value); article 225, *caput* (fundamental right to the ecologically balanced environment and state duty to promote its defence and protection for present and future generations); § 1, items IV and V (requirement for an environmental impact study prior to the installation of a work or activity potentially causing environmental degradation, as well as control of production that poses a risk to life or the environment) and § 2 (duty of environmental recovery); article 231, § 2, 3 and 6 (usufruct of indigenous communities of mineral resources on their lands and need for authorization from the National Congress for their non-traditional exploitation) and article 20, IX (mineral resources belong to the Federation). All articles cited are in the Federal Constitution.

In addition to the flagrant unconstitutionality, State Law no. 1,453/2021 also suffers from unconventionality, as it violated international responsibility assumed by Brazil in the International Convention of Minamata to reduce the use of mercury, as well as violation of ILO Convention no. 169, by not carrying out free, prior and informed consultation of the indigenous population.

We emphasize that the Sustainability Network party proposed a Direct Action for the Declaration of Unconstitutionality (ADI 6672) with a request for a precautionary measure, requesting the suspension of the effects of Law no. 1,453/2021. This measure was granted on 22/02/2021 through a monocratic decision issued by Minister Alexandre de Moraes; the law's effects are now suspended.

- **Bill no. 490/2007 – alteration of the process of demarcation of indigenous lands, imposition of the time frame thesis and risk of other setbacks**

The GTI/DPU was also compelled to express its opinion on the aforementioned Bill, which aims to change the process of demarcation of indigenous lands; to give generic application and legality to the thesis of the time frame, in addition to allowing the commercial exploitation of the resources of indigenous lands already demarcated by non-indigenous third parties.

As we have already dealt with PL 490, it is only worth noting that the GTI through the TECHNICAL NOTE NO. 5 - DPGU/SGAI DPGU/GTI DPGU recommended the rejection of PL 490/07, especially the substitute amendment by Representative Arthur Maia, for: (1) **formal vice of** unconventionality for, among others, lacking prior consultation with indigenous peoples (Article 6, ILO Convention 169), the obligation to guarantee that there is no discrimination based on indigenous origin and identity, and the need to adopt preventive and corrective measures necessary for the full and effective protection of indigenous rights; (2) **institutional defects** – a) rejection of the temporal landmark theory, since the current Constitution cannot be used as a reference for indigenous occupation, whose parameters are different from the requirements of civil law possession, and therefore indigenous people should not be required to demonstrate effective and uninterrupted possession – as if it were a possession in private law —, but instead should be granted the Indigenous Institute, given that their territorial rights precede any other rights; b) attempt to modify an entrenched clause, since indigenous people's right to their traditional lands is intimately linked to the principle of human dignity, which gives it the status of a fundamental right; c) non-observance of the principle of non-regression, as it threatens social achievements already attained (compensation for invaders, prohibition of the expansion of already demarcated indigenous lands, possibility of expropriation of indigenous lands due to “changes in cultural traits,” limitation of land and resource usufruct while allowing them to be negotiated with third parties, forced contact with isolated peoples, etc.); (3) violation of previous decisions of the Brazilian Supreme Court (RE-RG 1017365, MS 31901 MC, MS no. 31,901/MC DF, MS no. 31,100/AgR

DF, Rcl no. 13,769/DF, Rcl no. 14.473 AgR/RO, Rcl no. 27,702 AgR/AM, etc.).  
”

**• Public Civil Action with Request for Urgent Protection – Request for Removal of the President of FUNAI**

On October 5, 2021, the DPU, through the GTI, together with the Articulation of Indigenous Peoples of Brazil (APIB), filed a Public Civil Action with a Request for Emergency Relief in the 9th Federal Civil Court of the Judicial Subsection of the Federal District requesting, among others, the immediate removal of the current President of FUNAI, Mr. Marcelo Augusto Xavier da Silva.

Both entities argued in the petition that the entities established for the implementation of public policies aimed at protecting the rights of indigenous peoples cannot act in a way that undermines those same public policies and rights whose protection is their reason for existence. In these cases, the argument that it is up to the Administration, based on the discretionary power that usually belongs to the Executive branch, to determine the emptying of the planning, implementation and execution of indigenous public policies is not valid, since this affronts legal, constitutional, and international treaty provisions.

Thus, because they understand that since assuming the presidency of FUNAI, a federal agency that concentrates almost all public policies aimed at indigenous peoples, the representative has systematically attacked the protection of indigenous rights, his immediate removal was requested. Among other acts used as grounds for the request, the following stand out: the unfeasibility of the demarcation of indigenous lands; the omission in the judicial defence of indigenous rights; the omission in the defence in the face of invasions and land grabbing of indigenous lands; episodes of persecution of indigenous leaders and servants of the agency itself; and insufficient action to protect indigenous peoples from the COVID-19 pandemic.

In addition to the removal of the current president of the indigenous agency, the DPU and APIB have also requested, as a preliminary injunction, that



FUNAI be ordered to suspend the effects of Opinion 763/20 and the immediate resumption of all administrative processes of demarcation of indigenous lands, both under penalty of a daily fine.

- **Debate “The arrest of indigenous people in Brazil, intercultural criminal defence and the Resolution no. 287/2019 of the National Council of Justice”**

On October 20 and 21, the DPU hosted the debate “The arrest of indigenous people in Brazil, intercultural criminal defence and the Resolution no. 287/2019 of the National Council of Justice”. The event is an initiative provided for in the Action Plan of the Working Group for the Assistance of Indigenous Populations for the year 2021, which was broadcast live on the ENADPU channel on YouTube (<https://www.youtube.com/watch?v=TsODRCJiE4E>).

On the first day, lawyer Viviane Balbuglio and doctoral candidate in Social Anthropology Léia Macuxi participated in the debate. The mediator of this debate was federal public defender João Paulo de Campos Dorini, then coordinator of the GTI/DPU.

On the second, and last, day of the event, the conversation was mediated by the defender Daniele de Souza Osório, also a member of the Indigenous Communities Working Group, and was attended by Caroline Hilgert, legal advisor to the Indigenous Missionary Council (CIMI); Maurício Terena, indigenous lawyer of the Articulation of Indigenous Peoples of Brazil (APIB) and the Terena People's Council; and Neyla Ferreira Mendes, public defender of the State of Mato Grosso do Sul and coordinator of the Institutional Center for the Promotion and Defence of Indigenous Peoples and Racial and Ethnic Equality (NUPIIR).

The initiative integrates the efforts of the DPU to comply with the provisions of Resolution no. 287/2019 of the National Council of Justice (CNJ), which establishes procedures for the treatment of indigenous people in the condition of accused, defendant, convicted or deprived of liberty, and provides guidelines to ensure the rights of this population in the criminal sphere.

### 5.2.5. Conclusions and recommendations

In a non-exhaustive way, the following are some recommendations of the Working Group on Indigenous Communities of the Federal Public Defenders' Office, based on what was exposed:

- Implement health barriers in the main areas of access or, at least, in areas of greater vulnerability to harassment by external agents of the indigenous territories of isolated and recently contacted peoples, in order to avoid greater dissemination of the coronavirus among hypervulnerable population, while functioning as a tool for territorial protection.
- Ensure the human and material resources (mainly PPE) necessary for the proper functioning of the BAPes as sanitary barriers.
- Take a transparent stance, sharing the materials demanded by the Justice Institutions and APIB with a view to monitoring the installation and operation of sanitary barriers, in order to preserve and strengthen intercultural dialogue.
- Maintain priority treatment for the vaccination of the indigenous population against COVID-19, regardless of their condition or not as a village or the situation of regularization of their lands, respecting self-declaration, at all stages and age groups served by the National Immunization Plan.
- Make void the effects of the State of Roraima's Law no. 1,453/2021.
- Reject Bill No. 490/2007, especially the substitute amendment of Representative Arthur Maia.
- The GTI/DPU should carry out the projects provided for with regard to indigenous criminal defence, expanding the activities of training the defensive body for the subject and effecting the Technical Cooperation Agreement with the CNJ in order to jointly develop actions aimed at guaranteeing the rights of indigenous people in the condition of defendant, accused, convicted or deprived of liberty.



vacante

Jj Kk Ll Mm Nn Oo Pp Qq

Rr Rr Ss Ss Tt Tt Uu Uu Vv Vv Ww Ww Xx Xx Yy Yy Zz Zz

ILLUSTRATION

## 5.3. QUILOMBOLAS AND TRADITIONAL COMMUNITIES

### 5.2.1. Contextualization of the theme

#### 5.1.1.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations regarding quilombolas, traditional peoples and communities:

36. Carry out specific legislative reform to strengthen measures against discrimination on the basis of gender and ethnicity (Uganda);

37. Take measures to eliminate cases of discrimination against certain groups in society (Iraq);

38. Support initiatives and strategies to combat discrimination and promote the inclusion of vulnerable persons (Madagascar);

46. Strengthen measures to prevent and punish racism, discrimination and violence against indigenous peoples and people of African descent and violence against women and girls (Rwanda);

47. Strengthen policies related to the fight against discrimination against indigenous and Afro-Brazilian children and others in vulnerable situations from an integral and intersectoral perspective (Chile);

49. Continue taking active measures aimed at eradicating discrimination against Afro-Brazilian women based on their gender and ethnicity (Namibia);

51. Develop a national action plan on business and human rights in order to prevent development projects from violating the rights of traditional populations, indigenous peoples and workers and causing damage to the environment, and in order to ensure an effective remedy with meaningful consultations with the affected communities (Netherlands);

219. Continue to promote the rights of communities of African descent, in particular children's rights (Senegal);

221. Ensure the equal access of Afro-Brazilians to poverty reduction policies and social security benefits as a means of protection of their fundamental rights (Botswana);



222. Continue proactive measures to promote rights of indigenous peoples as well as of the Afro-Brazilian population and ensure their well-being (Bangladesh);

224. Ensure that indigenous peoples and other minorities are protected against all forms of discrimination (Philippines);

243. Continue efforts aimed at fostering inclusive social dialogue with all ethnic groups in Brazilian society (Holy See);

### **5.3.1.2. Situation of quilombolas, traditional peoples and communities in Brazil**

According to data from the Palmares Cultural Foundation, there are currently 3,447 certified quilombola communities throughout the national territory, most of them in the federal states of Maranhão (839), Bahia (821), and Minas Gerais (400)<sup>66</sup>. This number does not take into account the communities that have not yet formalized the application for certification, which means that the quilombola territories universe may be even greater. The Federal Constitution of 1988 guarantees peoples of traditional communities the right to have their lands preserved.

Article 68 of the Transitory Constitutional Provisions Act (ADCT).

The remnants of the quilombos communities that are occupying their lands are recognized as definitive property, and the State must issue them with the respective titles.

Linked to this difficulty is the struggle for the rights to basic sanitation, adequate food, and the right to health. They are populations that rely on institutions such as the DPU to defend their rights.

There is a lack of accurate information about the quilombola population in the country, mainly due to the dismantling of the Brazil Quilombola Program, of the Federal Government, and the lack of monitoring of public policies for this

---

<sup>66</sup>Available at: <https://www.palmares.gov.br/?p=56832>. Accessed on 27/01/2022.

follow-up, in charge of the National Secretariat for the Promotion of Racial Equality – SNPIR.

In this Defense Report, we highlight the role of the Public Defenders' Office during the Covid-19 pandemic together with the quilombola communities, whose mobilization was fundamental to ensure priority in vaccination, a measure necessary to protect their population.

Civil entities that follow the issue in the country attributed to the Federal Government the responsibility for omission in the face of the needs of traditional quilombola communities.

In this context, the Federal Public Defenders' Office joined as *amicus curiae* in the Argument for Non-Compliance with Fundamental Precept (ADPF) no. 742, proposed by the National Coordination of Articulation of Quilombola Black Rural Communities (CONAQ) and by several political parties before the Federal Supreme Court. The action aimed to compel the Federal Government to prepare and implement a National Plan to Combat the Covid-19 pandemic for quilombola communities.

The decision, taken in plenary in the judgment of the Argument for Non-Compliance with Fundamental Precept (ADPF) 742/2020, determined that the Federal Government:

- i) formulate, within 30 days, a national plan to combat the Covid-19 pandemic with regard to the quilombola population, dealing with sanitary measures and protocols aimed at ensuring the effectiveness of vaccination in the priority phase, with the participation of representatives of the National Coordination of Articulation of Quilombola Black Rural Communities – CONAQ;
- ii) constitute, within 72 hours, **an interdisciplinary and parity** working group, with the purpose of debating, approving and monitoring the execution of the Plan, including members of at least the Ministry of Health, Ministry of Women, Family and Human Rights, Palmares Cultural Foundation, Federal Public Defenders' Office, Federal Public Prosecutors' Office, National Human Rights Council, Brazilian Association of

- Collective Health and representatives of quilombola communities to be appointed by the National Coordination of Articulation of Quilombola Black Rural Communities;
- iii) arrange, within 72 hours, the inclusion, in the registry of cases of Covid-19, of the race/colour/ethnicity issue, ensuring the compulsory notification of confirmed and wide and periodic advertising;
  - iv) restore, within 72 hours, the content of public platforms for access to information <http://monitoramento.seppir.gov.br/> and <https://www.gov.br/mdh/ptbr/comunidadestradicionais/programa-brasil-quilombola>, refraining from deleting public data related to the population;
  - v) Moreover, it granted the request to suspend “judicial proceedings, notably possessory actions, claims of ownership, actions for recovery of possession, annulment of administrative processes of titling, as well as the appeals linked to those actions, without prejudice to the territorial rights of Quilombola communities” until the end of the pandemic.

The Federal Public Defenders' Office is currently part of the Inter-institutional Working Group, which monitors the implementation of the Covid-19 Pandemic Response Plan in traditional communities.

In this context, it is important to highlight the public hearing held on May 21, 2021, promoted by the Parliamentary Observatory of the Universal Periodic Review and the Commission on Human Rights and Minorities, where 9 recommendations related to the topic were under examination:

*36. Carry out specific legislative reform to strengthen measures against discrimination on the basis of gender and ethnicity (Uganda);*

*37. Take measures to eliminate cases of discrimination against certain groups in society (Iraq);*

*38. Support initiatives and strategies to combat discrimination and promote the inclusion of vulnerable persons (Madagascar);*

*42. Redouble the capacity-building efforts for all the security forces, aiming at avoiding practices of racial bias, or, directed, among others, against vulnerable minorities such as lesbian, gay, bisexual, transgender and intersex persons (Colombia);*

*46. Strengthen measures to prevent and punish racism, discrimination and violence against indigenous peoples and*



*people of African descent and violence against women and girls (Rwanda);*

*47. Strengthen policies related to the fight against discrimination against indigenous and Afro-Brazilian children and others in vulnerable situations from an integral and intersectoral perspective (Chile);*

*49. 49. Continue taking active measures aimed at eradicating discrimination against Afro-Brazilian women based on their gender and ethnicity (Namibia);*

*221. Ensure the equal access of Afro-Brazilians to poverty reduction policies and social security benefits as a means of protection of their fundamental rights (Botswana);*

*243. Continue efforts aimed at fostering inclusive social dialogue with all ethnic groups in Brazilian society (Holy See).*

The central point of this hearing was the analysis of Recommendation no. 221, which highlighted the need to create a set of public policies for Quilombola communities to have access to and are certified by the Palmares Cultural Foundation. From this, they could plead a series of measures, such as land regularization by INCRA, resulting in legal assistance to protect their territory.

Another relevant point of the meeting emphasizes the promotion of public policies and programs aimed at social protection, the health of Quilombola communities, especially during the Covid-19 pandemic, such as the Brazil Quilombola Program.

The meeting also reinforced the importance of the UPR, but stressed the absence of a specific point for the Brazilian quilombola communities, since of the 242 accepted recommendations – 9 of which were the subject of the debate – none made specific reference to the Brazilian quilombola communities, although they are related to the theme.

Also at this meeting, the Federal Public Defenders' Office collaborated with two important themes: the food and nutritional security of quilombola communities and the demarcation, titling and indemnification of quilombola territories.

In its presentation, the DPU defended that these are urgent and extremely important matters, as they deal with issues related to the existential minimum. Thus, it is fundamental to guarantee the right to food and nutritional security of quilombola communities, especially in a pandemic situation. In this sense, the State's duty in this social provision is unequivocal, under penalty of violation of the principle of prohibition of retrogression and non-compliance with a fundamental precept<sup>67</sup>.

### **5.3.3. Extrajudicial and judicial measures adopted by the Federal Public Defenders' Office**

The DPU, through the Working Group for the Assistance to Traditional Communities, has been working to monitor the actions of the Covid-19 Pandemic Response Plan. In this regard, the GTCT issued the following Technical Notes:

- Technical Note 2/ 2021 – Manifestation on request for amendment formulated in ADPF no. 742, on the guarantee of priority treatment to quilombola communities in the National Vaccination Plan and in the first vaccination phase.
- Technical Note 8/2021 – Food security and drinking water supply in quilombola communities.
- Technical Note 7/2021 – Compliance with the Federal Supreme Court decision regarding issues concerning the vaccination of quilombola communities.
- Technical Note 9/2021 – Protection of the traditional quilombola territory during the pandemic of the new Coronavirus and measures to ensure sanitary/social isolation, with the prohibition of the movement of third

---

<sup>67</sup> Available at: <https://www.camara.leg.br/evento-legislativo/61116>. Accessed on 27/01/2022.

parties in the quilombola communities, without their consent.

- Technical Note 10/2021 – Omissions by the Government in guaranteeing the fundamental rights of quilombola communities in coping with the pandemic of the new Coronavirus.
- Technical Note 11/2021 – Issues concerning the vaccination of quilombola communities.
- Technical Note 12/2021 – Compliance with the Federal Supreme Court decision regarding issues concerning the vaccination of quilombola communities.

#### **5.3.4. Conclusions and recommendations**

The absence of effective public policies for traditional communities in Brazil demonstrates the non-compliance with the recommendations of the Universal Periodic Review. The Brazil Quilombola Program, which had in its core a range of public policy aimed at enforcing the constitutional order regarding this follow-up, was emptied.

Seeking to contribute to minimize the vulnerability situation in which these communities find themselves, in the face of non-compliance with the recommendations of the UPR, the Brazilian State should be urged to adopt the following measures:

- Regularize the territories of the peoples of Traditional Communities;
- Implement strategies to expand access to health services by the quilombola population and other traditional peoples;

- Implement actions to supply drinking water to quilombola communities and other traditional communities that are experiencing water insecurity;
- Ensure minimum income for quilombola families and other traditional communities in situations of vulnerability during the Covid-19 pandemic;
- Prohibit the expropriation of traditional territories and the entry of third parties without the consent of the quilombola community, taking all necessary measures to ensure that those communities are not invaded by third parties.



## 5.4. BLACK POPULATION AND ETHNORACIAL POLICIES

### 5.4.1. Contextualization of the theme

#### 5.4.1.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations regarding the fight against racism, guaranteeing ethnic and racial equality, and promoting the rights of the black population:

35. Continue efforts to enhance public awareness on issues of ethnic and racial equality and to combat violence against indigenous peoples (Uzbekistan);
36. Carry out specific legislative reform to strengthen measures against discrimination on the basis of gender and ethnicity (Uganda);
46. Strengthen measures to prevent and punish racism, discrimination and violence against indigenous peoples and people of African descent and violence against women and girls (Rwanda);
47. Strengthen policies related to the fight against discrimination against indigenous and Afro-Brazilian children and others in vulnerable situations from an integral and intersectoral perspective (Chile);
48. Further promote ethnic and racial equality, building on the important policy measures already taken (Greece);
49. Continue taking active measures aimed at eradicating discrimination against Afro-Brazilian women based on their gender and ethnicity (Namibia);
60. Continue to implement measures aimed at preventing violence and racial discrimination against Afro-Brazilians and protecting their cultural heritage and places of worship (Namibia);
65. Take further steps in order to prevent violence against people of African descent (Republic of Korea);
68. Undertake strategies to reduce gun violence, particularly among poor black youth (Bahamas);



69. Take all necessary measures to reduce murder rates among Afro-Brazilian men, particularly through robust educational programmes adapted to their needs, following recommendations 119.138, 119.154, 119.157, 119.158, 119.159 and 119.160 from the second cycle (Haiti);
98. Step up efforts to abolish the practice of racial profiling and arbitrary arrest by the police and security forces (Indonesia);
133. Redouble efforts to further reduce the income gap between the Afro-Brazilians, especially Afro-Brazilian women, and the general population (Pakistan);
150. Strengthen policies to eliminate inequalities in access to employment related to gender and racial origins (Colombia);
151. Step up efforts to promote, in law and in practice, the inclusion of persons of African descent in the educational system and on the labour market by taking policy measures (Honduras);
219. Continue to promote the rights of communities of African descent, in particular children's rights (Senegal);
- 220; Continue to improve procedures to ensure the rights of people of African descent (El Salvador);
221. Ensure the equal access of Afro-Brazilians to poverty reduction policies and social security benefits as a means of protection of their fundamental rights (Botswana);

#### **5.4.1.2. Ethnoracial policies and the situation of the rights of the black population in Brazil**

Faced with the economic crisis, the increase in the prices of products necessary for human subsistence, the lack of financial resources, the lack of access to the labour market, the reduction of emergency aid and the end of the Bolsa Família social program, the quality of life of a large part of the Brazilian population was compromised, with more harmful effects on the black population, especially during the pandemic. In several areas, it is possible to verify that cuts in public policies to combat social and racial inequality have potentially made ethnic minorities more vulnerable.



One of the main examples in the year 2021 refers to the actions to face the pandemic. Even if at first glance it sounds contradictory, the fact is that the fight against Covid-19 in Brazil had specific targets: in the absence of racial markers in the national, state, and municipal vaccination plans, there is an explicit inequality in the application of vaccines: in March 2021, about two white people were vaccinated for every black person. This was the case even when, of those infected, there were proportionally more black deaths than white deaths in Brazil<sup>68</sup>. According to the Public Agency survey<sup>69</sup>, 3.2 million self-declared white individuals had already been vaccinated, as opposed to 1.7 million self-declared black or brown individuals.

As if it were not enough, there is negligence in the vaccination of Quilombola populations, despite them being part of the priority list of the national vaccination plan. According to the 2nd edition of the Covid-19 Vaccination Monitoring Bulletin in quilombola communities<sup>70</sup>, published in September 2021, in comparative terms, 45% of the quilombola population was fully immunized, while, throughout Brazil, 45% of the population over the age of 12 – a portion expected to receive the immunizer – was also fully immunized. Although at first there seems to be a parity, Quilombolas are a priority group, so their vaccination should be more advanced than the general vaccination in Brazil.

Although very symbolic in the record of Brazilian racial inequality, this is not the only example. The black population also remains the main target of institutionalized violence: according to the 2021 Brazilian Yearbook of Public Security<sup>71</sup>, there is an over-representation of blacks among the victims of police

---

<sup>68</sup>Available at: <https://apublica.org/2021/03/brasil-registra-duas-vezes-mais-pessoas-brancas-vacinadas-que-negras/>. Accessed on 27/01/2022.

<sup>69</sup> MUNIZ, Bianca; FONSECA, Bruno; FERNANDES, Larissa; PINA, Rute. Brasil registra duas vezes mais pessoas brancas vacinadas que negras. *Agência Pública*, March 15, 2021. Available at: <https://apublica.org/2021/03/brasil-registra-duas-vezes-mais-pessoas-brancas-vacinadas-que-negras/>.

<sup>70</sup> CONAQ; TERRA de Direitos; ECAM. Vacinômetro Quilombola: Retratos da situação da vacinação da Covid-19 nos quilombos. 2nd edition, September 2021. Available at: <https://terradedireitos.org.br/uploads/arquivos/VACINOMETRO-QUILOMBOLA---2-edicao.pdf>

<sup>71</sup> BUENO, Samira; MARQUES, David; PACHECO, Dennis. As mortes decorrentes de intervenção policial no Brasil em 2020. In: Anuário Brasileiro de Segurança Pública. Fórum Brasileiro de Segurança Pública, year 15, 2021. Available at: <https://forumseguranca.org.br/wp-content/uploads/2021/07/4-as-mortes-decorrentes-de-intervencao-policial-no-brasil-em-2020.pdf>.

lethality. Although they correspond to 56.3% of the total Brazilian population, among the victims of deaths due to police interventions, the percentage of black people reaches 79%. So much so that, in 2020, the police lethality rate among the black population reached 4.2 victims per 100,000, while among whites it is 1.5 per 100,000 – almost three times lower.

When it comes to ethnoracial policies, addressing human rights requires, therefore, “confronting the secular process of dehumanization that is imposed on black people by processes of permanent extermination or by the most varied practices of death during life that mark their trajectories”<sup>72</sup>. One of the ways to combat that is, no doubt, education. The consolidation of Law no. 10,639/2003, which amended Law no. 9,394/96 to make the study of Afro-Brazilian history and culture mandatory in elementary and secondary education, both in public and private schools, and of the Quotas Legislation (law no. 12,711/2012), which regulates the access of black people to universities and other higher education institutions, correspond to milestones that must be protected to promote racial equality.

In spite of this, we also note the lack of mechanisms sufficiently capable of effectively contemplating the monitoring and evaluation of policies to reserve places in higher education, as well as to guarantee compliance with Article 26-A of the Directives and Bases for Education (law 9,394/1996), which is to build knowledge about aspects of Brazilian black and indigenous people's history and culture. On the contrary, it denotes the scrapping and emptying of urgent public policies necessary to protect the rights of the black population. In the case of the Quotas Legislation, it has been in existence for ten years, which means it could be revised and made even more precarious.

The National High School Exam (ENEM) strongly reflects the dismantling of the Brazilian education system. It was created in 2010 to evaluate

---

<sup>72</sup> PIRES, Thula. Direitos humanos e América Latina: Por uma crítica americana ao colonialismo jurídico. *LASA Forum* – Dossier: el pensamiento de Lélia Gonzalez, un legado, un horizonte, Pittsburgh, v. 50, n. 3, p. 69–73, June/Sept. 2019, p. 71.

the performance of students through the consolidation of the Unified Selection System (SiSU) and has been responsible for reaching a considerable number of entrants in higher education by reducing the financial cost of selection processes for both students and for higher education institutions, and was adopted by 60 of the 63 Brazilian federal universities<sup>73</sup>. In 2021, however, the exam registered the lowest number of registrants since 2007, with a drastic reduction mainly among black, brown and indigenous students: 51.7% fewer registrations of brown people, 53.1% of black people and 54.8% of indigenous people<sup>74</sup>.

As if it were not enough, in the face of the national political crisis, the National Institute of Educational Studies and Research Anísio Teixeira (INEP) – an administrative entity linked to the Ministry of Education that holds, among other duties, the production of studies on education in the country and the preparation, organization and execution of the ENEM – recently suffered with the resignation of 37 civil servants for reasons of moral harassment and technical and administrative fragility of its current top management<sup>75</sup>. The regression of the Brazilian State in educational policies is therefore alarming and should be read as one of the main drivers of social and racial inequality in Brazil.

Given the brief contextualization, it should be expected that the ratification of the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance in May 2021 would be a step towards protecting the human rights of the black population. However, we witnessed the reproduction of discriminatory manifestations against the black population. On July 8, 2021, on the occasion of speaking to supporters in the

---

<sup>73</sup> FREITAS, Jefferson B. de; PORTELA, Poema E.; FERES JÚNIOR, João; BESSA, Águida & NASCIMENTO, Vivian. *As Políticas de Ação Afirmativa nas Universidades Federais e Estaduais (2003-2018). Levantamento das políticas de ação afirmativa (GEMAA)*, IESP-UERJ, 2020.

<sup>74</sup> SOUZA, Viviane. Enem 2021: número de pretos, pardos e indígenas inscritos cai mais de 50%. G1, Educação, August 27, 2021. Available at: <https://g1.globo.com/educacao/enem/2021/noticia/2021/08/27/enem-2021-cai-negros-pardos-indigenas-inscritos.ghtml>.

<sup>75</sup> SANTOS, Emily. Inep: Entenda a crise que levou à saída de 37 servidores do órgão responsável pelo Enem e como isso pode afetar o exame. G1, Educação, November 09, 2021. Available at: <https://g1.globo.com/educacao/noticia/2021/11/09/inep-entenda-a-crise-no-orgao-responsavel-pelo-enem-e-como-isso-pode-impactar-o-exame.ghtml>

vicinity of the Alvorada Palace, the President of the Republic laughed and compared a citizen's hair to a “cockroach farm”<sup>76</sup>.

In an equally burdensome manner, the Brazilian State maintains, as the head of the Presidency of the Palmares Cultural Foundation (an institution created with the purpose of promoting the preservation of cultural, social and economic values of black culture on the formation of Brazilian society), Mr. Sérgio Camargo, a citizen currently removed from the acts of personnel management after a complaint from the Labour Prosecution Service that accuses him of political-ideological persecution against Foundation employees. He is known for publicly opposing several racial equality policies, such as the racial quota policy, besides frequently offending black intellectual and political personalities and openly defending the discourse of racial democracy in the country, refusing to recognize the existence of racism as a historical and political process. It therefore denies the very *ratio essendi* of the Foundation he presides over.

The Foundation is mandated by policies of equity, appreciation, and recognition of Afro-Brazilian cultural heritage. The President in office at the time, however, goes against the foundation's very essence, dedicating himself to the deconstruction of symbols of black consciousness and the denial of the exercise of effective racial equality, even creating a seal to protect alleged victims of “reverse racism”, that is, against white people, in an absolutely anti-historical perspective.

Frequent episodes of racism or with nuances of adherence to an idea of white supremacy have been registered and demonstrate how frequently the Brazilian State is omissive in relation to confronting the racism that systematically affects the black population, in clear dissonance with the duties of the Democratic State. The human rights situation in the country represents a grave

---

<sup>76</sup> BOLSONARO faz comentário racista sobre cabelo crespo: ‘Criador de baratas’. UOL, Política, July 08, 2021. Available at: <https://noticias.uol.com.br/politica/ultimas-noticias/2021/07/08/bolsonaro-faz-comentario-racista-sobre-cabelo-crespo-criador-de-baratas.htm>.

menace to the democratic order. The Federal Constitution, already in its Preamble, defends equality and justice as the supreme values of a pluralistic and unprejudiced society, while racism is historically structuring the persistent inequalities in the country.

At the public hearing held on May 14, 2021, by the UN Parliamentary Observatory of the Universal Periodic Review<sup>77</sup>, 15 (fifteen) recommendations on the subject were analysed. During the debate, the real causes that make it difficult to comply with these recommendations were also addressed.

One of the causes pointed out was the difficulty of recognizing racism in the country, which generates a slow and difficult implementation of public policies in the current scenario. Thus, the non-recognition of racism in its various forms – from hate speech to institutional racism – entails a difficult and time-consuming process of implementing public policy mechanisms.

What was intended to demonstrate in the debate is that, without recognition of the problem, there is no transformation of reality, because by the omission or denial of the scenario, many lives are taken, and many rights violated.

Among other approaches, the event emphasized that the IBGE census is an indispensable instrument for defining and evaluating public policies on the subject, such as the Quotas Legislation, which will undergo a review in 2022.

The event addressed that the challenge of combating racism and prejudice requires urgency and must be observed as a fundamental right, since it is intrinsically linked to the right to life. Therefore, discriminatory practices must be effectively combated by demanding from the State a position that makes real efforts, not just the mere ratification of the recommendations made.

Violence against young black people was one of the topics addressed in this scenario. It should be noted that the Inter-American Commission on Human

---

<sup>77</sup>Available at: <<https://www.camara.leg.br/evento-legislativo/61114>>. Accessed on January 27, 2022.

Rights had already expressed deep concern about the increase in violence against people of African descent in Brazil in the years 2018 and 2020. The Commission had<sup>78</sup> already recommended to the Brazilian State the implementation of policies, laws, and practices to prevent and eliminate discrimination, whether direct or indirect, against people of African descent.

#### **5.4.2. Extrajudicial and judicial measures adopted by the Federal Public Defenders' Office and other human rights defence institutions**

The last few years have required the Working Group on Ethnoracial Policies (GTPE) of the Federal Public Defenders' Office, in the face of various situations of institutional discrimination against the black population, to act incisively in the judicial sphere. Public Civil Actions were proposed requesting to the Federal Government: the abstention from discriminatory acts and the public retraction of speeches with anti-democratic and discriminatory content uttered by the President of the Republic; the inclusion of quilombola, riverine and homeless people in the first phase of the national vaccination calendar against Covid-19; the adoption of sociodemographic criteria of low Human Development Index in the definition and attendance of priority groups to be contemplated by the National Immunization Program; and the creation of the Steering Committee of the Archaeological Site of Cais do Valongo, a Brazilian archaeological site that maintains the largest material and immaterial record of slave port in the Americas and the largest in the world, with subsequent preparation of a Plan and work schedule to comply with the commitments contracted by the titling of world cultural heritage with UNESCO.

In the legislative sphere, the GTPE-DPU provoked the Federal Senate to the legislative proposal to reinforce the commitments with UNESCO regarding the protection of the archaeological site of Cais do Valongo, as a World Cultural

---

<sup>78</sup>Available at: < <https://www.oas.org/pt/cidh/prensa/notas/2018/209.asp>> Acesso em 28 de janeiro de 2022.

Heritage of Humanity, which resulted in Bill no. 2000/2021 authored by Senator Paulo Paim. In addition, it presented a Technical Note for legal analysis of Bill no. 3402/2020, which deals with the expansion of affirmative actions from the reservation of vacancies to graduate programs (master's, professional master's and doctorate) of the Federal Institutions of Higher Education.

In the extrajudicial scope, the GTPE-DPU proposed a reflection on institutional policies to confront crimes of racism and racial injury based on its Report on the treatment of racial crimes in the State of Paraná, in partnership with the Commission on Human Rights and Citizenship of the Legislative Assembly of the State of Paraná (CDH-ALEP), which, like other units of the Federation, demonstrates non-compliance with the IACHR's determinations in relation to the lawsuit Simone André Diniz x Brazil. The case is a symbolic precedent of condemnation of the Brazilian State for disinterest and institutional omission in the protection of anti-discriminatory rights of the black population. In order to map the institutional treatment of racial crimes in the State of Paraná, a relevant gap was identified between the total number of cases of racial crimes registered and the number of complaints made, as another sign of neglect of policies to protect the black population. The research was instrumental in reinforcing the urgent mobilization of municipal, state and federal governments in favour of the effectiveness of anti-racist laws.

In addition, in defence of racial quotas in universities and higher education institutions, the GTPE-DPU carried out and published the national mapping of quota policies in public higher education, in partnership with the Brazilian Association of Black Researchers (ABPN), with the objective of constantly improving and monitoring public policies aimed at addressing the inequalities experienced by the black population. The mapping indicates low student retention, with astoundingly high dropout rates among the group enrolled by quotas; the asymmetry in the processes of hetero-identification, a recommended mechanism to prevent fraud; and the almost non-existent implementation of quotas in graduate studies, which would be essential to



complete the cycle of affirmation of ethno-racial diversity in academic environments.

Basically, several threats to the effectiveness of the affirmative vacancy reservation policy are apparent; this leads to the conclusion that any evaluation or revision of Law no. 12,711/2012 should promote, rather, a rich and serious data collection that guarantees an effective monitoring of said law. Along these lines, the GTPE-DPU prepared Technical Note no. 9/2021, analysing the mapping done by the National Secretariat of Policies for the Promotion of Racial Equality (SNPIR) and by the Ministry of Education on the subject, finding there were no institutional efforts to implement sufficient policies to monitor the regulation.

Another relevant publication by the GTPE-DPU was Technical Note no. 8/2021, regarding the monitoring and evaluation of the quota policy in the federal public service, implemented by Law No. 12,990/2014. This, in view of the reports prepared by SNPIR with the University of Brasília – UnB and the National School of Public Administration – ENAP on the subject, verified a continuous disparity between black and white people in the public service even in the face of affirmative policy, with education again being one of the most burdensome areas: more than half of the federal universities still do not have quota professors in their ranks, and, among those who do, the percentage of entrants is frighteningly low – about 0.53%, considering all the institutions that adopt the policy. It was concluded, therefore, that there is a need for more effective implementation of affirmative policies in higher education, involving the broadest sectors of Brazilian society.

In view of the necessary measures to combat racism and forms of collective reparation, especially stemming from the case of Mr. João Alberto Silveira de Freitas, murdered on the night of November 19, 2020, on the premises of the Carrefour Supermarket in Porto Alegre/RS, in an undeniable circumstance of racial discrimination that triggered several social demonstrations in Brazil, GTPE-DPU participated in the negotiation of the Term of Commitment to

Adjustment of Conduct (TAC) signed with the Carrefour Group in Brazil, ensuring compliance with antiracist measures to be implemented or reinforced by Carrefour to prevent the occurrence of acts of racism and racial discrimination, at the national level.

This TAC is paradigmatic: it corresponds to the largest agreement in Latin America inserted in the theme of racial discrimination, both in values and in measures of accountability and reparation to the black population. Among the commitments assumed is the establishment of an Antiracist Plan, which includes actions of social impact in the areas of employability and entrepreneurship education, such as the granting of scholarships and permanence to black people at the undergraduate and graduate level in the total amount of R\$ 68 million, in addition to R\$ 2 million having been made available to contribute to the preparation of projects of museological initiative or interpretation centre, intended for reflection on the process of enslavement and transatlantic trafficking of enslaved African people in the region of Cais do Valongo, in the city of Rio de Janeiro. The impact of the TAC in confronting racism and racial discrimination is irrefutable, not only as a legal framework to promote the anti-discrimination legislation, but for the direct impact on the reality of a relevant number of black people in the country.

In the same vein, going deeper into confronting police violence against black people, since 2020 the GTPE-DPU has been part of the Working Group on Combating Violence against the Black Population, together with members of public agencies, councils and organized civil society entities, based on Ordinance no. 84 of 20/11/2020 of the Secretariat of Justice, Citizenship and Human Rights of the State of Rio Grande do Sul, with the purpose of discussing police violence against the black population on an inter-institutional level and with civil society, aiming at the elaboration of proposals and the construction of solutions to confront racism in what repercussions in discrimination and violence against the black population in the State of Rio Grande do Sul. As a result of the Working Group's efforts, in 2021 the Governor of the State was required to take several

measures that, if implemented, could contribute considerably to reducing violence and homicides of black people, from an improvement in internal and external control of police activity, through the systemic training of security agents, to the installation, creation, and monitoring of a specific secretariat against racism.

Still on the subject, the GTPE-DPU participated in a public hearing of the Universal Periodic Review of the Human Rights Council of the Chamber of Deputies, in November 2021, on Public Security; at the occasion, UN human rights recommendations were reinforced. Among them were the need to measure and evaluate the training of police officers through a system of monitoring and accountability of managers in charge of training, in order to monitor the impact on the operability of security forces and agencies, ensuring an effective incorporation of human rights in institutional culture. Any discussions about public safety must consider structural racism and the history of discriminatory violence perpetrated against the black population, and a deep review of the institutional dividends that can be identified in the large number of investigations, denunciations, and mass incarceration of racialized people was pointed out as fundamental. Consequently, it is clear that urgent attention must be given to the external control of police activity, whose selective and punitive actions are closely linked to structural racism.

In 2021, the DPU held the cycle of *webinars “20 years of the Durban Declaration”*<sup>79</sup>, organized by ENADPU and the UN. The title refers to the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, which was a milestone of global justice at the international level, since the UN recognized slavery and the transatlantic slave trade as crimes against humanity. It also highlighted the importance of countries that benefited from black slavery, recognizing the cultural, economic and scientific

---

<sup>79</sup> ONU Brasil; DPU; ENADPU. Declaração de Durban e o discurso de ódio: desafios jurídicos. Aired on: September 28, 2021. Available at: <https://www.youtube.com/watch?v=9y5jLU6tLFY>

contributions of African descendants and acknowledging the persistence of racial discrimination even today.

In this space, the GTPE-DPU stressed that the recognition of the crime against humanity is still a special agenda to be fulfilled, even 20 years after the Durban Conference. Given the current situation in Brazil, it is a priority to reflect deeply on the need to decolonize the legal field in what is most intangible, due to the historical institutional encapsulation, especially in beliefs and ideologies focused on maintaining the privileges of the white population, as well as in its dynamics of theorization that prohibits the participation of various social segments in the composition of their decisions. Thus, it is imperative to face racial hatred as a symptom of the structuring factor of our social relations: racism. It is necessary to revisit the Durban agenda not only in the commitments it explicitly prescribes, but also in those that are no longer expressly contemplated or that were less densely expressed.

To summarize, the historical-cultural reparation of the peoples of the African diaspora deals with this commitment assumed by the Brazilian State both internationally and internally. The GTPE-DPU, in turn, has reinforced, in the performance of its activities, the commitment of the Federal Public Defenders' Office to social and racial justice, to guarantee effectiveness to the human rights contemplated by the Brazilian legal system and by international regulations, to combat racism and all forms of discrimination.

### **5.4.3. Conclusions and recommendations**

In view of the above and considering that it is the role of the State to develop actions to raise the awareness of the Brazilian population about the urgent fight against racism, as well as to promote social and racial equality through public policies in various areas of action (health, education, work, security, access to housing and adequate nutrition), an institutional commitment on the subject at

the legislative, executive and judicial levels is recommended, in order to make possible the necessary and efficient measures to confront racial discrimination.

In addition, the Working Group on Ethnoracial Policies (GTPE-DPU) concludes that the Brazilian State needs to pay special attention to its various mechanisms of action towards its own discriminatory practices, so that the current circumstances do not result in an international condemnation based on the verification not only of a repeated inefficiency or omission of federal management, but mainly of a legitimization of anti-democratic conduct promoted by the government authorities themselves.



Lavina Design

**ASISTENCIA Y DERECHOS  
DE LAS PERSONAS  
MIGRANTES Y DE LAS  
VÍCTIMAS DE LA TRATA  
DE PERSONAS EN BRASIL**



## **5.5. VICTIMS OF HUMAN TRAFFICKING**

### **5.5.1. Contextualization of the theme**

#### **5.5.1.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)**

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations regarding the fight against trafficking and exploitation of persons and assistance to victims:

124. Continue its efforts to combat contemporary forms of slavery, including trafficking and exploitation of persons, and provide support and protection to victims, paying particular attention to more vulnerable groups (Nicaragua);
125. Adopt regulations to operationalize constitutional amendments related to slave labour (Uganda);
126. Pursue efforts aimed at the prohibition of all forms of slavery by strengthening the resources of the National Commission for the Elimination of Slavery (Senegal);
127. Develop a national strategy to tackle modern slavery, including ratification of the 2014 ILO protocol to the Forced Labour Convention, and increased efforts to protect rural workers and women at risk of trafficking (United Kingdom of Great Britain and Northern Ireland);
128. Effectively implement the anti-trafficking law and provide resources and training for government officials (United States of America);
129. Preserve its positive record on combating trafficking and modern slavery by fully implementing activities envisaged in its second National Plan to Fight Human Trafficking (Azerbaijan);
130. Continue policies to combat trafficking, and promote assistance to victims (Lebanon);
131. Continue fighting against slave labour, in particular in the textile sector (Peru);
132. Further continue the combating of slave and child labour in the country (Ethiopia);

#### **5.5.1.2. Human trafficking: a global phenomenon**

Greater access to consumer goods, information, means of transport and provision of services and the possibilities of capital accumulation within a globalized world economy have fostered human mobility in the last century. People, in most cases, emigrate in the perception of an improvement in the living



conditions and dignified subsistence for themselves and their families. Thus, considering the migratory obstacles imposed by the most developed countries, with a resurgence in border control, there are now criminal organizations that, by economically exploiting this dream of a dignified life, especially in those citizens from poor countries, establish international human trafficking networks.

Between 2007 and 2010, 55,000 people were trafficked worldwide, 76% of whom were women and girls, according to the United Nations Office on Drugs and Crime (UNODC).

The 2020 UNODC Global Report on Trafficking in Persons<sup>80</sup> points out that female victims remain the primary targets. Nearly half of the victims identified globally were adult women and 20% were girls, while about 20% were adult men, and 15% were boys.

In the last 15 years, the number of victims has increased, and their profile has changed. The proportion of adult women fell from more than 70 percent to less than half. In relation to children, the increase was from about 10% to more than 30%, especially girls.

In that period, the proportion of adult men nearly doubled, from about 10% to 20%. Overall, half of the detected victims were trafficked for sexual exploitation, 38% for forced labour and 6% engaged in forced criminal activities.

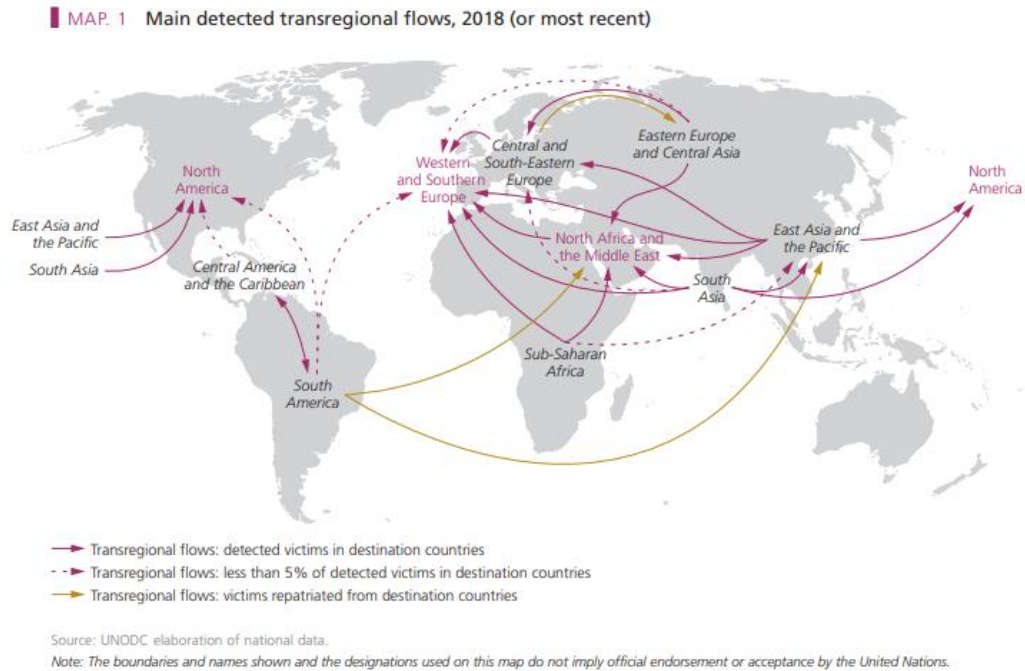
Regarding the profile of traffickers, the majority of those who were taken to court and convicted of the crime are male (about 64%).

Regarding migratory flows, Brazil maintains its profile as a country of origin, transit, and destination of victims of human trafficking. With Brazil as the country of origin, the destination of the victims are countries in Central Europe and North America. As a destination country, the detected victims came from

---

<sup>80</sup>UNODC. GLOBAL REPORT ON TRAFFICKING IN PERSONS. 2020. Available at: [https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP\\_2020\\_15jan\\_web.pdf](https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf). Accessed on 11/11/2021.

Central and South America, as well as Asia and North Africa and the Middle East, as can be seen from the following image:



In Brazil, the modalities with the highest incidence are trafficking for the purpose of sexual exploitation, work in conditions analogous to slavery and illegal adoption.

The UNODC Report points out that the internet is one of the means to connect victims, traffickers and “customers”, with true cyber-workflows for both sexual exploitation and organ trafficking.

In the Federal Public Defenders' Office, 87 Legal Assistance Procedures related to the theme were registered in the years 2018-2020, as follows:

Possible Victims identified by the DPU							
Year	Internal Traffic			International Traffic			Total
	Woman	Man	Children and adolescents (Below 18 years old)	Woman	Man	Children and adolescents (Below 18 years old)	
2018	9	6	0	1	0	0	16
2019	15	30	2	3	0	0	50
2020	10	11	0	0	0	0	21
<b>Total</b>	<b>34</b>	<b>47</b>	<b>2</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>87</b>

Source: DPU

There was a higher prevalence of victims of internal trafficking, mainly for the purpose of labour exploitation. Regarding the number of victims of domestic and international trafficking, 54% are men and 43.6% women, which differs, to some extent, from the national trend.

On August 27, 2021, the Parliamentary Observatory of the Universal Periodic Review organized a public hearing<sup>81</sup>, which aimed to analyse 9 recommendations made to the country on this topic.

At the event, the advances made in recent decades were outlined, more specifically one of the recommendations to effectively implement the law against trafficking and provide resources and training for government officials. On the other hand, the other recommendations were considered as unfulfilled or in regression.

The lack of Centres for Combating Trafficking in Persons and State Committees for Combating Trafficking in Persons in some states of the Federation were noted, for instance.

The participants pointed out that, although this theme has its own peculiarities, it is necessary to bring it closer to the theme of slave labour. This is

<sup>81</sup> Available at: <https://www.camara.leg.br/evento-legislativo/62557>. Accessed on 01/02/2022.

because the two themes are treated as contemporary forms of slavery, as evidenced by recommendation no. 124.

The hearing had several contributions,<sup>82</sup> such as that of the Regional Attorney's Office, which pointed out the importance of everyone in combating human trafficking, not limited just to the performance of combat agencies, but involving authorities and agencies that are at border locations, such as the Internal Revenue Service and the Federal Police.

Another concern regarding Brazilian public policies concerns the naturalization of the sexual division of labour, as a consequence of the oppression of the patriarchal social structure, which makes it difficult to visualize abusive and exploitative labour relations when women are victims, since the tendency is to consider them as a “typical” activity of women, such as domestic chores and the care of children and adolescents.

Therefore, it is likely that some situations of work analogous to that of a slave in activities involving, for example, domestic workers will not be considered.

### **5.5.2. The Palermo Protocol and its integration into Brazilian law**

Brazil is a signatory to the Palermo Protocol, considered the most important global instrument for making human trafficking visible and combating it. In this perspective, the Brazilian State has already incorporated into its internal legislation rules for the prevention, repression of crime associated with trafficking and protection of the human rights of victims.

Trafficking in persons is defined in the Palermo Protocol as “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of

---

<sup>82</sup>Available at: < <https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/noticias/observatorio-parlamentar-da-rpu-examina-enfrentamento-ao-trabalho-escravo-e-ao- trafico-de-pessoas> > Acesso em 02 de fevereiro de 2022.

the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” Exploitation should include at least the exploitation of prostitution or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or organ harvesting.

The Brazilian Law on Combating Trafficking in Persons (Law n. 13,344/16) establishes mechanisms for preventing, repressing, welcoming and protecting the human rights of victims, in addition to cooperation between the Government and civil society, with the purpose of combating cases of human exploitation.

One of the most important innovations was the adequacy of the typical figure of article 149 of the Penal Code to the terms of the Palermo Protocol. In fact, as of 2016, the typical conduct of the crime, provided for in article 149 of the Penal Code, were expanded and specified.

Thus, the crime of trafficking in persons presupposes the agency, solicitation, recruitment, transport, transfer, purchase, lodging, or reception of a person, through serious threat, violence, coercion, fraud or abuse, with the purpose of: I – removing organs, tissues, or parts of the body; II – subjecting them to work in conditions analogous to that of slavery; III – subjecting them to any type of servitude; IV – illegal adoption; or V – sexual exploitation.

Regarding the axes of prevention and protection, the Law imposed that national actions and policy must observe the principles of transversality of the dimensions of gender, sexual orientation, ethnic or social origin, origin, race, and age group in public policies and non-discrimination for whatever reason. It also establishes the possibility of preventing human trafficking through integrated measures in health, education, work, public security, justice, tourism, social assistance.

Certainly, the increase in punishment for the crime of human trafficking has expanded the powers of police authorities to request data and registration information on victims or suspects, from any government agency or from private companies.

Without a doubt, Law no. 13,344/16 represented a significant advance in the definition of the actions and initiatives that make up the national policy to combat human trafficking in Brazil and outlined in three axes of action: prevention, protection and repression. From this perspective, it is up to the organs of the justice and security system and civil society to ensure compliance with the legislation, at a time when Brazil is placing itself alongside the most advanced in the international movement against trafficking in persons.

### **5.5.3. The Federal Public Defenders' Office's Mission: preventing human trafficking and guaranteeing the rights of victims in the context of COVID-19**

The Working Group for the Assistance and Protection of Human Trafficking Victims was created with the objective of ensuring effective protection for victims, especially those in vulnerable groups, subjected to this serious form of human rights violation. In fact, the mission of the national group is to encourage and promote actions to prevent human trafficking and provide shelter for victims, guaranteeing them effective access to justice and integration into a support network and material shelter.

By the way, in the bias of attention and reception to the victim, there is still much to be achieved, especially from the dialogue between the various bodies and entities involved with the theme. In this context, the Federal Public Defenders' Office plays a unique role, as an institution present in all state capitals with the institutional mission umbilically directed to the promotion and awareness of human rights and the legal and multidisciplinary protection of vulnerable groups and minorities, where victims of human trafficking are located.

The work developed by the WG seeks to ensure the commitment assumed by the Brazilian State in the domestic and international fields, with a special focus on the three fundamental axes of confrontation: prevention, repression and assistance to victims.

In this sense, the articulation between the various public agents involved with the issue proves to be essential for effective confrontation, both for the field diagnosis, and for the identification of victims and the effective implementation of actions aimed at training agents and protecting victims.

The Federal Public Defenders' Office's National Group for Assistance to Victims of Trafficking in Persons emphasizes the importance of strengthening mechanisms, initiatives, and projects to prevent and combat trafficking in persons in the country, especially in the context of the Covid-19 pandemic.

It is essential that society and the Government debate and seek, in a communion of purposes, alternatives for the socioeconomic integration of thousands of families that have had their capacity for subsistence drastically reduced in recent months as a result of the pandemic. In particular, women and children who lost not only regular access to education but also their source of shelter and nutrition, resulting in greater vulnerability to begging, contracting SARS-Covid2 and being co-opted by criminal networks.

It is worth remembering that the closure of country borders, the prioritization of social isolation measures and the concentration of public efforts in combating the Covid-19 pandemic provided a reduction in the incidence of actions and initiatives to prevent, repress and welcome victims of human trafficking in Brazil.

In addition, the restrictions on the entry of immigrants into the country, in the context of the Covid-19 pandemic, associated with the prohibition of access to the institution of asylum and the possibility of summary deportation, created a worrying scenario by hitting vulnerable populations entering by land more



severely. In addition to violating minimum international standards of human rights protection, such measures have increased the vulnerability of migrants and refugees and the risks of enticement for human trafficking networks.

Likewise, the increase in domestic violence statistics shows a worrying indicator that victims may be at greater risk of violence and vulnerability, especially those subjected to sexual exploitation and forced domestic labour.

Undocumented migrants and seasonal workers face more precarious working conditions, which may reduce their ability to resist labour exploitation.

#### **a) Violations of the rights of children institutionally rescued**

The working group carries out activities to prevent and monitor possible victims of human trafficking. In recent years, we observed situations that, contrary to the provisions of the Statute of the Child and Adolescent, violated the maximum period for completion of the qualification for adoption (120 days), extendable for an equal period, by reasoned decision of the judicial authority. It can be seen that there have been several violations by the judiciary of this legal deadline without due grounds, a fact which directly affects institutionally rescued children.

Still, after the completion of the qualification processes, it became known that it took up to 3 (three) months for inclusion in the National Adoption System. This situation runs counter to the human rights of children who are received institutionally.

Regarding the National Adoption System, there was a failure of the system due to the significant number of unregistered children, even when there were interested applicants, either by delay in manual links, or by the maintenance of children who should no longer be included in the system. Again, the delay in the registration of children deprives them of the right to a family. This fact was questioned to the manager of the National Adoption System through administrative process no. 08179.000143/2021-24. However, we have not received a satisfactory response.

Thus, although the DPU campaigns in favour of legal and safe adoption, legal adoption is still discouraged by the lack of transparency and agility in the process.

Many families choose to do “surrogacy”, *in vitro* fertilization, the so-called “Brazilian adoption”, or even adopt children from other countries, given the difficulty of adopting legally in Brazil. This difficulty is not only found in the adoption of babies, but also in the adoption of a group of siblings and in the adoption of older children. It takes more than 5 (five) years on average in the latter case.

Still, it is important to consider that the excess of time for completion of the processes of removal of family power constitutes a violation of the rights of these children. To illustrate, on November 13, 2021, 7,954 children waited in processes of removal from family power for more than two years. Of these, at least 908 are apt to be immediately adopted if registered in the system as eligible.

Not infrequently, groups involved in human trafficking use this non-compliance with the governing legislation to propose alternative and illicit ways for adoption, which has an immediate relationship with human trafficking and the risk of exploitation of children and adolescents.

#### **b) Monitoring human rights of migrants and refugees in the state of Roraima (RR)**

From 22 to 26 March 2021, the Federal Public Defenders' Office conducted a fact-finding mission in the municipalities of Boa Vista and Pacaraima (State of Roraima) to assess the situation of protection, migratory regularization and shelter offered to Venezuelan migrants during the Covid-19 pandemic caused by the dissemination of the new coronavirus (Sars-CoV-2).

On 11 March 2020 the WHO – World Health Organization – declared a pandemic of COVID-19 arising from the dissemination of the new coronavirus (Sars-CoV-2). In light of this scenario, the Federal Government, since March 2020,

has issued several successive joint ministerial ordinances, with the objective of restricting the entry of non-nationals into Brazilian territory as an alleged preventive measure against the spread of the virus causing COVID-19.

In Ordinance no. 120, of March 18, 2020, the first to be published in the Official Gazette, the sanction for non-compliance, resulting from entry under conditions other than those determined, was provided for as “the immediate deportation of the offending agent and the disqualification of the refugee application,” which was maintained in subsequent texts.

Despite the fact that the Brazilian State has recognized “the situation of vulnerability resulting from the migratory flow to the State of Roraima, caused by the humanitarian crisis in the Bolivarian Republic of Venezuela” and has declared “the need for humanitarian reception in the national territory of these people from the Bolivarian Republic of Venezuela” (art. 1 of Decree 9,285/2018), the ordinances were especially strict regarding the entry of migrants into Brazil by land, and revealed a clear discriminatory character for the treatment of non-Brazilians from Venezuela. This has dramatically affected the legal situation of migrants in situations of economic need and other forms of vulnerability.

It should be stressed that Venezuelan migrants continued to enter Brazilian territory through existing footpaths for border crossing (known as “trochas”), outside the migratory entry control of the Federal Police of Pacaraima, which resulted in a large number of undocumented migrants in the state of Roraima.

The mission detected a state of widespread violation of human rights, the occurrence of which is largely due to the Brazilian migration policy. According to reports, around 90% (ninety percent) of the migrants housed at the Bus Station in Boa Vista, the capital of the state of Roraima, are from Venezuela and entered Brazilian territory after the entry restriction ordinances came into force. As a result, they were undocumented and unable to regularize their status or apply for refugee status. The undocumented situation is present in all reports of human rights

violations, as it implies a feeling of precariousness and temporariness and establishes a system of fear.

It was detected that there were cases of migrants housed in the bus station who were victims of human trafficking and forced labour, and who do not report it for fear of being deported, as they are undocumented. It was not possible to gather detailed information about these facts or to identify the victims, as the information was provided by a third party. At this point, it is important to note the mission's concern about the weakening of public policies in the area. This is a dangerous scenario because it encourages parallel management flows, eventually inciting human trafficking networks or criminal organizations.

Despite the advances of Law 13,445/2017 (Brazilian Migration Law), the constant risk of deportation and the sense of not belonging produced by the ordinances hindered access to rights, reinforced stigmas, caused general suffering and spelled out the category of undesirable immigrant – the above-mentioned environment of risk of deportation that significantly damages the living conditions and health, both physical and mental, of thousands of people.

This context of invisibility, together with the lack of effective channels for denouncing and demanding rights, not only violates minimum standards of international protection, but also reveals a contradictory behaviour by the Brazilian State. In 2018, the State declared “*the need for humanitarian reception of people coming from the Bolivarian Republic of Venezuela in the national territory*” and “*recognized the situation of vulnerability arising from the migratory flow to the State of Roraima caused by the humanitarian crisis in Venezuela*”. This resulted in the creation of the Logistical-Humanitarian Task Force Operation Acolhida.

### **c) Monitoring of indicators of the III National Plan to Combat Trafficking in Persons of the Ministry of Justice and Public Security**

The Federal Public Defenders' Office is part of the Joint Ministerial Monitoring and Evaluation Group of the III National Plan to Combat Trafficking

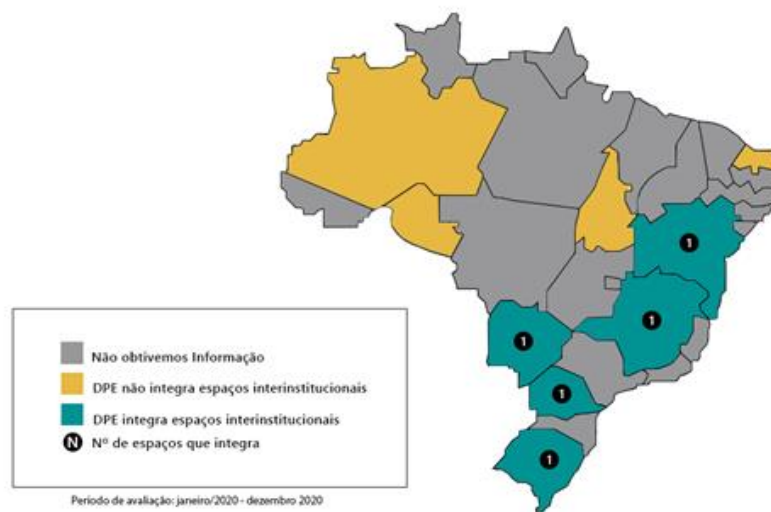
in Persons (Decreets No. 9,440/2018 and 9,796/2019), being directly responsible for goal 4.5: “to support the integration of agents of the Federal Public Defenders' Office, the States and the Federal District in joint-institutional spaces for debate and reception of victims of human trafficking.”

In 2021, on the occasion of the 2nd monitoring cycle of the III Plan, period from January to December 2020, the participation of the State Public Defender's Offices was determined in 05 (five) joint-institutional spaces for debate and reception of people victimized by human trafficking; while the participation of the Federal Public Defenders' Office reached a total of 28 joint-institutional spaces, distributed as follows:

### 2º Ciclo de Monitoramento do III Plano Nacional de Enfrentamento ao Tráfico de Pessoas

Integração da DEFENSORIAS PÚBLICAS ESTADUAIS em espaços interinstitucionais de acolhimento a vítimas de tráfico de pessoas

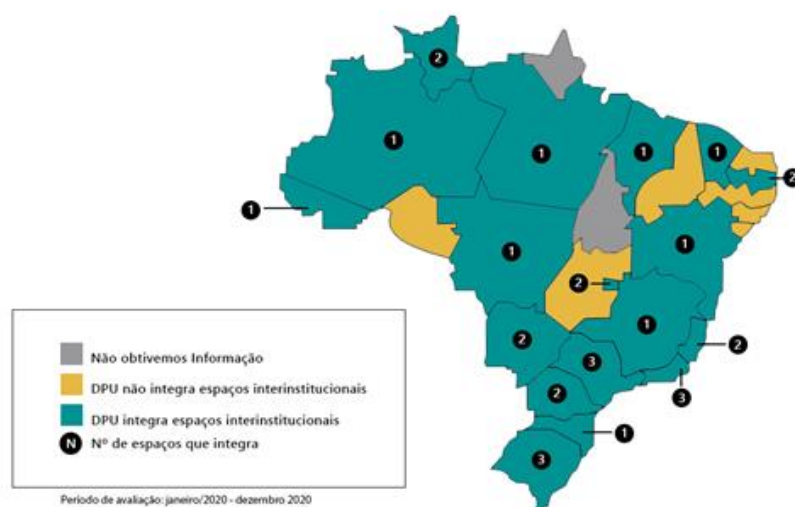
Indicador 4.5.b



## 2º Ciclo de Monitoramento do III Plano Nacional de Enfrentamento ao Tráfico de Pessoas

Integração da DEFENSORIA PÚBLICA DA UNIÃO em espaços interinstitucionais de acolhimento a vítimas de tráfico de pessoas

Indicador 4.5.a



As noted, it is essential to expand the participation of the Public Defender's Office in decision-making spaces and formulation of public policies to combat human trafficking in Brazil.

### d) Prevention of revictimization in judicial proceedings and regulation by the National Council of Justice

The Working Group for the Assistance and Protection of Human Trafficking Victims, by request and in partnership with the Regional Human Rights Defender in Mato Grosso, initiated negotiations with the National Council of Justice to assess the need to create a resolution or procedure so that the testimony of victims of human trafficking and/or slave labour can occur in order to avoid revictimization.

The proposal is in line with the National Pact for Protected Testimony, a development of Law no. 13,431/2017, which aims to establish testimony procedures so that children and adolescents who are victims or witnesses of violence are not compelled to maintain visual and/or face-to-face contact with perpetrators.

#### 5.5.4. Conclusion and recommendations

In the context of the data analysed, the action of the Brazilian State is urgent, especially of its bodies in charge of public policies and assistance to migrants, with a view to implementing the objectives of the III National Plan to Combat Trafficking in Persons.

In recent years, the DPU has intensified its participation in the national network for Combating Trafficking in Persons, having actively participated in the I, II and III National Plans; trained and encouraged the participation of Public Defenders in mobile inspection groups in the fight against slave labour, in partnership with the Ministry of Labour and Employment; strengthened the institutional Working Group, all with a view to playing its role as a national institution responsible for the promotion of human rights and the protection of specific groups and social minorities that need special protection from the Brazilian State.

The 2020 UNODC Global Report on Trafficking in Persons points to the need to strengthen national policies to combat human trafficking, focusing on the following points: a) creation of specialized national agencies to combat trafficking in persons with a multidisciplinary team; b) strengthen the integrity of the supply chain in public procurement and procurement, so that the private initiative collaborates with the prevention of human trafficking – eventually, the adoption of economic sanctions to repress companies that make use of human exploitation practices associated with human trafficking; c) act in cyberspace especially in existing online markets and networks, collecting digital documents in accordance with human rights, forensic evidence, in addition to developing countermeasures for the repression of human trafficking on the internet; d) address the causes of vulnerabilities to human trafficking; e) focus on crime prevention as a fundamental pillar of strategies to combat human trafficking; f) ensure that victims are not punished for acts they commit as a result of trafficking, h) strengthen the implementation of the protection measures included in the United



Nations Protocol on Trafficking in Persons; i) promote the development of anti-trafficking policies based on sound research and data and j) protect victims' access to justice and offenders' punishment.

From the perspective of the Working Group for the Assistance and Protection of Human Trafficking Victim, the following challenges and objectives can be listed for the prevention and tackling of human trafficking in the country:

- Strengthen the integration between the various public and private actors in the prevention of cases of human trafficking, especially internal trafficking for sexual exploitation of women and children.
- Expand inter-institutional action in the Midwest and North region with a focus on the prevention and repression of human trafficking for the purpose of sexual exploitation of children and women.
- Strengthen joint-institution cooperation mechanisms for the prevention of trafficking in persons.
- Expand policies to reduce social inequalities, providing real and effective conditions of material subsistence for victims in their places of origin. Eventually, it would be necessary to prioritize regions with the highest influx of victims and promote awareness-raising measures, in addition to basic infrastructure projects, access to education, health, and the labour market.
- Expand the participation of Public Defenders in the qualified forums for discussion, decision, and formulation of public policies, especially in the Regional Committees Against Trafficking in Persons

- Encourage the resumption of meetings and projects in the National and State Committees to Combat Trafficking in Persons.
- Expand investments in training of agents and employees of the justice and police system.
- Expand the reach of actions and projects for the prevention of human trafficking, including support from the private sector and UN agencies.
- Establish dialogue with the governmental spheres for the promotion of transversal, structural and intercultural policies that guarantee access to employment for potential victims of trafficking in people to enable minimum material conditions for the exercise of other fundamental rights.

In this context, the Federal Public Defenders' Office reaffirms its commitment to combat human trafficking and, above all, to promote actions and initiatives for the prevention, identification and humane reception of victims, with a view to contributing to a more just, egalitarian society that prioritizes the human rights of all.



## **5.6. FIGHT AGAINST SLAVE LABOUR AND ASSISTANCE TO RESCUED WORKERS**

### **5.6.1. Contextualization of the theme**

#### **5.6.1.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)**

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations regarding the fight against slave labour and assistance to workers rescued from slavery:

124. Continue its efforts to combat contemporary forms of slavery, including trafficking and exploitation of persons, and provide support and protection to victims, paying particular attention to more vulnerable groups (Nicaragua);
125. Adopt regulations to operationalize constitutional amendments related to slave labour (Uganda);
126. Pursue efforts aimed at the prohibition of all forms of slavery by strengthening the resources of the National Commission for the Elimination of Slavery (Senegal);
127. Develop a national strategy to tackle modern slavery, including ratification of the 2014 ILO protocol to the Forced Labour Convention, and increased efforts to protect rural workers and women at risk of trafficking (United Kingdom of Great Britain and Northern Ireland);
129. Preserve its positive record on combating trafficking and modern slavery by fully implementing activities envisaged in its second National Plan to Fight Human Trafficking (Azerbaijan);
131. Continue fighting against slave labour, in particular in the textile sector (Peru);
132. Further continue the combating of slave and child labour in the country (Ethiopia);

### 5.6.1.2. Tackling slave labour in Brazil

In Brazil, slave labour is not only a labour issue, but also a criminal issue, since the employer or agent who (i) submits an employee to forced labour or (ii) to exhaustive working hours, (iii) subjecting them to degrading working conditions or (iv) restricting, by any means, their locomotion, due to contracted debt, can (and should) be punished with imprisonment for two to eight years, and a fine, as provided for in article 149 of the Penal Code.

On the concept of forced labour, José Cláudio Monteiro de Brito Filho<sup>83</sup> presents the following understanding:

The characteristic touchstone of the concept, then, is freedom. When the worker cannot decide, spontaneously, for the acceptance of work, or at any time, in relation to his permanence in work, there is forced labour.

Thus, the 'and' that unites the two hypotheses should not be considered an additive conjunction. Forced labour will be characterized both when labour is demanded against the will of the labourer, during its execution, and when it is imposed from its very beginning. Labour initially consented to, but later revealed to be forced, is common in this form of overexploitation of labour in Brazil and can only be considered as forced.

According to Rogério Greco, slave labour is not only “working forcibly, but also imposing on a worker an exhausting working day, that is, one that culminates in completely exhausting his strength, undermining his physical and mental health”.<sup>84</sup>

Again, José Cláudio Monteiro de Brito Filho conceptualizes work in degrading conditions as that:

(...) in which there is a lack of minimum guarantees of health and safety, in addition to the lack of minimum working conditions, housing, hygiene, respect, and food. Everything must be guaranteed – this must be clarified, although it seems clear –

---

<sup>83</sup> BRITO FILHO, José Cláudio Monteiro de. Trabalho com redução do homem a condição análoga à de escravo e dignidade da pessoa humana. Revista do Ministério Público do Trabalho na Paraíba/Procuradoria Regional do Trabalho–13ª Região, João Pessoa, 1ª ed., p. 141-154, junho de 2006.

<sup>84</sup> GRECO, Rogério. Curso de Direito Penal: parte especial, volume II: introdução à teoria geral da parte especial: crimes contra a pessoa. – 14. ed. Niterói, RJ: Impetus, 2017, p. 492.

together; that is, on the contrary, the lack of one of these elements requires the recognition of work in degrading conditions.<sup>85</sup>

In order to eradicate slave labour, serfdom and other forced labour, the International Labour Organization has issued several conventions, notably no. 29, adopted at the 14th Session of the General Conference of the International Labour Organization. In this Convention, specifically in its article 1, all members have undertaken to act for the abolition of forced or compulsory labour, in all existing forms, as soon as possible.<sup>86</sup>

In the same vein, the Universal Declaration of Human Rights determined in its Article 4 that “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” As for slave labour, it provided, precisely, in its article 23, that “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.”<sup>87</sup>

In Brazil, the Special Mobile Inspection Group (GEFM) was created in 1995 in order to combat the enslavement of workers in Brazil. The GEFM is directly linked to the Labour Inspection Secretariat of the Ministry of Labour and Employment and, although it has already rescued more than 56,000 workers, its structure is still not sufficient to eradicate the problem.

In 2021, the groups focused on Labour Inspection rescued 1,959 workers in conditions analogous to slavery. The state with the greatest number of recorded cases, according to data taken from the fiscal operations, was Minas

---

<sup>85</sup> BRITO FILHO, José Cláudio Monteiro de. Trabalho com redução do homem a condição análoga à de escravo e dignidade da pessoa humana. Revista do Ministério Público do Trabalho na Paraíba/Procuradoria Regional do Trabalho–13ª Região, João Pessoa, 1ª ed., p. 141-154, junho de 2006.

<sup>86</sup> 14ª Sessão da Conferência Geral da Organização Internacional do Trabalho. Convenção n.º 29. Geneva, June 28, 1930.

<sup>87</sup>UN General Assembly. "Declaração Universal dos Direitos Humanos" (217 [III] A). Paris, December 10, 1948.



Gerais<sup>88</sup>. In all, 501 establishments were inspected, and the value of severance pay received by workers totalled R\$ 10,575,503.30.

Until November 2022, a total of 1,565 workers were found in conditions analogous to slavery by inspection activities, with 243 establishments inspected and approximately R\$ 3,812,667.18 in severance pay received by rescued workers<sup>89</sup>.

It must be taken into account that most of the time, workers are required to relocate from their residences to an unfamiliar location. This is a reality that leaves the worker vulnerable and exposed to risky situations. The existing double vulnerability, both economic and geographical, represents not only the vicious circle experienced by foreign workers but also by nationals.<sup>90</sup>

On August 27, 2021, the UPR Parliamentary Observatory held a public hearing whose theme was human trafficking<sup>91</sup>.

One of the main topics of discussion on that topic was the Brazilian State's lack of persistence in its efforts to eradicate slave labour, including its refusal to ratify the 2014 Protocol to ILO Convention No. 29 and the dearth of sufficient labour inspection teams.

The Ministry of Women, Family and Human Rights listed some challenges that need to be overcome in this theme and presented some actions that contribute to the eradication of slave labour, such as the mapping of criminal and civil sentences related to work analogous to slavery; the report of the II National Plan for the Eradication of Slave Labour; and the payment of compensation to workers rescued from Fazenda Brasil Verde, among others.

Another action that gained prominence was the work of the Special Mobile Inspection Group, coordinated by the tax audit of the work in partnership

---

<sup>88</sup> Painel de Informações e Estatísticas da Inspeção do Trabalho no Brasil. Available at: <https://sit.trabalho.gov.br/radar/>. Accessed on: November 13, 2022.

<sup>89</sup> Painel de Informações e Estatísticas da Inspeção do Trabalho no Brasil. Available at: <https://sit.trabalho.gov.br/radar/>. Accessed on: November 13, 2022.

<sup>90</sup> Manual de Combate ao Trabalho em Condições análogas às de escravo. Brasília: MTE, 2011.

<sup>91</sup> Available at: < <https://www.camara.leg.br/evento-legislativo/62557> >. Accessed on 02/02/2022.



with the Federal Public Defenders' Office, the Public Ministry of Labour and the Federal, Federal Highway and Military Police of the States.

### **5.6.2. The Brazilian State and measures to combat slave labour**

Since 2021, the Brazilian State, through the Ministry of Labour, recreated that year, denied funds resulting from labour conduct adjustment terms, which were used to equip government inspection groups. Likewise, it determined that such values and assets were destined to the Fund for the Defence of Diffuse Rights or the Worker's Support Fund.

Due to a significant reliance on state management and supervisory in Brazil for pre-specified goods, services, and works in Conditions of Conduct Adjustment signed by the Labour Prosecution Service, this move made it impossible for the labour inspectors to take action.<sup>92</sup>

It should be noted that during the pandemic, the budget to combat slave labour decreased. Budget constraints prevented field teams from carrying out inspections in order to rescue workers in conditions analogous to slavery in the country.

It is worth noting that in 2022 there was a decrease in the number of inspected establishments and rescued workers, a factor that is directly related to the reduction of material and personnel conditions for the organization of inspection actions.

To face this trend, the Brazilian State needs to increase the amount directed to the sector and create public policies to combat slavery, thus enforcing the fundamental precepts provided for in the Federal Constitution and which must be guaranteed to workers.

---

<sup>92</sup>Available at: <https://www1.folha.uol.com.br/mercado/2021/11/governo-bolsonaro-desvia-verba-para-fundos-e-esvazia-fiscalizacao-trabalhista.shtml>. Accessed on: November 9, 2021.

In 2021, we saw with concern the enactment of Provisional Measure no. 1,045/2021, whose objective was to institute the “New Emergency Programme for the Maintenance of Employment and Income”. However, that Provisional Measure brought several changes that were harmful to workers regarding working hours, overtime, accumulation of benefits, among others, in evident defiance of constitutional norms. Fortunately, on 1.9.2021, the Plenary of the Federal Senate rejected PM 1,045/2021 in its entirety.

### **5.6.3. Extrajudicial and judicial measures adopted by the Federal Public Defenders' Office and other human rights defence institutions**

The Federal Public Defender's Office prepared Technical Note No. 2/2021 for the Federal Senate with technical-legal considerations regarding the report of Provisional Measure No. 1,045/2021, which was approved by the Chamber of Deputies, and the impacts on actions to combat slave labour. The suggested revisions would contravene Brazil's adherence to international agreements and constitutional principles, thus the Note was provided as a technical aid to legislative discussions. In defence of the fundamental rights of rescued workers in a situation analogous to slavery, the Federal Senate rejected the proposal.

Similarly, the Federal Public Defenders' Office prepared Technical Note No. 3/2021 to assist the Federal Supreme Court in resolving the controversial issue raised in the General Repercussion in Extraordinary Appeal No. 1,323.708/PA. The issue under debate refers to the “constitutionality of differentiating the work conditions necessary for the typification of work as degrading, due to the local reality in which it is performed, as well as the evidential *standard* for conviction of the crime of reducing the worker to a condition analogous to that of a slave”.

In January 2021, a mega-operation to combat slave labour was carried out in several Brazilian states simultaneously. The Federal Public Defenders'

Office, the Labour Prosecution Service, the Labour Tax Audit, the Federal Police, the Federal Highway Police, and the Federal Prosecution Service participated in the Operation.

The Undersecretariat for Labour Inspection in partnership with the United Nations High Commissioner for Refugees, the International Labour Organization and the International Organization for Migration has launched the campaign “Protect the Work”. On May 12, 2021, the booklet “Am I being victimized by slave labour?” was published in order to guarantee workers basic information about their fundamental rights.<sup>93</sup>

On 27.8.2021, the public hearing took place with the theme “Observatory of the Universal Periodic Review – Slave Labour and Human Trafficking”. Recommendations include: continuing efforts to combat contemporary forms of slavery by providing support and protection to victims; adopting regulations to operationalize constitutional amendments related to slave labour; developing a national strategy to address modern slavery, including ratification of the ILO's 2014 Protocol to the Forced Labour Convention; and others.

Thirteen employers were included, 7 individuals and 6 legal entities, in the Employers' Register, the so-called “Dirty List of Slave Labour”. After publication, the name of each employer will remain for a period of two years, as provided in art. 3 of MTPs/MMIRDH Joint-Ministerial Ordinance No. 4/2016.

The National Commission for the Eradication of Slave Labour, linked to the Ministry of Women, Family and Human Rights, in partnership with the State Commissions for the Eradication of Slave Labour, the Municipal Commission for Slave Labour of São Paulo/SP, the International Labour Organization in Brazil, as well as numerous public entities and civil society organizations created the National Workflow of Service to victims of slave labour, which was published

---

<sup>93</sup>Available at: <https://www.gov.br/trabalho-e-previdencia/pt-br/assuntos/proteja/arquivos/cartilha-trabalho-escravo-2.pdf> . Accessed on: October 24, 2021.

from Ordinance no. 3,484/2021. The aforementioned flow includes the role of the Federal Public Defenders' Office as responsible for legal assistance to victims rescued from a situation of slavery.

This National Workflow is structured in three stages of action, namely: from denunciation to planning, rescue and post-rescue of workers. The main objective is to promote specialized and systematic care for victims of slave labour through the integrated and organized action of its protection network.

Finally, the Federal Public Defenders' Office participated in the largest rescue of workers subjected to conditions analogous to slavery in Brazil in 2021. In all, 116 workers were rescued in the Água Fria region, located in the municipality of Planaltina de Goiás. The operation started on 13.10.2021, but only ended on 20.10.2021. The Souza Paiol Company compensated workers in approximately R\$ 900,000.00.<sup>94</sup>

In 2022, the DPU constituted the Specialized Group for Assistance to Workers Rescued from Slavery (GETRAE), composed of Federal Public Defenders responsible for ensuring individualized and efficient care in defence of rescued victims. In addition, the DPU formally joined the National Workflow of Assistance to Victims of Slave Labour.

#### **5.6.4. Conclusions and recommendations**

Slave labour is still a reality that must be overcome in Brazil. To this end, the Working Group on Assistance to Workers Rescued from Slavery of the Federal Public Defenders' Office considers that guaranteeing the fundamental rights of these workers should be a priority. Thus, the recommendations are:

- Adoption of more persuasive public policies, such as television advertisements, in order to facilitate access to

---

<sup>94</sup>Available at: <https://reporterbrasil.org.br/2021/10/em-maior-resgate-do-ano-souza-paiol-e-responsabilizada-por-manter-116-trabalhadores-escravizados-na-colheita-de-palha-para-seus-cigarros/>. Accessed on: November 10, 2021.

information for all workers in the country so that they know their rights and know how to report.

- Expansion of channels for reporting slave labour.
- Increasing the budget for the Special Mobile Inspection Group (GEFM) which was created with the purpose of tackling the enslavement of labour in Brazil.
- Recommendation to the Federal Government to hold civil-service entrance examinations for the position of labour auditor.
- Recommendation to allocate more public funds to the Labour Inspection Secretariat.





## 5.7. GENDER IDENTITY AND LGBTI+ CIVIC AWARENESS

### 5.7.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations on combating discrimination and ensuring the rights of the LGBTI+ population:

39. Take necessary measures to address homophobic and transphobic crime, including by establishing a system for recording such crimes (Sweden);

40. Take urgent measures to adopt legislation sanctioning discrimination and incitement to violence on the grounds of sexual orientation, and investigate and sanction cases of violence against lesbian, gay, bisexual, transgender, intersex and queer persons (Argentina);

41; Continue advancing the promotion of laws and initiatives that ban discrimination and incitement to violence on the grounds of sexual orientation and gender identity, in particular in the case of young persons and adolescents (Chile);

42. Redouble the capacity-building efforts for all the security forces, aiming at avoiding practices of racial bias, or, directed, among others, against vulnerable minorities such as lesbian, gay, bisexual, transgender and intersex persons (Colombia);

43. Continue taking measures to develop legislation and policies at federal, state and municipal level to punish and prevent hate crimes and discrimination against the lesbian, gay, bisexual, transgender and intersex population (Finland);

44. Approve a specific law, in line with its international human rights obligations, that prohibits discrimination and incitement to violence based on sexual orientation and gender identity (Honduras);



45. Follow measures taken at the national level to ensure that municipalities in Brazil develop specific policies to guarantee rights of lesbian, gay, bisexual, transgender and intersex people (Israel);

47. Strengthen policies related to the fight against discrimination against indigenous and Afro-Brazilian children and others in vulnerable situations from an integral and intersectoral perspective (Chile);

66. Take measures to improve the situation of underreporting of cases of violence and discrimination against lesbian, gay, bisexual, transgender and intersex people, and develop policies to punish and prevent those actions (Israel);

67. Ensure that all hate crimes against lesbian, gay, bisexual, transgender and intersex persons are thoroughly investigated and prosecuted and seek to reduce hate by integrating human rights education into school curricula (Canada);

90. Ensure conditions at detention centres comply with international and Brazilian law and that particular attention is given to conditions faced by vulnerable prisoners including pregnant women, children, and lesbian, gay, bisexual, transgender and intersex persons; and provide human rights training to officials in the legal and judicial system (Ireland);

196. Ensure the effective implementation of measures to prevent, punish and eradicate all forms of violence and discrimination against women and lesbian, gay, bisexual, transgender and intersex persons (Mexico).

### 5.7.1.2. The situation of the rights of the LGBTI+ population in Brazil, the fight against discrimination and homo-transphobic violence

The UPR Observatory, through the Commission on Human Rights and Minorities, held a public hearing on July 18, 2021 that analysed 9 of the 12 recommendations on the subject<sup>95</sup>.

For the participants of the event, although there are some systems such as the Notifiable Diseases Information System — SINAN, of the Ministry of Health, and the Violence and Accidents Surveillance System — VIVA, which serve the LGBTI+ population, there is still an insufficiency of official statistics that address the different violations of the rights of this population<sup>96</sup>.

The debate demonstrated that some notification tools on violence such as Dial 100 and Call 180 have been expanded to *WhatsApp*, video calls, *Telegram*, and the app Human Rights Brazil, to facilitate access and speed of information, but this is still not enough.

Regarding public security, there is a need to raise awareness among state agents aimed at working with the LGBTQIA+ population, as well as the creation of mechanisms to combat impunity and underreporting.

Additionally, the significance of accurate data for the development of effective public policies and the inclusion of lessons on inclusive sex education and tolerance of diversity in the school curriculum as a critical element of the treatment of the theme in education for general awareness were emphasized.

The event recalled the importance of diversity in society, stressing that the LGBTI population is essential in the social structure. They stressed that, even within the LGBTI community, there are different groups that demand different needs, and that the State must pay attention to this.

---

<sup>95</sup> Available at: < <https://www.camara.leg.br/evento-legislativo/61703> > Acesso em 04.02.2022.

<sup>96</sup> Available at: < <https://escriba.camara.leg.br/escriba-servicosweb/html/61703> > Acesso em 04.02.2022.

Another aspect mentioned by event participants concerns several locations on the national territory where there is a greater lack of information. Such as in the Amazon, where a lack of dialogue and social and legal constraints create barriers to LGBTI people's access to health and safety. As a result, location should be considered as a factor that reveals the various needs of the population.

Lastly, the participants were unanimous in emphasizing the importance of each public entity's role in providing services that welcome the LGBTI population, particularly those aimed at public safety, given the alarming rates of violence against these people.

Notwithstanding the importance of the discussions, the fact is that the country is still stagnant with regard to policies to prevent and combat discrimination and homo-transphobic violence. From a series of layers of exclusion with reference to the so-called standard of normality, several people inserted in the acronym LGBTI+ find themselves in routines of social avoidance and vulnerabilities, having as a starting point their experiences, ways, and customs.

It is also important to note that this community does not present itself as a uniform block to which its sexual orientations and gender identities condition them to unique resolutions and referrals; in this regard, it is necessary to highlight varied developments that, in the face of the insurgencies that comprise this community – identity, socio-political, and economic – bring multiple overlaps in the biases of gender, race, class, age group, disability, class, territoriality.

Thinking about the importance of a state that is present to deal with the responsibilities that come with proposing a federative entity that combats cases of LGBTphobia is to advance and feedback a humanitarian purpose in which it is urgent to recognize elements that constitute individual rights, as well as attributes that allow people to register their repudiations, diagnose, and face LGBTphobic positions.

Intersectionalities only make the scenario even more vulnerable in a kind of interconnected system of oppression<sup>97</sup>, in which the same bodies that suffer from a certain stigma, in an interconnected way, suffer other prejudices that also marginalize them.

The pandemic brought not only a global health crisis, but also opened the curtains to other evidence of invisibility and lack of access to justice in groups of disempowered majorities. Some key areas had a resurgence in important social issues that did not obtain answers from the entities for better proposition and evaluation of adequate public policies. Thinking about what actions should be taken by the State to curb LGBTphobic violence is a path that should be welcomed precisely for the greater promotion of social welfare to this group.

A key factor in this context was the prohibition of blood donation by homosexual men established as a norm by the National Health Surveillance Agency – ANVISA to the LGBTI+ public, according to Ordinance no. 158/2016, of the Ministry of Health and Resolution of the ANVISA Collegiate Board (RDC) no. 34/2014. After much struggle for social movements, the Federal Supreme Court declared the unconstitutionality of the rules, considering that such a policy violates equality and constitutes discriminatory treatment. The DPU was *amicus curiae* in the trial, in defence of the LGTBI+ population.

Of equal importance – and in line with the recommendations of the Universal Periodic Review – was the equivalence, effected by the Federal Supreme Court, of homophobia and transphobia to the crime of racism, according to article 20, of Law No. 7,716/1989. In the Direct Action of Unconstitutionality by Omission (ADO) no. 26, the Federal Supreme Court declared the delay of the National Congress in the regulation of constitutional matters and defined that, until the law comes into force, the practice of transphobia and homophobia will suffer the legal punishment provided for the crime of racism.

---

<sup>97</sup>See book 'Intersseccionalidade'. Editora Feminismos Plurais. Coordination: Djamila Ribeiro

On the other hand, regarding the recommendations on differential prison treatment, it should be noted that, according to data from Infopen (National Survey of Penitentiary Information, prepared by the Ministry of Justice) the Brazilian prison population is the third largest in the world.

In the Action for Noncompliance with Fundamental Precept 347, the Federal Supreme Court recognized an unconstitutional state of affairs in the Brazilian prison system. Despite this, there is no specific prison policy for the LGBTI+ population, which entails a series of human rights violations in the prison environment, a space of proliferation of violence and exclusion of this social group.

### **5.7.1.3. Conclusion and recommendations**

From all of the above, it can be seen that the main advances in combating violence against the LGBTI+ population in Brazil resulted from judicial decisions issued by the country's highest court. While celebrating such progress, it should be remembered that these decisions resulted from omissions and violations of human rights in the Legislative and Executive Branches. In the first case, there was an unjustifiable delay in the legal regulation of punishments for transphobic and homophobic behaviour; in the second case, there was hateful discrimination against the LGBTI+ population due to rules of the Ministry of Health and ANVISA.

Thus, the Brazilian State's measures for the adoption of legislation sanctioning discrimination and violence based on sexual orientation or gender identity are still below what was expected when the recommendations were accepted. In addition, there are no records of the formulation of public policies in the penitentiary system with specific cutouts to the LGBTI+ population, although

the Federal Public Defenders' Office has already issued guidance in this regard to the National Council of Criminal and Penitentiary Policies<sup>98</sup>.

As recommendations to the Brazilian State, therefore, it is indispensable to approve specific laws to combat transphobia and homophobia, as well as the adoption of public policies within the scope of the three federative entities (Federal Government, States, and Municipalities) for the proper registration of acts of violence, the reception of victims, and education in rights as a prevention of violence.

Under the penitentiary system, the National Council for Criminal and Penitentiary Policies must develop and implement specific national policies to ensure specific conditions for the LGBTI+ population in detention centres, respect for gender identity and sexual orientation, and ascertainment of mistreatment and violence committed.

---

<sup>98</sup>Available at: <https://www.dpu.def.br/noticias-institucional/69497-dpu-pede-alteracao-em-relatorio-de-inspecao-penitenciaria-sobre-pessoas-lgbtqia>. Accessed on: November 13,2022.





258287

A ANEL  
B BULE  
C CENOURA  
D DENTISTA



## 5.8. WOMEN AND GENDER PARITY POLICIES

### 5.8.1. Contextualization of the theme

#### 5.8.1.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations on the theme of combating gender violence and promoting equality policies:

46. Strengthen measures to prevent and punish racism, discrimination and violence against indigenous peoples and people of African descent and violence against women and girls (Rwanda);
49. Continue taking active measures aimed at eradicating discrimination against Afro-Brazilian women based on their gender and ethnicity (Namibia);
90. Ensure conditions at detention centres comply with international and Brazilian law and that particular attention is given to conditions faced by vulnerable prisoners including pregnant women, children, and lesbian, gay, bisexual, transgender and intersex persons; and provide human rights training to officials in the legal and judicial system (Ireland);
93. Take necessary measures to increase the number of gynaecologists in the Brazilian prison system (Sweden);
94. Incorporate the Bangkok Rules into public policies to protect female inmates and adopt bill 5654/2016 that prohibits the use of handcuffs before, during and after childbirth on women deprived of liberty (Denmark);
95. Improve prison conditions, particularly addressing overcrowding and violence, including in prisons for women (Australia);

96. Improve facilities dedicated to pregnancy and maternity in prisons, in line with the Bangkok Rules (Thailand);

97. Strengthen prison reform efforts to protect female prisoners from sexual abuse and violence (Bahamas);

119. Take further efforts in combating violence against women such as enhancing the trust in the judicial system, measures to prevent violence, and promoting services and networks for women in rural areas (Spain);

127. Develop a national strategy to tackle modern slavery, including ratification of the 2014 ILO protocol to the Forced Labour Convention, and increased efforts to protect rural workers and women at risk of trafficking (United Kingdom of Great Britain and Northern Ireland);

140. Continue measures to combat poverty and social inequality by implementing rural development plans covering vulnerable groups, in particular rural women (Sri Lanka);

150. Strengthen policies to eliminate inequalities in access to employment related to gender and racial origins (Colombia);

154. Continue reinforcing the policy on effective and qualitative access to health services for vulnerable populations, especially women of African descent who still remain the group with the highest mortality (Colombia);

156. Widen health care to vulnerable groups, in particular women of minority groups (Republic of Korea);

157. Ensure continued effectiveness of strategies to combat HIV-AIDS, particularly among youth and other specifically affected groups (Bahamas);

158. Ensure access to reproductive health care, including high-quality prenatal care, and information on sexual and reproductive

health, contraception and emergency contraception, and safe abortion to all women without discrimination (Switzerland);

159. Ensure universal access to comprehensive sexual and reproductive health services, without discrimination and in accordance with the commitments made, among others, in the Montevideo Consensus (Uruguay);

160. Continue the commitments made in terms of access to the voluntary termination of pregnancy in order to ensure full respect for sexual and reproductive rights (France);

161. Continue expanding access to voluntary termination of pregnancy in order to ensure the full recognition of sexual and reproductive rights (Iceland);

162. Continue expanding access to voluntary termination of pregnancy in order to ensure the full recognition of sexual and reproductive rights (Iceland);

176. Continue to implement new policies and expand the coverage and scope of existing ones, to better promote gender equality, in particular for women in the countryside and low-income families (Singapore);

177. Adopt a law to protect vulnerable women, particularly low-income housewives (United Arab Emirates);

178. Continue the efforts to implement the “Women Living without Violence” programme launched in 2013 (Russian Federation);

179. Promote efforts to combat violence against women and ensure women's rights (Sudan);

180. Continue efforts to combat violence, particularly against women (Tunisia);

181. Take measures to stop violence that has cost the lives of more than five thousand women, and caused more than 500,000 rapes in the last year (Bolivarian Republic of Venezuela);

182. Strengthen efforts to reduce gender inequalities including to prevent death resulting from violence against women, and to encourage increased reporting of cases of rape (Bahamas);

183. Extend the “Women Living without Violence” programme, with particular attention to women and girls living in the countryside and to women and girls of Afro-Brazilian descent (Belgium);

184. Continue its efforts to combat violence against women and girls (Egypt);

185. Combat domestic violence and high maternal mortality rates suffered by women, in compliance with the Convention on the Elimination of All Forms of Discrimination against Women (Estonia);

186. Strengthen measures to eliminate violence and discrimination against women and girls, particularly in rural and remote areas (Islamic Republic of Iran);

187. Take measures to combat violence against women and children (Iraq);

188. Continue to adopt and implement effective measures to fight violence against women (Italy);

189. Strengthen its capacity-building programmes for judges and legal personnel on women’s rights and violence against women (Thailand);

191. Further strengthen mechanisms fostering prosecution of all perpetrators of sexual and gender-based violence (Slovakia);

192. Take measures to reduce the number of cases of violence against women and bring the perpetrators to justice (Togo);
193. Follow up on the infrastructure of safe houses for abused women and make sure the legal framework is widely implemented and reaches women's reality (Austria);
194. Increase its focus on policy implementation to combat family violence, and in particular violence against women and children (Australia);
195. Strengthen policies and programmes to address violence against women and combat child prostitution (Indonesia);
196. Ensure the effective implementation of measures to prevent, punish and eradicate all forms of violence and discrimination against women and lesbian, gay, bisexual, transgender and intersex persons (Mexico);
197. Further promote the participation of women in politics and government (Timor-Leste);
198. Put effective measures in place in order to increase the number of women at all levels of the decision-making process (Belgium);
214. Continue its efforts on further strengthening the rights of women, children and persons with disabilities (Mongolia);
216. Continue its efforts to increase the level of employment of persons with disabilities in the open labour market and take specific measures for women with disabilities (State of Palestine);

#### **5.8.1.2. Menstrual poverty, inequality, and gender violence in Brazil**

As a result of the global pandemic of COVID-19, women in Brazil – and there is no way we can report on this group without an objective criterion that demarcates black and impoverished women – were affected and co-opted by a

system of violence in which gender inequalities evidence a lack of access to decent income and work. The data point to striking inequalities in the division of domestic work and reproduction of life; in the occurrences of domestic and intrafamily violence and, finally, in the threats to sexual and reproductive rights.

Thus, talking about women in the past few years entails paying attention to a group in which crises, be them political, sanitary, economic or humanitarian, either structurally or contextually, whether they are part of conjunctures or ontological fragments of a history, have usually been part of the presumed and easily ascertainable routine of a population that is hand in hand with vulnerability.

It is impossible to ignore a structural and recurring movement that the pandemic revealed: the homes that at first lavished a supposed welcome and the possibility of a safe space, began to contain secrets of coexistence that sometimes overflow violence and intra-family dissent of the most varied orders, prolonging the effects of constraints on the humanity of many women, anonymous or not.

Women experienced new levels of precariousness as a result of the pandemic, proving the neglect of entities in the face of such significant struggles; as an institutional response, Brazilian women were removed from the agendas and demands of the constituted governments.

According to a report by the Organization for Economic Cooperation and Development (OECD) (2020), women are more vulnerable to any crisis that leads to loss or reduction of income. Women earn less, have less access to social security benefits, are overrepresented in the informal labour market, are the majority among single-parent families, and their poverty rates are higher<sup>99</sup>.

It is critical to note that gender disparities, as well as those of race, regionality, income, territory, and, lastly, education, are typically to blame for placing impoverished women at the heart of the various social representations most affected by the pandemic.

---

<sup>99</sup>Available at: <http://cee.fiocruz.br/?q=node/1339>. Accessed on 17/03/2022.

In the face of governmental apathy in finding practical and sanitary approaches to deal with this additional intersectionality of vulnerabilities, social concerns such as menstruation poverty have gained mainstream visibility.

The term menstrual poverty means lack of access or resources to purchase hygiene products – pads or menstrual cups – that are of utmost importance for the maintenance and performance of common activities attributed to women, girls, and trans men. Nevertheless, it is important to make it clear that the people most affected are those in prison, or in situations of homelessness or extreme poverty.

According to a study by the United Nations Population Fund (UNFPA) and the United Nations Children's Fund (UNICEF), menstrual problems are the main health-related reason for dropping out of school<sup>100</sup>. In Brazil, despite it being a human right, women who are among the poorest 5% need to work up to 4 (four) years to pay for the sanitary pads they will use throughout their lives<sup>101</sup>.

According to a 2018 survey, 22% of girls aged 12 to 14 in Brazil do not have access to adequate hygienic products during their menstrual period<sup>102</sup>. The situation worsens among adolescents aged 15 to 17 years, rising to 26%. Those are adolescents who stop attending classes and are deprived of social interaction because of the undignified exposure to which they are subjected. According to the 2017-2018 Household Budgets Survey, almost 8.7 million girls reside in a consumer unit where tampon purchases have been reported<sup>103</sup>.

It is estimated that, in Brazil, at least 22.5 million women of childbearing age enrolled in CadÚnico, have difficulties, in different nuances, to have access to the menstrual pads, whose monthly cost, in pharmacies, varies

---

<sup>100</sup>UNFPA/UNICEF. *Pobreza Menstrual no Brasil: desigualdades e violações de direitos*. p. 21.

<sup>101</sup>Available at: <https://livreparamenstruar.org/#oproblema>. Accessed on 19/03/2022.

<sup>102</sup>Available at: <https://outraspalavras.net/outrasmidias/pobreza-menstrual-problema-tabu/#:~:text=A%20ONU%20estima%20que%20uma%20em%20cada%20dez,entre%20as%20adolescentes%20de%2015%20a%2017%20anos.>

<sup>103</sup>UNFPA/UNICEF. *Pobreza Menstrual no Brasil: desigualdades e violações de direitos*. p. 10.



between R\$ 0.30 and 0.70 per unit<sup>104</sup>. Under normal conditions, monthly, the expense with sanitary pad is between R\$ 6.00 and R\$ 15.00.

According to the “Free to Menstruate” Report, it is estimated that a woman spends between R\$ 3,000 and R\$ 8,000 throughout her menstrual life on pads<sup>105</sup>. This is a disproportionately large sum for a large portion of the Brazilian population living in poverty or extreme poverty, and it is completely unattainable for the homeless population.

In this sense, crossing data on the female prison population, 62% are black women and these same women are three times more likely not to have access to a bathroom or shower at home for adequate intimate hygiene<sup>106</sup>. Art. 12 of the Criminal Enforcement Code states that every individual in jail has the right to health and hygiene; nevertheless, the Brazilian State fails to supply essential items to women, leaving the purchase of such products to their families. The lack of these products leads many people to resort to breadcrumbs and other inappropriate means that pose risks to their health, as also demonstrated by the justification graft of Bill 1,666/2021:

In the absence of sanitary pads, women, and girls in particular, make use of breadcrumbs, old clothes, strips of floor cleaning cloths, toilet paper, newspapers – or even nothing at all. For lack of pads, they do not attend school, cannot work outside, and are excluded from social activities.

The blatant precariousness of prison facilities reveals a total disregard for everyone. However, when the proper social spotlight is placed on the gender perspective, the basic needs of women become even more evident, especially in the face of the massive lack of public policies directed at this public.

---

<sup>104</sup>Available at: <https://drauziovarella.uol.com.br/mulher-2/menstruacao/pobreza-menstrual-1-em-4-adolescentes-nao-tem-acesso-a-absorventes/>.

<sup>105</sup>Available at: <https://livreparamenstruar.org/#oproblema>. Accessed on 19/03/2022.

<sup>106</sup>Available at: <https://carceraria.org.br/mulher-encarcerada/brasil-e-o-4o-pais-que-mais-prende-mulheres-62-delas-sao-negras>. Accessed on 19/03/2022.

Bill no. 4,968/2019, which would ensure the free supply of female sanitary napkins in public schools that offer final years of elementary and high school, had been vetoed by the Presidency of the Republic, completely injuring the dignity of women and girls in social vulnerability. However, the National Congress overturned the veto, ensuring the implementation of the program of free distribution of sanitary pads to all students in public elementary and high schools, through monthly quotas.

Also, at the beginning of this year, however, Bill 1,666/2021 was presented. Its goal is to guarantee women of reproductive age enrolled in CadÚnico, the Unified Register of Social Programs, women in homeless situations and women in custody in prison facilities free access to sanitary pads. The new law establishes the Menstrual Health Protection and Promotion Programme; and amends Law no. 11,346, of September 15, 2006.

According to article 4 of Bill 1,666/2021:

**Art. 4 For the purposes of the provisions of this Law and its supply to the target population through the Popular Pharmacy Programme, sanitary pads are considered to be health-related products, akin to medicines, which are essential for women of reproductive age to use, and whose use or application is crucial for the preservation and protection of individual health and personal hygiene.**

Ensuring access to menstrual pads/collectors and hygiene materials is a critical step towards integrating girls, women, and transgender men into society, as well as reducing social inequality. Ultimately, this measure promotes the well-being of all individuals without any prejudice based on their origin, race, sex, colour, age, or any other form of discrimination.

Another gender issue that deserves special attention during this pandemic is domestic violence. As in a web predisposed to tangled implications,

the escalation of domestic violence in this new global context of COVID-19 contagion highlights the complexity of the social issue. Gradually, the premise that private spaces are safe is being exposed. The pandemic calamity highlights this issue, as 36% of cases of violence were reported to have worsened due to social distancing measures, as noted by the Ministry of Women, Family, and Human Rights in April 2020<sup>107</sup>.

The data shows that domestic violence has only worsened during the pandemic, with services such as the “Call 180” hotline receiving increased numbers of reports – and this is not even accounting for the significant underreporting that occurs with this type of violence.

Conflicts and tension are starting to turn into daily episodes of physical, psychological, sexual and moral violence, among others. No less important is the loss of the possibility of reporting these abusive relationships, considering that the imposition of social distancing isolates potential victims from their supportive network (friends, neighbours, colleagues, etc.) that could help break this cycle of violence.

Furthermore, in addition to the setbacks already mentioned arising from the practice of social confinement that exposes women to abusive relationships, there is a concealment of agendas and resources that greatly hinder the progress of policies aimed at providing services and care for victims – which creates severe setbacks in a history of fragile advances.

Finally, another factor of great concern and pointed out by the United Nations Population Fund (UNFPA) is the estimate that 47 million women may lose regular access to contraceptives, which would easily result in 7 million unwanted pregnancies in the coming months – such numbers could result in an increase in

---

<sup>107</sup>Available at: <https://macaibanoar.com.br/ligue-180-registra-aumento-de-36-em-casos-de-violencia-contra-mulher/>. Accessed on 19/03/2022.

the number of illegal abortions and consequently in preventable maternal deaths in Brazil<sup>108</sup>.

Faced with this scenario, the Federal Public Defenders' Office acted directly, structurally, to confront situations of gender violence and discrimination against women. In 2021, the DPU joined the *HeForShe* movement, and is now part of a global movement to engage men and boys in removing the social and cultural barriers that prevent women from developing their full potentials.

Also, through the National Working Group on Women, the DPU presented a Technical Note about a booklet from the Ministry of Health that presented technically inadequate information that led to poor information about the right to safe termination of pregnancy<sup>109</sup>. The Working Group also opposed the mandatory preliminary hearing of Law no. 11,340/2006, a customary practice in the Brazilian Judiciary that requires a ratification of the denunciation of gender violence before the judicial authority<sup>110</sup>.

We also developed materials and organized events aimed at educating people on their rights, fighting against violence, and empowering women. For example, the *webinar* on empowerment and well-being in menopause<sup>111</sup> and the booklet on sexual and reproductive rights of women, available on the Federal Public Defenders' Office website<sup>112</sup>.

In addition, we also created brochures on family planning, humanized childbirth, and obstetric violence, with the goal of raising awareness among Brazilian society about women's fundamental rights during the pre- and post-pregnancy period. Finally, of no less importance, it is worth mentioning the Non-

---

<sup>108</sup>Available at: <https://brazil.unfpa.org/pt-br/news/especialistas-debatem-sobre-o-impacto-da-covid-19-no-acesso-aos-m%C3%A9todos-contraceptivos>. Accessed on 19/03/2022.

<sup>109</sup>Available at: [https://www.dpu.def.br/images/2021/SEI\\_DPU\\_-\\_5273261\\_-\\_Nota\\_T%C3%A9cnica.pdf](https://www.dpu.def.br/images/2021/SEI_DPU_-_5273261_-_Nota_T%C3%A9cnica.pdf). Accessed on: November 13,2022.

<sup>110</sup>Available at: <https://promocaodedireitoshumanos.dpu.def.br/dpu-se-posiciona-contr-obrigatoriedade-de-audiencia-prevista-na-lei-maria-da-penha/>. Accessed on 13/11/2022.

<sup>111</sup>Available at: <https://promocaodedireitoshumanos.dpu.def.br/evento-on-line-debate-o-empoderamento-feminino-e-o-bem-estar-na-menopausa/>. Accessed on 13/11/2022.

<sup>112</sup> Available at: [https://promocaodedireitoshumanos.dpu.def.br/wp-content/uploads/2021/07/cartilha\\_defesa\\_direitos\\_sexuais\\_reprodutivos-2021.pdf](https://promocaodedireitoshumanos.dpu.def.br/wp-content/uploads/2021/07/cartilha_defesa_direitos_sexuais_reprodutivos-2021.pdf). Accessed on 13/11/2022.

Sexist Language Manual that, recognizing the power of language in society, based on Technical Note no. 4/2020, presented important linguistic references so that institutional communication does not reproduce discourses that reinforce structural sexism<sup>113</sup>.

## 5.8.2 Conclusions and recommendations

From the various topics addressed in this chapter, it becomes clear that menstrual poverty, inequality, and violence against women are still existing realities in Brazil that need to be overcome. These issues are currently perpetuating and exacerbating social inequalities and subjugation.

The reality of epidemics is nothing new to humanity, and it is clear that the current government is not solely responsible for addressing the unequal geopolitical challenges they present. However, it cannot be ignored that the effects of these challenges have been exacerbated by a lack of interest and competence on the part of those in power, particularly during this critical historical moment. The absence of public policies and, consequently, the concern of the State with this portion of the population is a key point so that from this gap, new referrals and perspectives are established.

To this end, the DPU's Working Group on Women considers that the search for guaranteeing the fundamental rights of these women should be a priority. Thus, the recommendations are:

- Adoption of more robust and applicable public policies that act in the recognition of women's economic, social, cultural and environmental rights
- Implementation of Law no. 14,214, of October 6, 2021, establishing the Menstrual Health Protection and Promotion

---

<sup>113</sup>Available at: <https://promocaodereitoshumanos.dpu.def.br/wp-content/uploads/2021/06/Manual-4044658.pdf>. Accessed on 13/11/2022.

Programme to ensure the free supply of female sanitary pads and other menstrual health care

- Expansion of reporting channels for violence
- Strengthening the budget of public policies to combat gender-based violence and assist women in situations of violence
- Strengthening women's participation in the power and decision spheres
- Recognize that the preliminary hearing, as provided for in Article 16 of Law no. 11,340/2006, is not mandatory and is only applicable in cases where there is a prior expression of renunciation of representation, as permitted by law





**DPU**  
DEFENSORIA PÚBLICA DA UNIÃO

**DEFENSORIA  
PÚBLICA**

[www.dpudf.br](http://www.dpudf.br)

B2



## 5.9. PERSONS DEPRIVED OF LIBERTY AND THE FIGHT AGAINST TORTURE

### 5.9.1. Contextualization of the theme

#### 5.9.1.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations regarding the prison system, the rights of persons deprived of liberty, and the fight against torture, institutional violence and other forms of cruel, inhuman or degrading treatment:

77. Address overcrowding, sanitation, violence, and medical and psychological care in prisons (South Africa);

78. Take measures to reduce over incarceration, notably by encouraging the use of alternative sentencing and by making sure that pre-trial hearings are widely used (Spain);

79. Address the problem of severely overcrowded prisons to eliminate inhumane conditions and take all measures to prevent torture (Turkey);

80. Adopt without delay urgent measures to stop torture, violence, killings and serious overcrowding and degrading conditions in the prisons in Brazil (Bolivarian Republic of Venezuela);

81. Working jointly with the Federal States to improve detention conditions in Brazilian prisons (Algeria);

82. Continue improving prison conditions and reducing overcrowding (Angola);

83. Ensure respect for and protection of human rights for all detainees including by guaranteeing detention conditions in compliance with domestic as well as international law and standards and by protecting against cruel and inhuman treatment (Austria);

84. Improve as quickly as possible the different aspects of prisoners' conditions (Cabo Verde);

90. Ensure conditions at detention centres comply with international and Brazilian law and that particular attention is given to conditions faced by vulnerable prisoners including pregnant women, children, and lesbian, gay, bisexual,

transgender and intersex persons; and provide human rights training to officials in the legal and judicial system (Ireland);

91. Enhance efforts to reform the prison system and to ensure the protection of the human rights of all detainees (Italy);

92. Take measures to improve conditions related to treatment of inmates within prisons, through increasing the capacity as already initiated by the Government and through measures for maintaining order within prisons (Japan);

93. Take necessary measures to increase the number of gynaecologists in the Brazilian prison system (Sweden);

94. Incorporate the Bangkok Rules into public policies to protect female inmates and adopt bill 5654/2016 that prohibits the use of handcuffs before, during and after childbirth on women deprived of liberty (Denmark);

95. Improve prison conditions, particularly addressing overcrowding and violence, including in prisons for women (Australia);

96. Improve facilities dedicated to pregnancy and maternity in prisons, in line with the Bangkok Rules (Thailand);

97. Strengthen prison reform efforts to protect female prisoners from sexual abuse and violence (Bahamas);

98. Step up efforts to abolish the practice of racial profiling and arbitrary arrest by the police and security forces (Indonesia);

105. Expand custody hearing programmes to cover all pre-trial detainees by passing draft bill 554/2011. Provide specific training according to the Istanbul Protocol to judges and public prosecutors working in custody hearings (Germany);

106. Ensure that legislation relating to the prison situation and criminal justice is in accordance with international human rights standards (Mexico);

107. Improve judicial processes to minimize the length of pre-trial detention and speed up trials, and consider alternatives to detention to address prison overcrowding (United States of America);

108. Plan and take concrete measures in the mid-term period with the objective of reducing pre-trial time for remand prisoners and reduce the overall number of prisoners awaiting trial rather than serving sentences (Slovenia).

### **5.9.1.2. The Unconstitutional State of Affairs in the Brazilian Prison System and the violation of the dignity of the population deprived of liberty. Failure to comply with UPR recommendations.**

The construction of the Brazilian criminal policy, as we know it, is the result of a process of criminalization based on racism, racial hygiene, and violence. In this context, the prison system was developed to function as a mechanism of social exclusion and segregation of those people undesirable to the current political and economic system.

The first prison in Brazil, the Correctional House of Rio de Janeiro, was founded in 1850, and its purpose was to guard not only people convicted of crimes, but also marginalized groups, such as people with mental disorders, “insubordinate” enslaved people, free Africans and “vagrants”, including prostitutes and enslaved women, who shared the same cells as men.

On this last point, it should be noted that the first female prison in Brazil was the Madre Pelletier Penitentiary, founded in 1937 in Porto Alegre. Prior to its classification as a penitentiary, the prison functioned as a kind of “Social Rehabilitation” establishment founded in 1835, for the custody of the criminally convicted, homeless and “misfit” populations, including women with mental disorders or who had in any way defied established social standards.

Currently, by observing the application of criminal policies, the profile of people in prison and the conditions of incarceration, it is possible to say that little has changed.

Contrary to the functions proposed, related to the idea of “re-socialization” and reduction of violence, the policy of incarceration is not able to contain the increase in crime, functioning as a bottleneck that feeds a cycle of violence that contributes to the maintenance of social inequalities existing since the Empire of Brazil.

It is important to highlight that the profile of incarcerated people consists largely of poor, black, young people with little access to education, who committed property crimes or crimes related to the Legislation on Drugs (Law no. 11,343/06), highlighting the fallibility of drug policy.

According to data from the Brazilian Yearbook of Public Security 2021, in 2020, 66.3% of Brazilian prisoners identified themselves as black and 48.6% were between 18 and 29 years old<sup>114</sup>, which requires reflection on the priorities and selectivity of existing criminal and prison policies, in addition to necessary intervention and development of specific public policies aimed at this group.

According to a survey conducted by the Brazilian Forum on Public Security for the CNJ, “it was found that judicial treatment is harder for black defendants, including what happens at the detention hearing.” In the aforementioned act, the racial filtering that occurs in police approaches is hardly reversed or annulled, being an objective fact that materializes the (harsher) situation that blacks face before criminal justice, while the situation for whites is more favourable<sup>115</sup>.

The legislative amendments, especially the Penal Execution Law of 1984 and the Federal Constitution of 1988, which brought the determination of a guarantee-based approach to the observance of the rights of people in prison in various forms, were not enough to overcome the punitivist vision that has dragged on for centuries and leads to a reality of overcrowding in prisons, unhealthiness, and torture.

In this context, we highlight the policies of intensification of criminal legislation, especially from the 1980s, which generated an exponential growth of

---

<sup>114</sup> FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. In: Anuário Brasileiro de Segurança Pública. FBSP, 2021. Available at: <https://forumseguranca.org.br/wp-content/uploads/2021/07/anuario-2021-completo-v6-bx.pdf>, Accessed on 21/11/2021.

<sup>115</sup> FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA (Brazil). Audiência de custódia, prisão provisória e medidas cautelares: obstáculos institucionais e ideológicos à efetivação da liberdade como regra. Brasília: CNJ, 2018. 304 p. (Justiça Pesquisa). Relatório analítico propositivo. Available at: <https://bibliotecadigital.cnj.jus.br/jspui/handle/123456789/281>. Last accessed on 21/11/2021.

the population in prison of more than 400%. According to the last INFOPEN, released in 2019, in less than twenty years (2000 to 2019), the prison population jumped from 232,755 to 755,274 people incarcerated.

In recognition of the unconstitutional state of affairs of the Brazilian prison system, in September 2015, the Federal Supreme Court concluded the first stage of the judgment of the Argument for Non-Compliance with Fundamental Precept No. 347, in which the highest Court of the country officially recognized the “situation of massive and persistent violation of fundamental rights, resulting from structural failures and public policy failures.”

The trial, which evidenced the prison issue as a systemic failure, was resumed in the virtual plenary of the Federal Supreme Court in May 2021. In a vote cast by Justice Marco Aurélio Mello, among other measures, the Federal Government was ordered to prepare within 90 days of the end of the judgment a three-year national plan to overcome the unconstitutional state of affairs. Due to a request for examination by Minister Roberto Barroso, the trial was again suspended until the present edition<sup>116</sup>. The Federal Public Defenders' Office appears as *an amicus curiae* in the case, advocating for the adoption of decarceration measures, such as the application of alternative penalties.

It should be noted that the serious condition of the situation of imprisonment, prevention and combating torture in the country was the subject of a report produced by experts from the United Nations Subcommittee on Prevention of Torture (SPT). After visits to several institutions of deprivation of liberty in Brazil, recommendations were made to the Brazilian State for the effective application of domestic legislation and compliance with minimum standards established by international protective instruments<sup>117</sup>.

---

<sup>116</sup> Informe: O sistema prisional brasileiro fora da Constituição – 5 anos depois Balanço e projeções a partir do julgamento da ADPF 347. p. 04. Available at: [https://www.cnj.jus.br/wp-content/uploads/2021/06/Relato%CC%81rio\\_ECI\\_1406.pdf](https://www.cnj.jus.br/wp-content/uploads/2021/06/Relato%CC%81rio_ECI_1406.pdf).

<sup>117</sup> <https://www.gov.br/mdh/pt-br/sdh/noticias/2017/marco/sdh-torna-publico-o-iii-relatorio-brasileiro-ao-mecanismo-de-revisao-periodica-universal-do-conselho-de-direitos-humanos-das-nacoes-unidas>

Moreover, regarding the recommendations made to the Brazilian State in the third cycle of the Universal Periodic Review (UPR) from 2017 to 2021 on the theme of “prison conditions, prevention, and fight against torture, and justice system”, it can be observed that the majority of them were **not** implemented. On the other hand, among those that were considered in the implementation process, however, the reality reveals that the progress is timid, and the results have a low impact on the current scenario.

This is the panorama that was evidenced in the preliminary report of the parliamentary observatory of the UPR, prepared by the Commission on Human Rights and Minorities to the Legislative Consultancy of the Chamber of Deputies within the framework of the partnership of the Legislative House with the Office of the United Nations High Commissioner for Human Rights<sup>118</sup>, as the objective of monitoring compliance with the recommendations regarding the Brazilian prison system and the fight against torture and other cruel, inhuman and degrading treatment or punishment, accepted by the Brazilian State before the international community.

The Preliminary Report identified that 18 (eighteen) of the recommendations made were not complied with, including the one made by Mexico, to ensure that the legislation on the situation of prisons and criminal justice complies with international human rights standards. It also pointed out setbacks in four recommendations, such as the one made by Algeria, to continue efforts to combat torture and ill-treatment<sup>119</sup>.

In turn, the document recognized advances in 13 (thirteen) recommendations, such as those aimed at improving judicial processes to

---

<sup>118</sup><https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/observatorio-parlamentar-da-revisao-periodica-universal-da-onu/avaliacao-por-temas>.

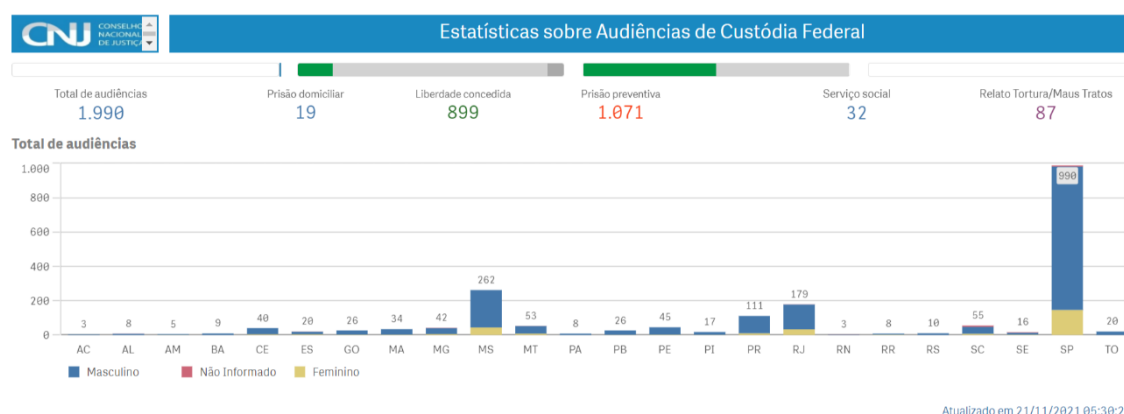
<sup>119</sup>Available at: <https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/noticias/observatorio-parlamentar-verifica-situacao-de-carceres-e-de-combate-a-tortura-no-brasil->. Last accessed on 21/11/2021.

minimize the duration of preventive detention and accelerate trials and considering alternatives to detention to face overcrowding.

However, the progress mentioned is not observed in the current reality in the country. Art. 316 of the Code of Criminal Procedure – CPP, introduced by Law no. 13,964, of 2019, which established the need for periodic review of preventive detention every 90 days and was identified as an important advance in the field by the report, is subject to intense judicial discretion, so that judges and courts remain not applying the provision and maintaining precautionary prisons that last for disproportionate and, consequently, illegal periods.

Likewise, custody hearings, established in article 310 of the CPP by Law no. 13,964 of 2019, which were also seen as an important advancement, have been practically suspended since the beginning of the pandemic and have not yet been resumed with the same frequency. In addition, remote performance has been widely questioned by civil society organizations and defence entities.

According to data available in the Detention Hearing System (SISTAC) of the CNJ, it can be observed that between January and November 2021, only 1,990 custody hearings were held within the scope of federal justice. Out of these, 1,071 preventive arrests were decreed, meaning that the number of preventive arrests decreed exceeded the number of releases granted. On the other hand, the very low rate of hearings held in the states of the federation is observed, and about 49% were performed in the State of São Paulo alone.





On the other hand, the arrests decreed without carrying out the hearings increase the hidden numbers of cases of torture and ill-treatment, in addition to making it difficult to identify potential beneficiaries of alternative measures to imprisonment, which remain unjustifiably segregated.

The slowness in holding the face-to-face detention hearing causes concern, since, even in cases where it has been held, it has usually been by videoconference, in total distortion of the institute.

It is also necessary to emphasize that the effective diagnosis of the prison situation of the Brazilian State is hindered by the lack of quantitative and qualitative data and information about the Brazilian prison system and criminal justice, a huge obstacle to the development of effective public policies to compliance with decarceration measures, prevention and combating torture, mistreatment, and all forms of institutional violence.

It is worth noting that the failures are not only in obtaining the data, but also in managing issues related to imprisonment and serving sentences. Sometimes, communication failures between different bodies and instances are identified, resulting in sentences being served for longer than what was established. These situations are serious and common, and there are no solutions to them in the horizon.

Recent Report of the National Council of Justice on balance sheet and projections from the judgment of ADPF 347, highlighted that:

(...) the great barriers to obtaining up-to-date and reliable data on the Brazilian prison system, creating obstacles to the elaboration of effective public policies – so that it is currently not possible to identify recurrence rates or cases of torture. Among the difficulties, we can list issues such as access to primary data (untraceable records, unstandardized reports, divergences in methodologies for completing instruments and analysis), irregular frequency of disclosure, inconsistencies in the comparison of data disclosed by different sources, limited use of

information technology for data processing and difficulties in feeding, maintaining, improving and integrating existing systems. (...)120.

The difficulty in obtaining and processing data and information is exacerbated by the incarceration of specific groups such as indigenous peoples and women. Respectively, the absence of adequate records on issues related to self-declaration and recognition of the indigenous person, and, in the case of women, the gestational situation and the existence of minor or disabled children and/or dependents lead to an inconsistency in the official data regarding the number of people belonging to such groups who are deprived of liberty, compromising their access to procedural rights and guarantees and, consequently, to incarcerating measures.

It should be noted that the Brazilian Prison System has been the subject of analysis by the Inter-American Court of Human Rights on several occasions. In all, 44 resolutions on provisional measures were issued in Brazil, 29 of which concern prisons and 15 about socio-educational hospitalizations.

The case of the Plácido de Sá Carvalho Criminal Institute (IPPSC) in Rio de Janeiro and the Curado Complex in Pernambuco stand out. In both cases, the Court issued resolutions recognizing overcrowding as the main cause of the worsening and deterioration of the prisoners' minimum health conditions. Therefore, since the situation would be incompatible with the minimum conditions for the treatment of prisoners, provided for in the internal law of the Brazilian State, the persons in custody would be facing a much greater judicial distress than that related only to deprivation of liberty<sup>121</sup>, thus consisting in illegal penalty.

---

120 Informe: O sistema prisional brasileiro fora da Constituição – 5 anos depois Balanço e projeções a partir do julgamento da ADPF 347. disponível em: [https://www.cnj.jus.br/wp-content/uploads/2021/06/Relato%CC%81rio\\_ECI\\_1406.pdf](https://www.cnj.jus.br/wp-content/uploads/2021/06/Relato%CC%81rio_ECI_1406.pdf)

121 RESOLUÇÃO DA CORTE INTERAMERICANA DE DIREITOS HUMANOS DE 28 DE NOVEMBRO DE 2018, available at: [https://www.corteidh.or.cr/docs/medidas/placido\\_se\\_03\\_por.pdf](https://www.corteidh.or.cr/docs/medidas/placido_se_03_por.pdf) and RESOLUÇÃO DA CORTE INTERAMERICANA DE DIREITOS HUMANOS DE 28 DE NOVEMBRO DE 2018, available at: [https://www.corteidh.or.cr/docs/medidas/curado\\_se\\_06\\_por.pdf](https://www.corteidh.or.cr/docs/medidas/curado_se_06_por.pdf).

At this point, it is worth remembering that the Covid-19 pandemic imposed restrictions that substantially compromised detention hearings, legal assistance, and visitation of family members to people in prison.

Considering the worrying scenario since 2020, 213 entities from all over the country have submitted to the UN (United Nations) and the OAS (Organization of American States) a complaint against the management of Covid-19 in Brazilian prisons.

Violations of international norms and recommendations were pointed out in at least six areas: lack of access to health, barriers to incarceration, incommunicability, problems in the registration of deaths, rebellions, and the use of precarious temporary structures for the shelter of imprisoned people. The entities requested that international organizations demand explanations from Brazil and recommend the adoption of emergency measures to contain a “catastrophe of alarming proportions”.

It should be noted that the provision of the assistance stipulated in the legislation and the monitoring of the prison system were seriously undermined in this period, making the prison population even more vulnerable, especially the minorities (women, the LGBTQI+ population, the indigenous population)<sup>122</sup> and their families.

In this context of over-incarceration and restrictive measures adopted due to the imposition of sanitary measures, it is important to highlight that prison minorities (women, LGBTIA+ population, elderly, foreigners, indigenous people, people with disabilities) are even more vulnerable, since prison policies are insufficient to meet their specificities.

It is worth mentioning that some especially vulnerable groups are targets of special attention by the Federal Public Defenders' Office. Some

---

122 Pastoral Carcerária. Relatório: A pandemia da tortura no cárcere - 2020. Available at: <https://cimi.org.br/wp-content/uploads/2021/01/Relato%CC%81rio-A-pandemia-da-tortura-no-ca%CC%81rcere-2020.pdf> Accessed on:

examples are women, migrants in prison, indigenous people arrested and prosecuted and people imprisoned in the Federal Penitentiary System. We will discuss those groups in more detail now.

## **5.9.2. Incarceration of specific groups**

### **5.9.2.1. Female incarceration**

Although women account for less than 5% of the population deprived of liberty in the country, the proportionally greater increase in this segment of the incarcerated population is of concern.

It is notorious how the incarceration of women, who are historically more in charge of the care work of dependent people (such as minor or disabled children, the elderly), directly affects these people. It is also notorious how the paradigm of incarceration is male, which leaves women much more unassisted in topics such as physical and mental health, motherhood, food, clothing.

Added to all these problems faced by women in incarceration is the risk of suffering sexual violence<sup>123</sup>, as recently reported.

On the other hand, with regard to the situation of pregnant women in prison and mothers or caregivers of children and people with disabilities, there has been an emergence of alternatives to incarceration.

In this context, the collective Habeas Corpus 143,641/SP, filed by the Federal Public Defenders' Office, in which the order was granted to determine the replacement of preventive detention by house arrest – without prejudice to the concomitant application of the alternative measures provided for in article 319 of the CPP – of all imprisoned women, pregnant women, women who have recently given birth, mothers and those responsible for children and people with disabilities, while such a condition persists, as well as adolescents subject to social and

---

123 <http://www.mpf.mp.br/regiao2/sala-de-imprensa/docs/gt-defesa-cidadania-nt14-violencia-sexual-1>

educational measures in an identical situation, except in cases of crimes committed by them through serious violence. In December 2018, the National Congress upheld the Federal Supreme Court's decision approving Law no. 13,769/18, which inserted article 318-A in the Code of Criminal Procedure (CPP).

However, there is still resistance on the part of the Judiciary to the application of alternative measures to the incarceration of women. Many judges and courts continue to order the pre-trial detention of pregnant women or mothers in cases where replacement would be appropriate on the grounds that they constitute very exceptional situations. Thus, judicial discretion regarding the replacement of the provisional detention of pregnant women and mothers or guardians for children or people with disabilities remains broad in Brazil.

Every day, cases of women who are held in preventive custody are reported in the media, and these women would clearly be the beneficiaries of the decarceration measures defined in the aforementioned precedents and norms. As an example, in October 2021, the case of a homeless woman in São Paulo, mother of five children – four under 12 years of age – whose preventive imprisonment was decreed and maintained by the Court of Appeals for theft of instant noodles, soft drinks and powdered drinks, was widely publicized<sup>124</sup>. A few days after this case, a mother of a five-year-old child was reported arrested for more than 100 days for water theft<sup>125</sup>.

Unfortunately, these are not isolated cases, a fact that is confirmed by those who act in defence of hypervulnerable groups and by the result of research carried out in this field.

On the other hand, house arrest limited to the hypotheses of precautionary segregation removes an important universe of families that could benefit from the expansion of the alternative.

---

<sup>124</sup>Available at: <https://www.istoedinheiro.com.br/stj-manda-soltar-mulher-presa-por-furtar-miojo-refrigerantes-e-refresco-em-po/>. Last accessed on 21/11/2021.

<sup>125</sup> Available at: <https://www.bbc.com/portuguese/brasil-59314206>. Last accessed on 21/11/2021.

Furthermore, we point out the strictness of the drug policy in the country, which also goes against the perspectives of several other countries that work towards the decriminalization of at least some substances. This scenario especially affects women, considering that almost 60% of incarcerated women are deprived of liberty on some drug-related charge, while for men this proportion is about 31%.

Regarding the performance of the Federal Public Defenders' Office on the issue of female incarceration in 2021, the articulation between the Migrant Prison Working Groups of the DPU/SP, the Working Group on Migration, Statelessness, and Asylum, and the ITTC - Instituto Terra, Trabalho e Cidadania is noteworthy for the preparation of a booklet aimed at migrant women in conflict with the law. Also noteworthy is the resumption, as a priority, of face-to-face consultation for migrant women deprived of their liberty, in the state of São Paulo in the second half of 2021.

### **5.9.2.2. Indigenous population**

With regard to the criminal and prison treatment reserved for indigenous persons in Brazil, in addition to the criminalization processes to which they are subjected, it is important to mention the repeated non-compliance by the judiciary and other actors of the criminal justice system of national and international laws that ensure the protection and guarantee of accused, defendant or convicted indigenous people in Brazil, namely: Convention no. 169 on Indigenous and Tribal Peoples of the International Labour Organization (ILO), the Bangkok Rules, the Statute of Indigenous Peoples (Law no. 6,001/1973).

Moreover, within the scope of the Judiciary Branch itself, it is frequent not to apply the practices and guidelines formulated by the CNJ itself within the framework of recent Resolution no. 287/2019, which establishes procedures for the treatment of indigenous people in the situation of accused, defendant,

convicted or deprived of liberty, including measures aimed at the extrication of this specific group of marked vulnerability.

The normative was elaborated through the joint articulation between the CNJ and various actors of the justice system, the Executive Branch and civil society, and the Federal Public Defenders' Office actively and effectively contributed to the elaboration process<sup>126</sup>.

It should be noted that the arrest of an indigenous person generates individual and collective consequences on the perspective of their culture and experience in their communities. For this reason, Resolution 287 and related legislation establish that imprisonment must be a very exceptional punitive response, taking into account the indigenous peoples' own forms of conflict resolution, giving preference, in any case, to alternatives to imprisonment<sup>127</sup>.

In this regard, CNJ Resolution no. 287/2019, among other provisions, establishes that the courts must ensure that information on indigenous identity and ethnicity, brought at any time in the process, is included in the computerized systems of the Judiciary and, in particular, in the minutes of the detention hearing, in accordance with article 7 of CNJ Resolution no. 213/2015.

It also establishes that the accountability of indigenous persons must consider the mechanisms of the indigenous community to which the accused person belongs, through prior consultation, and the judicial authority may adopt or approve conflict resolution and accountability practices in accordance with the customs and norms of the indigenous community itself, pursuant to article 57 of Law no. 6,001/73 (Statute of Indigenous Peoples).

It also determines the compatibility of alternative precautionary measures to imprisonment, as well as the regime of compliance with the

---

126 Available at: <https://www.cnj.jus.br/wp-content/uploads/2019/09/Manual-Resolu%C3%A7%C3%A3o-287-2019-CNJ.pdf>. Last accessed on 21/11/2021.

127 O lugar do encarceramento da violência institucional contra povos indígenas no Brasil. Available at: <https://carceraria.org.br/combate-e-prevencao-a-tortura/o-lugar-do-encarceramento-na-violencia-institucional-contr-povos-indigenas-no-brasil>. Last accessed on 22/11/2021.



indigenous person's customs, place of residence and traditions. Finally, it provides that, if there are no conditions to propitiate such adequacy, the judicial authority must apply, whenever possible and through consultation with the indigenous community, the special semi-open regime provided for in article 56 of Law no. 6,001/1973 for sentencing to imprisonment and detention.

However, also in relation to indigenous persons deprived of their liberty – accused, defendant or convicted – numerous obstacles prevent access to the rights of this population within the criminal justice system. There is no due understanding and realization of the exceptionality of imprisonment for indigenous people by the judiciary and other legal operators, who are unaware and/or recalcitrant in the application of the protective normative framework.

In addition, there is a systemic lack of knowledge about the diversity of peoples and their customs, contexts, specific rights, quantitative data of indigenous people who are incarcerated in Brazil and the conditions of segregation, which certainly constitutes an obstacle to the wide application of decarcerating measures to this group and to the construction of solutions and public policies aimed at preventing the incarceration of indigenous people and guaranteeing their rights.

### 5.9.2.3. LGBTI+ Population<sup>128</sup>

In a Technical Note from the National Penitentiary Department, the quantity of the LGBTI+ population incarcerated in Brazil was disclosed: a total of 10,457 people<sup>129</sup>.

---

<sup>128</sup>This topic used contributions from the Defender's Report - Complexo do Curado: Rights of the LGBTI+ Population. Available at: [https://promocaodedireitoshumanos.dpu.def.br/wp-content/uploads/2021/07/Informe\\_Defensorial\\_Complexo\\_Prisional\\_do\\_Curado.pdf](https://promocaodedireitoshumanos.dpu.def.br/wp-content/uploads/2021/07/Informe_Defensorial_Complexo_Prisional_do_Curado.pdf). Last accessed on 22/11/2021.

<sup>129</sup>Available at: [https://politeiacoproducao.com.br/pessoas-autodeclaradas-lgbtqia-no-sistema-penitenciario-brasileiro-o-que-dizem-e-nao-dizem-os-dados/#:~:text=Homossexual-Capaz%20de%20sentir%20atra%C3%A7%C3%A3o%20emocional%2C%20afetiva%20e%2Fou%20sexual%20por,ou%201%C3%A9sbicas%20\(g%C3%AAnero%20feminino\).&text=Pessoas%20que%20se%20relacionam%20afetiva,Nota%20T%C3%A9cnica%20DEPEN%2007%2F2020..](https://politeiacoproducao.com.br/pessoas-autodeclaradas-lgbtqia-no-sistema-penitenciario-brasileiro-o-que-dizem-e-nao-dizem-os-dados/#:~:text=Homossexual-Capaz%20de%20sentir%20atra%C3%A7%C3%A3o%20emocional%2C%20afetiva%20e%2Fou%20sexual%20por,ou%201%C3%A9sbicas%20(g%C3%AAnero%20feminino).&text=Pessoas%20que%20se%20relacionam%20afetiva,Nota%20T%C3%A9cnica%20DEPEN%2007%2F2020..) Accessed on 13/11/2022.

What can be seen is that there is a vast normative field in relation to the issue and a series of widespread and systematic human rights violations that still need to be addressed.

Currently, there are several norms that deal with the LGBTI+ population in prison at the national and international levels, for example: the Yogyakarta Principles (2006), on the application of international law to human rights violations based on sexual orientation and/or gender identity; Joint Resolution no. 1/2014 of the National Council for Criminal and Penitentiary Policy (CNPCP) and the National Council for Combating Discrimination (CNCD/LGBT).

The recent Technical Note No. 7 of the National Penitentiary Department (DEPEN), which deals with the procedures related to the custody of LGBTI people in the Brazilian prison system, according to international and national regulations, and considering the recent decisions of the Superior Courts on the subject, binding for all the Public Administration, should also be highlighted.

At the end of 2020, Resolution No. 348 of the National Council of Justice (CNJ) began assigning the judiciary the responsibility to observe procedures and guidelines regarding the treatment of individuals belonging to the LGBTI+ population in their various interactions with the criminal justice system. It even provided for the possibility of members of the judiciary directing people, such as trans/transvestite women, to prisons or jails according to their self-declaration of gender, after consulting the person about their choice.

In general, among the rights provided for in these regulations, it is possible to mention: the possibility of the arrested person participating in decisions associated with the place of imprisonment that aligns with their sexual orientation and gender identity; the offer of specific living spaces in male prison units, with transfer to specific spaces being subject to the individual's express consent; the choice to wear clothes according to gender; the maintenance of long hair and other

characters according to gender identity; the right to intimate visits; comprehensive healthcare, including the provision of hormonal treatment; the need for continuous training for personnel working in penal establishments, taking into account human rights and the principles of equality and non-discrimination, including providing training on issues of sexuality and gender; the possibility for courts, in collaboration with Magistracy Schools, to promote permanent and/or updating courses aimed at the training and functional qualification of magistrates and personnel who work with the LGBTI+ population deprived of liberty, among others.

It is noteworthy, in turn, that there was a substantial amendment to CNJ Resolution no. 348, which was reissued on January 25, 2021, by CNJ Resolution 366 to remove the right of transvestites and intersex people to express their choice over the place of deprivation of liberty. However, in a decision rendered by Minister Luís Roberto Barroso of the Federal Supreme Court on March 18, 2021, as a precautionary measure in the Argument for Non-Compliance with Fundamental Precept 527 Federal District, it was ensured that trans/transvestite women decide on the place of custody (where they want to serve their sentence), whether in male or female establishments.

About this, Carolina Parisotto and Guilherme Gomes Ferreira call attention to the institutional resistance to respect people with gender identities dissenting from the binary paradigm, effectively guaranteeing them allocation, as observed in relation to transvestites when the CNJ Resolution was reissued<sup>130</sup>. For the authors, it is unequivocal that the State is not committed to the constitutional precepts of ensuring the protection of the dignity of the person.

The truth is that most of the rights provided for the incarcerated LGBTI+ population listed in CNJ Resolution no. 348, were already provided for in other regulations, but they did not generate effective changes in Brazilian

---

<sup>130</sup>Available at: <https://revistaforum.com.br/debates/2021/1/29/no-dia-da-visibilidade-trans-um-direito-menos-somos-90553.html>. Accessed on: November 13, 2022.

prisons, such as, for example, the allocation of specific spaces for this population and hormone treatment.

In 2021, the Federal Public Defenders' Office published the Defenders' **Office Report - Curado Complex: LGBTI Population Rights**. The document highlights the DPU's actions focused mainly on the legal advice of the LGBTI+ population imprisoned in the Curado Complex on their rights, as well as the realization of a workshop entitled “LGBTI Lives in Prison: LGBTI Rights and Citizenship”. It also assisted in the application of questionnaires to monitor the conditions of prison units, prepared by the Project Strengthen to Overcome Prejudice (Projeto Fortalecer para Superar Preconceitos).

It is recalled that the units that make up the Curado Complex were the targets of repeated interventions by the Inter-American Court of Human Rights, which demanded that the Federative Republic of Brazil adopt specific measures to protect the personal integrity, health, and life of vulnerable groups, such as the LGBTI+ population.

### **5.9.3. Federal Prison System**

The Brazilian Federal Prison System was inaugurated in 2006, inspired by the North American prison model of super maximum security, called *Supermaximum Security Prisons*, or simply *Supermax*.

It is structured based on a normative microsystem, comprised of laws, decrees, and ordinances that pertain to the dynamics of criminal execution in federal penitentiary establishments. The main laws<sup>131</sup> governing the normative framework of the federal prison system are Law no. 11,671/08 and Decrees 6,049/07 and 6,877/09.

---

<sup>131</sup> CESTARI, Daniel Pheula. E Lovatto, Daniel Correa. Sistema Penitenciário Federal / Daniel Pheula Cestari, Daniel Correa Lovatto – São Paulo: Editora Juspodivm, 2021. p. 59.

This model was established in Brazil under the argument of promoting the administrative execution of restrictive measures of freedom of prisoners, provisional or convicted, whose inclusion is justified in the interest of public security or the prisoner himself (article 3 of Decree no. 6,049/07).

In summary, it is an exceptional regime of compliance with maximum security, isolation and monitoring, erected under the discourse of combating organized crime, isolating its leaders and highly dangerous prisoners, in order to make the management and articulation of criminal activities unfeasible.

The challenge faced by the Federal Public Defenders' Office as has been repeatedly addressed in various instances by defenders, including in actions before the Federal Supreme Court, is to question and propose a reflection on the reality of extreme rigidity presented in prisons under Federal administration, which have individual cells, occupancy inferior to capacity, adequate food, organization and cleanliness, with no record of escapes or rebellions.

Within the scope of the Federal Prison System, the unconstitutional state of affairs is not designed by the same known structural problems of the state system. In turn, it reveals itself through the logic intrinsic to the fulfilment of a sentence in federal penitentiaries: its extremely restrictive character, including from a disciplinary point of view; the logic of complete isolation; the prolonged permanence in the system, which triggers several deleterious and disproportionate effects in the course of the fulfilment of the sentence; the conflict in decisions related to the admission and permanence of the inmate in the FPS; the absence of secrecy and privacy in conversations between inmates and their family members and defenders; the absolutely restricted character of visits, which combine the internal of intimate and physical contact with their family members; and finally and especially, the deterioration of the mental health of inmates and professionals who work in the system<sup>132</sup>.

---

132 Idem.

The effectiveness of the model in the pursuit of the purpose initially proposed is also questioned, given that, since its implementation, it has not been possible to verify a significant disarticulation of criminal organizations, but quite the opposite. The profile of inmates included, transferred or remaining in the FPS is also questionable, as it does not always fit the need to safeguard public safety (article 3, caput, of Law 11,671/2008) or even the more specific criteria detailed in Article 3 of Decree 6,877/2009.

It is assured that, with the recent introduction of Law no. 13,964/2019, also known as “Anti-crime Package”, several changes were made to the FPS regime, all of them leading towards its hardening. Thus, the FPS, which has always been an exclusionary prison microsystem, has become even more rigorous. As an example, the visits were restricted to the virtual environment or to the parliament, with separation by glass and communication through intercom, with filming and recordings (article 3, paragraph 1, item II, of Law 11,671/2008).

The period of stay in the FPS was extended from up to 360 days to up to 3 (three) years, with express legal provision for indefinite renewal (article 10, paragraph 1, of Law 11,671/2008). The indefinite renewal, without temporal limitation, was already admitted by the STJ's (RHC 44,915/PR, Judge-rapporteur Felix Fischer, Fifth Panel, j. on 3/2/2015), but, with the introduction of Law no. 13,964/2019, this understanding was legally enshrined, removing any interpretative doubt, through the use of the expression “renewable for equal periods”.

In addition to this context of legislative change and regime resurgence, other equally stringent and illegal measures persist, which are endorsed by the STJ's court precedents and which end up guiding the understanding of judicial bodies with criminal competence and criminal execution.

Defenders and defenders who work in the Federal Penitentiary System have long pointed to the inconsistency of the criteria for inclusion and maintenance of people in the Federal Penitentiary System and to the fragility of control over

such inclusions and maintenance, which, as a result of jurisprudential understanding, is carried out only by the authorities that request inclusion, without control by the judge who accompanies the execution of the penalty in the Federal Prison System.

Alongside this context, in 2021, the Federal Public Defenders' Office, through the articulated action of the Secretariat for Action in the Prison System and AASTF, filed, with the Federal Supreme Court, the Collective Habeas Corpus (HC) no. 197,452, seeking to ensure that the connection to the FPS and/or the mere discussion on the connection to the system do not constitute obstacles for the assessment and granting, by the court of origin or by the federal court of execution, the progression of regime. It was also sought to guarantee the possibility of the federal court of execution to exercise a broad value judgment, without any decision-making restrictions, on the grounds presented by the court of origin for the inclusion, transfer, or renewal of permanence in the FPS.

Also noteworthy is the legal manifestation by the Federal Public Defenders' Office in the records of ADPF 518/DF, which deals with restriction of the right to intimate visits within the scope of the FPS, in addition to the presentation of a memorial of *amicus curiae* petition in the context of ADPF 347, by which it was sought to make visible the state of unconstitutional things that also affects the current regime of execution of the custodial sentence of people who are in custody in the FPS.

It is also worth noting the measures taken by the DPU to monitor and reduce the harm caused by the prison system in the FPS, such as periodic inspections of the Federal Penitentiary System units and measures taken with the DEPEN to ensure the rights and assistance provided for in the legislation to the population deprived of liberty in the FPS.

Despite the apparent position of isolation of the Federal Prison System within the country's prison system, it is observed that it has proved to be an important protagonist in the induction of public policies in the criminal, public



security and penitentiary fields. Therefore, it plays a role of a true oracle to the States of the Federation, accentuating these findings with the introduction of Law no. 13,964/19<sup>133</sup>. It demands, therefore, special attention, considering the potential of irradiation of its peculiar and pernicious dynamics of functioning.

#### **5.9.4. Posture of the Brazilian State in the period under analysis**

What is observed in the current Brazilian prison system is the repeated non-compliance with the guarantees and fundamental rights guaranteed by the 1988 Constitution. As a rule, establishments of deprivation of liberty have become large clusters of people forgotten by society, marked by the absence of a State, and it is clear that the situation of overcrowding is a factor of aggravation of all the problems identified in this field.

For no other reason, among the recommendations of the UPR to the Brazilian State on the subject related to the prison situation, several were intended precisely to promote the reduction of incarceration.

Based on data collected from the Information System of the National Penitentiary Department (SISDEPEN), within the scope of the report of the UPR's Parliamentary Observatory, it was concluded that, considering **both the absolute numbers of persons deprived of liberty and the rate per 100,000 inhabitants, the situation regarding the number of persons deprived of liberty in Brazil, between 2017 and 2020, is one where incarceration is worsening.**

On the other hand, it is noteworthy the **significant increase in the proportion of prisoners complying with an open regime, from 3.4% in December 2019 to 6.5% in 2020**<sup>134</sup>.

---

<sup>133</sup>Idem.

<sup>134</sup>According to the FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. Anuário Brasileiro de Segurança Pública 2021. FBSP, 2021. Available at: <https://forumseguranca.org.br/wp-content/uploads/2021/07/anuario-2021-completo-v6-bx.pdf>, accessed on 07/09/2021.

One probable factor for that is the publication of Recommendation 62/2020 by the National Council of Justice – CNJ, which recommended to the Courts and magistrates the adoption of preventive measures for the spread of infection by the new coronavirus – Covid-19, within the scope of the criminal and socio-educational justice systems. One such measure was that magistrates with jurisdiction over criminal enforcement, in the face of the pandemic, consider measures to grant early exit from closed and semi-open regimes, especially in relation to pregnant or lactating women, mothers, or people responsible for children up to 12 or for people with disabilities, as well as the elderly, indigenous people, people with disabilities and other prisoners who fall into a high-risk group.

Still with regard to measures adopted within the Judiciary to combat indiscriminate incarceration and the consequent overcrowding of prisons, the judgment of relevant actions that recognize the critical situation of the Brazilian reality stands out, such as the well-known ADPF 347 and RE 592,581, which defined the legitimacy of the Judiciary to impose or determine the execution of emergency works in prisons, removing the opportunity of allegation of the “reservation of the possible” by the Executive branch.

In turn, the aforementioned collective orders of habeas corpus granted by the 2nd Panel of the Federal Supreme Court in HCs 143,641/SP and 165,704/DF, the edition of CNJ Resolution no. 369/2021 that, in compliance with the respective decisions, establishes procedures and guidelines for replacing the deprivation of liberty of pregnant women, mothers, parents, and guardians of children and people with disabilities, pursuant to articles 318 and 318-A of the Code of Criminal Procedure.

In addition, we list the publication of the Binding Precedent no. 56 of the Federal Supreme Court, in the sense that the lack of adequate criminal establishment does not authorize the maintenance of the convict in a more burdensome prison regime, and in this case, the parameters established in RE no. 641,320/RS must be observed.

Although these are measures and decisions with the potential to have a direct impact on the number of people in prison and on the overcrowding scenario, there is evident resistance within the Judiciary itself, as a whole, both in applying precedents of this nature and in complying with the guidelines established by the National Council of Justice itself.

In a report carried out by researchers from the Brazilian Forum on Public Security, in a CNJ publication on detention hearing and the institutional and ideological obstacles to the realization of freedom as a rule<sup>135</sup>, regarding the replacement of provisional detention by house arrest for pregnant women or with children up to twelve years of age incomplete, based on the new wording granted to article 318, III and V, of the Code of Criminal Procedure by Law 13,257/2016, it was stated that:

(...)Initially it should be noted that the matter that deals with the specific rights conferred on imprisoned women (pregnant women or with children up to 12 years of age), not only appears greatly mitigated in the defensive theses faced in the judgments surveyed, but, when raised, is faced with refractory positions on the part of the set of judges. So much so that the few decisions that faced the issue, denied the order to keep patients cautiously imprisoned.

[...]

In the case of the application of the new wording of article 318 of the Code of Criminal Procedure, especially with regard to the arrests of women, in the Courts of Appeals of Rio Grande do Sul, Santa Catarina and São Paulo – in which there was the observation of judgments on the subject – predominates the understanding that the new normative provisions do not configure subjective rights of women preventively imprisoned but rather benefits that can be granted optionally from the discretion of the magistrates, in exceptional situations, where the risk on the part of the pregnant woman and the fetus, as well as the need for the presence of the person arrested for the life of the child, is undeniably demonstrated. (...)

---

135 FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA (Brazil). Audiência de custódia, prisão provisória e medidas cautelares: obstáculos institucionais e ideológicos à efetivação da liberdade como regra. Brasília: CNJ, 2018. 304 p. (Justiça Pesquisa). Relatório analítico propositivo. Available at: <https://bibliotecadigital.cnj.jus.br/jspui/handle/123456789/281>. Último acesso em 21/11/2021.

Once again, we return to the CNJ statistics on detention hearings. According to the graph presented, between January and November of the year 2021, only 1,990 detention hearings were held in the Federal Courts, with 1,071 preventive arrests and only 19 home detentions. It is necessary to investigate whether, among those who were cautiously segregated, after the custody hearing, there are potential beneficiaries of the collective orders issued in HCs 143,641/SP and 165,704/DF, alternative measures to imprisonment listed in articles 318 and 318-A of the Code of Criminal Procedure and CNJ Resolution no. 369/2021, for example.

In that research, attention was also drawn to the low efficiency of the detention hearing, a result of the naturalization of police violence, with the inquisitorial format of the hearings, obstacles to the defendants' right to defence, the selectivity of the criminal field and the use of grounds based on subjective moral criteria in judicial decisions<sup>136</sup>.

In continuity, as an obstacle to the increase in the absolute numbers of people deprived of their liberty and an obstacle to the reversal of the chronic overcrowding in the Brazilian prison system, we point out the increase in criminal legislation, notably from the legislative action of the Federal Executive, reinforced by the tendency to criminal populism of the national Legislative Branch, as a rule without any analysis of the human, political-criminal or budgetary impact of the proposed measures.

The recent Law no. 13,964/2021, known as “Anti-crime Package”, as well as the lack of any legislative initiative by the Executive Branch aimed at reducing incarceration rates or prison overcrowding, are worth mentioning.

On the other hand, it is noteworthy that, in recent years, the Christmas Pardon, initiated by the Presidency of Brazil, which proved to be an important

---

<sup>136</sup> FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA (Brazil). Audiência de custódia, prisão provisória e medidas cautelares: obstáculos institucionais e ideológicos à efetivação da liberdade como regra. Brasília: CNJ, 2018. 304 p. (Justiça Pesquisa). Relatório analítico propositivo. Available at: <https://bibliotecadigital.cnj.jus.br/jspui/handle/123456789/281>. Last accessed on 21/11/2021.

decarcerating instrument, allowing the anticipation of the end of the sentence and the commutation of penalties when the established requirements were met, has been greatly reduced, with agents of the security forces as beneficiaries, in another movement towards increased sanctions.

Finally, an excerpt from the Report of the UPR Parliamentary Observatory is transcribed which, when analysing the measures to reduce incarceration and combat overcrowding in the prison system, concluded that:

**In general, it appears from what has been said so far, as in other spheres of national life, that the Brazilian State develops public policies. As mentioned, there are a number of initiatives aimed, at least in theory, at combating prison overcrowding and incarceration. These initiatives, in most cases, suffer, however, from resources, coordination, and governance instruments capable of providing more consistent results in the framework reproduced here. In addition, many of them remain isolated amid other policies, legislation or determinations of the same power that aggravate the situation, which calls into question the commitment of the Powers of the Republic, as a whole, in combating overcrowding and incarceration<sup>137</sup>.**

#### **5.9.5. Victims of torture, cruel, inhuman or degrading treatment**

Institutional violence and torture are long-standing practices of the Brazilian State. Historical references always have much to teach us about the atrocities committed, whether during colonial times against the indigenous population and the black population or the abominable practices that occurred during the dictatorships in the country in the 20th century<sup>138</sup>.

In order to overcome this historical recurrence, the Federal Constitution of 1988 began to consider torture as an unsafe and unsusceptible crime of grace or amnesty, recognizing the right not to be tortured as a fundamental right.

---

<sup>138</sup> Informe Defensorial sobre Tortura e Violência Institucional com Enfoque no Sistema Prisional. Available at: [https://promocaodedireitoshumanos.dpu.def.br/wp-content/uploads/2021/08/Informe\\_Defensorial\\_sobre\\_tortura\\_e\\_violencia\\_institucional.pdf](https://promocaodedireitoshumanos.dpu.def.br/wp-content/uploads/2021/08/Informe_Defensorial_sobre_tortura_e_violencia_institucional.pdf). Last accessed on 22/11/2021.

In the same sense, it is worth mentioning the Inter-American Convention to Prevent and Punish Torture, promulgated by Presidential Decree 98,386/1989, which reinforces the need for the Brazilian State to act on the subject, and the United Nations Convention on the Rights of the Child of 1989, promulgated by Presidential Decree 99,710/1990, which provides for the protection of children in relation to torture.

Domestically, through Decree No. 40 of February 15, 1991, the Brazilian State ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of December 10, 1984.

In the 6-year gap – between 1991 and 1997 – the historical records of academia, the press and literature point to the significant struggles of social movements, institutions, civil organizations and other actors in the construction of legal and legal frameworks that could strengthen the debate around preventing and combating torture practices. In 1997, after intense legislative debate, Federal Law no. 9,455 – still in force – was enacted, which defined the crime of torture in the country.

After more than a decade also marked by intense mobilization of society and institutional actors fighting against torture, in 2007, through Decree no. 6,085, Brazil ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), an instrument that reaffirms such practices as serious human rights violations and imposes on the Brazilian State the obligation to install a mechanism to prevent torture<sup>139</sup>.

Although the issue of combating torture and other cruel, inhuman or degrading treatment or punishment is not limited to the prison space, it is certain that it has an intrinsic relationship with the situation of the Brazilian prison system, since it is in the prison environment that torture and all forms of ill-treatment have a marked incidence.

---

<sup>139</sup>Idem.

The Report on Torture in Brazil produced by the UN in 2001 highlighted information of serious overcrowding that prevailed throughout the prison system, causing frequent riots in prisons, so that prison officers resorted to the excessive use of force and torture was used as a form of retaliation or punishment, including in the form of “collective punishment”<sup>140</sup>.

Almost fifteen years later, the National Mechanism for Preventing and Combating Torture identified a widespread state omission regarding the functions of prison management and guaranteeing the rights of persons deprived of liberty in the visited states and the situation was even more serious considering the “gender divides that mark the places of detention”<sup>141</sup>.

In some cases, the high rates of overpopulation and the state omission triggered the virtual impossibility of fully managing the prison, so that it was not possible to control what was happening inside the wards, nor to provide basic rights such as legal assistance, or even food and water.

In early 2017, the penal systems of the states of Amazonas, Rio Grande do Norte and Roraima were the scene of real massacres that resulted in the death of about 126 people. The 2017-2018 MNPCT Report listed torture practices within the Prison System. Racism was identified as the core of the exercise of power and control of bodies, permeating the system in a direct and transversal way, influencing all torture practices visualized by the Mechanism<sup>142</sup>.

It is evident, therefore, that torture in the prison environment is part of the structure of this system, which classifies the person in custody as part of an enemy that needs to be eliminated, and not as a subject of rights. This view

---

140 Relatório sobre a Tortura no Brasil. Produzido pelo Relatar Especial sobre a Tortura da Comissão de Direitos Humanos da Organização das Nações Unidas (ONU). Geneva, April 11, 2001. Paragraph 7.

Available at: <http://www.direitoshumanos.usp.br/index.php/Direitos-Humanos-no-Brasil/relatorio-sobre-a-tortura-no-brasil-2001.html>. Accessed on 22/05/2021.

141 Relatório Anual 2015-2016 / Mecanismo Nacional de Prevenção e Combate à Tortura; Organização: Mecanismo Nacional de Prevenção e Combate à Tortura. – Brasília, 2015 p. 31;. Accessed on 20/05/2021. Available at: <https://mnpctbrasil.files.wordpress.com/2019/09/mecanismo-nacional-de-prevencao-e-combate-a-tortura-relatorio-anual-2015-2016.pdf>

142 Relatório Anual (2017) / Mecanismo Nacional de Prevenção e Combate à Tortura (MNPCT). p. 33. Available at: <https://mnpctbrasil.files.wordpress.com/2019/09/relatorioanual20172018.pdf>. Accessed on: 20/02/2021.



permeates the administrative and tactical practices of prison management, so that “humiliation is an integral part of the prison ritual”.

It is important to remember that this reality reverberates beyond people in prison, directly affecting family members and visitors who need to deal with prejudice, humiliation and vexatious searches, constituting another form of torture practised in the prison environment.

On the other hand, as we emphasize in the considerations made about the prison system, in the context of combating torture, quantitative data are not able to provide adequate elements for understanding the general panorama.

In this approach, it is important to mention the alarming situation of the National System for Preventing and Combating Torture (SNPCT), instituted by Law no. 12,847, of August 2, 2013<sup>143</sup>, composed of the National Committee for Preventing and Combating Torture (CNPCT), National Mechanism for Preventing and Combating Torture (MNPCT), National Council for Criminal and Penitentiary Policy (CNPCT) and the body of the Ministry of Justice responsible for the national penitentiary system.

Regarding the MNPCT, there were actions by the Brazilian government that directly and significantly impacted the agency, its structure and functioning, as recognized in the Mechanism's own biannual report<sup>144</sup>. It mentioned the delay in completing the process of selection of experts, as well as the delay in appointing those selected. The MNPCT worked, until July 2018, with only seven experts and experts, out of the 11 provided for by law, which impacted the planning and execution of the activities planned for that year. Currently, the MNPCT works with only 9 experts.

---

<sup>143</sup> Available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2013/lei/112847.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/112847.htm)

<sup>144</sup> Brazil. Mecanismo Nacional de Prevenção e Combate à Tortura (MNPCT), 2018. Relatório Bianual (2018 - 2019) / Mecanismo Nacional de Prevenção e Combate à Tortura (MNPCT). Adriana Raquel Ferreira Costa, Daniel Caldeira de Melo, Luís Gustavo Magnata Silva (org.). 191 p. Available at: <https://mnpctbrasil.files.wordpress.com/2021/02/relatorio-bianual-2018-2019-mnpct.pdf>. Last accessed on 21/11/2021.

Likewise, in addition to other obstacles related to embarrassments to regular activities and disrespect for the prerogatives of the MNPCT in the exercise of its functions, it is worth mentioning the dismissal of all experts from their positions, through decree no. 9,831, of 2019, which now establishes that “Participation in the MNPCT will be considered a relevant, unpaid public service provision”, which would have made the Mechanism's performance unfeasible for months, a situation partially reversed by judicial means.

It is noteworthy that the National Mechanism remains in operation due to an injunction obtained in a Public Civil Action filed by the Federal Public Defenders' Office, through the Regional Human Rights Defenders' Office in Rio de Janeiro, with the objective of declaring the illegality of an act of the Brazilian Presidency, given what article 8 §2 of Law no. 12,847/2013 says (guarantee of mandate to members of the MNPCT).

Currently<sup>145</sup>, the activities of the CNPCT have been paralysed since October 9, 2021, because the previous mandate (biennium 2019/2021) was finalized without the new elected members being sworn in, nor were the 12 vacancies belonging to civil society completed. There was also a temporary suspension of all ongoing acts related to Notice no. 5, of June 7, 2021, and Notice no. 17, of August 16, 2021, which deal with the 4th Public Call Process for the composition of the members of civil society of the National Committee for Prevention and Combating Torture in the 2021-2023 term.

According to Notice no. 24/2021, of October 27, 2021, of the Ministry of Women, Family and Human Rights – MMFDH, the determination resulted from compliance with the provisions of the Opinion of Enforcement no. 00042/2021/CGAEST1R/PRU1R/PGU/AGU, of the Federal Attorney's Office of the 1st region (PRU-1), on the decision rendered, in the preliminary injunction, in the records of Writ of Mandamus no. 1060282-69.2021.4.01.3400, filed by the

---

<sup>145</sup> Until the close of this edition in November 2021.

Federal Council of the Brazilian Bar Association – CFOAB, due to the restriction of the possibility of participation of the entity in the last notice<sup>146</sup>.

In view of the impasse caused by the suspension of the notice and the absence of consensus between the parties, the CNPCT remains inactive. Ultimately, the same happens with the SNPCT itself, which has its operation severely compromised with the stoppage of the activities of the collegiate. There is therefore at least a lack of urgency with regard to the full functioning of the anti-torture bodies.

#### **5.9.6. The Federal Public Defenders' Office and tackling torture, cruel, inhuman or degrading treatment**

It should be noted, initially, that the Federal Constitution of 1988 attributed to the Public Defenders a primary role in the promotion of human rights and in the defence of individual and collective rights of people in situations of vulnerability, as expressly verified in art. 134 of the Constitution.

From the constitutional provision, Complementary Law no. 80 of 1994 established a series of institutional functions to the Public Defender's Offices, and it is appropriate to highlight the performance in “police establishments, prisons and hospitalization of adolescents, aiming to ensure people, under any circumstances, the full exercise of their fundamental rights and guarantees” (article 4, XVII); and in the “preservation and reparation of the rights of victims of torture, sexual abuse, discrimination or any other form of oppression or violence, providing monitoring and interdisciplinary care for victims” (article 4, XVIII).

It should be remembered that, since 2019, the DPU has been part of the National System for Preventing and Combating Torture (SNPCT), in accordance with article 2, paragraph 2, item V, of Law no. 12,847/2013, in order to strengthen, through articulation and cooperative action, the prevention and fight against torture

---

146 Available at: <https://www.gov.br/participamaisbrasil/editais6>. Last accessed on 10/11/2021.

and other cruel, inhuman or degrading treatment or punishment, especially those of persons deprived of liberty. Likewise, based on article 7, paragraph 4, of Law 12,847/2013, it participates in the CNPCT with the legal status of permanent guest and with the right to voice, participating in the deliberations and debates of the collegiate.

Furthermore, in view of the findings of violations by the MNPCT, experts prepare information with recommendations to other competent authorities, which can use it to carry out appropriate measures. In this case, if illegal acts are committed by agents who are linked to federal public authorities (Federal Government), the DPU also has the duty to promote the reparation of the rights of people who are victims of torture or other types of institutional violence<sup>147</sup>.

For the exercise of this and other institutional functions, in addition to the ordinary service of full and free legal assistance provided by its units spread in all entities of the federation, the DPU also structured specific bodies to act on human rights issues and, particularly, prevention and fight against torture.

It is important to mention that CSDPU Resolution no. 127/2016 created 24 (twenty-four) functions of Regional Human Rights Defenders (DRDH), distributed in all States of Brazil and occupied by federal public defenders who, removed from their ordinary duties, have the function of promoting collective protection of rights and, in the individual field, providing legal assistance in cases of serious violations of human rights, promoting measures to protect victims of crimes and assisting the prosecution throughout their jurisdiction.

More recently, with the publication of CSDPU Resolution no. 183/2021, this number was expanded to 31 functions of Regional Human Rights Defenders, so that there is a DRDH in each State of the Federation.

---

<sup>147</sup> Informe Defensorial sobre Tortura e Violência Institucional com Enfoque no Sistema Prisional. Available at: [https://promocaodedireitoshumanos.dpu.def.br/wp-content/uploads/2021/08/Informe\\_Defensorial\\_sobre\\_tortura\\_e\\_violencia\\_institucional.pdf](https://promocaodedireitoshumanos.dpu.def.br/wp-content/uploads/2021/08/Informe_Defensorial_sobre_tortura_e_violencia_institucional.pdf). Last accessed on 22/11/2021.

Also, with regard to the body's action in the prevention and fight against torture, the Federal Public Defenders' General Office has a Secretariat of Action in the Prison System and Penitentiary Councils – SASP, which is part of the General Secretariat for Institutional Articulation – SGAI. The Secretariat's functions include to coordinate the participation in prison inspections carried out in partnership with other bodies of the justice system, as well as to plan, promote and coordinate, together with the DPU implementing bodies, actions in relation to the protection of the rights of the population in situations of deprivation of liberty.

The SASP also coordinates the participation of DPU members in state Penitentiary Councils, which enables the institution to participate in the inspection of places of deprivation of liberty under state administration.

In addition to the territorial action specialized in human rights, the Federal Public Defender regulated, via Ordinance no. 200, of 12/03/2018, the creation of National Working Groups, with the objective of promoting the DPU's priority legal assistance to social groups in vulnerable situations.

Among them, we highlight the existence of the Working Group for the Assistance of Prison Populations and Fight Against Torture, composed of 5 (five) federal public defenders of the 5 (five) Brazilian macro-regions, with the mission, among others, to “integrate the Federal Public Defenders' Office to the other bodies which compose the national system for preventing and combating torture, within the limits of its legal and constitutional competence”. The Working Group also promotes periodic inspections in the units of the Federal Prison System (FPS). Together with the SASP, the Working Group also promotes and collaborates in the formulation of public policies aimed at the defence of the prison population.

### **5.9.7. Compilation of torture data – first half of 2021. Identification of the response/posture (action or omission) of the Brazilian State in the period under analysis.**

It should be noted, beforehand, that there are no safe criminal and judicial statistics within the scope of Brazilian institutions that allow us to present individualized information on judicial processes, investigations and administrative investigations related to torture and other forms of institutional violence.

In the same sense, when presenting the second periodic report due to the provisions of article 6 of the UN Convention on the Prevention and Combating of Torture, the Brazilian State, answered the question about the consolidation of detailed statistical data on arrests and accusations made based on the law on the crime of torture explaining that the culture of generating data on public order and the criminal justice system is a recent practice in Brazil, so that there is no consolidated data on the subject.

In the domestic sphere, as mentioned, the National System for Preventing and Combating Torture – SNPCT was established by Law no. 12,847/2013, which is composed of the National Committee for Preventing and Combating Torture – CNPCT, the National Mechanism for Preventing and Combating Torture – MNPCT, the National Council for Criminal and Penitentiary Policy – CNPCP and the body of the Ministry of Justice responsible for the national penitentiary system. According to the governing legislation, the state and district committees and mechanisms for preventing and combating torture, as well as other institutions, such as NGOs, Judiciary bodies, and Child Protective Services can also be part of the SNPCT; internal affairs and police ombudsmen, and public defenders, may also request adherence to the System.

It turns out that, according to information obtained by the DPU from the National Secretariat for Global Protection of the Ministry of Women – SNPG, linked to the Ministry of Women, Family and Human Rights – MMFDH, responsible for coordinating the SNPCT, it did not have a unified database on governmental or non-governmental actions promoted within the scope of

preventing and combating torture, nor does it have a record of allegations, denunciations or judicial sentences on torture, although the CNPCT is responsible for creating and maintaining a record of complaints, denunciations and judicial decisions.

In fact, the absence of monitoring of statistics/data on torture or violations of rights was mentioned as one of the challenges for the full functioning of the State Committees to Prevent and Combat Torture, according to a report formulated by SNPG in 2019.

In this context, the National Ombudsman for Human Rights – ONDH is characterized as a channel for the entry of allegations and reports of torture within the scope of the MMFDH. The SNPG also clarifies that, based on the regulatory provisions of the MMFDH, the Ombudsman's Office itself forwards the allegations to the competent bodies – among which are the public defenders' offices – and monitors the measures taken, in addition to organizing and making available a data panel with information specifically on torture.

On the other hand, the MNPCT publishes on its websites a report of activities, approved by the CNPCT, in addition to reporting actions developed in the units of the federation together with bodies of the justice system and civil society entities.

Similarly, the same logic is observed in the scope of the Committees and Mechanisms for Preventing and Combating Torture in the federation units, although they are only established in 22 and 10 states, respectively, according to a survey carried out in 2021 by the Federal Public Defenders' Office, which demonstrates the limited effectiveness of the system.

Alongside these considerations, **in the first half of 2021**, data on reports of torture and other forms of institutional violence were compiled, based on three axes: (i) Data Panel of the National Ombudsman for Human Rights of the Ministry of Women, Family and Human Rights – ONDH/MMFDH; (ii) Statistics on Detention Hearings of the National Council of Justice – CNJ; (iii) Statistics of



the Secretariat for Action in the Prison System SASP/DPU – Collective Guardianship within the Prison System.

Based on this methodology, the research reached the following data:

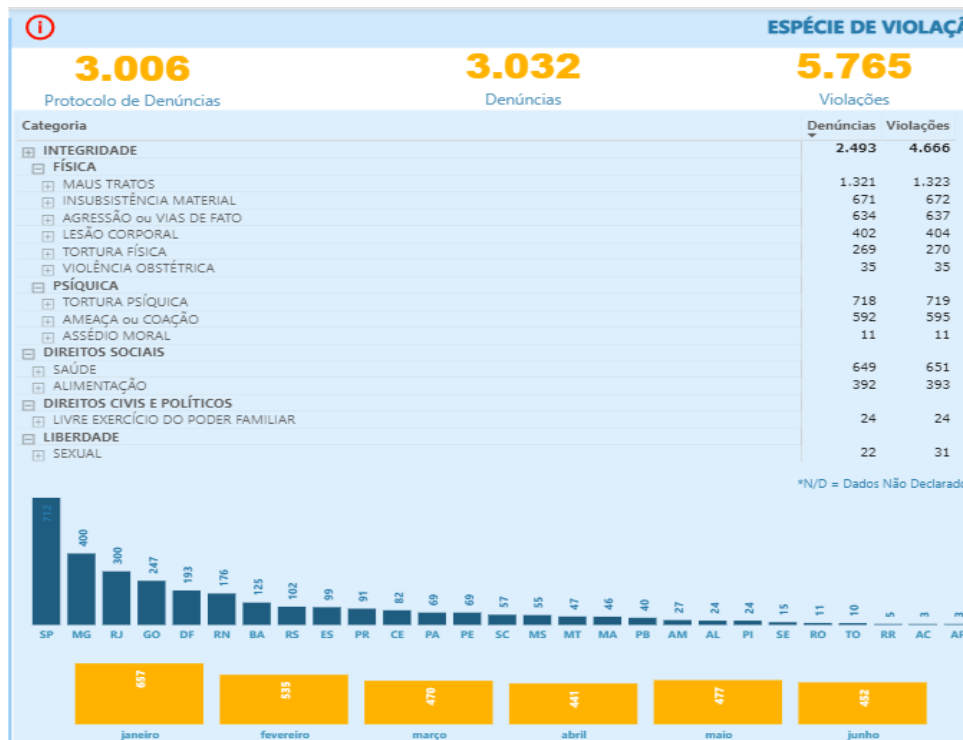
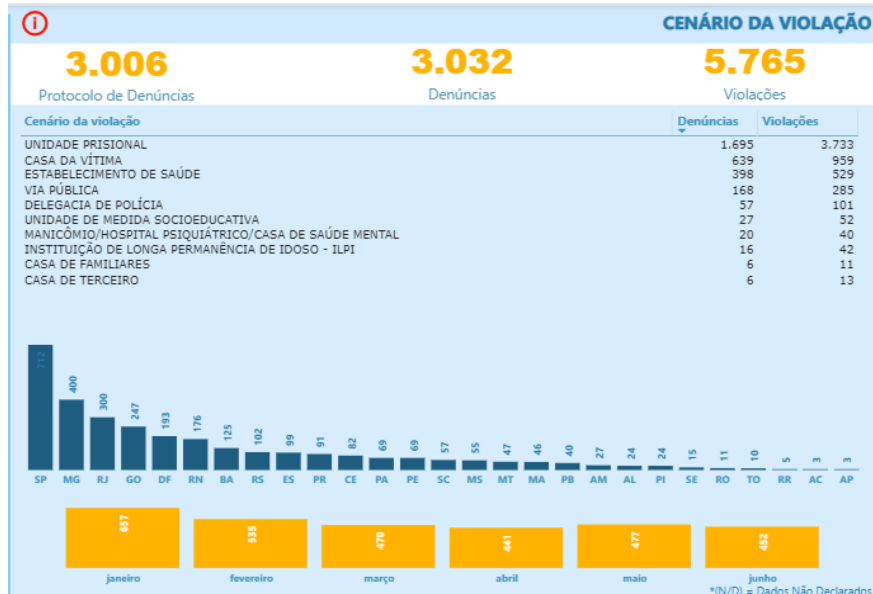
**(i) Data Panel of the National Ombudsman for Human Rights of the Ministry of Human Rights<sup>148</sup>:**

The Panel consolidates the reports sent to the ONDH through an extensive list of filtering fields and methods. In order to obtain necessary data on torture and institutional violence, within the scope outlined, the research used “Reporting Filters” and “Suspect Profile Filters” for the period from January 1, 2021, to June 30, 2021, using the following fields:

- Violation Scenario: Residence of the victim, family members and third parties; police station; healthcare establishment; long-term care institution for the elderly; asylum/psychiatric hospital/mental health institution; socio-educational measures unit; prison unit; public road
- Type of Violation:
  - Civil and Political Rights: Free Exercise of Family Power
  - Physical Integrity: Aggression or Fight; Material Insufficiency for Subsistence; Bodily Injury; Maltreatment; Physical Torture; Obstetric Violence
  - Psychological Integrity: Threat or coercion; Moral Harassment; Psychological Violence
  - Freedom: Sexual
  - Social Rights: Food.
- Profile of the Suspect: Public Agency.

---

<sup>148</sup>Source: [https://www.gov.br/mdh/pt-br/ondh/paineldedadosdaondh/copy\\_of\\_dados-atuais-2021](https://www.gov.br/mdh/pt-br/ondh/paineldedadosdaondh/copy_of_dados-atuais-2021)  
accessed on 24/08/2021

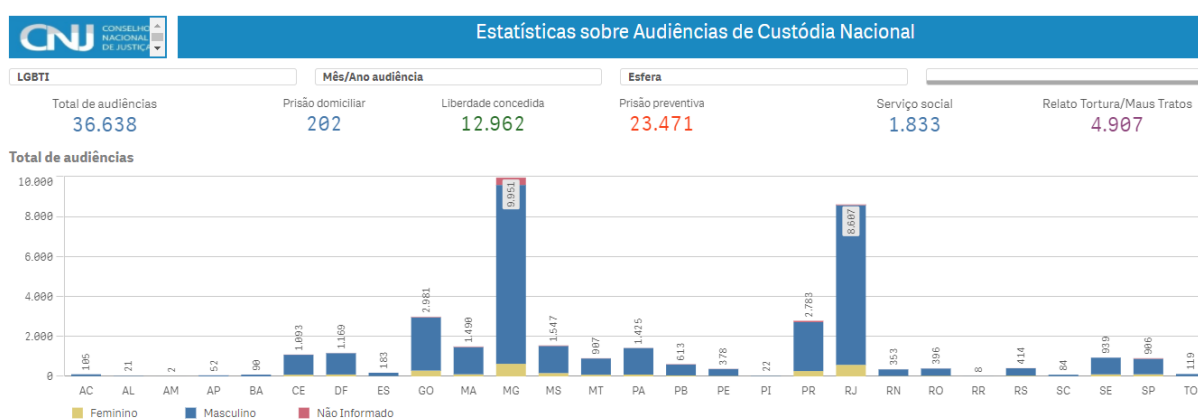


(ii) **CNJ Custody Hearing Statistics – SISTAC<sup>149</sup>.**

<sup>149</sup>Source: <https://paineisanalytics.cnj.jus.br/single/?appid=be50c488-e480-40ef-af6a-46a7a89074bd&sheet=ed897a66-bae0-4183-bf52-571e7de97ac1&lang=pt-BR&opt=currsel> acesso em 24/08/2021

The Detention Hearing System - SISTAC was structured in order to consolidate and systematize national data on the detention hearings. By analysing the Panel's data, it is possible to identify the number of cases of torture and ill-treatment reported during detention hearings.

Considering the period from January 1 to June 30, 2021, the research arrived at the following data:



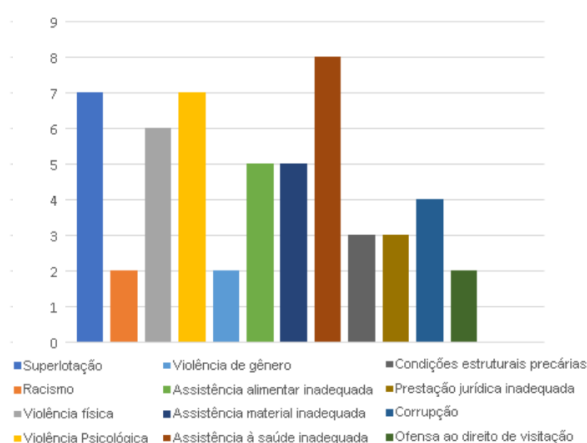
**(iii) Data of complaints of torture, ill-treatment and inhuman and degrading conditions sent to SASP/DPGU:**

The Federal Public Defenders' Office (DPU) signed, with the Federal Supreme Court (STF), a Technical Cooperation Agreement designed to attribute to the DPU the treatment of letters from persons deprived of liberty that contribute to the Supreme Court's Citizen's Centre.

At the current stage of execution of the agreement, the DPU receives letters from the Supreme Court and analyses their content. In addition to reports of legal and procedural issues of individualized/personal cases, many of these correspondences bring generic complaints about torture, violence, or inadequate prison conditions in the institution in which the citizen is segregated.

Considering the period from January 1 to June 30, 2021, the research arrived at the following data:

	Estado	Estabelecimento Prisional	População Prisional Potencialmente Assistida
1	Rio de Janeiro	Presídio Evaristo de Moraes	1.721
2	São Paulo	Penitenciária Joaquim Fonseca Lopes - Parelheiros	1696
3	São Paulo	Penitenciária José Parada Neto - Guarulhos I	2064
4	São Paulo	CDP de Diadema	1059
5	São Paulo	CDP de Getulina	1.913
6	São Paulo	Penitenciária Luiz Gonzaga Vieira	2024
7	São Paulo	Penitenciária de Iaras	2585
8	São Paulo	Penitenciária de Tupi Paulista	1691
9	Paraná	Delegacia Regional de Polícia de Castro	-
10	São Paulo	Centro de Detenção Provisória "ASP Sandro Alves da Silva"	562
11	São Paulo	Penitenciária de Mairinque	1920
<b>11</b>			<b>17.235</b>



### 5.9.8. Extrajudicial and judicial measures adopted by the Federal Public Defenders' Office and other institutions for the defence of human rights

During 2021, the DPU acted strategically in several spheres related to people in situations of imprisonment and confrontation with torture.

To this end, it acted in the extrajudicial and judicial field for the realization of the rights and guarantees related to these themes, on several fronts that converge and dialogue with each other, aiming to promote coordinated and

strategic actions, including in articulation with other actors of the justice system and entities focused on the defence of human rights.

In this context, the following relevant measures adopted by the DPU in 2021 are noteworthy:

### **Judicial action**

- In April 2021, a joint effort between SASP, GTPSP, DNDH, and ASSTF resulted in the presentation of Technical Note no. 1, which supported a petition by the DPU to join Direct Action of Unconstitutionality no. 5170 *as amicus curiae*. The action, under Judge-rapporteur Rosa Weber, aims to recognize that “*the State is civilly responsible for the moral damages caused to detainees when subjecting them to imprisonment in subhuman, unhealthy, degrading and overcrowding conditions*”.
- In July 2021, the Federal Public Defenders' Office in the State of Amazonas, through the Regional Human Rights Defenders' Office, filed an injunction request for the Federal Court to determine the effective application, in ten days, of the 1st dose of vaccine against Covid-19 in the entire population deprived of freedom in the state, given the unjustifiable delay of almost two months for the start of vaccination of people in prison, priority group 17 of the National Plan for the Operationalization of Vaccination against COVID-19 (PNO).
- Through the articulation of the SASP in conjunction with the AASTF, the DPU acted within the scope of the Federal Supreme Court in the following opportunities:
  - (i) Opinion in the records of ADPF 518/DF, which deals with restriction of the right of intimate visits within the scope of the Federal Prison System.
  - (ii) Based on coordinated action between SASP and ASSTF, the Collective Habeas Corpus no. 197,452 it was filed with the

Federal Supreme Court, seeking to ensure, within the scope of the FPS, that the link to the FPS and/or the mere discussion about the link to the system do not constitute obstacles to the appreciation and approval, by the court of origin or by the federal court of execution, of the progression of the regime; and the possibility of the federal court of execution to exercise a broad judgment of value, without any decision-making restrictions, on the grounds presented by the court of origin for the inclusion, transfer, or renewal of permanence in the FPS.

- (iii) From coordinated action between SASP and ASSTF, an opinion was presented as *amicus curiae* within the scope of ADPF 347, through which the DPU sought to highlight the unconstitutional state of affairs that also affects the current regiment of execution of the custodial sentence of the people who are in custody in the FPS (08038.014066/2021-02).
  - (iv) Based on the articulated action between SASP, GTPSP and ASSTF, a Technical Note was prepared as a technical contribution to the debates of the public hearing convened by the Second Panel of the Federal Supreme Court within the Habeas Corpus no. 165,704, which brought to the debate the situation of children and people with disabilities whose guardians are in prison. At the time, the DPU participated through the SASP. It is also worth noting the DPU's participation through the Secretariat of Performance in the Prison System in a monitoring hearing held by the 2nd Panel of the STF in September 2021 to analyse, among other measures, compliance with the collective order issued in these records and the guidelines of Resolution No. 369/21 of the CNJ.
- Presentation of a complementary opinion by the DPU in September 2021, through the Network for Action in the Inter-American Human Rights System, regarding the reparations ordered by the Inter-American Court of Human Rights (IACHR) on the resolution points no. 10 to 21 of the sentence rendered in the case Cosme Rosa

Genoveva and others (Favela Nova Brasília) vs. Federative Republic of Brazil.

- In 2021, the DPU filed Public Civil Action no. 5028972-85.2021.4.02.5101 in order to guarantee the social participation of civil society representatives within the scope of the CNPCT, who were appointed on 25/06/2019, with effective exercise of the mandates only on 08/10/2019. The action sought recognition of possession on 08/10/2019 as the initial term of the mandate of civil society representatives in the collegiate, declaring the illegality of an act tending to reduce its duration.
- Through coordinated action between SASP, DNDH, and DRDH/CE, in 2021, the procedural instruction and necessary steps were taken to adopt practical and sufficient measures to safeguard the rights of the 32 inmates who claim to have been assaulted during the shift from February 19th to February 20th, 2019, in the PASSATEMPO cell at CPPLIII during the intervention of FTIP in the State of Ceará, as reported by the National Mechanism for the Prevention and Combating of Torture (MNPCT) in missions conducted in prisons in the state of Ceará.

- **Inspections and Monitoring of Places of Detention**

- Institutional Mission for technical analysis of the situation of the Prison System of Roraima, with special attention to the following aspects:
  - (i) Performance of the Penitentiary Intervention Task Force, linked to the Ministry of Justice and Public Security – reports of cases of torture and aggression.
  - (ii) Perspective of demobilization of the Penitentiary Intervention Task Force in the State of Roraima and resumed by the State, according to Ordinance no. 52, of February 4, 2021, of the Ministry of Justice that provided for the withdrawal of FTIP to the detriment of the various risks pointed out in the FTIP monitoring reports and by the DPU/RR itself on the uncoordinated exit of FTIP from the State.



- (iii) Preventive measures against COVID-19 and schedule for the vaccination of the prison population and system workers.
- (iv) Migrant prisoners: regularization of the migratory situation.
- (v) Attendance of provisional prisoners of the Federal Justice by the DPU/RR.
- (vi) Urgent issues pointed out in COPEN/RR inspection reports: clothing, scabies outbreak, virtual visitations.

The action culminated in the issuance of Recommendation no. 4329948 - DNDH/DPGF to the Ministry of Justice and Public Security and the Secretariat of Security and Justice of the State of Roraima.

- Participation of the DPU in Mato Grosso do Sul of the LGBTQIA+MS Mission, in October 2021, of action by the National Mechanism for Preventing and Combating Torture (MNPCT) with the objective of promoting joint inspections in prison complexes located in the State, discussing the specificities of the LGBTQIA+ population and ensuring the protection of rights in prison.
- Performance of GTPSP in partnership with SASP, of inspections to the Federal Penitentiary Establishments of, Brasília/DF, Campo Grande/MS, Catanduvas/PR, Mossoró/RN and Porto Velho/RO.
- Participation of DPU members in state Penitentiary Councils, enabling the institution to participate in the inspection of places of deprivation of liberty under state administration.
- Provisions adopted within the scope of this SASP regarding complaints, received through the Letters that are forwarded under the Cooperation Agreement between the DPU and the Federal Supreme Court, which deal with inadequate prison conditions: throughout 2021, the SASP acted seeking information regarding complaints received through the Letters that are forwarded to the DPU under the Cooperation Agreement signed with the Federal Supreme Court that deal with inadequate prison conditions. In order to instruct the demands and subsidize the adoption of any extrajudicial and/or judicial measure, SASP provided more detailed and updated information with the local inspection bodies (in

particular, the Public Defenders' Office and the State Penitentiary Council).

- **Good Practices**

- **Publication of the Defenders' Report - Curado Complex: Rights of the LGBTI+ Population:** published in 2021, the report highlights the performance of the DPU focused mainly on the legal advice of the LGBTI+ population imprisoned in the Curado Complex on their rights, as well as the realization of a workshop entitled “LGBTI Lives in Prison: LGBTI Rights and Citizenship”. It also assisted in the application of questionnaires to monitor the conditions of prison units, prepared by the Project Strengthen to Overcome Prejudice (Projeto Fortalecer para Superar Preconceitos).
- **Publication of the Defenders' Report on Torture and Institutional Violence with a Focus on the Prison System,** normative reference, the contours of the Federal Public Defenders' Office (DPU), public statistical data, panorama of implementation and participation of the Public Defender's Office in the State Committees for Prevention and Combat and other technical contributions.
- **Public Hearing “People in Prison and Facing Torture”:** on October 13, 2021, the Federal Public Defenders' Office held a Public Hearing on the theme “People in Prison and Coping with Torture”, through the Working Group for the Assistance of Prison Populations and Fight Against Torture, in partnership with the Secretariat of Action in the Prison System and Penitentiary Councils. The main purpose of the event was to present the outlines of the DPU's actions regarding the fight against torture and institutional violence in the prison environment, to strengthen ties between public bodies and civil society entities, reinforcing dialogue and cooperation between institutions and society, as well as to receive criticism about the DPU's actions in this area in order to improve the quality of assistance. During the public hearing, representatives of social movements, civil society institutions and governmental bodies expressed their views. Their considerations would influence the development of actions in the year 2021.

- Conclusion of the **Federal Public Defenders' Office's 6th Essay Contest**, with the theme “Between heaven and asphalt: where is the dignity of the homeless population?” and launch of the **Federal Public Defenders' Office's 7th National Essay Contest** on the theme “Set meal: quality food is a sign of dignity”, in partnership with FIAN-Brazil, with the purpose of promoting education in rights and, dealing with participants in situations of deprivation of liberty, attesting 12 hours of reading and writing activities for the purpose of remission of the sentence. The SIXTH edition set a new participation record with **more than 23 thousand registered essays**, 20,080 of which were enrolled in Essay Category IV – students from the 6th to the 9th year of Elementary School and from the 1st to the 3rd year of Adult Learning Program in a situation of deprivation of liberty in the Brazilian Prison System; and 367 enrolled in Essay Category V – people in a situation of deprivation of liberty, serving a sentence in the Federal Prison System. According to the gathered data, the seventh edition will have an even higher number of participants.
  
- **Articulation between the Working Group for the Assistance of Prison Populations and Fight Against Torture and the Working Group on Migration, Statelessness and Asylum** in the preparation of Technical Note no. 10 - DPGU/SGAI DPGU/GTMR DPGU, which provided subsidies for the preparation of Resolution no. 405 of the National Council of Justice (CNJ), of July 6, 2021, which establishes procedures for the treatment of migrant persons in custody, accused, defendants, convicted or deprived of liberty, including in house arrest and other forms of punishment in an open environment, in compliance with criminal alternatives or electronic monitoring and confers guidelines to ensure the rights of this population within the scope of the Judiciary.
  
- **Articulation between the Migrant Prisoner Working Groups of the DPU/SP, the Working Group on Migration, Statelessness and Asylum and the ITTC - Instituto Terra, Trabalho e Cidadania** in the elaboration of a booklet aimed at migrant women in conflict with the law.
  
- Coordination and technical support to carry out an international virtual visit, with a visit between a migrant citizen in custody in Brazil and their family in Peru.

### 5.9.9. Conclusions and recommendations

The numerous problems involving the prison system, from our incarceration policies to the institutionalization of violence are issues that go through a historically consolidated punitivist vision, based on racism and violence, so that the change of this paradigm must necessarily go through the deconstruction and reformulation of public security policies from the strengthening of bonds by all actors involved, highlighting the primary role of organized civil society in the construction of policies and axes of action.

Although it is not an easily elucidated issue, it is possible to highlight some points of reflection as a suggestion to public institutions in confronting these issues:

1. Bringing about a change in the unconstitutional reality necessarily involves changing the collective mindset regarding individuals in prison, as the criminal punitive mindset is rooted in revenge and the notion of the incarcerated as an enemy of society. Investment in rights education campaigns is necessary in order for society to understand that criminalization processes are reflections of segregation policies and not of public security, in order to recognize in people in prison the humanity that exists in each one of us.

2. It is important to reflect on how public security policies influence the mass incarceration of poor, black, young people, with little access to education without, however, achieving the objectives it proposes: to reduce crime and “re-socialization”, and to rethink Public Security from a decolonial perspective, to promote minority rights, adjusted to social development policies and to reduce socioeconomic inequalities.

3. Considering that overcrowding is one of the main factors related to the absence of minimum living conditions in the prison environment, it is necessary to rethink our incarceration methods in order to encourage the implementation and expansion of alternative penal policies, using imprisonment effectively as a last resort strategy, reserved for the most serious crimes.

4. Given the high rates of pretrial detention, many of them in situations that allow for the adoption of alternative methods to incarceration provided for in legislation and case law, it is necessary to reevaluate the often automatic and simplistic exercise of converting provisional detention into preventive detention, encouraging the implementation and expansion of detention hearings throughout the country.

5. Considering that the vast majority of people in prison are economically vulnerable and depend on legal assistance from the Public Defenders' Office, ensuring a full defence necessarily requires strengthening and expanding the Public Defenders' Office. Currently, there is a shortage of public defenders in approximately 72% of the country's judicial districts, and the backlog of cases is a barrier to access to justice for those who depend on legal assistance from the Public Defenders' Office.

6. In addition to the evident need to reduce prison overpopulation, it is necessary to recognize and implement the rights of vulnerable groups in the prison environment (women, LGBTIA+ population, the elderly, foreigners, indigenous people, people with disabilities) through specific public policies.

7. The humanization of criminalization processes must also go through the humanization of public security professionals, including those who work in correctional facilities. Therefore, it is necessary to invest in

better working conditions and training, beyond just an armament strategy, through policies of mental health, social assistance, and human rights appreciation.

8. Considering Brazil's adherence to international norms on combating torture, it is necessary to strengthen the National System for Prevention and Combating Torture, guaranteeing greater effectiveness, autonomy, and resources for the operation of Mechanisms and Committees. On the other hand, it is also important to rethink the way torture is addressed within security agencies, through the development of humanitarian training programs and greater effectiveness in the processes of inspection, investigation, and identification of torture practices.

9. Given that the growth of female imprisonment in the country goes against international standards (with emphasis on the Bangkok Rules) that, in view of the peculiarities that surround the imprisonment of women, encourage alternative forms of punishment for women, it is necessary to develop more effective decarceration policies for women, such as the legal extension of house arrest to mother and caregiver women of dependent people as a possibility for serving their sentence.

10. With the resumption of various activities by Brazilian society in a context of the pandemic slowing down, it is crucial that in-person detention hearings be resumed, in the format provided for by the American Convention on Human Rights, which involves presenting the detained person to the judicial authority.

11. Considering the lack of reliable data on incarceration in Brazil, efforts should be made to collect and consolidate such data, and the judiciary should have control over information about individuals deprived of their liberty by court order.

Given the systematic communication failures between different branches of the judiciary that can result in longer-than-specified stays in custody, it is advisable to establish simpler communication channels and more efficient control systems.





## 5.10. THE ELDERLY AND PEOPLE WITH DISABILITIES

### 5.10.1. Contextualization of the theme

#### 5.10.1.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations regarding policies to promote human rights and defend the elderly and people with disabilities:

207. Continue to eliminate discrimination against children in street situations and rural areas as well as children with disabilities and against other minority groups and take all necessary measures to prevent abuse of their vulnerabilities (Turkey);

209. Continue its efforts to provide the necessary assistance for vulnerable groups, particularly persons with disabilities (Myanmar);

210. Pursue its commitment to ensure fully the respect of human rights of persons with disabilities, namely that these persons enjoy an adequate standard of living, including in rural areas (Portugal);

211. Continue its efforts to consolidate the rights of persons with disabilities (Egypt);

212. Combat discrimination of any kind against persons with disabilities, and take specific measures to improve the standard of living for such persons (Islamic Republic of Iran);

213. Continue to reinforce the implementation of public policies regarding persons with disabilities (Libya);

214. Continue its efforts on further strengthening the rights of women, children and persons with disabilities (Mongolia);

215. Implement measures in support of enhanced participation of people with disabilities in the workforce (Israel);

216. Continue its efforts to increase the level of employment of persons with disabilities in the open labour market and take specific measures for women with disabilities (State of Palestine);

### **5.10.1.2. The situation of the rights of people with disabilities in Brazil**

In Brazil, in addition to the entire protective framework provided for persons with disabilities in our Constitution, Decree no. 6,949/2009 promulgated the International Convention on the Rights of Persons with Disabilities and its Optional Protocol, signed in New York on March 30, 2007. The Convention, internalized in our legal system with constitutional amendment status, aims to promote, protect and ensure the full and equitable exercise of all human rights and fundamental freedoms by all persons with disabilities and thus promote respect for their inherent dignity.

The Convention defines persons with disabilities as “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others” (Article 1).

Law no. 13,146/2015 established the Brazilian Law on Inclusion of Persons with Disabilities (Statute of Persons with Disabilities). This law was intended to ensure and promote, under equal conditions, the exercise of fundamental rights and freedoms by persons with disabilities, aiming at their social inclusion and citizenship (article 1).

It is necessary to highlight the concept of discrimination presented by the present law: “any form of distinction, restriction or exclusion, by action or omission, which has the purpose or effect of harming, preventing or annulling the recognition or exercise of the fundamental rights and freedoms of a person with disabilities, including the refusal of reasonable adaptations and the provision of assistive technologies” (article 4, paragraph 1).

Law no. 7,853/1989, in turn, was instituted to provide for the support of people with disabilities, their social integration, and the judicial protection of collective or diffuse interests of these people, as well as to discipline the Federal Prosecution Service's actions. Specifically, in its article 17, it provided for the

mandatory inclusion, in the demographic census, of issues concerning people with disabilities, aiming at the updated knowledge of the number of people with disabilities in Brazil, with the inclusion of the specificities inherent to autism spectrum disorder.

According to the most recent census conducted by the IBGE (2010), 24% of the Brazilian population has some kind of disability, which represents more than 45,000,000 (forty-five million) people.<sup>150</sup> According to IBGE, in addition to investigating the population that has some type of disability, periodic research is carried out on municipal services adapted to people with some mobility difficulty: Municipal Basic Information Survey (MUNIC).<sup>151</sup> In fact, it is a detailed survey of information on the structure, dynamics, and performance of municipalities in Brazil.

As we know, people with disabilities are included in the group of people in a state of social vulnerability, because they need to face discriminatory situations and barriers on a daily basis, which hinders their equal social inclusion compared to other citizens. Although it is inconceivable, people with disabilities still have their basic rights denied, namely: studying, working, playing sports, going to cultural events, living independently, all due to their physical and/or psychological limitations. Hence the justification for the adoption of the Convention on the Rights of Persons with Disabilities in the country.

According to a study carried out by the IBGE, which is part of the National Health Survey (PNS), on average, 8.4% of the population has some type of limitation related to their occupation. The data also indicate that 67.6% of people with disabilities have never finished elementary school or have no formal

---

<sup>150</sup>Available at: <https://www.ibge.gov.br/estatisticas/sociais/populacao/9662-censo-demografico-2010.html?=&t=destaques>

<sup>151</sup>Available at: <https://educa.ibge.gov.br/jovens/conheca-o-brasil/populacao/20551-pessoas-com-deficiencia.html>

education whatsoever. Only 5% of people with disabilities have finished higher education.<sup>152</sup>

The factors related to basic education also directly influenced the employability of people with disabilities. If they were unable to finish their studies because of a lack of public policies, then they will not join the labour market. In Brazil, 60.4% of the population without disabilities has some form of occupation, whether formal or informal, while only 25.4% of the population with any disability has a job.

The gap is pronounced and measures need to be taken to correct it. Without a doubt, if Law no. 8,213/1991 were not in force, a large part of the population with some disability would have lost their professional occupation during the pandemic. Therefore, it is extremely important that compliance in companies be regularly inspected, and it should be further improved to protect more people.

### **5.10.2. Actions of the Federal Public Defenders' Office via GTPID in favour of persons with disabilities**

In 2021, the Federal Public Defenders' Office, through the Working Group on Assistance to the Elderly and Persons with Disabilities (GTPID), was extremely active in the fight for the rights of people with any type of disability.

In June 2021, the Federal Public Defenders' Office, through the General Secretariat of Institutional Articulation and the Working Group on Assistance to the Elderly and Persons with Disabilities, issued a **Technical Note**<sup>153</sup> maintaining that the text of Bill no. 1,113/2020, which intends to include Covid-19 among the serious diseases that exempt insured people from the General Social Security System from complying with the grace period for the granting of sickness and

---

<sup>152</sup>Available at: <https://oglobo.globo.com/brasil/direitos-humanos/quase-70-das-pessoas-com-deficiencia-no-brasil-nao-concluiram-ensino-fundamental- apenas-5-terminaram-faculdade-25170593>

<sup>153</sup>Available at: <https://www.dpu.def.br/noticias-institucional/233-slideshow/63282-nota-tecnica-covid-19-deve-ser-considerada-doenca-grave-para-fins-previdenciarios-e-pandemia-deve-suspender-o-periodo-de-graca>



disability retirement benefits, satisfies the interests of the numerous insured people contaminated by the coronavirus, suggesting the approval of the text without deletions.

At the time, it also presented the following proposal to the project: the inclusion of a specific article in the aforementioned Bill that determines, for the purposes of the provisions of article 15 of Law 8,213/91, the suspension of the counting of the so-called grace period during the period of decree of the state of public calamity in the country due to the Covid-19 pandemic.

The DPU weighed the restrictions imposed by the Pandemic (force majeure) that prevented the circulation of goods, services and people, as well as the due development of work – and collection of contributions – by a considerable portion of the population of productive age, especially the most vulnerable. Therefore, it is a reasonable and proportional measure, from the constitutional point of view, to include a specific article in the aforementioned Bill that determines, for the purposes of the provisions of article 15 of Law 8,213/91, the suspension of the counting of the so-called grace period during the period of official public calamity in the country due to the Covid-19 pandemic.

On 09/07/2021, Technical Note no. 2 was issued<sup>154</sup> to deal with “Bill no. 407/2021, which aims to add provisions to Law no. 7,853, of October 24, 1989, in order to give greater effectiveness to policies of social integration and support for people with disabilities”.

The DPU's view is that, when it is stated that “tax or credit incentives will be granted to companies that prove they hire more people with disabilities than they are obliged to”, the Bill promotes an important incentive and tax compensation for companies that comply, in an additional and optional manner, with the social responsibility already defined by law.

---

<sup>154</sup> Available at: <https://www.dpu.def.br/noticias-institucional/233-slideshow/63492-dpu-emite-nota-tecnica-defendendo-aprovacao-do-projeto-de-lei-n-407-2021-sem-alteracoes>.

At the time, the DPU also presented the following proposal to the aforementioned project: the inclusion of a specific article that determines the extent of the benefits proposed therein also to the elderly, for the purposes of Law 10,741/03 (Statute of the Elderly) and governing legislation, now contemplating people with disabilities and the elderly.

On 15/09/2021, the DPU issued Technical Note no. 3 to provide for the “Public policy provided for in Decree no. 10,502, of September 30, 2020, establishing the National Special Education Policy: Equitable, Inclusive and with Lifelong Learning – PNEE – Unconstitutionality”.<sup>155</sup>

The Institution, through the General Secretariat of Institutional Articulation and the GTPID, issued the aforementioned Technical Note to adhere to the foundations of Direct Action of Unconstitutionality no. 6590, proposed on October 26, 2020, by the Brazilian Socialist Party (PSB). It expressed the relevance of the DPU's intervention as an *amicus curiae*, aiming at the declaration of unconstitutionality of Decree no. 10,502/2020, which instituted the “National Special Education Policy: Equitable, Inclusive and with Lifelong Learning”.

In its reasoning, it pointed out that the Convention on the Rights of Persons with Disabilities was included in Brazilian legal system so that what is stated in its text is understood through a new interpretive logic, requiring active stances from the State in legislative activity and the promotion of public policies. The challenged normative act (decree) established a special education policy that allowed children and adolescents to be excluded from the regular education system due to discrimination based on disability, relegating them to segregation in special schools and depriving them of inclusive education.

- **GTPID's participation in the Preparation of the Unified Data Registry of Persons with Disabilities of the State of Espírito Santo**

---

<sup>155</sup>Available at: <https://promocaodedireitoshumanos.dpu.def.br/nota-tecnica-03-2021-politica-publica-prevista-no-decreto-no-10-502-de-30-de-setembro-de-2020-que-institui-a-politica-nacional-de-educacao-especial-equitativa-inclusiva-e-com-aprendizado-ao-long/>.



The GTPID is participating in the meetings for the preparation of the Unified Data Registry of Persons with Disabilities of the State of Espírito Santo, a system that will be composed of a unified database, updated and shared with different institutions and bodies acting in defence of the interests of people with disabilities, to enable the inclusion of people with disabilities and rehabilitated from the INSS in the labour market.

The registry is being built with the participation of the Federal Public Defenders' Office, through GTPID, Labour Prosecution Service of the State of Espírito Santo (ES), Labour Fiscal Audit in ES and representatives of CONDEF and SETADES.

The National Registration for the Inclusion of Persons with Disabilities (Registration-Inclusion) is provided for in article 92 of the Brazilian Inclusion Law, but it has not yet been implemented at the national level. The initiative in the State of Espírito Santo is innovative and seeks to fill the gap regarding the absence of a unified system that consolidates information of people with disabilities and rehabilitated to enable the implementation of public policies and access to the labour market.

The CADEF in Espírito Santo is in the final stages of construction, with the preparation of the prototype by a company specialized in information technology contracted to prepare the questionnaire that will be completed by people with disabilities, rehabilitated from the INSS and companies. With its implementation, it will be possible to bring companies closer to workers to facilitate the filling of about 3,900 vacancies currently open in Espírito Santo, in companies that must comply with the quotas provided for in article 93 of Law 8,213/91, in addition to obtaining data/information for the development of public policies in favour of people with disabilities/rehabilitated from the INSS.

- **GTPID participation in seminars and other events**

Among several participations of the Working Group on the Elderly and Persons with Disabilities, the following can be highlighted.

The Federal Public Defenders' Office (DPU), through GTPID, participated on June 15, 2021, in the live broadcast of the “National Campaign to Combat Violence against the Elderly: Strengthening Rights Protection Networks”, promoted by the Ministry of Women, Family and Human Rights (MMFDH), to raise society's awareness of the importance of implementing public policies for the elderly, through adherence to the National Pact for the Implementation of the Policy on the Rights of the Elderly<sup>156</sup>.

Representing the Federal Public Defenders' Office (DPU), GTPID participated, on June 18, in the virtual seminar promoted by the Commission for the Defence of the Rights of the Elderly of the Chamber of Deputies to mark the World Day for the Awareness of Violence against the Elderly, celebrated on June 15<sup>157</sup>.

There was also participation of the Federal Public Defenders' Office (DPU), via GTPID, on October 22, in the *webinar* on the 18 years of the Statute of the Elderly – “Reflections on Law 10,741/2003”. The online event was promoted by the National Secretariat for the Promotion and Defence of the Rights of Older Persons, the Ministry of Women, Family and Human Rights (SNDPI/MMFDH), in partnership with the Court of Appeals of the Federal District and Territories (TJDFT). The *webinar* addressed the themes “Law 10,741 of 2003 and new proposals for improvement for the promotion of rights – Curatorship and Supported Decision-Making”, “DPU and MMFDH partnership project and Reflections on Law 10,741 of 2003” and “Prospects for inspection in Long-Term Institutions for the Elderly (ILPIs)”. The objective was to promote a reflection on

---

<sup>156</sup>Available at: <https://www.dpu.def.br/noticias-institucional/233-slideshow/62992-junho-violeta-dpgf-fala-sobre-atuacao-da-dpu-no-combate-a-violencia-contr-a-pessoa-idosa>

<sup>157</sup>Available at: <https://www.dpu.def.br/noticias-institucional/233-slideshow/63067-dpu-participa-de-evento-pelo-dia-mundial-de-conscientizacao-da-violencia-contr-a-pessoa-idosa>

the law, as well as to foster new proposals to improve the normative plan, which deals with the rights of older persons in Brazil.<sup>158</sup>

### 5.10.3. The situation of the rights of the elderly in Brazil

#### a. Population ageing and necessity to implement public policies in favour of the elderly and their family caregivers

According to the Brazilian Institute of Geography and Statistics (IBGE), in recent years, the country's population has maintained the trend of ageing and exceeded the mark of 30.3 million elderly in 2017, according to the last Continuous National Household Sample Survey.<sup>159</sup> For the Ministry of Health, the increase in the population aged 60 (sixty) years or more significantly changed the shape of the age pyramid compared to 1980 and this variation will have more impact in 2060, when about 1/3 of Brazilians will be considered senior citizens.<sup>160</sup>

Despite all the guarantees, rights and public policies provided for in the governing legislation (laws 8,842/1994 and 10,741/2003, for example), as well as in the Federal Constitution, the situation faced by the elderly in Brazil is still precarious, either because of the lack of implementation of public policies provided for in the National Policy for the Elderly (PNI – law 8,842/1994), or because of the treatment received by them (physical, psychological and financial violence, among others), which causes some strangeness, because, in the 21st century, the ageing rate of the Brazilian population became higher compared to the last century.<sup>161</sup>

In Brazil, violence against the elderly is unfortunately still a reality, and it grew during the pandemic caused by the Coronavirus. According to the National

---

<sup>158</sup>Available at: <https://promocaodedireitoshumanos.dpu.def.br/dpu-defende-direitos-da-pessoa-idosa-em-webinario/>

<sup>159</sup>Available at: <https://agenciadenoticias.ibge.gov.br/agencia-noticias/2012-agencia-de-noticias/noticias/20980-numero-de-idosos-cresce-18-em-5-anos-e-ultrapassa-30-milhoes-em-2017>

<sup>160</sup>Available at: <http://mds.gov.br/assuntos/brasil-amigo-da-pessoa-idosa/estrategia-1>

<sup>161</sup>Available at: <https://www.ufjf.br/ladem/2020/06/21/envelhecimento-populacional-continua-e-nao-ha-perigo-de-um-geronticidio-artigo-de-jose-eustaquio-diniz-alves/>

Human Rights Ombudsperson, Fernando Ferreira, 37,000 notifications of violence against the elderly were received only in the first half of 2021.<sup>162</sup>

The numbers are alarming and demonstrate that a considerable and growing portion of Brazilian society is ageing, getting sick and, as if that were not enough, suffering from a situation of abandonment. It is certainly the most vulnerable social group of all. Many of these people are bedridden and have limitations that prevent them even from speaking and/or expressing any kind of will.

The causes of violence or neglect are varied, but some deserve special attention. Among them are the significant changes in family arrangements – families are smaller, and there are no longer caregivers for the most dependent. Another cause is the lack of financial resources, often caused by difficulty accessing social security and welfare benefits. Additionally, the lack of implementation of public policies to support the elderly and their family caregivers as provided in the 1994 National Policy for the Elderly is also a factor. These policies include community centres, day care centres, foster homes, sheltered workshops, home consultations, among others.

Sometimes, families that include people who demand special care end up being compelled to institutionalize their loved ones. This is so that, at least in theory, they receive a more dignified and adequate treatment within the institutional reception centres.

And, according to the Ministry of Women, Family and Human Rights<sup>163</sup>, there are already approximately 80,000 elderly people living in more than 6,200 reception institutions throughout the country. It is estimated that the number is even higher, if we compute the institutions that house those people informally.

---

<sup>162</sup>Available at: <https://www.camara.leg.br/noticias/774878-pandemia-de-covid-agravou-situacao-de-violencia-contra-idosos/>

<sup>163</sup>Available at: <https://agenciabrasil.ebc.com.br/politica/noticia/2020-04/equipes-de-saude-da-familia-vao-visitar-idosos-em-asilos>

In this context, far beyond criminalizing conduct, it is even more essential to prevent this situation itself from occurring. In order to achieve this, as highlighted by GTPID at a public event (Violet June) held at the Chamber of Deputies<sup>164</sup>, it's crucial to establish and expand a state that works towards preventing violence. Currently, thousands of elderly people are victims of such situations. Preventing this scenario could be achieved through measures such as expanding visits through the Family Health Programme, improving its structure, and reducing excessive institutionalization by providing community centres, day care centres, foster homes, day hospitals, sheltered workshops, home care services, and other related support.

Another issue of crucial importance to guarantee a better quality of life for the most vulnerable elderly is the constant search for the structuring and regularization of ILPIs, especially the smaller ones, located in regions with low HDI and which are in a situation of greater vulnerability/social risk.

In this regard, there is a need to promote more concrete and direct action by the competent federated entities to change this situation (Federation, States, and Municipalities), other public institutions (e.g. DPEs and MPEs), as well as the thousands of Councils for the Defence of the Rights of Older Persons – and similar – spread across the country (CNDI<sup>165</sup>, state and municipal councils), which are responsible for the management and establishment of criteria for the application of existing resources in countless funds (e.g. National Elderly Fund<sup>166</sup>) created precisely to guarantee greater dignity to the elderly located in their respective fields of activity.

---

<sup>164</sup>Available at: <https://www.dpu.def.br/noticias-institucional/233-slideshow/63067-dpu-participa-de-evento-pelo-dia-mundial-de-conscientizacao-da-violencia-contr-a-pessoa-idosa>

<sup>165</sup>Available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2019/decreto/D9893.htm](http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decreto/D9893.htm); A presidência do CNDI, que integra a estrutura do MMFDH, é exercida atualmente pelo Secretário Nacional de Promoção e Defesa dos Direitos da Pessoa (SNPDI/MMFDH). Recentemente, foi firmado ACT entre a DPU e o MMFDH/SNPDI, que culminou com a implantação do Projeto defensorial “Lares de Idosos: Espaços para Direitos, Dignidade e Solidariedade”.

<sup>166</sup>Available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2010/lei/112213.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2010/lei/112213.htm), *article 4: It is the competence of the National Council for the Rights of the Older Person - CNDI to manage the National Fund for Older Persons and set the criteria for its use.*

Investing in a nursing home, more than a demonstration of respect for the past of those who have contributed so much to society, reflects a true vision of leadership on the part of those who can see a current society with increasingly smaller family arrangements and exponential ageing. That is to say: if they are already so fundamental today, the tendency is for nursing homes to be even more necessary in the future.

In order to achieve these public policies to support the elderly and their family caregivers, already provided for in the PNI since 1994, the role of the Public Defender's Offices (*ombudsman and custos vulnerabilis*<sup>167</sup> entities) *must be strengthened, including that of the DPU* – with national representation – before the public authorities responsible for implementing them in their respective localities.

And the interinstitutional project “Nursing homes: Spaces for Rights, Dignity and Solidarity”, dealt with in another topic, moves in this direction.

#### **b. Institutional reception services for people in Brazil – existence of federal co-financing**

In Brazil, several services involving the sheltering of people fall under the Special High Complexity Social Protection of the Unified Social Assistance System (SUAS). It is also worth mentioning that, similar to what happens with certain services provided within the Brazilian Unified Healthcare System (SUS), these services are also co-financed with federal resources<sup>168</sup>.

Usually, such transfers occur through the transfer of financial resources from the federal government, through the National Fund for Social Assistance

---

<sup>167</sup>Available at: <https://www.conjur.com.br/2019-out-01/stj-admite-defensoria-custos-vulnerabilis-repetitivo>

<sup>168</sup>Available at: <http://mds.gov.br/aceso-a-informacao/perguntas-frequentes/assistencia-social/pse-protecao-social-especial/pisos-pse/piso-de-alta-complexidade>; <http://mds.gov.br/assuntos/assistencia-social/gestao-do-suas/financiamento/repasses>; [http://aplicacoes.mds.gov.br/suaswebcons/restrito/execute.jsf?b=\\*dpotvmubsQbsdfmbtQbhbtNC&event=\\*fyjcjs](http://aplicacoes.mds.gov.br/suaswebcons/restrito/execute.jsf?b=*dpotvmubsQbsdfmbtQbhbtNC&event=*fyjcjs)

(FNAS<sup>169</sup>), to municipalities, through their respective municipal funds, which, in turn, enter into agreements with philanthropic, welfare, and other non-governmental organizations (NGOs), which end up being responsible for the installation and/or maintenance of most of the institutional care centres existing in our country.

As a means of corroboration, it is worth mentioning, for example, Ordinance no. 2,221 of September 3, 2020, issued by the Ministry of Women, Family and Human Rights, which established the procedures for providing emergency financial assistance by the Federal Government to long-term care institutions and defined the distribution criteria, in accordance with Law no. 14,018 of June 20, 2020. This regulation dealt with emergency financial assistance in the amount of up to R\$ 160,000,000.00 (one hundred and sixty million reais), with the aim of strengthening the response to the public health emergency of international concern resulting from the coronavirus pandemic.

It is urgent to emphasize that such entities, when fully regularized, are also co-financed through state and municipal transfers, third-party donations, etc., and still use up to 70% of social welfare/pension benefits – paid with federal funds – earned by the elderly under their management (article 35, §2, of Law no. 10,741/2003 – Statute of the Elderly).

It can be concluded, therefore, that federal funds are being transferred, and the use of benefits paid by the INSS to vulnerable elderly people is allowed to enable the management of non-governmental entities. It is evident that there is also a clear interest of the Federal Government – and the DPU – both to monitor and ensure that the scarce public funds mentioned are well and properly employed by whomever it may be. Not to mention the constitutional duty that it has to promote the protection of human rights for vulnerable groups.

**c. The specific performance of the Federal Public Defenders' Office via the GTPID**

---

<sup>169</sup>Available at: <http://blog.mds.gov.br/fnas/institucional/>



The Federal Public Defenders' Office has established the Working Group on Assistance to the Elderly and Persons with Disabilities (GTPID), which handles sensitive cases of violation and collective, regional, and national demands involving the elderly and people with disabilities<sup>170</sup>.

Furthermore, the GTPID acts as a sort of laboratory for the formulation and execution of innovative theses and projects to be replicated within and outside the institution, such as the **DPU in Nursing Homes** project, which aims to promote necessary oversight and education on rights for all residents, family members, managers, and staff of these important social assistance facilities linked to the Unified Social Assistance System (SUAS). The DPU project for a safe and effective rehabilitation of INSS beneficiaries also seeks to provide specialized assistance to people with disabilities in vulnerable situations after undergoing the INSS professional rehabilitation programme.

In any situation, the GTPID's actions will always aim to promote the defence of individual, collective, and diffuse rights of the elderly and people with disabilities, particularly those safeguarded by applicable legislation. It seeks to encourage the elimination of all forms of neglect, discrimination, violence, cruelty, or oppression against the elderly and people with disabilities, as well as to promote the creation and adoption of specific measures, programmes, and policies for the elderly and people with disabilities, among other objectives.

- **The issuance of a Recommendation by GTPID, at the beginning of the COVID-19 pandemic, to all federative entities aiming at protecting institutionalized senior citizens**

Since the beginning of the COVID-19 pandemic, the DPU, an institution elected by the constituent as a state-appointed guardian of the

---

<sup>170</sup>Available at: <https://promocaodedireitoshumanos.dpu.def.br/gt-atendimento-a-pessoa-idosa-e-a-pessoa-com-deficiencia/>

vulnerable, within the constitutional and legal attributions that concern it and respecting its structural limitations, has also been undertaking numerous efforts, through its executing organs, to ensure the best possible treatment for that most vulnerable population served by ILPIs.

By way of example, there is the issuance of Recommendation no. 1 - DPGU/SGAI DPGU/GTPID, still in early April/2020, directed to all States and Municipalities, to reinforce the actions that were within their scope in the context of ILPIs, and to take all necessary measures to ensure that nothing was lacking in these institutional care centres in terms of human resources, personal protective equipment (PPE), materials for cleaning, disinfection, medication, periodic testing of residents and collaborators, and so on<sup>171</sup>.

In addition to the intended preventive measures, the Recommendation also sought to inform and guide public authorities, local managers, and those responsible for ILPIs about Joint Ordinance no. 1 published on April 2, 2020, by the Ministry of Citizenship. This ordinance established guidelines for requesting federal co-financing aid to address emergency demands related to coronavirus (Covid-19) within Long-Stay Institutions.

- **The implementation of the Elderly Homes Project: Spaces for Rights, Dignity and Solidarity**<sup>172</sup>

Still in 2020, following the same path of approach and inclusion of the institution in the scope of public policies aimed at the elderly and other vulnerable groups, Office no. 3931869/2020 – DPU/GTPID DPGU was issued, addressed to the Ministry of Women, Family and Human Rights (MMFDH), through which the inclusion of DPU as a partner institution was requested within the scope of the aforementioned ORDINANCE No. 2,221, OF SEPTEMBER 3, 2020, considering

---

<sup>171</sup>Available at: <https://www.dpu.def.br/noticias-institucional/233-slideshow/56729-covid-19-recomendacao-para-atencao-especial-a-situacao-dos-asilos> e <https://epoca.globo.com/guilherme-amado/defensoria-da-uniao-quer-testagem-em-massa-em-asilos-24416134>

<sup>172</sup>Institutional video available at: <https://youtu.be/UOFkoj97yyM>

that “there is a clear interest of this institution in monitoring and supervising the implementation of actions and the results of the application of resources transferred to beneficiary institutions.”<sup>173</sup>In response, the MMFDH, through Mr. Antonio Costa, National Secretary for the Promotion and Defence of the Rights of the Elderly and then President of the National Council for the Rights of Older Persons (CNDI), expressed a favourable opinion on the partnership.

Given the positive signal above, several discussions and meetings were promoted over the months between the GTPID/SGAI/SAE and the MMFDH/SNPDI, in order to establish a better strategy of cooperative institutional action, until, in June of this year, during a public event aimed at raising awareness among the population about the theme of violence against the elderly<sup>174</sup>, an important technical cooperation agreement (ACT) was signed between DPU and the Ministry of Women, Family and Human Rights.

Later, the execution of the aforementioned ACT began, with the implementation of one of the objects of the ACT<sup>175</sup>, notably the project “Elderly Homes: Spaces for Rights, Dignity, and Solidarity.” During the project, the DPU has already carried out inspections in **10 (ten) ILPIs** and its on-site activities have covered a target audience of approximately **400 elderly people in care**. There are already numerous legal assistance processes (PAJs) instituted in an office created exclusively to cover the demand resulting from this institutional project. Many of them involve elderly people entitled to social welfare benefits and, in some cases,

---

<sup>173</sup>Available at: <https://www.gov.br/mdh/pt-br/assuntos/noticias/2020-2/outubro/auxilio-emergencial-assinatura-da-lista-das-ilpis-habilitadas-ocorrera-ao-vivo-nesta-quinta-feira-22>

<sup>174</sup>Available at: <https://www.dpu.def.br/noticias-institucional/233-slideshow/62992-junho-violeta-dpgf-fala-sobre-atuacao-da-dpu-no-combate-a-violencia-contra-a-pessoa-idosa>

<sup>175</sup>The object of the aforementioned ACT was “*partnership and mutual cooperation in integrated actions and projects for the promotion of the rights of older persons; elaboration and production of printed and audio-visual materials and content for campaigns to disseminate information on the rights of older persons; organization of events such as lectures, forums, seminars and meetings to promote education on the human rights of older persons; execution of itinerant actions in Long Staying Institutions for the Elderly (ILPIs) to guarantee education on rights, full and free legal assistance, as well as to monitor the reversal of federal resources received by the ILPIs for the benefit of older persons; to encourage the creation of a programme of permanent action by DPU in ILPIs; raising awareness in civil society and workers in the area about the guarantees and fundamental rights of the elderly; mutual support and exchange of experiences and information to publicise and disseminate knowledge about the rights set out in Law no. 10.741/2003, the Inter-American Convention on the Protection of the Human Rights of Older Persons and other standards on the subject, encouraging respect and appreciation of older persons at the national level.*”

social security benefits – people with a contribution/qualification period, including – who only need simple legal guidance, a correct legal direction, to be duly claimed before the INSS.

- **1st mission**

The pilot stage took place in 4 (four) ILPIs located in Brasília, considered as model institutions; it aimed to acquire the necessary *know-how* regarding good conduct to be replicated in other institutions located in poorer regions, in municipalities without inspection equipment, and with low Human Development Index. Even in the case of “model” institutions, as portrayed in the news published on the DPU's own website<sup>176</sup>, the team was faced with several situations that required the provision of free legal assistance for the elderly<sup>177</sup>.

- **2nd mission**

Following that, between September 27th and October 1st, the DPU/Elderly Homes Project team travelled to the municipalities of Alagoinhas and Aporá, located in the region of the “agreste” in Bahia, to provide free legal assistance to approximately 170 elderly and disabled people residing in 6 local ILPIs.<sup>178</sup>

During the inspections, the DPU team heard reports from the institutions' responsible parties about the lack of supply of geriatric diapers,

---

<sup>176</sup>Available at: <https://www.dpu.def.br/noticias-distrito-federal/64075-dpu-inicia-projeto-de-vistoria-em-lares-de-idosos>

<sup>177</sup> An example of this is the case of Ms. Anastácia, sheltered at the ILPI Casa do Candango (DF) since 1990, a very old person – she seemed to be about 100 years old -, with a very serious disability (physical and mental), indigenous, illiterate and who does not even communicate in Portuguese. The only document she had until then was a birth certificate registered late in 1999, which only contained the registration number, a fictitious place of birth, her name in Portuguese, and nothing else. It was, in other words, an indigenous woman treated as an indigent in the middle of the capital of the republic. In order to the aforementioned super older woman could minimally exercise her rights - such as, for example, to request a simple assistance benefit before the INSS - a request for the urgent issuance of a CPF (Cadastro de Pessoa Física - Natural Persons Registry) on behalf of this citizen was sent to the Special Secretariat of the Brazilian, via GTPID; fortunately, in less than a month, there was a positive response from the state agency (RFB) already with information about the generation of a CPF number. In this case, an official letter was also sent to the DP-DF, for the resumption of the interdiction process of the lady, since, despite being well taken care of, she had been without a valid curator for years.

<sup>178</sup>Available at: <https://www.dpu.def.br/noticias-institucional/233-slideshow/64919-em-visitao-a-lares-de-idosos-na-bahia-dpu-constata-problemas-por-falta-de-acao-do-poder-publico>

continuous-use medications, treatment from the Family Health Program, materials for wound care, and physiotherapy services to prevent atrophy in the most dependent elderly, among other challenges faced by ILPIs.

It was also found that, due to difficulties in regularization and lack of funding, some ILPIs condition admission on the existence of a social security or welfare benefit for subsistence maintenance. However, some managers, despite all difficulties, open their homes to support abandoned elderly people, regardless of any compensation. The public authorities, through the Specialized Social Assistance Reference Centres (CREAS), continue to refer elderly (or otherwise) people to these institutions. In some cases, homeless people and people with disabilities are referred.

In this scenario, a contradictory posture of the local government was noted. On the one hand, visits are made to identify formal and structural irregularities; on the other hand, no transfers are made, and no concrete measures are taken to structure these welcoming spaces.

This situation causes many of these homes to remain in a cycle of precariousness, as without the necessary documentation (permit, for example), they cannot obtain the Social Assistance Beneficent Entity Certificate (CEBAS) for tax exemption purposes and cannot raise funds from any social assistance fund (national/state/municipal) (the exception was the federal emergency aid provided under Law no. 14,018/2020 and GM/MMFDH Ordinance no. 2,221 of September 3, 2020).

Without these resources, without tax exemption, and without concrete and sufficient state support, such entities end up never having the conditions to get out of what seems to be an endless whirlpool of irregularities and precariousness. And, as they continue to be fed with more and more residents sent by local assistance agencies (CREAS, for example), their situation is further aggravated over the years.

All of this becomes even more evident when considering the estimated monthly cost of maintaining an ILPI and what these homes can actually obtain as revenue (basically minimal benefits for the elderly and sporadic donations).

Regarding the reported difficulties, an institutional video was produced, a job carried out with great care by ASCOM/DPU, as can be seen through the link <https://www.youtube.com/watch?v=UOFkoj97yyM>.

At the end of this second mission, a detailed report was issued, and considering what was observed on-site and the range of existing federal/state demands, it was concluded that it is essential to establish a continuous model of care flow for elderly homes in the state of Bahia that involves the participation of DPE and DPU<sup>179</sup>.

---

<sup>179</sup> V. Minutes of the meeting attached to SEI proceeding 08038.020771/2021-31, which dealt with the 1st meeting ever held between DPU/GT-PID/DRDH-BA and DPE-BA (Regional of Alagoinhas).







## **5.11. WASTE PICKERS OF RECYCLABLE MATERIALS**

### **5.11.1. Contextualization of the theme**

#### **5.11.1.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)**

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations regarding social inclusion and environmental preservation policies:

30. Continue with the commendable efforts to strengthen the legal and institutional framework for the promotion and protection of human rights and to reduce poverty and promote social equality (Bhutan);

50. Consolidate the progress made towards reaching the Sustainable Development Goals, and continue efforts towards inclusive socioeconomic development programmes with a focus on poverty eradication (Islamic Republic of Iran);

51. Develop a national action plan on business and human rights in order to prevent development projects from violating the rights of traditional populations, indigenous peoples and workers and causing damage to the environment, and in order to ensure an effective remedy with meaningful consultations with the affected communities (Netherlands);

139. Continue to implement and strengthen public policies and programmes for inclusion, reduction of poverty and inequality, non-discrimination and promotion of equality and inclusion (Nicaragua);

140. Continue measures to combat poverty and social inequality by implementing rural development plans covering vulnerable groups, in particular rural women (Sri Lanka);

141. Implement further measures to address the problems related to poverty and socioeconomic inequality in respect of regions and vulnerable groups of the population, such as rural residents (Uzbekistan);

143. Continue the substantive efforts in the area of governance and poverty reduction (Côte d'Ivoire);

144. Continue efforts to combat poverty and to promote social equality (Lebanon);

226. Ensure that the rights of indigenous people and respect of the environment and biodiversity are taken into due consideration in economic activities (Holy See);

235. Continue to invest in poverty alleviation policies and to ensure more effective and targeted implementation, so as to reduce social and economic inequality, in particular for rural populations and indigenous peoples (Singapore);

### 5.11.2. The role of waste pickers and recyclable material pickers and reuse in the National Solid Waste Policy

To better understand the relationship between the public policy of solid waste and waste pickers and recyclers, it is important to observe the topic from a socio-environmental perspective<sup>180</sup>.

There is no doubt that environmentally appropriate treatment of solid waste is an unquestionable necessity for humanity, and it is a matter of utmost environmental importance and relevance.

However, this process of social (and cultural) transformation involves **actual public agents** (the waste pickers and recyclers), responsible for doing what the government and business sector have never done. For several decades, waste pickers have been carrying out the task that public (and private) agents responsible for executing this important public service should have been doing. In fact, waste pickers have been surviving from waste picking activity for many decades, and in some cases even centuries.<sup>181</sup> When public authorities are ineffective, it is the waste pickers who provide the service, often in an economic process of subsistence (in *landfills*<sup>182</sup> and/or *controlled dumps*<sup>183</sup>, for example). Despite the efforts of waste

---

<sup>180</sup> Social obligations meet the principles of environmental protection. The importance of environmental protection is not dissociated from the social aspect involved.

<sup>181</sup> BOSI, Antônio de Pádua. *História dos Catadores no Brasil*. 1ª ed. São Paulo: Verona, 2015. The author goes through a historical report on the activity of waste picking in Brazil and in the world, identifying records on the activity since a long time ago.

<sup>182</sup> **Landfill**: unit/place where urban solid waste is disposed of in an environmentally inadequate manner. They lack a set of systems and measures needed to protect people's health and the environment from damage and degradation.

<sup>183</sup> **Controlled Landfill**: it is a final disposal unit of urban solid residues without soil treatment - intermediary solution between landfills and sanitary landfills, not being yet the most adequate way as regards the generation of pollution to the environment; **Sanitary Landfill**: it is a final disposal space of

pickers, the public authorities fall short of achieving reasonable recycling rates. The country only recycles less than 4% of the urban solid waste produced, and almost 30 million tons/year of urban solid waste are dumped in landfills and controlled dumps<sup>184</sup>.

In fact, the Institute of Applied Economic Research – IPEA, considering the elements of this equation (solid waste – recycling – environment – natural resources), concluded almost a decade ago that the country loses about 8 billion reais per year due to sending recyclable and reusable materials to controlled dumps and/or landfills<sup>185</sup>.

The National Solid Waste Policy Law (Law no. 12,305/2010), although also based on environmental values and principles, did not forget the social and human aspects that involve the issue, especially the figure of the waste picker and their necessary **social inclusion and economic empowerment**. We can say that it was a choice focused on **biocentrism**<sup>186</sup>. Furthermore, it would not be credible for this group to be excluded from the transformative process intended by the legislation.

In this scenario of public authorities and business sector omission<sup>187</sup>, waste pickers and recyclers emerge as protagonists in the reuse and recycling process. If there is any recycling in Brazil at all, this happens thanks to the work

---

urban solid residues that has soil sealing and drainage of the generated liquids. It is a more appropriate form of final destination than dumps and controlled landfills, as it reduces the environmental contamination generated by the waste. (Anuário da Reciclagem 2020 – Associação Nacional dos Catadores e Catadoras de Materiais Recicláveis - ANCAT).

<sup>184</sup> Panorama 2020 – Associação Brasileira de Empresas de Limpeza Pública e Resíduos Especiais - ABRELPE. Available at: <https://abrelpe.org.br/panorama-2020/>

<sup>185</sup> Situação Social das Catadoras e dos Catadores de Materiais Recicláveis e Reutilizáveis no Brasil – IPEA. Brasília, 2013.

<sup>186</sup> The position of man according to environmental concerns is attributed to the following generic conceptions: anthropocentrism, ecocentrism and biocentrism. The first places man at the centre of concerns; the second places the environment at the centre of the universe; the third seeks to reconcile the first two, giving importance both to the environment and to man.

<sup>187</sup> Federal Court of Accounts. Judgment 2512/2016. Full Court. Judged on 28/09/2016. Available at: <http://www.lexml.gov.br/urn/urn:lex:br:tribunal.contas.uniao;plenario:acordao:2016-09-28;2512>.

developed by waste pickers and recyclers. The law, therefore, only sought to redeem this uncontroversial historical debt<sup>188</sup>.

### 5.11.3. Legal Nature of Solid Waste, Principles, Application, and the Socio-Environmental Function of Property

One of the most relevant topics we need to address when discussing the National Policy on Solid Waste and its relationship with waste pickers is the legal nature of solid waste and the legal framework surrounding the ownership of these materials.

Two sections of the national law are sufficient to indicate the direction to be followed regarding the nature of solid waste and the legal framework of ownership. The first is the **protector-receiver principle**, as set forth in Article 6, item II, and the second is the **legal nature of recyclable and reusable solid waste**, as defined in Article 6, item VIII. Both emphasize the work of waste pickers and impose obligations on the public authorities (at all three levels) and the business sector towards this category (whose protagonism is qualified by the recognition of rights).

The rule set forth in Article 6, item VIII, of the governing law actually functions as a kind of **property title** for recyclable and reusable solid waste in favour of waste pickers. Furthermore, it represents what we call the **principle *in dubio pro waste picker***. Therefore, when faced with a situation that generates doubt or ambiguity about which path to follow regarding environmentally sound

---

<sup>188</sup> This protagonism can be perceived when we analyse the mentioned legal diploma. Let's see: 1) the **expression "social and economic inclusion of waste picker cooperatives and associations" or similar** (repeated a dozen times), as well as the expression "waste pickers" itself, repeated dozens of times (remember that the *law does not contain useless words* and that it is a legislation with only 55 articles); 2) the **priority for contracting** associations, cooperatives or even collectives of waste pickers (obviously after a process of incubation and formalization), provided for in Article 36, 1 of Law No. 12,305/2010 - the expression must be interpreted based on this recognized **normative protagonism**, leaving no *room* for convenience and opportunity; 3) the express waiver of bidding for these contracts (article 36, paragraph 2); 4) the **legal concept (legal nature) of solid waste** foreseen in article 6, VIII ("*the recognition of reusable and recyclable solid waste as an economic good of social value, generator of work and income and promoter of citizenship*"), a kind of interpretive vector or, with our *venia*, consecration of the **principle *in dubio pro waste pickers***; and 5) the **principle of protector-receiver**, expressed in article 6, II - how waste pickers collect, minimizing environmental impacts, are accredited as creditors in the face of those who should do so. All this is *carefully* reinforced in Decree No. 7.404/2010 - articles 40, 41 and 43, items I, II and III.

treatment of solid waste, the solution must be in favour of waste pickers. Besides being the most vulnerable party in the process, national law recognizes their protagonism and qualifies them with rights.

This sense and scope are in line with the protagonism of waste pickers (as explained above) and the principles governing the National Solid Waste Policy, considering the legal nature of solid waste (Article 6, VIII, of Law no. 12,305/2010).

#### **5.11.4. Social inclusion and economic emancipation of waste pickers in the National Solid Waste Policy**

The National Solid Waste Policy (NSWP) can be defined as a set of principles, objectives, instruments, guidelines, goals, and actions adopted by the Federal Government, either alone or in cooperation with states, the Federal District, municipalities or private entities, aimed at the integrated management and environmentally sound disposal of solid waste.

The National, State, Municipal, and District Plans (as outlined in Articles 14 and onwards) require the establishment of goals, programs, projects, and actions to achieve specific targets (such as those stated in article 15, VI – National Plan, 17, VI – State Plan, and article 19, XI c/c 36, II, §§ 1 and 2 – Municipal Plan). This serves as a link between the legal obligations of the different levels of government, creating a sense of passive solidarity during the transition towards environmentally responsible treatment of solid waste, including the closure of landfill sites. Of particular importance is the social and economic inclusion of waste pickers in selective waste collection systems and reverse logistics.

This means that all entities of the federation are responsible for the social and economic inclusion of waste pickers (*ex vi* of articles 1, *caput*; 4; 7, VIII; 8, VI and XIX; 10; 12, *caput*; 15, V and VI; 17, V and VI; 19, XI; 25; 29, *caput* and single paragraph; 42, *caput*; 44, *caput*; 51, all of Law no. 12,305/2010). It should be clarified that inclusion is not limited to direct hiring (Article 24, XVII,

Law no. 8,666/99). This is just its final act. Exegesis allows us to conclude that inclusion is a genus of which the incubation/training of waste pickers are species; incentives to cooperatives and associations, and even indemnification. Therefore, in summary, the obligation of the public authorities (Federal Government, States, Municipalities, and the Federal District) is set out in the law.

Therefore, the rule inserted in article 54 of the governing law must be interpreted in light of the various values/principles/rules that make up the legal system. Despite the recent amendment (new wording given by Law no. 14,026/2020), the environmentally sound treatment of waste – including the closure of *landfill sites* – must consider the legal obligation of the federative entities in this regard. And this is expressed in the NSWP Law: the closure of landfill sites must be associated with the social and economic inclusion of associations and cooperatives of waste pickers (article 15, V and VI, 17, V and VI, 19, IX).

#### **5.11.5. The actions of the Working Group for The Assistance of Recyclable Material Collectors of the Federal Public Defenders' Office**

The Federal Public Defenders' Office's Working Group for The Assistance of Recyclable Material Collectors was created in 2014 as a result of its work (back in 2013) with the waste pickers who worked at the “*Aurá Dump*”, located in the Metropolitan Region of Belém/PA. This was the second-largest dump in the country at the time, with approximately 2,000 waste picker families. These factors made the process of closing the dump activities traumatic, with consequences that can be felt even today. For example, the waste pickers were not socially and economically included, contrary to the provisions of the applicable legislation (Law no. 12,305/2010)<sup>189</sup>.

---

<sup>189</sup> At that time, only a small group of waste pickers was part of the transition process for the municipal selective collection system in the Municipality of Belém - PA.

From this experience with the closure of dumps, other cases emerged, such as the closure of the “*Estrutural Dump*” (actions started in 2015), the largest dump in Latin America, located in the surroundings of the Federal District.

In addition, the Working Group has also mediated in several other specific cases between waste pickers and the public authorities during the transition from dump closure to the implementation of selective waste collection, as was the case in the Municipality of Mangaratiba/RJ, when the DPU signed a Conduct Adjustment Agreement – TAC in March 2019. And the current mediation process (joint action of DPU, DPE/RJ and MPT) between the waste pickers of “*Bulhões Dump*”, in Resende/RJ, and the local government, in the transition process between the closure of activities in the dump and the implementation of selective collection.

The DPU also participated in various mediations with the public authorities aimed at implementing selective waste collection and hiring cooperatives and associations of recyclable material collectors – the so-called urban waste pickers. In this context, the following actions deserve mention:

- Request for hearing at the Inter-American Commission on Human Rights – IACHR (174th session) in order to expose the situation of waste pickers in Brazil<sup>190</sup>.
- Action in the process of closing the activities of the “*Estrutural Dump*” in the Federal District, aiming at the social and economic inclusion of waste pickers (recommendatory notification<sup>191</sup>).
- Action in the process of closing the “*Mangaratiba Dump*” in the State of Rio de Janeiro, which resulted in the signing of a Conduct Adjustment Term – TAC<sup>192</sup> between the Federal Public Defenders’ Office and the Municipality. Concurrently with the closure of the dump, a cooperative

---

190 Proceeding No. 08038.004988/2019-89. Federal Public Defenders’ Office.

191 Internal document DPU - SEI 2084493

192 Internal document DPU - SEI 3834558



of recyclable and reusable material collectors was created and hired to provide services to the established selective waste collection system.

- Participation in the preparation of the document “*Technical and Legal Guidelines for the Selective Collection and Screening of Recyclable Materials during the COVID-19 pandemic*”<sup>193</sup>. The document aims to provide a general technical and legal approach for selective collection and sorting services of recyclable materials during the pandemic, in order to assist the Federal Prosecution Service, the Public Defenders' Office, public agencies, and entities that work towards improving selective collection and the safety conditions of waste pickers.
- Participation in the *Latin American Meeting Against the Destruction of Urban Solid Waste: Pathways to Zero Waste in Brazil*<sup>194</sup>. The meeting aimed to define strategies and actions in the face of intense attacks by cement and incineration companies for the burning of urban solid waste.
- Issuance of recommendations to municipalities aimed at protecting waste pickers during the Covid-19 pandemic.
- Preparation of Technical Note No. 1/2021<sup>195</sup> sent to the States, Municipalities, General Coordination of the National Immunization Program, President of the National Health Council (CONASS) and the President of the President of the National Council of Municipal Health Secretariats (CONASEMS), with technical-legal considerations regarding the inclusion of waste pickers and

---

<sup>193</sup>[https://www.cnmp.mp.br/portal//images/Publicacoes/documentos/2020/DIRETRIZES\\_COLETA\\_SELETIVA\\_E\\_COVID.pdf](https://www.cnmp.mp.br/portal//images/Publicacoes/documentos/2020/DIRETRIZES_COLETA_SELETIVA_E_COVID.pdf)

<sup>194</sup> Internal document DPU - SEI 3137431

<sup>195</sup> <https://promocaodedireitoshumanos.dpu.def.br/notas-tecnicas/>

waste pickers of recyclable and reusable materials in the National Plan for the Operationalization of Vaccination against COVID-19.

- Conducting a *Training Course for Waste Pickers* (2021), in partnership with the Justice Forum, ANADEP and CONDEGE. The objective was to present the theme to the defenders, enabling the expansion of action in support of the workers.
- Development of a *Human Rights Action Protocol for the Public Defenders' Office in Defence of Collectors of Recyclable and Reusable Materials*, in partnership with CONDEGE (2021) – in the development phase.

Furthermore, it is worth mentioning the implementation of the project *The DPU Goes Where the Poor People Are*, which has been funded by the Diffuse Rights Fund and coordinated by a member of the Working Group on Recyclable Materials Collectors since 2016. The project has been serving approximately 20 associations, cooperatives, and collectives of waste pickers across approximately 15 municipalities in the southern region of the state of Rio de Janeiro.



DEFENSORIA P...

...o promove a defesa dos ...ção jurídica

GOoffice

## 5.12. HOMELESS POPULATION

### 5.12.1. Contextualization of the theme

#### 4.12.1.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations regarding policies for social inclusion and defence of the rights of the homeless population:

- 30. Continue with the commendable efforts to strengthen the legal and institutional framework for the promotion and protection of human rights and to reduce poverty and promote social equality (Bhutan);
- 50. Consolidate the progress made towards reaching the Sustainable Development Goals, and continue efforts towards inclusive socioeconomic development programmes with a focus on poverty eradication (Islamic Republic of Iran);
- 51. Develop a national action plan on business and human rights in order to prevent development projects from violating the rights of traditional populations, indigenous peoples and workers and causing damage to the environment, and in order to ensure an effective remedy with meaningful consultations with the affected communities (Netherlands);
- 139. Continue to implement and strengthen public policies and programmes for inclusion, reduction of poverty and inequality, non-discrimination and promotion of equality and inclusion (Nicaragua);
- 140. Continue measures to combat poverty and social inequality by implementing rural development plans covering vulnerable groups, in particular rural women (Sri Lanka);
- 141. Implement further measures to address the problems related to poverty and socioeconomic inequality in respect of regions and vulnerable groups of the population, such as rural residents (Uzbekistan);
- 143. Continue the substantive efforts in the area of governance and poverty reduction (Côte d'Ivoire);
- 144. Continue efforts to combat poverty and to promote social equality (Lebanon);
- 204. Adopt comprehensive policies to combat sexual harassment, especially against children and adolescents, including those in street situations or living in placement institutions (Maldives);
- 207. Continue to eliminate discrimination against children in street situations and rural areas as well as children with



disabilities and against other minority groups and take all necessary measures to prevent abuse of their vulnerabilities (Turkey);

226. Ensure that the rights of indigenous people and respect of the environment and biodiversity are taken into due consideration in economic activities (Holy See);

235. Continue to invest in poverty alleviation policies and to ensure more effective and targeted implementation, so as to reduce social and economic inequality, in particular for rural populations and indigenous peoples (Singapore);

### 5.12.1.2 Situation of the rights of homeless people in Brazil

Brazil occupies the seventh position in the world ranking of inequality<sup>196</sup>, being one of the countries where income is most concentrated<sup>197</sup>. A large part of the population is pushed into poverty here. However, the exclusion and extreme vulnerability of the homeless population is unparalleled in the country's recent history.

The Institute of Applied Economic Research (IPEA) states, based on the SUAS Census and the Single Registry, that **there were more than 221,000 (two hundred and twenty-one thousand) homeless people in Brazil** in March 2020<sup>198</sup>, the month in which the Covid-19 pandemic was recognized. After that date, the homeless population increased significantly.

The escalation of unemployment and the inability to maintain rented housing are shown to human rights movements as important reasons for the increase in the number of homeless people<sup>199</sup>. The increase in domestic violence against women, which led many of the victims to reception centres or to the streets,

---

196 Relatório de desenvolvimento humano divulgado pelo Programa das Nações Unidas Disponível em: <<https://www12.senado.leg.br/noticias/infomaterias/2021/03/recordista-em-desigualdade-pais-estuda-alternativas-para-ajudar-os-mais-pobres>>. Accessed on November 18, 2021.

197 Available at: <<https://veja.abril.com.br/blog/jose-casado/credit-suisse-concentracao-de-renda-no-brasil-e-recorde/>>. Accessed on November 18, 2021.

198 Available at: <[https://www.ipea.gov.br/portal/images/stories/PDFs/nota\\_tecnica/200612\\_nt\\_disoc\\_n\\_73.pdf](https://www.ipea.gov.br/portal/images/stories/PDFs/nota_tecnica/200612_nt_disoc_n_73.pdf)>. Accessed on November 17, 2021.

199 Source: Agência Câmara de Notícias. Available at: <<https://www.camara.leg.br/noticias/769293-movimentos-de-direitos-humanos-alertam-para-o-aumento-de-pessoas-em-situacao-de-rua/>>. Accessed on November 19, 2021.

also seems to have contributed significantly to the worsening of the social crisis by reducing access to housing during the pandemic<sup>200</sup>.

Following the vertiginous increase in the homeless population, reports of violence and aggression against them have multiplied. In 2021, it's estimated that 17 homeless people died in São Paulo due to suspected hypothermia during the winter<sup>201</sup>.

## **5.12.2. Identification of the position of the Brazilian State with regard to the homeless population**

### **5.12.2.1. Federal legislation**

More than just negligent, the Brazilian State has continually violated the human rights of people experiencing homelessness during the course of the pandemic.

In the field of legislation, there was no strengthening of protection mechanisms specifically aimed at those vulnerable due to homelessness. The list of guarantees specific to the homeless population and the national public policy for this extremely vulnerable group remained untouched, restricted to the terms of Decree 7,053, of 23/12/2009.

A significant setback, in turn, occurred with the closure of the Bolsa Família Program (Law 10,836/2004), of recognized success for social inclusion and poverty reduction during its eighteen years of existence<sup>202</sup>, replaced by a benefit whose finality is still uncertain and lacking mechanisms for the elimination of inequality.

---

200 Available at: <<http://www.ihu.unisinos.br/610378-populacao-de-rua-aumenta-e-familias-inteiras-passam-a-nao-ter-onde-morar-entrevista-especial-com-juliana-reimberg>>. Accessed on November 19, 2021.

201 Available at: <<https://noticias.uol.com.br/cotidiano/ultimas-noticias/2021/07/31/morador-de-rua-morto-sp.htm>>. Accessed on November 25, 2021.

202 <https://www.worldbank.org/pt/news/feature/2010/05/27/br-bolsa-familia>

The only federal legislative efforts likely to be mentioned, and they're still small steps, were the two attempts to prevent the eviction of families who, hit by the serious economic crisis, lost the financial conditions to continue honouring the rent.

At first, the National Congress approved a rule to prevent only the eviction of a defaulting urban tenant, but the rule was vetoed by the President of the Republic, who considered it “excessive protection to the debtor to the detriment of the creditor<sup>203</sup>.” The veto was overturned, and the limited prohibition was established on 8/9/2020 in Law 14,010, of 10/6/2020.

In June 2021, the National Congress extended the ban on eviction to urban collective occupations. Again, there was the presidential veto, with support in the justification presented by the Ministry of Women, Family and Human Rights (MMFDH). In the reasons for the veto brought by the MMFDH, it was considered that “the legislative proposal is out of step with the fundamental right to property”, giving “a safe conduct for the irregular occupants of public properties, who often act in bad faith and whose judicial discussions have been going on for years”. However, the National Congress, once again, overturned the veto and the prohibition of urban collective evictions was established by Law 14,216, of 7/10/2021.

#### **5.12.2.2. State and Federal District legislation**

Federated States have also not strengthened legislative protection for the homeless population, although they have also tried prohibiting evictions during the pandemic.

The Legislative Assembly of the State of Rio de Janeiro, for example, approved a rule to this effect, fully vetoed by Governor Wilson Witzel. The veto was overturned and State Law 9,020/2020 was enacted. However, after provocation by the Association of Magistrates of the State of Rio de Janeiro, the

---

<sup>203</sup> Brazil. Presidency of Brazil. Message 331/2020 (reasons for the vetoes of Bill 1,179/2020).



ban on evictions was suspended, on grounds of unconstitutionality, by decision of the local Court of Appeals. Only with the intervention of the State Public Defender's Office did the law take effect again, by injunction of the Federal Supreme Court.

The Legislative Assembly of the State of São Paulo also approved the ban on evictions during the pandemic but did not overturn Governor João Dória's veto of the proposal.

In the Federal District, there was a situation similar to that of the State of Rio de Janeiro. The Federal District's Legislative Chamber banned evictions. Governor Ibaneis Rocha vetoed the bill; the veto was overturned by the Legislative Chamber, but the Court of Appeals of the Federal District and the Territories, alleging unconstitutionality, suspended the application of District Law 6,657/2020, at the request of the governor. Despite the suspension, an occupation was maintained through the performance of the Federal District's Public Defenders' Office, also by preliminary Federal Supreme Court decision.

#### **5.12.2.3. Municipal legislation**

The legislative production of the municipalities also makes progress in protecting the human rights of homeless people. On the contrary, setbacks and more violations are reported. An example was the approval, by the City Council of Londrina, in the state of Paraná, of an “anti-loitering” bill, to prohibit the allocation of any furniture, such as mattresses, chairs, tables, tents, and the like, in squares, streets, woods, sidewalks, and other public places in that municipality; in addition to determining the removal by public inspection agents of the allocated materials to be destined for recycling or landfill.

#### **5.12.2.4. Federal public policies**

During the Covid-19 pandemic, there was a dismantling of national public policy for the homeless population, both creating difficulties for holding meetings of the Intersectoral Committee for Monitoring and Monitoring the

National Policy for the Homeless Population and weakening its administrative support.

The federal government also did not advance in the inclusion of the homeless population in the national census. No concrete action was taken despite the court order that met the request of the Federal Public Defenders' Office in a public civil action<sup>204</sup>.

In the field of execution of offensive federal policies, the Ministry of Women, Family and Human Rights remains heavily invested in therapeutic communities despite the finding, by the National Mechanism for Combating and Preventing Torture<sup>205</sup>, of violations against the freedom and integrity of people who end up with them involved, especially those living in the streets.

An unknown is the publication of guidelines for the implementation of the First Housing Program by the Ministry of Human Rights (Ordinance no. 2,927/2021), because, despite indicating the possibility of meeting the old claim of the National Movement of the Homeless Population, it is projected with expectation of limited transfers – and only for the municipality of Fortaleza, in the State of Ceará, for the State of Paraná (nine hundred and twenty thousand reais, each) and for the Federal District (around seven million reais).

#### **5.12.2.5. State, district and municipal public policies**

The states, Federal District and Municipalities continue to offer shelters that restrict individual freedoms, with limitations on hours to enter and leave, strict routine for hygiene and meals, as well as rules such as division by gender, which

---

Public Civil<sup>204</sup> Action No. 0019792-38.2018.4.02.5101, distributed to the 21st Federal Court of Rio de Janeiro, which ruled in favour of the request. The records were sent to the Federal Regional Court of the 2nd Region assuming the number 0019792-38.2018.4.02.5101, in which judgment was rendered granting the appeals and the necessary remittance, to dismiss the case without examination of the merits with regard to the Federal Union and dismissing the request with regard to IBGE. In view of this decision, a Special Appeal was filed by DPU, which is still pending judgment by the Superior Court of Justice.

<sup>205</sup> Available at: [https://mnpctbrasil.files.wordpress.com/2020/11/relatorio\\_inspecao\\_ct\\_desafio\\_jovem\\_maanaim\\_itamo\\_nte.pdf](https://mnpctbrasil.files.wordpress.com/2020/11/relatorio_inspecao_ct_desafio_jovem_maanaim_itamo_nte.pdf). Accessed on November 25, 2021.

ends up separating heterosexual couples who live together on the street<sup>206</sup>. Thus, they are unattractive to that population and that contributes to the maintenance of people on the streets, to preserve the little to none autonomy they have.

In addition to the unattractive shelters, state entities persist in adopting violating measures, such as the installation, in February 2021, of “anti-homeless” stones on a sidewalk under the Dom Luciano Mendes de Almeida viaduct, on Salim Farah Maluf Avenue, Tatuapé, in the east of São Paulo.

On 22/03/2021, the “DF Legal” Secretariat promoted action for the overthrow of shacks under occupation near the Banco do Brasil Cultural Center (CCBB)<sup>207</sup> located at L4 Norte, in Brasília/DF. About 38 vulnerable families were evicted from their cardboard and plywood shacks. Even a small community school that was on the site was put down.

One of the few positive public policies was the prioritization of immunization of homeless people against Covid-19 with the Janssen vaccine for being applied in a single dose. Among the places that adopted this practice, we can mention the Federal District<sup>208</sup>, the cities of Belo Horizonte/MG<sup>209</sup>,

---

206 Available at: <<https://br.noticias.yahoo.com/pessoas-situacao-de-rua-brasil-abrigo-padre-julio-lancelotti-cracolandia-frio-133249295.html>>. Accessed on November 19, 2021.

207 Available at: <<https://www.correiobraziliense.com.br/cidades-df/2021/03/4913384-acao-conjunta-do-gdf-derruba-barracos-em-ocupacao-proximo-ao-ccbb.html>>. Accessed on November 19, 2021.

208 Available at: <<https://www.agenciabrasilia.df.gov.br/2021/06/28/populacao-em-situacao-de-rua-comeca-a-ser-imunizada/>>. Accessed on November 19, 2021.

209 Available at: <[https://www.otempo.com.br/mobile/cidades/vacina-da-janssen-em-bh-1-lote-sera-usado-para-imunizar-populacao-de-rua-1.2504887?utm\\_source=whatsapp](https://www.otempo.com.br/mobile/cidades/vacina-da-janssen-em-bh-1-lote-sera-usado-para-imunizar-populacao-de-rua-1.2504887?utm_source=whatsapp)>. Accessed on November 19, 2021.

Cuiabá/MT<sup>210</sup>, Salvador/BA<sup>211</sup>, São Paulo/SP<sup>212</sup>, Recife<sup>213</sup>, the states of Maranhão<sup>214</sup> and Santa Catarina<sup>215</sup>.

Another positive measure was the publication of Recommendation no. 101, of the National Council of Justice, of July 12, 2021, to Brazilian courts to adopt specific measures to ensure access to justice for the digitally excluded. However, despite this recommendation, the Court of Appeals of the State of Rio Grande do Sul and the Judicial Administrative Department issued Service Order no. 001/2021-P and CGJ of September 29, 2021, providing for the use of clothing on the premises of the Judiciary Branch in the state expressly prohibiting the entry, for example, of people wearing slippers or similar items, except due to medical recommendation.

Finally, Resolution No. 425, of October 8, 2021, of the National Council of Justice (CNJ), which established, within the scope of the Judiciary, the National Judicial Policy for Attention to People in Facing Homelessness and its intersectionalities, as a favourable attitude to the promotion and protection of human rights, however, still without practical effects.

### **5.12.3. Extrajudicial and judicial measures adopted by the Federal Public Defenders' Office and other institutions for the defence of human rights**

Among the extrajudicial measures adopted by the Federal Public Defenders' Office in defence of the human rights of homeless people, we can

---

210 Available at: <<https://g1.globo.com/mt/mato-grosso/noticia/2021/07/05/vacina-da-janssen-sera-priorizada-para-imunizacao-da-populacao-em-situacao-de-rua-em-cuiaba-diz-secretaria.ghtml>>. Accessed on November 19, 2021.

211 Available at: <<http://www.saude.salvador.ba.gov.br/vacinacao-chega-a-populacao-de-rua-e-moradores-das-ilhas-em-salvador/>>. Accessed on November 19, 2021.

212 Available at: <<https://g1.globo.com/jornal-nacional/noticia/2021/06/28/pessoas-em-situacao-de-rua-comecam-a-receber-vacina-janssen-em-sao-paulo.ghtml>>. Accessed on November 19, 2021.

213 Available at: <<http://www2.recife.pe.gov.br/noticias/07/07/2021/imunizante-janssen-tem-uso-prioritario-na-populacao-em-situacao-de-rua-no-recife>>. Accessed on November 19, 2021.

214 Available at: <<https://www.ma.gov.br/agenciadenoticias/?p=310951>>. Accessed on November 19, 2021.

215 Available at: <<https://www.nsctotal.com.br/noticias/sc-reserva-33-mil-doses-de-vacina-da-covid-para-pessoas-em-situacao-de-rua>>. Accessed on November 19, 2021.

mention: the issuance of two technical notes and a joint recommendation, as well as the sending of subsidies to the Ministry of Women, Family and Human Rights for the regulation of the Housing First project; action aimed at expanding the vaccination of the homeless population against Covid-19; suggestion to update the Brasília Rules Manual – a publication prepared by the Inter-American Association of Public Defenders (AIDEF); the publication of a Resolution by the Superior Council of the DPU and the edition of the DPU Forum dedicated to the subject.

In technical note no. 03/2021/NUCIDH/DPPR, of 22/04/21, the Centre for Citizenship and Human Rights of the Public Defenders' Office of the State of Paraná, the Regional Human Rights Defenders' Office of the Federal Public Defenders' Office, the Labour Prosecution Service and the Federal Prosecution Service evaluated the Bill contained in Proposition No. 005.00103.2021, which establishes the Solidary Table Program in the Municipality of Curitiba/PR. The signatory institutions opposed their merit because they understood that the project generates unnecessary bureaucratization to voluntary initiatives, in addition to hindering the solidarity process of food distribution in Curitiba/PR.

The technical note issued by the Working Group on Homeless Population on 18/05/2021 dealt with the Padre Júlio Lancelotti Bill (Chamber of Deputies No. 488/2021), which provides that the use of “hostile architecture” techniques in free spaces for public use is prohibited, through a proposal to amend Law no. 10,257, of July 10, 2001, – City Statute. The bill was evaluated as a positive step, as it seeks to prevent the perpetuation of discriminatory and human rights-violating practices.

Joint Recommendation No. 1 – DPDF/DPU/MPDFT/2021 was issued by the Public Defenders' Office of the Federal District, the Federal Public Defenders' Office and the Prosecution Service of the Federal District and Territories and suggested to the Governor of the Federal District that the homeless population be assured shelter or decent housing and, in the face of the curfew from 10 pm to 5 am, throughout the Federal District, in the acute period of the COVID-

19 pandemic. According to Decree no. 41,874, of March 8, 2021, it was recommended that administrative or criminal sanctions not be applied to this sector of the population for the simple fact of them being homeless.

Through the WG on Homeless People, DPU sent subsidies for the regulation of the project “Moradia Primeiro” (Housing First), a program resulting from a partnership between the Ministry of Women, Family and Human Rights and the Latin American College of Social Sciences (Flacso), inspired by the model of care for homeless people created in the United States of America, called *Housing First*<sup>216</sup>.

Another extrajudicial action in favour of the homeless population is related to vaccination against Covid-19. At the request of the Federal Public Defenders' Office (DRDH/MT and Working Group for the Assistance of People Experiencing Homelessness), the National Movement of the Homeless Population (MNPR), the Pastoral do Povo da Rua and the Transdisciplinary Program Poles of Citizenship, the Federal University of Minas Gerais (UFMG), Fiocruz and Ciamp Rua, there was an expansion, from 66,963 homeless people that could be vaccinated – an original estimate from the Ministry of Health – to 140,559, considering the age group from 18 to 59 years, to be included in the National Plan for the Operation of Vaccinations.

The Working Group for the Assistance of People Experiencing Homelessness also collaborated with the suggestion of updating the Manual of Brasília Rules prepared by the Inter-American Association of Public Defenders (AIDEP) exactly to include the service to homeless people as good practice.

The Superior Council of the Federal Public Defender's Office approved Resolution No. 184, of August 5, 2021, of the Superior Council of the Federal Public Defenders' Office (CSDPU), providing for the DPU's legal assistance to people facing homelessness, providing for the right of Federal Public Defenders to

---

216 Available at: <<https://www.dpu.def.br/noticias-institucional/233-slideshow/62505-gt-rua-apresenta-subsidios-para-a-regulacao-do-projeto-moradia-primeiro>>. Accessed on November 30, 2021.

compensate, through days off, the days and nights worked in the legal assistance of these people, according to local planning.

The National School of the Federal Public Defenders' Office dedicated an edition of the DPU Forum (v. 7, no. 24, 2021)<sup>217</sup> to the theme “people in homeless situations in times of pandemic”. The publication contains twelve articles and a photographic exhibition.

In the judicial process, the Federal Public Defenders' Office acted in defence of the human rights of people in homeless situations, in 2021, through the Warrants of Injunction no. 7,300 in the Federal Supreme Court and no. 359 in the Superior Court of Justice.

The Warrant of Injunction no. 7,300 filed by the Federal Public Defenders' Office before the Federal Supreme Court (STF) was partially upheld, determining the Federal Government to implement and pay the Basic Income of Citizenship program, provided for in federal law (Law no. 10,835/2004) from 2022 to Brazilians in situations of poverty and extreme poverty, with a per capita income of less than R\$ 178 and R\$ 89, respectively. The decision was made on 27/04/2021 and published on 23/08/2021.

In the Superior Court of Justice (STJ), Court Order no. 359 is being processed. In it, the DPU postulated the regulation of articles 22 and 23 of Law no. 11,124/2005 so that the Federal Government grants financial benefit to people of lower income, enabling access to housing. The case is still pending judgment and is in the process of notification to the authority under appeal (Minister of Regional Development).

In addition to the Federal Public Defenders' Office, other institutions record judicial and extrajudicial actions in favour of the human rights of the homeless population.

---

<sup>217</sup> Available at: <<https://www.dpu.def.br/enadpu/forumdpu>>. Accessed on November 18, 2021.



Judicially, we cite the Action for Noncompliance with Fundamental Precept no. 828 DF filed by the Socialism and Freedom Party (PSOL) in which several institutions were accepted as *amicus curiae*, among them, the Public Defenders' Office of the Federal District. On 03/06/2021, Minister Luís Roberto Barroso determined the suspension for six months of orders or measures to vacate areas that were already inhabited before March 20 last year, when the state of public calamity was approved due to the Covid-19 epidemic.

The suspension lasted broadly until October 31, 2022. However, on November 2, 2022, the Federal Supreme Court approved a transitional regime of the rule that prevented forced evictions, determining that the courts in the country establish land conflict commissions, mediation as an indispensable prior stage to collective eviction, which must observe the following administrative measures:

- (i) Be carried out through the prior knowledge and hearing of the representatives of the affected communities.
- (ii) Be preceded by a reasonable minimum period for eviction by the population concerned.
- (iii) Ensure the referral of people in situations of social vulnerability to public shelters (or a place with decent conditions) or adopt another effective measure to safeguard the right to housing, the separation of members of the same family being forbidden in all cases.

The Public Defenders' Office must be summoned in all cases, as determined by the Code of Civil Procedure.

In the extrajudicial scope, two recommendations deserve reference: i) Recommendation no. 28, of July 26, 2021, of the National Council for Human Rights suggesting to state and municipal governments the adoption of urgent measures, aiming at the protection of people on the street, in view of the

intensification of the cold in the South, Southeast, and Center-West regions of Brazil, between July 28 and August 1; and ii) Recommendation no. 03/2021 of the Prosecution Service of the Federal District and Territories with a series of proposals to be implemented and considered in the approaches carried out by the Federal District's Public Security Forces, by the State Secretariat for the Protection of the Urban Order of the Federal District – DF Legal and by the Social Development Secretariat of the Federal District to the homeless population.

#### **5.12.4. Conclusions and Recommendations**

In a country with so much inequality, with a huge concentration of income, the homeless population presents itself as one of the most extreme faces of urban poverty. The serious economic crisis generated by the Covid-19 Pandemic has further raised the number of people without decent housing.

Living in the streets is a violation of human rights, but these people suffer deprivation, aggression, are victims of forced evictions, have their lives cut short by violence and exposure to the elements.

In recent years, there has been no real progress in the protection and promotion of human rights of people facing homelessness. On the contrary, the facts demonstrated in this report indicate a setback in the state policy aimed at the homeless population. Seeking to resume compliance with international standards in the matter, the DPU recommends:

- The institution of a National Policy for the Homeless Population by means of a law in a formal sense.
- The implementation of rights and public policies already provided for in Decree No. 7,053/2009 such as access to health, education, housing, and security.

- The inclusion of homeless people in the National Census, generating quantitative data to subsidize public policies.
- The prioritization of the Housing First Program as an alternative to reduce the number of homeless people.
- The prohibition of social hygiene practices.
- Training of public agents regarding the peculiarities of this population, especially the awareness that they are subjects of fundamental rights and guarantees.



## **6. CITIZENSHIP AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

### **6.1. HOUSING AND LAND CONFLICTS**

#### **6.1.1. Contextualization of the theme**

##### **6.1.1.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)**

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations regarding housing and housing policies:

136. Strengthen the public policies to reduce the housing shortage and create conditions for access to affordable housing for middle- and low-income households (Angola);

137. Continue efforts to ensure adequate housing for all (Bangladesh);

138. Take further steps in enhancing the promotion and protection of the rights of the child, with a view to fully eradicating child homelessness (Croatia);

140. Continue measures to combat poverty and social inequality by implementing rural development plans covering vulnerable groups, in particular rural women (Sri Lanka);

141. Implement further measures to address the problems related to poverty and socioeconomic inequality in respect of regions and vulnerable groups of the population, such as rural residents (Uzbekistan);

235. Continue to invest in poverty alleviation policies and to ensure more effective and targeted implementation, so as to reduce social and economic inequality, in particular for rural populations and indigenous peoples (Singapore);

##### **6.1.1.2. The right to housing and housing policies in Brazil**

The right to housing was included in the list of fundamental rights in the Federal Constitution with Constitutional Amendment no. 26/2000. Brazil is a



signatory to the International Covenant on Social, Economic and Cultural Rights (UN, 1966), which recognizes the right to housing in a document ratified and incorporated into the national system in 1992 (Decree no. 591/92).

This right is intrinsically linked to the principle of human dignity (Article 1, III, of the CR). According to Sarlet:

Due to its existential character and expression of the right to life itself, the right to housing occupies a place similar to the right to food, and therefore integrates what in the international sphere has been considered a right to an adequate standard of living.<sup>218</sup>

According to the Special Rapporteur of the UN Human Rights Council<sup>219</sup>, adequate housing should include: security of tenure (every person has the right to live without fear of compulsory or forced removal); availability of services, infrastructure and public equipment (housing must be connected to water, sanitation, gas and electricity networks, in addition to other indispensable services); affordable cost (the cost of housing must not compromise the individual's livelihood); habitability (housing must offer conditions of protection against adverse weather events); non-discrimination and prioritization of vulnerable groups (housing must be accessible to all social groups, regardless of particular conditions); adequate location (housing must be in a place that offers opportunities for economic, cultural and social development); cultural adequacy (the way of building housing and materials used in construction must express both the identity and the cultural diversity of residents).

However, the universalization of the right to housing still faces great challenges in the country. Under the terms of the Report “Housing Deficit in Brazil 2016-2019”<sup>220</sup>, structured by the João Pinheiro Foundation:

---

<sup>218</sup> SARLET, Ingo W. **A Eficácia dos Direitos Fundamentais**: uma teoria geral dos direitos fundamentais na perspectiva constitucional. 10. ed. rev. actual. e ampl.; 3. tir. Porto Alegre: Livraria do Advogado Editora, 2011, p. 329.

<sup>219</sup> Available at: [http://www.direitoamoradia.fau.usp.br/?page\\_id=46&lang=pt](http://www.direitoamoradia.fau.usp.br/?page_id=46&lang=pt)

<sup>220</sup> FUNDAÇÃO JOÃO PINHEIRO. Deficit habitacional no Brasil – 2016-2019. Belo Horizonte: FJP, 2021. Available at: [http://fjp.mg.gov.br/wp-content/uploads/2021/04/21.05\\_Relatorio-Deficit-Habitacional-no-Brasil-2016-2019-v2.0.pdf](http://fjp.mg.gov.br/wp-content/uploads/2021/04/21.05_Relatorio-Deficit-Habitacional-no-Brasil-2016-2019-v2.0.pdf).

By analysing separately the components of the deficit, between 2016 and 2019, we observe that there was a growth of 4.6% per year in precarious housing, influenced by the increase of 13.6% per year in makeshift households, but mitigated by the reduction of 2.9% per year in rustic households (TABLE 54). Observing the growth rates year by year, there is a great intertemporal fluctuation, especially between improvised households and especially between 2016 and 2017. This may be related to the nature and source of this data, since it is an administrative record whose sample validations and forms of collection do not follow the methodological principles of official sample surveys, such as the National Continuous Household Sample Survey (PnadC), used in the calculation of the indicators described herein. Regarding rustic households, after the increase in 2017, there is a downward trend until the end of the period under analysis (TABLE 53, 54).

The number of households with deficits linked to the cohabitation component decreased over the years under analysis, which resulted in a decrease of 4.2% per year between 2016 and 2019. This performance reflects, above all, the reduction of 10.9% per year in the period of households classified as rooms and also the decrease of 3.6% per year in the indicator of living units (TABLE 54). Considering the variations, specifically, year by year, there is a continuous decrease in comfortable households, while, for the living units, there is stability between 2016 and 2017 and consecutive falls in the following years (TABLES 53, 54).

Finally, the excessive burden component with urban rent is observed, which showed a growth of 2.5% per year in the period between 2016 and 2019 (TABLE 54). Despite the increase, a slowing trend is observed in the rates calculated year by year (TABLE 54). The trajectory in question is similar to that verified for the general indicator



of housing deficit, which reflects the protagonism of the excessive burden with rent in the four years analysed”<sup>221</sup>.

Alongside the housing precariousness, one cannot fail to mention the situations of land conflicts, characterized by the dispute for the possession or ownership of property, rural or urban, as well as by the impact of public and private enterprises on low-income families or vulnerable social groups.

In turn, it must be considered that the pandemic health situation that the country faced has exacerbated social inequalities. This means an additional challenge to guaranteeing the right to housing in the pandemic temporal space we are facing.

The Zero Eviction Campaign reports that more than **123,153 families** are threatened with eviction during the pandemic in Brazil and that more than 23,500 families were evicted during the period from March 2020 to October 2021<sup>222</sup>.

The joint action of a network of entities in the Campaign, in addition to defending the right to housing in cases of violation, was responsible for the enactment of **Law no. 14,216, of October 7, 2021**, which suspended evictions during the pandemic.

In turn, within the scope of the Judiciary, the National Council of Justice (CNJ) issued **Recommendation no. 90, of March 2, 2021**, in which it urges the Judiciary to carry out a more careful evaluation of collective removals, as well as to comply with resolution 10/2018 of the National Council of Human Rights (CNDH).

---

221 FUNDAÇÃO JOÃO PINHEIRO. Deficit habitacional no Brasil – 2016-2019. Belo Horizonte: FJP, 2021, pp. 146-147.

222 <https://uploads.strikinglycdn.com/files/1e4b25e9-714f-404d-a445-10544f06b9e5/s%3C%ADntese%20Despejo%20Zero%20outubro%202021.pdf?id=3721839>

In the same vein, within the scope of **ADPF 828**, the Federal Supreme Court (STF) granted a request to suspend evictions and vacancies due to the Covid-19 pandemic, according to the criteria of Law no. 14,216/2021. The suspension was maintained until 31 October 2022, and, on 2 November 2022, a decision was handed down by the Federal Supreme Court (STF) endorsing the incidental provisional remedy to determine the adoption of a transitional regime for the resumption of the evictions in the following terms:

(a) The Courts of Appeals and the Federal Regional Courts shall immediately install land conflicts committees that can serve as operational support to the judges and, especially at this first moment, prepare the strategy for resuming the execution of decisions suspended by this action, in a gradual and incremental manner.

(b) Judicial inspections and mediation hearings by land conflict committees should be carried out as a prior and necessary step to collective eviction orders, including in relation to those whose warrants have already been issued. The hearings must count on the participation of the Federal Prosecution Service and the Public Defenders' Office in the places where it is structured, as well as, when applicable, the bodies responsible for the agrarian and urban policy of the Federal Government, States, Federal District and Municipalities where the area of litigation is located, under the terms of article 565 of the Code of Civil Procedure and article 2, § 4, of Law no. 14,216/2021.

(c) Administrative measures that may result in collective removals of vulnerable persons must (i) be carried out through the prior knowledge and hearing of the representatives of the affected communities; (ii) be preceded by a reasonable minimum period for eviction by the population involved; (iii) ensure the referral of people in situations of social vulnerability to public shelters (or a place with decent conditions) or adopt another effective measure to safeguard the right to housing, in any case, the separation of members of the same family.

Notwithstanding these cautions, without a federal government program that co-finances and guides the payment of social rent in municipalities and states, as well as strengthening housing programs, the housing deficit in Brazil and real estate speculation will remain as the driving causes of the violence produced by the eviction processes in the country.

### **6.1.2. The specific actions of the Federal Public Defenders' Office Via WG Housing and Land Conflicts**

The Federal Public Defenders' Office, in the use of its constitutional and legal attributions to promote human rights, established the Working Group on Housing and Land Conflicts (GTM) whose function is to carry out actions that require immediate measures to cease violations of law or guarantee a fundamental right for these socially vulnerable populations.

The GTM was created to promote the defence of the right to adequate housing and the protection of victims of forced removal, as well as to monitor cases related to adequate housing within the scope of the DPU and consolidate the necessary data to subsidise mechanisms for monitoring human rights policy.

Moreover, it also encourages the creation of participatory spaces in the formulation of national, state and municipal housing policies, safeguarding the prevalence of the social function of property in land conflicts.

Considering the uniqueness of the moment in which one lives, the GTM has acted in search of the defence of the right to housing and peaceful solution of possible land conflicts during the health crisis. In this sense, the working group gathered rules and instituted measures with the objective of suspending judicial, administrative or extrajudicial measures aimed at the removal and/or eviction, repossession or forced evictions during this period of public calamity.

#### **a) Technical Note no. 11, of June 4, 2021**

It refers to the agrarian reform process at the Maria Rosa do Contestado camp, in the Municipality of Castro, Paraná. This Technical Note was used as a strategy to defend the occupation of the property by the approximately 200 families of farmers who occupy the area and give it social destination and contributed to the suspension of the removal order against these families.<sup>223</sup>

**b) Technical Note No. 12, of July 30, 2021**

The Note produced suggested the approval of Bill no. 0155.8/2021, which is under consideration by the Legislative Assembly of the State of Santa Catarina, which provides for the suspension, during the COVID-19 Pandemic, of the enforcement of repossession orders, evictions or judicial or extrajudicial removals in private or public, urban or rural properties that serve as housing or have become productive through individual or family work.

**c) A Guidebook on DPU Action in cases involving forced eviction during the Covid 19 pandemic**

This guidebook also produced by the GTM in 2021 brings together legislation, recommendations, court decisions, technical notes on removals during the pandemic.

**d) Claim of Non-Compliance with Fundamental Precept No. 828**

The Argument of Noncompliance with a Fundamental Precept (ADPF) n. 828, filed in April 2021, seeks the suspension of the expedition of judicial, administrative or extrajudicial measures of removal and/or eviction,

---

<sup>223</sup>SEI document 4485522

repossession or evictions while the effects on the Brazilian population of the Covid-19 health crisis persist.

The Working Group on Housing provoked the Federal Public Defender General to intervene in the process as *amicus curiae*.

#### **e) DPU's Guide to Action in Rural and Urban Land Conflicts**

Produced by the DPU's Working Group on Housing and Land Conflicts in the year 2021, this guide provides subsidies for the actions of federal public defenders to guarantee the right to housing for the population in situations of vulnerability in conflict situations. In this sense, in addition to working on the concepts surrounding the theme, the publication points to regulations that can contribute to the justification of actions and the paths for action by members of the DPU in guaranteeing the right to territory for quilombola, indigenous and riverine populations, victims of land grabbing or affected by environmental disasters and victims of forced evictions, among others.<sup>224</sup>

#### **f) Zero Eviction Campaign (Campanha Despejo Zero)**

The Zero Eviction Campaign is a national network, which brings together more than 100 organisations, entities, social movements and collectives to act against evictions and forced evictions of vulnerable families. The campaign launched in July 2020 brings into discussion the issue of lack of adequate housing for all.

---

<sup>224</sup> Available at: [https://promocaodedireitoshumanos.dpu.def.br/wp-content/uploads/2021/07/Guia\\_atuacao\\_conflitos\\_fundiarios.pdf](https://promocaodedireitoshumanos.dpu.def.br/wp-content/uploads/2021/07/Guia_atuacao_conflitos_fundiarios.pdf)

The Federal Public Defenders' Office, through the GTM, officially joined the campaign.

**g) Technical Assistance in Housing of Social Interest (ATHIS)**

Technical assistance in social housing (ATHIS), established by Law No. 11,888/2008, is one of the elements for the realisation of the fundamental right to housing.

The Working Group on Housing and Land Conflicts of the Federal Public Defenders' Office has started a data collection process in Municipalities with headquarters of the DPU. The objective of the research was to verify Municipalities that implemented ATHIS or had implemented it in the past and the reasons for non-implementation.

The result of the research will be published in the *Revista da Defensoria Pública da União*.

**h) Participation in seminars, public hearings and other events**

In addition to the contributions listed above, there were several participations and actions of the Working Group on Housing and Land Conflicts throughout the year in question. The following events are worth mentioning:

- **Land Conflicts and Institutional Action Seminar**

The “Land Conflict and Institutional Action Seminar” was held on September 13, 20 and 27, 2021<sup>225</sup>. On the first day, the topic "Reflections on Land Regularisation of Social Interest" was addressed, with the participation of the

---

<sup>225</sup>SEI document 4807380

moderator and Public Defender Wilza Carla Folchini Barreiros, Public Defender Daniel Cogoy and lawyer Rosane Tierno.

On the second day of the meeting, the theme was "The paths of INCRA and DPU in agrarian reform". The speakers were Defender Ben-Hur Daniel Cunha and Defender Rita Cristina de Oliveira. Finally, the third day dealt with the topic of "Quilombola Territories and the Titling Process", mediated by Defender Elisângela Machado Cortês and with the participation of the Defender André Carneiro Leão and the lawyer, with a Master's degree in agrarian and quilombola law, Vercilene Francisco Dias.





DEFENSORIA PÚBLICA

## 6.2. FOOD AND NUTRITION SECURITY

### 6.1.1. Contextualization of the theme

#### 6.2.1.1 Recommendations received by the Brazilian State in the 3rd cycle of the Universal Periodic Review (2107-2021)

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations with regard to food and nutritional security:

135. Continue strengthening and improving the Bolsa Familia Programme in the context of the fight against hunger and poverty (Pakistan);

140. Continue implementing measures to combat poverty and social inequality through the implementation of rural development plans involving vulnerable groups, particularly women in rural areas (Sri Lanka);

141. Implement additional measures to address problems related to poverty and socioeconomic inequality among regions and vulnerable population groups, such as rural residents (Uzbekistan);

148. Further strengthen the social security system and efficiently protect the rights of vulnerable groups (China);

#### 6.2.1.2 Food and nutritional insecurity in Brazil

The II National Survey on Food Security in the Context of the Covid-19 Pandemic, conducted by the Brazilian Network for Food and Nutritional Sovereignty and Security in 2022, approximately 33 million people in Brazil are in a situation of hunger, and 58.7% of the population has some degree of food insecurity<sup>226</sup>.

Public policies to combat hunger have been weakened in recent years. An example of this statement was the extinction of the National Food and Nutritional Security Council at the beginning of the current Federal Government,

---

<sup>226</sup>Available at: <https://pesquisassan.net.br/2o-inquerito-nacional-sobre-inseguranca-alimentar-no-contexto-da-pandemia-da-covid-19-no-brasil/>. Accessed on 20/11/2022.

which was an "important space for dialogue, articulation, mutual learning and consultation between government and society".<sup>227</sup>” Brazil has returned to the hunger map <sup>228</sup>from which it had emerged in 2014<sup>229</sup>.

Besides the problem of the quantity of food, the population in Brazil has serious problems regarding the quality of food. According to the UN, between 2016 and 2019 the amount of people affected in Brazil by "moderate and acute food insecurity increased by 13% "<sup>230</sup>, numbers that have worsened in the last two years due to a policy of flexibilization of pesticides<sup>231</sup>, such as, for example, the recent approval of Decree 10,833/2021, which changed Decree 4074/2002, which regulates the Agrochemicals Law 7802/89 and brought the release of poisons that can cause cancer and genetic mutation<sup>232</sup>.

### **6.2.2. The position of the Brazilian State in the fight against hunger**

During the pandemic period, the emergency aid<sup>233</sup> was created, which alleviated the problem of hunger in Brazil for a period, however, the seasonality of this benefit was not a solution.

At the legislative level, there is Bill 4,194/2020, which aims to regulate the Basic Citizen's Income provided for in Law 10,835/2004, but there are no indications that this bill will be approved at the moment.

---

<sup>227</sup> Available at: <https://www.scielo.br/j/csp/a/CH3GmJVXnMRTRH89bL6LZVz/?lang=en>.

<sup>228</sup> Available at: <https://www.band.uol.com.br/noticias/jornal-da-band/ultimas/brasil-volta-ao-mapa-mundial-da-fome-16346961>.

<sup>229</sup> <https://www.gov.br/casacivil/pt-br/assuntos/noticias/2014/setembro/relatorio-indica-que-brasil-saiu-do-mapa-mundial-da-fome-em-2014>.

<sup>230</sup> Available at: <https://www.brasildefato.com.br/2020/07/13/onu-inseguranca-alimentar-no-brasil-cresce-em-3-anos-e-atinge-43-1-milhoes-em-2019>.

<sup>231</sup> Available at: <https://reporterbrasil.org.br/2020/05/96-agrotoxicos-sao-aprovados-durante-a-pandemia-liberacao-e-servico-essencial/>

<sup>232</sup> Available at: <https://mst.org.br/2021/10/15/confira-os-17-pontos-mais-graves-do-novo-decreto-de-bolsonaro-sobre-agrotoxicos/>

<sup>233</sup> Available at: <https://auxilio.caixa.gov.br/#/inicio>.



### **5.6.3. Extrajudicial and judicial measures adopted by the Federal Public Defenders' Office and other human rights defence institutions**

During the New Coronavirus pandemic, the DPU made an agreement with the Ministry of Citizenship for the "extrajudicial contestation concerning the denials of requests for emergency aid".<sup>234</sup>

Specifically regarding the situation of guaranteed access to food and basic protection, Recommendation No. 3799757 - DPU PA/GABDPC PA/DRDH AP PA was made to the Ministry of Women, Family and Human Rights and the Ministry of Citizenship, in conjunction with the Regional Human Rights Defender of the State of Pará and Amapá, with the aim of guaranteeing the bare minimum to socially vulnerable groups that do not fit into the concept of traditional and indigenous communities, as in the case of rural families living in extreme poverty, for whom emergency aid is insufficient to ensure access to basic subsistence items, due to the historical ineffectiveness of public policies to foster the economic development of these families.

In the judicial sphere, collective lawsuits were filed to determine that the Union should restart the food distribution programme for vulnerable groups, such as indigenous peoples and quilombola communities<sup>235</sup>.

As part of its work with the Legislative Branch, Technical Note No. 07 was drafted to draw attention to the urgent need to recompose the budget actions allocated to Food and Nutritional Security, in accordance with Bill No. 823/2021, which provides for emergency measures to support family farming in Brazil in order to mitigate the socioeconomic impacts of Covid-19 and other provisions. The technical note was sent to parliamentarians and aims to subsidise the realisation of amendments and form convincing for the approval of the project.

---

<sup>234</sup>Available at: <https://www.in.gov.br/en/web/dou/-/portaria-n-423-de-19-de-junho-de-2020-262755438>.

<sup>235</sup>Available at: <https://www.conjur.com.br/2020-abr-21/liminar-garante-alimentos-assistencia-medica-indios-rs>. Accessed on 20/11/2022.

Furthermore, the Specialized Thematic Committee on Basic Citizen's Income (CBR) was created within the Federal Public Defenders' Office, through ORDINANCE GABDPGF DPGU No. 395 of 30 April 2021, to plan, promote and coordinate the strategic work of the Federal Public Defenders' Office for the implementation of the Basic Citizen's Income through actions before the institutions, Executive, Legislative and Judiciary Branches, seeking a permanent channel for dialogue and reciprocal contributions with civil society. The Committee is composed of a representative of the Food and Nutrition Security Working Group.

#### **5.6.4. Conclusions and recommendations**

The food situation in Brazil is extremely worrying at present, with the country returning to the hunger map and no priority being given to public policies to combat this problem.

In light of the data collected, the recommendations of the Food and Nutritional Security WG of the Federal Public Defenders' Office are the following:

- The recreation of the National Food and Nutrition Security Council;
- The updating of the values of Bolsa Família according to inflation and the expansion of the programme to reach more people;
- The broadening of the dialogue of the Ministry of Citizenship with Civil Society in search of solutions to reduce hunger in Brazil;
- The approval of Bill 4,194/2020 which aims to regulate the Citizens' Basic Income provided for in Law 10,835/2004;

- Greater rigour in the release of agro-toxins and the revocation of the decrees that made the registration of poisons more flexible;
- The adoption of structural solutions to foster the economy and family production, as well as the development of consumption chains that enable communities to have access to food produced in their surroundings and in accordance with community standards and customs and regional specificities.

AUDIÊNCIA PÚBLICA:

# RENDA BÁSICA CIDADÃ

08/12  
10h - 17h

QUADRA 11 DO  
COMPLEXO II DA CÂMARA  
DEPUTADOS

**RBRB**  
REDE BRASILEIRA DE RENDA BÁSICA

**DPU**  
DEFENSORIA PÚBLICA DA UNIÃO





## 6.3. CITIZENS' BASIC INCOME

### 6.1.1. Contextualization of the theme

Since the recent past, Brazil has been fighting poverty through cash transfer programmes that aim to ensure cash transfers to the most vulnerable people in its population. Since 2004, the Bolsa Família programme has stood out in the fight against poverty and extreme poverty, but the Benefício de Prestação Continuada and the Auxílio Emergencial also serve as examples of cash transfer policies.<sup>236</sup>

The purpose of the assistance programmes is to guarantee minimum living conditions by means of a monetary amount to be paid on a monthly or annual basis. Such programmes aim to ensure that basic material needs are minimally met, guaranteeing citizenship and the existential minimum to Brazilians in situations of economic and social vulnerability.<sup>237</sup>

The biggest challenge, of course, is budgetary and financial. Brazil's cash transfer programmes have not yet reached the necessary level of value or breadth. Furthermore, the integration of various welfare benefits is challenging, conditioning their registration to bureaucratic barriers, which obstructs access to programmes and hinders the receipt of values so important for the composition of family income of people in conditions of extreme vulnerability, especially those living on the streets or unemployed.

Aiming to facilitate access to social assistance benefits and to ensure minimum conditions of dignity for all Brazilians living in the country and non-nationals resident for more than 5 years in Brazil, Law No. 10,835/2004 established the Basic Citizen's Income programme. This is a universal cash transfer programme to be implemented through the payment of a benefit of equal value to all citizens regardless of income, whose central objective is to cover the minimum

---

<sup>236</sup>Technical note No. 01/2021

<sup>237</sup>Technical note No. 01/2021

material costs of adequate food, education and health, fundamental rights set out in Article 6 of the Federal Constitution of 1988.

As stated in Law 10.835/04, the forecast for the implementation of the Basic Citizen's Income would be from the financial year 2005 onwards, in order to give priority to the most vulnerable groups. However, after more than 17 years of its validity, there is still no standard regulating the amount to be paid or how to implement it, which results in the programme not being implemented and contributes to millions of people living below the poverty line in Brazil. This unjustified omission, in the final analysis, violates one of the great objectives of the Republic, in the sense of eradicating poverty and marginalisation and reducing social and regional inequalities, denying minimum conditions of survival with dignity, without access to elementary rights such as food, education and health.<sup>238</sup>

The guarantee of basic needs for a dignified life through the Basic Citizen's Income benefit makes it possible, besides reducing poverty, reducing social inequality and eliminating hunger, to increase consumption, boosting the economy, increasing the tax collection of the State and, after all, generating more circulation of wealth and economic and social development in a structured way.<sup>239</sup>

It is important to highlight that such dear and fundamental rights that make up the so-called existential minimum, against which, by the way, the "reserve of the possible" clause cannot even be invoked, according to the understanding already consolidated by the Federal Supreme Court itself in ADPF 45, according to which "the values of life and property must be weighed, and the measures that protect, first of all, human life and dignity must prevail".<sup>240</sup>

### **6.3.2 The guarantee of Basic Citizen's Income - Writ of Injunction No. 7,100**

---

<sup>238</sup>Technical note No. 01/2021

<sup>239</sup>Technical note No. 01/2021

<sup>240</sup>Technical note No. 01/2021

The benefit of the Citizen Basic Income, as mentioned before, is a programme to meet the basic need for a dignified life, with the purpose of acting in the reduction of poverty and social inequality and the elimination of hunger, consequently assisting in the economic and social development.

According to the law approved in 2004, a "basic citizenship income" should have been instituted from 2005 onwards for all Brazilians living in the country and foreigners resident for at least five years, regardless of their socio-economic condition. The monetary benefit, according to the law, must be annual, of equal value for all, and sufficient to meet the "minimum expenses of each person with food, education and health, considering for this the degree of development of the country and the budgetary possibilities". The law did not set figures but defined that the programme would be reached in stages, starting with the "neediest strata of the population".<sup>241</sup>

Faced with the State's omission to regulate the relevant legislation Law 10,835/2004, the Federal Public Defenders' Office, using its legal and constitutional powers, filed a writ of injunction (MI 7.300), seeking judicial provision for the granting of the benefit payment Basic Citizen's Income.

The judicialization was successful and in April 2021, the Federal Supreme Court recognised the legislative delay in regulating the Basic Citizen's Income benefit and upheld the requests of the Injunction Writ of Mandamus to determine the implementation of the programme from the financial year 2022, according to law 10.835/2004. The STF decision determines a policy of unconditional basic income transfer to the stratum of the Brazilian population in a vulnerable situation (extreme poverty and poverty).<sup>242</sup>

In the decision, although it left it up to the Union to set the amount of income to be transferred, the STF defined the priority profile of the beneficiaries,

---

<sup>241</sup> <https://www.gazetadopovo.com.br/economia/o-que-se-sabe-da-renda-basica-que-o-stf-obrigou-o-governo-a-pagar/>

<sup>242</sup> <https://www.gazetadopovo.com.br/economia/o-que-se-sabe-da-renda-basica-que-o-stf-obrigou-o-governo-a-pagar/>

that is, people in extreme poverty and poverty, with per capita family incomes of up to R\$ 89 and R\$ 178, respectively, to be passed on without counterpart.

Also, according to what the Court established, the federal executive branch must adopt all applicable legal measures for the implementation of the benefit, including by amending the Multi-Year Plan (PPA) and the forecast of the Budget Guidelines Law (LDO) and the Annual Budget Law (LOA) of 2022.

According to an IBGE survey, in 2020, the country reached the mark of approximately 9 million people living in extreme poverty - with a per capita income of less than R\$ 89, according to the eligibility criteria of the Bolsa Família Programme.

At the end of 2021, the National Congress approved Law No. 14.284 of 29 December 2021, establishing the Auxílio Brasil Programme and the Alimenta Brasil Programme to replace the Bolsa Família Programme. Article 1, paragraph 1, states that the Auxílio Brasil Programme is a step in the gradual and progressive process of implementing the universalisation of the basic citizenship income.

Despite this, the Committee Basic Citizen Income, of DPU, in the Technical Note No. 05/2022, evaluated that the benefits provided for in the new legislation cannot be considered implementation of universal basic income, since, among other factors, maintains conditions and calculation *per capita* for the granting of the benefit, authorizes the taking of consigned loans, has insufficient value and maintains the logic of the "waiting list", i.e., the amount of beneficiaries is regulated according to the budget resources available.

#### **6.3.4 Identification of the response/posture (action or omission) of the Brazilian State in the period under analysis**

During the pandemic, Provisional Measure No. 1,061 of 9 August 2021, created by the Federal Government, was drawn up. The normative act created a new social programme, Auxílio Brasil, which replaced the Emergency Aid, with

an average value of R\$217.18 per month - an amount 17.8% higher than the average of the Bolsa Família programme<sup>243</sup>.

The rapporteur of Provisional Measure 1,061/2021 in the Chamber of Deputies expressly included in the text a reference to Law 10,835/2004, naming the new aid as the first phase of the Basic Income programme. Subsequently, as explained above, the MP was approved and converted into Law 14,284, of 29 December 2021.

The objective of Auxílio Brasil is to improve the Federal Government's income transfer policy by integrating social assistance, health, education and employment benefits. While guaranteeing a basic income to families in vulnerable situations, it offers tools for socio-economic emancipation.<sup>244</sup>

All families registered with Bolsa Família are entitled to the new benefit. The government has estimated that 14.6 million families will receive the aid in November. Those who do not receive Bolsa Família need to register with the CadÚnico (the federal government's Single Registry for social programmes) to try to access the benefit.

The institutional design of the new benefit (Brazil-aid) is different from the parameters set out in Law 10,835/2004, as already had the opportunity to expose.

On top of all this, the Constitutional Amendment Project (PEC) No. 29/2020, which introduces basic income as a social right, has been approved in the Senate. Eventual constitutionalisation of this right raises these social transfers to the same level as other benefits.

The constitutionalisation of basic income would also allow these cash transfers to be a perennial policy, a state policy, which could not be revoked by

---

<sup>243</sup> <https://www.gov.br/cidadania/pt-br/auxilio-brasil>

<sup>244</sup> <https://www.gov.br/cidadania/pt-br/auxilio-brasil>

any government. The purchasing power of the most vulnerable Brazilians must be immune to political conjunctures.<sup>245</sup>

In this regard, the Committee Basic Citizens' Income, DPU issued the Technical Note No. 06/2022, through which defends, through textual adjustments, the approval of the PEC n. 29/2020 to ensure the insertion in the constitutional text of the right to basic income for all those people in a situation of vulnerability living in Brazil.

In addition, through Technical Note No. 07/2022, the Committee reiterated its analysis of the constitutional proposal. According to the evaluation the current PEC contradicts understanding of the Supreme Court by restricting access only to Brazilians living in the country, weakening the legal status of migrants, and distorts the nature of social benefit to provide basic income family - and not individual.

#### **5.9.8. Extrajudicial and judicial measures adopted by the Federal Public Defenders' Office and other institutions for the defence of human rights**

As of January 2021, the DPU has set up Specialised Thematic Committees to monitor and defend the rights of vulnerable people and groups in situations of great social impact.

In particular, the Specialized Thematic Committee on Citizen Basic Income (RBC) promotes a proactive performance of the Public Defenders' Office on the subject. Among the Committee's duties are:

- To establish a permanent dialogue channel with public power institutions and civil society,
- Organize and participate in inter-institutional committees, meetings, public hearings and other events;
- To provide technical support, articulate and act jointly with the DPU's executing agencies (while respecting functional

---

<sup>245</sup>Opinion/2021. Rapporteur: Senator Antonio Anastasia

independence) with regard to the implementation of the basic income public policy;

- Promote, alone or in conjunction with other entities, studies and technical analyses regarding the implementation of the Basic Citizens' Income;
- Issue technical notes, recommendations, statements and adopt the necessary measures to defend the vulnerable population who are beneficiaries or potential beneficiaries of the basic income public policy;
- Coordinate with the Regional Human Rights Defenders and with the Working Groups of the Federal Public Defenders' Office for the adoption of strategic actions related to the implementation of the basic income;
- Liaise with federal, state, district and municipal bodies, adopting the necessary extrajudicial measures to fulfil the purpose of ensuring the implementation of the basic income;
- Maintain exchange and cooperation with public or private, national or international entities, with the aim of fulfilling the purpose of guaranteeing the implementation of the basic income;
- Monitor compliance with the obligations set out in Injunction Mandate No. 7,300, filed by the DPU with the Federal Supreme Court, for the realisation of the right to basic citizenship income. This action involves the production of reports and the provision of the necessary collaboration to the implementing bodies;
- Ensure that the constituted powers, within their competencies, adopt the necessary administrative and/or legislative measures for the full realisation of the Basic Citizens' Income at levels that are necessary and appropriate for the exercise of citizenship and the protection of dignity<sup>246</sup>

At the beginning of the year 2021, the Basic Income Committee of the Public Defenders' Office prepared Technical Note No. 01/2021, with the purpose of addressing the issue on **the legal duty to combat hunger and poverty**, containing the history and legal grounds and based on relevant information, which inform about the current situation of the vulnerable population of Brazil. The Technical Note was widely disseminated in the DPU's social media and forwarded personally or virtually to various representatives of civil society entities, parliament and the executive branch.

---

<sup>246</sup>

<https://promocaodedireitoshumanos.dpu.def.br/comite-tematico-especializado-renda-basica-cidada-rbc/>



The Federal Public Defenders' Office held on June 28, 2021, a public hearing with representatives of civil society organisations, those assisted, parliamentarians and public servants to debate the Basic Income and its role in promoting the objectives of the Republic and eradicating poverty.

On 27 April 2021, the ruling of the Injunction Mandate No. 7,300, STF, granted, at the request of DPU, the order for the implementation of the Basic Income of Citizenship, as provided in Law No. 10,835/2004, with implementation and regulation already for the year 2022.

To disseminate the theme and improve the studies, several meetings were held with representatives of civil society on the subject. In addition, the Committee also met with nominees from the Ministry of Citizenship and the Economy, and researchers from IPEA. All the information exchanged and obtained in these meetings guided the actions adopted, such as the Technical Notes mentioned in this report.

The theme was developed in media vehicles, with interviews and public manifestations of the committee and the DPU on the subject in newspapers of wide circulation<sup>247</sup>.

### **6.3.6. Conclusions and recommendations**

Therefore, although these social programmes exist in theory, in practice these measures, despite being very worthy, are still insufficient in value and scope. The emergency aid during the pandemic showed the transformative potential that a robust policy can have, including for the extinction of extreme poverty.

After all analysis, it is recommended:

- The budget of income transfer programs needs to be expanded robustly. More people need to receive the aid and the

---

<sup>247</sup> <https://www1.folha.uol.com.br/mercado/2021/11/bolsonaro-limita-entrada-no-novo-bolsa-familia-usando-linha-de-pobreza-que-ignora-inflacao-e-onu.shtml> and <https://www1.folha.uol.com.br/mercado/2021/07/novo-bolsa-familia-deveria-pagar-r-480-e-chegar-a-50-milhoes-diz-defensoria-publica.shtml>

amount needs to be increased. The budget discussion, however, does not seem to give the issue the priority it deserves;

- The Expenditure Ceiling (EC 95) is a constraint on social policies, as it prevents budget expenditure from reviewing its priorities at times of greatest need. By linking the following year's budget to that of 2016, corrected for inflation, there is no optimistic forecast for the expansion of programmes to the extent of social need;
- The eligibility line and the values of the cash benefit programmes need to be corrected annually, preferably by inflation or another index that ensures that time does not erode the programme and overly limit the entry of new families;
- The existence of "queues" for social assistance programmes to combat extreme poverty is not lawful. The decision of the STF in Writ of Injunction No. 7.300 ensured the payment of basic income to all people in extreme poverty and poverty. In this sense, any limitation on the number of beneficiaries may mean non-compliance with the court order;
- The experience of the Emergency Financial Assistance needs to be improved, avoiding the replication of quite serious failures in eventual local cash transfer policies. Digital vulnerability must not prevent the poorest layers of the population from accessing basic income.



## ■ 6.4. THE RIGHT TO HEALTH AND THE UNIFIED HEALTHCARE SYSTEM

### 6.1.1. Contextualization of the theme

#### 6.4.1.1. Recommendations received by the Brazilian State in the 3rd Cycle of the Universal Periodic Review (2017-2021)

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations with regard to the health theme:

152. Continue efforts to develop and implement inclusive health and education policies that benefit all sectors of society (Nepal);

153. Continue strengthening efforts to promote accessible and quality health services and institutions to reduce disparity in life expectancy among populations (Sri Lanka);

154. Continue strengthening policies on access to effective and quality health services for the entire population, especially women of African descent, who continue to be the group with the highest mortality rate (Colombia);

155. Attract financial and human investment in health and hospital services with the aim of strengthening the health system (Morocco);

156. Expand the scope of the health system, promoting the inclusion of vulnerable groups, in particular women belonging to minority groups (South Korea);

157. Ensure the continued effectiveness of HIV/AIDS strategies, especially among young people and other particularly affected groups (Bahamas);

158. Ensure access to reproductive health services, including prenatal care, and information about sexual and reproductive health, contraceptives and emergency contraceptive measures, and safe abortions for all women, without discrimination (Switzerland);

159. Ensure universal access to comprehensive reproductive and sexual health services, without discrimination, in accordance with the commitments agreed, inter alia, in the Montevideo Consensus (Uruguay);

160. Preserve the commitments made in terms of access to voluntary termination of pregnancy in order to guarantee full respect for sexual and reproductive rights (France);

161. Continue to expand access to voluntary termination of pregnancy in order to ensure full compliance with sexual and reproductive rights (Iceland);

162. Reduce maternal and infant morbidity and mortality by promoting care measures during pregnancy and at delivery (Iceland);

163. Improve health care services to further reduce child mortality (Islamic Republic of Iran);

#### **6.4.1.2. Health in Brazil and the Covid-19 pandemic**

Identified by Chinese authorities in December 2020 and characterised by its high rate of contamination, Sars-CoV-2 quickly spread around the world. It is a new type of the coronavirus category, whose clinical picture resembles severe acute respiratory syndrome and, in extreme cases, respiratory failure, and may even lead to death<sup>248</sup>.

Besides the sad losses of family and friends experienced worldwide, the pandemic was also responsible for several other ills experienced during this period, whose effects will certainly reverberate for years to come. Among them, it is possible to mention the imposition of restrictive measures, by States, Municipalities and the Union, to contain the spread of the virus - such as encouraging isolation and social distancing and the mandatory use of personal protective equipment (PPE) - impacts on the mental health of the population and impacts of economic order, motivated by the need to suspend various activities and sectors of the economy, with the consequent increase in the number of unemployed and expansion of the financial crisis already developing.

---

<sup>248</sup> Coronavirus Pandemic (COVID-19) – the data. Available at: < <https://ourworldindata.org/coronavirus-data> >. Accessed on: November 10, 2021.



In this scenario, despite the difficulties inherent to the moment, especially the need to adopt restrictive measures, the Federal Public Defenders' Office needed to adapt its model of action, in order to meet the demand of the poor population. Although it has only been formally organised since Supplementary Law No. 80/94, the DPU, like the state public defenders, has been considered a permanent institution essential to justice since the enactment of the Constitution of the Republic of 1988. The institution, whose founding principles are unity, indivisibility and functional independence, is responsible, according to the Constitution, for "legal advice, the promotion of human rights and the defence, at all levels, judicial and extrajudicial, of individual and collective rights, fully and free of charge, to those in need" (article 134, *head provision* and paragraph 4, both from the CRF/88).

Thus, especially at a time when the population is getting sicker and the number of unemployed is growing, maintaining the public service provision of the DPU offices has proved to be too important, even if it means changing traditional work methods - for example, by implementing remote work for most of the active Defenders and civil servants. It is certain that the services continued to be sought: in September 2020, the number of services provided by DPU in Minas Gerais, for example, totalled more than 26,000, of which 15,516 were provided in the Belo Horizonte unit alone<sup>249</sup>.

Part of this was due to the fact that the spread of the virus was responsible for the inauguration of certain types of specific demands, such as those claims that have as their object the Emergency Aid. According to information made available, in the period between 07 April 2020 and 28 February 2021, more than 154,000 Legal Aid Processes (PAJs) were opened to deal with demands involving the assistance benefit, which is why a specific task force was created, entitled the Emergency DPU Project, to deal exclusively with demands relating to the

---

<sup>249</sup> DPU em Minas Gerais realiza mais de 26 mil atendimentos durante pandemia. Available at: < <https://www.anadef.org.br/noticias/ultimas-noticias/item/dpu-em-minas-gerais-realiza-mais-de-26-mil-atendimentos-durante-pandemia.html> >. Accessed on: November 10, 2021.

assistance, by means of joint efforts in locations where there is no formal DPU headquarters<sup>250</sup>.

However, the demand for the Federal Public Defenders' Office remained in the period in cases whose object was recurrent even before the spread of the virus, such as demands that deal with human rights, retirement, education, housing and health, among others. It is therefore important to analyse the performance of the DPU, in the context of the pandemic, in health claims, especially with regard to the related procedures, from the opening of the Legal Assistance Process (PAJ) until the subsequent court decision granting the request.

#### **6.4.2. The service of the Federal Public Defenders' Office and the performance in the context of the pandemic**

Pursuant to article 196 of the Constitution of the Republic, the right to health is guaranteed to all and constitutes a duty of the State, to be ensured "through social and economic policies aimed at reducing the risk of disease and other problems and universal and equal access to actions and services for its promotion, protection and recovery". Thus, it is incumbent upon it to adopt the appropriate measures to ensure the physical, mental and social well-being of all citizens. The right to health also has as its legal foundations the Universal Declaration of Human Rights (article 25) and the American Convention on Human Rights (article 5.1), among other international instruments.

For the effective realization of the right to health, the legislator edited Law No. 8,080/90, which provides on "the conditions for the promotion, protection and recovery of health, the organization and operation of the corresponding services and other provisions". Constitutional norms were reiterated in the sense that it is the State's duty to promote the indispensable conditions for the full exercise of the fundamental right to health, to be guaranteed by means of public

---

<sup>250</sup> Defensoria Pública da União em números. Available at: < [https://www.dpu.def.br/images/home-2021/Portfolio\\_dpu\\_em\\_nmeros.pdf](https://www.dpu.def.br/images/home-2021/Portfolio_dpu_em_nmeros.pdf) >. Accessed on: November 10, 2021.



and social policies that aim to reduce the risks of disease and other problems and to establish conditions that ensure universal and equal access to actions and services for its promotion, protection and recovery (article 2, *head provision* and paragraph 1).

In turn, Article 4 regulated the Unified Health System (SUS), understood to be the set of health actions and services provided by federal, state and municipal public agencies and institutions, from the direct and indirect administration and foundations maintained by the Public Power.

In spite of the internal distributions within SUS, it is a consolidated jurisprudential understanding that the duty to guarantee health is a common competence and, thus, it is a solidary responsibility, shared by all federated entities. As a consequence, the passive pole, as a rule, may be composed of any of them, either individually or jointly<sup>251</sup>, and citizens cannot be opposed to any type of administrative distribution of competences.

Despite being guaranteed by the Constitution of the Republic itself, by international treaties and by infra-constitutional laws, it is not uncommon to encounter situations in which the right to health is not realized in practice. Thus, in the face of the refusal by the Public Power to provide a certain medicine or treatment, sometimes the only way to claim them lies in the judicialization of the case.

It should also be noted that this type of demand has an important peculiarity in that it requires, inherently, that the judicial provision be given as quickly as possible, since the subject's health is already fragile and the disease may progress with the passage of time. It is precisely for this reason that in almost all

---

<sup>251</sup>Theme 793/STF: The entities of the federation, as a result of the common competence, are jointly and severally responsible in the demands for provision in the area of health, and in view of the constitutional criteria of decentralization and hierarchization, it is up to the judicial authority to direct the compliance according to the rules of division of competences and determine the reimbursement to those who bore the financial burden. (RE 855178 RG, Rapporteur: LUIZ FUX, Full Court, judged on 05/03/2015, ELECTRONIC PROCEEDING GENERAL REPERCUSSION - MERIT DJE-050 DIVULG 13/03/2015 PUBLIC 16/03/2015)

cases it is necessary to request a preliminary injunction to grant a medicine or medical treatment.

- **Initial service**

In the context of the global coronavirus pandemic, initial assistance, which used to be provided mainly through the in-person appearance of the assisted party at DPU headquarters, has given way to the remote assistance channels that have been implemented, such as the institutional e-mails created specifically for this purpose, the on-call dispatches via telephone assistance - especially for urgent cases and demands, where there is danger of delay - and, finally, the mobile phone application 'DPU Cidadão'.

This certainly represented one of the great innovations implemented by the institution during the period, with gains for both the jurisdictional and the public servants. Launched in December 2020, the result of a partnership with Serpro, the federal government's information technology company, the application already had, in March 2021, more than 10,000 users and almost 2,000 demands related to emergency aid<sup>252</sup>. It certainly represented a milestone by enabling a direct, safe, fast and simple communication channel with the institution.

Its main features include the possibility of opening a Legal Aid Process (PAJ) directly through the application; the possibility for the assisted party to forward a copy of the documents necessary for its instruction - thus making it unnecessary to physically attend to hand over the documents - and also the possibility for the citizen to accompany, at any time and place, one or more PAJs opened in his favour, including alerts on any developments. In addition, the application also has its own environment for information related to contacts, useful *links*, frequently asked questions and news, as well as a specific area containing

---

<sup>252</sup> Assistência jurídica em auxílio emergencial agora pode ser solicitada à DPU por aplicativo. Available at: < <https://www.serpro.gov.br/menu/noticias/noticias-2021/dpu-aplicativo> >. Accessed on November 10, 2021.

guidance on military claims, international legal assistance, human rights, health, retirement, benefits and social assistance, federal crimes, education and housing.

It is, therefore, a modern mechanism with great potential to promote the democratization of access to Justice, in order to face other precarious means of communication, being certain that, in the event of the assisted not having access to technology, it will still be up to him/her to seek help from the Public Defenders' Office in one of the other service channels.

It is worth noting that, with the progress of vaccination and the reduction in the number of cases of people infected by the coronavirus, it was possible to resume, from 28 September this year, in a hybrid form, face-to-face consultations at the Federal Public Defenders' Office.

In any case, it is verified that, even at times when face-to-face service was suspended due to health impositions, the Public Defenders' Office remained effectively providing services and legal aid to citizens, at all times upholding its constitutional mission to defend the underprivileged and vulnerable population.

- **Collective actions**

In addition to acting in individual health claims, as described in the topics above, the Federal Public Defenders' Office, during the COVID-19 pandemic, adopted several measures to ensure the protection of collective, diffuse and homogeneous individual rights in the health sphere.

It is worth recalling that, according to Complementary Law No. 80/1994, article 1, the Public Defenders' Office is responsible for "*promoting human rights and the defence, at all levels, judicial and extrajudicial, of individual and collective rights, fully and free of charge, to those in need*".

The Working Group on Healthcare, with a view to strategic action to guarantee the Right to Health, has instituted procedures to monitor the restrictive

measures necessary to contain the coronavirus, the acquisition and application of vaccines and the availability of beds and oxygen.

Aware of the need to develop a national vaccination plan in Brazil, the Federal Public Defenders' Office sought the Ministry of Health to obtain information on vaccine procurement and implementation of measures to ensure greater agility and security in the immunisation plan.

Furthermore, in January 2021, RECOMMENDATION No. 4210597 - DPGU/SGAI DPGU/GABSGAI DPGU was issued, recommending to the Minister of Health the "*urgent implementation of the UNIFIED SYSTEM FOR VACCINATION ROUTE CONTROL, as provided for in the National Operationalisation Plan for Vaccination against COVID-19, with individualised registration and availability of microdata, including the CPF, of all people who have been vaccinated*".

Also in January 2021, in view of the serious input supply crisis experienced in the State of Amazonas, RECOMMENDATION No. 4189478 - DPGU/SGAI DPGU/GABSGAI DPGU was issued to the Minister of Justice, suggesting the adoption of several measures, indispensable to the restoration of the stock of oxygen cylinders and other inputs.

Subsequently, RECOMMENDATION No. 4335208 - DPGU/SGAI DPGU/GTS DPGU was issued on the need to adopt essential measures to guarantee the supply of beds for the treatment of patients diagnosed with or suspected of having COVID-19.

In parallel to these national measures, the Office of the Federal Public Defenders' Office in the states has also adopted measures to monitor state vaccination plans and ensure the provision of beds and supplies.

Specifically, in Minas Gerais, faced with the imminent collapse of the local health system, Public Civil Action 1017580-72.2021.4.01.3800 was filed,

seeking the implementation of additional ICU beds and the emergency purchase of intubation and oxygen kits.

Thus, the Federal Public Defenders' Office fulfilled its constitutional mission in the collective protection of social rights, acting in a diligent and, whenever possible, preventive manner, seeking to avoid greater damage to the right to health of the needy population.

### **6.4.3. Public health policies in light of the recommendations of the Universal Periodic Review**

The analysis of (non)compliance necessarily goes through the critical analysis of Constitutional Amendment No. 95 of 2016, which determined the freezing of the federal budget for 20 (twenty) years, weakening social policies aimed at health care, tackling epidemics and protecting vulnerable groups.

This situation is particularly serious in the case of maternal-infant mortality, the treatment of people with HIV/AIDS, the guarantee of sexual and reproductive rights and the access of minority groups to quality health care.

The aforementioned case of menstrual poverty and its effects on the development of girls and women in vulnerable situations is worth mentioning. It was precisely on the basis of budgetary justifications that the Executive Branch prevented the development of a public policy of pads distribution.

Another direct effect of the budget spending freeze is on the number of hospital beds available in the public health network. According to the Institute for Health Policy Studies (IEPS), by 2020 there was a deficit of 40,000 beds in intensive care units (ICU), as pointed out in the civil society report on the Universal Periodic Review<sup>253</sup>.

---

<sup>253</sup>COLLECTIVE RPU. Relatório da Sociedade Civil – Revisão Periódica Universal dos Direitos Humanos no contexto da Covid-19. 2020.

In this context, the strengthening of accessible and quality health services and institutions suffers a hard obstacle from the lack of material resources for their fulfilment. The national public disaster situation resulting from the Covid-19 pandemic exposed this scenario and, despite the measures adopted at the federal, state and municipal levels, showed that the country failed to develop a solid system to deal with inequalities in access to health, which were accentuated in the context of the health emergency.

Take, for example, the oxygen crisis in the state of Amazonas in early 2021. There are reports and documents denoting the situation of doctors having to choose which patients to save, families desperate to acquire at their own expense breathing apparatus and people dying without access to hospital oxygen.

#### **6.4.4. Conclusions**

From the considerations discussed above, it is possible to conclude that, even during the COVID-19 pandemic and during the health restrictions imposed on the movement of people and the functioning of institutions, the Federal Public Defenders' Office was successful in maintaining its constitutional function of providing legal assistance to citizens.

A large part of the new demands brought in this period involved the granting of Emergency Aid. Even so, most of them were related to other issues that were already being commonly dealt with by the Public Defenders' Office even before the pandemic began. Among these are the demands related to the realization of the fundamental right to health, guaranteed by the Constitution of the Republic itself, by international treaties and by infra-constitutional laws.

The access of those interested in being assisted by the DPU, in remote or hybrid form, was fully maintained. Thus, the citizens in need had the opportunity to report the situation and their interests, thus triggering the individual action of the DPU.

Furthermore, the DPU is aware of the fact that there is often a need to establish contact with those assisted, either to gather more documents or to report non-compliance with the judicial decision. In the case of demands for medicine, contacts are common so that the receiver can render accounts, attach updated prescriptions and medical prescriptions and inform of the need to request the purchase of a larger quantity of medicine.

At the same time, the DPU adopted extrajudicial and judicial measures to ensure collective protection of the right to health, guaranteeing a strong public health system that was structured, fair and sufficient to meet all the extraordinary health demands that arose from the COVID-19 pandemic.



ESCOLA MUNICIPAL CORAÇÃO DE JESUS.

ADM. JOSÉ WILSON  
APOIO. ESATUR



## 6.5. THE RIGHT TO EDUCATION IN BRAZIL<sup>254</sup>

Antonieta de Barros, the first black woman elected in Brazil, carried on her political banner the revolutionary and liberating power of education for all. Born in Florianópolis, State of Santa Catarina, at the age of 17 she founded the private course "Antonieta de Barros", with the aim of combating illiteracy among "needy" adults.<sup>255</sup> A teacher and journalist, she was elected state deputy for her home state in 1934. In his speeches, he stressed that "in the life of civilised peoples, the right that runs parallel to the right and duty of work is the right to education. It is a right that belongs to everyone, it has been among us until our days, unfortunately, in general, a privilege of a few, of those to whom fortune smiles, of those who possess monetary happiness"<sup>256</sup>.

The National School of Federal Public Defenders' Office and the National Campaign for the Right to Education present this report imbued with the dream cherished by Antonieta de Barros. Although it has acquired the *status* of a fundamental right in the 1988 Federal Constitution, public policies aimed at ensuring the right to education for all people have proved insufficient to achieve this goal. On the contrary, the signs of the Brazilian government in recent years point to a path of precariousness and regression in this sense.

Law No. 13,005/2014 approved the National Education Plan, effective for 10 (ten) years. In its article 3, provided that the goals provided for in this law would be met within its term. However, according to the National Education Plan (PNE) 2022 Balance Sheet, less than 14% of the targets will be met by the 2024 deadline. In addition to the low rate of progress on virtually all targets, 45% of them are currently in retrogression

---

<sup>254</sup>This chapter was written in partnership with the National Campaign for the Right to Education. Participating in the preparation were Andressa Pellanda, general coordinator of the National Campaign for the Right to Education and member of the Malala Fund's Network of Activists for Education; César de Oliveira Gomes, Director-General of the National School of the Federal Public Defenders' Office (ENADPU) and Alessandra Rodrigues Oliveira Mesquita, Coordinator of Incentives for Research and Publication of the National School of the Federal Public Defenders' Office.

<sup>255</sup>TORRES, Aline. Antonieta de Barros, a parlamentar negra pioneira que criou o Dia do Professor. **El País**, Florianópolis, October 14, 2020. Available at: <https://brasil.elpais.com/opiniao/2020-10-15/antonieta-de-barros-a-parlamentar-negra-pioneira-que-criou-o-dia-do-professor.html>. Accessed on May 9, 2022.

<sup>256</sup>VIDAS NEGRAS: A Educação Liberta. Voiceover by: Tiago Rogero. Interviewee: Flávia Persson. Spotify, June 2, 2021. Podcast. Available at: <https://open.spotify.com/episode/2fX3UvtOAW8oo98jDrhlVM?si=PuWKZCT-SfCS3nudb1uvIA>>. Accessed on May 11, 2022.

and the situation could be even worse. Given the great lack of up-to-date information, it is not possible to state with certainty the severity of the delays and setbacks.<sup>257</sup>

Although the pandemic of COVID-19 has worsened the scenario of inequality in relation to access to education, it should be noted that even before the health crisis, education, like other social rights, was already being dehydrated.

Constitutional Amendment No. 95, enacted in the year 2016, imposed severe obstacles to the fulfilment of the National Education Plan. It determines that until the year 2036 no investment in social areas can be greater than the inflationary adjustment. Add to this the successive cuts established by the Federal Executive Power, such as the Budget Law of 2021, approved with 27% cut in education.

This report aims to present the state of the art of public policies aimed at promoting and ensuring the right to education in Brazil. Firstly, the normative parameters that consolidate this right and its specific clippings, provided for in the sparse legislation, are presented. The starting point rests on normative frameworks of international human rights law that require the state to constantly interface the right to education with the principles of equality and non-discrimination.

The second chapter sets out the impact of the COVID-19 pandemic and the Brazilian State's responses to guarantee access to education. The precariousness of public policies and the lack of funding compatible with the commitments made by the Brazilian State in relation to the human right to education will be addressed. Contemporary challenges that surround the public debate will also deserve brief reflections, such as homeschooling, anti-racist education and militarisation in schools.

The third part will deal with the extra-judicial judicial measures adopted by the Federal Public Defenders' Office and the National Campaign for the Right to Education, in order to problematise the failures of the Brazilian State to guarantee access to education, based on the principles of equality and non-discrimination.

---

<sup>257</sup> CAMPANHA NACIONAL PELO DIREITO À EDUCAÇÃO. **Balço do Plano Nacional de Educação**. São Paulo, June 20, 2022. Available at: < <https://campanha.org.br/noticias/2022/06/20/a-3-anos-do-final-da-vigencia-plano-nacional-de-educacao-apresenta-45-das-metas-em-retrocesso-e-sofre-com-falta-de-dados/>>. Accessed on October 31, 2022.

At the end, recommendations are presented so that the human right to education takes back its leading role in the construction of public policies aimed at the development of citizenship and the consolidation of the Democratic State of Law.

### **6.5.1 The right to Education in Brazil: legislation, social aspects, shortcomings and inequalities**

International human rights law has enshrined the right to education as one of the social rights indispensable for a dignified life. Article 13, 1, of the International Covenant on Economic, Social and Cultural Rights (ICESCR), states parties recognize the right of every person to education. The same provision states that education should aim at the full development of the human person and the sense of his or her dignity. It further notes that education should enable every person to play a useful role in a free society, promote understanding, tolerance and friendship among all nations and racial, ethnic and religious groups.

The correlation between the right to education and equality and non-discrimination had already been an object of concern for the International System for the Protection of Human Rights (IHR) in the early sixties of the last century. This is what can be seen in the text of the Convention on Combating Discrimination in Education, adopted by UNESCO in 1960. In its article I, this Convention defines the concept of discrimination as any distinction, exclusion, limitation or preference which, on the grounds of race, colour, sex, language, religion, public or other opinion, national or social origin, economic condition or birth, has the purpose or effect of destroying or modifying equality of treatment in education. The text emphasises situations such as "depriving any person or group of persons of access to the various types or degrees of education" or "limiting to a lower level the education of any person or group".

The right to education is also provided for in international documents relating to specific groups, such as the International Convention on the Elimination of All Forms of Racial Discrimination (Article V, v), the Convention on the



Elimination of All Forms of Discrimination against Women (Article 10) and the Convention on the Rights of Persons with Disabilities (Article 24).

### **6.5.1.1 Normative parameters of the right to education in Brazil**

In the Constitution of the Federative Republic of Brazil, the right to education was given its own chapter between articles 205 and 214. However, in article 6, the constituent was clear in the sense of inserting education among the list of social rights, being the first to be listed, with the idea that it is a door to guarantee other rights.

The constitutional text, in article 205, states that "education is a right of all and a duty of the State", and aims at the full development of the person, their preparation for citizenship and their qualification for work. Equality and diversity, among others, compose the list of principles to be considered in the education system ("equal conditions for access and permanence in school" and "pluralism of ideas and pedagogical conceptions").

At the infra-constitutional level, Law No. 9,394/1996 introduced the Law of Directives and Bases of National Education (LDBEN) into the legal system. Article 1 provides for a series of stages in the training process of people, which contribute to the achievement of those objectives provided for in the Constitution of the Republic. In other words, the family, human coexistence, work, educational institutions, social movements, civil society organisations and cultural manifestations make up a structure that culminates in the development of the person and their sense of citizenship.

The flow established by this formative process is permanent, and contributes to the construction of a free, fair and solidary society, one of the fundamental objectives of the Federative Republic of Brazil (Article 3, item I). Not by chance did the ordinary legislator subsequently include three other principles to guide the Brazilian education system: (i) consideration of ethnic-racial diversity (included by Law n. 12,796/2013); (ii) guarantee of the right to education and

lifelong learning (included by Law n. 13,632/2018); (iii) respect for the human, linguistic, cultural and identity diversity of deaf, deafblind and hard of hearing people (included by Law n. 14,191/2021).

In 2014, Law No. 13,005 was enacted, which approves the National Education Plan (PNE). Once again, among other objectives, there is expression of the goal of overcoming educational inequalities, with emphasis on the promotion of citizenship and the eradication of all forms of discrimination. There is also the "promotion of the principles of respect for human rights, diversity and socio-environmental sustainability".

The PNE foresees 20 goals to be fulfilled by the year 2024, period in which the law ends, according to article 214 of the Federal Constitution<sup>258</sup>. One of the Plan's characteristics is that it has specific resource allocation for its funding, which takes precedence over Multi-Year Plans.

However, after 8 (eight) years of the PNE, the scenario shows significant stagnation, associated with backward movements and precariousness of public policies for education. Figures presented by the National Campaign for the Right to Education show that of the 20 goals set, only 5 have been partially met, the latter being non-ambitious goals that were already close to being met.<sup>259</sup>

As an example, note Goal 6: "Offer full-time education in at least 50% of public schools in order to meet at least 25% of students in Basic Education". In the year 2014, there were 42,665 schools and 6.5 million enrolments with full day. By 2020, the numbers had fallen to 27,969 schools and 4.8 million enrolments,

---

<sup>258</sup>CRFB, article 214. "The law shall establish the national education plan, of ten-year duration, with the objective of articulating the national education system on a collaborative basis and defining guidelines, objectives, goals and implementation strategies to ensure the maintenance and development of education in its various levels, stages and modalities through integrated actions of the public authorities of the different federative spheres that lead to: (...) (Wording given by Constitutional Amendment No. 59, of 2009)

<sup>259</sup> CAMPANHA NACIONAL PELO DIREITO À EDUCAÇÃO. **Balço do Plano Nacional de Educaço.** São Paulo, June 20, 2022. Available at: < <https://campanha.org.br/noticias/2022/06/20/a-3-anos-do-final-da-vigencia-plano-nacional-de-educacao-apresenta-45-das-metas-em-retrocesso-e-sofre-com-falta-de-dados/>>. Accessed on October 31, 2022.

which represents a loss of approximately 15,000 schools and more than one and a half million enrolments.<sup>260</sup>

### 6.5.1.2. Overview of inequality in access to education

The precarious treatment given by the Brazilian government to policies of access to public education goes against the movements oriented towards the affirmation of the Democratic State of Law, the primacy of human dignity and the reduction of social inequalities, all of which are objectives of the Public Defenders' Office, according to Article 3-A of Complementary Law No. 80/1944 (wording of Complementary Law No. 132/09). Added to this is the fact that the Brazilian State has historically failed to tackle poverty and the multiple vulnerabilities that beset the majority of the Brazilian population.

The Inter-American Commission on Human Rights (IACHR), in its Report on the Situation of Human Rights in Brazil, stated that inequality in the country is structural due to the historical discrimination suffered by some specific groups.<sup>261</sup> It is worth mentioning that there is a tendency for the bodies that make up the International System for the Protection of Human Rights to promote thematic reports with specific sections on the situation of historically vulnerable groups. It is not by chance that in the Report the IACHR "stresses the great importance that education policy has both a universal and inclusive character, paying attention to the groups that have historically been situated at its margins".<sup>262</sup>

---

<sup>260</sup>

CAMPANHA NACIONAL PELO DIREITO À EDUCAÇÃO. **Balço do Plano Nacional de Educaço.** São Paulo, June 20, 2022. Available at: < <https://campanha.org.br/noticias/2022/06/20/a-3-anos-do-final-da-vigencia-plano-nacional-de-educacao-apresenta-45-das-metas-em-retrocesso-e-sofre-com-falta-de-dados/>>. Accessed on October 31, 2022.

<sup>261</sup> ORGANISATION OF AMERICAN STATES (OAS). Inter-American Commission on Human Rights. **Situaço dos direitos humanos no Brasil.** Approved by the Inter-American Commission on Human Rights on February 12, 2021. [S.1.]; OAS, 2021. Available at: <<http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>>. Accessed on March 16, 2022.

<sup>262</sup> *Idem, ibidem*, p. 164.



In relation to the Afro-descendant population, mention is made of data from the Brazilian Institute of Geography and Statistics (IBGE), 2019, which indicate that the illiteracy rate reaches 9.1% of black people, while the percentage of white people points to 3.9%. In rural areas, the percentage jumps to 20.7% for black people and 11% for white people.<sup>263</sup>

Another noteworthy point concerns access to education for transgender and transvestite people. In this sense, Resolution No. 12/2015 is cited, from the extinct National Council of Fight against Discrimination and Promotion of the Rights of Lesbians, Gays, Bisexuals, Transvestites and Transsexuals, linked to the then Ministry of Human Rights<sup>264</sup>, which established parameters to guarantee the conditions of access and permanence of trans and transvestite people in the education system. Subsequently, the Ministry of Education, in the year 2018, issued Ordinance No. 33/2018, which ensures the use, throughout the country's Basic Education network, of the social name by trans and gender diverse people over the age of eighteen.

Despite the aforementioned legislation, negative stereotypes and prejudice still obstruct access to education for transgender, transvestite or people of another non-hegemonic gender identity. Reports of violence against LGBTQI+ people in the school and academic environment are not uncommon, which has caused a significant number of dropouts.<sup>265</sup> At the point, from the perspective of International Human Rights Law, the direction indicated by Bill No. 7,180/2014, which aims to curb education with a gender perspective in the school environment, is inadequate. The IACHR<sup>266</sup> recalls that this Bill tends to violate article 13.2 of

---

<sup>263</sup>BRAZILIAN INSTITUTE OF GEOGRAPHY AND STATISTICS (IBGE). **Desigualdades sociais por cor ou raça no Brasil**. Estudos e Pesquisas, Informação Demográfica e Socioeconômica, Rio de Janeiro, n. 41, 2019. Available at: [https://biblioteca.ibge.gov.br/visualizacao/livros/liv101681\\_informativo.pdf](https://biblioteca.ibge.gov.br/visualizacao/livros/liv101681_informativo.pdf). Accessed on May 16, 2022.

<sup>264</sup> The National Council for Combating Discrimination and Promoting the Rights of Lesbians, Gays, Bisexuals, Transvestites and Transsexuals was abolished by the Federal Government through Decree No. 9,759/2019.

<sup>265</sup>BRAZIL. Chamber of Deputies. **Estudantes LGBT se sentem inseguros nas escolas, aponta pesquisa**. Source: Agência Câmara de Notícias, October 18, 2017.

<sup>266</sup> ORGANISATION OF AMERICAN STATES (OAS). **Situação dos direitos humanos no Brasil**. Approved by the Inter-American Commission on Human Rights

the Protocol of San Salvador regarding educators' right to freedom of expression<sup>267</sup>.

Education with a gender perspective, as well as anti-racist education (which will be dealt with in a specific topic), are structuring issues for a mature debate, with an inclusive bias, regarding the human right to education. In relation to the first, we highlight the observation made by the IACHR in its Report on the Human Rights Situation in Brazil:

[...] the IACHR reminds the State that the gender perspective is an essential tool to combat discrimination and violence against women and persons with diverse sexual orientations and gender identities; and a concept that seeks to make visible the position of inequality and structural subordination of women to men due to their gender. Therefore, the Commission reminds the State of its obligation to adopt specific measures to modify sociocultural patterns of heteronormative behaviour, including the design of formal and non-formal educational programmes to combat prejudices and customs and all other types of practices based on the premise of the inferiority of women or other groups historically discriminated against because of their sexual diversity or gender identity.<sup>268</sup>

As far as women are concerned, IBGE data from 2021 shows an increase in the level of education of women in relation to men, although the situation in the labour market remains very disadvantageous for women. Both in relation to attendance at primary school (from 6 to 14 years of age) and in relation to attendance in the age group between 15 and 17 years, there is parity in access, with a percentage of 87.1% for women and 87.4% for men.<sup>269</sup> In relation to the population of 25 years of age or older with a complete university degree, the IBGE makes a cut according to race and gender, attending to the good practices of International Human Rights Law: the numbers indicate a percentage of 20% for

---

on February 12, 2021. [S.l.]: OAS, 2021, p. 167. Available at: <<http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>>. Accessed on May 16, 2022.

<sup>267</sup> ORGANISATION OF AMERICAN STATES. **Additional Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights**, “San Salvador Protocol”. Available at: <<https://www.oas.org/juridico/spanish/tratados/a-52.html>>. Accessed on May 16, 2022.

<sup>268</sup> *Idem, ibidem*, p. 167.

<sup>269</sup> BRAZILIAN INSTITUTE OF GEOGRAPHY AND STATISTICS (IBGE). **Estatísticas de Gênero: Indicadores Sociais das Mulheres no Brasil**. Available at: <[https://biblioteca.ibge.gov.br/visualizacao/livros/liv101551\\_informativo.pdf](https://biblioteca.ibge.gov.br/visualizacao/livros/liv101551_informativo.pdf)>. Accessed on May 16, 2022.

white men and 23% for white women; of 7% for black men and 10% for black women.

It should be noted that the correlation gender and race have a distinct impact for the purposes of perception of public policies related to education. An extremely relevant theme for the anti-discrimination agenda, the concept of intersectionality or multiple discrimination has been debated in the academic field and has gained emphasis within the International Human Rights Protection System. Not coincidentally, the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, recently promulgated by Decree No. 10,932/2022, presents the concept of multiple or aggravated discrimination as

any preference, distinction, exclusion or restriction based concurrently on two or more of the criteria set forth in article 1.1, or others recognized in international instruments, the object or effect of which is to nullify or impair the recognition, enjoyment or exercise, on an equal basis, of one or more of the human rights and fundamental freedoms set forth in international instruments applicable to States Parties, in any area of public or private life.<sup>270</sup>

The explanation for the historical discrimination that consolidates inequality in access not only to education, but also to other public policies that structure a dignified life, goes through an understanding of the impact of colonialism<sup>271</sup> on Brazilian society in the 21st century. Social indicators show that people with difficulties in access to public education, as a rule, belong to minority groups that have historically been victims of dehumanising discourses (afro-descendants, people of sexual orientation different from the cisheteronormative

---

<sup>270</sup>ORGANISATION OF AMERICAN STATES. **Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance**, 2013. Available at: <[https://www.oas.org/en/sla/dil/docs/inter\\_american\\_treaties\\_A-68\\_Convencao\\_Interamericana\\_racismo\\_POR.pdf](https://www.oas.org/en/sla/dil/docs/inter_american_treaties_A-68_Convencao_Interamericana_racismo_POR.pdf)>. Accessed on May 16, 2022.

<sup>271</sup> Colonialism is, in the words of Maldonado-Torres, "a political and economic relationship in which the sovereignty of one nation or people rests on the power of another nation, which makes that nation an empire". MALDONADO-TORRES, Nelson. Sobre la colonialidad del ser: contribuciones al desarrollo de un concepto. In: CASTRO-GÓMEZ, Santiago; GROSFUGUEL, Ramón. **El giro decolonial: reflexiones para una diversidad epistémica más allá del capitalismo global**. Bogotá: Iesco-Pensar-Siglo del Hombre, 2007, p 243.

standard, people with disabilities, low-income, indigenous, migrants, in the socio-educational system, etc.).

The asymmetrical power relations established through this historical process affirm the hegemonic perspective of culture, of work, of the way of being and living. People whose characteristics were alien to the Eurocentric concept of human idealised by the coloniser (male, white, owner, heterosexual, without disabilities) became victims of successive violations of rights that are still reproduced by the Brazilian State.

The legislator has sent signals in the sense that he sees in education a solid instrument to face the discriminatory character of the Brazilian society. An example of this are laws n. 10,639/2003 (establishes the guidelines and bases of national education, to include the theme "Afro-Brazilian and Indigenous History and Culture" in the official curriculum of the education network) and 11,645/2008 (establishes the guidelines and bases of national education, to include the theme "Afro-Brazilian and Indigenous History and Culture" in the official curriculum of the education network), both referenced more than once by the UN. Law No. 13,146/2015, in articles 27-30 deals with the right to education for people with disabilities.

However, the fulfilment of the mentioned legal diplomas still lacks priority by the Federal Government and reveals itself as another point to be questioned regarding the guarantee of an inclusive public education.

## **6.5.2. the impact of the covid-19 pandemic and the Brazilian State's responses to guarantee access to education**

### **6.5.2.1 The impact of pandemic COVID-19 on access to education**

The pandemic of COVID-19 has brought numerous challenges to States regarding access to rights for those most vulnerable. The health crisis has had a serious impact on the human rights of those who, above all, already found

themselves in a context of difficulties in accessing the minimum essentials for a dignified life. Not by chance, the IACHR, through Resolution No. 1/2020, recognised that the American continent is characterised by social disparities in which poverty and extreme poverty constitute a problem that cuts across all States in the region.<sup>272</sup> This scenario has prevented millions of people from taking basic prevention measures against the disease, especially those in vulnerable groups.<sup>273</sup>

The IACHR also recommended that States guarantee access to education for children and adolescents, with the stimuli that their age and level of development require. There is special mention of access to online education for children and adolescents with disabilities, in order to avoid digital exclusion.<sup>274</sup>

In April 2020, the President of the Republic issued Provisional Measure No. 934, which established exceptional rules for the school year in basic education and higher education, due to the emergency caused by the COVID-19 Pandemic. The text exceptionally exempts basic education schools from the obligation to observe the minimum of 200 (two hundred) school working days.

In the same period, the National Council of Education (CNE) approved the Opinion CNE/CP n. 5/2020, which provided for the "Reorganization of the School Calendar and the possibility of counting non-contact activities for purposes of compliance with the minimum annual workload, due to the Covid-19 Pandemic". In this document, the CNE defines non-contact pedagogical activities as being "the set of activities carried out with technological mediation or not in order to guarantee essential school attendance during the period of restrictions for carrying out school activities with the physical presence of students in the educational unit of basic education or higher education".<sup>275</sup>

---

<sup>272</sup> ORGANISATION OF AMERICAN STATES. Inter-American Commission on Human Rights. Resolution No. 1/2020. **Pandemia e Direitos Humanos nas Américas**, p. 3. Available at: <https://www.oas.org/pt/cidh/decisiones/pdf/Resolucao-1-20-pt.pdf>. Accessed on May 18, 2022.

<sup>273</sup> *Idem, ibidem*, p. 3.

<sup>274</sup> *Idem, ibidem*, p. 16.

<sup>275</sup> NATIONAL COUNCIL OF EDUCATION. **Reorganization of the School Calendar and the possibility of calculating non-presential activities for the purpose of complying with the minimum annual workload, due to the COVID-19 Pandemic**. Opinion CNE/CP no. 5/2020. Available at:

In order to strengthen dialogue and transparency about public education policies designed by the Brazilian State as responses to the health crisis, the National Campaign for the Right to Education, in partnership with other civil society organisations, issued a Technical Note in which it points out situations that are potentially damaging to the right to compulsory basic education.<sup>276</sup> Among them, the following stand out: (i) exclusion of students and teachers from "non-contact activities" for not having access to the Internet and/or for lack of electronic equipment such as computers, tablets or smartphones; (ii) disregard for the socioeconomic situations of the families of basic education students of the public system, as greater responsibilities are imposed on families regarding the performance of school activities; (iii) lack of food protection for children and adolescents; (iv) induction to the early use of electronic equipment by children and interaction in applications and social networks, with possible exposure to inappropriate content and advertising, in violation of the rules of protection of childhood and adolescence.<sup>277</sup>

The UN Special Rapporteur on the Right to Education at the time, Koumbou Boly Barry, in a report on the impact of COVID-19 on the right to education, to which the National Campaign for the Right to Education was called to contribute, recognised that structural discrimination impacted most severely on the most vulnerable and marginalised groups. The rapporteur points out that the problem has more intensely affected countries where the public education system is fragile, as well as where there is a lack of trust between citizens and public institutions.<sup>278</sup>

---

[http://portal.mec.gov.br/index.php?option=com\\_docman&view=download&alias=145011-pcp005-20&category\\_slug=marco-2020-pdf&Itemid=30192](http://portal.mec.gov.br/index.php?option=com_docman&view=download&alias=145011-pcp005-20&category_slug=marco-2020-pdf&Itemid=30192). Accessed on July 13, 2022.

<sup>276</sup> NATIONAL CAMPAIGN FOR THE RIGHT TO EDUCATION; CEDECA CEARÁ; RESEARCH GROUP ON THE RIGHT TO EDUCATION, EDUCATIONAL POLICIES AND SCHOOL; PUBLIC SCHOOL AND UNIVERSITY NETWORK. **Recommendations for the availability and collection of data on the actions of education networks related to educational activities during the Covid-19 pandemic** [Technical Note]. São Paulo/Fortaleza: CNDE/CEDECA-CE/DiEPEE-UFABC/REPU, 2020.

<sup>277</sup> *Idem, ibidem*, p. 8-9.

<sup>278</sup> UN. **Right to education: impact of the COVID-19 crisis on the right to education; concerns, challenges and opportunities**, 15 June 2020 (A/HRC/44/39). Available at: <https://www.ohchr.org/en/calls-for-input/report-impact-covid-19-crisis-right-education>. Accessed on July 13, 2022.

In fact, a significant number of people in situations of socioeconomic and cultural vulnerability do not have access to the internet and computer devices. The humanitarian crisis scenario tends to worsen the financial situation of many families, increasing the inequality gap that already characterised Brazilian society even before the pandemic. Not coincidentally, Boly Barry reminds us that “excessive reliance on online learning tools to ensure continuity of education can exacerbate inequalities<sup>279</sup>.”

In Brazil, a survey carried out by the Locomotiva Institute showed that 55% of students in the country's favelas were not educated during the pandemic. About 34% were unable to participate due to lack of internet access, and another portion (21%) were not receiving the activities from the school or college in which they were enrolled<sup>280</sup>. This reality potentiates the emergence of a series of other factors that make life more vulnerable. This is why the Rapporteur on the right to education mentions that it is not only about ensuring inclusive education, but also about ensuring the provision of a range of other essential social services to marginalized groups, such as health, housing, food and employment. In other words, taking into account the Sustainable Development Goals, the response to the health crisis must be multidimensional and multisectoral.<sup>281</sup>

#### **6.5.2.2. Funding of educational public policies**

The austerity regime adopted by the Brazilian State in relation to public policies for the realisation of social rights has been impacting on education since long before the COVID-19 pandemic. Constitutional Amendment n. 95/2016 (the "Spending Ceiling" Amendment) inaugurated a period of freezing public investment in areas that are essential to combat the structural inequality present in Brazilian society. According to this new tax regime, constitutionally foreseen for 20 years, until the year 2036, being an extremely unprecedented measure in the

---

<sup>279</sup> *Idem, ibidem*, p. 11.

<sup>280</sup> INSTITUTO LOCOMOTIVA. São Paulo, 2020. Available at: <https://ilocomotiva.com.br/clipping/o-globo-maioria-dos-alunos-que-moram-em-favelas-ficou-sem-estudar-na-pandemia-mostra-pesquisa/>.

Accessed on July 13, 2022.

<sup>281</sup>UN, *op. cit.*, p. 22.



world, “the primary expenditure of the federal government is limited by a ceiling defined by the maximum amount of the previous year adjusted by the accumulated inflation, in 12 months measured by the Broad Consumer Price National Index (IPCA)”<sup>282</sup>.

As Brazil entered the 21st century, it presented worrying social indicators regarding education, especially in relation to high rates of illiteracy among young people and adults and school exclusion. However, during the first fifteen years of this century, the Brazilian government implemented some policies that resulted in substantial improvements in social and educational indicators<sup>283</sup>. In this period, social public investment (direct and tax expenditures) rose, as a proportion of GDP, from around 13% in 2002 to 18% in 2015.<sup>284</sup>

From the enactment of Constitutional Amendment No. 95/2016, the reduction of investment in social policies has been causing a dense setback in Brazilian public education. From a budget of R\$114.9 billion in 2015, education had a forecast of R\$70.6 billion in its budget, which represents a decrease of 38.6%<sup>285</sup>. The main effect is revealed in the difficulty of complying with the provisions of the National Education Plan (Law no. 13.005/2014), which provides for twenty goals to be met, from kindergarten to higher education, until the year 2024.

Regarding the impact of Constitutional Amendment (CA) No. 95/2016, the IACHR expressed concern about the issue by recalling the "still existing challenges regarding access to early childhood education and higher education, youth and adult literacy, school dropout, and especially considering ethnic-racial

---

<sup>282</sup> DIREITOS VALEM MAIS. A urgência do fim da Emenda Constitucional 95 no enfrentamento da COVID-19 e no cenário pós-pandemia, 2020. Available at: <https://direitosvalemmais.org.br/2020/05/08/documento-tecnico-urgencia-do-fim-da-ec95-no-enfrentamento-da-covid-19-e-no-pos-pandemia/>. Accessed on 10/08/2022.

<sup>283</sup> CAMPANHA NACIONAL PELO DIREITO À EDUCAÇÃO. **Estudo Educação e Desigualdades – Capítulo Brasil:** os efeitos do investimento em educação para a redução das desigualdades sociais e os dos cortes para o aprofundamento do abismo: uma análise das últimas duas décadas, 2020, p. 4.

<sup>284</sup> *Idem, ibidem.*

<sup>285</sup> DIREITOS VALEM MAIS. **Nota Técnica LDO/LOA 2021 e PEC 188:** Piso mínimo emergencial para serviços essenciais, desmonte do Estado pela PEC do pacto federativo e necessidade de mudanças urgentes nas regras físicas. Available at: [https://direitosvalemmais.org.br/wp-content/uploads/2020/09/NOTATECNICA\\_DVM\\_LOALDOPEC1288.pdf.pdf](https://direitosvalemmais.org.br/wp-content/uploads/2020/09/NOTATECNICA_DVM_LOALDOPEC1288.pdf.pdf). Accessed on 10/08/2022.

inequalities in access to quality education"<sup>286</sup>. In defending the increase of public investment in education in Brazil, the IACHR recalls that "3% of children are out of 'fundamental 1' grade, 4% are out of 'fundamental 2', as well as 17% out of high school", which is why the State should not promote the discontinuity of inclusive policies such as the Brasil Alfabetizado Programme<sup>287</sup>.

Brazil's fiscal austerity regime was also subject to analysis by the UN. Addressing the future of public education systems, the entity highlighted that in the country funding cuts and the spending cap policy led to the dismantling of social policies, preventing the people concerned from having an urgent and adequate response to the context of the COVID-19 pandemic<sup>288</sup>. As a result, the UN Special Rapporteur on the Right to Education, in a thematic report on education in the pandemic, recommended that countries devote the maximum of their available resources to the full realization of the right to education.<sup>289</sup>

In addition to the non-fulfilment of the progressive agenda instituted by the National Education Plan, another direct consequence of AC no. 95/2016 is the distancing from the targets set by UN Sustainable Development Goal no. 4 (SDG 4), which deals with quality education. SDG 4 aims to ensure access to inclusive, equitable and quality education and promote lifelong learning opportunities for all people.<sup>290</sup>

The backwardness of the Brazilian State in relation to public policies for education was also evident in the analysis of compliance with the recommendations of the 3rd Cycle of the Universal Periodic Review (2017-

---

<sup>286</sup> ORGANISATION OF AMERICAN STATES (OAS). Inter-American Commission on Human Rights. **Situação dos direitos humanos no Brasil**. Approved by the Inter-American Commission on Human Rights on February 12, 2021. [S.l.]: OAS, 2021, p. 164-165. Available at: <<http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>>. Accessed on August 15, 2022.

<sup>287</sup> *Idem, ibidem*, p. 165.

<sup>288</sup> UN. **Right to education: impacto f the COVID-19 crisis on the right to education; concerns, challenges and oportunities**, 15 June 2020 (A/HRC/44/39), p. 16. Available at: <https://www.ohchr.org/en/calls-for-input/report-impact-covid-19-crisis-right-education>. Accessed on August 14, 2022.

<sup>289</sup> *Idem, ibidem*.

<sup>290</sup> UNITED NATIONS BRAZIL. **Sustainable Goal 4: Quality Education**. Available at: <<https://brasil.un.org/pt-br/sdgs/4>>. Accessed on August 15, 2022.

2021)<sup>291</sup>. In a report by the Collective of UPR Brazil, organised by the Institute of Development and Human Rights (IDDH) and whose chapter on education is coordinated by the Campaign, it is identified that the Brazilian State has not been complying with a series of recommendations that deal with themes such as "school inclusion for afro-descendant groups", "National Education Plan" and "inclusive education and reduction of school inequality"<sup>292</sup>.

The proposition of the Project of Constitutional Amendment No. 13/2021 was also another measure that signalled a movement of weakening of the policies aimed at public education. The aforementioned PEC, already approved, adds the article 115 to the Act of Transitional Constitutional Provisions, which provides that the States, the Federal District and the Municipalities, as well as their agents, will not be held liable for non-compliance, in the financial year 2020, with the provisions of the head of article 212 of the Federal Constitution. According to this provision, "the Union shall apply, annually, never less than eighteen, and the States, the Federal District and the Municipalities twenty-five percent, at least, of the revenue resulting from taxes, including that from transfers, in the maintenance and development of education".

The federal entities benefiting from the measure argued that the economic crisis resulting from the COVID-19 pandemic affected their respective budgets, which required the adoption of exceptional measures. On the other hand, civil society organisations, such as the National Campaign for the Right to Education, presented counterpoints in order to prevent the promulgation of the PEC. Among them was the argument that, although there had been an increase in the demands for spending on health and social assistance, these were mostly financed with resources transferred by the Union<sup>293</sup>. The entity also warned that

---

<sup>291</sup> The Universal Periodic Review (UPR) is a mechanism by which countries, based on reports submitted to the UN Human Rights Council, make recommendations to each other with the aim of improving the human rights situation globally.

<sup>292</sup>RPU BRAZIL COLLECTIVE REPORTS, March 2022, p. 18-20. Available at: <[https://plataformarpu.org.br/storage/publications\\_documents/VGBTkrKxfPOBwvb0v09E6c1onW2dxu7Uec5z8Ywx.pdf](https://plataformarpu.org.br/storage/publications_documents/VGBTkrKxfPOBwvb0v09E6c1onW2dxu7Uec5z8Ywx.pdf)>. Accessed on August 14, 2022.

<sup>293</sup> CAMPANHA NACIONAL PELO DIREITO À EDUCAÇÃO. **Não é uma crise, é um projeto: os efeitos das reformas do Estado entre 2016 e 2021 na educação (caderno 1)**. São Paulo: Instituto

the proposal is a precedent that discredits the institution of the investment floor in education, because it would encourage politicians to fail to meet their obligations, through the belief in the issue of future rule that exempted them from the constitutional commandment.<sup>294</sup>

PEC 13/2012 resulted in the enactment of Constitutional Amendment No. 119/2022, which disoblige states and municipalities to do a minimum application of resources to education in 2020 and 2021 and exempts public managers from this responsibility due to the COVID-19 pandemic.

### 6.5.2.3. School Meals

The right to adequate food is provided for in article 6 of the Constitution of the Federative Republic of Brazil. It is also provided for in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 25 of the Universal Declaration of Human Rights.

Article 208, VII, of the Constitution of Brazil provides that the State's duty to education will be made effective through the guarantee of “assistance to students in all grades of basic education, by means of supplementary programmes providing school materials, transportation, food, and health care”.

Law 11947/2009 is considered a fundamental milestone in the fight for food and nutritional security for children and adolescents<sup>295</sup>. It established the National School Meals Programme (PNAE) for all public basic education students.

According to the School Meals Observatory, PNAE serves around 41 million students, with annual transfers of R\$ 4 billion to the 27 states and 5,570 municipalities<sup>296</sup>. This is an extremely relevant public policy, since a substantial

---

Campanha, 2021, p. 82. Available at: <https://campanha.org.br/acervo/estudo-nao-e-uma-crise-e-um-projeto-os-efeitos-das-reformas-do-estado-entre-2016-e-2021-na-educacao/>. Accessed on September 4, 2022.

<sup>294</sup> *Idem, ibidem*, p. 83.

<sup>295</sup> OBSERVATÓRIO DA ALIMENTAÇÃO ESCOLAR. **Sobre o PNAE**. Available at: <[www.alimentacaoescolar.org.br](http://www.alimentacaoescolar.org.br)>. Accessed on September 7, 2022.

<sup>296</sup> *Idem, ibidem*.

proportion of the students who benefit from it have access to the only or main meal of the day at school.

Due to the COVID-19 pandemic and the consequent suspension of classroom lessons, the provision of school meals was interrupted, causing enormous damage to children and adolescents whose access to school meals was a matter of survival. On the subject, a survey carried out by the School Meals Observatory reports that before the pandemic, 85% of students ate at school.<sup>297</sup>

Law 13.987/2020 authorised the use of PNAE resources to promote the distribution of food to students. Still, in many locations the food baskets/kits did not reach the destination, or there was only partial service<sup>298</sup>. The School Meals Observatory informs us that 23% of the students did not receive any type of food assistance.<sup>299</sup>

#### 6.5.2.4 Inclusive education and intersectional approaches

Inclusive education is a concept of education that aims to guarantee access to education for all people, in line with the principle of equality and non-discrimination. It presupposes the valuing of diversity, taking into account social markers of difference that may eventually create obstacles for some groups of people to usufruct the human right to education in its fullness. Inclusive education should accommodate ethnic, racial, cultural, social, physical, intellectual, sensory and gender diversity, for example.

---

<sup>297</sup> OBSERVATÓRIO DA ALIMENTAÇÃO ESCOLAR. **Estudantes: O que pensam os/as escolares sobre o Programa Nacional de Alimentação Escolar, antes e na pandemia de Covid-19.** Available at: <[https://alimentacaoescolar.org.br/media/acervo/documentos/LEVANTA\\_DADOS\\_ESTUDANTE\\_VF.pdf](https://alimentacaoescolar.org.br/media/acervo/documentos/LEVANTA_DADOS_ESTUDANTE_VF.pdf)>. Accessed on September 7, 2022.

<sup>298</sup> OBSERVATÓRIO DA ALIMENTAÇÃO ESCOLAR. **Sobre o PNAE.** Available at: <[www.alimentacaoescolar.org.br](http://www.alimentacaoescolar.org.br)>. Accessed on September 7, 2022.

<sup>299</sup> OBSERVATÓRIO DA ALIMENTAÇÃO ESCOLAR. **Estudantes: O que pensam os/as escolares sobre o Programa Nacional de Alimentação Escolar, antes e na pandemia de Covid-19.** Available at: <[https://alimentacaoescolar.org.br/media/acervo/documentos/LEVANTA\\_DADOS\\_ESTUDANTE\\_VF.pdf](https://alimentacaoescolar.org.br/media/acervo/documentos/LEVANTA_DADOS_ESTUDANTE_VF.pdf)>. Accessed on September 7, 2022.

According to General Comment No. 4 of the Committee for the monitoring of the Convention on the Rights of Persons with Disabilities, inclusive education should be understood as:

- a) a fundamental human right of all students. Notably, education is the right of the individual student and not, in the case of children, the right of a parent or carer. Parental responsibilities in this regard are subordinate to the rights of the child;
- b) A principle that values the well-being of all students, respects their inherent dignity and autonomy, recognises individual needs and their ability to effectively be included and contribute to society;
- c) One of the means to realise other human rights. It is the main means by which people with disabilities can lift themselves out of poverty, obtain the conditions to participate actively in their communities, and protect themselves from exploitation. It is also the main means of achieving inclusive societies;
- d) The result of a process of continuous and proactive commitment to eliminate barriers that impede the right to education, as well as changes in the culture, policy, and practice of regular schools to effectively accommodate and include all students.

From the same perspective, UN Sustainable Development Goal No. 4 (SDG 4 - Quality Education), provides among its targets "By 2030, substantially increase the supply of qualified teachers, including through international cooperation for teacher training in developing countries, especially least developed countries and small island developing states", and "Build and upgrade education facilities that are child, disability and gender sensitive and provide safe, non-violent, inclusive and effective learning environments for all".

The National Education Plan (Law No. 13.005/2014) points in this direction by providing among its guidelines the universalization of school attendance, the overcoming of educational inequalities, with emphasis on the promotion of civic awareness and the eradication of all forms of discrimination, as well as the promotion of the principles of respect for human rights, diversity and environmental sustainability.

The intersectional approach should take into account the incidence of multiple vulnerabilities that mark a person's condition, which may hinder or even prevent access to quality education (race, gender, physical or intellectual disability, income, etc.). Mention is once again made of General Comment No. 4 of the Committee for the monitoring of the Convention on the Rights of Persons with Disabilities, regarding the characteristics of inclusive education:

Respect and valuing diversity: all members of the learning community are equally welcomed, respected in their diversity, regardless of disability, race, colour, sex, language, linguistic culture, religion, political or other opinions, national, ethnic, indigenous or social origin, economic power, birth, age or other status. All students should feel valued, respected, included and listened to.

#### 6.5.2.4.1. Special Education

The Federal Supreme Court, in the Direct Action for the Declaration of Unconstitutionality no. 6.590/DF, defined that "the inclusive education paradigm is the result of a process of social conquests that moved away the idea of segregated living of people with disabilities or special needs to insert them in the community context"<sup>300</sup>. The judgment dealt with the unconstitutionality of Decree 10.502/2020, which established the "National Plan for Special Education: Equitable, Inclusive, and with Lifelong Learning", which had a list of civil society organizations as *amicus curiae*, gathered in the Brazilian Coalition for Inclusive Education, among them the National Campaign for the Right to Education<sup>301</sup>.

The public policy of special education foreseen in Decree 10.502/2020 withdrew the compulsory enrolment in regular education, presenting this modality only as an alternative within the special education system. In this way, the STF understood that the aforementioned Decree would open space for public policies that would weaken the imperative of inclusion of students with disabilities, global developmental disorders and high abilities or giftedness in the regular education network.

---

<sup>300</sup>BRAZIL. Federal Supreme Court. **Direct Action for the Declaration of Unconstitutionality No. 6590 MC-Ref/DF**. Full Court. Rel. Min. Dias Toffoli. Brasília, December 21, 2020.

<sup>301</sup>Learn more in the book "Pela Incusão", edited by Instituto Alana and launched in 2022.



The Brazilian government maintained the argument that it was up to families to decide what was best for their children. However, this guideline goes against the Brazilian Constitution and the Convention on the Rights of Persons with Disabilities<sup>302</sup>, which has the status of a Constitutional Amendment in the Brazilian legal system, under the terms of article 5, paragraph 3 of the Federal Constitution. Article 24.1 of this Convention, moreover, is peremptory in stating that:

States Parties recognize the right of persons with disabilities to education. In order to realize this right without discrimination and on the basis of equal opportunity, States Parties shall ensure inclusive education at all levels and lifelong learning [...].

The Rapporteur of ADI 6590/2021, Supreme-Court Justice Dias Toffoli, highlighted the segregationist nature of the public policy proposed by Decree 10.502/2020:

It is striking that the provision treats inclusive mainstream schools as a specific category within the universe of special education, as if it were possible for non-inclusive mainstream schools to exist. Inclusive education does not mean the implementation of a new institution, but the adaptation of the whole system of regular education, in order to bring together students with and without disabilities within the same teaching proposal, to the extent of their specificities. Moreover, the provision in the decree is also problematic for the implementation of bilingual schools for the deaf as educational institutions of the regular system - presented as an option for those who use the Brazilian Sign Language (Libras). This is because there are no *initial* obstacles for schools in the general education system to adapt to attend to such students, as had been occurring before the edition of the act in question.

The United Nations Committee responsible for monitoring the implementation of the Convention, in 2016, endorsed the inclusive nature of education for people with disabilities, through General Comment No. 4, as highlighted in the previous topic.

Another point of much controversy was Bill no. 4,909/2020, which aimed to change the Law of Directives and Bases of Education (LDB) to provide

---

<sup>302</sup>Article 3 of the Convention on the Rights of Persons with Disabilities includes among its general principles "non-discrimination", "full and effective participation and inclusion in society", "respect for difference and acceptance of persons with disabilities as part of human diversity and humanity", "equality of opportunity" and "accessibility".

for bilingual education in Libras as a first language and written Portuguese as a second language as a modality of basic education for students with hearing impairment, deaf, deafblind, signers or not, deaf with superior abilities or giftedness or with associated disabilities.

Bill No. 4,909/2020 was approved and resulted in the enactment of Law No. 14,191/2021, under the terms desired by the author of the proposal. The Brazilian Coalition for Inclusive Education, in a public note, positioned itself against the approval of the legal text, arguing that it is "a setback to inclusion policies and the rights of deaf people, sign language or not, allowing this type of education to be taught in schools, poles and / or special classes, without guarantee of interaction with other social groups<sup>303</sup>. The Collective warns about the segregationist and discriminatory nature of the proposal, which confirms the tendency of the Brazilian government to move away from the guidelines of International Human Rights Law on the issue.

In order to give prestige to a harmonic and coherent interpretation of the protective rules that govern the rights of people with disabilities, it is possible that the grounds that resulted in the declaration of unconstitutionality of Decree 10.502/2020 by the STF, subsidize a new ADI against Law 14.191/2020.

#### **6.5.2.4.2. Homeschooling**

The term homeschooling refers to the situation in which parents or guardians fully assume the responsibility for the formal education of the child, no longer delegating it to educational institutions. The main characteristic of this modality is that formal education will take place, by choice of the parents, only in the home environment, with the State no longer playing a role in the child's education.

---

<sup>303</sup>BRAZILIAN COALITION FOR INCLUSIVE EDUCATION. **For inclusive bilingual education: Public Note of the Brazilian Coalition for Inclusive Education on Bill No. 4,909/2020**, May 25, 2021. Available at: <<https://inclusaoja.com.br/2021/05/31/nota-da-coalizao-brasileira-pela-educacao-inclusiva-sobre-pl-da-educacao-bilingue/>>. Accessed on September 8, 2022.

Home education has been the subject of intense debate in Brazil in recent years, and a bill has been introduced in the National Congress to regulate it. The Federal Supreme Court has also expressed its opinion on this matter in Extraordinary Appeal No. 888815/RS.

Article 205 of the Constitution of the Republic states that education is everyone's right and a duty of the State and the family. The text establishes a co-responsibility between the family and the State for the education of the child and, consequently, for the formation of that citizen who in the future will be able to contribute to the processes of evolution and maturation necessary for the consolidation of a free, just and solidary society (Federal Constitution, article 3, item I), as well as democratic values. Not by chance, article 205 also provides that education "will be promoted and encouraged with the collaboration of society, aiming at the full development of the person, his preparation for the exercise of citizenship and his qualification for work".

Education in Brazil, therefore, is the result of a system in which the State, family and society are interrelated through reciprocal duties with regard to the formation of the child, whose product is the full development of the person for the exercise of citizenship. The constituent was crystal clear in the sense of thinking the educational system from the performance of the three mentioned actors.

In the book "The Principle of Responsibility", the German philosopher Hans Jonas, when discussing the responsibility for children's education, promotes a distinction between the role of parents and the role of the State. The author explains that parental responsibility is directly associated with the duty to ensure the child's existence. The first phase of childhood is entirely parental responsibility. However, the other stages of training are accompanied by the State, which has an interest in training public people through the educational policy it

establishes<sup>304</sup>. Here is an excerpt from the book that illustrates the fundamentals presented here:

[...] The education of the child includes the introduction into the world of men, beginning with language and following with the transmission of the whole code of beliefs and social norms, the appropriation of which enables the individual to become a member of the wider society. The private opens up to the public and incorporates it as an integral part of the person's Being. In other words, the 'citizen' is an immanent object of education, and thus part of the responsibility of parents, not only because of an imposition by the state. On the other hand, just as parents educate their children 'for the state' (and for many other things), the state takes on the education of children for itself. In most societies, the first phase is entrusted to the family, but all the others are subject to state supervision, regulation and assistance, so how can there be such a thing as an 'educational policy'. In other words, the State does not only want to receive citizens who are already trained, it wants to participate in their training.

In RE 888815/RS, the recognition of homeschooling as a way for the family to fulfil its duty to provide education was discussed. The STF dismissed the appeal and established the following thesis: "There is no subjective public right of the student or his family to home schooling, which does not exist in Brazilian legislation"<sup>305</sup>.

The Constitutional Court could have advanced towards consolidating the understanding that home education compromises democratic values dear to the civilizing pact signed in the 1988 Constitution, such as the promotion of diversity and the right to difference. It is school that allows children to develop their first socialisation ties outside the family environment, which will enable them to learn about solidarity, equality, non-discrimination, and respect for difference.

---

<sup>304</sup>JONAS, Hans. **O Princípio Responsabilidade**: ensaio de uma ética para uma civilização tecnológica. Transl.: Marijane Lisboa; Luiz Barros Montez. Rio de Janeiro: Contraponto. Ed. PUC-Rio, 2006, p. 186-187.

<sup>305</sup>BRAZIL. Federal Supreme Court. **Extraordinary Appeal No. 888815/RS**. Full Court. Draftsman of the judgment, Justice Alexandre de Moraes. Brasília, September 12, 2018.

Moreover, arguments pointed out by the National Campaign for the Right to Education I public hearing in the Chamber of Deputies during the last stage of the proceedings of Bill no. 3.179/2012 point to the degree of scientific negationism of the proposal, since pedagogy is a science and needs to be exercised by professionals with adequate training, ensuring one of the primordial dimensions of the quality of education. Furthermore, data from 'Disque 100' and the National Forum for the Prevention and Eradication of Child Labour point to the increased risk of domestic violence, sexual abuse, sexual exploitation of children and child labour because of the removal of the social protection space that the school represents.

By centring the grounds of the decision on the absence of legal provision, the STF signalled to the National Congress the possibility that it might regularise homeschooling by means of a law. This move was made through Bill No. 3,179/2012, which provides for the possibility of home-based provision in basic education. In the justification, the right to freedom is highlighted as the main basis for its proposition. This bill was approved by the House of Representatives and is currently awaiting consideration by the Federal Senate, under number 1.388/2022.

#### **6.5.2.4.3. Anti-racist Education**

Recalling the vulnerabilities and structural inequalities that mark Brazilian society, the IACHR pointed out the relevance of the educational policy having "both a universal and inclusive character, paying attention to the groups that have historically been situated at its margins"<sup>306</sup>. As a result, anti-racist education is presented as one of the mechanisms aimed at confronting systemic racism in Brazil.

The intersection of gender and race should always be in evidence when it comes to discussing anti-racist policies. This is because these two social markers,

---

<sup>306</sup> ORGANISATION OF AMERICAN STATES (OAS). Inter-American Commission on Human Rights. **Situação dos direitos humanos no Brasil**. Approved by the Inter-American Commission on Human Rights on February 12, 2021. [S.I.]: OAS, 2021, p. 164. Available at: <<http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>>. Accessed on October 23, 2022.

when they act together, increase a person's level of exposure to successive human rights violations. In education it is no different. This is what a study by Géledes - Instituto da Mulher Negra (Black Women's Institute) points out, which identified a deepening of inequalities in the municipality of São Paulo, based on race, colour and gender, during the COVID-19 pandemic. The study reveals that black girls had less access to remote education compared to other groups of students (white and black boys, white girls). About 40 per cent of girls interviewed by the Institute did not gain access to learning materials during the pandemic, while all white boys interviewed said they had such access.<sup>307</sup>

One of the central issues in terms of anti-racist educational policy are the affirmative actions aimed at reserving vacancies for black, brown and indigenous people in federal institutions of higher education. This public policy was instituted by Law 12.711/2012, known as the "Law of Quotas", which on 29 August 2022 completed ten years. Article 7 of this legal diploma foresees the revision of the measure within ten years from the date of its publication. As a result, debates have intensified within the Legislative Branch on whether or not to continue the policy of racial quotas in public universities.

According to the Brazilian Legislative Observatory, in the current legislature the issue has mobilised the proposition of 19 (nineteen) bills, of which 09 (nine) are in favour of the quota policy, 07 (seven) against and 03 (three) neutral<sup>308</sup>. The extent of the equality principle is the big issue that divides opinions and mobilises politicians of different ideological persuasions.

On the one hand, it is understood that the quota policy harms the principle of equality among all Brazilians, creating a distinction based on race that is in no way justified in the case of the Brazilian State, which has never adopted a

---

<sup>307</sup> GÉLEDES INSTITUTO DA MULHER NEGRA. **A Educação de meninas negras em tempos de pandemia** [livro eletrônico]: o aprofundamento das desigualdades. 1.ed. São Paulo: Géledes, 2021. Available at: < <https://www.geledes.org.br/a-educacao-de-meninas-negras-em-tempos-de-pandemia-o-aprofundamento-das-desigualdades-o-livro/>>. Accessed on October 23, 2022.

<sup>308</sup> OBSERVATORY OF THE BRAZILIAN LEGISLATIVE. **Ciências Sociais Articuladas: o Congresso e a Revisão da Política de Cotas**, December 17, 2021. Available at: < <https://olb.org.br/ciencias-sociais-articuladas-o-congresso-e-a-revisao-da-politica-de-cotas/>>. Accessed on October 23, 2022.

regime of racial segregation between whites and blacks. This perspective glimpses a merely formal dimension of equality.

On the other hand, the defenders of the quota policy take into consideration the material dimension of the equality principle. This current points to the historical inequality between white and black people in Brazil, the result of systemic racism (in its structural and institutional interface), which leads to a lack of equal opportunities for access to higher education. This is in line with the guidelines that have been established by International Human Rights Law. The Inter-American System, for example, emphasises "the duty of States to adopt measures to guarantee real and legal equality among people, in addition to combating historical structural or de facto discrimination against people of African descent"<sup>309</sup>. In this sense, the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, internalized in Brazil with Constitutional Amendment status, provides in article 1, item 5, which:

Special or affirmative action measures adopted for the purpose of ensuring the enjoyment or exercise, under conditions of equality, of one or more human rights and fundamental freedoms by groups requiring such protection shall not constitute racial discrimination, provided that such measures do not lead to the maintenance of separate rights for different groups and are not perpetuated once their objectives have been achieved.

The wording of this article is in dialogue with article I, "4" of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which states that:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals in need of such protection as may be necessary to provide such groups or individuals with equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided that such measures do not lead, as a consequence, to the maintenance of separate rights for different racial groups and are not continued after their objectives have been achieved.

---

<sup>309</sup>ORGANISATION OF AMERICAN STATES (OAS). Inter-American Commission on Human Rights. **Situação dos direitos humanos no Brasil**. Approved by the Inter-American Commission on Human Rights on February 12, 2021. [S.l.]: OAS, 2021, p. 165-166. Available at: <<http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>>. Accessed on October 23, 2022.



The development of a mature debate on anti-racist education, especially on the indispensability of the quota policy in favour of people of African descent, presupposes a challenge to the myth of racial democracy, which still reverberates in the core of Brazilian public institutions as well as in a significant part of society. According to the theory of racial democracy, Brazil had not internalised the structuring bases of racism, due to the supposedly inclusive character of the Portuguese coloniser, and to the consequent miscegenation that occurred in the civilising process, which prevented the consolidation of specific racial categories.

The myth of racial democracy was accepted by the Brazilian government during the civil-military regime (1964-1985) and even today still imposes obstacles on Brazilian political, legal and social thinking to identify the causes and consequences of structural racism for the maintenance of power asymmetries between blacks and whites.

This discussion could be at a much more advanced stage if the Brazilian State had carried out another public policy directed at anti-racist education: the fulfilment of the legal commandment foreseen in article 26-A of Law No. 9.394/1996 (Law of Guidelines and Bases of National Education), with the wording of Laws No. 10.639/2003 and 11.645/2008. According to this provision, "In public and private elementary and secondary schools, the study of Afro-Brazilian and indigenous history and culture becomes obligatory". Paragraph 1 highlights the importance of the transdisciplinary bias of the syllabus, with the forecast of addressing various aspects of black and indigenous history and culture, and their contributions in the social, political and economic areas for education. These two laws are even cited as examples at international level of the legal incorporation of education as a dimension of the cultural right, in the thematic report of the UN Special Rapporteur on the Right to Education published in 2021.

However, despite being an extremely relevant policy for tackling systemic racism, the absence of a plan for its implementation by the federal government means that in practice the article 26-A is still a long way from reality. In some schools throughout the country there is one or another exceptional activity, on a

case-by-case basis, with the objective of giving concreteness to this public policy. Without the elaboration, however, by the government, via the Ministry of Education, of an execution plan with specific pedagogical guidelines, the tendency is for the measure to stagnate, which will always depend on the good will of the local manager.

#### **6.5.2.4.4. Project 'School without Political Party'**

The School without Political Party Project emerged as a movement that seeks to combat within schools education with a gender perspective and the teaching of politics and citizenship in schools. The movement resulted in Bill No. 7,980/2014, which aims to require teachers to adopt a neutral position on the issues.

The STF, in ADI 5537, when considering the unconstitutionality of a law of the State of Alagoas that created the Free School Programme (inspired by the School Without Political Party project), defined that the neutrality imposed by the state law in question was incompatible with the constitutional principle of plurality of ideas, as well as the freedom to teach and learn. The Free School Programme prohibited the practice of "political and ideological indoctrination" in the classroom, on the grounds that parents have the right for their children to receive a moral education free of political, religious or ideological indoctrination." This ADI had a number of civil society organisations participating as *amicus curiae* in a coalition mobilised by the NGO Ação Educativa, including the National Campaign for the Right to Education.

The IACHR recalls that "that the gender perspective is an essential tool to combat discrimination and violence against women and persons with diverse sexual orientations and gender identities; and a concept that seeks to make visible the position of inequality and structural subordination of women to men due to their gender<sup>310</sup>."

---

<sup>310</sup>ORGANISATION OF AMERICAN STATES (OAS). Inter-American Commission on Human Rights. **Situação dos direitos humanos no Brasil**. Approved by the Inter-American Commission on Human Rights

#### 6.5.2.4.5 Militarisation in schools

The issue of the militarisation of schools was the subject of attention of the Inter-American Commission on Human Rights in its report published in 2021. The issue gained emphasis with the creation of the National Civic-Military Schools Programme through Decree No. 10,004/2019. According to the objectives, the military personnel would act as monitors in the educational, didactic-pedagogical and administrative areas, in state, municipal and regular district public schools that adhere to the programme.

The IACHR pointed out that "guaranteeing the right to education requires a pedagogy that respects individuality, promotes citizenship and socialisation with respect for human rights, and requires specialised staff. In this regard, the Commission draws attention to the distinct nature of the armed forces compared to that intended for educational dynamics<sup>311</sup>."

#### 6.5.2.5 The UN Universal Periodic Review

The Universal Periodic Review (UPR) is a periodic and universal mechanism of the United Nations Human Rights Council, in operation since 2008. The function of this instrument is to verify compliance with human rights recommendations addressed to UN member states<sup>312</sup>. Currently, Brazil is closing its 3rd UPR cycle (2018-2022) and starting its 4th cycle (2023-2027).

The Collective RPU Brazil, a group composed of 30 civil society organisations with the purpose of monitoring the Universal Periodic Review,

---

on February 12, 2021. [S.l.]: OAS, 2021, p. 167. Available at: <<http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>>. Accessed on October 23, 2022.

<sup>311</sup>ORGANISATION OF AMERICAN STATES (OAS). Inter-American Commission on Human Rights. **Situação dos direitos humanos no Brasil**. Approved by the Inter-American Commission on Human Rights on February 12, 2021. [S.l.]: OAS, 2021, p. 165. Available at: <<http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>>. Accessed on October 23, 2022.

<sup>312</sup> CAMPANHA NACIONAL PELO DIREITO À EDUCAÇÃO. **Brasil está em retrocesso em metade das metas de direitos humanos sobre as quais deve prestar contas à ONU**. Available at: <<https://campanha.org.br/noticias/2022/05/25/brasil-esta-em-retrocesso-em-metade-das-metas-de-direitos-humanos-sobre-as-quais-deve-prestar-contas-a-onu/>>. Accessed on October 23, 2022.

published a Report this year to assess compliance with the 242 recommendations accepted by the Brazilian State in 2017, when the 3rd cycle began. Regarding specifically the right to education (not counting those in which the theme appears jointly with other areas), there were 15 recommendations, none of which was fulfilled.<sup>313</sup>

Among the recommendations on the right to education accepted and not complied with by the Brazilian State, we identify the elaboration and strengthening of educational programs for the reduction of homicide rates among afro-descendant men (recommendation n. 69 - Haiti), school inclusion for groups of African descent (recommendations 151, 173 and 174, from Honduras, Haiti and Indonesia, respectively), fulfilment of the National Education Plan (recommendations 164, 166, 167, 169 and 171, from Israel, Malaysia, Morocco, South Korea and Sudan), inclusive education and reduction of school inequality (recommendations 149, 165, 168, 170, 172 and 175, from Libya, Japan, Peru, Turkey, China and Paraguay, respectively).

The chapter on "education, austerity and discrimination" of the Report of the Collective UPR Brazil, coordinated by the National Campaign for the Right to Education, presents the following recommendations: (1) End with austerity policies and resume massive public funding in public education; (2) Perform accurate diagnosis of the non-compliance of the National Education Plan and resume the focus of the State educational policy for the advancement in its goals; (3) Suspend all policies that go against the provisions of the 1988 Federal Constitution and infra-constitutional legislation, such as *homeschooling*, School Without Party, militarization of schools, interventions in the democratic management of educational institutions, among others; (4) To regulate the National System of Education, the National System of Evaluation of Basic Education and the Cost Pupil-Quality, in order to implement mechanisms to

---

<sup>313</sup>COLLECTIVE RPU BRAZIL. **RPU Brazil Collective Reports**, 2022. Available at: <[https://plataformarpu.org.br/storage/publications\\_documents/HZVYvOSZHAW7sZzE3E2UfhrXTh4w8gTdqOre7xdX.pdf](https://plataformarpu.org.br/storage/publications_documents/HZVYvOSZHAW7sZzE3E2UfhrXTh4w8gTdqOre7xdX.pdf)>. Accessed on October 23, 2022.

combat educational, regional and social inequalities, racism, sexism, and other discriminations.<sup>314</sup>

### **5.9.8. Extrajudicial and judicial measures adopted by the Federal Public Defenders' Office and other institutions for the defence of human rights**

Legal assistance procedures related to the right to education are part of DPU's daily work. There are demands related to funding from FIES, PROUNI, the quota system in federal public universities, problems with enrolment in federal public universities and federal institutes, among other claims.

In action related to the context of the COVID-19 pandemic, the DPU filed a Public Civil Action against the Federal Union, the State of Rio de Janeiro and the City of Rio de Janeiro in the first half of 2020, in order to obtain an emergency plan for the peripheral communities of that state<sup>315</sup>.

In this performance, the institution presented data from<sup>316</sup> DataFavela, a research institute associated with the Central Única das Favelas and the Locomotiva Institute<sup>317</sup>, which pointed out that among the children of school-age residents, 86% stopped going to school because of the pandemic. The same research showed the difficulties for children in these communities to have access to the internet, with 30% not even having computers to carry out the activities. At the end, the DPU asked the Judiciary to order the Executive Power to draw up a contingency plan, aimed at actively seeking social promotion and democratisation of distance learning, in a period compatible with the urgency caused by the effects

---

<sup>314</sup> COLLECTIVE RPU BRAZIL. **RPU Brazil Collective Reports**, 2022. Available at: <[https://plataformarpu.org.br/storage/publications\\_documents/HZVYvOSZHAW7sZzE3E2UfhrXTh4w8gTdqOre7xdX.pdf](https://plataformarpu.org.br/storage/publications_documents/HZVYvOSZHAW7sZzE3E2UfhrXTh4w8gTdqOre7xdX.pdf)>. Accessed on October 23, 2022.

<sup>315</sup> BRAZIL. Federal Public Defenders' Office. **Legal Assistance Proceeding No. 2020/016-03374**. Rio de Janeiro, May 5, 2020.

<sup>316</sup> CENTRAL ÚNICA DAS FAVELAS (CUFA). Rio de Janeiro, 2020. Available at: <https://www.cufa.org.br/>. Accessed on October 24, 2020.

<sup>317</sup> INSTITUTO LOCOMOTIVA. São Paulo, 2020. Available at: <https://www.ilocomotiva.com.br/>. Accessed on July 18, 2020.

of the pandemic, in favour of the communities of the State and Municipality of Rio de Janeiro.

The DPU also monitored registration for the ENEM during the context of the COVID-19 pandemic. At the beginning of the health crisis, in April 2020, the Institution issued a Recommendation to the Ministry of Education to suspend the ENEM calendar<sup>318</sup>. On the occasion, the DPU stressed that 30% of the population does not have access to the internet, as well as 43% of rural schools. Because of this, people with low incomes would be the biggest losers with the maintenance of the original calendar of that year, as they were not able to apply for the exemption of the registration fee, nor would they have conditions to study for the test, initially scheduled for 11 October 2020. The National Campaign for the Right to Education supported this action through its participation as *amicus curiae*.

The attempt of extrajudicial solution with the MEC was unsuccessful, reason why the DPU filed, in April 2020, a public civil action against the Federal Union and the National Institute of Educational Studies and Research Anísio Teixeira - INEP before the 12th Federal Civil Court of São Paulo. In the class action, the DPU, together with the National Campaign for Education and the Brazilian Union of Secondary School Students, asked the Judiciary to order the defendants to adapt the ENEM calendar and schedule to the pandemic reality of that moment.

The DPU obtained the granting of injunctive relief to extend the deadline for requesting exemption from the registration fee for another fifteen days. Although the Union has filed an interlocutory appeal against the decision granting the injunction, the calendar was effectively changed to include the deadline for requesting exemption from the registration fee on May 22, 2020.

---

<sup>318</sup>BRAZIL. Federal Public Defenders' Office. **Legal Assistance Proceeding No. 2020/020-03650**. Rio de Janeiro, April 6, 2020.

In 2021, still in the same public civil action, the DPU requested the postponement of the test, scheduled for 24/01/2021. This time, despite not having obtained the granting of the request, he had the injunction of urgency granted so that it was determined the reapplication of the tests, on 23 and 24 February, to all candidates who attended the exam, but had denied access to the rooms of evidence for over 50% capacity.

The two actions highlighted above demonstrate the institutional commitment of the DPU and partner institutions in civil society, such as the National Campaign for Education, to the human right to education. In addition, it signals the institutional nature to act alongside organised civil society in the search for the realisation of grassroots public policies.

#### **6.5.4 Conclusion and recommendations**

Given the setbacks analysed and the challenges to the realisation of the right to education in Brazil, the recommendations of this report are appropriate:

1. Repeal Constitutional Amendment No. 95 to exclude public education from the fiscal austerity regime it imposed. Education is the main tool for combating the structural inequality that characterises Brazilian society.
2. Adequately finance education, complying with the provisions of Law no. 13.005/2014, the National Education Plan; regulating and properly implementing the National Fund for Maintenance and Development of Basic Education and Valuation of Education Professionals (Fundeb), through the definition of weighting factors appropriate to the needs of the respective stages and modalities, the regulation and implementation of the Cost Per Pupil-Quality (CAQ) through the National Education System, and the regulation and implementation of the National Assessment System for Basic Education (Sinaeb), essential for the good and equitable distribution of 2.5 p. p. corresponding to



the Union's VAAR complementation to the Fund; and recomposing the budget for Higher Education Institutions, with the resumption of research scholarships and investments dedicated to teaching, research and university extension.

3. Adopt assertive and propositional pedagogical guidelines on inclusive education. This includes contributing to educational policy, as a priority, issues related to anti-racist education, special education from the inclusive perspective and education for the diversity of gender and sexual orientation. It also includes resuming the inclusive and successful agendas of the now defunct Secadi/MEC. These are issues that go through the whole history of the formation of Brazil, however, in a subaltern and stereotyped perspective, and it is up to the State to promote public educational policies capable of conferring protagonism to these historically vulnerable groups.

4. To strengthen Secondary Education in the country, ensuring quality education, with adequate funding and professionals with adequate training, working conditions and appreciation; with the deepening of the subjects and the inclusion of critical perspectives for the formation of citizenship; and extinguishing any policies that aim to train cheap labour and discourage access to higher education. In the same perspective, it is necessary to expand the conditions for an inclusive access to ENEM, a fundamental stage for the democratization of the access to higher education. And finally, to review the Quotas Law, continuing and strengthening its policy of affirmative action in a permanent and sustained way.

NÃO A  
MINERAÇÃO  
NÃO A PL 191



## **7. SOCIAL AND ENVIRONMENTAL ISSUES, BUSINESS AND HUMAN RIGHTS**

### **7.1. Contextualization of the theme**

#### **7.1.1 Recommendations received by the Brazilian State in the 3rd cycle of the Universal Periodic Review (2017-2021)**

In the third cycle of the Universal Periodic Review, the Brazilian State received the following recommendations with respect to business and human rights:

51. Develop a National Action Plan on Business and Human Rights to prevent development projects from violating the rights of traditional populations, indigenous peoples and workers and from causing damage to the environment, and to ensure effective reparations with meaningful consultation with affected communities (Netherlands);
52. Develop a comprehensive national action plan on business and human rights in accordance with the UN Guiding Principles in this regard (Paraguay);
53. Draw up an Action Plan on Business and Human Rights (Sierra Leone);
54. To continue efforts to punish those responsible for the rupture of the containment barriers in Jacareí and Mariana; and to ensure that the victims of this tragedy have their right of access to justice and their right to compensation and reparations for the damage caused respected. We recommend that Brazil share the experience gained through its constructive and substantive participation in the Intergovernmental Working Group, created by Resolution 26/9 of the Human Rights Council (Ecuador);
55. Continue its efforts to implement the National Policy on Climate Change with regard to reducing deforestation in the Amazon region (Ethiopia);

#### **7.1.2. Large enterprises and human rights violations in Brazil**

As can be seen from the content of the recommendations received by the Brazilian State on the subject of "business and human rights", it was considered

fundamental to draw up a National Action Plan on the subject, in accordance with the United Nations Guiding Principles, in order to prevent development projects from violating the rights of traditional populations, indigenous peoples and workers and causing damage to the environment, and to guarantee effective reparations with meaningful consultation with affected communities.

In this regard, it should be noted that no specific law on the matter has been approved by the National Congress. Although there are bills supported by the Federal Public Defender's Office, such as the National Policy on Dam Affected People, there is still a legislative shortage to protect the rights of the populations and vulnerable groups affected.

Decree No. 9.571, of 21 November 2018, established National Guidelines on Business and Human Rights, for medium and large companies, including multinational companies with activities in the country. The adoption of national guidelines, however, is optional for medium and large companies, including multinationals, and the activity of members of the Monitoring Committee is an unpaid public service, which reduces the incentives to join the committee.

Thus, although Decree 9.571/2018 has created the recommended national policy, with a forecast of compliance with UN standards, its implementation is not of a mandatory nature and its monitoring by civil society does not count on incentives from the State. Strictly speaking, their participation depends on the volunteer members'. Furthermore, attendance at the meetings will preferably take place virtually, and it is expressly provided that the costs of any travel for the participation of the act will be paid by the member himself. As for members from government agencies, participation depends on the appointment of the superior of the agency that the civil servant is part of, with designation by the Minister of State for Human Rights, which reveals the political nature of the appointment.

Thus, in spite of the Parliamentary Observatory of the Universal Periodic Review has disclosed document in which it affirms that Recommendations no. 52 and 53 are in progress<sup>319</sup>, it is important to detach that the actions of the Brazilian State in the last two years still lack more effort for its effective implementation.

Another weakening of human rights and business policy is in the dismantling of the National Environmental Council (CONAMA). The issuing of the decree that modified CONAMA, followed by the revocation of the resolutions that protected Permanent Preservation Areas (Resolution No. 303), and the one that provided on the environmental licensing of irrigation enterprises in the agricultural sector (Resolution No. 284), represented a serious setback in environmental protection. In the same vein, Resolution No. 499 allows the burning of pesticides and toxic waste in rotary cement kilns, in a clear embracing of business interests, even though blatantly contrary to the rules protecting the environment.

It should not be forgotten that the right to a healthy environment was already included as a human right in the San Salvador Protocol to the American Convention on Human Rights (article 11) and in the United Nations International Covenant on Economic, Social and Cultural Rights (article 12.2.b).

To reinforce this, the UN Human Rights Council published a resolution expressly recognising the right to the environment as a human right to be protected and discussing the impact of climate change and other problems arising from the unsustainable use of natural resources, air, land and water pollution, which clearly interfere with the enjoyment of a safe, clean and healthy environment<sup>320</sup>.

---

<sup>319</sup> Recommendations No. 52 (Develop a comprehensive national action plan on business and human rights in line with the UN Guiding Principles in this regard - Paraguay) and No. 53 (Develop an Action Plan on Business and Human Rights - Sierra Leone). Parliamentary Observatory of the Universal Periodic Review: business and human rights. 2021. P. 6. Accessed on 03/02/2022.

<sup>320</sup> Available at: <https://brasil.un.org/pt-br/150667-meio-ambiente-saudavel-e-declarado-direito-humano-por-conselho-da-onu>. Accessed on 03/03/2022.



The Federal Constitution of 1988, admittedly citizen, social and directive, ensures the fundamental right to an ecologically balanced environment (Article 225). In this context, it is possible to affirm that the alterations mentioned in CONAMA's Resolutions represent a step backwards in the relationship between human rights and companies, in clear opposition to the Sustainable Development Goals (Goals 12 and 13)<sup>321</sup>.

About recommendation no. 54 made by Ecuador which refers to "continue efforts to punish those responsible for the rupture of the containment barriers in Jacaré and Mariana; and ensure that the victims of this tragedy have their right of access to justice and their right to compensation and reparations for the damage caused respected", the Parliamentary Observatory pointed out that there was no compliance, stating that:

The process of identification and reparations for the victims of the dam bursting has not been concluded to date. In the case of the Mariana dam collapse, the crime of homicide was removed from the process in 2019. The destroyed communities have not been rebuilt and answers are still lacking for the recovery of the environment.

Regarding Ethiopia's Recommendation no. 55, in the sense of "continuing its efforts to implement the National Policy on Climate Change regarding the reduction of deforestation in the Amazon region", the Observatory concluded that there was regression, assuming that "data from the PRODES system show that the deforestation rate in the Amazon in 2019 is the highest rate since 2008.

In 2020, the System of Estimates of Emissions and Removals of Greenhouse Gases (SEEG) stated that Brazil would not meet the target set in the National Policy on Climate Change even at its least ambitious threshold."<sup>322</sup>. The

---

<sup>321</sup>Available at: <https://odsbrasil.gov.br/>. Accessed on 03/03/2022.

<sup>322</sup>Parliamentary Observatory of the Universal Periodic Review: business and human rights. 2021. P. 20. Accessed on 03/02/2022.

last few years have been marked by the dismantling of environmental protection networks, the stimulus to mining and the expansion of land grabbing for non-sustainable agricultural production, as well as the senseless release of agrochemicals.

According to the Institute of Man and Environment of the Amazon - IMAZON, the "Amazon forest experienced in 2021 its worst year in a decade". More than 10,000 square kilometres of forest were destroyed<sup>323</sup>. In the same vein, the Amazon Environmental Research Institute - IPAM reported that "from 2010 to 2020, the area occupied by mining within indigenous lands grew by 495%; in the case of conservation units, the growth was 301%. In 2020 alone, 9.3% of the country's prospecting area occurred within indigenous lands<sup>324</sup>." The Scars in the Forest Report analysed the growth of prospecting in Yanomami territory, highlighting that it is one of the indigenous lands most affected by illegal prospecting, having grown, despite the pandemic, by more than 30% in 2020<sup>325</sup>. The increase in mining activity is also due to government authorisation for mining within indigenous territories.

The Instituto Socioambiental- ISA links the decrease in environmental protective measures to the expansion of land-grabbing and prospecting<sup>326</sup>, having stated that "the aggregate deforestation of the three years of Jair Bolsonaro's current government (2019 to 2021) with the previous three years (2016 to 2018), the deforestation of protected areas suffered an increase of 79%<sup>327</sup>." Not only that,

---

<sup>323</sup> Available at: <https://amazon.org.br/imprensa/desmatamento-na-amazonia-cresce-29-em-2021-e-e-o-maior-dos-ultimos-10-anos/>. Accessed on 02/02/2022.

<sup>324</sup> Available at: <https://ipam.org.br/garimpo-na-amazonia-o-coracao-da-floresta-e-suas-veias-impactados/>. Accessed on 04/02/2022

<sup>325</sup> Relatório Cicatrizes da Floresta. A evolução do garimpo ilegal na TI Yanomami em 2020. Directed by Hutukara Yanomami Association Wanasseduume Ye'kwana Association. Pp. 46-48.

<sup>326</sup> Available at: <https://www.socioambiental.org/pt-br/blog/blog-do-monitoramento/fiquesabendo-de-janeiro-amazonia-teve-pior-desmatamento-da-decada-em-2021>. Accessed on 02/02/2022

<sup>327</sup> Technical Note: Uncontrolled deforestation in the legal Amazon: the estimate of the PRODES deforestation rate in 2021 and the impact on protected areas. Available at: [https://acervo.socioambiental.org/sites/default/files/documents/prov0448\\_0.pdf](https://acervo.socioambiental.org/sites/default/files/documents/prov0448_0.pdf). P. 3. Accessed on 02/02/2022.



INESC warned, in a Technical Note<sup>328</sup>, that the 2021 Budget Bill has reduced the budget for environmental bodies by 35%.

The damage caused by mining and deforestation not only damages the environment, but also has profound consequences for traditional communities, whose territories are increasingly limited and their natural resources increasingly scarce. Furthermore, taking into account that the context of the latter refers to the COVID-19 pandemic, the increased presence of prospectors in the Amazon region considerably increases the risk of spreading the new Coronavirus, presenting a disproportionate impact on indigenous communities that do not have easy access to urban centres to seek help, depending on the precarious Indigenous Health Districts<sup>329</sup>.

Furthermore, the tension between indigenous people and prospectors intensified and several violent episodes were recorded, including direct attacks on Yanomami communities using heavy weapons<sup>330</sup>.

In effect, the situation surrounding Recommendation No. 55 is one of significant regression in the protection of the environment, the climate and traditional communities especially affected by deforestation and air and water pollution. Once again, when weighing the objectives of promoting economic development, producing wealth and generating energy against those of protecting traditional communities, it can be seen that Brazil has given much greater weight to economic interests, putting the lives of thousands of indigenous and riverside communities directly affected at risk, as well as millions of people locally,

---

<sup>328</sup>Technical Note: Environment and the PLOA 2021: one more piece of the dismantling of the Brazilian environmental policy. Available at: [https://www.inesc.org.br/wp-content/uploads/2020/10/NT\\_PLOA2021MeioAmbiente\\_V03.pdf](https://www.inesc.org.br/wp-content/uploads/2020/10/NT_PLOA2021MeioAmbiente_V03.pdf). P.3. Accessed on 02/02/2022.

<sup>329</sup> Reportagem Fantástico: [Terra Yanomami e o retrato do abandono: desnutrição, surto de malária e frascos de dipirona | Roraima | G1 \(globo.com\)](https://g1.globo.com/rr/roraima/noticia/2021/11/14/terra-yanomami-e-o-retrato-do-abandono-desnutricao-surto-de-malaria-e-frascos-de-dipirona-|Roraima-|G1-(globo.com)). Available at: <https://g1.globo.com/rr/roraima/noticia/2021/11/14/terra-yanomami-e-o-retrato-do-abandono-desnutricao-surto-de-malaria-e-frascos-de-dipirona.ghml>. Accessed on 25/11/2021.

<sup>330</sup> Reportagem O Globo. Ataque de garimpeiros em TI Yanomami. Available at: <https://oglobo.globo.com/politica/video-pf-revida-ataque-troca-tiros-com-garimpeiros-em-terra-yanomami-25013364>. Accessed on 25/11/2021.

regionally and globally, insofar as the environment is an asset of diffuse ownership and essential to all humanity.

Regarding recommendation no. 51 of the Netherlands, in the sense of "developing a National Action Plan on Business and Human Rights to prevent development projects from violating the rights of traditional populations, indigenous peoples and workers and causing damage to the environment, and to ensure effective remedies with meaningful consultation with affected communities", the Observatory pointed out that the current situation is one of progress<sup>331</sup>, reporting several regulations issued in order to create a national plan for the expansion of the participation of those involved. However, as presented in this topic, although there is legislative activity, in practice, what is verified is the weakness of civil society's performance.

*Alcântara Quilombola Communities vs. Brazil*, in proceedings before the Inter-American Commission on Human Rights - IACHR, is an example involving traditional populations. In brief summary, this is a land conflict between a Quilombola Community and the Aeronautical Aerospace Base situated in the city of Alcântara/MA, in which the Armed Forces, in the middle of the last century, installed the Base and removed families to settlements, imposing on them a new dynamic for living and preventing them from exercising their free cultural reproduction, even though there is land titling in favour of quilombola communities, in the form of article 68 of the ADCT<sup>332</sup>.

After the publication of reports within the IACHR, the Brazilian State has only partially complied with the Commission's determinations. This is because, although consultation with local people has taken place, the decisions of communities should guide government decision-making, and consultation is not just a formal requirement for the adoption of policies to the contrary. Strictly

---

<sup>331</sup>Available at: <http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>. P. 06. Accessed on 03/02/2022.

<sup>332</sup>Article 68, ADCT: "The remaining quilombo communities that are occupying their lands are recognized to have the definitive property, and the State shall issue them the respective titles".

speaking, the purpose of involving the people affected is to ensure that their interests are valued and weighed up when creating the applicable public policy. For this reason, although Brazil has adopted the appropriate normative measures and observed the procedure from a formal point of view, materially it has not met the real concerns of the communities involved. For this reason, the case was recently received by the Inter-American Court of Human Rights for trial.

It should also be noted that land conflicts in Brazil are frequent. In 2021 alone, "418 territories suffered 'Violence Against Occupation and Tenure'. Of these, 28% are indigenous territories; 23% are quilombola territories; 14% are squatters' territories; 13% are landless territories, among others"<sup>333</sup>. It can be seen, however, that traditional communities are at the forefront of disputes over land, having to, despite constitutional protection, live in a situation of relentless squatting with land-grabbers, prospectors, businessmen and the federal government itself (14% of conflicts)<sup>334</sup>, as occurs in Alcântara/MA and in Simões Filho/BA, between the Quilombola Community of Rio dos Macacos and the Brazilian Navy.

Therefore, as to recommendation no. 51, there is no effective progress in its compliance. The expansion of mining on indigenous lands, as well as environmental deregulation that favours mining and the recent sending of the case of Quilombola Communities of Alcântara to the Inter-American Court of Human Rights demonstrate the stagnation of the National Action Plan on Business and Human Rights.

Regarding social aspects related to business activities and human rights, the report "Human Rights Situation in Brazil", 2021, of the Inter-American Commission on Human Rights - IACHR - points out that companies have

---

<sup>333</sup>Available at: <https://www.ecodebate.com.br/2021/12/13/mortes-em-conflitos-por-terra-disparam-em-2021/#:~:text=Em%202021%2C%20418%20territ%C3%B3rios%20sofreram,sem%2Dterras%2C%20entre%20outros.Acesso em 04/02/2022.>

<sup>334</sup>Available at: <https://www.ecodebate.com.br/2021/12/13/mortes-em-conflitos-por-terra-disparam-em-2021/#:~:text=Em%202021%2C%20418%20territ%C3%B3rios%20sofreram,sem%2Dterras%2C%20entre%20outros.Acesso em 04/02/2022.>

functional structures that show the structural racism existing in the country and, in the majority, do not adopt affirmative action for hiring their employees, so that only "4.7% of executive and managerial positions in the largest companies in Brazil are occupied by people of African descent"<sup>335</sup>.

As presented in the topics of the general context and in the specific chapter on homeless people, the occupation of public spaces as a form of housing has been a growing problem in recent years, with emphasis on the last two years in which the rate increased by almost 32%. This is due, in part, to the absence of effective public policies for the realisation of the right to decent housing in the country, and, as reported by the IACHR, there is a greater prevalence of the interests of real estate companies over the democratic management of the city for the occupation of urban land<sup>336</sup>.

Also, the IACHR stated that it causes astonishment that the list of companies that make up the "Dirty List", that is, adopt exploitation of labour analogous to slavery, has not been published for 2 consecutive years and, after, in 2019, it was published but not updated. In fact, the last published list "contained 187 employers, responsible for the enticement of 2,375 workers, mostly related to farms, civil construction works, sewing workshops, prospecting and mining"<sup>337</sup>. In consultation with the Labour Inspection Portal<sup>338</sup>, it is verified that in 2020, 936 people were rescued and, only in 2021, 1,937.

Despite the seriousness of the situation, the DPU has received complaints about the cut in funding for labour inspectors, who are responsible for monitoring companies<sup>339</sup>. As verified, even in the face of the greater risk of enticement to slave labour in the years of the pandemic, due to the intensification

---

<sup>335</sup>Available at: <http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>. P. 20. Accessed on 03/02/2022.

<sup>336</sup>Available at: <http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>. P. 48. Accessed on 03/02/2022.

<sup>337</sup>Available at: <http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>. P.55. Accessed on 03/02/2022.

<sup>338</sup>Available at: <https://sit.trabalho.gov.br/radar/>. Accessed on 03/03/2022.

<sup>339</sup>Available at: <https://www.brasildefato.com.br/2021/04/13/lista-suja-e-divulgada-mas-desmonte-freia-combate-a-escravidao-na-pandemia>. Accessed on 03/03/2022.

of social vulnerabilities, the budget cut was the largest in 10 years, equivalent to a reduction of 40% of the amounts previously allocated<sup>340</sup>.

The preponderance of corporate interests to the detriment of workers' interests is nothing new in Brazil. The country has already been held responsible for labour in conditions analogous to slavery before the Inter-American Court of Human Rights in the case of *Workers from the Brasil Verde Farm vs. Brazil*<sup>341</sup> and in the case *Fábrica de Fogos de Santo Antônio de Jesus in Bahia vs. Brazil*<sup>342</sup>, in which, after the explosion of an irregular factory, without the minimum security to develop the activity, but which had an Army licence to handle explosives, 64 people died and 6 were injured. Of these, the majority were women and children, people in extreme poverty and lacking opportunities. The necessary emphasis is that in both cases the entrepreneurs had a license and, at least in theory, had been subjected to inspection. Hence, the problem of the weakening of labour audits and the need to question whom such measures benefit.

Finally, the IACHR presents concern regarding the privatization of prisons in the country. This is because, although the costs to the public coffers are higher than those observed in prisons under state management, the conditions of treatment of inmates and their opportunities in the system are not better, which is why privatization would not be justified. Still, under the perspective of the dignity of the human person, convicts would go from being subjects of rights before the State to goods before the company, since the value to be received corresponds to the number of people in prison. Therefore, profit depends on the largest number of prisoners, while the rights of penal execution are left in the background, contrary to the principles of criminal procedure to reduce incarceration and the adoption of

---

<sup>340</sup> Available at: <https://g1.globo.com/economia/noticia/2021/02/21/em-ano-de-pandemia-verba-para-combate-ao-trabalho-escravo-encolhe-mais-de-40percent-e-e-a-menor-dos-ultimos-10-anos.ghtml>. Accessed on 03/03/2022.

<sup>341</sup> Sentença da Corte Interamericana de Derechos Humanos no caso *Trabalhadores da Fazenda Brasil Verde vs. Brasil*. Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_318\\_por.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_318_por.pdf). Accessed on 03/03/2022.

<sup>342</sup> Relatório da Comissão Interamericana de Derechos Humanos no caso *Fábrica de Fogos de Santo Antônio de Jesus na Bahia vs. Brasil*. Available at: <https://www.oas.org/es/cidh/decisiones/corte/2018/12428FondoPt.pdf>. Accessed on 03/03/2022.

measures other than imprisonment. Moreover, "private establishments give preference to prisoners for non-violent crimes or with greater chances of social reintegration, which would not represent, then, any advantage to the public economy<sup>343</sup>.

From a human rights perspective, it is imperative to highlight the Brazilian experience with the privatization of penal establishments and the high number of violent acts that have occurred in these spaces, such as the Pedrinhas Penitentiary Complex in Maranhão and the Anísio Jobim Penitentiary Complex - COMPAJ in Amazonas. In this regard, in both privatised complexes, the IACHR highlights episodes that resulted in serious human rights violations, such as the massacres of 2013 and 2019 respectively<sup>344</sup>.

We conclude, therefore, that of the five recommendations presented by the last cycle of the Universal Periodic Review on the subject of human rights and business, Brazil failed to comply, in practice, with at least four of them, presenting measures that go against sustainable development, respect for human rights and transparency of information.

The current Brazilian scenario, which superimposes the interests of companies on those of vulnerable groups, incurring in serious human rights violations, especially of traditional communities, black people and those living in poverty, is worrying. This demonstrates the disproportionate impact of the measures adopted and reinforces the occurrence of environmental racism<sup>345</sup>, in which ethnic minorities are systematically victimised by environmental degradation actions, presenting itself as one of the forms of manifestation of structural racism, latent in the history of Brazilian society.

Three contexts are symbolic of this theme: Altamira, Rio Doce and Brumadinho, which we will present in the following lines.

---

<sup>343</sup>Available at: <http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>. P. 80. Accessed on 03/02/2022.

<sup>344</sup>Available at: <http://www.oas.org/pt/cidh/relatorios/pdfs/Brasil2021-pt.pdf>. P. 80. Accessed on 03/02/2022.

<sup>345</sup>Available at: <https://racismoambiental.net.br/textos-e-artigos/racismo-ambiental-expropriacao-do-territorio-e-negacao-da-cidadania-2/>. Accessed on 04/02/2022.

### 7.1.3. The dam bursts in Mariana/MG and Brumadinho/MG

Due to the gravity of the violations of the rights of vulnerable people and groups caused by the collapse of the Fundão Dam (Mariana/MG) and the Córrego do Feijão Mine (Brumadinho/MG), the DPU established the Specialized Thematic Committee for the Doce River Basin/Brumadinho (Ordinance GABDPGF DPGU No. 850 of 18 November 2020).

The purpose of the Thematic Committee is to define, coordinate, prepare and promote the implementation of actions aimed at defending the rights of people affected by disasters, as well as to liaise with the various sectors of civil society, the companies responsible, all spheres of government and affected communities.

- **The collapse of the Fundão Dam**

On 15 November 2015 the Fundão dam burst, located in the subdistrict of Bento Rodrigues, 35 km from the centre of Mariana (MG), the world's largest environmental disaster involving mining tailings dams, which led to the death of nineteen people and dumped more than 40 million cubic metres of ore tailings into the environment, contaminating the Rio Doce basin in the states of Minas Gerais and Espírito Santo, until it reached the Brazilian territorial sea.

The wave of tailings has caused, in municipalities of Minas Gerais and Espírito Santo, the destruction of vegetation cover in riverside areas, the burial of aquatic and terrestrial flora and the destruction of habitats, culminating in the extinction of aquatic fauna and reduction of terrestrial fauna. It also lodged sediments of ore tailings along the entire length of the watercourse.

The disaster resulted in the death of workers who were in the vicinity of the dam and people in the community of Bento Rodrigues, also characterising the health risk to the populations of the affected Municipalities.



- **The Córrego do Feijão Mine BI Dam burst**

The BI dam of the mining company Vale S.A. at the Córrego do Feijão mine, located in Brumadinho-MG, broke on 25 January 2019, killing 270 people and spreading about 13 million m<sup>3</sup> of ore tailings, causing socioenvironmental and socioeconomic damage throughout its channel and affecting, in different dimensions of damage, several people and communities that had a direct or indirect relationship with the river.

This is the biggest work-related accident in the history of Brazil, but the damage is not limited to the labour area.

The indigenous, quilombola and traditional communities, who used the Paraopeba River and its tributaries as a means of subsistence and exercise of their social, cultural and spiritual activities, were drastically impacted, damage that adds to the historical vulnerability and invisibility of these communities in public policies developed by the Public Power.

## **7.2 Extrajudicial and judicial measures adopted by the Federal Public Defenders' Office and other institutions for the defence of human rights**

The following actions were carried out by the Specialized Thematic Committee to address the rights violations resulting from the collapse of the Fundão dam in Mariana/MG.

- Extrajudicial notification of Vale, together with the Public Defenders' Office of Espírito Santo and the Federal Prosecution Service, due to the omission of the company in the negotiation for the repair of the damages suffered, due to the rupture of the Fundão dam, Mariana/MG, by the indigenous communities Tupiniquim and Guarani de Comboios and Caieiras Velha, located in Aracruz/ES;

- Monitoring of the renegotiation meetings in the scope of the Conduct Adjustment Agreement, related to the Fundão dam collapse, at the National Council of Justice (08038.012942/2021-58);
- Meetings, throughout 2021, with the National Justice Council and other Justice Institutions, about the processes of renegotiation of indemnity projects related to the Mariana/MG dam collapse (08038.012942/2021-58);
- Participation in the term of agreement for the repair of individual economic damages and the process of full compensation of the Indigenous Guarani Mboapy Pindó Community, due to the dam collapse in Mariana/MG;
- Participation in the term of agreement for the repair of individual economic damages and the process of full compensation of the Indigenous Community of Comboios, due to the collapse of the dam in Mariana/MG;
- Support to the Regional Human Rights Defender of Minas Gerais in case no. 1003050-97.2020.4.01.3800 (PAJ no. 2020/004-01099);
- Visit, together with MPF, FUNAI and a legal expert, to the indigenous territory of the Krenak, located between the banks of the Doce River and the Pico de Sete Salões, to continue the technical advisory process (08038.010342/2021-55);
- Support in the preparation of the Incident of Civil Suspicion No. 1017945-29.2021.4.01.3800;
- Supporting the Renova Foundation and the Public Defenders' Office of Espírito Santo in the procedure for preparing the Basic Environmental Plan - Indigenous Component (PBAI) of the Indigenous Community of Comboios, due to the dam collapse in Mariana/MG;
- Attendance at the public hearing, organized by the Federal Senate, for the purpose of instructing the discussion about Bill No. 2,788 of 2019, which "institutes the National Policy on the

Rights of Populations Affected by Dams (PNAB)  
(08038.021022/2021-21).

The following actions were carried out by the Specialized Thematic Committee to address the rights violations resulting from the collapse of the Fundão dam (Brumadinho/MG).

- Admission, as *amicus curiae*, in the Action for breach of fundamental precept no. 790/DF, in order to defend the annulment of the homologation of the judicial agreement signed in the mediation process SEI no. 0122201-59.20208.13.000 between the State of Minas Gerais, Public Prosecutor's Office of Minas Gerais, Federal Public Prosecutor's Office and Public Defender's Office of the State of Minas with Vale S. A., due to the lack of free and informed participation of those affected by the collapse of dams B-I, B-IV and B-IVA, in Brumadinho/MG;
- Institutional visit to the indigenous communities Pataxó and Pataxó Hã-Hã-Hãe, which were affected by the collapse of the Córrego do Feijão mine dam, to survey the current demands related to the reparation process against Vale S.A. (08038.023531/2021-98);
- Formalization of the second additive term to the Term of Extrajudicial Preliminary Adjustment - TAP-E between DPU, MPF, Vale S.A., Funai and indigenous leaders, in August 2021, in which it was defined: (i) the definitive payment of the amounts related to the emergency fund, based on the perspective of payment until the year 2024; (ii) permanence of the complementary health service until December 2023; (iii) creation of working groups to elaborate criteria for individual compensation; and (iv) viability of the beginning of the activities of the entity responsible for the socioeconomic study (IEDS) (4631409);

- Mutirão de atendimento às famílias do Pataxó and Pataxó Hã-Hã-Hãe, atingidas pelo ruptimento da barragem de Brumadinho. Assistance to about 40 families of the indigenous community Pataxó and Pataxó Hã-hã-hãe, affected by the rupture of the Brumadinho-MG dam in the year 2019, aiming to ascertain the individual damages suffered, for subsequent application for compensation against Vale S.A (08038.022750/2021-50);
- Action together with Vale S.A. to make it feasible to hire the Socioeconomic Consulting firm - IEDS, in order to begin the work of diagnosing the damage caused to the Pataxó and Pataxó Hã-Hã-Hãe people (meetings registered in SEI 4805240 and 4878327, letters SEI 4807363 and 4905055, and technical opinion SEI 4815029);
- Acting together with Vale S.A. to define a health diagnosis in favour of the indigenous Pataxó and Pataxó Hã-hã-hã community and regularise the complementary health service provided to the villages (SEI 08182.000137/2020-37);
- Institutional visit to the quilombola communities Quilombo de Pontinha, Beira Córrego and Retiro dos Moreiras, in November 2021, to survey the current demands related to the reparation process against Vale S.A. (08038.008008/2021-31);
- Provocation of the Palmares Cultural Foundation to define the draft terms of reference for the contracting of Socioeconomic Consultancy Services to survey the damage suffered by the Quilombo communities Quilombo de Pontinha, Beira Córrego and Retiro dos Moreiras (4871750);
- Institutional visit, on 06 to 08 November, to the Marinhos, Rodrigues, Sapé and Ribeirão quilombola communities, located in the rural area of the municipality of Brumadinho/MG, to investigate the demands related to the reparation process against Vale S.A. (08038.023856/2021-71);

- Action to adapt the quilombola component study (ECQ) conducted by Ecology Brasil, in compliance with the requirements of the Term of Reference (TR) issued by Fundação Cultural Palmares (FCP), on behalf of the quilombola communities Marinhos, Rodrigues, Sapé and Ribeirão, with the issuing of a letter and holding of a meeting with Ecology Brasil, in order to indicate the need to hold a new consultation, with the participation of independent technical consultants and the Palmares Foundation, to analyse the ECQ with the remaining quilombo communities of Brumadinho/MG (4846124 and 4861867);
- Actions against the parties to the Global Reparations Agreement (State of Minas Gerais, Prosecution Service of Minas Gerais, Federal Prosecution Service and Public Defenders' Office of Minas Gerais), to adjust the process of popular consultation for prioritization of themes and sub-themes of projects related to annexes I.3 and I.4 of the Judicial Reparations Agreement, in order to adapt it to the reality of the quilombola communities affected (Sapé, Ribeirão, Marinhos, Rodrigues, Pontinha, Beira Córrego and Retiro dos Moreiras), notably as regards the digital exclusion of their members, and to safeguard compliance with their specific characteristics as traditional communities (4817520 and 4838087);
- Draft of the Defence Report 01/2021 (4902079), which deals with reports from quilombola communities and indigenous peoples affected by the dam collapse in Brumadinho/MG, as well as the conclusions on the violations of rights committed during the reparation process;
- Joint meeting with leaders of the Kaxixó people, due to the damage caused by the dam collapse in Brumadinho/MG (08038.010341/2021-19).

## **7.3 Conclusions and recommendations**

For all these reasons, we can see the systematic violation of the human rights of the vulnerable population resulting from the collapse of the Fundão and Córrego do Feijão dams.

The actions of the Federal Public Defenders' Office have sought dialogue in various legal, judicial and extrajudicial spheres, so that, although there are no Public Defender's Offices throughout the affected territory, the Thematic Committee has made great efforts in the procedural and extra-procedural dimensions involving both disasters.

The social, individual and environmental damage caused, to a large extent, is not repairable, so that currently there is discussion about forms of compensation and mitigation measures.

## **7.4. Altamira**

### **7.4.1. Social impacts from the Belo Monte Hydroelectric Power Plant**

Located in the west of the State of Pará, the Xingu region includes the municipalities of Altamira, Anapu, Brasil Novo, Medicilândia, Pacajá, Placas, Porto de Moz, Senador José Porfírio, Uruará and Vitória do Xingu. The region's name comes from the Xingu River, which begins in the east of the State of Mato Grosso and cuts across the State of Pará until it flows into the Amazon River.

Among the municipalities that make up the Xingu region, the city of Altamira deserves special mention. It is the largest municipality in the country and the third largest in the world, with a larger territory than ten Brazilian states and countries like Portugal, Greece, Iceland, Ireland and Switzerland. Close to the municipality of Altamira is the Belo Monte Hydroelectric Plant, located on the Xingu River basin.

Operated by Consórcio Norte Energia, a group led by Eletronorte, the venture was included in the Growth Acceleration Programme (PAC) in 2007,

with construction starting in 2011. The full operation of the plant took place in 2019, with the activation of the 18th and last turbine. With the installation of the Belo Monte Hydroelectric Power Plant, the Altamira region changed rapidly. The abrupt population growth engendered by the construction work was not accompanied by investment in public health, education and security services compatible with the new reality of the place. At the same time, environmental and economic transformations have drastically affected local production, livelihoods and commerce, producing even more violence and unemployment in a region historically marked by the absence of the State.

In this context, according to the 2017 Atlas of Violence (produced with 2015 data)<sup>346</sup>, Altamira came to occupy the position of the most violent city in Brazil. According to the 2019 Atlas of Violence (produced with data from 2017)<sup>347</sup>, the Municipality became the 2nd most violent among cities with over one hundred thousand inhabitants, and is still the most violent city in the Amazon. Furthermore, with the implementation of the Belo Monte Hydroelectric Plant, the profile of local criminality has changed, with conflicts between factions<sup>348 349</sup>.

Parallel to the social costs, the socio-environmental impacts caused by the construction and operation of the Belo Monte Hydroelectric Plant are countless. In fact, the damming and diversion of the Xingu River caused the flooding of an area of 478 square kilometres and modified the flow in the Volta Grande do Xingu (VGX), so that the quantity of water no longer derives from the natural flow of the river, but from the control operated by the concessionaire. Given this scenario, the Consensus Hydrograph was stipulated, which is the main measure for mitigating the adverse effects of the reduction in flow in the Volta Grande do Xingu. Indicated in the EIA-RIMA of Belo Monte Hydroelectric Plant, the objective of the Hydrogram would be, in principle, to conciliate the generation

---

<sup>346</sup> Ipea - Atlas da Violência 2017

<sup>347</sup> Ipea - Atlas da Violência v.2.7 - Atlas da Violência dos Municípios Brasileiros 2019

<sup>348</sup> Com Belo Monte e briga de facções, Altamira vive explosão de assassinatos | Exame

<sup>349</sup> Altamira, a cidade que mata o futuro - Outras Palavras



of energy with the quantity of water indispensable for the ecological functions of the region and the maintenance of its navigability conditions.

However, there is no demonstration in the EIA-RIMA that the flows adopted are sufficient to guarantee the sustainability of the Volta Grande do Xingu. The flows implemented in the initial operation phase of the Power Plant (from 2015 to 2019) were higher than those planned and, even so, proved insufficient to ensure the sustainability of the undertaking, causing various impacts on fauna, flora and local populations.

#### **7.4.2 Volta Grande Mining Project**

Promoted by Belo Sun Ltda, the Brazilian subsidiary of the Canadian company Belo Sun Mining Corporation, the Volta Grande Mining Project was presented to the Pará State Secretariat for Environment and Sustainability (SEMAS/PA) in 2012. This is the largest open-pit gold extraction project in Latin America, and the Environmental Impact Assessment (EIA) indicated that it would be the largest. The project is to be installed in the municipality of Senador José Porfírio/PA, less than fifty kilometres from the main dam of the Belo Monte Hydroelectric Plant. It is, therefore, the same region impacted by the reduced flow of the Volta Grande do Xingu, which is home to numerous riverside communities and two Indigenous Lands (Arara and Paquiçamba).

As indicated in independent studies and opinions, there is a risk of collapse of the dam designed for the Belo Sun Mining Project, a situation that would cause irreversible damage to the Xingu River, exterminating one of the regions with the greatest biodiversity in the world<sup>350</sup>. Also worthy of note is the fact that the companies that conducted the dam stability study were the same companies hired by Vale S.A. prior to the disasters in Mariana and Brumadinho<sup>351</sup>.

---

<sup>350</sup> Projeto de mineração Belo Sun é inviável, aponta estudo técnico | ISA - Instituto Socioambiental

<sup>351</sup> Belo Sun se movimentava para explorar ouro em terras indígenas no Pará mesmo com batalha judicial - Observatório da Mineração ([observatoriodaminerao.com.br](http://observatoriodaminerao.com.br))

### 7.4.3. Land conflicts

On the margins of the Transamazon Highway is the city of Anapu, which concentrates a significant part of the agrarian demands in the Xingu region. In 2005, the municipality became known worldwide due to the murder of missionary Dorothy Mae Stang, creator of the Esperança and Virola-Jatobá Sustainable Development Projects (PDS).

The crime was ordered by two farmers who were fighting over the possession of land belonging to the Union. There are several causes of land conflicts in Anapu. In fact, there has been a great concentration of land in Pará as a result of integrationist and developmental projects cemented in the 20th century, especially during the military dictatorship (1964-1985). Consequently, a process of expropriation and exploitation of the territory began, causing illegal appropriations of public lands ("grilagem") and severe environmental impacts caused by illegal timber extraction and burning<sup>352</sup>.

In this context, territorial disputes become inevitable. The situation is further aggravated by the repeated omission of the state to give effect to the constitutional right to agrarian reform, consolidated by the absence of a structure capable of inspecting irregularities in the countryside. Finally, the repeated impunity for the crimes committed in Anapu, which involve threats, aggression and murder, should be noted. Indeed, according to a survey conducted by the Pastoral Land Commission, at least nineteen people have been killed in the region since 2015 in crimes related to conflicts over land<sup>353</sup>.

---

<sup>352</sup> Conflitos Agrários e Ocupação de Terras na Amazônia: Uma análise crítica acerca da Dinâmica Fundiária Paraense - Empório do Direito ([emporiiodireito.com.br](http://emporiiodireito.com.br))

<sup>353</sup> 15 anos após assassinato de Dorothy Stang, ativistas dos direitos pela terra na Amazônia continuam em grande risco - Notícias ambientais ([mongabay.com](http://mongabay.com))

#### **7.4.4 Extrajudicial and judicial measures adopted by the Federal Public Defenders' Office and other institutions for the defence of human rights**

In 2021, the Federal Public Defenders' Office institutionalised the Specialised Thematic Committee for Altamira (CTE Pacaraima), which focused on the following activities.

- In order to produce the 1st Defence Report - Altamira, the CTE held 36 (thirty-six) meetings with representatives of communities, social movements and public institutions, such as the Federal Prosecution Service, the Prosecution Service of the State of Para, the Public Defenders' Office of the State of Para, INCRA, FUNAI and IBAMA. Visits were made to riverside communities outside the Belo Monte Hydroelectric Plant reservoir; to the Mayaká and Furo Seco indigenous communities; to the Tavaquara collective urban resettlement (RUC) and to the Jardim Independente I neighbourhood. Meetings were also held in the city of Anapu/PA, which concentrates a significant portion of the land conflicts in the region;
- Preparation of a technical report, which suggested the need to open 29 (twenty-nine) new Collective Legal Aid Cases, involving issues such as housing and land conflicts; people affected by major events;
- Preparation of the Defender's Report No. 01/2021 with recommendations and suggestions to the National Mining Agency, Caixa Econômica Federal, Federal Public Defenders' Office, Public Defenders' Office of the State of Pará, Funai, ICMBio, Ibama, Incra, Laboratory for Studies of Territorial Dynamics of Amazonia, Ministry of Citizenship, Ministry of Women, Family and Human Rights, INSS, Municipality of Altamira, Norte Energia S.A, Secretariat of State Patrimony of the Union and Secretariat of Public Health of the State of Pará;

- Monitoring of the Consensus Hydrograph established in the Environmental Impact Assessment of the hydroelectric power plant, by filing Public Civil Action No. 1000684-33.2021.4.01.3903 and with visits to indigenous and riverside communities affected on 20.09.2021 to 25.09.2021;
- Meeting held on October 29, 2021, at the headquarters of the Xingu Vivo Movement in Altamira/AM to hear the demands related to the social and environmental impacts resulting from the installation of the Belo Monte Hydroelectric Plant.
- Request for information, on 08/03/2021, to ICMBIO about the proposed management plan for the RESEX Verde Para Sempre Verde.
- On 18/08/2021 and 19/08/2021, a technical visit was made to the RESEX Verde Para Sempre, during which various beneficiary families and community leaders were heard about the socioeconomic and environmental pending issues that still exist, especially those related to the lack of full enforcement of the protective regime established for the conservation unit. On 15/09/2021, it requested information about resources, land regularization plans, composition of the Deliberative Council of the RESEX, among others, from ICMBIO;
- Technical visit made to the Paquiçamba Indigenous Land (Vitória do Xingu/PA), with the knowledge that a large part of the indigenous residents in the location are not registered with the Tarifa Social de Energia Elétrica - TSEE. Thus, requisition letters were sent to the company Equatorial Energia Pará, the Prefeitura de Vitória do Xingu and FUNAI, in order to subsidise action;
- Drafting of a possessory action to secure possession of the families occupying the Ressaca Settlement Project against INCRA and Belo Sun Mineração Ltda (case no. 1003722-53.2021.4.01.3903);

- Issuance, in March 2021, of RECOMMENDATION No. 4302188 - DPU PA/GABDPC PA/DRDH AP PA addressed to the National Indian Foundation, with the objective of preventing the authorization, promotion, articulation and/or participation in meetings for the presentation and discussion of the Indigenous Component Studies of the Environmental Impact Studies of the Volta Grande Mining Project with the communities of the Arara Indigenous Lands of Volta Grande do Xingu and Paquiçamba, or their representatives, while the pandemic of the new coronavirus (COVID-19) persists;
- Issuance, in October 2021, of RECOMMENDATION No. 4679103 - DPU PA/GABDPC PA/DRDH AP PA, with the objective that the Trincadeira-Bacajá Indigenous Land be included in the environmental licensing of the Volta Grande Project; the Mebengokokre-Xikrin people be consulted about the enterprise; the Environmental Impact Study of the Indigenous Component be carried out regarding the indigenous people who had been displaced from the Volta Grande do Xingu; and, guarantee free, prior and informed consultation with the aforementioned displaced indigenous people;
- Follow-up of the inspection conducted by IBAMA as part of the process for renewing the Operating License of the Belo Monte Hydroelectric Plant, together with the MPF, residents, NESA and civil society, to various RUCs, such as Laranjeiras, São Joaquim, Tavaquara and Jardim Independente I;
- Participation in technical seminar on independent analysis of the Belo Sun EIA-CI in Altamira/AM, on 16/11/2021 and 17/11/2021, organized by the Instituto Socioambiental. During the mission, the precarious legal situation of the PA Ressaca was observed, which motivated the expedition of requisition letters to INCRA and requests for meetings with INCRA and Belo Sun;

- Held meetings with IBAMA, MPF, MPPA, Altamira City Hall and Norte Energia S.A. to discuss the relocation of families living around the pond in the Jardim Independente I neighbourhood, which were recognized by the licensing authority of the Belo Monte Hydroelectric Plant as impacted by the project.
- Issuance, on 18/03/2021, of the JOINT RECOMMENDATION DPU/MPPA/MPF No. 01/2021, for the purpose of the immediate adoption of the measures necessary for the execution of the determinations contained in Official Letter 172/2020/COHID/CGTEF/DILIC, which fully accepted the provisions of Technical Report 29/2020-COHID/CGTEF/DILIC, requiring Norte Energia to present an executive schedule for the relocation of the families of the properties registered in the area around the lagoon of Jardim Independente I;
- Holding, on 20.05.2021, of a Public Hearing to gather information about the relocation of families living around the lagoon in the neighbourhood of Jardim Independente I;
- Issuance, on 19/07/2021, of the JOINT RECOMMENDATION DPU/MPPA/MPF No. 02/2021, aiming at the presentation of a swift and efficient executive schedule for the relocation of the families and the establishment of a fine in case of non-compliance (4568028). On October 29, 2021, it took part in an inspection conducted by IBAMA in the Jardim Independente I neighbourhood as part of the process to renew the Operating Licence for the Belo Monte Hydroelectric Power Station;
- Expedition of Official Letter to the Chico Mendes Institute for Biodiversity Conservation (ICMBio), requesting the continuity of negotiations with Norte Energia for implementation of condition 2.24, paragraph "c", of LO

1317/2015, referring to the obligation to provide technical assistance for fishing for the three RESEXs of Terra do Meio, for a period of three years;

- Expedition of an official letter, in December 2021, to the Special Indigenous Sanitary District (DSEI) in Altamira requesting information on the "dislodged" indigenous communities Iawá, Jericoá II, Kanipá and São Raimundo, which, according to the findings of an institutional visit, are not being attended to by the competent indigenous health care bodies;
- Participation in meetings with the municipality of Altamira, MAB, residents, MPPA, DPPA and IBAMA, in order to discuss issues related to the Collective Urban Resettlements (RUCs) of Altamira/PA;
- Meeting held with the quilombola community of Porto de Moz/PA, representatives of the MAB, the Neighbourhood Association of Jardim Independente I (AMBAJI) and the Altamira City Hall;
- Request to the 3rd Civil Registry Office of Altamira, and then to the General Internal Affairs Office of the Court of Justice of the State of Pará, that the birth records of the indigenous people of the Parakanã people in Altamira/PA be registered.

#### **7.4.5. Conclusions and recommendations**

From the above, we can see the massive violation of the human rights of the populations living in the Volta Grande do Rio Xingu as a result of the implementation of large-scale projects. Public authorities, in general, have no effective action to stop the damage and, sometimes, assume the figure of the main violator.



The approval of national legislation with regulatory frameworks on the duties of companies, transnational and national, correlated to a shared responsibility on human rights is fundamental. This is a measure capable of guaranteeing legal security and respect for the rights of populations affected by market activities.

## 8. CONCLUSION

As already exposed, in 2019 Brazil occupied the 73rd position in the world ranking of the human development index - HDI, presenting a coefficient of approximately 0.7, while it figured in 9th place in the comparative relative to the Gini index, measured from the factors of social inequality<sup>354</sup>. The research report by the United Nations Development Programme - UNDP - revealed that Brazil is one of the current leaders in poor income distribution, second only to Qatar. In 2021, the country was back on the UN hunger map, with more than 61 million people below the poverty line, according to a reference value of ½ minimum wage used by the Unified Registry<sup>355</sup>, and an unemployment rate of 14.7%, a record when compared with recent years since 2012<sup>356</sup>.

During the Report, we observed that violence against the elderly is still a reality and that it grew during the pandemic caused by the Coronavirus. According to the National Human Rights Ombudsperson, Fernando Ferreira, in the 1st half of 2021 alone, 37,000 notifications of violence against the elderly were received<sup>357</sup>.

The reality of the Brazilian prison system is also one of the clippings of this report. This is because, more than five years after the Federal Supreme Court (STF), in the context of the Action of breach of fundamental precept (ADPF) No. 347, recognized the unconstitutional state of things in prisons in the country, the overcrowding in prisons is still systematic, which increases the climate of tension,

---

<sup>354</sup>UNDP – UN. Relatório do desenvolvimento humano 2019. Além do rendimento, além das médias, além do presente: as desigualdades no desenvolvimento humano no século XXI. 2019. p. 303

<sup>355</sup>IBGE. Síntese de indicadores sociais: uma análise das condições de vida da população brasileira : 2020 / IBGE, Coordenação de População e Indicadores Sociais. - Rio de Janeiro: IBGE, 2020, page 66. Available at: <https://biblioteca.ibge.gov.br/visualizacao/livros/liv101760.pdf>. Accessed on 29/05/2021.

<sup>356</sup> IBGE – Pesquisa Nacional por Amostra de Domicílios Contínua - PNAD. Indicadores mensais produzidos com informações do trimestre móvel terminado em março de 2021. Rio de Janeiro, 2021. Available at: [https://agenciadenoticias.ibge.gov.br/media/com\\_mediaibge/arquivos/49e558eb5b0e3bb0dd9d5801400c4c2d.pdf](https://agenciadenoticias.ibge.gov.br/media/com_mediaibge/arquivos/49e558eb5b0e3bb0dd9d5801400c4c2d.pdf). Acesso em 29/05/2021

<sup>357</sup>Available at: <https://www.camara.leg.br/noticias/774878-pandemia-de-covid-agravou-situacao-de-violencia-contra-idosos/>

besides making it impossible to guarantee the fundamental rights and assistance to the execution and individualization of the sentence.

In this context, in relation to the LGBTQIA+ population, of note is the substantial amendment of CNJ Resolution No. 348, which was reissued on 25 January 2021 by CNJ Resolution 366, to remove the right of transvestites and intersex persons to express choice about the place of deprivation of liberty.

The situation of indigenous communities also showed setbacks. The expansion of prospecting activity on indigenous lands has resulted in significant environmental impacts, as well as weakening the health of indigenous families and several episodes of violent conflict<sup>358</sup>. The proximity of prospectors to the villages means a decrease in animal life and an increase in tensions. In 2021, important news media reported the abandonment of Yanomami communities by inspection and policing bodies, showing images of miners shooting at indigenous men, women and children with high-calibre weapons<sup>359</sup>.

In addition, the silting up and the deposit of metals resulting from mining have a special impact on river waters, the source of life for the indigenous peoples. With the pollution of the waters, there is a reduction in fish and the food supply becomes increasingly scarce. Poor water quality also has a reflection on indigenous health. Regarding the indigenous health subsystem, although there is regulation of the health districts in the SUS Law, the media reported records of children in a situation of malnutrition and probable verminosis, besides the high infant mortality rate. Hospitals without minimum structure and lack of medicine are other serious problems faced by many communities<sup>360</sup>.

---

<sup>358</sup> Relatório Cicatrizes da Floresta. A evolução do garimpo ilegal na TI Yanomami em 2020. Produced by Hutukara Yanomami Association  
Wanasseduume Ye'kwana Association. 52 p.

<sup>359</sup> Reportagem O Globo. Ataque de garimpeiros em TI Yanomami. Available at: <https://oglobo.globo.com/politica/video-pf-revida-ataque-troca-tiros-com-garimpeiros-em-terra-yanomami-25013364>. Accessed on 25/11/2021.

<sup>360</sup> Reportagem Fantástico: Terra Yanomami e o retrato do abandono: desnutrição, surto de malária e frascos de dipirona | Roraima | G1 (globo.com). Available at: <https://g1.globo.com/rr/roraima/noticia/2021/11/14/terra-yanomami-e-o-retrato-do-abandono-desnutricao-surto-de-malaria-e-frascos-de-dipirona.ghtml>. Accessed on 25/11/2021.

It should be noted that, despite Brazil having already been held responsible by the Inter-American Court of Human Rights for the delay in demarcating indigenous territories<sup>361</sup>, the federal government stated that the State is not capable of curbing mining activity in the region, failing to act to guarantee permanent possession of the area to indigenous communities, as constitutionally provided, and to prevent the continuation of environmental illicit activities in its interior<sup>362</sup>. On the contrary, political pressure has intensified for the legalisation of mining activity in Indigenous Lands<sup>363</sup>, with the approval of the urgency regime of PL 191/2020 that seeks to regulate paragraph 1 of article 176 and paragraph 3 of article 231 of the Constitution to establish the specific conditions for the research and exploitation of mineral and hydrocarbon resources and for the use of water resources to generate electricity on indigenous lands and establishes indemnity for the restriction of the usufruct of indigenous lands<sup>364</sup>.

Indigenous leaders manifested themselves through a letter in April 2021, denouncing government actions against their lands and way of life, highlighting the destruction caused to their lands by the construction of hydroelectric dams and prospecting, as well as the encouragement not to demarcate the TY and the establishment of more restricted time limits<sup>365</sup>.

---

<sup>361</sup> Caso Xucuru vs. Brasil. Available at: [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_346\\_por.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_346_por.pdf). Accessed on 25/11/2021.

<sup>362</sup> FOLHA DE S.PAULO. Mourão diz que é hora de discutir mineração em terra indígena. 08/09/2020. Available at: < <https://www1.folha.uol.com.br/mercado/2020/09/mourao-diz-que-e-hora-de-discutir-mineracao-em-terra-indigena.shtml> >. Accessed on 25/02/2021. A PUBLICA. Enquanto força tarefa investiga ouro ilegal, lobby do garimpo tem apoio do governo. 22/06/2020. Available at: < <https://apublica.org/2020/06/enquanto-forca-tarefa-investiga-ouro-ilegal-lobby-do-garimpo-tem-apoio-do-governo/> > Acesso em: 25/02/2021. RORAIMA EM TEMPO. Onyx: Garimpo é ‘importantíssimo’ e indígenas podem desenvolver ‘sem perder características’. 24/11/2020. Available at: < <https://www.roraimaemtempo.com/ultimas-noticias/onyx-garimpo-e-importantissimo-e-indigenas-podem-desenvolver-sem-perder-caracteristicas-380414.jhtml> >. Accessed on 25/02/2021.

<sup>363</sup> Relatório Cicatrizes da Floresta. A evolução do garimpo ilegal na TI Yanomami em 2020. Produced by Hutukara Yanomami Association  
Wanasseduume Ye'kwana Association.

<sup>364</sup> Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2236765>. Accessed on 19/03/2022.

<sup>365</sup> Carta de Manifesto – Kayapó. Available at: [https://www.socioambiental.org/sites/blog.socioambiental.org/files/nsa/arquivos/carta\\_kriny.pdf](https://www.socioambiental.org/sites/blog.socioambiental.org/files/nsa/arquivos/carta_kriny.pdf). Accessed on 02/02/2022.

The last few years have been marked by the dismantling of environmental protection networks, the stimulus to prospecting and the expansion of land-grabbing for non-sustainable agricultural production, as well as the senseless release of agrochemicals. According to the Institute of Man and Environment of the Amazon - IMAZON, the "Amazon Forest experienced in 2021 its worst year in a decade". More than 10,000 square kilometres of forest were destroyed, almost half of which was federal land<sup>366</sup>. INESC warned, in a Technical Note<sup>367</sup>, that the 2021 Budget Bill has reduced the budget for environmental bodies by 35%.

Quilombola communities have also had their territories involved in disputes and their rights violated. Article 68 of the ADCT ensures definitive ownership of titled lands, but the provision is constantly violated, especially by the Armed Forces. In Alcântara/MA, for example, the disputes are about the forced displacement of communities from their titled areas and the negative impact of resettlement in areas with extremely different characteristics, which violates Decree 6.040/2007, about maintenance in the spaces necessary for cultural, social and economic reproduction of traditional peoples and communities. The case is in the process of being presented before the Inter-American Court of Human Rights, after unsuccessful attempts at an amicable solution within the Inter-American Commission on Human Rights - IACHR.

Urban and rural land conflicts are present throughout the country. The economic crisis intensified by the new Coronavirus pandemic has led to an increase in rent defaults and a consequent increase in irregular occupations, which give rise to repossession suits and further evictions. If, on the one hand, official recommendations are to stay at home, on the other, public policies do not favour the permanence of rural and urban workers in their dwellings, given the insufficient

---

<sup>366</sup> Available at: <https://imazon.org.br/imprensa/desmatamento-na-amazonia-cresce-29-em-2021-e-e-o-maior-dos-ultimos-10-anos/>. Accessed on 02/02/2022.

<sup>367</sup> Nota Técnica Meio Ambiente e o PLOA 2021: mais uma peça do desmonte da política ambiental brasileira. Available at: [https://www.inesc.org.br/wp-content/uploads/2020/10/NT\\_PLOA2021MeioAmbiente\\_V03.pdf](https://www.inesc.org.br/wp-content/uploads/2020/10/NT_PLOA2021MeioAmbiente_V03.pdf). P.3. Accessed on 02/02/2022.

existence of economic promotion policies for agricultural production in family economy regime, of basic social tariffs for water, sewage, energy or of housing financing for needy populations. The credit lines related to the National Agrarian Reform Programme (PNRA) have very short grace periods, adhesion contracts and difficulty in proving crop losses due to climatic issues<sup>368</sup>.

These facts subject the rural and urban population to terrible housing conditions, deprived of basic sanitation (piped water and sewage), with open-air dumping of waste, further aggravating the health of this population. Rising rents in urban areas and insufficient housing policies have increased the number of people living on the streets.

There are no national data on this reality, to the extent that the Census carried out, as a rule annually, by IBGE, was not authorized in the year 2021 under allegation of lack of budgetary resources. However, some surveys denote the escalating social crisis. The Municipality of São Paulo, for example, calculated that there had been a 31% increase in two years in the number of people living on the streets, rising from around 29,000 to almost 32,000 people<sup>369</sup>. Another fact worth highlighting is that 35.3% of those interviewed said that they had spent a whole day without food in the last seven days, which in absolute numbers means that a situation of extreme food insecurity affected around 8,600 people<sup>370</sup>.

As pointed out by the Strategic Action Group of the Public Defenders' Office in the Superior Courts:

---

<sup>368</sup> National Agrarian Reform Programme - PNRA, throughout the state of Acre, detailing the modalities for granting credit: Initial Support; Development; Women's Development; Semi-arid; Forestry; Environmental Recovery; Cocoa; Housing and Housing Reform.

<sup>369</sup> Pesquisa censitária da população em situação de rua, caracterização socioeconômica da população em situação de rua e relatório temático de identificação das necessidades desta população na cidade de São Paulo (2021). Available at: [https://www.prefeitura.sp.gov.br/cidade/secretarias/upload/Produtos/Produto%209\\_SMADS\\_SP.pdf](https://www.prefeitura.sp.gov.br/cidade/secretarias/upload/Produtos/Produto%209_SMADS_SP.pdf). Pp. 83 – 90. Accessed on 02/02/2022.

<sup>370</sup> Pesquisa censitária da população em situação de rua, caracterização socioeconômica da população em situação de rua e relatório temático de identificação das necessidades desta população na cidade de São Paulo (2021). Available at: [https://www.prefeitura.sp.gov.br/cidade/secretarias/upload/Produtos/Produto%209\\_SMADS\\_SP.pdf](https://www.prefeitura.sp.gov.br/cidade/secretarias/upload/Produtos/Produto%209_SMADS_SP.pdf). Pp. 50-52 Accessed on 02/02/2022.

All these components of housing deficit and inadequate housing are also aggravating factors for the transmission of COVID-19. The precarious housing, consisting of rustic and improvised houses are unhealthy places and offer risks of contagion; the excessive burden of rent presents a great risk of eviction of families that are in an even more fragile economic situation due to the economic crisis generated by the pandemic; the cohabitation of families increases the intensity of contact and, consequently, of household transmission; the lack of urban infrastructure, such as the lack of access to electricity, water supply, sewage and rubbish collection, also make it extremely difficult to take basic preventive measures, such as hygiene and social isolation; the lack of buildings, such as the non-existence of an exclusive bathroom, the use of all rooms as dormitories, water storage, inadequate flooring and roofing also increases the risk of transmission of the virus; the inadequacy of land represents insecurity of tenure and represents a greater risk of evictions<sup>371</sup>.

Even in the face of laws and court decisions prohibiting evictions during the period of the COVID-19 pandemic, these have been occurring frequently. For this reason, ADPF 828 was filed at the Federal Supreme Court, in order to recognise the right to housing as a right to life and health in a context of health emergency for the extension of the scope of law 14.216/21<sup>372</sup>, so as to avoid new evictions and the violation of the rights of vulnerable groups directly affected.

It is undeniable that the pandemic of the new Coronavirus has led to significant negative impacts on the exercise of fundamental rights, especially for members of the most vulnerable groups, who, faced with the context of health emergency, have deepened the intersectionality of their vulnerabilities. The State, although it has acted to mitigate these effects through income distribution

---

371 Request for permission as Amicus Curiae of GAETS, the State Public Defenders' Office in São Paulo, in the context of ADPF 828. Pp.33-34.

372 Law No. 14,216/2021 Establishes exceptional measures due to the Public Health Emergency of National Importance (Espin) resulting from the human infection by the SARS-CoV-2 coronavirus, to suspend the enforcement of judicial, extrajudicial or administrative measures that result in the eviction or collective forced removal from private or public property, exclusively urban, and the granting of preliminary injunctions in eviction proceedings under Law No. 8.245 of 18 October 1991, and to encourage the execution of agreements in leasing relationships.



programmes such as emergency aid<sup>373</sup>, has not been able to cancel out the harmful effects of the pandemic.

The reduction of spaces for social control and popular participation in the Public Administration shows the weakening of some pillars of democracy. Spaces for discussion and participation of civil society, such as the Councils of Rights, have had significant changes in their structures, from restructuring to facilitate the amendment of regulations, through the reduction of popular participation, to the very extinction of collegiate bodies<sup>374</sup>. Not only in the environmental area, the National Council for the Rights of Children and Adolescents also underwent profound changes following Presidential Decree 10,003/2021, which "dismissed councillors elected for the 2019-2020 biennium; established quarterly meetings by videoconference (instead of monthly face-to-face); selective processes in place of elections; and appointed rather than elected presidents, with the right to extra votes in the event of a tie in deliberations."<sup>375</sup>

In ADPF 622, the Federal Supreme Court recognised the practice of "abusive constitutionalism", consisting of the "practice that promotes the interpretation or alteration of the legal system in such a way as to concentrate powers on the Chief Executive and disable agents who exercise control over his actions - an instrument associated, in the international order, with democratic regression and the violation of fundamental rights"<sup>376</sup>. There were also significant budget cuts in the area of education and research. For example, FIOCRUZ, a foundation whose role is fundamental in research and production of vaccines

---

<sup>373</sup>Law No. 13,982, of April 2, 2020, extended by Provisional Presidential Decree No. 1,000 of 2020 and 1,039 of 2021.

<sup>374</sup>Available at: <https://www.socioambiental.org/pt-br/noticias-socioambientais/governo-reduz-transparencia-e-participacao-social-na-area-ambiental-mostra-estudo>. Accessed on 02/02/2022.

<sup>375</sup>Available at: <https://prioridadeabsoluta.org.br/agenda-227/stf-julga-decreto-conanda/>. Accessed on 02/02/2022.

<sup>376</sup> STF, ADPF No. 622. Available at: <https://prioridadeabsoluta.org.br/wp-content/uploads/2021/06/acordao-adpf-622.pdf>. P. 13. Accessed on 02/02/2022.

against COVID, with special emphasis over the last two years, had its budget cut by 11 million reais<sup>377</sup>.

As presented, the structure of the Unified Health System, still insufficient for the ordinary demand of the population, was not able to prevent such a high number of deaths directly and indirectly caused by COVID-19 infection. The mortality rate, however, is directly proportional to the economic and social vulnerability of the affected group. Food insecurity, lack of adequate housing, poor educational level of the population and domestic and state violence also contribute to the high number of Pandemic victims.

As recorded, in the last report of the United Nations Universal Periodic Review (UN, 2017)<sup>378</sup>, Brazil received 246 recommendations, having accepted 242 in the 3rd cycle. In 2020, when the country was reassessed, the report indicated that 142 recommendations (58.68% of the total) were not being complied with and, among these, in 64 recommendations there were serious retrogressions. This means that in addition to failing to comply with more than half of the recommendations, Brazil was going against the achievement of almost one third of all the recommendations of the 3rd UPR cycle<sup>379</sup>.

In this context, in the face of serious setbacks or stagnation in relation to the majority of the recommendations of the third cycle of the UN Universal Periodic Review, there is an urgent need for the Brazilian State to invest in structural solutions that prioritise vulnerable populations. The immediate enforceability of human rights and their universality, in light of the principle of the prohibition of retrogression, do not allow for the abandonment of the political and

---

<sup>377</sup> Available at: <https://www.brasildefato.com.br/2022/01/24/educacao-e-trabalho-concentram-cortes-de-bolsonaro-veja-quanto-cada-ministerio-perde-em-2022>. Accessed on 02/02/2022.

<sup>378</sup> Extra-conventional mechanism of the UN Human Rights Council for monitoring and protecting human rights in member countries.

<sup>379</sup> Relatório sobre a situação dos direitos humanos no Brasil em contexto da pandemia da Covid-10, elaborado em 2020. Available at: <https://plataformarpu.org.br/storage/publications/documents/pf8qPxasVS5ad6V3FRP7zzhgyNaZzJ6RK5Hkts2y.pdf>. Accessed on 18/11/2021.

social commitments made by Brazil in the Federal Constitution and in international human rights treaties.

The Federal Public Defenders' Office, as a national institution and responsible for the promotion of rights, will keep under constant surveillance in the next cycle the attitude of the constituted powers regarding compliance with the recommendations of the Universal Periodic Review.

