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**To the OHCHR**

**Subject: Brazil – ICCPR**

**NHRI INFORMATION - HUMAN RIGHTS COMMITTEE 138th session 26 June - 28 July 2023**

The Federal Public Defender's Office of the Federative Republic of Brazil is the institution in charge of the promotion of human rights according to Brazilian Constitution, through its Working Group Migration Refugees and Stateless and through its office of international affairs. In the context of the assessment of Brazil regarding ICCPR it offers this contribution which embraces access to justice, women's and girls' sexual and reproductive health and rights, including abortion, and migration.

This document will start with (1) Introduction: role of the Federal Public Defender's Office in the Brazilian Constitution. Next, it will discuss (2) Access to Justice, (3) Women's and girls' sexual and reproductive health and rights, including abortion (4) migration, most of them related to the mission and actions of the Brazilian Federal Public Defender's Office.

## **1. Introduction: role of the Federal Public Defender's Office in the Brazilian**

The Federal Public Defender's Office (DPU) is an autonomous, permanent institution. According to Article 134 of the Brazilian Constitution, its function, as an expression and instrument of the democratic regime, is of legal guidance, promotion of human rights and defense, at all levels, judicial and extrajudicial, of individual and collective rights, integrally and free of charge, to those in a vulnerable situation.

Complementary Law nº 80/19942 regulates the Public Defender's Office in Brazil and establishes several functions of this institution. We highlight, for the present contribution, those of "representing the international systems of protection of human rights, pleading before their organs", and "exercise the defense of individual and collective interests [...] [of] vulnerable social groups that deserve special protection from the State" (article 4, VI and XI, of Complementary Law nº 80/1994).

## **2. 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 in the topic entitled Equality before Courts and Access to Justice. However, strengthening the Federal Public Defender's Office is essential to protecting and promoting human rights and 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 LXXIV<sup>1</sup>). A Law enacted by the National Congress also states about public the 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 (article 134). It provides for human rights and legal representation for millions of citizens in every corner of the Brazilian

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<sup>1</sup> [http://www.planalto.gov.br/ccivil\\_03/Constituicao/Constituicao.htm](http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm)

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 unrepresented people have fundamental rights not effectively ensured by the government, which could be achieved through juridical assistance.

The Constitutional Amendment 80/2014<sup>2</sup> 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 judiciary sections and state's federal subsections, to meet the goal established by the Constitutional Amendment.<sup>3</sup> The insufficiency of Public Defenders and the existence of jurisdictional units that are not addressed by Federal Public Defenders Office offer restrictions and reaffirms the inequalities regarding access to justice in the different regions of the country, weakening the institution's work.

Juridical assistance is fundamental to safeguarding access to justice, both in the judiciary 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 disabilities.<sup>4</sup> 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 representation<sup>5</sup>. Moreover, in Brazil 6,6 % of the population over 15

<sup>2</sup> [http://www.planalto.gov.br/ccivil\\_03/Constituicao/Emendas/Emc/emc80.htm](http://www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc80.htm)

<sup>3</sup> The National Public Defender Survey presents figures for the year 2022: the common Federal Court is divided into 279 federal judicial subsections and only 80 subsections are regularly served by the DPU, representing 28.7% of the total number. 199 federal judicial subsections are not served by the DPU, representing 71.3% of the total.

Source: ESTEVES, Diogo. AZEVEDO, Júlio Camargo de Azevedo. GONÇALVES FILHO, Edilson Santana. JIOMEKE, Leandro Antonio. LIMA,

Marcus Edson de. MENEGUZZO, Camylla Basso Franke. SADEK, Maria Tereza. SILVA, Franklyn Roger Alves. SILVA, Nicholas Moura e.

TRAVASSOS, Gabriel Saad. WATANABE, Kazuo.

Pesquisa Nacional da Defensoria Pública 2022, Brasília: DPU, 2022. Pág.39.

<https://pesquisanacionaldefensoria.com.br/pesquisa-nacional-2020/analise-nacional/>.

<sup>4</sup> Currently, 86,207,120 inhabitants do not have access to the legal assistance services offered by the DPU. Within the indicated number, 78,242,563 are economically vulnerable inhabitants with a family income of up to 3 minimum wages, who potentially cannot afford to hire a private lawyer to promote the defense of their rights.

Source: National Survey 2022, page 43. <https://pesquisanacionaldefensoria.com.br/pesquisa-nacional-2020/analise-nacional/>.

“When interpreting the data, it is important to bear in mind that the legal and assistance services provided by the Public Defender's Office are not restricted to the economically vulnerable with a family income of up to 3 minimum wages.

minima. The difficulty in accessing a fair legal order can derive from multiple types of vulnerability,

such as “age, disability, belonging to indigenous communities or minorities, victimization, migration and

internal displacement, poverty, gender and deprivation of liberty” (Brasília Rules on Access to Justice for Women

people in conditions of vulnerability, Rule nº 4)”

Source: National Survey 2022, page 50. <https://pesquisanacionaldefensoria.com.br/pesquisa-nacional-2020/analise-nacional/>.

<sup>5</sup> At least 40.4% of the Brazilian population is potentially outside the federal justice system and prevented from claiming their own rights through the DPU. (National Survey 2022, page 43) <https://pesquisanacionaldefensoria.com.br/pesquisa-nacional-2020/analise-nacional/>.

years is illiterate,<sup>6</sup> which means 11 million people that 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 poverty<sup>7</sup>.

In Brazil, civil demands under 60 minimum wages can be filed in Federal Courts without the assistance of a counsel. Nonetheless, many impoverished people do not access justice without 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. Moreover, 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 juridical 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 vulnerable people, include: supporting the autonomy of the Federal and State's Public Defense; increasing the number of public defenders<sup>8</sup> so that in every city where there is a court there is a public defender, increase the number and especially of public servants who work at the Public Defender's Office, including psychologists, social workers, anthropologists, and supporting research into the impact of the lack of assistance and juridical counselling in civil and criminal cases.

### 3. Women's and girls' sexual and reproductive health and rights, including abortion and menopause<sup>9</sup>

In art. 5, I, the Brazilian Constitution states that “men and women are equal in rights and obligations.” Despite the Constitutional provision and other human rights instruments, Brazil is a party (CEDAW, Belem do Pará Convention, ICCPR, ICCESR); Brazilian societal practices often encompass violence against women, including institutional violence. Those discriminatory practices are worsened by intersectionalities such as racism, homophobia, xenophobia, and prejudice against the elderly.

In the helm of health rights, Federal Constitution of 1988, provides in Art. 196 that “Health is a right of all and a duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other harms and universal and equal access to actions and

<sup>6</sup>Source: <https://educa.ibge.gov.br/jovens/conheca-o-brasil/populacao/18317-educacao.html#:~:text=Um%20dado%20importante%20sobre%20educa%C3%A7%C3%A3o,havia%20sido%206%2C8%25.>

<sup>7</sup>BRASIL. Instituto de Pesquisa Econômica Aplicada. [https://repositorio.ipea.gov.br/bitstream/11058/11228/1/n\\_07\\_O\\_Efeito\\_da\\_Covid\\_19.pdf](https://repositorio.ipea.gov.br/bitstream/11058/11228/1/n_07_O_Efeito_da_Covid_19.pdf) p. 7

<sup>8</sup> Taking into account only the economically vulnerable population, Brazil has a ratio of 1 Public Defender for every 29,730 inhabitants with a family income of up to 3 minimum wages – National Survey 2022, page 48.

The consolidated analysis of data on the personnel structure reveals that the Ombudsman's workforce Public Defenders in the country totals 32,922 professionals, including Public Defenders (21.1%), civil servants (28.1%), residents (8.1%) and interns (42.7 %) – data from 2021.

Specifically, for DPU: 644 Defenders; 469 own frame servers; 693 extraframe servers; 1,648 interns and 402 residents, totaling 3,856 people. The support staff structure is considered little or not adequate by 81.8% of Defenders

Public(s). Only 18% of respondents assess the support staff structure as adequate or very suitable for carrying out the institutional activities carried out by the Public Defender's Office.

Considering the survey's margin of error, the analysis of the historical series reveals a variation without statistical significance in relation to the evaluation carried out in 2014, when 81.1% of the members of the Public Defender's Office considered the support structure as little or not at all adequate.

Source: National Survey, pages 75-77.

“To fulfill its mission, the Public Defender's Office of the Union needs to appoint 825 federal public defenders to overcome the current career deficit. Administrative management for the biennium 2021-

2022 also works for career creation necessary support and, in this way, guarantee quality assistance to needy citizens in All country. Deficit of defenders: 56.2% (Source: Asplan, DPU).

The data show that the workforce of the DPU is far behind the workforce of other organs of the justice system. the strength of DPU work is equivalent to only 18.4% of the AGU workforce; 16.3% of the strength of MPF work; and 4.3% of the workforce of Federal Justice

<sup>9</sup> This section was based, among other documents, in MANIFESTAÇÃO Nº 6166897 - DPGU/SGAI DPGU/GTMLR DPGU

services for promotion, protection and recovery.” However, inadequate healthcare is often a reality, which is worsened by gender discrimination.

In this context, violations of women’s and girls’ sexual and reproductive health and rights might mean denial, restriction, or poor quality of legal abortion services.

As mentioned in the third periodic report submitted by Brazil under article 40 of the Covenant, CCPR/C/BRA/3, Brazilian Penal Code (Decree-Law no 2.848/1940) establishes as criminal offenses provoking abortion on oneself or consenting that another person induces it (Article 124); provoking abortion without the pregnant person’s consent (Article 125); and provoking abortion with the pregnant person’s consent (Article 126). Article 125 must be applied, instead of the Article 126, whenever the pregnant person has fourteen years old or less, if the person doesn’t have the mental capacity to consent, or if the consent was given through fraud, serious threat, or violence.

Article 128 states that the abortion induced by a physician is not punished in two cases: when there is no other way to save the pregnant person’s life (therapeutic abortion) and if the pregnancy resulted from rape (humanitarian abortion).

Brazilian Supreme Federal Court, in the writ ADPF 54, in 2012, decided that the abortion of anencephalic fetuses should be considered legal. Hence, there are three cases of legal abortion in Brazil.

In neither of the three cases, judicial authorization or previous police investigation is required.

What is not contained in the third periodic report submitted by Brazil under article 40 of the Covenant, CCPR/C/BRA/3, is that, the right to legal abortion, however, in the last years, has suffered institutional threaten, such as the proposal of a constitutional amendment (PEC) no. 29, made in 2015, and the publication, in June 2022, of the booklet “Atenção técnica para prevenção, avaliação e conduta nos casos de abortamento” [Technical attention to prevention, evaluation and conduct in cases of abortion] by the Ministry of Health.

PEC no. 29/2015, presented by Senator Magno Malta, aimed to include in the Brazilian Constitution’s Article 5, caput, the inviolability of the right to life since conception.

Previously archived, the proposal was reactivated at the beginning of the last legislature (2019) – by Senator Eduardo Girão’s request – and was forwarded to the Senate’s Commission of Constitution and Justice to be evaluated. The Commission’s rapporteur Senator Eduardo Amorim considered it legal and constitutional.

If approved by the Parliament, PEC n. 29 would attribute to fetus’s or embryo’s life the same value as a pregnant girl’s or woman’s life, which could lead to the total prohibition of abortion in Brazil, even in the cases of rape, risk to the pregnant person’s life or anencephalic fetus – cases of legal abortion.

The proposal ignored the criminalization of abortion as a public health issue in Brazil and the setback it would represent to protect girls’ and women’s reproductive rights.

On September 8, 2019, DPU’s Working Group on Women issued a Technical Note no. 3 DPGU/SGAI DPGU/GTMLR DPGU stating that the proposal violated women’s and girls’ fundamental rights guaranteed by the Brazilian Constitution.

PEC no. 29 was archived on December 22, 2022, as established by the Senate's Internal Regulation (Article 332), which says that an unarchived proposal whose approval process wasn't concluded must be archived by the end of the legislature.

In June 2022, the Ministry of Health launched a booklet called “Atenção técnica para prevenção, avaliação e conduta nos casos de abortamento” [Technical attention to prevention, evaluation, and conduct in cases of abortion], which brought some misconceptions regarding the legal aspects of abortion in Brazil.

The booklet, targeted to the public health system's healthcare professionals, stated that there was no legal abortion in Brazil, since all types of abortion criminal offenses; few situations, though – such as the existence of risk for the pregnant person's health – could exclude the unlawfulness of the conduct after criminal investigation.

The harm of such a statement is enormous since girls and women face many barriers to accessing their right to legal abortion. This can be exemplified by the case of an 11-year-old pregnant girl who, despite the existence of a risk to her health, because of her tender age and the certainty that she was a victim of rape, was denied the right to legal abortion by a hospital and then, by a judge in the estate of Santa Catarina. In a hearing, the judicial system's representatives told the girl that, in the case of the termination of the pregnancy, the baby would agonize to death. Also, they asked if she could bear the pregnancy a little bit longer to enable adoption by another family<sup>10</sup>. The procedure only occurred after the Federal Public Prosecutor's Office (MPF) issued a recommendation to the hospital that refused to assist the girl.<sup>11</sup>

The booklet uses legal terms – such as the exclusion of unlawfulness – to create confusion in the medical community about girls' and women's right to abortion in the cases of rape, risk to the pregnant person's health and anencephalic fetus, as established by Brazilian Penal Code and as decided by the Brazilian Supreme Court.

On July 9, 2022, DPU's Working Group on Women issued the Technical Note no. 10 DPGU/SGAI DPGU/GTMLR DPGU expressing its contrary position to the booklets' content and recommending that it should be taken out of circulation.

Because of the harsh criticism made by civil society, the booklet was revised in September 2022. The statement that any abortion is a criminal offense was removed.

The booklet perspective seems to be also present in the third periodic report submitted by Brazil under article 40 of the Covenant, CCPR/C/BRA/3, under the topic “Voluntary termination of pregnancy and sexual and reproductive rights (arts. 6, 7 and 8)” as it states that even in legal hypothesis of abortion, it is regarded as a crime.<sup>12</sup> This perspective revictimizes and stigmatizes women that undergo abortion procedures.

Finally, it's important to register that a writ – ADPF 442 – was filed in the Supreme Federal Court by Partido Socialismo e Liberdade (PSOL) aiming to obtain the recognition that the Articles 124 and 126 of the Penal Code were not received by the Brazilian Constitution, since they violate the principles of human dignity, citizenship and non-discrimination, as well as the

<sup>10</sup> GUIMARÃES, P et al. Vídeo: em audiência, juíza de SC induz menina de 11 anos grávida após estupro a desistir de aborto. Portal Catarinas, [s.l.], jun. 2022. <https://catarinas.info/video-em-audiencia-juiza-de-sc-induz-menina-de-11-anos-gravida-apos-estupro-a-desistir-de-aborto/>.

<sup>11</sup> BORGES, C, BATISTTELA, C. Meninda de 11 anos que foi estuprada em SC consegue fazer aborto, diz MPF. G1, [s.l.] jun. 2022. <https://g1.globo.com/sc/santa-catarina/noticia/2022/06/23/menina-de-11-anos-que-foi-estuprada-em-sc-consegue-fazer-aborto-diz-mpf.ghtml>

<sup>12</sup> CCPR/C/BRA/RQ/3, par. 48



fundamental rights to life, freedom, equality, not to be tortured, health and planned parenthood. Justice Rosa Weber is its rapporteur. The writ argues that women should be guaranteed the freedom to choose to terminate a pregnancy safely in the first twelve weeks. The Federal Public Defender's Office requested its admission in the lawsuit as *amicus curiae*, defending the plaintiff's point of view.

#### **4. Treatment of aliens, including migrants, refugees and asylum seekers<sup>13</sup>**

Despite the Replies of Brazil to the list of issues concerning 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).<sup>14</sup>

The reality is that the COVID-19 pandemic did not remove the reasons that led 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 had one 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 forty interministerial ordinances. The Law 13.979/2020 does not foresee sanctions for irregular entry into Brazil. Nonetheless, most of the Ordinance's 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 nonrefoulement and bar to collective compulsory withdrawal. They 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 assure due process before measures of compulsory withdrawal. This principle is stated in article 3, III,

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<sup>13</sup> This section was based, among other documents, on MANIFESTAÇÃO Nº 5912437 - DPGU/SGAI DPGU/GTMAR DPGU; DOC SEI 5822836; and João Freitas de Castro Chaves, INFORMAÇÃO Nº 5967784/2023 - DPGU/SGAI DPGU/GTMAR DPGU.

<sup>14</sup> CCPR/C/BRA/RQ/3

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, concerning 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 face many challenges as obtaining a visa from the Brazilian Embassy in Haiti is necessary. However, this measure has been hampered by several factors, as “since 2019 the Brazilian Embassy in Port-au-Prince has suffered from a huge service deficit, aggravated after the COVID-19 pandemic. The impossibility of new appointments for visa and interview requirements, despite working jointly with the IOM - International Organization for Migrations and the creation of the BVAC - Brazilian Visa Application Center led hundreds of Haitian people in Brazil to promote individual actions to waive visas for their family members, alleging administrative inefficiency in the provision of the service and guarantee of the right. There were also public civil actions filed by community associations of Brazil and by the Federal Public Defender's Office, in order to guarantee at least the waiver of a visa for the purposes of family reunion with children and teenagers.”<sup>15</sup> As a result, 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 is 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 10<sup>th</sup> April 2023, PORTARIA INTERMINISTERIAL MJSP/MRE N° 38, DE 10 DE ABRIL DE 2023, was issued and states that the National Secretariat of Justice (Senajus) will be responsible for analyzing applications for prior 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.

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<sup>15</sup> Fonte: João Freitas de Castro Chaves, INFORMAÇÃO N° 5967784/2023 - DPGU/SGAI DPGU/GTMAR DPGU

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 that the Brazilian migration policy is governed, among others, by the principle of protection of Brazilians abroad (art. 3º XIX).

All flights from of returnees from the United States land in the International Airport of Belo Horizonte. In *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 the government does not provide means to ensure their adequate return to the 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.<sup>16</sup>

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.

### **Final Considerations**

This contribution discussed access to justice, women's and girls' sexual and reproductive health and rights, including abortion, and migration, from a human rights approach by the Federal Public Defender's Office, the autonomous and independent institution that has the mission to promote human rights, according to the Brazilian Constitution. Please do not hesitate to contact the Federal Public Defender's Office for further information.

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<sup>16</sup> "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.