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Arns Commission – Dom Paulo Evaristo Arns Commission for Human Rights Defense

CASLA – Casa latino-americana

CEERT – Center for the Study of Labor Relations and Inequalities

Rights in Network Coalition

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1 Article 1 Combined with Article 27 - Self-Determination of Peoples

1.1 Demarcation of Indigenous Territories and Self-Determination of Indigenous Peoples

The 1988 Constitution guarantees indigenous peoples their social organization, customs, languages, beliefs and traditions, in addition to the original rights over the lands they traditionally occupy. It is incumbent to the Federal Union to demarcate their territories. The promise of demarcation of all territories by 1993¹ has never been fulfilled and the relevant constitutional provision is still far from being fulfilled². Of 732 traditional territories, 490 have been demarcated, 125 are in the process of being identified, 43 identified, and 74 officially declared as indigenous lands³.

As Brazil has become a commodity-exporting economic powerhouse over the past 20 years, demarcation processes have become more complex and slower, the result of pressure from the agricultural and financial sectors. In the same sense, the agribusiness caucus becomes one of the most influential interest groups in the National Congress⁴, putting forward bills that try to limit the scope of Article 231 of the Constitution, especially with regard to the self-determination of territories by indigenous peoples.

1.2 The Question of the Time Framework ("Marco Temporal")

A major part of agribusiness and lobby groups against indigenous peoples are trying to advance a mistaken legal understanding called a "time framework," according to which traditional indigenous territories could only be recognized by the Brazilian state if an indigenous community was actually occupying the territory demanded on October 5, 1988, the date of the promulgation of the Constitution of Brazil. Such a thesis presents some serious problems. First, it violates international human rights law. UNDRIP protects this right, in its Article 26 and the Human Rights Committee's own understanding⁵ of the continuous and traditional character of territories occupied by indigenous peoples in relation to various Articles of the ICCPR⁶. Second, it violates the constitutional

¹ ADCT Art. 67. "The Union will complete the demarcation of indigenous lands within five years." Available at: <https://www2.camara.leg.br/legin/fed/conadc/1988/constituicao.adct-1988-5-outubro-1988-322234-normaatualizada-pl.pdf>.

² Administrative steps for the demarcation of territories: identification studies; Approval of Funai; Disputes; Declarations of the limits of the land; physical demarcation.

³ Available at: https://pib.socioambiental.org/pt/Situa%C3%A7%C3%A3o_jur%C3%ADdica_das_TIs_no_Brasil_hoje.

⁴ See: CIMI Anti-Indigenous Congress, available at: <https://cimi.org.br/congressoantiindigena/>

⁵ UNDRIP, Article 26.1: Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

⁶ HRCtee: General Comment Adopted by the Human Rights Committee under Article 40, Paragraph 4, of the International Covenant on Civil and Political Rights, "with regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples, (CCPR/C/21/Rev.1/Add.5 26 April

text itself, which literally speaks about *traditional* lands⁷. Brazilian law adopts the principle of the traditionality of indigenous lands ("indigenato"), in line with international law, since Law No. 601, and the Constitutions of 1934, 1937, 1946, 1969, and 1988, conferring *ex tunc* effect to traditional indigenous possession.

The Supreme Court currently rules on a case of general repercussion brought by the Xokleng community (State of Santa Catarina), through the Extraordinary Appeal No. 1,017,365, to analyze the validity of the mistaken thesis of the time framework, in the light of the Constitution, which also concerns the international obligations assumed by Brazil. The trial of the case, which had several stoppages due to requests for views from the judges, was once again interrupted on June 7, which causes a greater fear of more violence in the indigenous territories.

This doctrine was addressed in *obiter dictum* by the Supreme Court in the Raposa Serra do Sol case (2009), and not endorsed as a consolidated thesis. It has been used by lower courts, as well as by the federal administration itself, to interrupt ongoing demarcation processes. Even in the new Lula government, Opinion 001 of the previous administration was not revoked or replaced by the Attorney General of the Union, but had its effects were lifted by an order of the Supreme Court.

In view of the inherent imbalance of power between indigenous communities and the extractive industry and major part of agribusiness, indigenous peoples have faced enormous obstacles to maintaining possession of their traditional lands and exercising their rights protected by the ICCPR.

The thesis of the time framework, if accepted by the Supreme Court, will be binding on the lower courts, legislative and national executive, in addition to having a strong negative influence in Latin American countries, where it is also trying to restrict the original rights of indigenous peoples.

In practical terms, if the thesis of the temporal framework is consolidated, the process of demarcations in Brazil will become ineffective. It will also consolidate the plundering of several indigenous peoples who have been stripped of their territories, but will continue their historical struggle.

The thesis of the time frame, if accepted by the STF, will bring additional challenges to the peoples of voluntary isolation or recent contact, since it will be able to regularize the lands grabbed or illegally occupied by groups without commitment to life and the defense of the environment.

1994, para. 7); *Jouni E. Länsman et al. v. Finland*, Communication No. 671/1995, U.N. Doc. CCPR/C/58/D/671/1995 (1996).

⁷ Art. 231. The Indians are recognized for their social organization, customs, languages, beliefs and traditions, and the original rights over the lands they traditionally occupy, and it is up to the Union to demarcate them, protect and ensure respect for all their assets. § 1 - The lands traditionally occupied by the Indians are those inhabited by them on a permanent basis, those used for their productive activities, those essential to the preservation of the environmental resources necessary for their well-being and those necessary for their physical and cultural reproduction, according to their uses, customs and traditions. (underline added).

1.3 Institutional Violence in the Context of Traditional Land Reclaims

Several indigenous communities, seeing no other solution to the serious humanitarian crisis affecting them, are once again occupying the territories from which they were expelled, by court order or by illegal use of force by private or even public agents. This land reclaim represents a new form of pressure on the authorities, aimed at accelerating the process of demarcation of the respective lands. During the land reclaims, communities once again have access to land and contact with spiritual practices, houses of prayer, rivers, mountains and natural resources that are sacred to them.

At the same time, the reclaims are marked by violence and threats perpetrated by public security forces, which do not have the competence to deal with indigenous issues, or by private security guards and militias which, in addition to not having competence, are in the pay of groups interested in expulsion and improper repossession. Emblematic are the examples of the Pataxó people (State of Bahia) who suffer action from armed gunmen in their reclaims⁸, and the Xokleng Konglui people, when claiming their territory in a privatized forest (State of Rio Grande do Sul), being the target of several court orders for repossession⁹.

So far, the response of the Brazilian state has been one of serious drawbacks. In the case of the Pataxó people, there was an *on-site* visit by the National Human Rights Council, in November 2022, but the solution to the crisis remains pending¹⁰.

Although in theory there may be technical and legal issues to be resolved in each event of reclaim, the Brazilian State has been inefficient for these conflicts to be resolved peacefully, often generating violence with deaths of members of indigenous communities.

2 Article 2 - Implementation of the ICCPR

2.1 Systemic Inequalities in Brazil

The great challenge for the full realization of civil and political rights in Brazil is the systemic and historical inequality that disproportionately affects women, children, Afro-descendants, quilombolas, indigenous peoples, gypsies, LGBTQI+ people, the poor and peripheral, the elderly, the disabled, migrants and other vulnerable sectors of the population. Even though Brazil's GINI index

⁸ CIMI. Available at: <https://cimi.org.br/2023/02/violencia-pataxo-demarcacao-governo-federal/>.

⁹ Available at: <https://cotidiano.sites.ufsc.br/retomada-xokleng-konglui-o-renascimento-de-um-povo/>.

¹⁰ Report of the Mission to the extreme south of Bahia to verify human rights violations against indigenous Pataxó people. Available at: <https://www.gov.br/participamaisbrasil/relatorio-da-missao-ao-extremo-sul-da-bahia-para-verificar-violacoes-aos-direitos-humanos-contra-indigenas-do-povo-pataxo>.

has regressed from 0.591 in 2004 to 0.489 in 2022, access to basic rights for the majority of the population is still a challenge.

The Brazilian State has adopted protective legislation in favor of these groups, such as the [Child and Adolescent Statute](#) (1988), the [Racial Equality Statute](#) (2010), the [Elderly Statute](#) (2003) and the [Statute of the Person with Disabilities](#) (2015). Such laws had the positive effect of establishing a legal framework for addressing these inequalities. At the same time, the monitoring of the objectives to be achieved by these laws remains a constant problem for the authorities and for the necessary participation of civil society entities.

It is important to state what has been positive: the Brazilian population census is disaggregated by race, ethnicity and gender, according to the principle of self-declaration, which facilitates the allocation of resources and government efforts for policies that take vulnerable sectors out of invisibility. Another factor in the eradication of inequalities is the conditional programs of income distribution, which have significantly improved the living conditions of the most impoverished sectors of society.

The Brazilian state has adopted a series of temporary special measures that signal a positive step towards the equalization of rights, such as Constitutional Amendment No. 117, which obliges political parties to allocate at least 30% of public funds for electoral campaigns to female candidates.

There are, however, at least three foci of concern.

First, such measures have been debated in society several times merely as public policy options, and not as obligations of the State before the ratified conventions (ICCPR, CERD, CEDAW, etc.). Secondly, no clear parameters for monitoring the evolution of these measures were established, nor the designation of a specific public body for the respective monitoring, goals and evaluation of their effectiveness. And the third focus refers to the fact that temporary special measures are adopted in an ad hoc and fragmented manner between the three levels of administration and three powers.

For example, with regard to affirmative action to eradicate racial discrimination, the National Plan for the Promotion of Racial Equality (PLANAPIR) does not detail how it would be monitored. The Decree creating this plan was repealed by the previous administration (2019), not yet being restored by another equivalent norm¹¹.

2.2 Implementation of ICCPR in the Domestic Sphere

Despite the long time of ratification of the ICCPR by the Brazilian State, there is still little knowledge of its provisions at the domestic level, in the branches of the judiciary, executive and legislative; and at the federal, state and municipal levels. The Constitutional Amendment No. 45¹² of December

¹¹ Decree n. 6.872/2009, which approves the PLANAPIR and institutes its Articulation and Monitoring Committee. Available at: https://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/decreto/d6872.htm.

¹² Available at: https://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc45.htm.

2004 elevates to the category of constitutional amendment only the human rights conventions approved by 3/5 of the votes in the National Congress, in 2 rounds of voting, which does not reach the Covenant, because it was ratified before the approval of this Amendment. The Supreme Court of Brazil (STF) has not yet clearly established the hierarchical value of human rights conventions vis-à-vis domestic law. Even so, there is still incipient knowledge about the Covenant by the judiciary and rarely are its articles and general comments cited by judges, lawyers and prosecutors. Likewise, at the regional level, the process known as *conventionality control* is performed exceptionally, creating a great challenge in the practical implementation of the Covenant and the other conventions. The National Council of Justice has made an effort to expand the application of these conventions, but so far it has been limited to the inter-American system¹³.

The Federal Supreme Court (STF) rejected the obligation to comply with the judgment of the case *Guerrilha do Araguaia v. Brasil* (2010) by the IACtHR, weakening a collaboration between both courts¹⁴.

On the other hand, Bill 220/2016¹⁵, which deals with the recognition of decisions by international human rights bodies, received new amendments expanding its scope of application to the organs of the UN system. However, the National Congress has not prioritized the handling of this bill that would give more legal certainty to victims of human rights violations and the project was shelved.

The Brazilian State's own systemic delay in submitting periodic reports to the United Nations treaty bodies represents yet another challenge for the implementation of the Covenant. At the governmental and private levels, there is little knowledge of the review process by the treaty bodies and of the importance of the Committee's recommendations.

3 Article 3 - Gender Equality

3.1 Gender Violence

In the 1980s, notorious femicide crimes in Brazil mobilized public opinion and gave rise to important feminist civil society organizations in favor of women victims of domestic violence, cases that usually only came to light when the woman ended up dead. At the time, such crimes were defined by the press and in criminal proceedings as "passionate in self-defense of honor"¹⁶. It took until 2006 for the first law against domestic violence (Maria da Penha Law¹⁷) to be enacted and, in 2015, the classification of the crime of femicide as qualified homicide to be included in national legislation¹⁸.

¹³ Recommendation n. 123/2022. Available at: <https://atos.cnj.jus.br/atos/detalhar/4305>.

¹⁴ ADPF 153. Available at: <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=612960>.

¹⁵ Available at: <https://www25.senado.leg.br/web/atividade/materias/-/materia/125951>.

¹⁶ About Ângela Diniz's case: <https://www.uol.com.br/universa/noticias/redacao/2020/07/16/coisa-mais-linda-faz-referencia-a-doca-street-relembre-o-caso.htm>.

¹⁷ Law 11.340/2006. Available at: https://www.planalto.gov.br/ccivil_03/ Ato2004-2006/2006/Lei/L11340.htm.

¹⁸ Law 13.104/2015. Available at: https://www.planalto.gov.br/ccivil_03/ Ato2015-2018/2015/Lei/L13104.htm.

Still, it was only after the decision of the Federal Supreme Court (STF) in 2021, which ruled the thesis of self-defense of honor to be unconstitutional, that it was no longer accepted as a defense in cases of femicide¹⁹. However, these legislative changes have not yet had the expected impact on reality.

An opinion poll conducted by the Patrícia Galvão Institute and IPEC in 2022²⁰ indicated that half of Brazilian people know at least one woman who has suffered domestic violence. Among women, 60% know at least one victim and 36% said they had been victims themselves. For 90%, if there was effective support from the state, women would feel safer to denounce and get out of the violent relationship; for 85%, men who commit domestic violence know it is a crime but believe they will not be punished; for 72% the police officers do not believe in the seriousness of the complaint and the risk that the woman runs; and, for 69%, the Brazilian justice system treats violence against women as unimportant. Almost all of the people interviewed agree that the State has the obligation to promote educational campaigns, expand the number of assistance services for battered women and increase the number of specialized police stations, present in only 7% of the municipalities.

When the victim files a formal complaint, it incumbent on the judicial authority to apply Emergency Protective Measures, both to impose obligations on the aggressor and to ensure the protection of the victim. Data organized by the National Council of Justice (CNJ)²¹ and presented in graph 1 indicate that the number of these measures requested had an exponential increase of 61.6% in the last three years. In 2020, there were 331,414; in 2021, 433,955 and in 2022, 535,640. A similar situation was also identified in the number of cases of domestic violence and femicide²². In 2016, 422,718 new domestic violence cases were filed and in 2021, 630,742, an increase of almost 50%. On femicide, in 2016 there were 1,662 new lawsuits, and in 2021, 1,991.

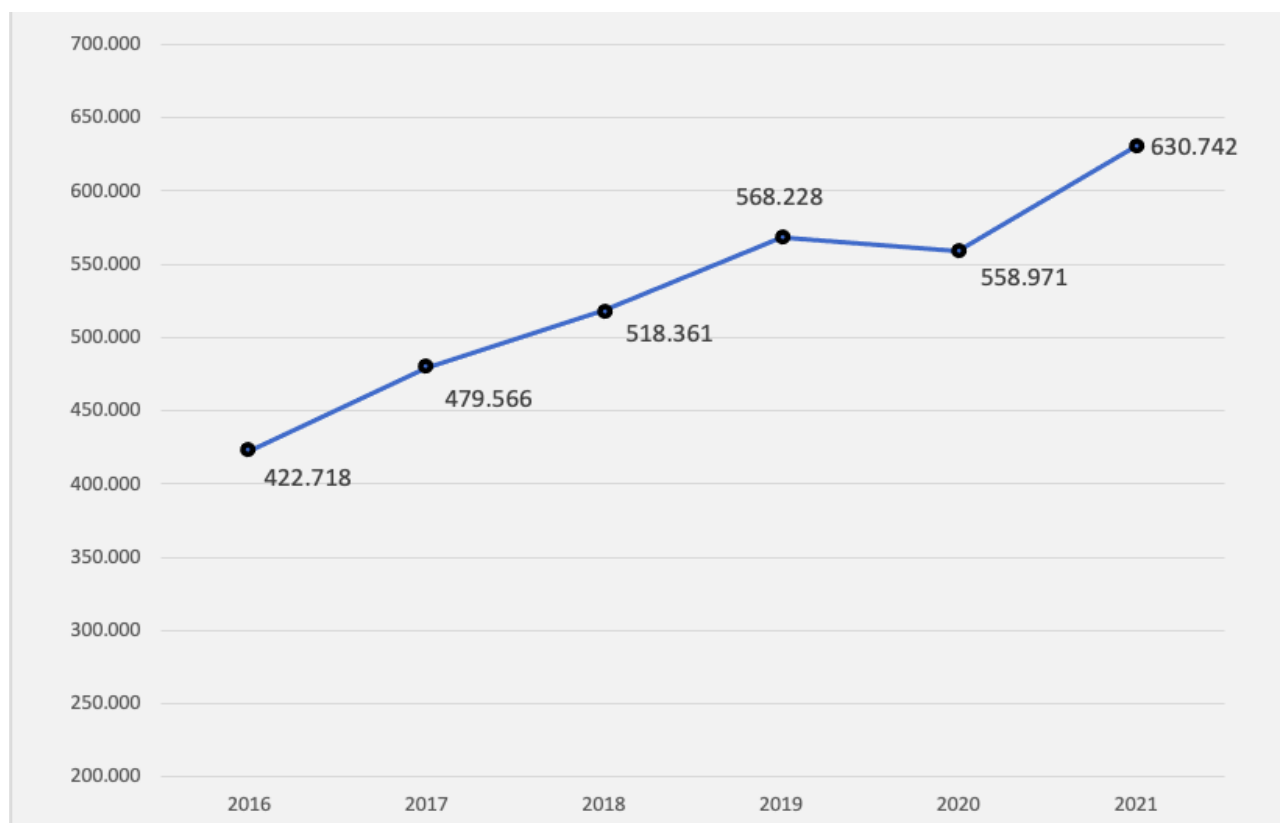
¹⁹ ADPF 779 Mc-Ref/DF. Available at: <https://jurisprudencia.stf.jus.br/pages/search/sjur446516/false>.

²⁰ Available at: <https://dossies.agenciapatriciagalvao.org.br/dados-e-fontes/pesquisa/redes-de-apoio-e-saidas-institucionais-para-mulheres-em-situacao-de-violencia-domestica-no-brasil-instituto-patricia-galvao-ipec-2022/>.

²¹ Monitoring Panel of the Emergency Protective Measures of the Maria da Penha Law. Available at: https://medida-protetiva.cnj.jus.br/s/violencia-domestica/app/dashboards#/view/5ff5ddea-55e6-42a6-83fa-710d40507c3f?_g=h@2463b39.

²² Monitoring of the National Judicial Policy to Combat Violence against Women. Available at: https://paineis.cnj.jus.br/QvAJAXZfc/opendoc.htm?document=qvw_l%5Cpaineis.cnj.qvw&host=QVS%40neodimio03&anonymous=true&sheet=shVDRResumo.

Graph 1 - Number of new cases of domestic violence in the CNJ from 2016 to 2021.

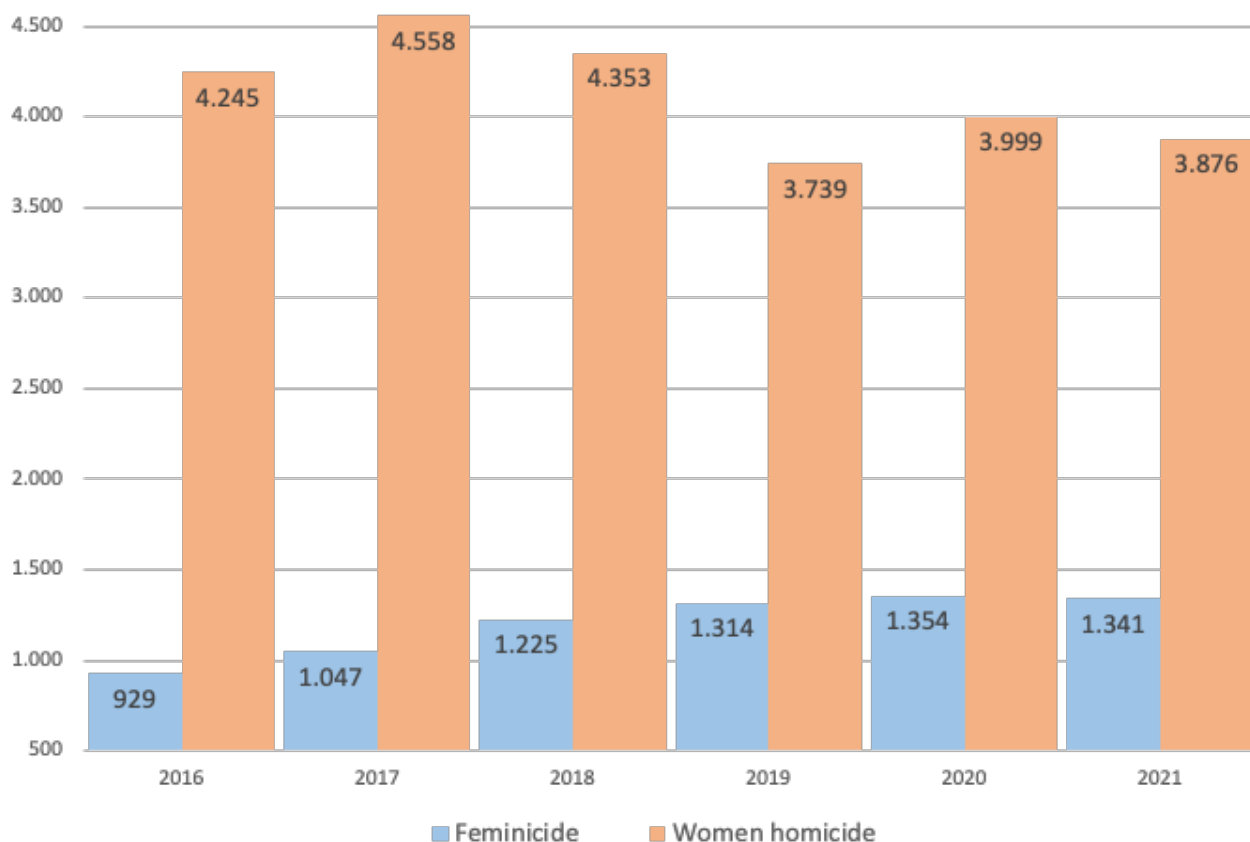


Source: CNJ (2022).

When violence against women reaches its maximum, murder, the Brazilian authorities still have difficulty typifying the crime correctly and, often, homicide resulting from the fact that a person is a woman is confused with common homicides, whose rate is also important in this social group. Data organized by the Brazilian Forum on Public Security²³ over the years and released through the Public Security Yearbooks indicate these numbers and establish a comparison between crimes of common homicide against those typified as femicide, as shown in Graph 2. Considering that the Femicide Law was enacted in 2015, it is possible to perceive the progressive change of the typification over the years.

²³ Brazilian Yearbooks of Public Security. Available at: <https://forumseguranca.org.br/anuario-brasileiro-seguranca-publica/>.

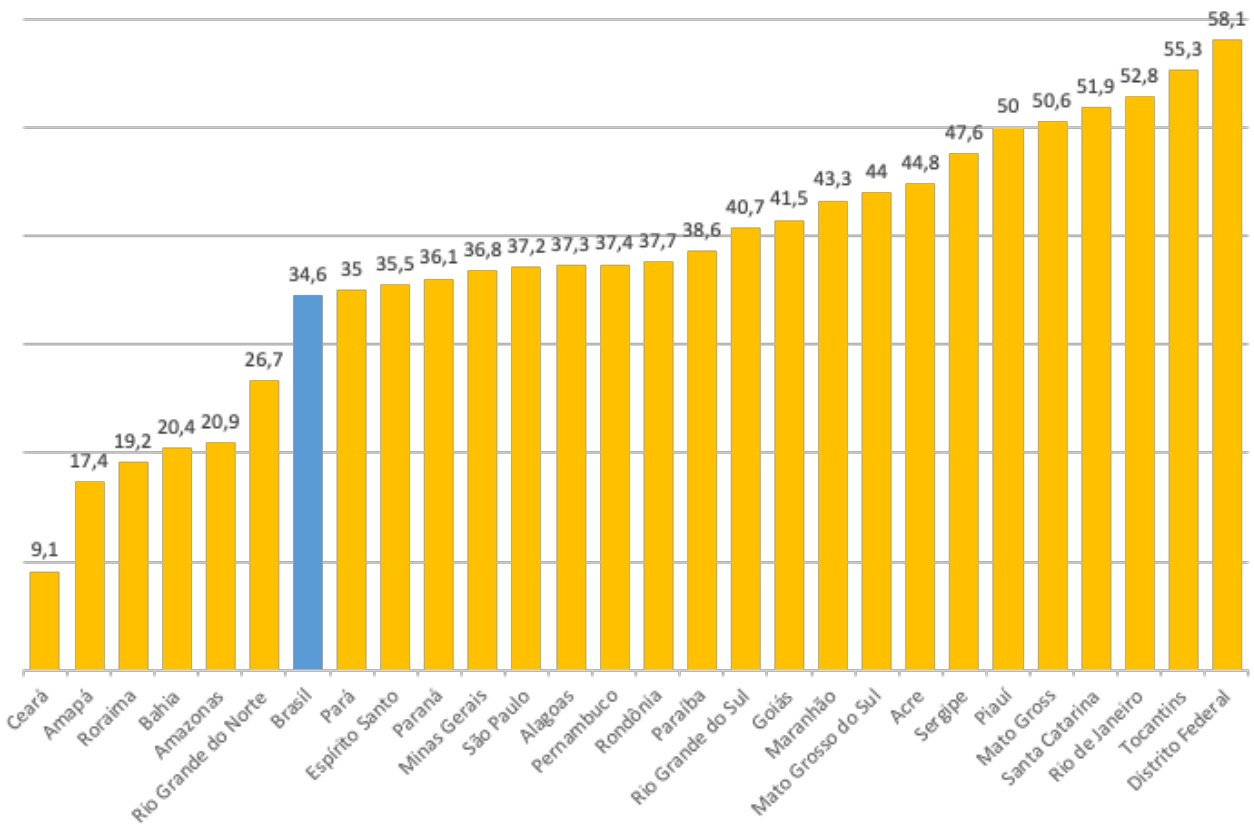
Graph 2 - Homicide of women and femicide between 2016 and 2021.



Source: Brazilian Forum on Public Security (2018, 2019, 2020, 2021, 2022).

The 2022 Public Security Yearly Report presents data on the typification of femicide by federative states and the numbers indicate considerable differences, as shown in Graph 3. The analysis highlights that the correct typification presents challenges that involve different state protocols, as well as the subjectivity of discernment of the police authority that registers the crime, which has generated underreporting. In the country, 34.6% of female homicides are classified as femicide, in the Federal District they are 58.1% and in the opposite extreme, in Ceará, they are 9.1%.

Graph 3 - Proportion of female homicides classified as femicide in 2021.



Source: Brazilian Forum on Public Security (2022).

The racial component is present in lethality and typification. While in the records of femicide 37.5% of the victims are white and 62% black, in the other violent deaths, 28.6% are white and 70.7% are black. Finally, gender violence against cisgender women simply because they are women is also directed at trans people, who are murdered and suffer all sorts of aggressions for their gender identity. Even in the face of significant underreporting and lack of official data, according to a report²⁴ by the National Association of Travestis and Transsexuals, in 2022 there were 131 murders in Brazil, the country that kills the most trans people, 76% of which were black people.

In addition to violence, inequalities in access to rights are crossed by gender and race and affect women more and black women much more. In the second quarter of 2022, according to a report²⁵ by the Pact to Promote Racial Equity, white men had an average income 30 percent higher than white women, 64 percent higher than black men, and 102 percent higher than black women. Unemployment also hits black women hardest. While the unemployment rate was 7.1% among

²⁴ Dossier Murders and Violence against Brazilian Transvestites and Transsexuals in 2022. Available at: <https://antrabrazil.files.wordpress.com/2023/01/dossieantra2023.pdf>.

²⁵ Black women in the Brazilian labor market: wage inequalities, representativeness and education between 2010 and 2022. Available at: https://storage.googleapis.com/pacto-public-documents/report_black_women.pdf.

white men, among black men it was 10.1%, among white women it was 10.7% and among black women it was 17.1%. These data help explain why food insecurity affected 64.1% of Brazilian households for which women were responsible, with 19.3% in severe food insecurity, according to De Olho na Fome²⁶. Considering race, 65% of the households for which a black person was responsible were also at some level of food insecurity, with 18.1% being severely food insecure. Gender inequality in conjunction with racial inequality still prevails in the country.

4 Article 6 - Right to Life

The compliance with the State obligations relevant to this article also presents important inequality components. In the overall population, average life expectancy rose from 71.3 years in 2003²⁷ to 76.6 years in 2019²⁸.

The infant mortality rate fell from 29.2 per thousand born in 2000 to 13.82 per thousand in 2015²⁹, a significant drop, but close to the Latin American average, alongside several countries with a lower development index³⁰, which also demonstrates the difficulty of Brazil, an economic power in the region, in translating financial gains into better conditions for its population. Black children are 39% more likely to die by the age of 5 than white children. When it comes to indigenous children, the proportion is raised to 95%³¹. Occurrences of postpartum death, diarrhea and death from malnutrition are considerably higher in black and brown mothers and children, compared to white mothers and children.

In Brazil, more than 700,000 deaths have occurred from coronavirus infection, with an estimated 400,000 preventable deaths³², in a context of denial of the severity of the pandemic, spread of misinformation by the government itself, intentional neglect of vulnerable sectors and blackout by the federal government of data on dead and contaminated. The mortality rate among the indigenous population was twice as high as the white population³³. The indigenous population itself had to put in place measures of self-defense, data production and awareness. For every 100,000

²⁶ II National Survey on Food Insecurity in the Context of the COVID-19 Pandemic in Brazil. Available at: <https://olheparaafome.com.br/wp-content/uploads/2022/06/Relatorio-II-VIGISAN-2022.pdf>.

²⁷ Available at: <https://agenciadenoticias.ibge.gov.br/agencia-sala-de-imprensa/2013-agencia-de-noticias/releases/12863-asi-em-2003-expectativa-de-vida-do-brasileiro-subiu-para-713-anos>.

²⁸ Available at: <https://agenciadenoticias.ibge.gov.br/agencia-sala-de-imprensa/2013-agencia-de-noticias/releases/29502-em-2019-expectativa-de-vida-era-de-76-6-anos>.

²⁹ Available at: <https://brasilemsintese.ibge.gov.br/populacao/taxas-de-mortalidade-infantil.html>.

³⁰ Available at: <https://www.macrotrends.net/countries/LCR/latin-america-and-the-caribbean/infant-mortality-rate>.

³¹ Available at: [https://www.thelancet.com/journals/langlo/article/PIIS2214-109X\(22\)00333-3/fulltext](https://www.thelancet.com/journals/langlo/article/PIIS2214-109X(22)00333-3/fulltext).

³² Available at: <https://www12.senado.leg.br/noticias/materias/2021/06/24/pesquisas-apontam-que-400-mil-mortes-poderiam-ser-evitadas-governistas-questionam>.

³³ APIB: Indigenous Emergency, available at: <https://emergenciaindigena.apiboficial.org/en/dados-covid-19-novo/>

inhabitants, in the age group between 50 and 59 years, there were 57.4 deaths of non-indigenous people and 130.3 deaths of indigenous people³⁴.

Moreover, while some Brazilian cities have admittedly decreased the proportion of violent deaths, police brutality is perpetrated mainly against the Afro-descendant, Roma, poor and peripheral population, in addition to the recent police attacks against the indigenous population.

4.1 Executions of the Afro-Brazilian Population in Favelas

There is a pattern of executions by police forces in raids on slum areas, recognized by the United Nations special procedures³⁵. In theory, police actions are aimed at combating drug trafficking. As a consequence, there is a high number of executions by the police forces, whose victims, in their great majority, are young and black, residents of the respective regions.

4.1.1 Vila Cruzeiro (Rio de Janeiro) - on May 25, 2022, an incursion by police forces into the Cruzeiro favela caused the summary execution of 26 residents of the community, mostly young black men. This was the second deadliest killing in the city's history, after the Jacarezinho massacre the previous year. The operation was carried out in direct violation of ADPF 6351, which restricted police incursions into favelas during the pandemic. The Federal Prosecution and Office was informed at the last minute, making it impossible to assess the legal terms of the operation in real time. This operation was in violation of the STF's ADPF 6351, restricting police incursions in slums during the pandemic. The Prosecution was notified only at the last minute, thus there was no prior assessment of the legal grounds of the operation.

4.1.2 Jacarezinho (Rio de Janeiro) - On May 6, 2021, Rio de Janeiro's civil police launched Operation Exceptis in the Jacarezinho favela of about 60,000 inhabitants, mostly poor and Afro-descendants. 250 police officers, 4 armored vehicles and two helicopters were used in the operation. The operation resulted in the execution of at least 28 people, including a police officer, as well as the wounding of six other people. The violence was compounded by the fact that the operation was conducted at dawn, with several residents preparing for their daily activities, including children, on the streets. Stray bullets hit public transport vehicles, injuring passengers. There were also reports of point-blank shooting even as the victim surrendered. There were reports of torture of detainees, as the Forensic Service confirmed in its report. Witnesses suffered reprisals for reporting the violations³⁶.

4.1.3 Genivaldo de Jesus dos Santos - Exactly two years after the death of George Floyd, on 25 May 2022, at around 11am, Genivaldo de Jesus Santos, 38 years old, black man, diagnosed with schizophrenia, was approached by Federal Road Police agents while riding without a helmet in the Umbaúba municipality, Sergipe State. During the approach, he was tortured and killed. Witnesses

³⁴ SESAI 2021 Report.

³⁵ JAL BRA 14/2021, JAL BRA 4/2021, JAL BRA 9/2019, JAL BRA 10/2018, and AL BRA 7/2017.

³⁶ AL BRA 4/2021.

say he cooperated with the agents and even reported his psychiatric condition. He was immobilized and thrown to the ground and hit with pepper spray, though he offered no resistance. He was victimized by name-calling and kicking and placed in the trunk of the vehicle, having been assaulted for 30 minutes. In the closed trunk of the police vehicle, one of the agents threw gas and pepper spray and, although the victim asked for help, was kept there for 15 minutes. The population who witnessed and filmed what happened, despite trying, could not intervene because they were threatened by the agents. The victim's wife, who arrived at the scene when Genivaldo was already inside the vehicle, asked the agents to open the trunk so he could breathe, and heard in an ironic response: "He's better than us, he is ventilated"³⁷.

4.1.4 Other Cases of Racial Violence - Other vulnerable sectors of society also suffer from racism and police brutality. In the south of the state of Bahia, the Roma population is a constant target of police violence, including the execution by military police of members of the community, followed by a real hunt for the other members, through advertisements on social media posted by the military police themselves involved.

In the state of Mato Grosso, a border zone with Bolivia³⁸, on August 11, 2020, four members of the indigenous Chiquitano people were executed by the Military Police.

In all cases, the "auto de resistência" is a common exoneration argument³⁹. In the first investigative reports, a thesis according to which the victims offered resistance to police action and were therefore murdered, contrary to the various autopsies demonstrating acts of extrajudicial execution. In this way, impunity is already present in the first moments of the investigation.

4.1.5 Difficult Dialogue between the Federal and State Governments to Address these Violations - The dialogue between the federal sphere and the state spheres, which have a predominant constitutional competence in matters of public security, on the fulfillment of the obligations arising from the Pact is almost non-existent. After several visits and special procedures pointing to the severity of police violence, the challenge of eradicating this practice remains.

5 Article 7 - Prohibition of Torture and Cruel, Inhuman and Degrading Treatment

5.1 Systemic Violations

Although the criminalization of torture is provided for by law and there is a system aimed at supervising, monitoring and punishing the respective violations, torture continues to be recurrently used as a practice by Brazilian police institutions. It occurs inside and outside prisons and, most of

³⁷ Available at: <https://www.noticiasominuto.com.br/brasil/1912114/3-policiais-agrediram-genivaldo-de-jesus-por-30-minutos-dizem-moradores>.

³⁸ Available at: <https://cimi.org.br/2020/09/chacina-de-indigenas-chiquitanos-segue-impune-e-mobiliza-organizacoes-sociais-do-brasil-e-bolivia/>.

³⁹ Available at: <https://www.ohchr.org/en/press-releases/2015/09/brazil-minorities-urge-promises-equality-be-fulfilled-un-rights-expert>.

the time, lacking thorough investigation and accountability. Conversely, its practice is institutionally invisible, relying on an articulation between police and justice institutions that naturalizes and perpetuates the practice of torture.

The National Council of Justice (CNJ) shows that between 2019 and July 2022, there were at least 44,200 complaints of torture and ill-treatment made at the time of detention reported at custody hearings, doubling the previous four years⁴⁰. The Pastoral Carcerária denounces that, in 2022, reports of torture in prisons increased by 37% throughout the country. The report "Voices and data of torture in times of mass incarceration"⁴¹, recorded 369 cases reported between 2021 and 2022, and of this total, 52.2% relate to physical aggression, such as punches, slaps, kicks, shots, beatings; 18.38% to verbal aggression, such as name-calling and humiliation; 1.73% to discrimination based on race/color, ethnicity, gender identity or sexual orientation; 36.32% to the use of degrading treatment, such as keeping incarcerated people sitting on the floor under hot sun, deprivation of sunbathing for days for months, etc.

The report also points out that, of the registered cases, 30.01% deal with violation of the rights of family members, such as denial of the right to visit, denial of the right to send basic survival items, denial of the right to send letters; 1.34% of sexual violence committed by the police; 2.24% vexatious checks; 13.9% of the use of firearms, pepper spray, tear gas bomb, stun bomb, rubber bullet or other torture tools such as baton, broomstick, plastic bag for suffocation, wire, wet towel etc.; 55.1% of the lack of healthy food, drinking water and absence of basic hygiene items; 47.53% of lack of medications, of necessary surgical procedures; and 9.41% of lack of legal assistance.

5.2 Prison conditions

There are structural problems on minimum conditions of habitability, such as the lack of mattresses and beds for the rest of the imprisoned people; the distribution of food unfit for consumption or the lack of any food; the lack of drinking and hygienic water in the cells; as well as the lack of pads or remedies specific to female conditions; the closure of the prison to civil society. In the report "Torture in Times of Mass Incarceration", released in 2016 and containing data from complaints collected from 2005 to 2016, the main forms of torture demonstrated degrading conditions of imprisonment (71 cases) and physical aggression (70 cases). In 2023, the report "Voices and Data on Torture in Times of Mass Incarceration", with data from January 1, 2021, to July 31, 2022, elucidated that main types of violence applied to torture were negligence in the provision of material assistance (123 cases), physical assaults (116 cases), and negligence in the provision of health care (106 cases). In addition to the dissemination of the National Prison Pastoral database, these figures show the cruelty in Brazilian prisons. The rise of hate speech to the highest echelons of government and the disdain of progressive groups towards the prison system are some of the catalysts for the increase in these numbers. Another factor is the militarization of the prison system,

⁴⁰ Available at: www.conjur.com.br/2022-ago-03/34-anos-depois-aprovacao-fim-tortura-casos-dobram-pais.

⁴¹ Available at: <https://static.poder360.com.br/2023/01/pastoral-carceraria-torture-us-prisoners-18jan-2023.pdf>.

with its maxims being the institution of the Penitentiary Intervention Task Forces and the approval of Constitutional Amendment No. 104, which raised the category of penitentiary agent to the criminal police.

Brazil is obliged to comply with the CAT and OP-CAT and accordingly enacted Federal Law No. 9,455/1997, which typifies the crime of torture. Brazil, acceding to the OP-CAT established the National System for Preventing and Combating Torture, including the National Mechanism for Preventing and Combating Torture and the National Committee for Preventing and Combating Torture^{42 43 44}. After the previous administration have severely restricted the functioning of this System, the new federal administration adopted new decrees reinstating the remuneration of the experts⁴⁵. Similarly, the STF ruled on the case, mandating the Executive also provide the necessary means for the functioning of the system⁴⁶.

The National Mechanism has produced a set of Reports showing the existence of torture in the country and the insufficiency of the measures taken for its eradication⁴⁷. Regarding the NPM, the Brazilian State has not yet granted and forwarded the appeal made by the Federal Supreme Court for "the necessary conditions to be established in law so that the powers of the MNPCT are exercised with due legal certainty and independence, according to the commitment assumed by the Brazilian State in the national and international order" (ADPF Judgment No. 607). There is an objective limit still pending, i.e. is the capillarization of this system through the creation of Committees and Mechanisms in the federated units, the States. They have been implemented only in nine of the 27 units of the federation⁴⁸, and others partially implemented according to international standards⁴⁹. There is no Committee nor Mechanism in eight States⁵⁰.

⁴² The Convention was adopted by Federal Decree No. 40/1991 and the Optional Protocol by Federal Decree No. 6085/2007. The prohibition of torture is provided for in article 5, item III, of the 1988 Federal Constitution, which states: "no one shall be subjected to torture or to inhuman or degrading treatment".

⁴³ Available at: www.planalto.gov.br/ccivil_03/ato2011-2014/2013/lei/l12847.htm.

⁴⁴ Available at: www.planalto.gov.br/ccivil_03/ato2011-2014/2013/Decreto/D8154.htm#art26.

⁴⁵ Federal Decrees No. 11,341 and 11,394/2023. Available at: https://www.planalto.gov.br/ccivil_03/ato2023-2026/2023/Decreto/D11341.htm and https://www.planalto.gov.br/ccivil_03/ato2023-2026/2023/Decreto/D11394.htm.

⁴⁶ ADPF Judgment No. 607. Available at: <https://portal.stf.jus.br/processos/downloadPeca.asp?id=15351516552&ext=.pdf>.

⁴⁷ For further information on the various reports, please access <https://mnpctbrasil.wordpress.com/relatorios/>.

⁴⁸ Rio de Janeiro (State Law No. 5,778/2010); Pernambuco (State Law No. 14,863/2012); Rondônia (State Law No. 3,262/2013); Paraíba (State Law No. 9,413/2011); Espírito Santo (State Law No. 10,006/2013); Maranhão (State Law No. 10,334/2015), Goiás (State Law No. 19,684/2017); Mato Grosso do Sul (State Law No. 5,314/2018); and Sergipe (State Law No. 8,135/2016).

⁴⁹ Acre (State Decree No. 7,304/2020); in Alagoas (State Law No. 7,141/2009); in Amapá (State Law No. 2,226/2017); in Amazonas (State Decree No. 37,178/2016), in Bahia (Decree No. 10,652/2007), in Ceará (State Decree No. 30,573/2011); in Pará (Resolution CESP No. 159/2010); in Piauí (State Decree No. 14,233/2010); and Rio Grande do Norte (State Decree No. 29,268/2019).

⁵⁰ The Federal District, Mato Grosso, Minas Gerais, Paraná, Roraima, Rio Grande do Sul, São Paulo and Tocantins.

6 Article 8 - Prohibition of Slavery

A survey by the Superior Labor Court (TST) of 2022 shows that the Labor Court of Brazil judged 10,482 cases related to slave-like labor in the last 5-year period, which would represent a 41% increase in the number of such cases⁵¹. It has even been frequent the disclosure in the media of people rescued from work analogous to slavery in Brazil, in cases of flagrant submission of these people to degrading conditions and, often, also of physical and psychological torture. One of the cases that deserved to be highlighted this year was the rescue of 207 workers who worked in the grape harvest in Bento Gonçalves (Rio Grande do Sul State) in February. The men were recruited by a company hired by 3 large wineries, in most cases, in Bahia, and were found in lodgings in degrading conditions, with exhausting working hours of 14 hours a day without breaks and with reports of physical punishments amounting to torture or degrading treatment: beatings, use of pepper spray and electrical discharges with stun guns⁵².

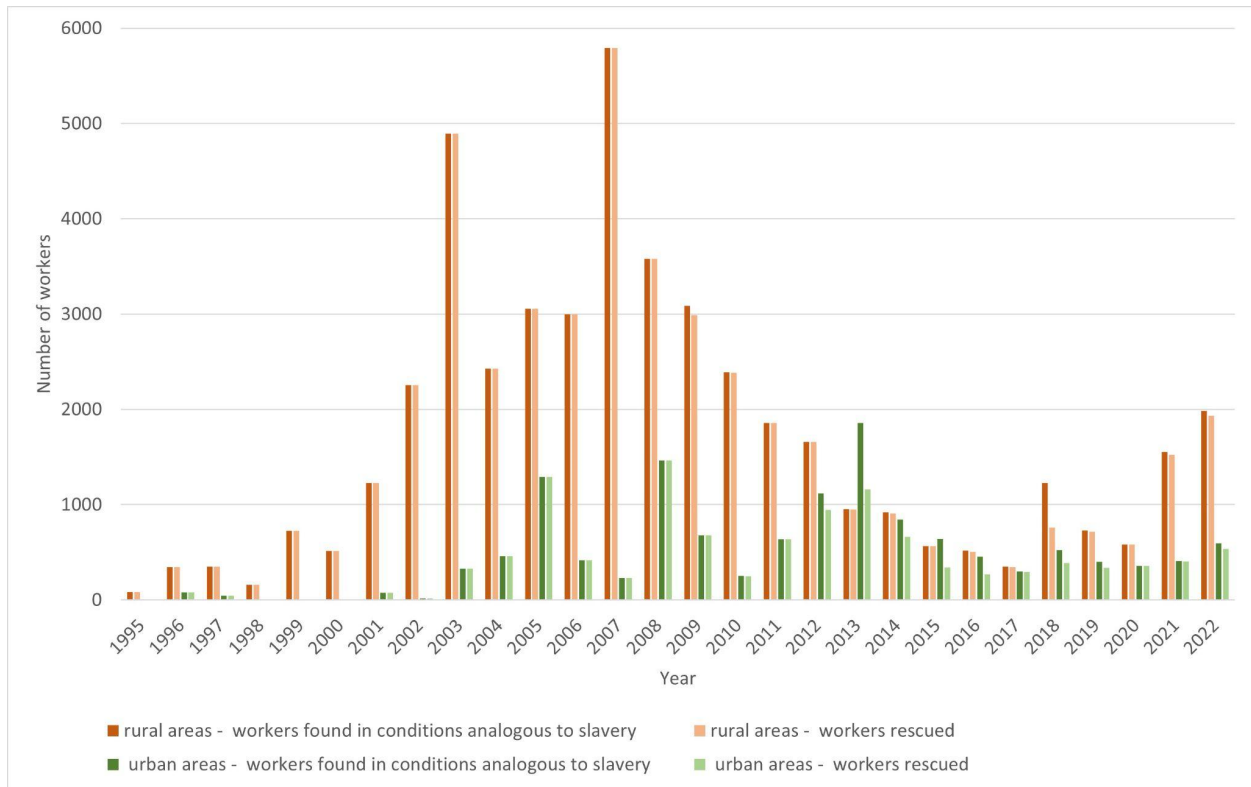
In 1995, the system of inspection of labor analogous to slavery was created. Data from the Labor Inspection Information and Statistics Panel in Brazil⁵³ indicate that, by 2022, 6,602 establishments were inspected and 60,251 workers were rescued in conditions analogous to slavery, 4,710 establishments and 46,779 workers in rural areas and 1892 establishments and 13,472 workers in urban areas. The number of workers rescued over these years can be seen in Graph 4. It is remarkable the significant increase in the number of workers found in these conditions in rural areas in recent years.

⁵¹ Available at: <https://www.tst.jus.br/-/tst-publica-série-de-postagens-sobre-trabalho-análogo-à-escravidão>.

⁵² Available at: <https://noticias.uol.com.br/colunas/leonardo-sakamoto/2023/02/25/escravizados-na-producao-de-vinho-no-rs-recebiam-choques-e-spray-de-pimenta.htm>.

⁵³ Available at: <https://sit.trabalho.gov.br/radar/>.

Graph 4 - Workers found in conditions analogous to slavery and rescued workers in rural and urban areas of Brazil from 1995 to 2022.

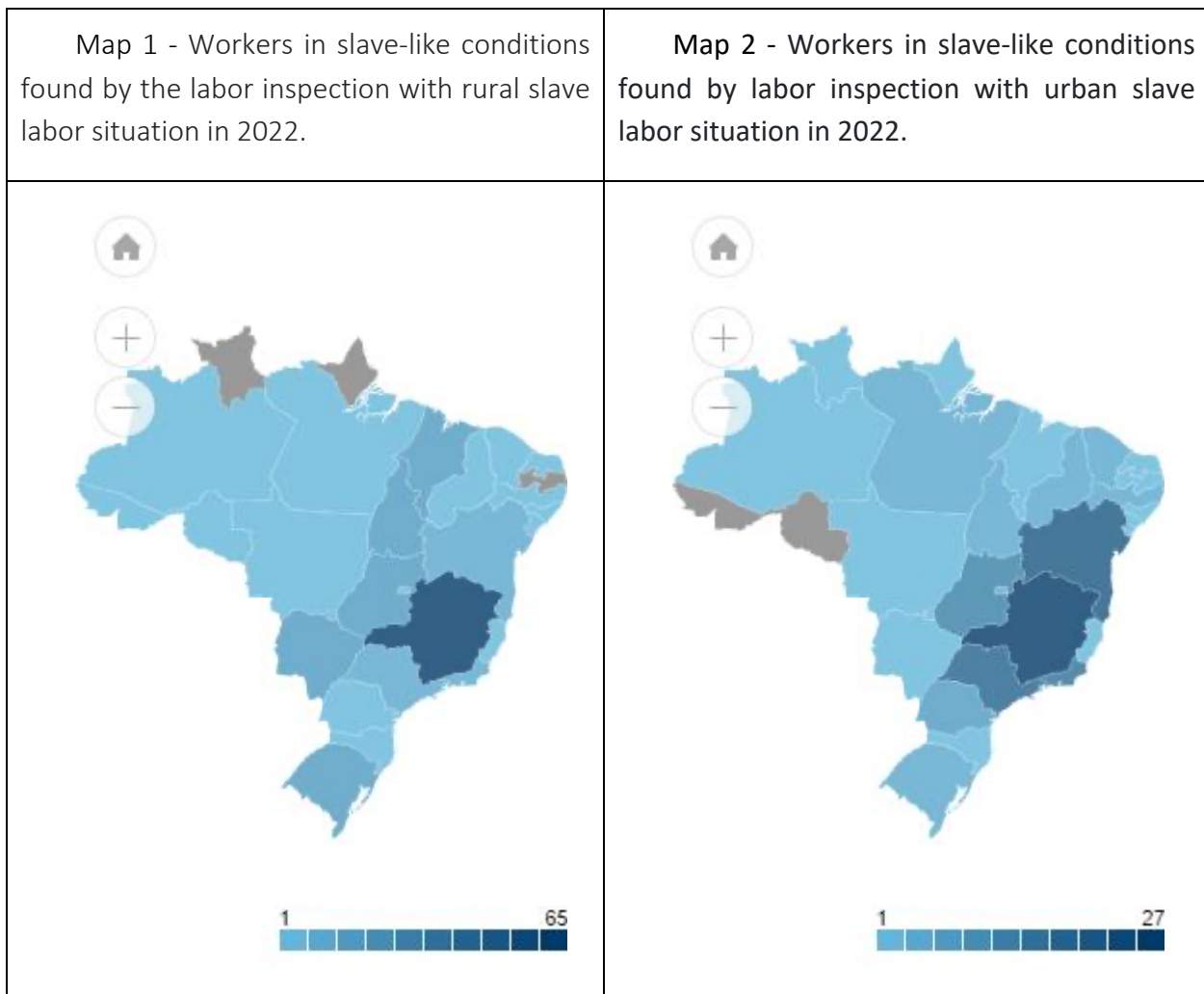


Source: Statistics and Information Dashboard of Labor Inspection in Brazil.

The graph also shows the difference between the number of workers found in work analogous to slavery in each year and those actually rescued in the inspections carried out. The absence of publication of the reports of inspections to combat labor analogous to slavery means that the causes of this difference cannot be identified. These reports have not been published on the respective website of the Ministry of Labour and Employment since 1999⁵⁴.

In any case, it is important to note that inspections and rescues do not have an equitable geographical distribution across the country, which can be from the consultation of the Panel data year by year by state and by municipality. Maps 1 and 2 show a relevant concentration of workers found in the year 2022 in the State of Minas Gerais, both in rural and urban areas.

⁵⁴ Reports of Inspections to Combat Slave Labor. Available at: https://www.gov.br/trabalho-e-emprego/pt-br/assuntos/inspecao-do-trabalho/areas-de-atuacao/copy_of_combate-ao-trabalho-escravo-e-analogo-ao-de-escravo.



The Panel also allows consultation of data for each CNAE (National Classification of Economic Activities). In this case, the concentration of workers found in the sector of "manufacture of garments, except underwear" in the city of São Paulo is remarkable. From 2010 to 2022, 76 establishments were inspected, where 494 workers were found in conditions analogous to slavery, with the rescue of 491 of them.

Another field that deserves special attention is that of domestic servants. This is a particularly vulnerable sector, given the persistence of informality, even after the promulgation of the so-called "PEC das Domésticas", (the "Maids' Constitutional Amendment Bill"), which changed the wording of the sole paragraph of article 7 of the Federal Constitution to establish equal labor rights between domestic workers and other urban and rural workers⁵⁵. Data from IPEA reveal that in 2018, already 5 years after the enactment of this constitutional amendment, only 28.6% of domestic workers had a formal contract⁵⁶. Data from the Panel show a significant increase in the number of workers in

⁵⁵ Constitutional Amendment n. 72/2013. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc72.htm.

⁵⁶ The challenges of the past in the domestic work of the XXI century: reflections for the Brazilian case from the data of the Continuous PNAD. Available at: <https://repositorio.ipea.gov.br/handle/11058/9538>.

conditions analogous to slave labor in Brazil in the CNAES "Domestic Services": there were 2 workers rescued in 2017, 2 in 2018, 5 in 2019, 3 in 2020, 30 in 2021, 30 in 2022 and already 3 in 2023, totaling 75 people. Of these, most of the rescues took place in the urban sphere: 1 in 2017, 2 in 2019, 3 in 2020, 22 in 2021, 26 in 2022 and 1 in 2023, for a total of 55 workers.

An emblematic case of domestic work analogous to slavery was the rescue, in March 2022, in Rio de Janeiro, of an 84-year-old woman who was exploited for 72 years by three generations of a family, without study, time off, vacation or salary and even without leaving the house at any time. It is the case of the longest exploitation of a person in contemporary slavery since the creation of the inspection system in May 1995. These long periods of relationship between bosses and workers are common in cases of domestic work analogous to slavery, unlike cases of work for economic exploitation – on farms and coal plants, for example – which usually last the size of an enterprise (months or a few years)⁵⁷. In this case, persons in the house told the labor auditor who acted in the rescue that she was not considered a maid because she was "like family", that they had no reason to pay her salary because she ate and slept on the spot and that she was called a "black mother"⁵⁸. These two expressions are common in Brazil and customarily used in situations of domestic work analogous to slavery. Although hiring domestic work is a relatively cheap luxury in Brazil, the profession was only regulated in 2015⁵⁹ and it is common for poor – and mostly black – girls and adolescents to be taken from their families by those who will come to exploit their work under the claim that they will take care of them or that they will put them to study, which may not be within the reach of their family of origin given the great social inequality of the population of Brazil. This was the case with this exploited woman for 72 years. Her parents worked in the countryside, on the family farm that had exploited her for decades. She was taken, at the age of 12, for domestic work in the house of the owners of the said farm, to the then capital of the country, with the promise that she would study. Afterwards, the employer did not even allow her to leave the house and controlled visits and phone calls, making it difficult to contact people outside the house. With her death, the woman was taken to the house of the couple's daughter, as if she were the object of inheritance^{57 58}. This case illustrates how work analogous to slavery in Brazil is often related to child labor, which is discussed later in the text.

It is also worth noting that the rescue of people in domestic work analogous to slavery still has a particular challenge in Brazil: the rescues are made by labor auditors-inspectors and through complaints. The first difficulty, then, is to create a culture of denouncing these cases, given the aforementioned naturalness with which this exploitation is often seen. In this sense, the Brazilian State, through the Ministry of Labor and Employment, has a campaign for decent domestic work⁶⁰,

⁵⁷ Available at: <https://reporterbrasil.org.br/2022/05/mulher-e-resgatada-apos-72-anos-de-trabalho-escravo-domestico-no-rio/>.

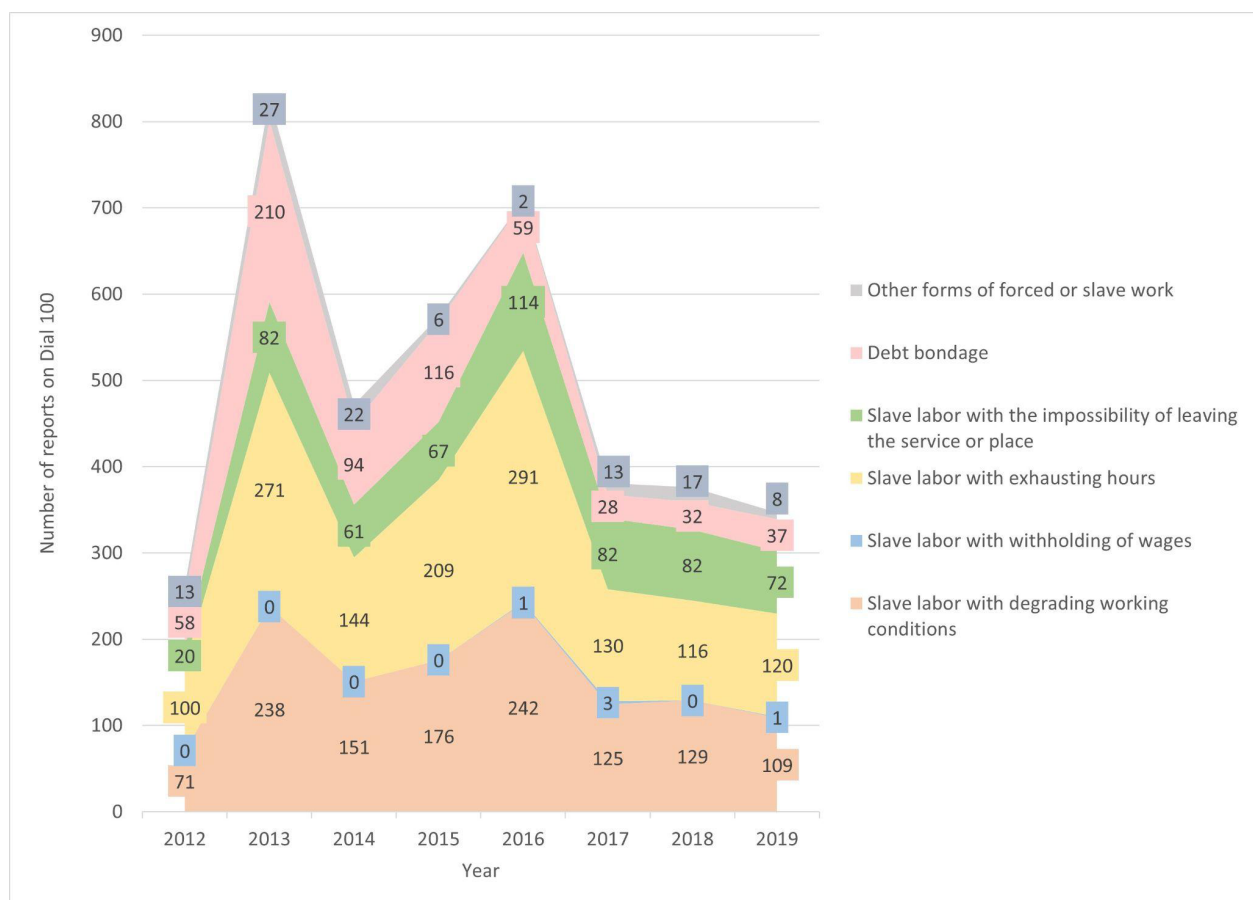
⁵⁸ Available at: <https://www.cnnbrasil.com.br/nacional/mulher-de-86-anos-e-resgatada-apos-72-anos-de-trabalho-em-condicoes-analogas-a-escravidao/>.

⁵⁹ Complementary Law n. 150/2015, which provides for the domestic work contract. Available at: https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp150.htm.

⁶⁰ Available at: https://www.gov.br/trabalho-e-emprego/pt-br/assuntos/inspecao-do-trabalho/fiscalizacao-do-trabalho/trabalho_domestico.

which needs to be expanded. Considering all the CNAES, data from the Smart Lab – Observatory for the Eradication of Slave Labor and Human Trafficking, an initiative of the Public Ministry of Labor in partnership with the ILO in Brazil⁶¹, show that, from 2012 to 2019, a total of 3949 complaints were received on Dial 100 in the categories [1] slave labor with degrading working conditions, [2] slave labor with withholding of wages, [3] slave labor with exhausting hours, [4] slave labor with the impossibility of leaving the service or place, [5] debt bondage, and [6] other forms of slave or forced labor, distributed as shown in Graph 5⁶². It is noteworthy, in this case, the prevalence of complaints regarding slave labor with degrading conditions of work and slave labor with exhausting hours, as well as the reduction in the number of complaints received in the last years of the period.

Graph 5 - Evolution of reports of work analogous to slavery on Dial 100 from 2012 to 2019.



Source: Observatory for the Eradication of Slave Labor and Human Trafficking.

Conversely, the challenge regarding the rescues of people in domestic work analogous to slavery is not restricted to the submission of complaints. Often the auditors have difficulty in supervising the complaints received, in view of the principle of inviolability of one's home, guaranteed in the Federal

⁶¹ SmartLab Technical Note n. 1/2017. Available at: https://www.ilo.org/wcmsp5/groups/public/---americas/---ro-lima/---ilo-brasilia/documents/genericdocument/wcms_555892.pdf.

⁶² Available at: <https://smartlabbr.org/trabalhoescravo>.

Constitution of 1988, even though [1] the law specifies, in article 5, item XI, what authorizes the entry of third parties into the residence of others without the consent of the resident without the establishment of a situation of illegality, that is, "in case of flagrante delicto or disaster, or to render relief, or, during the day, by judicial determination"⁶³; [2] Article 149 of the Penal Code classifies it as a crime the act of reducing someone to the condition analogous⁶⁴ to that of a slave and, in theory, [3] it is "legally possible for the Auditor-Fiscal of Labor to enter the domicile of the employer, even if against his will, without the prior issuance of a judicial warrant, since it is a crime of a permanent nature, it is legally incumbent upon the labour authority to terminate it", since the said auditors-inspectors have the power of administrative police⁶⁵.

The case of this woman rescued at the age of 84 also allows us to pay attention to the racial dimension in relation to work analogous to slavery in Brazil. The country abolished slavery belatedly, in 1888, and even today the inequality between blacks and non-blacks is naturalized, as well as the exploitation of the labor of black people. A survey by Repórter Brasil based on data from the Undersecretariat of Labor Inspection, through the Access to Information Law, revealed that every 4 out of 5 workers rescued in a situation analogous to slavery between 2016 and 2018 were black. After the rescue, rescued workers can receive "rescued worker unemployment insurance," a temporary aid intended for victims. It was the data from this register that were used in this survey, which reveals that 82% of the 2,400 workers who have already received unemployment insurance after rescue were black and brown, and among the rescued blacks are mainly men (91%), young people from 15 to 29 years old (40%) and born in the Northeast (46%). In the period studied, of 2,570 rescued workers, 2,481 received aid (96%), of which 343 declared themselves white and 2,043 black (sum of blacks and browns). The others declared themselves yellow (18), indigenous (66) or did not declare their race. In addition, 56% of those rescued did not even complete elementary school; 14% were even illiterate⁶⁶.

7 Article 10 - Persons Deprived of Liberty

The 2022 research, *Reports of invisibility: representatives of public actors on the application of the legal framework of early childhood in the female penal and socio-educational scenario*⁶⁷, developed by the National Council of Justice (CNJ) and the UNDP, analyzes the universe of adolescents in hospitalization, including young mothers of children up to 6 years of age. According to the data, the invisibility of adolescents, including those belonging to traditional peoples (quilombolas and

⁶³ Available at:

http://www.planalto.gov.br/ccivil_03/constituicao/constituicaocompilado.htm.

⁶⁴ Available at: http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848compilado.htm.

⁶⁵ VIRGINIO, JF. The supervision of contemporary domestic slave labor and household inviolability: an analysis from the perspective of the power of the administrative police of labor inspection.. Available at: <https://enit.trabalho.gov.br/revista/index.php/RevistaEnit/article/download/159/100/974>.

⁶⁶ Available at: <https://reporterbrasil.org.br/2019/11/negros-sao-82-dos-resgatados-do-trabalho-escravo-no-brasil/>.

⁶⁷ Available at: <https://www.cnj.jus.br/wp-content/uploads/2023/04/relatos-da-invisibilidade-relatorio-qualitativo-2909.pdf>.

indigenous), is aggravated by non-compliance with the Legal Framework for Early Childhood. The normative, among other factors, indicates that the Public Power must guarantee to the adolescent mothers in deprivation of liberty coexistence with the sons and daughters in early childhood. However, if the coexistence with the child is not authorized or restricted to a short period, there is often the removal of family power and the permanent rupture of the maternal-filial bond. The mother-child relationship, according to the report, is treated as an additional mechanism of punishment.

The research also highlights so-called cultural obstacles, as a phenomenon that relates to "social conservatism". The tendency of this conservatism is to demand greater punishment for individuals "considered deviant, such as women and adolescents who, respectively, have committed a crime and an infractional act".

Another point of attention is the granting of assisted freedom. The measure restricts rights, but does not impose the total removal of the adolescent from her family and community. According to the research, in the evaluation of members of the Public Prosecutor's Office, adolescents involved in robberies or homicides, serious acts, however, will not have the right to assisted freedom.

8 Article 13 - Expulsion of Foreigners

8.1 Emblematic Cases

Two emblematic cases were followed, in Paraná, by the Casa Latino Americana (Casla):

8.1.1 Paraguayans with refugee status due to political persecution and death threats in Paraguay -
In 2001, Paraguayans Juan Arrom, Victor Colmán and Anuncio Martí sought refuge in Brazil, in the city of Curitiba (PR), due to the death threats they suffered in their country, for their participation in a left-wing political party, the Free Fatherland Party (PPL). They were accused of kidnapping the wife of a Paraguayan millionaire, but even proving that they had no involvement in this crime, they suffered kidnapping, torture and death threats, until they were forced to seek refuge in Brazil. The request was accepted and the three Paraguayans established roots in Curitiba, establishing a family, exercising their professional skills and studies.

In 2017, the Paraguayan government began pressuring the Brazilian government to extradite the three refugees. With the arrival of the Bolsonaro government and its Minister of Justice, Sérgio Moro, the negotiations of this deportation became more frequent, coinciding with commercial interests of both governments on the sale of surplus energy from the Itaipu Power Plant. Until, in 2019, Moro issued Ordinance 666 allowing the extradition of Paraguayans.

The real reason for the persecution and threats against Paraguayans was a complaint they filed against the Paraguayan State at the Inter-American Commission on Human Rights (IACHR). The trial of the case of torture and disappearance is in the final stages and involves several public agents and politicians who still maintain activity in the government. Among them, the current vice president of

Paraguay, Hugo Velázquez, who is a prosecutor and, at the time of the kidnapping, was responsible for collecting the confession of the accused.

There was, therefore, a serious violation of Law 9,474/97 in Brazil and the Refugee Statute of 1951, to which Brazil subscribed. The case before the Inter-American Commission on Human Rights (IACHR) is still pending a decision. The three Paraguayans are out of Brazil, pending a solution to the case, including from the UNHCR, which is following the process.

8.1.2 Africans having asylum applications denied by Conare - Other cases handled by CASLA are of Africans originating from countries that are considered democratic, but with internal religious or ethnic conflicts, unknown by migration agencies, especially the National Committee for Refugees (Conare), a body linked to the Ministry of Justice and Public Security, which rejects the requests.

A recent appeal was filed in favor of a refugee who had to leave his native country (Guinea Bissau) in search of refuge, due to persecution that he began to suffer for religious reasons, since he converted to Christianity, whose religion is not accepted and widely persecuted by the ancestral ethnicity PAPEL (in ethnic groups of Guinea Bissau), "The papers are an ethnicity originating in Guinea-Bissau. They currently represent 7% of the total Guinean population".

Another example was the case of an Angolan refugee who requested recourse to Brazil because she had had her asylum request denied by Conare, on the grounds that there is no conflict in Angola. However, Conare did not stick to the fact that this lady was a native of Cabinda, a region almost outside the territory of Angola, next to the Congo, where there are many conflicts, both internal and of the border country. She ended up returning to the Congo and could not return to Angola, leaving here all the structure she had already built with her work. Now she wants to return to Brazil, but she cannot afford the trip.

9 Article 14 - Right to a Fair Trial and Due Process

Considering that the bases of Brazilian society are rooted on the process of enslavement of black people, racism in Brazil has structured not only social relations, but also institutions. As in periods of slavery, the black population is still perceived as disenfranchised, at the same time that it is placed as dangerous, one that needs to be contained, repressed. Our legal system is often used to implement the incarceration of the black population. An example is that, despite the adoption of 20% vacancy reservation for black people by the Judiciary⁶⁸, racial diversity in the judiciary is still extremely low. The National Council of Justice (CNJ) itself recognized the ineffectiveness of its racial equity policy⁶⁹, considering that it has not produced effective results for any change in the profile of the Brazilian Judiciary. Only 12.8% of the magistrates are black. On the other hand, in the universe of trainees, the percentage reaches 100% of black people in some courts, demonstrating that this has been the main institutional place reserved for blacks, with worse salaries and no effective

⁶⁸ Law 12.990/2014. Available at: https://www.planalto.gov.br/ccivil_03/ato2011-2014/2014/lei/l12990.htm.

⁶⁹ Resolution 457/2022. Available at: <https://atos.cnj.jus.br/files/original160200202205026270007840766.pdf>.

bond⁷⁰. In the treatment given to black jurisdictions, the situation worsens, because according to the CNJ, there were, in 2021, 134,000 lawsuits for racial crimes pending in Brazil. However, only 1.3% for the crime of racism. Six of them on appeal in the third instance, in the Superior Court of Justice.

Of the 89 courts that responded to the survey, only 33.7% (30 of them) said they used other measures to promote racial equity, in addition to the reservation of vacancies in competitions. That is, a strategic area for the dignified survival of the black population is hegemonically white and does not have effective policies to change its institutional reality of omission or even contribution to the exclusion and genocide of black youth.

With regard to the Brazilian prison population, according to data from InfoPen/2022, currently Brazil, in absolute numbers, has the third largest prison population, with about 837 thousand inmates, of which 67.5% are black. There is a disproportion in the weight of the definition of penalties between whites and blacks who have committed the same crime. This has also been the target group in the case of unjust arrests, since police catalogs usually gather images mostly of black people⁷¹.

An unprecedented survey conducted by the Public Defender's Office of Rio de Janeiro and the National College of General Public Defenders (Condege), an entity that brings together public defenders from all over the country, shows that blacks are the biggest victims of mistaken facial recognition, in percentage: 83% of those unjustly imprisoned for photographic recognition in Brazil are black⁷².

10 Article 17 - Right to Privacy

In Brazil, the right to privacy continues to be violated, despite some advances. The General Law of Protection of Personal Data (LGPD)⁷³ of 2018 does not deal with areas such as public security. State surveillance is primarily concerned in three areas: (i) government hacking (ii) biometric data, and (iii) integration of state databases.

It is noteworthy the acceleration of purchases of hacking tools during the administration of former President Jair Bolsonaro. In 2021, public spending on such tools increased by almost 1000%⁷⁴ compared to 2015, without mechanisms of transparency and social control, favoring abuses as in

⁷⁰ CNJ. Research on black people in the judiciary. Available at: <https://www.trt4.jus.br/portais/media-noticia/536486/rela-negros-negras-no-poder-judiciario-150921.pdf>.

⁷¹ BORGES, J. Racism, precarious lives and the criminal justice system as a necropolitical machine. In: FEFFERMANN, M, et al. Interfaces of Genocide in Brazil: race, gender and class. Available at: https://docs.bvsalud.org/biblioref/2022/12/1006036/temas-em-saude-coletiva_n25_2018.pdf.

⁷² Report on photographic reconnaissance at police headquarters. Available at: <http://condege.org.br/wp-content/uploads/2021/05/Relatorio-CONDEGE-DPERJ-reconhecimento-fotografico.pdf>.

⁷³ Available at: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2018/lei/l13709.htm.

⁷⁴ Available at: <https://ip.rec.br/wp-content/uploads/2022/11/Mercadores-da-inseguranca.pdf>.

Operation SOS⁷⁵ and Operation Chabu⁷⁶. Recently, new serious cases⁷⁷ of acquisitions by the Brazilian Intelligence Agency were disclosed⁷⁸.

It also concerns the expansion of the use of facial recognition⁷⁹ in public safety and access to other rights, such as education⁸⁰, in several states. In addition to making mistakes, such technologies have a racist, Lgbtphobic and sexist character. For example, a study indicated that 7 out of 11 people were detained for machine error at the Maracanã Stadium in Rio de Janeiro⁸¹.

There is also a growing integration and sharing of state databases without observing legal parameters, such as the Cortex, a program of the Federal Police⁸². Public services are more and more centralized and made available by the GOV.br platform⁸³, managed by the state-owned Data Processing Service (SERPRO), which recently illegally made available to the Federal Highway Police, data of all 80 million citizens able to drive⁸⁴. The indiscriminate integration occurs despite the recurrent data leaks and the attempt to create a basic register of citizens that was the target of a decision by the Federal Supreme Court⁸⁵.

⁷⁵ Available at: <https://oantagonista.uol.com.br/brasil/exclusivo-a-empresa-que-vendeu-a-maleta-hacker-para-o-esquema-de-helder-barbalho/>.

⁷⁶ Available at: <https://jornalggn.com.br/xadrez-ultradireita/governo-adquire-sistemas-espioes-e-ciber-milionarios-sob-suspeitas/>.

⁷⁷ Available at: <https://www.intercept.com.br/2023/04/19/abin-comprou-programa-que-pode-espionar-internet/>

⁷⁸ Available at: <https://teletime.com.br/14/03/2023/sistema-de-monitoramento-usado-pela-abin-utiliza-dados-das-redes-das-operadoras-de-telecom/>.

⁷⁹ Available at: <https://lapin.org.br/2021/07/07/vigilancia-automatizada-uso-de-reconhecimento-facial-pela-administracao-publica-no-brasil/>.

⁸⁰ Available at: <https://internetlab.org.br/pt/noticias/em-novo-relatorio-internetlab-mapeia-o-uso-de-reconhecimento-facial-em-escolas-publicas-brasileiras/>.

⁸¹ Available at: https://opanoptico.com.br/wp-content/uploads/2022/05/PANOPT_riodecameras_mar22_0404b.pdf.

⁸² Available at: <https://www.intercept.com.br/2020/09/21/governo-vigilancia-cortex/>.

⁸³ Available at: <https://www.dataprivacybr.org/documentos/policy-paper-entre-a-visibilidade-e-a-exclusao-um-mapeamento-dos-riscos-da-identificacao-civil-nacional/>.

⁸⁴ Available at: <https://www.intercept.com.br/2023/05/02/prf-desrespeita-lei-e-compra-copia-da-base-de-dados-biometricos-de-todos-os-motoristas-com-cnh-no-brasil/>.

⁸⁵ Available at: <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=494227&ori=1>.