

**Report on Brazil
for the Human Rights Committee 138th Session**

Human Rights National Council

About the CNDH

The National Human Rights Council (CNDH), created by Federal Law No. 12.986/2014, is a collegiate body of equal composition that aims to promote and defend human rights in Brazil through preventive, protective, reparatory and sanctioning actions of conduct to situations of threat or violation of these rights, provided for in the Federal Constitution and in international treaties and acts ratified by Brazil.

The CNDH is responsible, among other duties, for supervising and monitoring public human rights policies and the national human rights program, and may suggest and recommend guidelines for their implementation. It is also up to the CNDH to give an opinion on normative, administrative and legislative acts of interest to the national human rights policy and to prepare legislative proposals and normative acts related to matters within its competence, and to monitor administrative and judicial proceedings that are directly or indirectly related to serious human rights violations.

In view of the legal powers established to the CNDH, that collegiate sends contributions to the Human Rights Committee for its 138th Period of Sessions.

The information below is the result of the Extraordinary Meeting to Monitor Brazilian Foreign Policy on Human Rights, held by the CNDH on 05.19.2023, which included representatives of the Brazilian State and civil society organizations. As a result of this meeting, the Federal Public Defender's Office and the Center for Comparative Legal Cultures, Internationalization of Law and Justice Systems of the University of Vale do Rio dos Sinos also sent subsidies, through technical notes, which are systematized throughout this document.

Comments will then be made on only some of the provisions of the International Covenant on Civil and Political Rights, with emphasis on reports and documents that the CNDH produced during part of the revised period. All referred documents are available at: <https://www.gov.br/participamaismaisbrasil/cndh>.

Article 1. Right to free determination

On the protection and promotion of the rights of indigenous peoples

Currently the right to territory has been the central point of the promotion and protection of the rights of indigenous peoples. The demarcation of indigenous territories is seriously threatened by the Brazilian state, either by the paralysis of the indigenous policy in the previous government, or by the debate on the time frame of the demarcations that occur both in the National Congress (PL 490/2007) and in the Supreme Court (RE 1.017.365/SC).

The CNDH defends that the guarantee of protection of the rights of indigenous peoples in Brazil involves the rejection of the thesis of the time frame. According to this thesis, the date of promulgation of the 1988 Constitution, October 5, 1988, would constitute the time frame for the recognition, to indigenous groups, of the original rights over the lands they traditionally occupy.

In contrast, the theory of *Ius indigenatus* (Latin for "right to the local of birth", "native right"), recognizing, in line with the Federal Constitution of 1988, the indigenous original right to traditionally occupied lands, is the one that best protects the population of the indigenous peoples of Brazil currently located in non-approved areas, which corresponds to approximately 500 thousand indigenous in 5,494 existing villages within declared (but not approved) indigenous lands and outside these territories.

Indigenous peoples have an original right to lands traditionally occupied by express provision of the Federal Constitution and the CNDH considers that the recognition of the theory of *Ius indigenatus* is essential for the continuity of the processes of study, demarcation, approval, registration and deintrusion of Indigenous Lands.

The CNDH has carried out over the last period a series of denunciations of violations of the rights of indigenous peoples, in which often the non-recognition of their original rights over the lands they traditionally occupy and the non-demarcation of their lands result in violations of their right to life, health and education, housing and the balanced environment, self-determination and their cultural rights.

The following is to bring to light some examples of the Council's recognition of cases of serious human rights violations of indigenous peoples in Brazil caused fundamentally by the delay of the Brazilian State in not demarcating indigenous lands in the last 22 years:

CDDPH Resolution No. 27/2006 – referring to the Cinta-Larga, in the state of Rondônia, indigenous peoples who have been involved in conflicts arising from the existence of a diamond deposit in the subsoil of their territory.

CDDPH Resolution No. 04/2007 – regarding violations of the human right to adequate food among Guarani-Kaiowá groups in the state of Mato Grosso do Sul, Xavante groups, in the state of Mato Grosso, Guarani groups, in the state of Espírito Santo, and several other indigenous communities of the state of Santa Catarina.

Report of impressions on the living conditions of Guarani Kaiowa in the region of Dourados, MS - documents several human rights violations against Guarani Kaiowa and Guarani Nandeva Indigenous, who live near Dourados in the state of Mato Grosso do Sul, pointing to the existence of land conflict in the region, the expulsion of indigenous people from original lands and the poor living conditions, housing and health care of indigenous people.

Report of the "Tupinambá Special Commission" – referring to the follow-up carried out by the CDDPH, between 2010 and 2011, of cases of

human rights violations of indigenous peoples in Bahia, related to the Tupinambá People, the demarcation of their lands, death threats, violence, persecution and criminalization, through administrative procedures and judicial proceedings against indigenous leaders in the south of that State.

Report of the CNDH mission in relation to the population affected by the implementation of the Belo Monte HPP - with description and recognition of the violation of human rights of indigenous peoples by that enterprise, in which it can be seen the intervention of companies in the autonomy of the affected peoples, the non-compliance with environmental conditions and rights of indigenous peoples established by environmental agencies and a situation of double violence caused by the dam: expelled from their lands the indigenous people go to the cities; being in the cities, they are usually not recognized as indigenous. The village peoples were not properly consulted (the Jurunas, the Arara, the Xikrin, among other peoples directly or indirectly affected), and the understanding prevailed, of society and the State that indigenous lands would not be flooded by the enterprise, thus disregarding the worldview of those peoples. The damming of the Xingu River, with the consequent diversion of the waters by approximately 100 km (region of Volta Grande), decreased the supply of food and resulted in the drought of significant areas of the river, causing changes in the life and culture of indigenous peoples throughout the region.

Report on the Rights of Indigenous Peoples and Quilombola Communities of the Southern Region - regarding the analysis of reports of violence, repression and violations of the human rights of Kaingang indigenous peoples (Municipalities of Gentil, Mato Castelhanos, Faxinalzinho, Irai and Vicente Dutra/RS; Chapecó/SC, Laranjeiras do Sul/PR) and Guarani (Municipality of Palhoça/SC; São Miguel do Iguaçú/PR; Guáira and Terra Roxa/PR). The set of these complaints once again expressed an adverse picture of land conflicts, police violence and imprisonment of leaders, aggressions and public statements of racist content pronounced by authorities and public agents, inattention and negligence of public agencies regarding health care, right to family and community life, school education, differentiated and bilingual, housing, food security, land regularization, among other violations. It can be seen that the issue of the demarcation of indigenous lands is the main cause of the violation of peoples' rights, social segregation and conflicts in the South Region, where there are dozens of indigenous camps, villages in undemarcated areas, claim movements of studies for demarcation, judicializations of administrative procedures of FUNAI and judicial processes annulling demarcation ordinances based on the famous thesis of the time frame.

Complaints received in the 2018-2020 biennium by the CNDH - related to the violation of the rights of indigenous peoples, in which the issue of territorial dispute, the non-demarcation of their lands, is always the catalyst element of the denial of their rights, among which the request to intensify surveillance in the Marãiwatsédé Indigenous Land, in order to prevent the occurrence of conflict in said region in the state of Mato Grosso; the denunciation of invasion in the Munduruku Indigenous Land (State of

Maranhão) on death threats, aggressions and persecutions made against indigenous people by local loggers; denunciation of eviction by the Judiciary of the indigenous families who occupy the City Park of the Municipality of Carazinho/RS (its demarcation is sought); threats against the life of leaders Cacica Kátia (Maria do Carmo Querino de Almeida) and Cacique Babau (Rosivaldo Ferreira da Silva) in southern Bahia, resulting in a CNDH mission carried out from April 15 to 17, 2019 in the Tupinambá Indigenous Lands of Belmonte and Olivença, in which also the existing atmosphere results of the land conflict between farmers and indigenous people, due to the non-demarcation of their lands. The process of demarcation of indigenous lands, as is the case of the Guyraroká Indigenous Land, of the Guarani and Kaiowá People, of Mato Grosso do Sul, also reached the CNDH, resulting in its manifestation on the occasion of the judgment of Termination Action No. 2686, through 14 letters issued to this Supreme Court in the years 2018 and 2019, which has in its core the discussion on the thesis of the time frame. 7 The latest situation of human rights violations analyzed by the CNDH, at the plenary meeting of 10-16-2020, presented by the Working Group that carried out a mission in the region of Nova Olinda do Norte/AM, in relation to events that occurred between July and August 2020, refers to the denunciation of entry and use of indigenous land without permission that resulted in the death of one person and subsequent persecution and death by the military police of that state of four people, two Munduruku indigenous people. The community denounced torture, violence and abuse of authority practiced by the Military Police that led the city to practically adopt curfew, which only ceased after the intervention of the Federal Police operation to control the operation of the Military Police and restore the confidence of the population in the State. In this case, in which the CNDH visited the Terra Preta Community of the Maraguá people and the Coatá-Laranjal Indigenous Land of the Munduruku people, the issue of non-demarcation of the Terra Preta of the Maraguá people, the intrusion of the Coatá Indigenous Land and other land issues as elements of the conflict was also present, confirming that the land is the central point of the promotion and protection of the rights of indigenous peoples.

Recommendation No. 04, of March 12, 2021 - Recommends to FUNAI, SESAI, IBAMA, ICMBio, the Superintendence of the Federal Police in Rondônia and the Military Police of Rondônia the adoption of measures to guarantee the human rights of the indigenous peoples who inhabit the Uru Eu Wau Wau Indigenous Land. - Recommends the adoption of measures for migration management and order

Resolution No. 10, of May 20, 2021 - Approves the Report on Human Rights and Territorial Law of Isolated Indigenous Peoples: Ituna/Itatá Indigenous Land.

Note of Repudiation of the violation of the Right to Manifestation of the Indigenous Peoples of Brazil, held in Brasília/DF, on June 16, 2021

Resolution No. 13, of July 8, 2021 - Provides for the creation of a Working Group on Recommendation No. 18, of December 20, 2020, of the National Council for Human Rights, aiming to carry out the provisions of the aforementioned Recommendation, notably regarding the dialogue with institutions, bodies and entities of the justice system, the administrative spheres of the prison system and others related to the aforementioned Recommendation, in order to concretize the rights of indigenous people concatenated in Resolution No. 287 of the National Council of Justice and its Guidance Manual.

Recommendation No. 21, of June 7, 2022 - Recommends to the government the availability of search and rescue teams to the journalist and the indigenous researcher missing in the Javari Valley.

Recommendation No. 26, of June 22, 2022 - Recommends to the institutions of the Brazilian State to take the appropriate measures to cease the serious and repeated actions and omissions of the Federal Government that reveal the affirmation of political and economic interests to the detriment of the rights of indigenous peoples, characterizing an unconstitutional state of affairs, legalism and authoritarian infralegalism and deviation of purpose in the performance of managers at FUNAI; the removal of Funai President Marcelo Augusto Xavier da Silva; the protection of threatened human rights defenders; the continuity of investigations and reinforcement of public security in the Javari Valley; and the acceptance of the principles, guidelines and recommendations for the guarantee of the human rights of isolated and recent contact indigenous peoples established by Resolution No. 44/2020 of the CNDH.

CNDH Note 21/2022 - CNDH regrets the deaths of Bruno Pereira and Dom Phillips, recommends continuity of investigations and requires verification of FUNAI's responsibility.

Recommendation No. 27, of July 7, 2022 - Recommends the action of bodies in the protection and assistance of Guarani and Kaiowá indigenous peoples in the state of Mato Grosso do Sul, in the territories in which they are located, regardless of whether they are demarcated indigenous lands, in regularization or only claimed.

CNDH Note 14/22 - CNDH Public Note on violence against the Yanomami people

CNDH Note 23/2022 - CNDH condemns a police action that resulted in the death of an indigenous person and ten others injured by the Guarani and Kaiowá peoples in the Resumption of Guapoy Mirim Tujury in Amambai/MS, and calls on FUNAI to protect the rights of indigenous peoples

CNDH Public Note No. 27/2022 - CNDH condemns violent actions against the Guarani and Kaiowá in the Guapoy occupation in Amambai/MS

Public Note No. 31/2022 - CNDH repudiates violent actions against the Pataxó indigenous people of the extreme southern region of Bahia

Public Note No. 37/2022 - CNDH repudiates the misinformation campaign against the indigenous peoples of Rondônia

On the protection and promotion of the rights of quilombola communities

Like the indigenous issue, the CNDH has received numerous complaints of violence and violations of the rights of the quilombola population, especially with regard to territorial law.

The territorial rights of quilombola communities were recognized by the Federal Constitution of 1988. Articles 215 and 216 of CF 88 and art. 68 of the ADCT ensure and recognize that full access to the territory of the quilombola population is directly linked to the right to life, health and safety and the ways of creating, making and living of this population.

27 years ago, in 1995, 412 quilombos were recognized by the Brazilian State. Currently, despite the registration of 5,972 quilombos in 1,674 municipalities in 24 states, as disclosed by the IBGE in 2020, only 200 of these territories are fully demarcated and titled.

The absence of public policies for quilombola communities demonstrates the lack of historical reparation of the slavery period and the structural racism that conforms the Brazilian state. It is urgent to resume the policy of demarcation and territorial titling, especially of the approximately 1,700 processes that are initiated and unprogressed at the National Institute of Colonization and Agrarian Reform (INCRA).

In addition to the delay in recognizing quilombola territories, there are numerous records of complaints in the CNDH about the violation of the right to prior, free, informed and good faith consultation of quilombolas about their territories, under the terms of ILO Convention No. 169. As an example of complaints received by this Council, the quilombola communities affected by the rupture of the Córrego do Feijão Dam in Minas Gerais and the Kilombola Community Morada da Paz - Territory of Mãe Preta (CoMPaz), in Rio Grande do Sul. Below are some of the demonstrations carried out by the CNDH, in its last biennium, in relation to violations of the rights of quilombola communities:

Recommendation No. 22, of June 11, 2021 - Recommends to the MEC the revocation of the changes already made in the Public Notices of the National Textbook Program that exclude commitments to the agenda of non-violence against women, the promotion of quilombola cultures and rural peoples, the theme of equal gender, as well as other approaches to gender and diversity, and that no new changes are made in the public notices in this regard.

Recommendation No. 24, of July 8, 2021 - Provides for violations of the OECD Multinational Companies Guidelines and the Business and Human Rights Principles, the Right to prior, free and informed consultation; access

to information regarding the quilombolas affected by the rupture of the Córrego do Feijão Dam in Minas Gerais.

Recommendation No. 43, of November 12, 2021 - Recommends to the Institute of the Environment - IBAMA, the National Institute of Colonization and Agrarian Reform - INCRA, the Palmares Cultural Foundation - FCP, the National Land Transport Agency - ANTT, the state of Rio Grande do Sul and the municipalities directly or indirectly affected by the expansion works of the BR 386 federal highway in Rio Grande do Sul, and represents to the State and Federal Public Prosecutors' Offices on measures to guarantee human rights, in particular the right to Prior, Free, Informed and Good Faith Consultation of the Kilombola Morada da Paz Community - Territory of Mother Preta (CoMPaz) and other quilombola communities, indigenous or traditional populations, whose territories are in the area of influence of the project and expansion works of the mentioned highway.

Recommendation No. 44, of November 12, 2021 - Recommends to the National Institute of Colonization and Agrarian Reform - INCRA the adoption of measures regarding the guarantee of the constitutional right to grant title to quilombola communities.

Recommendation No. 03, of February 11, 2022 - Recommends to INCRA the immediate suspension of Normative Instruction No. 111/2021 with the revocation of all effects produced, as an urgent measure to ensure the constitutional and international rights of quilombola communities.

Recommendation No. 20, of June 2, 2022 - Recommends to the Brazilian Institute of the Environment and Renewable Natural Resources the suspension of the environmental licensing of the Santa Quitéria Project (Process No. 02001.014391/2020-17) due to non-compliance with the consultation procedure and prior, free, informed and good faith consent to indigenous peoples, quilombolas and traditional communities affected, impacted or affected, as determined by ILO Convention No. 169 to which Brazil is a signatory.

Public Note No. 28/2022 - CNDH welcomes the Aquilombar and reinforces the need to guarantee the constitutional rights of the quilombola population

About the budget cut in the public policy of land regularization

In 2022, the CNDH expressed, through CNDH Public Note No. 05/202, concern about the abrupt cuts promoted by the then federal government in the budget for quilombola land regularization, indigenous policy and agrarian reform policy, from which the information presented below is extracted.

As of 2016, the decrease in resources allocated to quilombola land regularization in Brazil intensified. In 2010, the budget provided for in the Annual Budget Law was

R\$64 million – R\$10 million for current expenses and R\$54 million for indemnities. In 2019, the value plummeted to approximately R\$3.5 million – R\$2.5 million for current expenses and R\$958,000.00 for indemnities.

In 2021, the amount was abruptly reduced, remaining at R\$240,865.00 – of these R\$206,008.08 reais destined to current expenses and R\$43,857.00 for property indemnities. In 2022, when sanctioning the budget, the Presidency of the Republic vetoed the other resources approved for public policies aimed at quilombola communities, as well as indigenous peoples. In this sense, R\$85,000.00 reais was vetoed from the already tight and insufficient resource, which had the purpose of recognizing and indemnifying quilombola territories.

The recurrent cuts and at alarming scales reinforce the extermination policy that had been implemented by the federal government management (2019-2022) in the face of traditional peoples and communities.

FUNAI went through a budget bottleneck, which represents a fundamental part of the emptying of the rights guaranteed to indigenous peoples by the Federal Constitution. More than that, the logic that has prevailed in recent years in Brazil configures the following scenario: the fewer resources the indigenous agency receives to guarantee its structure, the less capacity for execution it has. Low budget execution, in turn, is used as a justification for investing less resources in the following years. The people who pay the bill are the Indigenous people. In relation to the 2022 budget, R\$773,000.00 were vetoed, destined to the demarcation, regularization and inspection of indigenous lands, as well as protection of isolated peoples; and R\$859,000.00, destined to the promotion and protection of the rights of indigenous peoples.

The same setbacks can be seen in relation to the National Agrarian Reform Policy. In addition to the lack of a National Agrarian Reform Program in force by the current government, the budget cuts mainly linked to INCRA are significant. INCRA's overall budget fell 16% from 2021 to 2022.

While in 2015 the budget for “Rural Education” was R\$32,550.00, in 2022 it is only R\$17,935,268.00; for “Land Acquisition” it went from R\$800,000,000.00 in 2015 to R\$2,435,000.00 in 2022; in relation to the “Consolidation of Settlements” from R\$281,934,900.00 in 2015 to R\$66,736,198.00 in 2022; for “Productive Inclusion” from R\$333,132,704.00 in 2015 to R\$25,300,000.00 in 2022. That is, significant cuts that promote in practice the paralysis of Agrarian Reform.

It should also be noted the brutal emptying of personnel in the aforementioned entities, in view of and not carrying out public tenders necessary for the replacement and expansion of the qualified workforce to meet the legal and constitutional purposes of these bodies, without forgetting, in the specific case of FUNAI, the permanent need to have indigenous contractors for the execution of specific activities of indigenous policy.

Clause 6. Right to life

Violation of the right to life: insufficient information regarding COVID-19

The information provided by Brazil in the response dated December 28, 2022 is incomplete and does not portray the truth of the facts embodied in the tragedy of more than 700,000 COVID-19 deaths. The criminal administration of the pandemic operated under the presidency of Jair Bolsonaro was taken to international instances and, internally, contrary to what was informed, the successive and repeated determinations of the STF under ADPF 709¹ were not satisfactorily met by the Brazilian government. In addition, the report of the “CPI of the Pandemic” indicates the set of actions taken by the then government to deny the seriousness of the health crisis and, with it, stimulate the production of mass deaths and sequelae.

In relation to the Inter-American Human Rights System, it is possible to map successive manifestations in relation to the State of Brazil indicating a repeated omission regarding compliance with the international parameters related to the matter, such as: (i) precautionary measure No. 563-20 (Resolution 35/2020)², of July 17, 2020, which records the omission of the Brazilian State to promote access to health for the almost 26,000 members of the Yanomami and Ye'kwana communities in the face of the specific risk related to the COVID-19 health crisis; (ii) precautionary measure No. 1211-20 (Resolution 44/2020)³, analyzed on August 6, 2020, is also related to the violation of the rights of the original peoples; (iii) precautionary measure No. 679-20 (Resolution 94/2020)⁴, dated December 11, 2020, deals with the protection of the Mundurucu Indigenous People; (iv) precautionary measure No. 754-20 (Resolution 1/2021)⁵, of January 4, 2021, 2021, pertinent to about 16 thousand Indigenous People belonging to the Indigenous Peoples of Arja and Awjara Terra.

Despite the efforts of subnational entities and also the Legislative Branch and the Judiciary, the decision-making criteria for the conduct of public policies in the context of a pandemic went beyond the International Criminal Court (ICC)⁶. Although none of the representations have reached institutionally relevant stages in the ICC, it is important to note that there is a constant variable in the different approaches to the problem: the absence of criteria based on the parameters of International Human Rights Law for the protection of life and health.

¹ STF. ADPF 709/2020. Available at: <https://portal.stf.jus.br/processos/detalhe.asp?incident=5952986>

² <https://www.oas.org/es/cidh/decisiones/pdf/2020/35-20MC563-20-BR-PT.pdf>. Accessed on May 26, 2023.

³ IACHR. Available at : <https://www.oas.org/pt/cidh/decisiones/pdf/44-20MC1211-19-BR-pt.pdf>. Accessed on May 26, 2023.

⁴ IACHR. Available at <https://www.oas.org/en/cidh/decisiones/pdf/94-20MC679-20-BR.pdf>. May/26 2023.

⁵ IACHR. Available at https://www.oas.org/es/cidh/decisiones/mc/2021/res_1-21_mc_754-20_br_es.pdf. May/26 2023.

⁶ ABJD. Complaint 04/03/2020 Available at https://static.congressoemfoco.uol.com.br/2020/04/TPI_ABJD_020420.pdf; PDT. Complaint 06/01/2020 Available at <https://static.poder360.com.br/2020/07/PDT-acusa-Jair-Bolsn-de-crime-contra-a-humanidade.pdf>; UNISAÚDE. Criminal complaint. Available at https://uniglobalunion.org/sites/default/files/imce/english_denuncia_presidente_icc_final.pdf; ARTICULATION OF INDIGENOUS PEOPLES OF BRAZIL (APIB); SURUÍ, Almir; METUKTIRE, Raoni. Communication pursuant to Article 15 of the Rome Statute. Available at https://documentacao.socioambiental.org/noticias/anexo_noticia/53148_20210125_091016.PDF.

These elements related to international jurisdictional bodies are only indicative of the serious actions and omissions that integrated the public policies adopted by the Brazilian State during the context of the health crisis. This is because the elements gathered from national institutions allow us to see that the consequences of conducting measures to confront the pandemic represent an even greater affront to the protection of life, under the terms recommended in the Covenant on Civil and Political Rights.

From the establishment of the Parliamentary Commission of Inquiry, which was instituted by the Requirements No. 1,371 and 1,372, of 2021, it is possible to indicate at least six approaches that show the perversion of the structure of the Brazilian State. At first, the final report reinforces the description that the Brazilian Government at the time chose to encourage collective contamination by COVID-19, even without any support for scientific evidence⁷, so that the population would acquire antibodies naturally as soon as possible and, thus, it was possible to lift any and all measures of restriction, at least for the population of working economic age. It even invested in an advertising campaign whose *slogan* was “Brazil cannot stop”, to polarize the clash between compliance with the restriction measures, necessary to face the health crisis, and the intention of the Federal Government, which was the resumption of economic activities without any affectation⁸.

This finding present in the Final Report approved within the scope of the aforementioned Parliamentary Committee of Inquiry originates from a study by the Center for Studies and Research on Health Law of the University of São Paulo⁹. As a result of the research developed by CEPEDISA, it is possible to point out the existence of three axes that supported the collective contagion strategy adopted by the Federal Government. The first are acts of government that implied acts of sabotage against measures adopted by state, municipal and district governments that were contrary to the government's intention to relax restrictions, especially those that had a negative impact on economic activities. The second axis presents a set of normative acts, especially regarding the legislation that defines the essential activities, which could continue to be developed in the context of restrictions. Finally, in the third axis, there is an institutionalized propaganda against public health, in order to disseminate a plexus of ideological, moral and economic arguments, as well as a set of false or decontextualized information, to hinder the implementation of measures necessary to face the health crisis and in line with the guidelines of the World Health Organization¹⁰.

⁷ HALLAL, Pedro *In* BARIFOUSE, Rafael. Expecting herd immunity “is absurd and unethical,” says study leader investigating how many had covid-19 in Brazil. BBC. 07/20/2020 Available at <https://www.bbc.com/portuguese/brasil-53453245>. Access: May 25, 2023.

⁸ CPI. Final Report Approved by the Commission on October 26, 2021. Available at <https://legis.senado.leg.br/sdleg-getter/documento/download/72c805d3-888b-4228-8682-260175471243>. Access: May 25, 2023. p. 50-58.

⁹ In Brazil, it is possible to recognize the “existence of an institutional strategy for the spread of the virus, promoted by the Brazilian government under the leadership of the Presidency of the Republic.” CEPEDISA. Rights in the pandemic mapping and analysis of legal standards for response to covid-19 in Brazil. Bulletin No 10. 01/20/2021. p. 6. Available at https://cepedisa.org.br/wp-content/uploads/2021/02/Boletim_Direitos-na-Pandemia_ed_10.pdf. Access: May 25, 2023. The systematic results of the study conducted by CEPEDISA can also be found in the work of VENTURA, Deisy de Freitas Lima; AITH, Fernando Mussa Abujamra; REIS, Rossana Rocha. *Bolsonaro Genocide: Covid-19 pandemic*. São Paulo: Elefante, 2021.

¹⁰ VENTURA, Deisy de Freitas Lima; AITH, Fernando Mussa Abujamra; REIS, Rossana Rocha. *Bolsonaro Genocide: Covid-19 pandemic*. São Paulo: Elefante, 2021.

Finally, still in relation to this first topic highlighted in the CPI Report, it is possible to indicate that, also within the scope of the SIDH, there was the recognition that the Brazilian Federal Government adopted the strategy of collective contamination, a practice that was condemned by the V Annual Report of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights of 2021:

Likewise, SRESCER is concerned about the information received that the Brazilian government defended the thesis of herd (or collective) immunity by contagion (or transmission) as a form of response to COVID-19, spreading the belief that "natural immunity" derived from infection by the virus would protect individuals and lead to control of the pandemic, as well as estimates that would have lacked rigor on the number of deaths and the date of the end of the pandemic. In the same way, the incitement to expose the population to the virus and non-compliance with preventive health measures, based on the denial of the seriousness of the disease, the apology of value and the supposed existence of early treatment for COVID-19, with the use of chloroquine and its hydroxychloroquine derivative in the treatment protocol, are observed with concern¹¹.

A second element of governance characterized in this note is the political campaign carried out by the Federal Government so that the population made use of ineffective drugs for the prevention and/or aid in treatment for infected people. In addition to the various manifestations of high authorities of the Federal Government, the structures of the Brazilian Army were instrumentalized¹² to enhance the production of chloroquine in the country, in addition to the availability of an application for drug prescription without clinical parameters¹³.

The third element that appears in the CPI report and which is directly related to the right to life, corresponds to the third axis of the collective contamination strategy already pointed out by CEPEDISA studies. Thus, the CPI also found elements to corroborate the conclusion that the Federal Government worked to ensure that non-pharmacological measures, such as social distancing and the use of masks, were discredited by the population¹⁴.

The fourth element indicates that not only was the communication of the Federal Government and its senior officials directed against non-pharmacological measures, but also against the official registration of infection and death data, which marked different

¹¹ IACHR. V Annual Report of the Special Rapporteur on Economic, Social, Cultural and Environmental Rights of the Inter-American Commission on Human Rights, 2021. Available at <https://www.oas.org/es/cidh/docs/anual/2021/capitulos/redesca-es.PDF>. Access: May 25, 2023. § 269.

¹² CPI. Final Report Approved by the Commission on October 26, 2021. Available at <https://legis.senado.leg.br/sdleg-getter/documento/download/72c805d3-888b-4228-8682-260175471243>. Access: May 25, 2023. p. 112.

¹³ [14] CPI. Final Report Approved by the Commission on October 26, 2021. Available at <https://legis.senado.leg.br/sdleg-getter/documento/download/72c805d3-888b-4228-8682-260175471243>. Access: May 25, 2023. p. 106.

¹⁴ CPI. Final Report Approved by the Commission on October 26, 2021. Available at <https://legis.senado.leg.br/sdleg-getter/documento/download/72c805d3-888b-4228-8682-260175471243>. Access: May 25, 2023. p. 155-193

measures in that context¹⁵. More than that, when managing a range of information capable of shaping the subjectivity of different segments of the population, what occurred was not the simple questioning of statistical records, but a denial of the violence and catastrophe that were experienced by these same people. Instead of the necessary measures, ignorance and a conspiratorial climate spread, where only the then President of the Republic would be the oracle capable of properly interpreting the conjuncture.

Then the fifth element of genocidal governance comes from refusing to acquire and defend available vaccines. There was a possibility of acquiring vaccines, but the federal government preferred not to purchase the lots offered, justifying the refusal from the (standardized) clauses of the contract¹⁶, which in this context only reveals the intention to suspend the supply of medication to the population. In line with the reluctance to acquire immunizers, the President of the Republic, several times declared¹⁷ that he would not take the vaccine, a communication and governance technique that causes, as a direct effect, an alignment of his supporters to adopt the same decision for their own lives. In addition, he also declared that his own 11-year-old daughter would not be vaccinated¹⁸, which, as a consequence of the ideologization of the vaccine, caused child vaccination coverage as a whole to be impaired in Brazil, which in 2021 regressed to the same level as in 1987¹⁹. The president's stance, coupled with the dissemination of false news about possible collateral damage, as well as the politicization of vaccine sources, if they were not exclusive causes of the phenomenon, certainly contributed decisively to the situation suffering a more severe deterioration.

The sixth and final element involves one of the greatest evidences of the catastrophe that was the management of the health crisis in Brazil. This is because throughout the month of January 2021 there was still no possibility of vaccination at scale, since the first dose was only applied in Brazil on January 17 of that year²⁰, non-pharmacological sanitary measures such as the use of masks and social distancing measures were undergoing a peak of social questioning from²¹ the repeated manifestations of senior officials of the Federal Government. As an alternative, both as a means of preventing

¹⁵ CPI. Final Report Approved by the Commission on October 26, 2021. Available at <https://legis.senado.leg.br/sdleg-getter/documento/download/72c805d3-888b-4228-8682-260175471243>. Access: May 25, 2023. p. 193-204

¹⁶ CPI. Final Report Approved by the Commission on October 26, 2021. Available at <https://legis.senado.leg.br/sdleg-getter/documento/download/72c805d3-888b-4228-8682-260175471243>. Access: May 25, 2023. p. 208.

¹⁷ G1. Bolsonaro says he will not get a vaccine; science recommends immunization of those who have already had Covid. Oct. / 13 2023. <https://g1.globo.com/politica/noticia/2021/10/13/bolsonaro-diz-que-nao-tomara-vacina-ciencia-recomenda-imunizacao-de-quem-ja-teve-covid.ghtml>. Access: May 25, 2023.

¹⁸ Ravasco, Gabrielle. My daughter will not get vaccinated against Covid-19, says Bolsonaro Dec. 27. 2021. Available at <https://www.cnnbrasil.com.br/politica/minha-filha-nao-vai-se-vacinar-contr-a-covid-19-afirma-bolsonaro/>. Access: May 25,

¹⁹ In 2021, childhood vaccination in the country reached its worst level in three decades. Coverage rates have returned to 1987 levels.

²⁰ RIBEIRO, Victor. A year ago, Brazil applied the first dose of vaccine against covid-19. Brazilian Communication Company, January 17, 2022. Available at <https://agenciabrasil.ebc.com.br/radioagencia-nacional/saude/audio/2022-01/ha-um-ano-brasil-aplicava-la-dose-de-vacina-contr-a-covid-19>. Access: May 25, 2023.

²¹ G1. Crowds protest in the center of Manaus against a new closure of the trade. 26-Dec 2020. <https://g1.globo.com/am/amazonas/noticia/2020/12/26/multidao-faz-protesto-no-centro-de-manau-contr-a-novo-fecamento-do-comercio-video.ghtml>. Access: May 25, 2023.

contagion and as a treatment in case of infection, the Ministry of Health proposes the use of chloroquine. In this context, there was an outbreak of cases in Manaus that resulted in at least 113,732 cases and 5,506 deaths²² due to COVID-19 in the State of Amazonas²³. These figures show not only the intentional absence of adequate public policies and in line with international standards, but also the complete ineptitude in promoting the right to life regarding the management of the most basic inputs for coping with the health crisis, as was the case with the lack of oxygen²⁴. This case is so emblematic because there was a resource available for the acquisition of oxygen, as recorded by the then Executive Secretary of the Ministry of Health recorded in his testimony before the CPI²⁵.

Among all the elements indicated from the different approaches selected from the Final Report presented by the COVID-19 CPI of the Federal Senate, one of the most striking manifestations, which denote the strong load of intentionality in the various manifestations of violence experienced by the Brazilian people in the context of the health crisis, stands out the understanding of sovereignty portrayed by the former Minister of Health, Eduardo Pazuello:

Our decision is complete, Brazil is sovereign to make its decisions in any area, including health. No, we are not obliged to follow any kind of guidance from the WHO or the UN or anywhere else. We are sovereign.²⁶

Certainly, not all the deaths that occurred on Brazilian soil were caused by the political options adopted at the time. Death is still an inherent fatality of the human condition. However, the speech is revealing because it explains the lack of adherence to international parameters for coping with COVID-19 as a way of affirming a national political power that escapes the scope of the International Covenants and the foundations and objectives of the Federal Constitution itself.

²² To parameterize the meaning of these numbers in relation to the Amazonian population, it is reported that in the entire year of 2020, 5,325 deaths were recorded due to COVID. In 2021, 8,511 were recorded. That is, the deaths of the eight weeks corresponded to 103% of the deaths of the previous year and 64.6% of the entire year. Data extracted from CONASS. National panel: Covid-19: cases and deaths. Available at <https://www.conass.org.br/painelconasscovid19/#.Xt1mjGS0V4.whatsapp>. Access: May 25, 2023.

²³ CPI. Final Report Approved by the Commission on October 26, 2021. Available at <https://legis.senado.leg.br/sdleg-getter/documento/download/72c805d3-888b-4228-8682-260175471243>. Access: May 25, 2023. p. 266.

²⁴ In order to measure what is intended to be referred to as lack of oxygen, the CPI cites a technical report that sought to identify situations of therapeutic gas deprivation in the state public network. Of the 184 medical records analyzed, considering the days of January 14 and 15, 34 patients presented critical deficit or lack of oxygen. CPI Final Report Approved by the Commission on October 26, 2021. Available at <https://legis.senado.leg.br/sdleg-getter/documento/download/72c805d3-888b-4228-8682-260175471243>. Access: May 25, 2023. P. 272.

²⁵ “On December 31, the balance in the account of the State of Amazonas was R\$ 478.1 million; and the balance in the accounts of the Municipal Health Fund of the Municipalities of the State of Amazonas was R\$ 203.1 million” CPI. Final Report Approved by the Commission on October 26, 2021. Available at <https://legis.senado.leg.br/sdleg-getter/documento/download/72c805d3-888b-4228-8682-260175471243>. Access: May 25, 2023. p. 268.

²⁶ CPI. Final Report Approved by the Commission on October 26, 2021. Available at <https://legis.senado.leg.br/sdleg-getter/documento/download/72c805d3-888b-4228-8682-260175471243>. Access: May 25, 2023. p. 189

Finally, the document dated December 28, 2022 indicating ADPF 709/2020 seems to suggest that the determinations of the Federal Supreme Court were fulfilled by the government then in power. Nothing further from the truth, while the international bodies – the Inter-American Commission on Human Rights and the International Criminal Court – received demands against the country and complaints against Jair Bolsonaro, respectively, the highest Court in Brazil issued successive decisions for the Executive Branch to adopt emergency measures in favor of indigenous peoples, whether with regard to the need for isolation, medical resources, pharmaceuticals and vaccines, or territorial protection regardless of whether indigenous lands are approved. The numerous versions that the government presented of the General Plan for Coping with COVID-19 for Indigenous Peoples and the Governance and Monitoring Plan were declared unsatisfactory by the judge reporting on the Process, who repeatedly stated that the government then failed to comply with internal and international standards protecting the rights of indigenous peoples.

We list below the positions signed by the CNDH on the subject:

Recommendation No. 05, of March 18, 2021 - Recommends the adoption of measures for migration management and border planning in the Municipality of Pacaraima/RR and guaranteeing the rights of undocumented migrants in the context of the covid-19 pandemic

Recommendation No. 06, of March 23, 2021 - Recommends the adoption of sanitary and economic measures in view of the worsening of the Covid-19 pandemic throughout the national territory.

Recommendation No. 10, of April 13, 2021 - Recommends the withdrawal of the agenda from Bill No. 948/2021, which amends the provisions of Law No. 14,125/2021, or any other initiation that deals with the purchase, handling and application of vaccines against Covid-19, maintaining what is provided for in the current law and the already existing regulatory frameworks that guarantee vaccination by the Unified Health System.

Recommendation No. 12, of May 13, 2021 - Recommendation to the Ministers of Women, Family and Human Rights, Foreign Affairs, Health and Justice and Public Security, regarding the need to preserve the right to information and the isonomy of non-national persons and to ensure better sanitary conditions regardless of their migratory status, among other measures.

Recommendation No. 18, of June 2, 2021 - Recommends not to hold the Copa América (CONMEBOL) 2021 in Brazil and to present information and documents regarding the negotiations for the tournament in the country and to ensure that the event does not aggravate the pandemic health crisis.

Recommendation No. 20, of June 11, 2021 - Recommends the suspension of the process, within the scope of the Federal Senate, of the bill that establishes the general environmental licensing law while the pandemic situation in Brazil lasts, as well as, when it is resumed, a broad debate with

Brazilian society through existing means and mechanisms, within a reasonable and lasting time that broadly contemplates the essential and necessary participation of social actors interested in the topic.

Joint Recommendation by CNDH, DPU and DPE/RJ, of October 21, 2022 - They recommend to the Ministry of Health to present, within 10 days, the schedule for the vaccination of all children from 6 months against covid-19.

Report of the Information Survey Mission on Covid-19 Outbreak in State Psychiatric Hospitals in the State of Rio Grande do Sul: Activities and Recommendations

Statement by the CNDH to the IACHR on human rights violations in the context of the Covid-19 pandemic in Brazil

Right to memory and truth

This theme, so sensitive to the Brazilian democratic affirmation, and crucial for understanding the ideological dichotomies that give meaning to Brazil's political scenario, remains inconclusive.

The information provided by the Brazilian State to the UN Human Rights Committee – CCPR (both those presented on 06.03.2020 – III State Report on compliance with the International Covenant on Civil and Political Rights – as those answered on 12.28.2020 – Answers by the Brazilian State to the questions of the Human Rights Committee) points out a linear and restricted perspective of the phenomenon of remembrance.

Considered in its formal aspect, the information provided by the Brazilian State proves to be correct; this statement, however, obscures a scenario underlying the Brazilian State's own understanding of political memory, whose meanings are poorly understood in all its Powers (Legislative, Judiciary and Executive).

There was, in fact, an effort by the Brazilian State to deepen measures in the transitional scope, including the Amnesty Commission and the National Truth Commission. The facts ascertained from this evidenced the past of extreme violence that defined the Brazilian State between 1964 and 1985, with torture, deaths, concealment of corpses and forced disappearances of political dissidents.

Despite this, there was no effective advance in the accountability (one of the milestones of the Transitional Justice) of public agents involved in human rights violations. The dictatorial period also counted on the participation of civil society actors, a fact that also awaits further investigations and the corresponding attribution of responsibilities.

The recommendations cited by the Brazilian State (“17 institutional measures, 8 initiatives aimed at restructuring the regulatory framework and 4 measures to monitor activities” - III State Report on compliance with the International Covenant on Civil and

Political Rights) proved to be timid or unsatisfactory, mainly because they did not adequately respond to the requirements imposed by the Inter-American Court of Human Rights, in order to remove the 1979 Amnesty Law and hold human rights violators accountable (Case Gomes Lund and others - “Guerrilla of Araguaia” vs. Brazil - Judgment of November 24, 2010).

The "Responses of the Brazilian State to the questions of the Human Rights Committee", of 12/28/2020, are limited to pointing out the performance of the Amnesty Commission, its competences and its results. Again, there has been real progress on this issue. However, here too the facts described must be taken in a comprehensive sense, able to understand the reasons why (a) the Amnesty Commission – and even the National Truth Commission – remain linked to government options and not to state policies; (b) despite the examined requests and the indemnities granted, the impunity of human rights violators in the dictatorial period persisted and (c) it was not possible to advance vetting policies as a way of purifying public office and as a preventive measure to new threats to democracy.

The discrepancies detected, indicating the misunderstanding of the Brazilian State about the protective scope of the Right to Memory and Truth, the unrestricted link that this Right has with transitional practices and the links that political memory presents with democratic protection and overcoming corruption, expose the inadequacy and insufficiency of the information provided by the Brazilian State.

The initial information from the Brazilian State (03.06.2020 – III State Report on compliance with the International Covenant on Civil and Political Rights) expressly indicated the temporal limitation between 2004 and 2017, even though they mentioned that “Some priority initiatives undertaken in 2018 or later are contemplated.” In any case, the Answers of the Brazilian State to the questions of the Human Rights Committee, on 12.28.2020, certainly expanded the space for analysis of facts that equally surround the (in) adequate understanding of political memory by the Brazilian State.

An example of this is the Herzog and others case vs. Brazil – Judgment of March 15, 2018, also judged by the Inter-American Court of Human Rights and which reprised, to some extent, the understanding of the Gomes Lund Case and others - “Guerrilla Araguaia” vs. Brazil - Judgment of November 24, 2010). These events, crucial to an adequate understanding of the Right to Memory and Truth in the Brazilian scenario, were omitted from the information provided.

If, on the one hand, this absence (or forgetfulness) is justified in an attempt to ignore the disapproval, within the scope of International Human Rights Law, of the omissions of the Brazilian State in the proper confrontation of its violent past; on the other hand, it is an option designed not to reveal the contradictions that the Judiciary also reveals in the understanding of political memory.

When judging the Argument of Non-Compliance with Fundamental Precept – ADPF No. 153, in April 2010, the Supreme Federal Court understood as received by the Brazilian Federal Constitution of 1988 the Amnesty Law of 1979. As a result, political crimes and common crimes were equated, both committed during the dictatorial period,

preventing the accountability – despite the contrary understanding of the Inter-American Court of Human Rights – of violators of Human Rights.

There has been no progress on this issue. On the contrary, it was also from this understanding that they began to have support for statements that sought to mitigate – and even praise – acts and crimes committed during the dictatorial period. Two examples of this contradiction can be cited, although they are not the only ones: the first: messages from the President of the Republic recommending the celebration of March 31 (date on which the armed forces took power in Brazil in 1964); the second: the reluctance of the Judiciary to assign responsibilities, not just individual ones, for violations of Human Rights during the dictatorial period. In judging civil Appeal No. 5000493-21.2020.4.03.6126, the Federal Regional Court of the 3rd Region denied compensation to Antonio Torini – persecuted during the military dictatorship – for understanding that his actions (he was leader of a political movement) violated the order of the time and that this conduct affected “the law then in force”.

The incongruities are located, paradoxically, in the refusal of the Judiciary to give adequate understanding to the protective scope of political memory; in the lethargy of the Legislative Power, inert both in the implementation of adequate memory policies and in the elaboration of institutional reforms and in the mismatch of the Executive Power, which should situate political memory as a state agenda and not as a merely administrative procedure.

These facts, although they reverberate in the ideals around what the Right to Memory and Truth is and how it can be affirmed, were not even mentioned in the information of the Brazilian State.

In the Brazilian political scene, an instrumental and restricted view of the phenomenon of political remembrance persists. Thus, there was no effective accountability by the Brazilian State for crimes against human rights committed during the military dictatorship period.

CNDH's statement on the subject:

Recommendation No. 18, of May 13, 2022 - Recommends to the National Council of Justice, the Federal Public Prosecutor's Office, the Federal Public Defender's Office and the Federal Attorney General's Office, actions that contribute to the realization of the Right to Memory and Truth.

Article 7. Prohibition of torture

With regard to the content of art. 7, refers to the contributions of this Council to CAT, whose review of the Brazilian State in the first half of the current year, having brought updated information on the reality of torture in the country.

CNDH's statement on the subject:

Public note of repudiation of the treatment granted by the federal government to the National Committee to Prevent and Combat Torture (CNPCT)

Article 13. Rights of migrant persons

Treatment of aliens, including migrants, refugees and asylum seekers

Despite the Replies of Brazil to the list of issues in relation to its third periodic report, CCPR/C/bra/RQ/3, stating that

Question 6

27. We inform that none of the COVID-19 pandemic combat actions contradicted the commitments taken within the International Covenant on Civil and Political Rights. Additional information on the matter was submitted at the time of the Brazilian State Report to the IV Cycle of the Universal Periodic Review (UPR).²⁷

The reality is that the COVID-19 pandemic did not remove the reasons that led and lead to forced migration; on the contrary, it increased them due to the economic and social crisis it caused. States established restrictions to cross borders, and migration processes were even criminalized. There was an increase in xenophobia as migration was associated with the spread of the virus. Migrants faced bars from entering, summary deportations, underwent dangerous paths to escape border control, and many remained with irregular status. Thus, migrants were even more exposed to human rights violations and there was an additional obstacle in their challenging path: the pandemic.

Recognizing the COVID-19 pandemic in January 2020 by the World Health Organization (WHO), the Brazilian National Congress enacted Law 13.979, of February 6, 2020, to provide measures to address the pandemic in Brazil. Article 3, VI, “a”, provides for exceptional and temporary restrictions on entering and leaving the country via highways, ports, or airports, based on a technical recommendation by the National Health Surveillance Agency (Anvisa) (art. 3, paragraph 6-B, I). After that, the Federal Government issued various ordinances. The Law 13.979/2020 does not foresee sanctions for irregular entry into Brazil. Nonetheless, most of the Ordinances state that those who infringed the entry prohibitions were subjected to the sanctions of I- civil, criminal, and administrative liability II - immediate repatriation or deportation; and III - bar to request refugee status. Those ordinances violated the human rights of vulnerable migrants and refugees, as provided in international human rights treaties and case-law, Brazilian's Constitution, and Laws on Migration and Refuge. As a result of those ordinances, borders remained mostly closed only to land or waterway flow of people. They discriminated against those arriving by land and sea, and breached international obligations of non-refoulement and bar to collective compulsory withdrawal. They

²⁷ CCPR/C/bra/RQ/3

created, thus, illegal discrimination against the most vulnerable people - like the Latin American groups that enter the country by land. Those who were admitted by plane were subject to the usual visa requirements and submission to COVID-19 tests. The ordinances violated the principle of non-criminalization of migration since they criminalized cross-border movements and did not ensure due process before measures of compulsory withdrawal. This principle is stated in article 3, III, of Brazilian Migration Law. It is also rooted in the Inter-American Court of Human Rights case “Vélez Loo versus Panama”, in its Advisory Opinions 18/2003 and 21/2014, and in the Inter-American Commission of Human Rights “Report on immigration in the United States: Detention and due process.”

The restrictions imposed on the entry of non-nationals from other countries into Brazilian territory led to a sudden reduction in the official number of migrants entering the country. Based on data from the National Migration Registration System - SISMIGRA, in 2020 there was a 71.32% reduction in new records in the Federal Police system compared to the previous year. However, regarding the specific situation of forced migration, it is essential to mention that due to its nature, motivated by the search for one's own survival or subsistence due to issues related to the country of origin, which makes migration an imperative need, there was not, even with restrictive measures on the entry of non-nationals into Brazilian territory during the COVID-19 pandemic, an interruption in migratory flows, especially by land or waterway. Migration routes become even more difficult and risky for migrants because they had to enter the country through border points without migration control. In summary, the denial of migrants' rights increased with the sanitary justification and migration restrictions led to a rise in the number of undocumented and irregular migrants and also meant the violation of various civil rights, including the right to life and freedom.

As mentioned in the third periodic report submitted by Brazil under article 40 of the Covenant, CCPR/C/bra/3, par. 177 “In 2012, a special category for protection was created, enabling Brazilian consular authorities to issue humanitarian visas to Haitians.” In practice, migrants faced many challenges as until it was necessary, for that, to obtain a visa from the Brazilian Embassy in Haiti. However, this measure has been hampered by several factors, including unavailability of appointments and insufficient material resources and personnel at the aforementioned embassy in view of the high demand. As a result, hundreds of Haitians have thwarted their intention to flee the humanitarian crisis installed there and migrate to reunite with their close relatives in Brazil.

Such an omission on the part of the Federal Executive was manifestly incompatible with the legislation and, more than that, violates fundamental norms of the Constitution of the Republic, International Refugee Law, International Human Rights Law, the Statute of Refugees and the Law of Migration.

Regarding family unification, the situation seems to be improving as in 10th April 2023, INTERMINISTERIAL ORDINANCE MJSP/MRE No. 38, OF APRIL 10, 2023, it was issued and states that the National Secretariat of Justice (Senajus) will be responsible for analyzing applications for priority residence permits, to be made by Haitians who want to bring their family members, up to the second degree, to Brazil. It remains to be seen if the ordinance will be properly implemented and ensure humanitarian visas.

Another migration issue that violates civil rights of migrants is deportation from the United States. This contribution will discuss it only from the standpoint of the omissions of the Brazilian State. We recall that the Brazilian Migration Law provides and that the Brazilian migration policy is governed, among others, by the principle of protection of Brazilians abroad (art. 3 XIX).

All flights from returnees from the United States land in the International Airport of Belo Horizonte. *In locus* diligences, the Federal Public Defender's Office has identified that returnees are from several states of the federation, including Rondônia, Mato Grosso, Espírito Santo, as well as the city of Governador Valadares/MG and surroundings. The Brazilian Government has agreed with U.S. authorities to land all returnees in Belo Horizonte, but does not provide means to ensure their adequate return to the final destination. Many stated that they did not have the money to return to the place where they were born, needing to overnight in the airport or wait at the Belo Horizonte Bus Station until they managed to buy tickets to the destination.

In the *in locus* diligence it was also stated that throughout the flight, Brazilian male returnees are forced to wear handcuffs on their hands and feet, as well as a chain around their waist, removed only 1 (one) hour before landing in Confins. The DPU identified marks on the hands of several returnees due to the use of handcuffs; Considering that the aircraft transporting Brazilians is a private aircraft chartered by the United States, which, once in Brazilian airspace, binding precedent no. 11 of the Federal Superior Court (STF) applies.²⁸

Our perspective is that the use of handcuffs violates civil rights and that Brazilian government is omitting by does not barring the use of handcuffs once the aircraft is in Brazilian airspace.

Article 14. Access to justice

The third periodic report submitted by Brazil under article 40 of the Covenant, CCPR/C/bra/3, barely mentions the Public Defender's Office and does not mention Public Defender's Office at all in the topic entitled Equality before courts and access to justice. However, strengthening the Federal Public Defender's Office is essential to the protection and promotion of human rights and to the access to justice.

In Brazil there is a constitutional right to counsel in all categories of criminal and civil cases for those who cannot afford legal representation (article 5, item LXXIV²⁹). There is also a Law enacted by the National Congress that states about Public Defenders. The Public Defender's Office is an institution created by the Federal Constitution of 1988 that aims to promote and protect human rights and to guarantee this constitutional right

²⁸ "The use of handcuffs is only lawful in cases of resistance and well-founded fear of escape or danger to one's own or others' physical integrity, on the part of the prisoner or third parties, justified in writing, under penalty of disciplinary, civil and criminal liability. of the agent or authority and the nullity of the arrest or the procedural act to which it refers, without prejudice to the civil liability of the State." Our translation.

²⁹ http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm

(article 134). It provides legal representation for millions of citizens in every corner of the Brazilian territory, including those detained by the criminal justice. According to the Federal Constitution, the Public Defender's Office is an autonomous institution and therefore does not depend on the Executive Branch in order to organize or manage itself. However, the government must provide the necessary means to fulfill its international and constitutional obligation towards the Public Defender's Office, especially on the federal level. Thus, despite the constitutional right to counsel, only a small fraction of the population has access to a public defender and effective access to justice.

Millions of people in Brazil are deprived from accessing their fundamental rights due to lack of access to court systems or must navigate the court system without a public defender despite being unable to afford legal representation and despite their constitutional right to a public defender. Many people who are unrepresented in fact have fundamental rights not effectively ensured by the government which could be achieved through legal assistance.

The Constitutional Amendment 80/2014³⁰ states that the Federal and States governments must provide Public Defenders in all courts of the country within eight years of its publication. The number of public defenders in each location will be proportional to the population and to the effective demand for a public defender. Nonetheless, we are in 2023 and there is a long way to the Federal Government, within federal judicial sections and state's federal subsections, to meet the goal established by the Constitutional Amendment. The insufficiency of Public Defenders and the existence of jurisdictional units that are not addressed by Federal Public Defenders Office offer restrictions and reaffirm the inequalities regarding access to justice in the different regions of the country, weakening the institution's work.

Legal assistance is fundamental to safeguarding access to justice, both in the judicial and non-judicial arena, especially to the most vulnerable and poor ones. Yet, in Brazil, millions of people who are vulnerable or poor are not able to access a Federal Public Defender and access legal representation when facing serious problems such as lack of access to social security, lack of access to healthcare, criminal procedures, lack of social assistance, problems related to housing and forced eviction, various forms of human rights violations and problems related to the rights of people with disabilities³¹. In fact, in Brazil, only a fraction of the legal hardships faced by impoverished and vulnerable people unable to afford private lawyers is addressed with the assistance of legal representation³². Furthermore, in Brazil 6.6% of the population over 15 years is

³⁰ http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc80.htm

³¹ According to the IV Diagnostic of the Public Legal Defense (2015) the main areas that Federal Public Defenders deal, between 2009 and 2014 are social security (86.7%), health (82.2%), criminal freedom (82.2%), social assistance (76.5%), housing (75.6%), human rights (73.4%) and people with disabilities (71.7%). BRAZIL Justice Ministry IV Diagnosis of the Public Defender's Office in Brazil. Brasília, 2015. Available at <http://www.justica.gov.br/sua-protecao/reforma-do-judiciario/biblioteca/iv-diagnostico-da-defensoria-publica-no-brasil.pdf> p. 87)

³² According to the IV Diagnostic of the The Public Legal Defense the institution needs to be enhanced and does not embrace all areas where the judiciary power is installed (BRAZIL. IV Diagnosis..., 2015, p. 5). In 2015, when the IV diagnosis of The Public Legal Defense was released the Federal Public Legal Defense had 550 active federal Public Defenders. Nonetheless the interministerial working group created by the Decree s/n, of April 15, 2005, with the aim to study and release a proposal of uncertainties by the personal of the Federal Public Defenders Office, it is necessary approximately 1,281 Federal Public Defenders to embrace the national need for legal assistance. The study points out a gap of 731 Federal Public Defenders in the country. In 2015 the number of Federal Public Defenders is 20% higher than in 2008. In 2012 the law 12,763 was enacted and authorized the creation of 789 positions of Federal Public Defenders, from which 705 remain vacant. The aim is to open a public defender's office in the places where there are federal courts. (BRASIL, IV Diagnóstico... p. 100-101).

illiterate,³³ which means 11 million people who cannot read and write to claim for their rights. It is also important to emphasize that official information demonstrates a slight increase in the level of extreme poverty³⁴.

In Brazil, civil demands under 60 minimum wages can be filed in Federal Courts without the assistance of a counselor. Nonetheless, many impoverished people do not access justice without a legal counsel, and when they do, many actions are filed without adequate probatory documents, a fact which decreases the chances of success for the most vulnerable ones. Furthermore, many cases could be resolved in the administrative arena when there is access to a public defender, with no need to resort to court. Thus, this gap in the legal assistance reinforces both the inequality and the oppression existing in the Brazilian society.

Steps the Brazilian government should take to increase the promotion of human rights and access to counsel in civil and criminal cases, especially to the vulnerable people, include: supporting the autonomy of the Federal and State's Public Defense³⁵; increasing the number of public defenders³⁶ so that in every city where there is a court is a public defender, increasing the number and speciality of public servants who work at the Public Defender's Office, including psychologists, social workers, anthropologists,³⁷ and

³³Source: <https://educa.ibge.gov.br/jovens/conheca-o-brasil/populacao/18317-educacao.html#:~:text=%20d=%20i%20s%20e%20e%20C3%A7%C3%A3o,haviaido%20s%206%2C8%25>.

³⁴ BRAZIL. Institute for Applied Economic Research. https://repositorio.ipea.gov.br/bitstream/11058/11228/1/n_07_O_Efeito_da_Covid_19.pdf p. 7

³⁵“The subordination of the institution to the Government violates its institutional mission and often requires the Defender, when providing legal assistance to people in socially vulnerable situations, to question and oppose the Federal Government. Thus, acknowledging the autonomy of the Federal Public Defender's Office is important to protect the institution against the one that, in most cases, is the opposing party in the processes in which it operates. Furthermore, the autonomy of the institution assures the defense of the public interest, avoiding that Defenders act in a dubious manner, due to a possible retaliation of the Federal Government whenever its interests are opposed.”(...) “On the other hand, Federal Defenders seem to be granted less institutional and budgetary autonomy from the Federal Public Defender's Office, regarding which they present a more critical approach in comparison to that of the State Defenders, whose autonomy and budgetary perception is broader. According to the collected data, 94.6% of them state that the Public Defender Office in which they work has little or no autonomy to manage the allocation and application of its own resources. Furthermore, they indicate that the Federal Government is the institution responsible for most of the restraint on DPU's institutional autonomy”. (...)“The Federal Public Defenders Office's autonomy emerges, in this sense, in a yet inconclusive and at times conflicting path. Guaranteeing freedom of action to Federal Public Defenders in face of the other powers of the State, especially the Federal Government to which it was subordinate until 2013, represents the perfecting of the very legal assistance system performed by DPU. However, it is mandatory that the members of this institution keep their efforts in order to guarantee that the autonomy formally won by means of the Constitutional Amendment remains effective.” BRAZIL IV Diagnosis, p. 97-100)

³⁶ The interministerial working group created by the Decree s/n, of April 15, 2005, with the aim to study and release a proposal of uncertainties by the personal of the Federal Public Defenders Office, states that it is necessary approximately 1,281 Federal Public Defenders to embrace the national need for legal assistance. Furthermore, constitutional amendment 80/2014 states that federal and state governments must provide Public Defenders in all courts in the country within 8 years. BRAZIL IV Diagnosis..., p. 100-101)

³⁷ According to the research, in 58.4% of the Federal Public Defenders Office there is no proper staff to perform administrative duties [meaning the staff is “borrowed” from other Government departments and agencies] and in 79.3% there are no support staff to assist the Defenders’ work. The lack of, especially, a proper support staff triggers a stark problem to the institution's everyday activities, since it is very common for Public Defenders to require, among others, reports, technical reports and plans of action, which could only be properly performed by architects, social assistants, accountants, psychologists, sociologists and other specialists from different fields of knowledge. Many claims do not progress or take

supporting research into the impact of the lack of assistance and legal counselling in civil and criminal cases.

Article 22. The right to freedom of association

Criminalization of social movements

During the Extraordinary Meeting for the Monitoring of Foreign Policy on Human Rights in Brazil, representative of the Landless Rural Workers' Movements (MST) reported the reality of criminalization of the struggle for the right of access to land within the scope of the Federal Legislative Branch, embodied in the establishment of the Parliamentary Commission of Inquiry against the MST.

The following is part of the document written by the National Direction of the Movement and widely disseminated in Brazil, which represents the perspective of the largest social movement in Latin America on the facts and which, for this reason, must come to the attention of this Committee, in order to subsidize the analysis of the degree of respect for the rights provided for in articles 19, 21 and 22 of the PICDP.

1. The CPI against the MST represents a persecution of the popular struggle for Bolsonarism. The CPI proposal is, in fact, an attempt to persecute and criminalize the popular struggle. The MST has been fighting for almost 40 years to ensure that the Federal Constitution is fulfilled and that the social function of the land (constitutional guarantee) is respected. Our historic struggle, denouncing the powerful landowners and building dignity for the Landless families, gave us the conditions to donate during the pandemic, one of the most difficult moments in the history of the country, 8,500 tons of healthy food for the neediest population. In addition, we distribute more than 2 million lunch boxes to homeless and hungry families.

[...]

3. The CPI does not shed light on the main agrarian problems in the country. When seeking to investigate the occupations carried out by the MST throughout this year, the CPI omits the main real agrarian problems in Brazil. The growing deforestation, land grabbing, burning, violence in the countryside, the use of labor analogous to slavery, the destruction and contamination of natural assets by the use of pesticides, represent the real ills of the Brazilian countryside. In 2023, Brazil has already set a record for rescuing workers in a situation of work analogous to slavery. These facts should be the subject of investigation rather than the legitimate struggle of popular movements. In addition, the protagonists of these attacks do not have the slightest legitimacy to contest the struggle of the MST. Ricardo

too long to be decided, on account of this deficiency. In this sense, it is crucial to bear in mind that 'interdisciplinarity appears as an inexorable aspect for the consolidation of rights'. To recognize it is, therefore, to point towards the extension of the rights' effectiveness." (LIMA; BERCOVICI, 2005, p. 05, *apud* BRASIL. IV Diagnosis..., p. 102)

Salles, quoted to be the CPI's rapporteur, was Bolsonaro's Minister of the Environment, responsible for destroying the country's environmental policies. Lieutenant Colonel Zucco, who is scheduled to be president of the CPI, is investigated in the Supreme Court as one of those responsible for financing undemocratic acts by Bolsonaristas against the result of the 2022 elections. These are the ones who want to investigate the MST. It is evident that the real interest of the CPI is to obfuscate the crimes committed by agribusiness.

4. The CPI's request is unsustainable and has no determined purpose. The requirement to install the CPI is totally unsustainable. Such a document is a pamphlet attacking not only the Movement, but the commitment of the National Congress to pay attention to the most urgent issues in the country. The CPI has no determined fact. They use vague terms and speak of "purpose of the MST", "funders", and do not specify and delimit its object of investigation. Without certain fact, there is no legal support for any parliamentary investigation, which costs time and public money to function. The social function of property is constitutionally guaranteed and meets productive, environmental and labor criteria. These are items that must be combined. Therefore, legal certainty is achieved by complying with the Constitution, requiring the fulfillment of the social function of property. The fight of the MST is, precisely, for the Federal Constitution to be fulfilled. The struggle through occupations is legitimate, as it seeks to draw attention and demand compliance with the FC from the competent authorities. The final report presented in function of the CPMI of the Land (2010) states that: "Housed in the Brazilian Constitution itself is the matrix, the source of legitimacy and legality of agrarian social movements, because founded on the right of free association and organization that characterizes any democratic state of law." That is, other investigations, carried out by the same Parliament, have already attested to the legitimacy of the struggle organized by the MST.

[...]

7. The MST has already been the target of attempted criminalization through CPIs. In all, four CPIs have already been carried out involving the MST: CPI da Terra in 2005, CPI of NGOs in 2008, CPI of the MST in 2010 and CPI of INCRA/FUNAI in 2017. All these were political instruments at the service of only one segment of society, in this case, the ruralists, unbalancing an equitable performance of the State. In common, **they all sought to persecute and criminalize our militancy and flags, without, however, succeeding in their main objective: to end the Movement. Its real focus is to reduce the democratic participation of the population, a central agenda of Bolsonarism, and block the political debate on the country's great themes.**

In this sense, when analyzing the composition of the CPIMST, it is noted that of the 54 member parliamentarians, among holders and alternates, about 40 are appointed by parliamentary fronts of agriculture and arms/military. The sessions show the truculent characteristic of the majority bloc, using insults, name-calling, false accusations, conclusions and aggressive stance when referring to the MST. In this step, the legal

advice that accompanies the work of the commission translates the feeling of “an agromilitary CPI”, with more parliamentarians linked to the military context than properly to big agribusiness.

Another element that causes concern is the lack of fact determined to be investigated by the CPI, that is, it is proposed to investigate all the performance of the movement and its struggle. In addition, it confuses the work of the MST with the work of other social movements, such as the National Front of Struggles.

In addition, actions of other social movements have been linked to the MST, in order to obtain an accumulation of investigators who fight for access and democratization of lands in the country.

In view of the above, it is understood that the CPIMST must be subject to observation by this Committee, since it does not have a specific object and proves to be an instrument of political persecution of the MST, its militants and people fighting for agrarian reform in Brazil.

Example of previous CNDH manifestation on the subject:

CNDH Public Note of March 10, 2017 - CNDH expresses repudiation regarding the criminalization of social movements and human rights activists in Brazil.