

INFORMATION IN ADVANCE OF THE ADOPTION OF THE LIST OF ISSUES ON BRAZIL

**Alternative report submitted to the UN Committee on Enforced Disappearances (CED)
in the context of the review of Brazil report**

The undersigned civil society organizations would like to provide the following background information to the Committee on Enforced Disappearances in advance of the adoption of the list of issues on Brazil in CED Session 18

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Terra de Direitos

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1. Introduction

For the purposes of this shadow report, it is essential to recall the concept of enforced disappearance brought by the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED). Article 2 of the ICPPED defines enforced disappearance as a crime necessarily linked to state action, either through direct action by its agents or through their acquiescence in relation to the action of private individuals. This definition is widely accepted in the Inter-American Human Rights System, in the European Human Rights System and in the Constitutional Courts and High Courts of several countries on the American continent¹.

Thus, the concept of enforced disappearance provided for in ICPPED refers to “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”²

It is relevant to differentiate enforced disappearance, as it is recognized internationally, from other types of crimes already listed in Brazilian law, which are insufficient in view of the ICPPED determinations. Among these, article 148 of the Brazilian Penal Code, the criminal type of kidnapping and private imprisonment, distinct from the enforced disappearance insofar as it does not presume the involvement of state agents. In the same vein, article 159 of the Penal Code, which typifies the crime of extortion through kidnapping, but does not require the participation, directly or indirectly, of state agents for the configuration of the crime. Thus, there is no penal type in Brazilian law that criminalizes enforced disappearance.

Due to the internalization of ICPPED, Brazil states, in its report submitted to the Committee on Enforced Disappearances - CED, that is making efforts to adapt its laws to international conventions and to typify in its Penal Code the crime of enforced disappearance, presenting the Project of Law 6240/2013 as a demonstration of these efforts. However, as we will see later, until now there is no Law aimed at typifying enforced disappearance under the terms of ICPPED, that is, as a crime that presupposes to some extent state action, thus emptying the concept defined by jurisprudence, doctrine and international instruments.

In this regard, the general comment on the definition of enforced disappearance, prepared by the Working Group on Enforced or Involuntary Disappearances of the United Nations Human Rights Council, states that "enforced disappearances are only considered as such when the act in question is perpetrated by state actors or by private

¹ Inter-American Court of Human Rights (IACHR). *"Cuadernillo de Jurisprudencia de la Corte Interamericana de Derechos Humanos No 6: Desaparición Forzada"*, par. 140. Available at: <http://www.corteidh.or.cr/sitios/libros/todos/docs/cuadernillo6.pdf>. Accessed on 18 of march 2020.

² UN. Committee on Enforced Disappearances. UN International Convention for the Protection of All Persons from Enforced Disappearance of 2006, art. 2.

individuals [...] on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government"³.

The Committee on Enforced Disappearance has repeatedly stated, in its concluding observations, that the definition of enforced disappearance in domestic law must be in accordance with Article 2 of the ICPPED⁴. The Committee considers "[...] the offence of enforced disappearance is not a series of different crimes, but rather a complex and single offence, committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State [...]"⁵. Apesar disso, o relatório do Estado brasileiro afirma que "the country may face forced disappearances perpetrated by persons or groups of persons **acting without authorization**, notably related to land conflicts in remote rural areas, drug trafficking/anti-drug actions, and internationally"⁶.

Such a statement made by Brazil in its Report, suggests that enforced disappearances in Brazil are perpetrated without the participation of State agents, at the same time that it depreciates the occurrence of the phenomenon, limiting it to specific scenarios. As will be seen below, the absence of official data precludes the real dimensioning of enforced disappearances in Brazil, while making invisible the participation of state agents and militias as directly or indirectly responsible for the enforced disappearance of people in Brazilian territory. The State report contributes to this invisibility, to the extent that it presents numerous existing measures to combat "disappearance" in a generic way, without any focus on enforced disappearance as a crime that includes the participation of state agents as an element.

Even more serious is the fact that the Brazilian State deliberately ignores the hundreds of victims of enforced disappearances during the Brazilian military dictatorship, whose remains were never recovered, in flagrant breach of Article 24 of the ICPPED. On the subject, the Brazilian State affirms that"[...] its obligations towards the Committee take effect only after the entry into force of the instrument internally. In Brazil, the Convention was internalised on May 11, 2016"⁷. This statement disregards the continued nature of the crime of enforced disappearance, which, according to the Working Group on Enforced or Involuntary Disappearances, enables:

"Even if some aspects of the violation may have been completed before the entry into force of the relevant national or international instrument, if other parts of the violation

³ UN. Working Group on Enforced or Involuntary Disappearances. General Comment on the definition of enforced disappearance

⁴ UN. Committee on Enforced Disappearance. Concluding observations on the report submitted by Portugal under article 29 (1) of the Convention

⁵ UN. Committee on Enforced Disappearance. Concluding observations on the report submitted by Japan under article 29 (1) of the Convention

⁶ UN. Committee on Enforced Disappearance. Report submitted by Brazil under article 29 (1) of the Convention, due in 2012, par. 27.

⁷ UN. Committee on Enforced Disappearance. Report submitted by Brazil under article 29 (1) of the Convention, due in 2012, par. 34.

are still continuing, until such time as the victim's fate or whereabouts are established, the matter should be heard, and the act should not be fragmented".⁸

In fact, the Brazilian State makes no mention of the disappeared during the Brazilian military dictatorship and public policies on truth, memory, justice and reparation implemented within the scope of transitional justice to deal with the authoritarian past, which, as will be seen below, have been suffering serious setbacks. Although the Brazilian State generically cites bodies created for this purpose - such as CEMDP, CNV and the Perus Working Group⁹ - the report omits the existence of these disappeared, contradicting the maxim of transitional justice "to know to not repeat". Furthermore, the Brazilian State tries to link ideological meaning to the search for truth, arguing that "[...]in latest investigations on this and other issues, data and surveys are being investigated to effectively find the precise truth, **without ideological misrepresentations**"¹⁰.

Therefore, in view of the seriousness of the issue, it is hoped that this shadow report will serve as input for this Committee on Enforced Disappearance to reiterate the international obligations of the Brazilian State vis-à-vis ICPPED and condemn the State's inaction regarding prevention, combating and investigating crimes of enforced disappearance, as well as the absence of due reparation for victims and their families

2. Enforced disappearances in Brazil

2.1 Background

The Inter-American Court on Human Rights (I/A Court) considered for the first time the systematic human rights violations carried out during the Brazilian civil-military dictatorship in its decision on the case *Gomes Lund and others v. Brazil*. In its decision, the I/A Court declared that in April 1964 a military coup overthrew the constitutional government and initiated a dictatorship that prevailed until 1985¹¹. In this case, the I/A Court also established that between 1969 and 1974, during General Médici's mandate, there was a "massive offensive against armed opposition groups", being the most extreme phase of the dictatorship period.

In spite of the fact that military commanders assumed power with a coup d'état on March 31, 1964 with the promise that they would defend democracy, on April 9,

⁸ UN. Working Group on Enforced or Involuntary Disappearances. General Comment on Enforced Disappearance as a Continuous Crime.

⁹ UN. Committee on Enforced Disappearance. Report submitted by Brazil under article 29 (1) of the Convention, due in 2012, pars. 143-145.

¹⁰ UN. Committee on Enforced Disappearance. Report submitted by Brazil under article 29 (1) of the Convention, due in 2012, par. 144.

¹¹ IACHR. *Case Gomes Lund et al. "Guerrilha do Araguaia" v. Brazil*. Preliminary Objections, Merit, Reparations and Costs. Serie C 219. Judgment of November 24, 2010. Par. 85.

Institutional Act No. 1 was issued, the exception norm that indicated the political guideline military governments would adopt from that moment on. From there,, the Institutional Acts that followed would increasingly intensify restrictions on democratic principles, determining the termination of the mandates of several parliamentarians of recognized democratic performance, imposing the suspension of parliamentary immunity, the vitality of magistrates, the stability of public officials and other constitutional rights¹².

Since then, the Brazilian political scene has been permeated by authoritarianism, by the suppression of constitutional rights, by persecutions of political activists, students, lawyers, journalists, members of the clergy, union leaders and workers¹³, among many others, triggered by the Army, which openly assumed the role of repression organ, as well as the Federal Police and Civil and Military state police, whose dropped their legal attributions as the promotion of public security and started to carry repression functions, largely using criminal means to investigate and intimidation techniques as torture¹⁴.

Contrary to this system, part of society organized itself in movements of resistance to the military regime. Often characterized by their left-wing political orientation, such organizations sought to change the *status quo* of military repression. Regarding the actions carried out by the opposition organizations, they were varied: while some groups were resorting to peaceful forms of contextual transformation, others used confrontational tactics to obtain immediate results¹⁵.

In order to dismantle opposition organizations, especially those involved in armed resistance actions, repression used authoritarian instruments against the entire civilian population¹⁶. The most emblematic of these instruments was Institutional Act No. 5 (hereinafter "AI-5") of 1968, which resulted in intensified surveillance and repression against the internal enemy. Through it, the guarantee of *habeas corpus* was suspended, which allowed the arbitrary and violent arrest of individuals for alleged political crimes, crimes against national security, crimes against the economic and social order or against the popular economy¹⁷.

¹² Brazil. Presidency of the Republic. Institutional Act no. 1. 09 of april 1964. Available at: http://www.planalto.gov.br/ccivil_03/AIT/ait-01-64.htm. Accessed on March 16th 2020.

¹³ BANDEIRA, Marina. *"Brasil Nunca Mais: um relato para a história"*. Petrópolis: Vozes, 1985.

¹⁴ GASPARI, Elio. *"Ditadura Escancarada"*. São Paulo: Companhia das Letras, 2002.

¹⁵ Archdiocese of São Paulo. *Brasil: Nunca Mais*. Editora Vozes (2001), pp. 89-90.

¹⁶ Brazil. Federal Public Prosecutor Office. Coordination and Revision Chamber, 2. *Crimes da ditadura militar*. Brasília: MPF, 2017, p. 93.

¹⁷ About the Institutional Act nº. 5, see: Brazil. Institutional Act nº. 5, 13 of december 1968. The Federal Constitution of 24 of january 1967 and state Constitutions are kept; The Presidency of the Republic may decree interventions on states and municipalities, without the limitations enshrined in the Constitution,

As a result, the period after the promulgation of the AI-5 is considered the most violent and repressive period of the Brazilian military dictatorship¹⁸. Evidence obtained by the Federal Public Ministry (hereinafter “MPF”) reveals that, from 1970 and until 1975, the regime adopted, as a systematic practice, the executions and disappearances of opponents, especially those considered more “dangerous” or of greater importance. importance in the hierarchy of organizations¹⁹. “There were 281 deaths or disappearances of dissidents, equivalent to 75% of the total deaths and disappearances during the entire dictatorship”²⁰.

Successive internal security guidelines were issued between 1969 and 1970, which defined, according to a study by the Armed Forces themselves at the time, “what should be done to prevent, neutralize and even eliminate subversive movements”²¹, detailing the creation of an “Internal Security System” to improve the repression effectiveness. In this perspective, these guidelines established, in summary, a new format of coordination between the different public security agencies, by structuring the so-called Information Operations Detachments / Internal Defense Operations Center (“DOI-CODI”)²², that operated under the command of the Army. Practices such as the mandatory use of codenames and the use of appearance and civilian clothes were institutionalized²³. The aim was to prevent the identification of state agents acting in the name of the repression regime.

The Armed Forces study, mentioned earlier, clearly states that the purpose of CODI was “to guarantee the necessary coordination of the planning and execution of Internal Defense measures, in the different levels of Command”, while DOI was the operational body of CODI, destined to directly combat organizations considered “subversive-

suspend political rights of any citizen for the duration of 10 years and destitute federal, state and municipal electoral mandates, among other measures. Available at: <http://www.planalto.gov.br/ccivil_03/AIT/ait-05-68.htm> .

¹⁸ Brazil. Secretary for Human Rights of the Presidency of the Republic. Special Commission on Dead and Political Disappeared (hereinafter “CEMDP”). *Direito à memória e à verdade: Comissão Especial sobre Mortos e Desaparecidos Políticos*. Brasília: Secretary for Human Rights of the Presidency of the Republic, 2007, p. 21. See also Case Herzog and others Vs. Brazil. Preliminary objections, merits, reparations and costs. Judgment of 15 of march 2018. Series C, Nº 353, par. 107 ref. IACHR. Case Gomes Lund and others (“Guerrilha do Araguaia”) vs. Brazil. Preliminary objections, merits, reparations and costs. Judgment of 24 of november 2010. Series C nº 219, par. 85

¹⁹ Brazil. Federal Public Prosecutor Office. Coordination and Revision Chamber, 2. *Crimes da ditadura militar*. Brasília: MPF, 2017, p. 76 e 77.

²⁰ Brazil. Federal Public Prosecutor Office. Coordination and Revision Chamber, 2. *Crimes da ditadura militar*. Brasília: MPF, 2017, p. 77.

²¹ PEREIRA, Freddie Perdigão. *O Destacamento de Operações de Informações (DOI) – Histórico Papel no Combate à Subversão – Situação Atual e Perspectivas*. Monografia. Escola de Comando e Estado Maior do Exército, Rio de Janeiro, 1977, p. 6.

²² Brazil. Secretary for Human Rights of the Presidency of the Republic. Special Commission on Dead and Political Disappeared (hereinafter “CEMDP”). *Direito à memória e à verdade: Comissão Especial sobre Mortos e Desaparecidos Políticos*. Brasília: Secretary for Human Rights of the Presidency of the Republic, 2007, 23.

²³ PEREIRA, Freddie Perdigão. *O Destacamento de Operações de Informações (DOI) – Histórico Papel no Combate à Subversão – Situação Atual e Perspectivas*. Graduation paper. School of Command and Major State of the Army 1977, p. 26

terrorists”, with the “mission [to] dismantle the entire personnel and material structure of these organizations, as well as prevent their reorganization”, truly creating the figure of an internal enemy, an element that would be the basis of national security doctrine²⁴.

In effect, “DOI-CODI took first place in political repression in the country” alongside the other state agencies that “maintained independent repressive actions, arresting, torturing and eliminating opponents”²⁵.

The enormous repression apparatus created led “thousands of citizens to political prisons, making torture and murder an uninterrupted routine”²⁶. The DOI-CODI of the II Army, in São Paulo, alone has had more than 6,000 arrests and at least 64 cases of death or disappearance described in the official CEMDP book-report.

In that pitch, the Brazilian military dictatorship had an organized system, based on commands from the Presidency of the Republic²⁷, which ran through the military, intelligence and police organs, composing a structure of violent and illegal repression of the opposition's political activity²⁸. Therefore, a true unified system of information and repression took place, equipping and structuring the State to combat this fabricated threat²⁹.

Enforced disappearance was one of the most common practices carried out by organs of state repression. In this perspective, while the intelligence services identified potential targets within those they believed to be subversive because of their objection to the ideals of the regime, army and police agents were in charge of the practical aspects of these operations. In fact, many of the political opponents were disappeared, often sent to centers controlled by DOI-CODI or other repression agencies to be subjected to torture sessions to extract information and were subsequently killed³⁰. They were taken to clandestine ditches to be buried as destitute, through forged death certificates crafted

²⁴ PEREIRA, Freddie Perdigão. *O Destacamento de Operações de Informações (DOI) – Histórico Papel no Combate à Subversão – Situação Atual e Perspectivas*. Graduation paper. School of Command and Major State of the Army 1977, p. 20.

²⁵ Brazil. Secretary for Human Rights of the Presidency of the Republic. Special Commission on Dead and Political Disappeared (hereinafter "CEMDP"). *Direito à memória e à verdade: Comissão Especial sobre Mortos e Desaparecidos Políticos*. Brasília: Secretary for Human Rights of the Presidency of the Republic, 2007 p. 23.

²⁶ Project Brasil Nunca Mais. Report. Tome I, pg 32. Available at http://bnmdigital.mpf.mp.br/docreader/DocReader.aspx?bib=rel_brasil&pagfis=286 Accessed on March 16th 2020.

²⁷ IACHR. Case Herzog and others Vs. Brazil. Preliminary objections, merits, reparations and costs. Judgment of 15 of march 2018. Series C, N° 353, par. 241

²⁸ São Paulo. Commission of Truth of the State of São Paulo. Report. Tome I, Par I, pg 138: “In 1970, the Presidency of the Republic drafted the Presidential Guideline for Internal Security. Based on what it was stated, shortly thereafter the Internal Security Planning was made and after the DOI-CODI were created, which expanded to the whole country São Paulo's Oban model-system.

²⁹ Brazil. National Commission of the Truth. *Report / National Commission of the Truth*. Brasília: CNV, 2014. v. 1, pp. 112-113.

³⁰ IACHR. Case Herzog and others Vs. Brazil. Preliminary objections, merits, reparations and costs. Judgment of 15 of march 2018. Series C, N° 353, par. 239

with the support of medical examiner's groups from the Legal Medical Institute, masking the tortures carried out by members of the State³¹, without family members knowing their fates. Also, there were deaths made official as if they had occurred in shootings against the police, in escape attempts, being run over or suicide³².

In addition to the enforced disappearances and executions, physical and psychological torture were adopted as common practices against opponents of the regime. These were deprived of their liberty in official or even illegal establishments³³.

Official documents prepared by the National Truth Commission enumerate various types of physical and psychological torture, such as electric shock, the electric chair, paddling, waterboarding, hanging, threats, among others³⁴. These documents prove the existence of a context, which demonstrates not only the existence of an extensive organization of the state, but also the gravity of the acts inflicted on those considered enemies of the regime, including the civilian population.

The structure then achieved by the repressive apparatus guaranteed total impunity for the violations perpetrated, in the absence of judicial guarantees and access to impartial and reputable courts. Furthermore, any report or news about these serious crimes was censored³⁵, as well as the disclosure of unfavorable information or opinions contrary to the regime. Only official notes presenting improbable versions of suicides, being run over and similar causes of death of political opponents could be released³⁶.

The I/A Court's decision in the case of Gomes Lund et al. v. Brazil is paradigmatic not only for the international recognition of the repressive system structured by the Brazilian dictatorship between 1964 and 1985, but also for the establishment of precedents in the treatment of cases of forced disappearances. In this sense, in general terms, the case dealt with the disappearances of members of an armed struggle group known as the

³¹ São Paulo Municipal Chamber. *Parliamentary Inquiry Commission – Perus/Disappeared*. In: "Vala clandestina de Perus: desaparecidos políticos, um capítulo não encerrado da história brasileira." São Paulo: Macuco Institut, 2012, p. 172, 191

³² São Paulo Municipal Chamber. *Parliamentary Inquiry Commission – Perus/Disappeared*. *nota supra*, p. 183

³³ For more information on clandestine centers, see: Brasil. Comissão Nacional da Verdade. *Relatório / Comissão Nacional da Verdade*. – Recurso eletrônico. – Brasília: CNV, 2014. v. 1, pp. 792-823.

³⁴ Brazil. National Commission of the Truth. *Report / National Commission of the Truth*. Brasília: CNV, 2014. v. 1, pp. 365-375.

³⁵ Project Brasil Nunca Mais. Report. Tome I, pg 34. Available at http://bnmdigital.mpf.mp.br/docreader/DocReader.aspx?bib=rel_brasil&pagfis=286 Accessed on March 16th 2020.

³⁶ In the same lines, see, for instance: BNM, Tome I, pg 42 and Brazil. Secretary for Human Rights of the Presidency of the Republic. Special Commission on Dead and Political Disappeared (hereinafter "CEMDP"). *Direito à memória e à verdade: Comissão Especial sobre Mortos e Desaparecidos Políticos*. *nota supra*, p. 27.

Guerrilha do Araguaia, opposing to the military dictatorial regime and composed of a contingent of about 70 people, in early 1972³⁷.

From 1973, under the direct command of the President of the Republic, General Médici, the official order was to eliminate all members of the insurgent group³⁸. In fact, at the end of 1974, there were no more Araguaia guerrillas, with reports that their bodies were dug up and burned or thrown into the rivers of the jungle region where the clashes occurred. At the same time, the military government imposed absolute silence on the events in Araguaia, censoring the press in disseminating news on the subject, while the Army vehemently denied the movement's very existence³⁹.

In this context, given the pluri-offensive⁴⁰ character of the crime of enforced disappearance, the Court held the Brazilian State accountable for the violation of the rights juridical personality, life, personal integrity, personal freedom, as well as those related to guarantees and judicial protection⁴¹.

The I/A Court held that the State of Brazil should conduct criminal investigations, with due diligence, in a reasonable time to clarify the events, determine the corresponding criminal responsibilities and effectively apply sanctions and consequences that the law determines⁴², taking into account the criteria applicable to these sort of cases⁴³.

Despite efforts made by members of the Federal Public Prosecutor (MPF) in an attempt to promote the criminal prosecution of the reported crimes, the Amnesty Law and the statute of limitations continue to be the main obstacles to the investigation of serious human rights violations committed during the Brazilian military dictatorship by State agents. As can be seen below, these institutes are still systematically applied by most of the Brazilian Judiciary, both in the first instance and in higher courts. To that extent, the entire realization of this provision of the Court's judgment starts to acquire a new

³⁷ IACHR. Case Gomes Lund and others ("Guerrilha do Araguaia") vs. Brazil. Preliminary objections, merits, reparations and costs. Judgment of 24 of november 2010. Series C n° 219, par. 88.

³⁸ IACHR. Case Gomes Lund and others ("Guerrilha do Araguaia") vs. Brazil. Preliminary objections, merits, reparations and costs. Judgment of 24 of november 2010. Series C n° 219, par. 89.

³⁹ IACHR. Case Gomes Lund and others ("Guerrilha do Araguaia") vs. Brazil. Preliminary objections, merits, reparations and costs. Judgment of 24 of november 2010. Series C n° 219, par. 90.

⁴⁰ IACHR. Case Gomes Lund and others ("Guerrilha do Araguaia") vs. Brazil. Preliminary objections, merits, reparations and costs. Judgment of 24 of november 2010. Series C n° 219, par. 122.

⁴¹ IACHR. Case Gomes Lund and others ("Guerrilha do Araguaia") vs. Brazil. Preliminary objections, merits, reparations and costs. Judgment of 24 of november 2010. Series C n° 219, pars. 125 e 126.

⁴² IACHR. Case Gomes Lund and others ("Guerrilha do Araguaia") vs. Brazil. Preliminary objections, merits, reparations and costs. Judgment of 24 of november 2010. Series C n° 219, par. 256.

⁴³ IACHR. Case Gomes Lund and others ("Guerrilha do Araguaia") vs. Brazil. Preliminary objections, merits, reparations and costs. Judgment of 24 of november 2010. Series C n° 219, par. 256.

obstacle from the legislative change that expands the competence of the military justice to judge common crimes practiced by the military against civilians.

It is important to note that, when the I/A Court ruled on the Vladimir Herzog vs. Brazil, in July 2018, the United Nations rapporteurs for the promotion of truth, justice, reparations and guarantees of non-repetition, on torture and on extrajudicial executions released a joint note reaffirming the conformity of this decision with international principles. In this regard, they highlighted that “The lack of accountability for these crimes contributes to creating a collective impression that public security officials are above the law, weakening society's trust in public institutions and the rule of law”. Also, they related impunity to the continuation of the same crimes in the present: “Impunity for past violations also fails to prevent new acts of torture or extrajudicial executions by the hands of public officials”⁴⁴.

2.2 Enforced disappearances in democracy

For the purposes of the Inter-American Convention on Forced Disappearance of Persons to which Brazil has been a signatory since 1994, enforced disappearance is “the act of depriving a person or persons of his or their freedom, (...) perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees. (Article II of the Inter-American Convention on the Forced Disappearance of Persons).

In Brazil, the imprisonment and the forced removal of bodies from their territories permeate the entire Brazilian social and economic formation from the time of colonization to the current democratic period. The colonial system left a trail of extermination of native peoples, enslavement, looting, expulsions, expropriations, Christian indoctrination, violence and plunder where 'civilizing' expeditions went. There were 12.5 million Africans transported to the Americas between the 16th and 19th centuries in almost 20 thousand trips, 64.6% of whom were men and 35.4% were women. In addition, 2.5 million people died during the transfer. Since 5.8 million slaves were sent to Brazil by Portuguese vessels, Brazil was the largest destination of slaves in the slave trade in the Americas for three centuries, 1560-1850⁴⁵.

⁴⁴ Brazil Informative Note: UN specialists salute regional court's decision on Herzog case. Available at <http://acnudh.org/pt-br/brasil-especialistas-da-onu-saudam-decisao-de-corte-regional-sobre-o-caso-herzog/>.

⁴⁵ *Voyages Report - The Trans-Atlantic Slave Trade Database.*

Furthermore, the degree of violence in the capture of black men and women from the African continent and the process of dehumanization and, subsequently, their transformation into simple goods to be disposed in the overseas trade, being held hostage by the capital's desires and the violent birth of capitalism is fundamentally associated with the slavery of the black people serving as a lever of the original accumulation process (Williams, 2012). Consequently, one of the main determinants of the slavery period was the violent character in the capture of the African people made possible through the mechanism of torture, kidnapping and domination over black bodies.

Therefore, the practice of enforced disappearances does not originate only in the period of the business-military dictatorship in Latin America, but, throughout the brutal process of colonization of the continent, marked by the extermination of the original peoples, the subjugation of the African peoples, looting , exploitation and destruction of natural resources, among other dramatic processes of humiliation and subordination of the colonies for the subordinate insertion of Latin American countries in the industrial phase of world capitalism.

The methods of enforced disappearance have been used constantly as a form of state terror in different historical times and under different conditions. However, it is noteworthy that in the dramatic years of the business-military dictatorship in Latin America, enforced disappearances of people were used as a political instrument for a wide curtailment of freedom and forfeiture of political rights. The character of deprivation of liberty through capture, kidnapping, torture, mutilation and other nasty methods of dehumanization and control of bodies during the period of the Brazilian dictatorial period left latent marks in the social memory and in the political performance of society until today.

Consequently, in Brazil there is no classification for enforced disappearance crimes, even though there are numerous international recommendations on the subject and mainly on the degree of omission by the State regarding the countless cases of disappearances that occur in peripheral and slum areas. Cases that should be characterized as enforced disappearances are allocated in a decadent and frivolous way in the category of missing persons.

Throughout the 2000s, almost 87,000 people disappeared in the state of Rio de Janeiro. In the graph below, we can see that with the implementation and expansion of the UPP in the metropolitan area of Rio de Janeiro, the cases of missing persons registered a strong growth trajectory. In 2003 there were 4,800 cases of disappearances, an

increase of 32% compared to 2015, a total of 6,348 missing persons. In 2019 alone, the Public Security Institute recorded 4,768 disappearances across the state.

Graph 1 - Missing Persons and Resistance Records in the State of Rio de Janeiro



Source: Public Security Institute, self elaboration

The complete absence of categorization about enforced disappearances highlights the clear political lack of interest in investigating these cases. After all, most of the cases of enforced disappearances involve agents or ex-public security agents and / or people from the institutional structure of the State itself.

The cases of resistance to arrest are emblematic of how the execution and disposal of lives occurs on a daily and systematic basis in peripheral areas, these territories being the ones that suffer most from the intense violations committed by the State. When observing the trajectory of acts of resistance across Rio de Janeiro, the exponential growth of records of murders committed by police intervention from the UPP and the expansion of the militia controlled areas stands out. In 2019, 1,810 lives were lost due to the resistance records, an increase of 18% over the previous year. The largest number of murders committed by state agents in the entire historical series.

However, most of the violations committed by the State are not even registered. In addition to the problem of underreporting, the methodologies used by official bodies are not available for free access and the methodological procedures are changed according

to the interests of the State to hide the inefficiency of public security policy that does not deal with the confrontation of institutional racism as a structural issue.

The effects of the radicalization of the genocidal and highly militarized discourse of the current government brings to the forefront the need to discuss the retrograde model of Brazilian public security that targets peripheral black youth, in which the “war on drugs” results in mass incarceration and legitimizing the extermination of black people that can be executable at any time. From 2010 to 2018, 3,725 people were executed through the intervention of state agents in the Baixada Fluminense, these data ratify structural and institutional racism in the process of extermination of the black, poor and peripheral people⁴⁶.

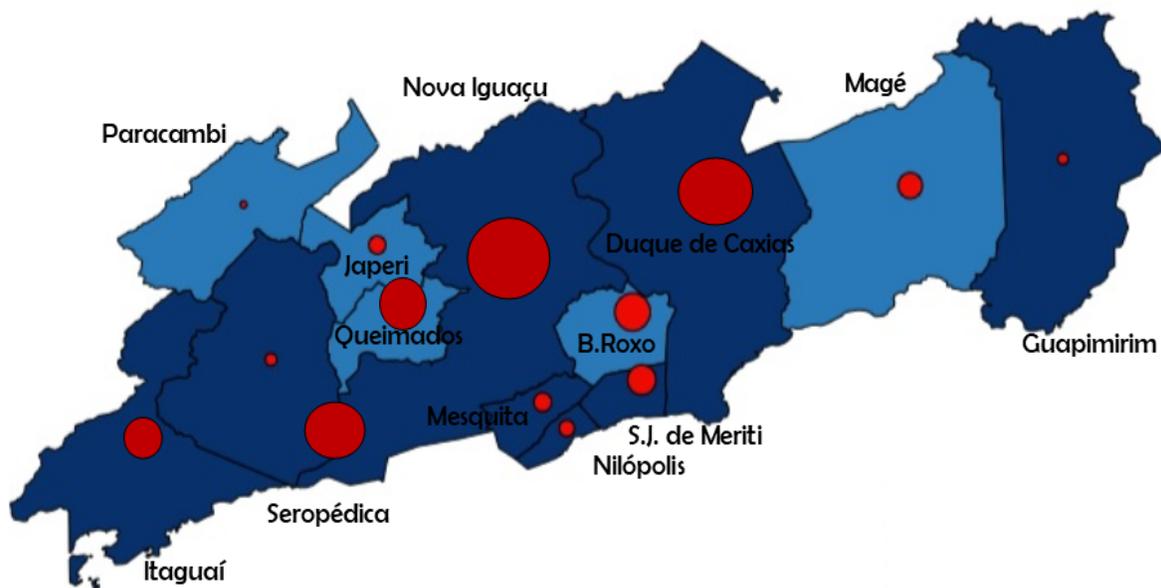
In 2019 alone, 1,256 people disappeared in the Baixada Fluminense, according to ISP data. However, the official data does not represent the brutal reality of the Baixada, considering the recurrent problem of underreporting in cases of homicides and disappearances. Approximately 60% of the total number of missing persons in the state occurs in the Baixada Fluminense. The official data methodology does not include cases of enforced disappearances, making it even more difficult to quantify the real number of people who are victims of urban violence that are carried out by the State.

The profile of the victims, in general, is young people, blacks and browns, with low education, male and residents of slums and peripheries. The history of urban violence in the Baixada Fluminense is marked by the daily disappearance of people, deaths that are ignored even by official statistics. Mothers of victims of state violence receive daily information from young people who have suffered this type of violation. In most cases, enforced disappearances occur with the involvement of the military police, civilian police and militia acting in the territories.

Currently, the areas with the highest number of allegations and denouncing enforced disappearances are the militia controlled areas that arbitrarily and violently arrest, deprive of liberty, murder and disappear with the bodies of these people. The bodies are disposed of in clandestine cemeteries or rivers to prevent the victims from being identified.

Map 1 - Expansion of Militia control in Baixada Fluminense in 2019

⁴⁶ Right to Memory and Racial Justice Initiative (IDMRJ). Bulletin IDMRJ 2020. Available at: <https://dmjracial.files.wordpress.com/2020/02/boletim-iv-dmjr.pdf>. Accessed on March 16th 2020.



Source: IDMJR

There has been a process of intensifying the territorial dispute between militia factions in the Baixada in recent months. According to information systematized by the Right to The Right to Memory and Racial Justice Initiative, more than 50 people were executed and had their bodies tortured, mutilated and left by the Guandu River in Nova Iguaçu⁴⁷. There was also a slaughter in Belford Roxo, in the Vila Dagmar neighborhood, in which 4 people were murdered and 16 people injured in a local bar. And after an investigation into militias in Itaboraí, a clandestine cemetery was found being used to dispose of bodies in the municipality.⁴⁸

The Baixada Fluminense is experiencing a process of expanding control of the militia throughout its territory. Nova Iguaçu, Duque de Caxias and Queimados have most of their urban areas controlled by different factions of militias. In 2019 there were 1201 homicides, 528 murders committed by police, 1,256 missing persons and 29 corpses found in Baixada, according to official records. However, residents report that after conflicts over power struggles between militia factions and drug factions, dozens of

⁴⁷ O Globo Journal. "Tribunal das Milícias tem morte por fogo, espada e esquartejamento". 1st of september 2019. Available at: https://oglobo.globo.com/rio/tribunal-das-milicias-tem-morte-por-fogo-espada-esquartejamento-maes-de-vitimas-se-unem-por-justica-23919790?fbclid=IwAR2Q8ii3KTKXlqSjsQFvklGVLggbF7wiJ_VltrWuhGeWoKsk1oytsIx2HhM. Accessed on March 16th 2020.

⁴⁸ O Dia. "Polícia e MP encontram cemitério clandestino que seria da milícia de Itaboraí". 5th of July 2019. Available at: <https://odia.ig.com.br/rio-de-janeiro/2019/07/5660716-policia-e-mp-encontram-cemiterio-clandestino-que-seria-da-milicia-de-itaborai.html>. Accessed on March 16th 2020.

young people are found dead, others maimed and many forcibly disappeared. Most of these cases are not even registered⁴⁹.

The effects of the radicalization of the genocidal and highly militarized discourse of the current government brings to the forefront the need to discuss the retrograde model of Brazilian public security that targets peripheral black youth, in which the “war on drugs” results in mass incarceration and legitimizing the extermination of black bodies that can be executable at any time. From 2010 to 2019, 4,253 people were executed through the intervention of state agents in the Baixada, these data ratify structural and institutional racism in the process of extermination of the black, poor and peripheral people.

- **Forced Disappearance Reports:**

“15 youth residents of Queimados neighborhood were taken for an “investigation” by militia members. The youth were subsequently tortured and murdered by men hooded with weapons and swords. Their bodies were mutilated and scattered throughout Adrianópolis and Austin. To this day, the motivation and authorship of this slaughter are unknown”.

“A young resident of Miguel Couto was executed by the Militia who operate in the Adrianópolis area after leaving a party. Family members found his body after an anonymous call stating that the young man was murdered and had his body discarded in a vacant lot”.

Although Brazil has signed the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), in 2007 and since 1994, the Brazilian State was already a signatory of the Inter-American Convention on Forced Disappearances of Persons the heinous practice persists, especially against the poorest and black communities. A legal framework is missing in Brazil. Draft laws on enforced disappearances have already been under discussion in the Federal Congress, but the State has never had the political will to vote and approve them.

Brazil, as a signatory to ICPPED and ICFDP has committed to not conduct, nor allow, or tolerate the enforced disappearance of people; making the perpetrators of these crimes liable under Brazilian justice system. The question then remains: what is the Brazilian State effectively doing to reduce enforced disappearances? The question causes discomfort when it is possible to see the involvement of the State itself, by action or

⁴⁹Right to Memory and Racial Justice Initiative (IDMRJ). Bulletin IDMRJ 2020. Available at: <https://dmjracial.files.wordpress.com/2020/02/boletim-iv-dmjr.pdf>. Accessed on March 16th 2020.

omission. Faced with the problem, conducting studies and research on the subject is key to guarantee Brazilian democracy and the construction of a collective memory that serves for the struggle for claiming historical structural changes.

Therefore, the need to guarantee the creation of the typification of the enforced disappearance category is evident, in order to stimulate the investigation and elucidation of these countless cases of deprivation of liberty. The State must be held responsible for this type of violation and guarantee economic and psychosocial reparations for victims and their families.

3. Lack of definition of enforced disappearances in Brazilian Legislation

As mentioned before, Brazil enacted the Inter-American Convention on the Forced Disappearance of People (1994) - through Decree no. 8,766, of May 11, 2016⁵⁰, As well the International Convention for the Protection of All Persons from Enforced Disappearance (2006), through Decree n°. 8.767, of May 11, 2016⁵¹. By these laws, Brazil committed to fulfill the provision contained in art. 4 of ICPPED, and art. I of ICFDP to prohibit these actions under domestic law.

Regardless of the understanding whether Decrees No. 8,766 / 2016 and No. 8,767 / 2016⁵² have immediate application in the national legal system, there are efforts from the Legislative Power in order to modify the Brazilian Penal Code to include an article (art. 149-A), to typify the crime of enforced disappearances and insert it in the list of hideous crimes (Law n° 8.072 / 1990. Bill n°. 6240/2013⁵³, proposes the adding of the crime of enforced disappearances to the Brazilian Penal Code, establishing, among other provisions, that this crime is imprescriptible (§ 8° art. 149-A, PL 6240/2013). It also states that this crime be permanent in nature, being therefore, continuously consummated as long as the person is not freed or clarified their fate, condition and whereabouts, even when the person has passed away (§ 10° do art. 149-A, PL 6240/2013).

During the analysis of Bill by the National Congress, the text was approved with amendments to the text made by the Rapporteur of the Commission on Human and

⁵⁰ Brazil. Presidency of the Republic. Decree n°. 8766. March 11th 2016. Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/decree/D8766.htm. Accessed on March 16th of 2020

⁵¹ Brazil. Presidency of the Republic. Decree n°. 8.767. May 11th of 2016. Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/decree/D8767.htm. Access on March 20th of 2020

⁵² Presidency of the Republic. General Secretariat. Sub Secretariat for juridic topics. Decree no. 8766. Available in http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/decree/D8766.htm and in http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/decree/D8767.htm

⁵³ House of Representatives. Bill n° 6240. 30 de agosto de 2013. Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=589982>. Accessed on March 16th of 2020

Minority Rights, the then federal deputy Jair Bolsonaro, current President of Brazil, on December 18, 2013⁵⁴. Subsequently, the Bill was sent to the Commission for Public Security and Combating Organized Crime, which approved it on December 13, 2016, also with a substitute text proposed by Congressman Alexandre Leite⁵⁵. On December 12, 2018, the rapporteur of the Constitution, Justice and Citizenship Commission (CCJ for its acronym in Portuguese), federal deputy Maria do Rosário, issued an opinion approving the original text of PL 6240/2013⁵⁶. Contrary to what the Brazilian State stated in its report, however, as the rapporteur ceased to be a member of the CCJ in 2019, the Bill currently awaits the appointment of a new rapporteur, for the preparation of a new opinion and appreciation by the CCJ⁵⁷. Therefore, PL 6240/2013 is also pending a vote in the plenary of the Legislative House.

In the original Senate Bill 6240/2013, it was stated in §8 that "*The offenses provided for in this article are imprescriptible*"⁵⁸. This paragraph was modified by the opinion of the Commission on Human and Minority Rights, at the suggestion of the Ministry of Defense to the rapporteur, former federal deputy Jair Bolsonaro⁵⁹. With this, the text started to establish that "The crimes foreseen in this article are imprescriptible, except for the scope of Law No. 6,683, of August 28, 1979"⁶⁰, which excludes the imprescriptibility of the crime of enforced disappearance for the crimes included in the Amnesty Law (Law No. 6,683 / 79).

In addition, the opinion of the Commission for Public Security and Combating Organized Crime, written by the rapporteur, former federal deputy Alexandre Leite, removed the inclusion of the crime of enforced disappearance from the heinous crime hypotheses, as

⁵⁴ House of Representatives. Bill nº 6240. 30 de agosto de 2013. Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=589982>. Accessed on March 16th 2020.

⁵⁵ House of Representatives. Bill nº 6240. 30 de agosto de 2013. Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=589982>. Accessed on March 16th 2020.

⁵⁶ House of Representatives. Bill nº 6240. 30 de agosto de 2013. Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=589982>. Accessed on March 16th 2020.

⁵⁷ House of Representatives. Bill nº 6240. August 30th 2016. Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=589982>. Accessed on March 16th 2020.

⁵⁸ House of Representatives. Bill nº 6240. August 30th of 2013. Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=589982>. Accessed on March 16th 2020.

⁵⁹ House of Representatives. Bill nº 6240. August 30th of 2013. Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=589982>. Accessed on March 16th 2020.

⁶⁰ House of Representatives. Bill nº 6240. August 30th of 2013. Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=589982>. Accessed on March 16th 2020.

provided for in the original Bill proposed by the Senate⁶¹. At the time, the opinion claimed that considering the principle of human dignity, Criminal Law should be used as an *ultima ratio*, and therefore considered that increasing the list of heinous crimes would not be a reasonable solution⁶².

It is clear, therefore, that the Bill that intends to classify the crime of enforced disappearance under Brazilian Law remains under analysis in the National Congress. The amendments proposed by the commissions in the National Congress represent a threat of violation of international standards for the definition of enforced disappearances. Brazil is bound by these standards since ratified these international conventions. Indeed, the possibility of exclusion from the legislative timeframe regarding the crime of enforced disappearance, investigation and prosecution of crimes of the military dictatorship result in maintaining impunity for these crimes..

Despite the efforts mentioned by the Brazilian State, the crime of enforced disappearance remains lacking classification under national criminal law, being insufficiently subsumed by kidnapping and its qualifying conducts, although it is certain that there is no adequacy of domestic law to international treaties on the subject. Still, such absence is a barrier to the pursuit of the crime and its liability, as well as to the reparation that should be carried out by the Brazilian State

In this sense, Brazil must adopt the necessary measures to give effect (effet utile) to the provisions of the treaties on forced disappearances that have already been ratified. Therefore, the law in question must comply with the requirements of international human rights law on the matter, which are:

- a) Continuity of the offense - Both the International Convention for the Protection of All Persons from Enforced Disappearance (Article 8) and the Inter-American Convention on Forced Disappearance of Persons (Article III) provide that the crime of disappearance has a continuing or permanent character, while the victim's fate or whereabouts are not established;
- b) Imprescriptibility - Article VII of the Inter-American Convention on the Forced Disappearance of Persons declares that "*Criminal prosecution for the forced disappearance of persons and the penalty judicially imposed on its perpetrator shall not be subject to statutes of limitations*" and where statute of limitations is applicable by fundamental rule, "*the period of limitation shall be equal to that which applies to the gravest crime in the domestic laws of the corresponding*

⁶¹ House of Representatives. Bill n° 6240. August 30th of 2013. Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=589982>. Accessed on March 16th 2020.

⁶² House of Representatives. Bill n° 6240. August 30th of 2013. Available at: <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=589982>. Accessed on March 16th 2020.

State Party". Article 8 of the ICPPED states that in these cases, criminal proceedings commences "from the moment when the offence of enforced disappearance ceases, taking into account its continuous nature";

- c) Common Jurisdiction - Article IX of the Inter-American Convention on the Forced Disappearance of Persons stipulates that "*Persons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions*".

3.1 Lack of accountability of agents for crimes committed in the Brazilian military dictatorship

Impunity for crimes against humanity committed during the Brazilian dictatorship period was for a long time justified by the alleged legal command arising from the Amnesty Law. However, what makes the use of amnesty so problematic is not only the lack of accountability of those individuals who have committed systematic human rights violations. In fact, the central issue of this debate is the application and acceptance of this institute in a world that has globally accepted the idea of universal human rights, for which no derogation is allowed, in particular the absolute prohibition against torture, slavery, genocide and other serious human rights violations.

Brazil ratified the American Convention on Human Rights in 1992, having accepted the optional clause of mandatory jurisdiction of the Inter-American Court in 1998⁶³. Such acceptance means that Brazil agreed to be held accountable for human rights violations that occurred after that date, and, although the Inter-American Court is not able to rule on human rights violations committed before acceptance of the I/A Court's jurisdiction, the lack of an investigation and prosecution of these facts, in the period after December 10, 1998, constitutes an autonomous violation of human rights and commitments assumed internationally by the country, which are therefore subject to the Court's jurisdiction.

In 2010, Brazil Supreme Federal Court (STF for its acronym in Portuguese), while judging a constitutional case (ADPF for its acronym in Portuguese) ADPF No. 153 ruled rejecting, by majority vote of its members, the request for the unconstitutionality of the Amnesty law (Law No. 6,683 / 1979)⁶⁴. However, as already seen, in the same year, the Inter-American Court judged the case of Gomes Lund and Others v. Brazil ("Guerrilha do Araguaia"), where it unanimously held that the Brazilian Amnesty Law would be contrary to the American Convention on Human Rights ("Pact of San José Costa Rica").

⁶³ Presidency of the Republic. Casa Civil. Sub Secretariat for juridic topics. Decree nº 4.463. November 8th of 2002. Available at http://www.planalto.gov.br/ccivil_03/decreto/2002/D4463.htm

⁶⁴ Federal Supreme Court. ADPF n. 153. Rel. Min. Eros Grau. Available at <http://www.stf.jus.br/arquivo/cms/noticianoticiastf/anexo/adpf153.pdf> . See also "STF é contra a revisão da Lei de Anistia por sete votos a dois". Notícias STF. April 29th of 2010. Available at <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=125515>

Additionally, the application of Amnesty Law, according to the ruling of STF in (ADPF) n. 153 disregards the jurisprudence of the Federal Supreme Court (STF) itself. For example, in the context of requests for extradition made by the Argentinian government, the STF consolidated the understanding that enforced disappearance, qualified as kidnapping under national law, is a permanent crime⁶⁵. In this sense, the statute of limitations for the crime only begins to run with the ceasing of the crime, which would occur with the determination of the whereabouts of the person or of his / her remains, so that, without the effective location of the bodies, there is no the incidence of the statute of limitations⁶⁶. Therefore, the fact that the STF did not rule on the continued nature of the enforced disappearances in ADPF 153 was questioned in Court by the Federal Council of the Brazilian Bar Association (CFOAB)⁶⁷. This legal claim is still pending, even though 8 years have passed. connection with embargoes of declaration⁶⁸.

Due to the permanent nature of the crimes of enforced disappearance, the concealment of the bodies and the ignorance of victims' whereabouts, generate a constant denial of the rights to truth and justice of family members. These factors make the perpetuated violations go beyond the timeframe of the Amnesty Law and the acceptance of the jurisdiction of the Court, being maintained until the disappearance is resolved⁶⁹.

In addition, the I/A Court considers that the Brazilian Amnesty Law has been interpreted and applied, prevents family members from accessing their judicial guarantees, as provided for in the American Convention and violates their right to legal protection. Therefore, the law directly affects the State international duty to investigate and sanction grave human rights violations.

According to a report by the Center for Studies on Transitional Justice (CJT for its acronym in Portuguese) of the Universidade Federal de Minas Gerais UFMG presented to the IACHR during the on-site visit in 2018, the vast majority of criminal proceedings

⁶⁵ Ext 974, Min. Rapporteur Marco Aurélio, Rapporteur Min. Ricardo Lewandowski, j. 06/08/2009, DJ 03/12/2009; Ext. 1150, Min. Rapporteur Cármen Lúcia, j. 19/05/2011, DJ 16/06/2011; Ext 1299, Min. Relatora Cármen Lúcia, j. 10/09/2013, DJ 24/09/2013; Ext 1278, Min. Rapporteur Gilmar Mendes, j. 18/09/2012, DJ 03/10/2012.

⁶⁶ V. SILVA FILHO, José Carlos Moreira da. *Justiça de Transição e Poder Judiciário brasileiro – a barreira da Lei de Anistia para a responsabilização dos crimes da ditadura civil-militar no Brasil*. In: _____. *Justiça de transição: da ditadura civil militar ao debate justtransicional*. Porto Alegre: Livraria do Advogado Editora, 2015, p. 237-260.

⁶⁷ Declaration embargoes are a type of appeal measure in the Brazilian legal system that does not seek to reform the judge's decision. In fact, this mechanism seeks to remedy the omissions and obscurities present in the contested decision.

⁶⁸ In a more recent case, in 2016, in a request for extradition made by the government of Argentina against Salvador Siciliano, the plenary of the court concluded a trial in which it took a stand against the recognition of the imprescriptibility of serious human rights violations such as those committed during the dictatorship in Brazil. But it did not state that in cases of forced disappearance (kidnapping) the statute of limitations applies. In those cases, the bodies had been located (the continued crime had ended).

⁶⁹ Technical Data Sheet for the I Case “Gomes Lund e outros (“Guerrilha do Araguaia”) vs. Brasil” Available at http://www.corteidh.or.cr/CF/Jurisprudencia2/ficha_tecnica.cfm?nld_Ficha=342&lang=es

initiated by the MPF remain blocked. Among the 37 criminal cases then identified, 27 had their complaints rejected, and among those received, most were suspended. Almost all of them have appeals pending judgment, few have become final. Most decisions against the initiation of criminal cases apply amnesty and statute of limitations, and / or affirm that it cannot decide differently, because the STF decision in ADPF 153 is binding on the entire Judiciary. Judges do not consider nor apply International Human Rights Law, not even Brazil's conviction, after the STF decision in ADPF 153.

3.2 Lack of accountability of State agents in democracy

Currently, Brazil stands out as to the lack of information and a firm position in relation to the measures taken to confront militias in Brazilian territory. In this perspective, through the statistical dissemination of investigations, operations carried out by police agents to dismantle the activities of these groups or initiatives to persecute and hold accountable public security agents and national forces involved in committing crimes in the exercise of their functions, the reality recent Brazilian, especially from federative entities like the state of Rio de Janeiro, presents itself as paradigmatic for understanding the magnitude of the absence of the state in certain social sectors.

In addition to this, Law No. 13.491 was enacted on October 13, 2017 and changed article 9 of the Military Penal Code with regard to increasing the jurisdiction of the military justice system. In this vein, the law removed from the jurisdiction of the Jury Court the judgment of intentional crimes against the life of civilians committed by military personnel of the Armed Forces, as long as they are carried out in compliance with: duties assigned to them by the President of the Republic and the Minister of Defense. State of Defense; action involving the security of a military institution or military mission, even if not belligerent and, finally, of a military nature, peacekeeping, law and order guarantee or subsidiary assignment, carried out in accordance with article 142 of the Federal Constitution (which contain provisions on the attributions of the Armed Forces) and the following legal instruments (lists the Brazilian Aeronautical Code, Complementary Law - LC 97/99, the Military Criminal Procedure Code and the Electoral Code).

Several lawsuits pending before the STF question the constitutionality of this legislative change, considering that it causes a violation of fundamental rights by preventing or restricting access to the truth and justice⁷⁰. As raised in these actions, the aforementioned law attacks the authority of the Jury Court, a stony clause, breaking the

⁷⁰ ADI n°: 5901. Available at <http://redir.stf.jus.br/estfvisualizadorpub/jsp/consultarprocessoeletronico/ConsultarProcessoEletronico.jsf?seqobjetoincidente=5359950>, ADI n. 5032. Available at <http://portal.stf.jus.br/processos/detalhe.asp?incidente=4451226> and ADPF n. 289. "Ação pede limites à Justiça Militar para julgar civis em tempos de paz". Notícias STF. August 22nd 2013. Available at <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=246326>

rules of an impartial trial and violating the principle of equality before the law, since it privileges one category (that of the Armed Forces military), to the detriment of the whole society. Therefore, all the due legal process is relativized and the useful result of the process is compromised, namely, the criminal liability of these agents⁷¹.

It is possible to note how the culture of non-accountability of the military for acts practiced during the dictatorship in Brazil shapes the State's posture today. In this perspective, the Brazilian State uses institutional mechanisms, such as the Amnesty Law, to shield State agents and the military that commit human rights violations, both during the dictatorship and today, from direct accountability for their acts, maintaining the country in an unfinished transition to the democratic period as the State itself promotes the non-assumption of responsibility for these facts.

Furthermore, the Federal Constitution of 1988 established that, among the public security forces provided for in art. 144 of the Federal Constitution, are the federal police, civil police (judiciary) and the military police, considered as "auxiliary force of the army" and responsible for ostensive policing⁷². To that extent, the Constitution provides for the possibility of the Armed Forces to act in national territory, in support of the security forces in guaranteeing the law and order - GLO (by its acronym in Portuguese) - rule contemplated in art. 142 of the Magna Carta, provision regulated by Complementary Law 97, of 1999, and by Decree 3897, of 2001. Within the scope of these operations, the President of the Republic would provisionally grant the military the power to act with police power in situations of risk of disturbance of the order.

Altogether 141 GLO missions were decreed. Initially, during the first decades after the promulgation of the constitutional text in 1988, this resource was used basically to guarantee support to states during strikes by the military police and to support the holding of major events, as in the case of ECO92.

However, in recent years, in addition to major events and occasional strikes⁷³, GLOs have been used for longer periods and for ordinary public security actions, among the most famous examples being the use of the armed forces during the period of the

⁷¹ ADI n°: 5901. Available at <http://redir.stf.jus.br/estfvisualizadorpub/jsp/consultarprocessoeletronico/ConsultarProcessoEletronico.jsf?seqobjetoincidente=5359950>

⁷² It is noted that, according to art. 144 of the Brazilian Federal Constitution, the military are not legitimated to act in the ostensive policing and public security sphere. The Federal Constitution approved in 1988, established that among the public security forces are the federal police, civil (judicial) police and military police, considered an "auxiliary force to the Army" and responsible for ostensive policing.

⁷³In 2016, on the eve of the Olympic Games in Brazil, and facing a new GLO decree, members of the armed forces pressed the National Congress to adopt measures to give "legal protection" to their actions in security operations in Rio de Janeiro, demanding a change in the competence for the investigation and judgment of their acts, especially the practice of crimes against life, from Common Justice, to Military Justice.

federal intervention in Rio de Janeiro (2018), and the use of the military near prison units in the northern states of the country, among others⁷⁴.

It is at this point that the expansion of the military jurisdiction approved at the end of 2017 becomes particularly problematic. Until 1996, military justice had jurisdiction to try crimes against life committed by military personnel against civilians. After repeated pressure from national civil society and, especially, the recommendation of the IACHR⁷⁵ in the case of 10,301, known as the “Parque São Lucas” Case, a Law was approved and, subsequently, the Constitutional Amendment⁷⁶, amending paragraph 4 of art. 125 of the Federal Constitution restricting military jurisdiction and valuing the Jury Tribunal.

In this perspective, with the aforementioned approval of Law 13.491 / 2017, the Military (Federal) Justice became competent to judge crimes, including against life, committed by officers of the armed forces against civilians, during GLO operations⁷⁷. In addition to changing the crimes committed by the armed forces, the law passed in 2017 also resulted in expanding military jurisdiction to prosecute - and investigate - crimes provided for in extravagant criminal legislation, such as abuse of authority, torture and possession of weapons (article 9, CPM II)⁷⁸. Before, Military Jurisdiction was to judge the military only (in situations of military activity or interest defined in subparagraphs "a" to "f" of Article 9 of the CPM) for the practice of the crimes provided for in the CPM, "although they are also with equal definition in the common criminal law", with the competence to judge the crimes provided for in special criminal laws.

⁷⁴ ROSSI, Amanda. "Congresso aprova decreto de intervenção federal no Rio de Janeiro; entenda o que a medida significa". BBC News Brasil. February 21st of 2018. Available at <https://www.bbc.com/portuguese/brasil-43079114>. See also ALVES, Raoni. "Cerimônia marca fim da intervenção federal no RJ: 'Cumprimos a missão', diz general". G1 Rio. December 27th of 2018. Available at <https://g1.globo.com/rj/rio-de-janeiro/noticia/2018/12/27/cerimonia-encerra-intervencao-federal-na-seguranca-do-rj.ghtml>.

⁷⁵ Comissão Interamericana de Direitos Humanos. Caso n. 10.301 (“Parque São Lucas” vs. Brasil). Relatório 40/03. Available at <https://cidh.oas.org/annualrep/2003port/Brasil.10301.htm>

⁷⁶ Art 125, § 4º da Constituição Federal: "Compete à Justiça Militar estadual processar e julgar os militares dos Estados, nos crimes militares definidos em lei e as ações judiciais contra atos disciplinares militares, ressalvada a competência do júri quando a vítima for civil, cabendo ao tribunal competente decidir sobre a perda do posto e da patente dos oficiais e da graduação das praças". Available at https://www.senado.leg.br/atividade/const/con1988/con1988_26.06.2019/art_125_.asp

⁷⁷ A recent decision by the Council of Military Justice, judging a case that occurred during a GLO operation in Rio de Janeiro in 2015 illustrates the institutional arrangements that continue to provide guarantees to the military in their human rights violations: In 2015, five friends were returning home from a bar in Complexo da Maré, Rio de Janeiro, when the car in which they were staying was hit by six rifle fire. All were injured and one of the boys became paraplegic and had to amputate his left leg. The Council of Military Justice considered that there was "imaginary self-defense", absolving the officers involved.

⁷⁸ On these issues, several judicial actions are in progress at the Supreme Court aiming to restrict the competence of military justice to judge crimes against civilians, such as ADI 5901, ADI 5804/ADI 5901, ADI 5804 (regarding Law 13.471/17), ADI 5032 (regarding the enlargement of GLO operations), ADI 5915 (regarding the decree regarding the federal intervention in Rio de Janeiro), ADPF 289 (regarding the incompetence of military justice to try civilians in peacetime), ADI 4164 (regarding Law 9.299/96)

In addition, who currently investigates crimes committed by the military - officers of the armed forces or police - is the internal affairs of these same military forces, in most cases, the battalions to which these officers belong, reducing the scope of the civil police, including the scientific police. At the end of the investigation, it is up to the Internal Affairs Division of the Military Justice - Federal or State - to determine whether or not there are elements for the initiation of an investigation or criminal action. In other words, those who investigate crimes are hierarchical superiors, with personal ties and, many times, submitted to the same Command as the investigated military. This corporatism was one of the foundations mentioned in the recommendation of the IACHR that motivated the amendment of the Law in 1996.

In the case of crimes against life, the current interpretation within the Military Justice is that it is up to the Corregedor Judge or Judge of the Military Autarchies, after the investigation is carried out by the internal affairs (or Corregedorias) of the military, will evaluate whether there are conditions to exclude illegalities in the specific case (as self defense or strict compliance to legal duty, etc) and, only after this analysis, determine whether to file the case or forward it to the Jury Court.

After the approval of the Law in 2017, the Inter-American Commission on Human Rights and the Office of the High Commissioner for Human Rights (OHCHR), criticized Brazil recalling the international commitments assumed by the country, as well as the recommendations made in the past. In a note, the organizations mentioned that “they have argued for many years that the investigation and prosecution by military courts of allegations of human rights violations committed by the military, especially for alleged violations against civilians, preclude the possibility of an independent and impartial investigation carried out by judicial authorities not linked to the hierarchy of command of the security forces themselves”⁷⁹. It should be noted that the UN Special Rapporteur against torture recommended to Brazil, in 2016, that it ensures that complaints and violations committed by military agents against civilians be processed by civil courts.

Faced with so many institutional backups, police lethality rates have been increasing year on year, in the first half of 2019 alone, 2886 people were killed by police, 120 more than in the same period in 2018⁸⁰. In 2019, the State of São Paulo, had the historical record of deaths by the police, 736 victims⁸¹. In the state of Rio de Janeiro the increase

⁷⁹ Press Release "ONU Direitos Humanos e CIDH rechaçam de forma categórica o Bill que amplia jurisdição de tribunais militares no Brasil". October 13th of 2017. Available at <https://www.oas.org/pt/cidh/prensa/notas/2017/160.asp>

⁸⁰Public Prosecutor Office of Rio de Janeiro. “Letalidade Policial no Rio de Janeiro em 10 pontos”. Available at <http://www.mprj.mp.br/conheca-o-mprj/centro-de-pesquisas/letalidade-policial-rj>; See also "Monitor da Violência: assassinatos caem em 2019, mas letalidade policial aumenta; nº de presos provisórios volta a crescer" G1 Rio. December 16th of 2019. Available at <https://g1.globo.com/retrospectiva/2019/noticia/2019/12/16/monitor-da-violencia-assassinatos-caem-em-2019-mas-letalidade-policial-aumenta-no-de-presos-provisorios-volta-a-crescer.ghtml>

⁸¹ RICARDO, Carolina. "Aumento da letalidade policial é pauta urgente no Estado de São Paulo". El País. February 19th of 2020. Available at <https://brasil.elpais.com/opiniao/2020-02-19/aumento-da-letalidade-policial-e-pauta-urgente-no-estado-de-sao-paulo.html>

has also been accentuated, according to a finding by the local Public Prosecutor's Office, which points out that 'since 2015, we see that the pattern of police lethality in Rio de Janeiro has risen some steps in this period. The monthly average number of deaths by intervention by State agents in 2015 was 54. In 2018 it was 128. In 2019, between January and August, the average in Rio reached the number of 156 victims per month'⁸².

It can be seen how the culture of impunity of the military for acts practiced during the dictatorship in Brazil shapes the state's posture today. In this perspective, the Brazilian State uses institutional mechanisms, such as the Amnesty Law, to shield State agents and the military that commit human rights violations, both during the dictatorship and today, from direct accountability for their acts, maintaining the country in an unfinished transition to the democratic period insofar as the State itself promotes the non-assumption of responsibility for these facts. Thus, there is no guarantee of an investigation and, of course, of a fair, impartial and independent trial, as provided for in several international instruments to which Brazil is a signatory, such as the International Covenant on Civil and Political Rights and the American Convention on Human Rights. Humans.

Thus, regrettably, instead of taking measures to control police and military activity, current government officials have publicly justified their belligerent actions and forwarded proposals for new safeguards to the National Congress, exempting guilt or unlawful deaths by military personnel.

In the words of an Army Commander: "Military personnel must be guaranteed to act without risking a new Truth Commission"⁸³.

4. Dismantling of public policies on truth, memory, justice and reparations

In the last decade, Brazil has experienced moments of political, economic and institutional instability, which mark the fragility of the Brazilian democratic state.

Over the years 2013 and 2014 there were demonstrations with the massive participation of the Brazilian population across the country. Initially, the demonstrations were aimed at denouncing the precarious municipal public transportation services and their respective exorbitant tariffs for workers, but the demands included issues related to education, health and public safety, in addition to questions about interests and seriousness of the Judiciary, Legislative and Executive

⁸² Ibid.

⁸³ LÔBO, Cristina. "'Militares precisam ter garantia para agir sem o risco de surgir uma nova Comissão da Verdade', diz comandante do Exército". G1 Política. February 19th of 2018. Available at <https://g1.globo.com/politica/blog/cristiana-lobo/post/general-vilas-boas-militares-precisam-ter-garantia-para-agir-sem-o-risco-de-surgir-uma-nova-comissao-da-verdade.ghtml>

Powers⁸⁴. During this popular movement, a few groups were defending the return of the country to the hands of the the military, praising the regime and defending the practice of torture, for example⁸⁵. Such groups associated public policy complaints with the government of elected officials, who in the past participated in resistance to the military dictatorship

This crisis culminated in the impeachment process of the democratically elected ex-President, Dilma Rousseff, on August 31, 2016, accused of crimes of responsibility against the fiscal order⁸⁶. This process received the name of “coup” by a large part of society and specialists due to the countless political factors that influenced decision-making. It should be noted that, during the vote to receive the impeachment complaint in the National Congress, which was broadcast on national television, the former federal deputy and current President of Brazil, Jair Bolsonaro, dedicated his favorable vote in honor of Colonel Carlos Alberto Brilhante Ustra - recognized by Brazilian justice as one of the greatest torturers of the military regime in Brazil - declaring:

"In honouring the memory of Colonel Carlos Alberto Brilhante Ustra, the dread of Dilma Rousseff, for the army of Caxias, for the Armed Forces, for Brazil above all and God above all, my vote is yes"⁸⁷.

After the impeachment procedure was approved by the Federal Senate, the then Vice-President, Michel Temer, assumed the Presidency. Since then, a political agenda marked by significant setbacks in human rights guarantees has been implemented in Brazil.

As seen previously, Law No. 13.491 was enacted on October 13, 2017⁸⁸, which

⁸⁴ G1, “Transporte e Política são principais razões de manifestações, diz pesquisa”. 23 de junho de 2013. Available at: <http://g1.globo.com/fantastico/noticia/2013/06/transporte-e-politica-sao-principais-razoes-de-manifestacoes-diz-pesquisa.html>. Accessed on March 16th 2020; A Folha de São Paulo, “Veja as reivindicações levadas às ruas durante manifestações”. June 20th of 2013. Available at: <http://www1.folha.uol.com.br/cotidiano/2013/06/1298127-veja-as-reivindicacoes-levadas-as-ruas-durane-manifestacoes.shtml>. Accessed on March 16th 2020.

⁸⁵ Terra. “SP: marcha ‘em defesa da liberdade’ pede volta dos militares ao poder”. July 10th of 2013. Available at: <https://www.terra.com.br/noticias/brasil/politica/sp-marcha-em-defesa-da-liberdade-pede-volta-dos-militares-aopoder,e5d130a67cacf310VgnVCM4000009bcceb0aRCRD.html>. Accessed on 16 de março de 2016; O Tempo. “Manifestação pede impeachment de Dilma e intervenção militar”. November 1st of 2014. Available at: <https://www.otempo.com.br/cidades/manifestacao-pede-impeachment-de-dilma-e-intervencao-militar-1.941028>. Accessed on March 16th 2020.

⁸⁶ Agência Senado. *Impeachment de Dilma Rousseff marca ano de 2016 no Congresso e no Brasil*. December 28th of 2016. Available at: <https://www12.senado.leg.br/noticias/materias/2016/12/28/impeachment-de-dilma-rousseff-marca-ano-de-2016-no-congresso-e-no-brasil>. Accessed on March 16th 2020.

⁸⁷ BBC Brasil. *Discurso de Bolsonaro deixa ativistas ‘estarecidos’ e leva OAB a pedir sua cassação*. April 20th of 2016. Available at: http://www.bbc.com/portuguese/noticias/2016/04/160415_bolsonaro_ongs_oab_mdb. Accessed on March 16th 2020.

⁸⁸ Presidency of the Republic. Law no 13.491/2017. Available at: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/L13491.htm. Accessed on March 16th 2020.

amended the text of the Military Penal Code, conferring jurisdiction on military justice to try the Armed Forces military officers responsible for intentional crimes against civilians, including homicides, tortures and disappearances. In addition, the aforementioned law extends the jurisdiction of the Military Court to prosecute crimes committed by military personnel not provided for in the Military Code, as long as provided for in criminal law, such as the crime of torture and kidnapping, for example. This represents a major setback in human rights in Brazil after a historic process of claim by human rights defenders and demands from civil society that had won the transfer to the common justice of the competence to judge the crimes against life committed by the military against civilians⁸⁹, which was modified with the new legislation.

On February 16, 2018, President Michel Temer issued, through Federal Decree no. 9,288/2018⁹⁰, the federal intervention in the State of Rio de Janeiro, subordinating the state's public security area to the control of the Armed Forces, under the command of Army General Walter Souza Braga Netto. Federal intervention is provided for in the Federal Constitution, however it had never been used since the return to the democratic regime, in 1985. The militarized intervention carried out to allegedly confront violence in Rio de Janeiro substantially extrapolated the federal intervention, causing fear mainly in the population of the most vulnerable areas, especially the favelas. Indeed, since its implementation, complaints of illegal approach, violation of privacy and abuse of authority by the military have been reported⁹¹.

On March 8, 2018, during a seminar given at the Superior War School “Escola Superior de Guerra” (ESA for its acronym in Portuguese) the general of the reserve, Augusto Heleno, declared that the federal intervention’s mission, or objective, was to “eliminate” opponents, by this declaration, he intended to justify the deaths that may occur⁹². He also concluded that Brazil should not resemble countries that failed to combat drug trafficking: “Colombia was 50 years in civil war because they did not do

⁸⁹ Presidência da República. Law no. 9.299/1996. Available at: http://www.planalto.gov.br/ccivil_03/leis/L9299.htm. Accessed on March 16th 2020; Constitutional Amendment no. 45. December 30th of 2004. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc45.htm. Accessed on March 16th 2020.

⁹⁰ Presidency of the Republic. Federal Decree no. 9.288/2018. Available at: <https://www2.camara.leg.br/legin/fed/decret/2018/decreto-9288-16-fevereiro-2018-786175-publicacaooriginal-154875-pe.html>. Accessed on March 16th 2020.

⁹¹ El País. *Sem amparo legal, militares usam celulares pessoais para ‘fichar’ moradores de favelas*. February 23rd of 2018. Available at: https://brasil.elpais.com/brasil/2018/02/24/politica/1519433345_411126.html. Accessed on March 16th 2020; Rede Brasil Atual. *Moradores do Rio relatam violações cometidas durante intervenção federal*. September 27th of 2018 Available at: <https://www.redebrasilatual.com.br/cidadania/2018/09/moradores-do-rj-relatam-violacoes-cometidas-por-forcas-de-seguranca-da-intervencao/>. Accessed on March 16th 2020.

⁹² Marco Aurélio Canônico. “Rio, Haiti, Araguaia. Para general, lições de episódio da ditadura podem evitar que Brasil vire narcopaís”. Folha de S. Paulo March 8th of 2018. Available at: <https://www1.folha.uol.com.br/colunas/marco-aurelio-canonical/2018/03/rio-haiti-araguaia.shtml?loggedpaywall# = ?loggedpaywall>. Accessed on March 16th 2020.

what we did in Araguaia"⁹³, praising the criminal practices of the military regime.

The UN High Commissioner for Human Rights, Zeid Al Hussein, has criticized before the 37 Session of the HRC, the use Armed Forces for public security functions in Brazil, in addition to expressing concern on the statements made by high-ranking military personnel on the alleged preventive amnesty for military personnel who would commit human rights violations⁹⁴.

In March 14, 2018, Marielle Franco, councilwoman of the city of Rio de Janeiro, who was recognized for her work as a human rights defender, was murdered after her appointment as Rapporteur for the Rio de Janeiro Federal Intervention Monitoring Commission, days after openly denouncing serious human rights violations perpetrated by police in the Acari slum⁹⁵. Her death had a wide repercussion on the national and international scene, with the IACHR and OHCHR issuing an official note pointing out concerns about the situation of human rights defenders in Brazil⁹⁶.

Since the inauguration of Jair Bolsonaro as the President of Brazil in January 2019, the dismantling of public policies related to the right to memory, truth, justice and reparation has intensified, with the emptying and erasing of the advances obtained, through a policy of historical revisionism about past violence in the Brazilian military dictatorship.

When he was still a candidate, in addition to declarations of support to Colonel Carlos Alberto Brilhante Ustra, Bolsonaro already publicly defended that there had been no military coup in 1964⁹⁷. His point of view was assumed in an official manner by the new government, as can be seen in a statement sent in April 2019 to the UN Rapporteur on the Promotion of Truth, Justice, Reparation and Non-Repetition Guarantees, Mr. Fabian Salvioli, in which the Brazilian State takes a position denying the occurrence of the military dictatorship and justifying the regime due to a communist threat⁹⁸.

⁹³ Marco Aurélio Canônico, "Rio, Haiti, Araguaia. Para general, lições de episódio da ditadura podem evitar que Marco Aurélio Canônico. "Rio, Haiti, Araguaia. Para general, lições de episódio da ditadura podem evitar que Brasil vire narcopais". Folha de S. Paulo March 8th of 2018. Available at: <https://www1.folha.uol.com.br/colunas/marco-aurelio-canonical/2018/03/rio-haiti-araguaia.shtml?loggedpaywall# = ?loggedpaywall>. Accessed on March 16th 2020

⁹⁴ High Commissioner's global update of human rights concerns, 37th session of the Human Rights Council. 7 March 2018. Available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22772&LangID=E>.

⁹⁵ O Globo. *Quatro dias antes de ser assassinada Marielle Franco compartilhou denúncia contra ação de PMs*. March 15th 2018 Available at: <https://oglobo.globo.com/rio/quatro-dias-antes-de-ser-assassinada-marielle-franco-compartilhou-denuncia-contra-acao-de-pms-22491429>. Accessed on 16 março de 2020.

⁹⁶ CIDH. Press Release no 052/18. CIDH repudia assassinato de vereadora e defensora de direitos humanos no Brasil. March 16th 2018

⁹⁷ Revista Veja. *Doze vezes em que Bolsonaro e seus filhos exaltaram e acenaram à ditadura*. November 4th 2019. Available at: <https://veja.abril.com.br/politica/doze-vezes-em-que-bolsonaro-e-seus-filhos-exaltaram-e-acenaram-a-ditadura/>. Accessed on March 16th 2020.

⁹⁸ A Folha de São Paulo. *Brasil diz à ONU que não houve golpe em 1964 e que governos militares afastaram ameaça comunista e terrorista*. April 4th 2019. Available at: <https://www1.folha.uol.com.br/poder/2019/04/brasil-diz-a-onu-que-nao-houve-golpe-em-1964-e-que-governos-militares-afastaram-ameaca-comunista-e-terrorista.shtml>. Accessed on March 16th 2020.

In transitional justice policies, especially in the past two years, the greatest attacks have been suffered by the Special Commission on Dead and Disappeared Political Persons (CEMDP by its acronym in Portuguese) and the Ministry of Justice's Amnesty Commission, both initiatives were undertaken with the aim of dealing with the past state violence during the military period.

In this perspective, CEMDP was created through Law no. 9,140/1995⁹⁹, being a recognition by the State of its responsibility for the crimes committed during the military dictatorship, including enforced disappearances. In addition to declaring political dead or politically disappeared victims of the military regime, the CEMDP was also responsible for taking steps to locate their remains, the possibility of requesting, by administrative means, the rectification of their death certificates, as well as such as the payment of compensation to family members.

The Amnesty Commission on its turn, was created by Provisional Measure n°. 2,151 / 2001, converted into Law no. 10,559 / 02¹⁰⁰. The purpose of the body was to assess requests from individuals affected by the military regime, in order to support the granting of political amnesty by the Minister of Justice. Subsequently, starting in 2007, the Amnesty Commission expanded its activities, promoting, for example, the Amnesty Caravans, itinerant public sessions in which the requests for political amnesty were considered, approaching civil society and implementing symbolic reparation policies.

Both the CEMDP and the Amnesty Commission are no longer linked to the Ministry of Justice and are now part of the structure of the Ministry of Women, Family and Human Rights. In March 2019, the minister responsible for the portfolio, Damares Alves, instituted a new internal regulation for the Amnesty Commission, in addition to determining an audit in relation to previous acts, reviewing the amnesties granted¹⁰¹. After announcing that the government would be more rigorous in examining the right to amnesty, Minister Damares denied, in a single day, 101 requests for amnesty¹⁰², and also appointed new counselors, who had their appointments questioned in court by the Federal Public Ministry due to history incompatible with the Amnesty Commission¹⁰³.

⁹⁹ Presidency of the Republic. Lei n°. 9140/1995. December 4th 1995. Available at: http://www.planalto.gov.br/ccivil_03/LEIS/L9140.htm. Accessed on March 16th 2020.

¹⁰⁰ Presidency of the Republic. Lei n°. 10.559/02. November 13th 2002. Available at: http://www.planalto.gov.br/ccivil_03/LEIS/2002/L10559.htm. Accessed on March 16th 2020.

¹⁰¹ Globo G1. "Damares amplia número de integrantes e determina auditoria em atos da Comissão de Anistia." March 27, 2019. Available at: <https://g1.globo.com/politica/noticia/2019/03/27/damares-amplia-numero-de-integrantes-e-determina-auditoria-em-atos-da-comissao-de-anistia.ghtml>. Accessed on March 16th 2020.

¹⁰² Revista Veja. "Ministra Damares indefere 101 pedidos de anistia." May 2, 2019. Available at: <https://veja.abril.com.br/brasil/ministra-damares-indefere-101-pedidos-de-anistia/>. Accessed on March 16th 2020.

¹⁰³ G1. "Nomeados por Damares para Comissão de Anistia têm postura 'incompatível' com órgão, diz MPF." May 7, 2019. Available at: <https://g1.globo.com/politica/blog/matheus-leitao/post/2019/05/07/nomeados-por-damares-para-comissao-de-anistia-tem-postura-incompativel-com-orgao-diz-mpf.ghtml>. Accessed on March 16th 2020.

In August 2019, the composition of CEMDP members was modified, including the dismissal of Attorney General Eugênia Gonzaga, who was replaced by Marco Vinicius Carvalho, member of PSL, former party of Jair Bolsonaro¹⁰⁴. In fact, this occurred a week after CEMDP recognized that Fernando Santa Cruz, father of the President of the Brazilian Bar Association, Felipe Santa Cruz, was murdered for political reasons contrary to a statement by the President who denied this information¹⁰⁵.

More recently, in January 2020, a new internal regulation was released for the CEMDP, which, in the views of its former President Eugênia Gonzaga, "represents the end of its activities"¹⁰⁶. The new regulation imposed serious limits on the search for the remains of victims of the military dictatorship that are missing to this day and prevents the rectification of death certificates for family members¹⁰⁷, which seriously undermines the body's duties and affects the right to memory of Brazilian society and of relatives of political dead and disappeared persons.

In the context of the setbacks in relation to human rights in the Bolsonaro government's agenda, Decree no. 9831, of June 10, 2019, was enacted to dismiss all 11 experts from the National Mechanism for the Prevention and Combat of Torture, as well as extinguishing the remuneration of its members¹⁰⁸. The United Nations Subcommittee on the Prevention of Torture has spoken out repudiating the act, which violates the international treaties assumed by Brazil, weakening the fight against torture in the country¹⁰⁹.

In conclusion, in recent years Brazil has maintained a posture of countless setbacks on the issue of transitional justice, through public policies that deny the violence committed by the State in the past, threatening democracy and the realization of human rights in the country.

¹⁰⁴ G1. "Comissão sobre Mortos e Desaparecidos Políticos: veja quem entra e quem sai." August 1, 2019. Available at: <https://g1.globo.com/politica/noticia/2019/08/01/comissao-sobre-mortos-e-desaparecidos-politicos-veja-quem-entra-e-quem-sai.ghtml>. Accessed on March 16th 2020.

¹⁰⁵ Folha de São Paulo. "Família de Fernando Santa Cruz vai à PGR cobrar explicações de Bolsonaro." July 29, 2019. Available at: <https://www1.folha.uol.com.br/poder/2019/07/familia-de-fernando-santa-cruz-vai-a-pgr-cobrar-explicacoes-de-bolsonaro.shtml>. Accessed on March 16th 2020.

¹⁰⁶ Globo G1. "Governo altera regimento interno da Comissão de Mortos e desaparecidos; para ex-presidente do órgão, é o 'fim das atividades'." January 16, 2020. Available at: <https://g1.globo.com/politica/blog/matheus-leitao/post/2020/01/16/governo-altera-regimento-interno-da-comissao-de-mortos-e-desaparecidos-para-ex-presidente-do-orgao-e-o-fim-das-atividades.ghtml>. Accessed on March 16th 2020.

¹⁰⁷ Congresso em foco. "Governo reduz atribuições da Comissão de Mortos e Desaparecidos Políticos." January 16, 2020. Available at: <https://congressoemfoco.uol.com.br/direitos-humanos/governo-reduz-atribuicoes-da-comissao-de-mortos-e-desaparecidos-politicos/>. Accessed on March 16th 2020.

¹⁰⁸ Presidency of the Republic. Decree no. 9831. June 10, 2019. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decree/D9831.htm. Accessed on March 16th 2020.

¹⁰⁹ Uol. "Bolsonaro viola tratado sobre tortura, conclui comitê da ONU." December 16, 2019. Available at: <https://noticias.uol.com.br/colunas/jamil-chade/2019/12/16/bolsonaro-viola-tratado-sobre-tortura-conclui-onu.htm>. Accessed on March 16th 2020.

4.1 Concealment of official documents from the dictatorial period

The concealment and restriction of access to military archives is an important and representative factor on how the Brazilian State persists, preventing access to truth, memory and justice, occurred both during the Brazilian military dictatorship and during democracy.

To this date, the archives of the information and surveillance of the Armed Forces and DOI-CODI information services have not yet been made available to the public, on the grounds that they would have been destroyed. Nevertheless, journalist Lucas Figueiredo demonstrates in his book, "Nowhere: Military and Civilians in the Concealment of Dictatorship Documents", that the version that the files had been legally destroyed was a scam, as other documents went through up to six stages documented authorization until their destruction¹¹⁰. According to the author, "the practice, therefore, was to register the destruction process from beginning to end, and then to spread the term of destruction internally". It concludes, therefore, that documents that demonstrate the process of destruction of these files should be presented, otherwise, the legal standards of that time had not been fulfilled¹¹¹.

In the case of *Gomes Lund and others vs Brazil* the I/A Court affirmed:

"The State cannot rely on the lack of proof of the existence of the requested documents. On the contrary, it must substantiate the refusal to provide the information, demonstrating that it has taken all measures at its disposal to prove that, in fact, the requested information did not exist. **It is essential that, in order to guarantee the right to information, public authorities act in good faith and diligently take the necessary actions to ensure the effectiveness of that right, especially when it comes to knowing the truth of what happened, in cases of serious violations of human rights**¹¹²."

However, not even with the adoption of a national regulatory framework with the approval of the Access to Information Law¹¹³ was able to create change in the patterns of response from the Armed Forces.

Contudo, nem a mudança no marco normativo nacional com a aprovação da Lei de Acesso à Informação provocou mudanças no padrão de resposta das Forças Armadas. Within the framework of the National Truth Commission (CNV), the

¹¹⁰ FIGUEIREDO, Lucas. *Lugar nenhum: Militares e Civis na Ocultação dos Documentos da Ditadura*. São Paulo: Companhia das Letras, 2015, p. 99 e 100.

¹¹¹ FIGUEIREDO, Lucas. *Lugar nenhum: Militares e Civis na Ocultação dos Documentos da Ditadura*. São Paulo: Companhia das Letras, 2015, p. 100.

¹¹² IACHR. *Case Gomes Lund et al. "Guerrilha do Araguaia" v. Brazil*. Preliminary Objections, Merit, Reparations and Costs. Serie C 219. Judgment of November 24, 2010. Par. 211.

¹¹³ Brazil. Law no. 12.527. November 18, 2011. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on March 16th 2020.

Brazilian State reiterates its version on the destruction of documents¹¹⁴ and shows a lack of due diligence in the search for documents that could clarify the serious violations of human rights committed during the dictatorship. It should be remembered that the law that creates the National Truth Commission establishes that “it is the duty of public servants and the military to collaborate with the National Truth Commission” when “it requests [the] assistance of public entities and agencies”¹¹⁵ For example, in response to the CNV's request for the names of those responsible for guarding the Armed Forces' confidential documents from 1964 to 1990, as well as documents from the repression period were still kept in the archives of the Army, Navy and Air Force, the response received from the Army was¹¹⁶

“Currently, there are no documents produced in the Brazilian Army's collection related to the period mentioned [1964-90]. This situation is mainly due to regulations provided for in Decree 79099, of January 6, 1977, which at the time allowed destruction, by the authority that prepared them or by the authority that held their custody¹¹⁷”.

Such concealment is especially serious, since the activities of the detention and torture centers were marked by an effort to cover up the truth of the facts¹¹⁸. Deaths resulted from torture and executions were defrauded as deaths resulted from confrontation or alleged resistance to arrest¹¹⁹. Such a practice of covering up crimes did not only involve direct agents - military or police - but extended to the forensic system, through a practice in which the Legal Medical Institutes corroborated the false versions of the deaths¹²⁰.

The apparatus maintained to guarantee impunity for the crimes against humanity committed during the dictatorship relied especially on the actions of the police, the Public Ministry, the Judiciary and forensic experts. Among the most common forms of concealment of crimes are denial of arrest; false versions of suicide, escapes

¹¹⁴ IACHR. *Case Herzog and others Vs. Brazil*. Preliminary objections, merits, reparations and costs. Series C, Nº 353. Judgment of 15 of March 2018. Par. 336.

¹¹⁵ Brazil. Law no. 12.528. November 18, 2011. Available at: <https://www2.camara.leg.br/legin/fed/lei/2011/lei-12528-18-novembro-2011-611803-norma-pl.html>. Accessed on March 16th, 2020.

¹¹⁶ FIGUEIREDO, Lucas. *Lugar nenhum: Militares e Civis na Ocultação dos Documentos da Ditadura*. São Paulo: Companhia das Letras, 2015, p. 109 e 110.

¹¹⁷ FIGUEIREDO, Lucas. *Lugar nenhum: Militares e Civis na Ocultação dos Documentos da Ditadura*. São Paulo: Companhia das Letras, 2015, p. 111.

¹¹⁸ Brazil. Federal Public Prosecutor Office. Coordination and Revision Chamber, 2. *Crimes da ditadura militar*. Brasília: MPF, 2017, p. 117 e 118.

¹¹⁹ Brazil. Secretary for Human Rights of the Presidency of the Republic. Commission on Dead and Disappeared Political Persons. *Direito à memória e à verdade: Comissão Especial sobre Mortos e Desaparecidos Políticos*. Brasília: Secretary for Human Rights of the Presidency of the Republic, 2007, p. 35.

¹²⁰ Brazil. Federal Public Prosecutor Office. Coordination and Revision Chamber, 2. *Crimes da ditadura militar*. Brasília: MPF, 2017, p. 117 e 118.

and confrontations; false reports; burial in clandestine pits and deliberate refusal to investigate tortures, executions and enforced disappearances reported¹²¹.

Since there are various false versions of the detentions, deaths and enforced disappearances propagated by the military regime, it is essential that the archives of the Armed Forces and of the DOI-CODI information services are made available for these versions to be rectified. The concealment of the archives through false allegations of their destruction is an obstacle to the realization of the right to the truth in Brazil until the present moment, perpetuating impunity in relation to crimes of enforced disappearance, disregarding the international parameters on the subject.

4.2 Rectification of death certificates for Dead and Disappeared Political Persons

As mentioned before, CEMDP was established by Law no. 9,140 of September 4, 1995. In November 2017 CEMDP enacted Resolution no. 2, which establishes a specific procedure for rectifying death certificates of persons recognized as dead or disappeared for political reasons from the time of the military dictatorship¹²².

The resolution complies with recommendation no. 07 of the National Truth Commission (CNV from its acronym in Portuguese), which deals with the issue of rectifying the annotation of the cause of death in the death certificate of people killed as a result of grave human rights violations¹²³.

From 2014, CEMDP had been chaired by the Regional Federal Prosecutor Ms. Eugênia Gonzaga. The implementation of the Resolution on the rectification of death certificates took place during her term as President of the Commission. In 2019, however, Ms. Gonzaga was summarily exonerated from the role of president of CEMDP.

The new president of CEMDP, appointed by Bolsonaro, in a public hearing in the National Congress, affirmed that the procedure instituted by Resolution no. 02 of the CEMDP to rectify the death certificates of political opponents, as well as the forcibly disappeared during the military regime was an “excess”, since the certificate should be made by a doctor¹²⁴.

When interviewed by a news agency, the new president of CEMDP stated:

"The military regime established in Brazil was an important chapter in our history, but I don't usually demonize the military in that sense, because they committed

¹²¹ Brazil. Federal Public Prosecutor Office. Coordination and Revision Chamber, 2. *Crimes da ditadura militar*. Brasília: MPF, 2017, p. 118.

¹²² Brazil. CEMDP. Resolution n°. 2. November 29, 2017.

¹²³ Brazil. National Truth Commission. Final Report. Part V, p. 8.

¹²⁴ House of Representatives. Public Hearing of the Financial Control Committee. October 23, 2019. Available at <https://www.camara.leg.br/evento-legislativo/57302?video=1571836524443>. Accessed on March 16th 2020.

excesses. And the other side also committed excesses. We have to analyze this period as a period of internal war.¹²⁵

Finally, under an allegation of a need to “correct irregularities”, CEMDP enacted a new internal regulation, which revoked Resolution no. 2 of 2017, ending the issuance of death certificates for family members of missing persons.

At the moment, the Public Ministry of the State of São Paulo in partnership with the State Public Defender's Office and the Brazilian Bar Association have taken on the task of seeking the revision of these death certificates through administrative processes, aiming to meet the claims of more than 100 families¹²⁶.

The relatives of the disappeared political opponents have faced obstacles in public notary offices when attempting to rectify the document, which deny the request for rectification under the argument of an alleged overlap of legislation - being the Public Records Law - and the relatives' right to the truth¹²⁷.

The obstacles created by the State in this process of rectification of certificates makes it difficult for relatives of enforced disappeared persons to seek a fundamental form of reparation. According to the former president of CEMDP:

"The government has a duty to take appropriate measures to ensure the memory and truth in relation to human rights, since Brazil was already found responsible and accountable at the international level for forcibly disappearing with political opponents. Measures such as the solemnities of delivering the new death certificates, the meetings of family members and registration plates at historic sites. These are measures that keep history alive so that the facts are not forgotten and shall not be repeated"¹²⁸

It is therefore crucial to understand the rectification of death certificates for political opponents forcibly disappeared as a measure of symbolic reparation family members. Just as we must note that CEMDP, through Resolution no. 2 of 2017, became a competent institution to carry out such reparations. Therefore, the change in the presidency of the CEMDP and its consequent deconfiguration, together with the refusal

¹²⁵DW Brasil. “Comissão de Mortos e Desaparecidos pode acabar em 2020”. January 22, 2020. Available at: <https://p.dw.com/p/3Wci8>. Accessed on March 16th 2020.

¹²⁶ Uol. “Após ato de Bolsonaro, MP assume revisão de atestados de óbito da ditadura”. December 18, 2019. Available at: <https://noticias.uol.com.br/politica/ultimas-noticias/2019/12/18/mp-de-sp-assume-retificacao-de-atestados-de-obito-de-vitimas-da-ditadura.htm>. Accessed on March 16th 2020.

¹²⁷ Rede Brasil Atual. “Familiares de vítimas da ditadura não conseguem retificar atestados”. 26 de abril de 2019. Available at: <https://www.redebrasilatual.com.br/politica/2019/04/familiares-de-vitimas-da-ditadura-nao-conseguem-retificar-atestados/>. Accessed on March 16th 2020.

¹²⁸ Congresso Em Foco. “Governo reduz atribuições da Comissão de Mortos e Desaparecidos Políticos” by Marina Barbosa. January 16, 2020. Available at <https://congressoemfoco.uol.com.br/direitos-humanos/governo-reduz-atribuicoes-da-comissao-de-mortos-e-desaparecidos-politicos/>. Accessed on March 16th 2020.

of the public notaries to rectify these documents, represents a denial of this form of symbolic reparation to the relatives of the disappeared.

In a similar note, ICCPED on its concluding observations has recommended to the State of Chile in 2019, while addressing the theme of symbolic:

“Ensure that the institutions dealing with reparation, **including symbolic reparation**, have adequate financial and technical resources and **qualified staff**”¹²⁹

Therefore, obstacles imposed by the State to the family members of people disappeared by the military regime to prevent them, after all this time, to have their right to truth realized, are extremely condemnable, once generates revictimization of those who already suffered so much from action and omission of the State.

4.3 Obligation to locate and return the remains of victims of enforced disappearance

Araguaia Working Group

The Brazilian State has an international obligation in relation to the enforced disappearances carried out during Guerrilha do Araguaia, at the time of the military regime. The State has the duty to “make every effort to determine the whereabouts of the victims of enforced disappearances and, if necessary, identify and deliver the remains to their relatives”¹³⁰.

Despite several attempts, without state support, by relatives of the victims since 1980, it was only on April 29, 2009 that the Ministry of Defense issued ordinance 567 / MD, which created the Tocantins Working Group whose main task would be to coordinate and carry out all the activities necessary for the location, collection and identification of the bodies of guerrilla members and soldiers killed in the episode known as “Guerrilha do Araguaia”¹³¹.

Although the Ministry of Defense invited other bodies and entities to form the Working Group, art. 2 of the aforementioned Ordinance provided the new body with a fundamentally military composition, giving the Command the Army a central role in the Working Group, which was responsible for setting procedures and goals for the project of locating and identifying the remains of disappeared civilians and members of the military. From this perspective, under such conditions, the Group's performance represented a serious danger to the integrity of the remains of those disappeared in

¹²⁹ UN. Committee on Enforced Disappearance. Concluding observations on the report submitted by Chile under article 29 (1) of the Convention.

¹³⁰ IACHR. *Case Gomes Lund et al. “Guerrilha do Araguaia” v. Brazil*. Preliminary Objections, Merit, Reparations and Costs. Serie C 219. Judgment of November 24, 2010. Operativa Paragraphs 10.

¹³¹ Ministry of Defence. Ordinance no. 567/MD. April 29, 2009.

Araguaia, and a risk to their effective recovery and delivery to the victims' relatives, due to the connection with the criminal liability of Army members.

In this sense, given the nature of the working group's composition, the victims' relatives rejected any participation in the project and expressed their rejection of the ministerial initiative. The rejection was filed before the Ministry of Defense and the office of the President of the Republic and delivered to the President.

In 2011, through new inter ministerial ordinance, the Working Group was reformulated to become the Araguaia Working Group (GTA) with formal dispositions that provided for the participation of family members in the work of search and location of the remainings, the monitoring by a member of the Public Ministry, the use of appropriate scientific methodology and the participation of the Ministry of Justice and the Human Rights Secretary of the Presidency of the Republic in coordinating the work, with the monitoring of the Special Commission on the Dead and Disappeared.

However, family members emphasize that, in practice, old obstacles and failures in the State's duty to act with due diligence to determine the whereabouts of victims forcibly disappeared still persisted, which may have been instrumental in ensuring that no conclusive results have been achieved over 2011, even in the face of the huge expenses alleged by the State: R \$ 4,615,178.19 during field activities that occurred in 2009 and 2010 and R \$ 1,700,000.00 in 2011.

About this period, it is important to highlight the set of statements that were given to the media by Judge Solange Salgado, of the Federal Justice of Brasília, who condemned the Brazilian State in the Ordinary Action under domestic law filed by the relatives of the victims of enforced disappearances¹³². Indeed, she stated that the work of the Araguaia Working Group ("GTA") "does not evolve because of a 'pact of silence' sealed by military personnel who worked in the conflict" and said that this "agreement has the consent of the Army command"¹³³.

In this sense, there is no demonstration that the GTA's coordination has sought or intended to seek information on the whereabouts of victims of enforced disappearances from institutions that directly participated in these practices during the military regime, notably the Armed Forces, restricting its performance to interviews with peasants, ex-military and community members.

Another challenge consists in the lack of a schedule and planning for the methodological organization of the work. In this context, members of GTA, chosen by the Brazilian State, did not systematize or previously shared information they had with family members, resulting in the methodology of the missions and identification

¹³² Federal Justice of Brasília. Ordinary Action no. 82.0024682-5.

¹³³ Folha de São Paulo. "União é leniente em busca no Araguaia, diz juíza". March 7, 2012. Available at: <https://www1.folha.uol.com.br/paywall/login.shtml?https://www1.folha.uol.com.br/fsp/poder/29839-uniao-e-leniente-em-busca-no-araguaia-diz-juiza.shtml>. Accessed on March 16th 2020.

processes being random and, in most cases, determined 'on the spot', meaning during the course of excavations and exhumations¹³⁴.

In May 2013, the Office of the Federal Prosecutor (MPF - for its acronym in Portuguese), issued a report on the activities of search and location. In this report, MPF pointed out that R\$ 6,422,320.54 (six million, four hundred and twenty two thousand and three hundred and twenty two reais and fifty four cents)¹³⁵. have been spent, directly linked to GTA activities. However, despite the costly investment, searches to date have yielded no results.

From the beginning of the expeditions, family members of the victims of enforced disappearances have reaffirmed the need to establish a database with their genetic material, warning that, between 2014 and 2015, the Brazilian State only sought 5 family members for this purpose, reaching the number of 49 family members cataloged¹³⁶.

In total, up to now only twenty-seven remains of mortals have been found, but none have been identified. The State claims that the experts have not been able to collect genetic material from the remains so far¹³⁷.

In 2019, the current Brazilian President issued Decree 9.759/19, which, among other measures, extinguished the GTA without proposing any new action that accounts for the international responsibility of the State to investigate the whereabouts of the victims from Araguaia¹³⁸. Additionally, he expressly criticized, while he was a parliamentarian, in the year 2009, the search for political opponents disappeared during the dictatorship, even posing next to a poster about the searches in the Araguaia region with the words "Whoever looks for bones is a dog"¹³⁹.

Perus Working Group

The Perus Working Group (GTP for its acronym in portuguese) was created in 2014, as part of judicial conciliation in Public Civil Action filed in 2008 by the Federal Public Prosecutor (MPF) against the Federal Government. It also included the State of São

¹³⁴ Observations to the 1st Report of the Brazilian State on compliance with the sentence of case Guerrilha do Araguaia at IACHR, 2012, p. 31.

¹³⁵ Federal Public Prosecutor Office. Monitoring report on the search and identification of the remains of the disappeared in the Araguaia Guerrilla. Attachment 4 of the Report of the Brazilian State on compliance with the sentence of case Guerrilha do Araguaia at IACHR, 2013, p. 9.

¹³⁶ Observations to the 4th Report of the Brazilian State on compliance with the sentence of case Guerrilha do Araguaia at IACHR, 2015, p.17.

¹³⁷ Uol. "Burocracia paralisa busca por ossadas de guerrilheiros no Araguaia." March 20, 2018. Available at: <https://noticias.uol.com.br/cotidiano/ultimasnoticias/2018/03/19/burocracia-e-falta-de-verbas-paralisa-busca-por-ossadas-de-guerrilheiros-noaraguaia.htm>. Accessed on March 16th 2020.

¹³⁸ Brasil de fato. "Bolsonaro encerra grupos responsáveis por identificar ossadas de vítimas da ditadura." April 22, 2019. Available at: <https://www.brasildefato.com.br/2019/04/22/bolsonaro-encerra-grupos-responsaveis-por-identificar-ossadas-de-vitimas-da-ditadura>. Accessed on March 16th 2020.

¹³⁹ Brasil de fato. "Bolsonaro encerra grupos responsáveis por identificar ossadas de vítimas da ditadura." April 22, 2019. Available at: <https://www.brasildefato.com.br/2019/04/22/bolsonaro-encerra-grupos-responsaveis-por-identificar-ossadas-de-vitimas-da-ditadura>. Accessed on March 16th 2020.

Paulo, universities and experts that until then had participated in the analysis aimed at identifying the remains of mortals found in a clandestine ditch in Dom Bosco Cemetery, Perus, in São Paulo¹⁴⁰.

Since the end of the 1970s, relatives of dead and disappeared political opponents had information about the existence of the clandestine ditch, in which the remains of mortals of murdered political militants would have been hidden. In this context, these family members of the disappeared realized that the record books in the cemetery of Perus contained notes of a series of false names and code names used by political opponents who were disappeared, especially with regard to the former militants of opposing groups¹⁴¹. Records were found with data on people who participated in the resistance to the military regime, who were considered missing. In fact, several of these forms were marked with red pencil with the letter "T", a symbol that state repression bodies used to represent "terrorist", that is, all those considered subversive by the regime. Thus, on September 4, 1990, the ditch became the target of an official investigation with the decision of the mayor of São Paulo, Luiza Erundina, to create the Special Commission for the Investigation of Perus remaining of mortals¹⁴².

When the ditch was finally opened in 1990, the remains of mortals that were found there were stored in 1049 bags, each containing the remains of at least one individual, part of them with remains related to more than one individual mixed together. Initially, the material was transferred to the São Paulo Legal Medical Institute (IML for its acronym in Portuguese), an organ linked to the State Police¹⁴³.

Since IML was involved in the repression and there were still IML personnel of medical examiners and forensics who collaborated with human rights violations, family members and human rights defenders demanded the transferring of the bones to the University of

¹⁴⁰ Timeline since the discovery of the clandestine ditch in the cemetery of Perus. GONÇALVES, Gabriela. "Decreto assinado por Bolsonaro impede trabalho de equipes técnicas em ossadas de Perus". Globo G1. April 22, 2019. São Paulo. Available at <<https://g1.globo.com/sp/sao-paulo/noticia/2019/04/22/decreto-assinado-por-bolsonaro-impede-trabalho-de-equipes-tecnicas-em-ossadas-de-perus.ghtml>> Accessed on March 16th 2020.

¹⁴¹ HESPANHA, Luiz. "A primeira Comissão da Verdade". Vala Clandestina de Perus. Desaparecidos Políticos, Um Capítulo Não Encerrado da História Brasileira. 1st edition. São Paulo. 2012. p. 30. Available at <http://www.dhnet.org.br/verdade/rn/bibliografia/livro_vala_perus_emmanuel.pdf> Accessed on March 16th 2020.

¹⁴² HESPANHA, Luiz. "A primeira Comissão da Verdade". Vala Clandestina de Perus. Desaparecidos Políticos, Um Capítulo Não Encerrado da História Brasileira. 1st edition. São Paulo. 2012. p. 32. Available at <http://www.dhnet.org.br/verdade/rn/bibliografia/livro_vala_perus_emmanuel.pdf> Accessed on March 16th 2020. It is also noted that on October 5, 1990 the City Council of São Paulo approved the installation of a Parliamentary Commission of Inquiry to investigate the origin and responsibilities regarding the remains found at Don Bosco Cemetery in Perus and to investigate the situation of the other cemeteries of São Paulo.

¹⁴³ Timeline since the discovery of the clandestine ditch in the cemetery of Perus. GONÇALVES, Gabriela. "Decreto assinado por Bolsonaro impede trabalho de equipes técnicas em ossadas de Perus". Globo G1. April 22, 2019. São Paulo. Available at <<https://g1.globo.com/sp/sao-paulo/noticia/2019/04/22/decreto-assinado-por-bolsonaro-impede-trabalho-de-equipes-tecnicas-em-ossadas-de-perus.ghtml>> Accessed on March 16th 2020.

Campinas' Department of Legal Medicine. In this context, investigations carried out until the end of 1992 identified two militants, whose remains were in the mass grave: Dênis Antônio Casemiro, murdered in May 1971, in São Paulo, and Frederico Eduardo Mayr, killed in February 1972, in São Paulo's capital.

After some progress, however, Unicamp's investigation was suspended and the remains of mortals continued to be stored at the university in inadequate conditions. At the request of family members, the MPF intervened and both the remains of mortals and documents related to the Perus ditch were removed from Unicamp in 2001. A new attempt to continue the identifications was requested, this time under the responsibility of the University of São Paulo (USP), but again there was no progress and storage conditions remained inadequate.

In this sense, Public Civil Action no. 00251698520094036100 was moved in 2009 by the MPF in order to determine the responsibilities for the problems verified in the identification work and to determine to the Federal government the maintenance and structure of the team dedicated to the identification of the disappeared persons¹⁴⁴. At the request of family members, the Federal University of São Paulo, which was not part of the process, offered to collaborate with the process of analyzing the remains of mortals aimed at identifying missing persons.

The prosecutors from MPF responsible for the claim highlighted that part of the reason for the unjustified delay stems from the fact that the government had not given the CEMDP the necessary tools for the healthy performance of their legal duties¹⁴⁵.

In 2014, the Working Group of Perus was created¹⁴⁶ by an agreement between the Secretary for Human Rights of the Presidency of the Republic, the CEMDP, the Municipal Secretary for Human Rights and Citizenship of the Municipality of São Paulo and Unifesp. The remains of mortals were transferred to the Center for Anthropology and Forensic Archeology at Unifesp (CAAF/Unifesp for its acronym in Portuguese) and the University started to participate in the work, which involved a permanent multidisciplinary team made up of university employees and consultants hired with resources from the federal government, through an agreement with UNDP and São

¹⁴⁴ Brazil. Federal Public Prosecutor Office. Public Civil Action no. 00251698520094036100. Initial petition. May 12, 2008. São Paulo. p. 2. Available at https://mpma.mp.br/arquivos/CAOPDH/ACP_ditadura_militar_manoeffilho_doc05.pdf Accessed on March 16th 2020.

¹⁴⁵ Brazil. Federal Public Prosecutor Office. Public Civil Action no. 00251698520094036100. Available at http://www.dedihc.pr.gov.br/arquivos/File/Caso_Ossadas_de_Perus.pdf > Accessed on March 16th 2020. p. 6. See also: Brazil. National Truth Commission. *Report / National Truth Commission*. - Electronic Resource. Brasília: CNV, 2014. v. 3, p. 1263.

¹⁴⁶ Brazil. Presidency of the Republic. Secretary for Human Rights. Ordinance nº 620 of October 8, 2014. Available at http://www.lex.com.br/legis_26060427_PORTARIA_N_620_DE_9_DE_OUTUBRO_DE_2014.aspx. Accessed on March 16th 2020.

Paulo City Hall, in addition to rotating experts¹⁴⁷. The general coordination of the work was under the responsibility of the Management Committee, a GTP body and formed by a representative of each institution (Federal Government; São Paulo City Hall; Unifesp). In addition to the analysis of the skeletons, an ante-mortem investigation was carried out with relatives of 41 people officially recognized as disappeared political opponents, from whom genetic samples were collected. The Federal Government hired a laboratory located in the Netherlands (ICMP) to compare genetic data and genetic samples taken from 750 skeletons were sent to them, in addition to those samples from family members, the remains of two political opponents, Dimas Antônio Casemiro and Aluizio Palhano were identified through this procedure in 2018¹⁴⁸.

In the course of these works, in April 2019, Federal Decree 9,759 / 2019 was published, which determined the extinction of several collegiate bodies of the federal public administration. Although at first it was reported that the GTP would also be affected, its activities were not interrupted, according to a note from the Ministry because the group was operating under an agreement that would be renewed¹⁴⁹. However, the term of the agreement that regulated the GTP has ended, and so far it has not been renewed. Thus, the work continued without legal regulation and, therefore, without security for the institutions and people involved¹⁵⁰.

Periodically, the different parties of the process aimed at identifying the remains of mortals, report on the work at the conciliation hearings that take place at the Federal Regional Court of the 3rd Region, within the scope of the public civil action mentioned above. In the hearings that took place during 2019 and in the beginning of 2020, representatives of the Brazilian Government stated several times that the signing of the agreement to regulate the activities of the GTP would be underway in the internal

¹⁴⁷ Federal University of São Paulo (Unifesp). Center for Anthropology and Forensic Archeology at Unifesp. Project Perus Working Team. Available at: <https://www.unifesp.br/reitoria/caaf/projetos/grupo-de-trabalho-perus>. Accessed on March 16th 2020.

¹⁴⁸ MARQUES, Marília, PAIVA PAULO, Paula. "DNA permite identificação de ossada de desaparecido político encontrada na vala clandestina de Perus". Globo G1. December 3, 2012. Available at <https://g1.globo.com/df/distrito-federal/noticia/2018/12/03/dna-permite-identificacao-de-2a-ossada-encontrada-na-vala-clandestina-de-perus.ghtml>. Accessed on March 16, 2020; VALENTE, Rubens. "Ossada de Perus identificada é de militante da esquerda morto em 1971". Folha de São Paulo. February 20, 2018. Available at <https://www1.folha.uol.com.br/poder/2018/02/ossada-de-perus-identificada-e-de-militante-da-esquerda-morto-em-1971.shtml>. Accessed on March 16th 2020.

¹⁴⁹ Brazil. Presidency of the Republic. General Secretary. Head office for legal affairs. Federal Decree 9.759. April 11, 2019. Available at http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/decree/D9759.htm. This infralegal statute extinguished, in a generic way, all the collegiate organs (among them the working groups), instituted by infralegal mechanisms, under the justification of control of public spending of the Public Administration. See also: PINE, Rute. "O que faz o Grupo de Trabalho Perus, ameaçado pelo governo Bolsonaro?" Brasil de Fato. São Paulo. April 23, 2019. Available at <https://www.brasildefato.com.br/2019/04/23/o-que-faz-o-grupo-de-trabalho-perus-ameacado-pelo-governo-bolsonaro/>. Accessed on March 16th 2020.

¹⁵⁰ VANNUCHI, Camilo. "Governo Federal ameaça interromper análise das ossadas de Perus". UOL Blogosfera. November 21, 2019. Available at <https://camilovannuchi.blogosfera.uol.com.br/2019/11/21/governo-federal-ameaca-interromper-analise-das-ossadas-de-perus/>. Accessed on March 16th 2020.

bureaucracy of the federal government agencies, without this process having been concluded. Still in these conciliation hearings, at the end of 2019, the Federal Government proposed the removal of the remains from Unifesp, transferring them to the Forensic DNA Research Institute of the Civil Police of the Federal District, in Brasília, on the grounds of financial savings. Considered in a conciliation hearing on December 9, 2019, the Federal Government 's proposal was rejected by Unifesp, the São Paulo City Hall, the MPF and the relatives of missing persons.

The team working at CAAF / Unifesp ended the work of analyzing the remains that were in boxes with only one individual, and is waiting to start the step of re-associating skeletons found in boxes with mixtures (26% of the total boxes). In 2019, the Federal Government issued a public notice for the hiring of experts to work in this new phase via the agreement with UNDP, but the selection process has not progressed so far. At a hearing held in February 2020, the City of São Paulo reported that it had not received funds that should be transferred from the Federal Government to the State government for the payment of the consultants who were hired, and that to avoid interruption of the work, payment has been made with the money from City Hall's budget, although it is an obligation of the Federal Government. In addition, the Federal Government contract renewal with the ICMP laboratory is still pending, to investigate the genetic compatibility of over 120 individuals and the cases in which the skeletons of more than one individual are mixed.

In addition to the uncertainties regarding the continuity of the work, it has not yet been defined what the destination of the remains will be after the end of the investigation work, nor how the information produced with the investigation will be managed. Representatives of the Federal Government affirm at the conciliation hearings that their understanding is that, having been paid for with money from the federal government, they have exclusive ownership over the data. Unifesp understands that, as it is a database on human rights violations, a collection should be created with the management shared by the university, public prosecutors and representatives of civil society, among others.

5. Conclusion

Brazil signed the International Convention for the Protection of All Persons from Enforced Disappearance in 2007, as well as the Inter-American Convention on Forced Disappearance of Persons in 1994. Despite these international commitments, there is, however, no classification of the crime disappearance under Brazilian law to adapt it to existing international parameters.

In this sense, in contrary to what the Brazilian State suggested in its report, the crime of enforced disappearance is a crime necessarily linked to the action of the State, under the terms of the ICPPED. This phenomenon has been part of the oppression of the Brazilian population since colonization, was used as a mechanism of fear in the military dictatorship and is still present in democratic times.

During the Brazilian military dictatorship, the practice of enforced disappearances, as well as acts of summary executions, arbitrary arrest and torture, were used in a generalized and systematic manner as a government policy with the aim of eliminating opponents of the regime. To this day, many victims of the military period remain as politically disappeared, without their remains having been located, which was disregarded by the report sent by the Brazilian State. Likewise, impunity in relation to crimes committed during the military dictatorship is perpetuated due to the current interpretation of the Amnesty Law and the other legal obstacles, which were imposed even after the decision of the I/A Court that declared the unconventionality of the application of the Law of Amnesty and reiterated the international obligation of the Brazilian State regarding the investigation and sanction of enforced disappearances.

The position of the Brazilian State in relation to past violence becomes even more serious considering several recent setbacks in human rights practices, including in the context of transitional justice. In fact, the fragile and incomplete Brazilian transitional process contributed to the fact that enforced disappearances continued to occur even in democracy. Still, the lack of data to categorize enforced disappearances, which are inserted in the numbers related to disappearances in general, makes it difficult to analyze the current situation on the subject and the formulation of public policies, in addition to demonstrating the state's failure to investigate these crimes. Until today, impunity prevails for enforced disappearances, especially after the approval of Law No. 13,491, which expands the scope of Military Justice.

Therefore, it is imperative that the Brazilian State adapt its domestic legislation to the parameters on enforced disappearances provided for in ICPPED, complying with its internationally assumed obligations, so that these crimes can be investigated and prosecuted in an appropriate manner. Equally important is the fight against impunity for crimes of enforced disappearance, maintaining and strengthening the policies on the right to memory, truth, justice and reparation regarding violence in the military dictatorship, and, mainly, investigating and prosecuting these crimes. Likewise, Brazil needs to have specific and updated data on enforced disappearances in democracy, as well as investing in public security policies that respect and guarantee human rights, with special attention to the threats of the expansion of militarization in the public spheres.

6. RECOMMENDATIONS

1. Brazil should bring domestic legislation into line with international standards, passing a law that classify enforced disappearances as a crime under domestic law. In adopting legislation, Brazil needs to ensure that it meets the standards provided by ICPPED;
2. Brazil should declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of the Convention, according to art. 31 of ICPPED

3. Brazil should ensure serious, impartial, diligent and effective investigations of enforced disappearances cases, as stated in article 12 of ICPPED and ensure the fulfillment of the rights of the victim provided in art. 24.2 of ICPPED.
4. Advance in the investigations on the fate of the victims of Guerrilha do Araguaia and identify the remains found in the ditch of Perus Cemetery.
5. Return the remains of enforced disappeared persons identified to their relatives
6. Thoroughly investigate, adopting due diligence standards according to international law the enforced disappearances being committed during democracy.
7. Brazil should ensure that Amnesty Law is not used as an obstacle to prevent investigations on enforced disappearances.
8. Brazil should adjust its domestic law to international standards and limit the application of military jurisdiction for crimes against life committed by military personnel against civilians.