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Situation of human rights in Brazil



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** In keeping with Article 17.2 of the Commission's Rules of Procedure, Commissioner Flávia Piovesan, a national of Brazil, did not participate in the discussion of, research and deliberations on, and approval of this report.*

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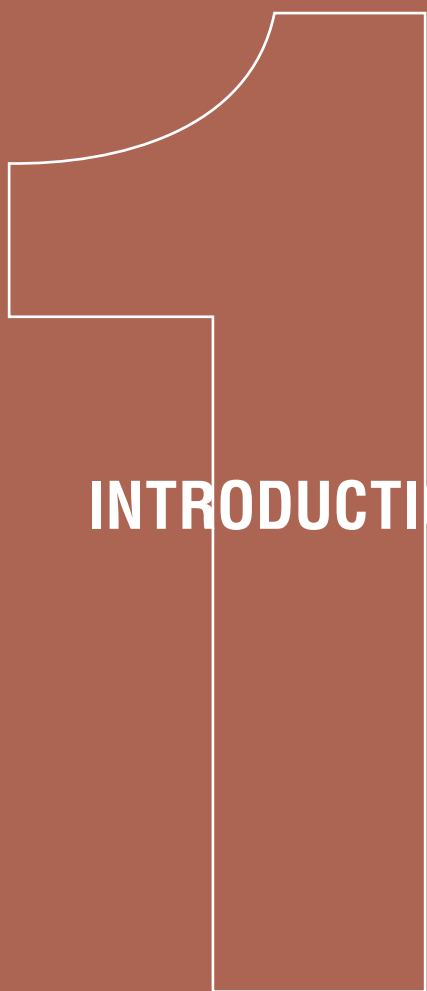
EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

1. Twenty years after its first visit to Brazil, the Inter-American Commission on Human Rights (hereinafter “IACHR,” Inter-American Commission,” or “Commission”) returned to conduct a comprehensive diagnostic assessment of the human rights situation in that country. Given the complexity of that task in such a vast territory and the particularities of each region and each federated state, the Commission opted to focus on specific issues and groups historically impacted by discrimination and structural inequality.
2. Accordingly, in Chapter 2 of this report, the IACHR analyzes the situation of persons of African descent, including *quilombola* communities (akin to tribal communities, by international parameters); women; indigenous peoples; campesinos and rural workers; landless and homeless people; and inhabitants of *favelas* (shantytowns) and persons living on the outskirts of cities. To that end, the Commission sought to unravel the common thread in the violations endured by those individuals and communities and its close connection to longstanding exclusion from access to land and de facto denial of economic, social, cultural, and environmental rights. The Commission has determined that, due to ethno-racial discrimination, many of those people end up in a vicious cycle of poverty that forces them to live in extremely precarious habitats where they are exposed to the violence perpetrated by criminal groups or organizations, such as armed gangs (*milicias*), drug traffickers, domestic and international human traffickers, and to working conditions akin to slavery.
3. Structural discrimination and inequality are also rampant in prisons, rehabilitation centers and therapeutic communities, as discussed in Chapter 3. As the IACHR observes, those environments turn into institutional breeding grounds for the marginalization of persons of African descent and persons living in extreme poverty. In particular, the IACHR underscored the plight of persons deprived of liberty, who are often held in overcrowded and structurally deficient prisons, maltreated, and frequently subjected to torture. Children and adolescents at odds with the law find themselves in similar conditions, housed in rehabilitation (“socio-educational”) centers that strongly resemble prisons and do little to achieve their core purpose of social reintegration.
4. Chapter 3 also addresses the drug user support system. There the Commission observes shortcomings in therapeutic communities that end up placing their users in situations that violate their rights, including the rights to freedom of expression and religion.
5. As regards freedom of expression, the IACHR ascertains an increase in the number of threats by authorities to the life and bodily integrity of journalists and other media workers, a situation that worsened following the national elections in 2018. There was also an increase in hate crimes based on people’s sexual orientation, gen-

der identity and/or gender expression, and in hate speech or stigmatization by State authorities around that time. In that respect, the Commission stresses that, although the country has made progress with fighting discrimination and even punishes cases of discrimination against LGBTI persons, administrative changes point to a weakening of public policies towards them.

6. Brazil's lengthy history of structural discrimination and inequality also severely impairs citizen security. In Chapter 4, the Commission analyzes security policies and the very high number of violent deaths in the country. It likewise draws attention to the significant increase in threats, attacks, and murders of human rights defenders, especially those defending land rights and addressing environmental issues. The IACHR notes in the institutional response a tendency to opt for violent and punitive policies implemented by the police and judicial authorities. The IACHR observes, in that regard, a constant and indiscriminate practice of racial profiling, which results in a high number of victims of African descent, living in slums, outlying districts, and economically vulnerable areas. In addition to those policies, there has been a gradual militarization of public security, which ultimately also reinforces a warlike mentality in both urban and rural settings. All of the above has rendered the Brazilian police, statistically, one of the most lethal police forces in the world as well as the one with the largest number of murdered officers.
7. The IACHR also garnered information showing that, for the most part, Brazil's justice system has made no progress in terms of investigations, convictions, and reparation to victims of institutional violence. In the Commission's opinion, as highlighted in Chapter 5, such crimes have largely gone unpunished, which, in intersection with structural discrimination, reinforces the assessment that the justice system is plagued with institutional racism. Such selective impunity is also a feature of crimes committed under the civil-military dictatorship in Brazil. Despite the progress made by a number of bodies seeking to establish the truth of what happened, the IACHR stresses that very serious human rights violations during that period have yet to be punished.
8. The Commission concludes its report with a diagnostic assessment of the institutional human rights structure developed in the country after the transition to democracy. In that regard, the Commission acknowledges that the rule of law in Brazil is founded upon solid democratic institutions. Thus, Chapter 6 analyzes the various democratic and human rights institutions that together consolidate a framework of respect and protection of human rights. That said, the Report warns that that system has recently been confronting challenges and setbacks. In response, the IACHR puts forwards recommendations for forging ahead with more robust observance of human rights in Brazil.



INTRODUCTION

CHAPTER 1 INTRODUCTION

9. The Inter-American Commission on Human Rights conducted an on-site visit to Brazil from November 5-12, 2018 as part of its ongoing monitoring of human rights in the region, pursuant to Article 106 of the Charter of the Organization of American States (hereinafter “OAS”). That visit, aimed at gaging the principal human rights challenges in the country, followed an invitation from the Brazilian state on November 29, 2017 and an agreement on the date for that visit reached early in 2018.
10. The IACHR delegation was headed by the then president of the IACHR, commissioner Margarette May Macaulay, and comprised the first vice-president, commissioner Esmeralda Arosemena de Troitiño; commissioner Francisco Eguiguren Praeli; commissioner Joel Hernández García; and commissioner Antonia Urrejola Noguera, rapporteur for Brazil. The delegation also included the assistant executive secretary, María Claudia Pulido; the chief of staff of the executive secretary, Marisol Blanchard Vera; the special rapporteur for freedom of expression, Edison Lanza; the special rapporteur for economic, social, cultural, and environmental rights (DESCA), Soledad García Muñoz; and experts from the IACHR’s executive secretariat.
11. The IACHR held meetings with Brazilian authorities in the various branches and spheres of government, such as the Ministry of Human Rights, the Federal Supreme Court, the Ministry of Foreign Affairs, the National Human Rights Council, the Office of the Attorney General of the Republic and state prosecutors, the Office of the Public Defender of the Union and state public defenders, as well as municipal and state authorities. The Commission also met with representatives from a wide range of civil society organizations and social movements, human rights defenders, people of African descent, *quilombolas*, indigenous peoples, rural workers, people living in poverty, homeless people, leaders of movements defending the rights of various groups that have suffered historical discrimination, leaders of the LGBTI movement, inhabitants of favelas, and family members of murdered police officers, and others. The IACHR also held meetings with representatives of international organizations that are part of the United Nations system and members of the international diplomatic corps stationed in Brazil.
12. The delegation split into six groups, who traveled to the states of Bahia, Maranhão, Mato Grosso do Sul, Minas Gerais, Pará, Rio de Janeiro, São Paulo, and Roraima, as well as the capital, Brasilia. There, the IACHR gathered numerous testimonies from victims of human rights violations and their families, and reviewed documents, laws, bills, and other information relating to human rights in the country. During its visit, the IACHR had a chance to get to know a number of state institutions, including detention centers; the reception and care center for migrants and refugees on the Venezuelan border; a socio-educational detention center for children and teenagers, and

other facilities. It also visited quilombos and indigenous community lands, and the drug-use zone known as Cracolândia, in São Paulo.

13. The IACHR wishes to thank federal, state, and municipal authorities of the Brazilian State for all the support they provided during the delegation's visit and to underscore that the information they provided testifies to the State's commitment to maintain a frank, open, and constructive dialogue regarding the advancement, challenges, and consolidation of the inter-American human rights system in Brazil. It is also grateful for the information that it received from civil society organizations, human rights defenders, and international organizations. In particular, the IACHR values and appreciates the efforts of the victims of human rights violations and their families who presented testimonies, complaints, and other information relating to the human rights violations they suffered.
14. In addition, during its mission, the IACHR signed cooperation agreements with both the Federal Public Prosecutor's Office and the National Council of the Public Prosecutor's Office, aimed at establishing formal cooperation mechanisms for the defense and promotion of human rights in the Hemisphere. Within that framework, the IACHR reiterates that the state and federal public prosecutor's offices, and the state and federal public defender's offices play an indispensable part in ensuring effective guarantees for human rights and preserving democracy in Brazil.
15. The present report is the outcome of that visit. It comprises six chapters, containing detailed analysis of the extreme inequality and vulnerability to which certain persons, groups, communities and populations are subjected in Brazil as a result of the historical discrimination with which they have always been treated. The report draws on the information gathered during its visit and, in addition, on inputs culled from investigations routinely conducted by the various mechanisms deployed the IACHR, such as public hearings, work meetings, requests for information, and precautionary measures. The IACHR also tapped decisions and recommendations made by specialized international organizations, along with texts and publications in Brazil's main media, and other sources.
16. The Commission first examined the situation of persons of African descent and of traditional or tribal (*quilombola*) Afro-descendant communities, indigenous communities, women, campesinos and rural workers, and victims of forced labor or working in conditions akin to slavery. It also observed other especially at-risk groups, including persons deprived of their liberty, adolescents confined to so-called socio-educational centers, people held in "therapeutic communities", migrants, journalists, and LGBTI persons. That initial analysis served to update many of the IACHR's diagnostic assessments based on its previous visit to Brazil.
17. At the same time, the IACHR examined issues to do with citizen security, including violence and crime indicators and analyses of public security policy. That way, it was

able to discern the failure to hold State agents accountable for the human rights violations they committed, a problem the country has been faced with since the transition to democracy. During the Commission's visit, it observed both the progress made and challenges still remaining with the forging of a political and institutional framework for the effective exercise of human rights, including its close correlation with the conditions required for the exercise of civil and political rights (freedom of expression and information, freedom of association and protest, bans on hate speech and discrimination, participatory democracy) and social, economic, and cultural rights (education and health).

- 18.** It is worth pointing out that the Commission acknowledges that Brazil has a democratic system governed by the rule of law, with robust democratic and human rights institutions. Nonetheless, it is clear that the country faces challenges with overcoming historically neglected structural defects as well as worrisome setbacks in certain policies that could be particularly detrimental with respect to the human rights of its inhabitants.
- 19.** On October 26th, 2020, the Commission transmitted a preliminary draft of this report to the Brazilian State and asked for any observations to be remitted to it in accordance with its Rules of Procedure. On December 22nd, 2020, the IACHR received information from the State, the relevant aspects of which were incorporated into this final version approved by the IACHR on February 12, 2021.



**HISTORICAL DISCRIMINATION
AND SOCIO-ECONOMIC
DISCRIMINATION AS FACTORS
CAUSING STRUCTURAL
INEQUALITY**

CHAPTER 2 HISTORICAL DISCRIMINATION AND SOCIO-ECONOMIC DISCRIMINATION AS FACTORS CAUSING STRUCTURAL INEQUALITY

A. HISTORICAL DISCRIMINATION

1. Afro-descendants

20. Persons of African descent have historically been impacted by structural discrimination¹ and institutional racism². As the Commission pointed out in its first country report on Brazil in 1997, the domination of Afro-descendants and the perception that this segment of the population is subjugated persist in Brazilian society and are replicated in a number of State structures. These are phenomena that, thanks to State actions or omissions, help give rise to racial stereotypes and subject these persons to “differences that make for less than an acceptable level of equality, and [...] are often reflected in flagrant abuses of human rights, particularly as to equality, non-discrimination, and the right to dignity”³.
21. This pattern of discrimination is found in the numerous hurdles that these people face to access and be able to exercise their rights, particularly as regard effective participation in democratic forums, access to the formal job market, and management positions in the corporate private sector, to quality health care and education, decent housing, and effective access to justice. Apart from that, the IACHR ascertained, with profound concern, systemic violence practiced by State agents, especially by members of police institutions and agents in justice systems rife with racial profiling⁴ designed to criminalize and punish the Afro-descendant population.

1 The concept of structural discrimination is addressed in IACHR, Report on Poverty and Human Rights in the Americas. OEA/Ser.L/V/II.164 Doc. 147. September 7, 2017, par. 393.

2 The concept of institutional racism is addressed in IACHR, Report on the Situation of Human Rights in the Dominican Republic. OEA/Ser.L/V/II. Doc. 45/15. December 31, 2015, par. 92.

3 IACHR, Report on the Situation of Human Rights in Brazil, OEA/Ser.L/V/II.97, Doc. 29, rev.1, September 29, 1997.

4 The term racial profiling is widely used and developed in the inter-American human rights system. On this, see: IACHR, Report on the Merits N° 23/03, Néri da Fonseca, approved on March 11, 2004; and IACHR, Report on the Merits N° 66/06, Simone André Diniz, approved on October 21, 2006.

22. According to official nation-wide figures for 2019, 56.8% of Brazilian society was of African descent⁵. Despite that high percentage, the Commission ascertained the extremely low levels of that population's democratic participation. Thus, in the latest electoral process in 2018, of the 1,752 candidates elected to office at all levels of both the executive and legislative branches of Brazil's government (municipalities, federated state, and national levels), only 27.86%, or just 488 people, consider themselves to be Afro-descendants⁶. The situation in the private sector is similar. According to national data on professional profiles in the corporate sector, only 4.7% of executive and managerial positions in Brazil's largest enterprises are held by persons of African descent⁷.
23. As regards health, while the Commission acknowledges the significant progress made with the National Comprehensive Health Policy for the Black Population (PNSIPN)⁸, the Commission observes with concern that in 2018 barely 28% of Brazil's municipalities had incorporated the actions envisaged in that policy in their local health guidelines. That finding is even more worrisome when it is combined with data showing that almost 80% of the Brazilians who depend exclusively on the National Health System (SUS) are of African descent⁹. Accordingly, the Commission considers that the 20 billion real cut in just the 2019 SUS budget appropriation, as a result of the promulgation of Constitutional Amendment No. 96/2016¹⁰, will have a direct and devastating impact on those persons' health, rendering them even more vulnerable to the conditions of historical structural inequality they are already mired in.
24. The structural inequality generated by racial discrimination is shown even more starkly by analysis of data on the education of Afro-descendants in Brazil. According to Brazilian Institute of Geography and Statistics (IBGE) figures, whereas 3.9% of the white population 15 or older is considered illiterate, that percentage increases to 9.1% for persons of African descent. In the same vein, the figures show that 44.2% of black males aged 19-24 did not finish secondary (junior high and high) school in 2018. For young black women in that age group, the figure is 33% compared to 18.8% for young white women¹¹.

5 Brazilian Institute of Geography and Statistics, *Pesquisa Nacional por Amostra de Domicílios Contínua trimestral*, [Continuous quarterly national household survey] 2019.

6 Tribunal Superior Eleitoral, *Estatísticas Eleitorais - Eleições Gerais de 2018*, December 11, 2019.

7 Instituto Ethos, *Perfil Social, Racial e de Gênero das 500 Maiores Empresas do Brasil e suas Ações Afirmativas*, [Social, racial, and gender profile of Brazil's top 500 companies and their Affirmative Actions], May 2016.

8 Ministry of Health, Directive GM/MS No. 992. May 13, 2009.

9 ONU Brasil, *Quase 80% da população brasileira que depende do SUS se autodeclara negra*, December 5, 2017.

10 Conselho Nacional de Saúde, *Saúde perdeu R\$ 20 bilhões em 2019 por causa da EC 95/2016*, February 28, 2020.

11 Brazilian Institute of Geography and Statistics, *Pesquisa Nacional por Amostra de Domicílios Contínua trimestral*, [Continuous quarterly national household survey] 2019.

25. At that same time, the IACHR acknowledges the progress made in terms of the Afro-descendant population's access to higher education in Brazil (50.3% in 2018)¹². The Commission notes the information provided by the Brazilian State regarding the investment of R\$ 508,500.00 for the implementation of Law No. 12,711/2012 accountability, which reserves 50% of vacancies at federal public universities to students from families with an income equal to or less than 1.5 minimum wages¹³.
26. All of the above expose the Afro-descendant population to a cycle of poverty and extreme poverty in Brazil. According to information obtained by the Commission, historically, the poverty rate for the Afro-descendant population is at least twice as high as the rate for the rest of the population: topping 22%¹⁴. The unemployment rate, too, appears higher among persons of African descent, which may partly be explained by that segment of the population's lower level of education. The same is true of the unemployment rate for persons who have completed higher education: for whites the unemployment rate is 5.5%, compared to 7.1% for Afro-descendants. Finally, another factor worth noting is the intersectional wage gap, which looks at the wage differential between men and women. In 2019, male Brazilian workers received on average 30% more than female workers¹⁵, the difference being even starker with respect to Afro-descendant women.
27. The aforementioned data correlate with a cycle of interrelated human rights violations. Here, it should be noted that the cycle of racial violence is rooted in pervasive cultural patterns of ethnic and racial belittling and subjugation throughout Brazilian society that have generated historical structural discrimination, prejudice, and inequality that in turn have perpetuated a perverse culture of racial domination expressed in an unending cycle of violations. That cycle has meant that socio-economic exclusion and discrimination also impair the rights to integrity and life of a huge segment of that population.
28. In that connection, the Commission views with alarm the high number of murders or Afro-descendants in Brazil, which, according to information provided by the State, increased at a rate of 23.1% between 2006 and 2016¹⁶. According to the information at the Commission's disposal, 73.1% of the 618,000 homicides registered in Brazil from 2007 to 2017 were committed against persons of that ethnic-racial origin¹⁷. Even more worrisome are the age groups involved and the manner in which those homicides were

12 Brazilian Institute of Geography and Statistics, *Síntese de Indicadores Sociais 2019*.

13 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 4.

14 ECLAC. *Situation of Persons of African Descent in Latin America and policy challenges to guarantee their rights*, December 2017, p. 74.

15 Agência IBGE de Notícias, *Homens ganharam quase 30% a mais que as mulheres em 2019*, May 6, 2020.

16 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 6.

17 Instituto de Pesquisa Econômica Aplicada, *Atlas da Violência 2019*, 2019.

committed. According to the available data, 78% of the victims are male youths of African descent, aged between 15 and 29¹⁸. The mortality rate of women of African descent increased by 22% between 2006 and 2016¹⁹. Add to that the fact that, in 2015 and 2016, 75% of persons killed in interventions carried out by agents of the State security forces, in crimes that for the most part go unpunished²⁰, were Afro-descendants²¹.

29. This even suggests a “social cleansing” process, with the consent of the State, geared to exterminating sectors deemed “undesirable,” “marginal,” “dangerous,” or “potentially criminal²². As reported by the State, qualitative research carried out in recent years by the Ministry of Justice and Public Security shows that the police approach is done in a “selective, discretionary and subjective way, with little porosity to public control or regulation”²³.
30. In the state of Rio de Janeiro, the IACHR was notified of violence practiced by public security forces which, according to Public Safety Institute (ISP) data, resulted in 2019 in 1,819 deaths in alleged clashes with civilians. That figure was up by 18% over the previous year and marked the highest number of deaths at the hands of the police in the history of the state. Over three-quarters (78.5%) of the victims were persons of African descent, like 10-year-old Eduardo Jesus Ferreira, who was targeted by police when he was sitting on the doorstep of his home in April 2015²⁴.
31. In the state of São Paulo, 716 such deaths were registered in 2019, 65% involving Afrodescendants, as a result of alleged clashes between police and civilians. That was an 11.5% increase over the previous year’s figure²⁵. Once again, according to testimony received, many of those crimes remain unpunished, as was the massacre of more than 500 people in the so-called May Crimes of 2006.

18 Brazilian Institute of Geography and Statistics, *Desigualdades Sociais por Cor ou Raça no Brasil, Estudos e pesquisas: Informação Demográfica e Socioeconômica - Nº. 41*, 2019.

19 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 7.

20 According to the report of the Parliamentary Investigation Commission (CPI) on the Murder of Young People, 99.2% of these crimes go unpunished. On this, see: Federal Senate, *Relatório Final da Comissão Parlamentar de Inquérito sobre Assassinato de Jovens, June 2016*. Pg. 41.

21 Fórum de Segurança Pública, *Anuário Brasileiro de Segurança Pública 2019*, 2019.

22 IACHR, *Annual Report 2002, Chapter V - Follow-Up Report on the State of Guatemala’s Compliance with the Recommendations Made by the IACHR in its Fifth Report on the Situation of Human Rights in Guatemala (2001)* par. 114, 2002

23 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 6.

24 Information received by the IACHR during its visit, archives of the Inter-American Commission on Human Rights, 2017; Federal Senate, *Relatório Final da Comissão Parlamentar de Inquérito sobre Assassinato de Jovens*, June 2016. Pg. 9.

25 Ouvidoria da Polícia do Estado de São Paulo [Police Ombudsperson’s Office of the state of São Paulo], *Relatório Anual de Prestação de Contas 2019*, February 2020. P. 30.

32. According to data published by the Ministry of Women, Family, and Human Rights, it is notable that 67% of victims of police violence nationwide described themselves as males of African descent, aged between 20 and 40.²⁶ According to the information provided by the State, the decisions taken by the security forces are not preceded by prior investigation, but based on discriminatory concepts in relation to “clothing, possessions or frequented location, as well as stereotyped behaviors associated with peripheral urban black cultures” by law enforcement officers²⁷.
33. The Inter-American Commission asserts that those murders cannot be considered isolated acts of violence. Rather, they constitute a systematic and generalized process led by State security institutions and judicial organs and geared to exterminating people of African descent with using extremely and deliberately cruel methods²⁸. In the Commission’s opinion, could come dangerously close to procedures that seek to exterminate all or some of the population of that ethnic-racial origin.
34. That said, the Commission acknowledges the State’s efforts to address these and other related issues. In particular, the Commission underscores the work done by the National Secretariat for Policies Promoting Racial Equality (SNPPIR), established in 2003 as a Special Secretariat reporting to the Office of the President of the Republic and today within the scope of the Ministry of Women, Family and Human Rights. SNPPIR played a leading part in the process of drawing up the legal and public policy frameworks still in effect for defending and protecting the rights of persons of African descent, such as the National Policy for Promoting Racial Equality (2003)²⁹, the National Plan for Promoting Racial Equality (2009)³⁰ and the Racial Equality Statute (2010), which served as the framework for setting up the National System for the Promotion of Racial Equality (SEN-APIR)³¹. Furthermore, the IACHR highlights the important role of the National Council for the Promotion of Racial Equality (CNPIR), linked to the SNPIR, which guarantees the participation of civil society in the development of policies aimed at racial equality³². According to State data, in 2019, the amount of R \$ 2,500,000.00 was made available for the implementation of decentralized policies in the states and municipalities³³.

26 Agência Brasil, *Disque 100, ministério explica dados sobre violência policial*, June 26, 2020.

27 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 6.

28 On this, see Inter-American Court of Human Rights, *Judgment in the Case of Favela Nova Brasília v. Brazil*, par. 150, February 16, 2017.

29 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, *Decree n 4.886*, November 20, 2003.

30 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, *Decree n° 6.872*, June 4, 2009.

31 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, *Law no 12.288*, July 20, 2010.

32 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 3.

33 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 4.

35. Likewise, the social protection policies, including cash transfers and housing and health benefits, along with affirmative actions undertaken by the Brazilian State, have greatly contributed to improvements in conditions for the population of African descent. From 2002 to 2012, there was a marked decline in the number of Afro-descendant families living in poverty³⁴. Even so, more recent IBGE data show predominantly lower wages for that population compared to those received by persons of other ethnic-racial origins, who in 2018 earned on average 73.9% more than persons of African descent³⁵.

2. Traditional or tribal (*quilombola*) afro-descendant communities

36. On a number of occasions, the Inter-American Commission has pronounced on the special protection to which traditional or tribal Afro-descendant peoples are entitled. In respect of those communities of African descent, which continue to share an identity, origin, history, and traditions (in short, a group awareness), the IACHR acknowledged that they have the same rights as “tribal peoples,” especially as regards collective property³⁶. The Inter-American Court has expressed similar views, consolidating the idea that those communities have the right “*to hold collective title of the territory they have traditionally used and occupied, which includes the lands and natural resources necessary for their social, cultural and economic survival, as well as manage, distribute, and effectively control such territory, in accordance with their customary laws and traditional collective land tenure system, and without prejudice to other tribal and indigenous communities*”³⁷.

37. In Brazil, those peoples are known as “*quilombolas*” and, while they differ in terms of their formation, they share not only their historical resistance to slavery and exploitation in Brazil, but also the way of life they traditionally developed in their territories, a system based on self-government, and a collective form of organization. Regarding the *quilombola* peoples, the Commission observes that, although they were only formally recognized as a tribal people 100 years after the abolition of slavery, with the promulgation of the 1988 Constitution³⁸, that recognition did result in effective socio-economic inclusion nor in comprehensive reparation for those communities. As informed by the Brazilian State, only through Decree Nº. 6.040/2007, which established the National Policy for the Sustainable Development of Traditional Peoples and Communities (PNPCT), the State began to embody the recognition gen-

34 World Bank, *Afro-descendants in Latin America: Toward a Framework of Inclusion*, 2018.

35 IBGE, *Síntese de Indicadores Sociais, Uma análise das condições de vida da população brasileira*, 2019, p. 27.

36 IACHR, *Situation of the Human Rights of the Indigenous and Tribal Peoples of the Pan Amazon Region*, par 7, September 29, 2019.

37 I/A Court of H.R., *Saramaka People v. Suriname*, par. 194 (c), page 57, November 28, 2007.

38 Constitution of the Federal Republic of Brazil, *art. 68 do Ato das Disposições Constitucionais Transitórias*.

erated by the Constitution, by guaranteeing access to traditional territories and their natural resources, infrastructure social and economic development, social inclusion and differentiated education, in addition to fostering sustainable production³⁹.

38. Exemplifying the invisibility and negation of the identity of the *quilombola* population is the fact that, except for statistics compiled by civil society organizations and pilot census projects, to this day the State has no exact data on either the size of that population or the characteristics of the people comprising it⁴⁰. In this regard, the Commission welcomes the information that SNPIR has been making efforts to identify *quilombola* communities in the 2021 census, in order to allow the design of policies appropriate to the specificities of this population⁴¹.
39. The denial of these persons' historical and cultural identity and rights is the result of the structurally embedded racial discrimination to which they were always subjected in Brazil. On this, the Commission maintains that the State's historical omission, which only began to be corrected with the promulgation of the most recent Constitution in 1988, paved the way for a series of violations of these communities' rights. Among the most glaring are violations related to the environment and the impacts of megaprojects installed in their territories by State or private sector agents; the dearth or precariousness of public services for those populations; and the inadequacy of the provisions in domestic law and of administrative mechanisms for guaranteeing and protecting territorial rights and prior consultation for the *quilombola* peoples. Finally, there is no effective policy of reparation for the discrimination to which that population has historically been subjected.
40. The IACHR was informed by the State that by December 2017, 3,051 *quilombola* communities had been certified by the Fundação Cultural Palmares, a process that represents the first step towards public recognition of the quilombo and the regularization of occupied land - guaranteed by Decree Nº. 4.887/2003⁴². However, the Commission notes with concern the information that, since the decree enactment, only 116 land titles have been issued by the National Institute of Colonization and Agrarian Reform (INCRA), missing 1,715 cases which are still under analysis⁴³.
41. In addition, the Commission received information on the development of different

39 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 7 and 8.

40 According to data of the National Coordination for Articulation of Black Rural Quilombola Communities (CONAQ), there are 2,847 certified quilombola communities in Brazil. Another 1,533 are in the process of being certified. On this, see: CONAQ, [Resiliência Quilombola](#), June 6, 2020.

41 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 10.

42 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 9.

43 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 10.

programs to care for *quilombola* communities, such as those focused on infrastructure – *Luz para Todos* Program – which benefited 131,967 people; National Rural Housing program, as well as the Sanitation Program Rural Sustainable Brazil. Likewise, the State informed about the investment of a minimum amount resources destined to provide health for this population, as well as the construction of cisterns and water system supplies. Likewise, the *Escola da Terra* program, aimed at promoting the continuing education of teachers who meet the specific demands of the *quilombola* population⁴⁴.

42. As regards megaprojects, during its visit the IACHR observed the precarious plight of the Rio dos Macacos quilombo. According to information furnished to the Commission, that *quilombola* territory, which has existed for 200 years, was chosen by the Brazilian Navy 47 years ago as the site it needed for its Aratu Naval Town. Since then, conflicts have emerged due to violations of the community members' right to freedom of movement by Armed Forces personnel⁴⁵, as was observed during the visit by the IACHR delegation in 2018 in the form of ubiquitous checkpoints set up by Brazilian Navy officers. What is more, the Commission notes that José Izídio Dias, the *quilombola* leader in Rio dos Macacos, was assassinated on November 25, 2019⁴⁶.
43. The Commission has been drawing attention to conflicts triggered by private or public interests in *quilombola* territories, without the State taking steps to protect their inhabitants. Often the perpetrators and instigators of those threats, coercion, and acts of violence go unpunished⁴⁷.
44. The Commission also observed that the construction of a wall by the Armed Forces in the Rio dos Macacos quilombo could potentially impair the community's traditional way of life, especially with respect to fishing, agriculture, and religious rites. According to information provided by the community, the building of the wall worsened already precarious sanitary conditions in the territory⁴⁸.
45. In the Commission's opinion, such restrictions on the use and enjoyment of the land, territories, and natural resources of *quilombola* communities weaken their capacity to "preserve, protect and guarantee the special relationship that the members of the Saramaka community have with their territory" such that they can "they may

44 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 10 e 11.

45 Federal Public Ministry, Civil Investigation No. 1.14.000.000833/2011-91, 2011.

46 Justiça Global, *Nota da Justiça Global de pesar pelo assassinato do quilombola José Izídio Dias*, November 27, 2019.

47 IACHR, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources:: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, OEA/Ser.L/V/II.Doc. 47, December 15, 2015, par. 256.

48 Geledés, *Marinha ergue muro, e quilombolas de Rio dos Macacos temem ficar sem acesso a água*, 2017.

continue living their traditional way of life, and that their distinct cultural identity, social structure, economic system, customs, beliefs and traditions are respected, guaranteed and protected (...)”⁴⁹. The IACHR reminds the State that its international obligation with respect to guaranteeing the survival of the *quilombola* tribal peoples entails not just recognition in fact and law of their territories, but also the adoption of effective measures geared to safeguarding their traditional way of life and their development.

46. In particular, the IACHR underscores the duty of the State to ensure an immediate stop to all actions or practices by private operators, Brazilian government officials, or members of its Armed Forces that obstruct or prevent access to drinking water and basic sanitation. The IACHR considers that access to water is intimately linked to respect and guarantees for several human rights, such as the right to life, humane treatment/personal integrity, and the principle of equality and nondiscrimination.
47. During its visit, the IACHR also had the opportunity to meet with the *quilombola* populations in the municipality of Alcântara, in Maranhão, who live in the vicinity of the Alcântara (Space Agency) Launching Center (CLA) of the Ministry of Defense. There, the Commission was notified that, despite the recognition of those populations as *quilombola* communities in 2004⁵⁰, and publication of the Technical Identification and Demarcation Report (RTDI) of the Descendant Community of the Alcântara Quilombo, in 2008⁵¹, titling of the territory was made subject to a reconciliation process at the request of the Ministry of Defense and the Office of the Attorney General of the Republic.⁵² In this regard, the IACHR observes with concern that the delay in the titling process could directly impair the right of 3,350 families who live in that territory⁵³.
48. The IACHR was also advised regarding the concern in the *quilombola* communities in the Alcântara region regarding the threat of another eviction due to the expansion of the rocket launching base envisaged in the Technology Safeguards Agreement between the Government of the Federative Republic of Brazil and the Government of the United States of America in 2019⁵⁴.
49. Accordingly, the State needs to conduct bone fide, culturally appropriate, prior, free, and informed consent consultations regarding all physical alterations to, or close to,

49 I/A Court of H.R., *Saramaka People v. Suriname*, Judgement of November 28, 2007.

50 Fundação Palmares, *Comunidades certificadas*, 08 de junho de 2004.

51 Diário Oficial da União (Official Gazette), *Regularização Fundiária das Terras da Comunidade Remanescente de Quilombo de Alcântara*, November 5, 2008, p. 125 and 126.

52 Federal Senate, *Jobim recorre à AGU por terras de Alcântara*, February 4, 2009.

53 International Labour Organization, *Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020)*, 2020.

54 Ministry of Defense, *Conhecendo o Acordo de Salvaguardas Tecnológicas Brasil e Estados Unidos*, 2019.

the traditional territory, in addition to CLA activities that may affect the communities, be they activities that generate waste, sound pollution, or significant movement of people in the area, or that impose constraints on the population's right to freedom of movement. Similarly, consultation must be held regarding initiatives or bills that envisage *quilombola* communities' participation in the benefits of the project⁵⁵.

50. In turn, on the conflict between the Army Command and the Quilombola Community of Forte Príncipe da Beira, in Rondônia, the Brazilian State reported on the availability of resources for the Brazilian Army to comply with Public Civil Action No. 6050-05.2014.4.01.4101. Such resources will be used in order to install a CCTV monitoring system in strategic areas, enabling the circulation of *quilombolas* residing in the space⁵⁶.
51. The Commission reminds the State of its obligation to consult in order to obtain the free, prior, and informed consent regarding customs and traditions of the *quilombola* communities, whenever there is a question of large-scale development plans within tribal territories⁵⁷. The IACHR emphasizes that "large-scale development or investment project" should be understood to mean any "process of investment of public and/or private, national or international capital for the purpose of building or improving the physical infrastructure of a specified region, the transformation over the long run of productive activities involving changes in the use of and property rights to land, the large-scale exploitation of natural resources including subsoil resources, the building of urban centers, manufacturing and/or mining, power, extraction and refining plants, tourist developments, port facilities, military bases and similar undertakings"⁵⁸.
52. Prior consultation is required not only in matters relating to the territory or that have an environmental impact, but also regarding regulations to do with freedom of movement in traditional territories, changes in governmental administrative structures, and environmental licensing⁵⁹. In that sense, the IACHR acknowledges the initiatives undertaken by the Federal Public Ministry of Brazil aimed at establishing, through broad, participatory, and transparent mechanisms, community consultation protocols that address the diversity of indigenous and *quilombola* peoples and communities.
53. Finally, the Commission underscores that the longstanding negation of *quilombola* identity, which is also rooted in structural racial discrimination, renders those communities extremely vulnerable. That process, in turn, triggers the physical and psy-

55 Chamber of Deputies, *Projeto cria fundo para beneficiar comunidades afetadas pela base de Alcântara*, April 19, 2019.

56 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 13.

57 I/A Court of H.R., *Saramaka People v. Suriname*, Judgement of November 28, 2007.

58 United Nations, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. Doc. E/CN.4/2003/90, 21 January 2003, para 6.

59 Racismo Ambiental, *Expansão da Base de Alcântara pode desabrigar 2700 famílias quilombolas*, March 19, 2019.

chological violence encountered in the fight for recognition of their ancestral territories (even against State institutions); in deficient procedures for practicing prior, free, and informed consultation; and in dealing with obstacles that fully or partially limit the enjoyment of their economic, social, cultural, and environmental rights.

3. Indigenous peoples

54. The 2010 census registered 817,963 indigenous persons pertaining to 305 ethnic groups speaking 274 different languages⁶⁰. The same survey yielded data regarding 107 indigenous peoples living in voluntary isolation, that today are only about 70, as informed by the State⁶¹. It was the first census to include specific questions regarding those peoples, prompted by changes associated with the restoration of democracy in the country.
55. In that sense, the 1988 Federal Constitution was a historic milestone with respect to the rights of indigenous peoples in Brazil. Together with Decree No. 5.051/04⁶², which promulgated C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization, it sought to supersede the assimilation and legal guardianship policies in effect since colonization⁶³. Moreover, the Commission took particular note of bill No. 2.057/1991 – Indigenous Peoples Statute⁶⁴, which reportedly is still being processed by the National Congress.
56. Despite the legislative progress made, the IACHR considers that the situation of indigenous peoples and communities is serious and worrying. They face not only threats of invasion of their territories by non-indigenous individuals, but also major challenges with respect to the titling and protection of their lands. More often than not, indigenous peoples and communities lack the State protection they need. In that context, the Commission voices its profound concern at the revision of indigenous and environmental policies in favor of illegal occupation of ancestral lands, the encouragement of acts of violence against indigenous leaders and communities, and authorization of the environmental destruction of their territories.

60 Brazilian Institute of Geography and Statistics.

61 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 18.

62 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, Decree nº 5.051, April 19, 2004.

63 Fundação Nacional do Índio (FUNAI), Política Indigenista, June 9, 2020.

64 Chamber of Deputies, Bill No 2.057, Tuesday, October 29, 1991.

57. In addition to all of the above, parliamentary agendas are emerging aimed at undermining the progress made with indigenous policies. With regard to that, the Commission was advised that, at end-2018, there were more than 100 bills being processed in the National Congress aimed at curtailing indigenous rights, especially those relating to land demarcation⁶⁵.
58. The Commission underscores the important institutional part played by the National Foundation for the Indigenous (FUNAI), which, even though it had been established as part of an assimilation approach, transformed itself in the course of time and thanks to the 1988 Constitution into an institution bent on strengthening and protecting the rights of indigenous peoples. Thus, the IACHR became aware of the institutional weakening of the FUNAI in recent years. Apart from that, the possible impact of the structural changes in Brazil's Federal Government institutions following Provisional Measures 870/19 of January 1, 2019 is especially worrisome⁶⁶.
59. Apart from uncertainties regarding its positioning as an institution, the IACHR notes that FUNAI been severely hit by budget cuts⁶⁷. According to civil society estimates, the Foundation's 2016 budget, corrected for inflation, had dropped back to what it was 10 years earlier. Likewise, worth highlighting is information regarding the potentially devastating impact of the fiscal regime introduced as of Constitutional Amendment No. 95 that could paralyze the work being done to oversee and protect indigenous populations⁶⁸. In that regard, the Commission was apprised of the Technical Note issued by Foundation personnel in 2019 pointed out an approximately 40% cutback in FUNAI activities compared to the previous fiscal year⁶⁹.

65 CIMI (Indian Missionary Council), *Congresso Anti-Índigena Os parlamentares que mais atuaram contra os direitos dos povos indígenas*.

66 That Provisional Measure, which established the basic organizational structure of the organs making up the Office of the President of the Republic and the Ministries, altered the administrative structure of the Federal Executive Branch, by transferring to the Ministry of Agriculture, Livestock, and Supply (MAPA) functions previously assigned to the National Foundation for the Indigenous (FUNAI) and the National Institute of Colonization and Agrarian Reform (INCRA). They included powers to identify, recognize, set boundaries, demarcate, and title lands occupied by the descendants of *quilombola* communities. Six months later, that alteration was revoked by the National Congress through the passing of Law No. 13.844 of June 18, 2019 (when Provisional Measure No. 870 became law), which re-assigned those functions to the FUNAI and INCRA. However, on the very same day that the law was promulgated, the Executive Branch issued another Provisional Measure (No. 886/2019, shifting those functions to the MAPA. In response to that, suits were filed in court, and the Judiciary handed down a preliminary judgment on June 24, 2019 declaring that the changes, which had already been rejected by the Legislative Branch, were unconstitutional. Along the same lines, the Chairman of the Board [CHECK: Presidente da Mesa] of the National Congress issued a Declaratory Act on June 25, 2019 effectively annulling the changes introduced by MP 886/2019 as regards the functions relating to indigenous and *quilombola* lands.

67 Agência Pública, *"Operando com 10% do orçamento, FUNAI abandona postos e coordenações em áreas indígenas"*, March 25, 2019.

68 Instituto Socioambiental (ISA), *PEC 241 vai congelar orçamento da Funai no fundo do poço*, October 26, 2016.

69 Civil Servants Association of the National Foundation for the Indigenous (FUNAI), *A Política Indigenista no PPA e na LOA*

60. Therefore, the Commission asserts that, as the federal body responsible for public policies for the indigenous peoples and communities in Brazil, FUNAI must be endowed with adequate physical and material resources, as well as a robust mandate *vis-a-vis* other State institution. The weakening of the institutional framework underpinning indigenous policies in the country, combined with weaker environmental policies, tends to erode the State's ability to comply with its international obligation to protect the indigenous peoples.
61. In the same vein, the Commission ascertained weaker environmental licensing policies and institutions, a development that directly impairs the rights of indigenous peoples. Thus, on February 29, 2019, the Brazilian Institute of the Environment and Renewable Natural Resources (IBAMA) published Regulatory Resolution (*Instrução Normativa*) No. 8, authorizing companies to apply for environmental licenses (formerly granted by the Federal body only) directly from state and municipal bodies⁷⁰. The resolution provides for applications that include activities on indigenous lands, in protected areas and oil exploration projects off the Brazilian coast. The IACHR warns that, in the absence of an institutional structure at the federal level to mediate in licensing processes, state and municipal bodies could be more susceptible to pressure from private interests.
62. At the same time, the IACHR received reports of precariousness with respect to indigenous health policies⁷¹. In this regard, the State informed the existence of the Special Secretariat for Indigenous Health (SESAI), created in 2010 to guarantee health with an ethnic-racial approach in the Unified Health System (SUS). Likewise, it warned of the existence of health and dental programs and the application of vaccination strategies to indigenous people, which guaranteed 141 thousand doses of vaccine in 2015⁷². The IACHR reiterates that the indigenous peoples have the collective and individual right to enjoy the highest possible level of physical, mental, and spiritual health, and to have their own health systems and practices. Likewise, they are also entitled to use all the health care and medical services institutions available to the general population. Consequently, in consultation and coordination with the indigenous peoples, States must promote intercultural systems or practices in the medical and sanitation services provided to indigenous communities, including training for indigenous health care professionals and technical staff⁷³.

70 Diário Oficial da União (Official Gazette), *Instrução Normativa N° 8*, February 20, 2019.

71 See Chapter 6 of this report.

72 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 15.

73 OAS, *American Declaration on the Rights of Indigenous Peoples*, Article XVIII

63. Although the Constitution of the Republic of Brazil recognizes the inherent original right (*direito originário*) to land traditionally occupied by the indigenous peoples and contains specific guidance regarding the five-year term for establishing that right (*para essas [sic] destinação*), the Commission observes that demarcation of those lands is not being completed within that time frame⁷⁴. Despite the record informed by the Brazilian State that in 2018, 435 were regularized⁷⁵. Currently, there are reportedly 847 indigenous territories regarding which some dispute still needs to be settled by the State before they can receive title. That applies to nearly two-thirds (64%) of all (1,306) indigenous lands⁷⁶. Apart from that, the IACHR received information to the effect that the recent measures adopted by the State could be detrimental to guarantees of the indigenous peoples' right to collective property⁷⁷. Another extremely worrisome development is Proposed Constitutional Amendment No. 187, already approved by the Constitution and Justice Committee of the Chamber of Deputies, which authorizes commercial (agricultural and forestry) exploration on indigenous lands⁷⁸.
64. The IACHR reiterates the findings of the Inter-American Court in the case of the *Xucuru Indigenous People and its members v. Brazil* (2018), to the effect that failure to delimit or effectively demarcate the borders of the territory regarding which an indigenous people has a collective property right can trigger a feeling of permanent uncertainty among the members of such peoples. That same judgment establishes that uncertainty regarding the limits to property rights in the context of the size of a territory produces insecurity as to the extent to which native peoples can freely use and enjoy their respective property⁷⁹.
65. During its visit, the IACHR likewise received information asserting that, since the judgment handed down by the Federal Supreme Court in 2009 in connection with Petition No. 3,338/RR regarding the Raposa Serra do Sol lands, the Temporal Landmark (*Marco Temporal*) thesis had become institutionalized in Brazil. According to this argument, indigenous peoples would only have right to land that was in their possession on October 5, 1988 (when the current Federal Constitution was promulgated). On July 20, 2017, Judgment (*Parecer*) 001/2017 GAB/CGU/AGU established that all Federal Public

74 Article 67 of the Transitory Constitutional Provisions Act of the 1988 Constitution established a five-year time limit for demarcating all indigenous lands.

75 Which, according to information provided by the State, would represent an area of approximately 16,900,565.3634 hectares - IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 18.

76 Information provided by the Indian Law Resource Center, *Situation of Human Rights of the Indigenous Peoples of Brazil*, p.2 [IACHR archives] of December 8, 2018.

77 Chamber of Deputies, *CCJ aprova PEC sobre atividades agropecuárias em terras indígenas*, August 27, 2019.

78 Chamber of Deputies, *CCJ aprova PEC sobre atividades agropecuárias em terras indígenas*, August 27, 2019.

79 I/A Court of H.R. *Case of the Xucuru Indigenous People and its members v. Brazil*. Preliminary objections, Merits, Reparations, and Costs. Judgment of February 5, 2018. Series C, No. 346, par. 188

Administration bodies, including FUNAI, had to follow those guidelines⁸⁰. In the meantime, the IACHR notes with concern that the decision by the Federal Supreme Court suspending application of the Temporal Landmark thesis is a preliminary ruling that can still be revoked. Furthermore, the Commission stresses that the aforementioned judgment helps create an *erga omnes* effect likely to be adopted in the final ruling: a situation that would impact all already completed and future indigenous territory demarcation processes.

66. As the IACHR sees it, the temporal landmark thesis disregards the innumerable cases in which indigenous peoples were violently evicted from the territories they traditionally occupied and, for that reason only, were not occupying them in 1988. Accordingly, the Commission considers that the thesis contravenes international and inter-American human rights norms and standards, especially the American Convention on Human Rights and the American Declaration on the Rights of Indigenous Peoples⁸¹.
67. The IACHR therefore warns that application of the Temporal Landmark thesis could affect 748 administrative demarcation processes under way in Brazil, if FUNAI is prevented by its own office of legal counsel from proceeding with those processes. In addition, the Attorney General's Office (AGU) could not appeal rulings in which a first instance judgment annuls a land demarcation after ascertaining that there was no indigenous occupation of the area in 1988. Such cases would be prevented from appealing to a higher instance. The Commission also places on record that the Temporal Landmark thesis was applied in several judicial decisions by federal regional courts, giving rise to the cancellation of demarcation processes in the cases of the Limão Verde, Buritim lands of the Terena people, and Guyraroká lands of the Guarani and Kaiowá peoples, all of them located in Mato Grosso do Sul⁸².
68. On that subject, during its stay in Brazil, the Commission visited the Guyraroká indigenous territory, in respect of which the Federal Supreme Court (STF) applied the temporal landmark thesis, annulling the demarcation processes already begun with the identification and boundary-setting report published on November 25, 2004⁸³. The Commission observed that the community remains outside most of its territory, currently occupying less than 5% of the 11,401 hectares identified. The IACHR was also told that, as a result of the application of the temporal landmark, the community risks imminent eviction.

80 *Advocacia Geral da União* (Office of the Attorney General of the Republic), [Parecer 001/2017 GAB/CGU/AGU](#), July 20, 2017.

81 OAS, *American Declaration on the Rights of Indigenous Peoples*, Article XVIII and XXV.

82 Information provided by the Indian Law Resource Center, [Situation of Human Rights of the Indigenous Peoples of Brazil](#), p.4 [IACHR archives] of December 8, 2018.

83 Federal Supreme Court (STF), [AR: 2686 DF - Distrito Federal 0069660-65.2018.1.00.0000, Rapporteur: Min. LUIZ FUX, Judgement handed down on: 04/30/2018](#), Publication date: DJe-086, May 4, 2018.

69. For its part, the IACHR has ascertained that the humanitarian plight of the Guarani and Kaiowá peoples derives largely from violation of their territorial rights. During its visit to the Dourados-Amambaieguá indigenous territory, the Commission received abundant information regarding the victims of the so-called “Caarapó Massacre,” in which Clodiodi de Souza was killed and another six members of the indigenous community wounded, including a 12-year-old child. It was also apprised of frequent attacks by armed militias resulting in several deaths and forced disappearance. In addition, there are reports of frequent police operations, such as the operation known as Caarapó I, on April 25, 2017, which deployed more than 200 policemen and a helicopter, which violated international standards and the human rights of the indigenous peoples⁸⁴.
70. The IACHR also received a complaint regarding the territorial confinement of the Guarani and Kaiowá peoples, the second largest indigenous population in Brazil, 80% of which has been occupying fewer than 27,000 hectares for more than 100 years. The Commission was also notified of several murders and homicides among members of these indigenous peoples. In that regard, the IACHR considers that overcrowding in these native reserves and the conflicts triggered by such close confinement lead to conditions that deprive the Guarani and Kaiowá of a decent life.
71. Reportedly, one of the most serious consequences of violation of the right to land has been the separation of indigenous children from their families. In Caarapó, the Commission visited the Maria Ariane Educational Center (CEMA), in which 17 of the 19 children living at the Center were indigenous. In Dourados, in 2018, 34 indigenous children were registered as living in shelters. The process of accommodating indigenous children in shelters is a reflection of the hardships and violations experienced in indigenous communities, particularly when they are deprived of the right to land, as observed in the case of the Guarani and Kaiowá indigenous peoples.
72. As for the implications of the right to land, the Commission wishes to draw attention to the restrictive interpretation currently being made of the right to free, prior, and informed consultation regarding measures that affect indigenous peoples. The Inter-American Commission ascertained, as in the case of the *quilombola* communities, that said right is reportedly being applied only to investment projects, not as regards other legislative and administrative measures. The IACHR reiterates that the Inter-American Court of Human Rights established that States must adopt such measures as are needed to guarantee the right to prior consultation of indigenous peoples and communities, as well as amend those that prevent the full and free exercise of that right⁸⁵.

84 JusBrasil, “*MPE/MS quer que Justiça Federal conduza feitos da Operação Caarapó I*”

85 I/A Court of H.R. *Case of the Kichwa de Sarayaku Indigenous People v. Ecuador. Merits and Reparations*. Judgment of Wednesday, June 27, 2012. Series C, No. 245, par. 301.

73. At the same time, the Commission commends the initiatives undertaken by indigenous peoples and communities to draw up autonomous consultation and consent protocol⁸⁶. Such instruments constitute legitimate exercise of the right of indigenous peoples to participate in consultation processes in accordance with their own cultural guidelines⁸⁷. So far, such protocols have yet to be institutionalized by the State in such a way as to ensure that they are duly complied with and are incorporated into State practice in all situations requiring consultation.
74. The IACHR also received information regarding the decision-making process that led to construction of the Belo Monte hydroelectric complex in the Brazilian Amazon. According to that information, Belo Monte has been the object of 20 public civil lawsuits (ACP) filed by the Federal Public Ministry (MPF) since 2001, claiming failure to obtain free, prior, and informed consent. Here, it is to be noted that the project, located in the Teles Pires river basin, involves six planned hydroelectric plants (UHEs), four of which are reportedly now being built. Moreover, in the Tapajós basin there will be 43 UHEs and 80 Small Hydroelectric Plants (PCHs), which reportedly impact nearly one million people, including 10 indigenous village nations, 25 settlement projects, and approximately 600 traditional fishermen⁸⁸. The Commission reiterates the rulings of the Inter-American Court of Human Rights to the effect that “regarding large-scale development or investment projects that would have a major impact within Saramaka territory, the State has a duty, not only to consult with the Saramakas, but also to obtain their free, prior, and informed consent, according to their customs and traditions”⁸⁹.
75. About this project, according to the information provided by the State, since September 2019, representatives of SNPIR have been working with the Chamber of Conciliation and Arbitration of the Federal Administration to guarantee the reparation related to the damages by the construction of the plant which affected traditional peoples⁹⁰.
76. The IACHR was likewise told about a number of mining projects with either overwhelming or partial impact on indigenous lands and protected areas in the Brazilian Amazon. According to civil society data, of the 44,911 mining projects undertaken,

86 The Commission was apprised of several consultation protocols, including: Wajãpi Consent; the Juruna (Yudjá) Consultation Protocol of the Paquiçamba de Volta Grande do Rio Xingu Indigenous Land; the Consultation Protocol for two Indigenous Peoples in Xingu Territory; the Protocol for Consulting the Waimiri Atroar people; the Consultation Protocol of the Kayapó-Menkrãgnoti people in association with the Kabu Institute; and the draft Consultation Protocol of the Indigenous Peoples of Oiapoque. Rede de Cooperação Amazônica, “*Consulta previa, libre e informada*”, April 22, 2019.

87 I/A Court of H.R. Case of the Kichwa de Sarayaku Indigenous People v. Ecuador. Merits and Reparations. Judgment of June 27, 2012. Series C, No. 245, par. 177.

88 Information provided by the Indian Law Resource Center, Situation of Human Rights of the Indigenous Peoples of Brazil, p.5 [IACHR archives] of December 8, 2018.

89 Inter-American Court of Human Rights, Saramaka People v. Suriname Preliminary Objection, Merits, Reparations and Costs., Judgment of November 28, 2007, Series C N° 172, par. 134.

90 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 14

in the Brazilian Amazon in 2016, 17,509 (mainly artisanal gold mining – *garimpeiro* – projects) overwhelmingly or partially impacted indigenous lands and protected areas. In fact, some 70% of the projects are gold prospecting projects. Most (10,686) are being implemented in federal protected areas; 4,181 on indigenous lands; and 3,390 in state protected areas⁹¹. Those data, plus recent statements by senior authorities in Brazil regarding liberalization of mineral mining in the Amazon, are cause for enormous concern, due to the impact on the environment and on the survival of indigenous peoples and tribal communities.

77. For its part, the Inter-American Commission received information about cases in which judicial rulings supporting actions by the Federal Public Ministry on the rights of indigenous peoples were frozen by the “Suspension of Security”⁹². Using that legal construct, judges suspended lower court rulings, arguing that they posed a threat to the social and economic order. According to civil society reports, that mechanism is being used discretionally and to the detriment of constitutional protection of the environment and of native villages. The effects of using “Security Suspension” can be seen, for instance, in the case of the Teles Pires river hydroelectric complex, where areas that were sacred for the Munduruku, Kayabi, and Apiaka villages were destroyed, causing irreparable harm to the cultural and spiritual heritage of the indigenous communities in the region⁹³.
78. The IACHR also observes the worrisome clearing of land in Brazil and its repercussions for the survival of the indigenous peoples.⁹⁴ Information has also been obtained indicating that the Arara indigenous land, located in the immediate area of influence of the Belo Monte project, has been invaded by loggers. Land-grabbers (*grileiros*) have invaded the Uru-yo-wau-wau Indigenous Land⁹⁵, and there are reports that the indigenous peoples have been threatened by armed invaders. Those are just examples of innumerable complaints of clashes between indigenous peoples, loggers, and farmers that have multiplied over the past year, illustrating a trend of

91 Information provided by the Indian Law Resource Center, [Situation of Human Rights of the Indigenous Peoples of Brazil](#), p.6 [IACHR archives] of December 8, 2018.

92 The “Security Suspension” concept arose in Brazilian law in the middle of a military dictatorial regime (*regime de exceção*) together with the publication of the Writ of Mandamus (Law 191/1936), a State instrument to defend individual rights against manifestly illegal acts, which envisages the possibility of suspending a ruling against a government official if it is deemed harmful to the public interest. Justiça Global (Brazil), Justiça nos Trilhos (Brazil), Sociedade Paraense de Direitos Humanos – SDDH (Brazil), Terra de Direitos (Brazil), Instituto Socioambiental – ISA (Brazil), Inter-American Association for Environmental Defense – AIDA (regional), and International Rivers (international), [“Situação do direito ao acesso à justiça e a suspensão de decisões judiciais \(ação de suspensão de segurança\) no Brasil”](#), p.5. March, 2014

93 GT Infraestrutura, [Nota pública sobre a violação de direitos indígenas na construção de hidrelétricas no Rio Teles Pires. Força Nacional, atuando como segurança privada, reprime povos indígenas em hidrelétrica na Amazônia](#) [in IACHR archive], March 22, 2018.

94 Imazon, [A boletim do desmatamento da Amazonia legal](#), February 28, 2019.

95 Inter-American Association for Environmental Defense – AIDA; International Rivers; Conectas; Fórum Teles Pires; [Operação Amazônia Nativa, “Solicitação de audiência sobre sucessivos retrocessos na garantia de direitos humanos dos povos indígenas no Brasil”](#), p.6 [IACHR archive], March 6, 2019.

mounting violence and obstruction of the rights of indigenous peoples⁹⁶. In this regard, the State reported that since July 2019, SNPIR has been monitoring the articulation of the National Indian Foundation (FUNAI) and the Federal Police to ensure that the rights of indigenous peoples are preserved⁹⁷.

79. Moreover, the State reported on the mediation of judicial conflict in the municipalities of Rodelas and Paulo Afonso, in Bahia, within the framework of the expropriation of the lands for use in the Tuxá indigenous community, which had been removed for the construction of the Taparica Hydroelectric Plant. Likewise, the Brazilian State provided information on a visit by State institutions to the Canabrava-Guajajara indigenous territory, in the municipality of Barra da Corda, in Maranhão, to understand the conflict that exists there, as well as to generate strategies to minimize it⁹⁸.
80. The Commission notes that one of the principal problems associated with defense of territories and the environment is the widespread use of intimidation, threats, and attacks against defenders, leaders, and indigenous communities that defend their territory⁹⁹. During its visit, the IACHR met with a delegation of the Articulation of Indigenous Peoples of Brazil (APIB), which told it about a series of attempts to criminalize its leaders. The IACHR also draws attention to the fact that, in first half 2019, there were several attacks against indigenous communities in a number of parts of Brazil, such as attacks on the Guarani and Kaiowá peoples, in Mato Grosso do Sul; the Tunimba in Bahia; the Pankararu in Pernambuco; and the murder of the Wajãpi leaders in Amapá¹⁰⁰.
81. During its visit, the IACHR also voiced its concern regarding the human rights situation of indigenous peoples in voluntary isolation or initial contact. The Commission reiterates the extreme vulnerability to which those Amazonian peoples are exposed as a result of the presence of outside persons engaged in extractive industry activities who alter their way of life, world view, and social and cultural customs, apart

96 Amazônia real, "*Asurini capturam cinco garimpeiros na terra indígena, mas PF de Altamira libera acusados*", March 21, 2019.

97 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 13.

98 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 14.

99 The IACHR reiterates that, in these cases, attacks on, or the loss of, a leader or defender directly impairs the exercise of the rights of members of the group concerned and exacerbates the sense of helplessness. For example, in 2017, the IACHR received information about an attack that took place in Povoado de Bahias, in the municipality of Viana (MA), against members of the Gamela indigenous people. On Sunday, April 30 of that year, several dozen members of the Gamela people occupying land they claim as their ancestral territory were attacked by machete-wielding campesino farmers. Two members of the indigenous people had their hands cut off, one had his legs cut off, five received bullet wounds, and 13 were knifed. El país, *Conflicto por terras no Maranhão termina com denúncia sobre mãos decepadas*, May 2, 2017; The Guardian, *Brazilian farmers attack indigenous tribe with machetes in brutal land dispute*, May 1, 2017; Comissão Pastoral da Terra: *Povo Gamela sofre ataque premeditado de fazendeiros contra suas vidas e lutas*, May 1, 2017.

100 El País, "*Assassinato de liderança Wajãpi expõe acirramento da violência na floresta sob Bolsonaro*", 29 de julho de 2019.

from heightening the risk of spreading common diseases among people lacking immunity¹⁰¹. Thus, information was received, for instance, about the dire health crisis among the Yanomani indigenous communities found in southern Venezuela and the north of Brazil, triggered by uncontrolled outbreaks of measles. The lack of culturally appropriate medical care in such cases poses a threat not just to each person's life, but also to the physical and cultural survival of their communities¹⁰².

- 82.** Despite the challenges referred to above, the Commission acknowledges the efforts made by a variety of State institutions committed to preserving, protecting, and guaranteeing the rights of the indigenous peoples in Brazil. For example, the IACHR notes the recent resolution by the National Council of Justice (CNJ), establishing a protocol for judges hearing criminal cases involving indigenous persons. The resolution provides, for instance, for an interpreter and anthropological expertise during the pretrial investigation of the case, as well as consultation with the community of origin of the indigenous person, regarding its own mechanisms for finding liability¹⁰³.
- 83.** Likewise, the IACHR acknowledges the importance of the National Foundation for the Indigenous (FUNAI) as the leading federal institution for promoting and defending the rights of indigenous peoples, particularly the right to self-determination and the right to land upheld in the Federal Constitution. Together with FUNAI, the National Indigenous Policy Council (CNPI), established by Decree No. 8.593 of December 17, 2015¹⁰⁴, plays a key part in democratic handling of Brazil's indigenous policy.
- 84.** The Commission reminds the State about the importance of safeguarding the right to memory and truth for indigenous peoples. The IACHR observes that the civilian-military dictatorship in Brazil (1964-1985) fostered the assimilation and legal guardianship paradigm based on an alleged "national interest" (land occupation, highway construction, and so on) that triggered a number of violations of indigenous populations' rights¹⁰⁵. In that connection, the Commission welcomed the news that

101 IACHR, Press Release No. 144/17, IACHR and UNHCR Express Concern over Reports of a Massacre against Indigenous Peoples in Voluntary Isolation and Initial Contact in the Brazilian Amazon Region, September 21, 2017.

102 Through its petitions and cases system, the IACHR issued admissibility report in such cases as *Members of the Ananas Indigenous Community et al. v. Brazil*. IACHR. Admissibility Report No. 80/06, Petition 62/02 – *Members of the Ananas Indigenous Community et al. (Brazil)*, October 21, 2006. Likewise, the IACHR has granted innumerable precautionary measures on behalf of several indigenous peoples in the Brazilian Amazon; take, for instance, the case of the Wapichana, Patamona, Ingaricó, Taurepang, and Macuxi peoples, and that of the indigenous communities of the Xingu river basin, Pará. IACHR. *Brazil (2004)*. December 6, 2004. Paragraph 13; IACHR. PM 382/10 Indigenous Communities of the Xingu River Basin, Pará, Brazil, April 1, 2011.

103 National Council of Justice, *Resolução Nº. 287*, June 25, 2019.

104 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, Decree No 8.593, December 17, 2015.

105 National Truth Commission, *Relatório: Volume II, texto 5 - Violações de direitos humanos dos povos indígenas*.

the Federal Public Ministry (MPF) has made both administrative and judicial moves to obtain reparation for a number of ethnic group, albeit so far largely in vain. The Commission draws attention to the importance of such reparation not only in recognition of past violations but also as a sign of commitment to ensuring that they are not repeated. Particularly noteworthy, in that connection, is the situation of the Waimiri Atroari, whose lands and lives were severely impacted by the construction of the BR 174 federal highway in the 1970s and are now threatened by the “Tucuruí transmission line” project¹⁰⁶.

- 85.** The Commission further underscores the points made by FUNAI during its visits, regarding the concrete problems faced by indigenous communities in Brazil, such as land invasions and environmental degradation, sexual exploitation, the provision and use of drugs, labor (including child labor) exploitation, and disorderly exodus of the population.
- 86.** Finally, the Inter-American Commission again reminds the State that the ethnic-racial discrimination suffered by indigenous peoples, focusing on their historical cultural assimilation and invasion of their ancestral territories, exposed them to a series of violations, such as the violence inflicted in those territories by groups illegally extracting natural resources and the absence of a robust policy guaranteeing for those populations effective and culturally appropriate access to their economic, social, cultural, and environmental rights. In the same vein, the IACHR underscores that the weakening of State protection for indigenous territories heightens the risk of extermination of ancestral populations, be it through clashes with invaders, destruction of the environment and of their means of subsistence, or through cultural assimilation and other ways of subjecting those populations to the wishes of majorities.

4. Women and gender-based violence

- 87.** The Inter-American Commission has repeatedly drawn attention to the multiple structural factors perpetuating discrimination against women and exacerbating the risks to which they exposed. The societies it has referred to cultivate male chauvinism (machismo), and patriarchal and sexist stereotypes that foster structural discrimination and end up permitting and tolerating all kinds of (physical, psychological, sexual, economic, and other) violence against women¹⁰⁷. During its visit, in particular, the IACHR received abundant information regarding stepped-up levels of violence against wom-

106 O Globo, *MP quer reparação a indígenas por mortes em conflitos durante ditadura*, April 1, 2019

107 IACHR, *Violence and discrimination against women and girls: Best practices and challenges in Latin America and the Caribbean*, OEA/Ser.L/V/II. Doc. 233. November 14, 2019, par. 94.

en. In Brazil, it has taken decades just to recognize violence against women as a public issue and not just a factor found in private personal relationships¹⁰⁸.

- 88.** The IACHR recalls the progress made with the passing of Law No. 11.340/06, of August 7, 2006 (Maria da Penha Law), among other public policies aimed at organizing safe havens for women victims of violence, such as the *Casa da Mulher Brasileira*¹⁰⁹. Likewise, in 2012-2013 the Brazilian Congress established a Joint Parliamentary Commission of Inquiry (CPMI) to assess “the situation of violence against women” in the country and the “complaints regarding the failure of the authorities to apply the instruments provided for by law to protect women exposed to violence”¹¹⁰. The Commission’s work led to the promulgation of Law No. 13.104, of March 9, 2015, which provided a legal definition of the crime of “femicide” (*feminicídio*)¹¹¹. In addition, as informed by the State, in 2018 it was sanctioned the Law No. 13.772, which typifies the crime of unauthorized registration of sexual intimacy in the penal code. In this same sense, in 2019, the Law No. 13,871 established obligations to aggressors in order to reimburse the costs of victims of domestic violence to the Unified Health System (SUS)¹¹².
- 89.** The IACHR was also notified by the State of various other efforts aimed at eradicating violence and discrimination against women. One welcome development is the implementation Women’s Police Stations (*Delegacias de Defesa da Mulher*), specializing in attending to victims of physical, psychological, and sexual violence. However, it needs to be pointed out that those stations have not been established everywhere: one third of Brazil’s 133 stations are located in São Paulo. The IACHR was also informed of the final phase of implementation of the Single Protocol and Integration Project aimed at providing priority attention to victims of domestic violence, conducting courses for offenders designed to eradicate recidivism, and involving Secretariats for Education and Custody (“tutelary”) Councils in an integrated effort to improve protection for women victims of violence¹¹³.

108 It was only in 1962 that women acquired full civil rights and no longer had to ask males for permission to work. And it took until the Federal Constitution of 1988 for women to be recognized as equal to men in terms of rights and obligations. Cf. Ana Paula Antunes Martins, *O Brasil é um país machista?* Correio Braziliense, April 26, 2014.

109 Federal Senate, *Casa da Mulher inaugurou o atendimento integrado*, 2015.

110 Federal Senate, *Relatório Final da Comissão Parlamentar Mista de Inquérito Sobre a Violência Contra as Mulheres*, 2013.

111 Technically, “femicide” characterizes the murder of “a women because of her gender (Article 121.VI)”, for instance when it involves “domestic and family violence” or “contempt of or discrimination against women as such” (Article 121. VI.§ 2º I and II).

112 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 21 and 22.

113 See: Federative Republic of Brazil, Inter-American Commission on Human Rights, On-site Visit, Report containing additional information (*Relatório Com Informações Adicionais*), May 2019, Correspondence with the IACHR, Note No. 141, May 17, 2019. IACHR archives.

90. Despite progress in respect of laws and public policies, the Commission ascertains that violence against women continues at a dramatic rate, with alarming numbers of women murdered in Brazil because of their gender¹¹⁴. According to data of the Economic Commission for Latin America and the Caribbean (ECLAC), 40% of all murders of women in LAC are committed in Brazil¹¹⁵. In the same vein, according to data provided by Security Secretariats, there were 4,539 reported murders of women in Brazil in 2017, 1,133 of which were classified as femicide. That was a 6.1% increase over 2016, when the number of registered murders was 4,245 (929 femicides)¹¹⁶. In 2019, despite the reduction in the number of homicides of women, 1,314 femicides were registered, an increase of 7.3% in relation to the previous year¹¹⁷. These statistics also point to more-than-average victimization of women of African descent. Those data corroborate the disproportionate impact of violence and insecurity on groups already historically subject to structural discrimination.
91. In addition, the Commission observes with concern that, in a majority of cases, the women murdered had denounced their aggressors and had experienced very serious domestic violence and previous attempts to attack or kill them. In many of those cases, the aggressors were found to be or to have been spouses or partners. Half of those murders were committed using firearms and most occur in the victims' own homes¹¹⁸. Accordingly, the Commission notes with extreme concern the State's efforts to use presidential decrees to expand Brazilians' access to firearms¹¹⁹, which could, in addition, lead to an exponential increase in violence perpetrated against women¹²⁰.
92. The IACHR reiterates that intersectional discrimination factors also tend to compound the victimization of women in gender-based murders, heightening their vulnerability. Thus, women of African descent suffer the cumulative impact of gender-based exclusion, discrimination, and violence, exacerbated by the structural

114 IACHR, Press Release No. 024/19, *IACHR Expresses Deep Concern over Alarming Prevalence of Gender-based Killings of Women in Brazil*, February 4, 2019; Exame, *Taxa de feminicídios no Brasil é a quinta maior do mundo*, August 7, 2018; El País, *América Latina é a região mais letal para as mulheres*, November 27, 2018.

115 ECLAC, *At Least 2,795 Women Were Victims of Femicide in 23 Countries of Latin America and the Caribbean in 2017*, 15 November 2018; ECLAC *Femicide Observatory 2016 – 2017*, undated.

116 Fórum Brasileiro de Segurança Pública. *Edição 2018 do Anuário Brasileiro de Segurança Pública*, 2018. *O uso de dados da Segurança Pública se justifica, neste caso, pois eles permitem distinguir entre mortes enquadradas ou não como feminicídios. Os dados da Saúde, por sua vez, mostram um total de 4.936 mortes de mulheres, o maior número registrado desde 2007.*

117 G1, *Mesmo com queda recorde de mortes de mulheres, Brasil tem alta no número de feminicídios em 2019*, March 5, 2020.

118 *Atlas da Violência 2019*. Brasília: Ipea e FBSP, pp. 39 e seguintes; Correio Braziliense, *Feminicídios e tentativas de assassinato disparam no Brasil em 2018*, January 8, 2019. GLOBO, *Quase Metade Dos Feminicídios São Cometidos Por Armas De Fogo, Revela Estudo*, January 21, 2019; O TEMPO, *Quatro em cada dez mulheres assassinadas em MG levou tiro*, January 20, 2019.

119 El País, *Bolsonaro cambia la ley por decreto para facilitar la venta de armas*, January 16, 2019.

120 El País, *Armas matam mulheres*, January 16, 2018. ; El País, *Mulheres dizem não às armas e sabem o porquê*, January 22, 2018.

racial discrimination based on their ethnic/racial origin. According to 2015 data furnished by the *Disque 180* program, a telephone hotline to report gender-based violence and attend to women victims of violence, 60% of reported cases involved women of African descent and, according to Ministry of Justice data for 2015, 68.8% of the women murdered were of the same ethnic/racial origin¹²¹. Furthermore, according to data culled by this Commission, while in the past 10 years there has been an 8% reduction in the number of homicides of non-Afrodescendent women, those involving women of African descent increased by 14.5%¹²². In fact, between 2006 and 2016, the homicide rate for the latter was 71% higher than for women not of African descent¹²³. Similarly, women human rights defenders have to contend with gender stereotypes that reject their participation in public life and the leadership role they play in defending their fundamental rights, territories, and traditions.

93. The Commission acknowledges the efforts made by the State to stop the intentional violent deaths of women, as well as the above-mentioned laws and public policies. In particular, it highlights the provision in the Maria da Penha law that men accused of breaking that law forfeit their right to bear arms. Nevertheless, the IACHR continues to receive information regarding the hurdles women face to gain access to justice and to these protection measures. Those hurdles include ongoing social tolerance of violence against women, reinforced by the notion that women are men's "property"; the persistence of stereotypes and discriminatory attitudes among State agents; the long time it takes in the justice system and in legal proceedings to obtain protective measures; and the absence or scant presence of entities specializing in the subject all over Brazil¹²⁴.
94. As regards sexual violence, according to information obtained by the IACHR, in 2017 alone 60,018 cases of rape were registered nationwide, an average of almost 165 cases per day. That kind of violence was also increasing, with cases registered in 2017 amounting to an 8.4% increase over the previous year¹²⁵. In 2018, according to information in the public domain, the number of cases increased yet again: to 66,041. The IACHR notes with particular concern that nearly three-quarters of all those rapes (72%) were committed victims under the age of 18¹²⁶.
96. The Commission also notes with special concern the increase, in the past five years, of cases of group or collective sexual violence. Ministry of Health data show the number

121 ARTIGO 19, *Dados Sobre Femicídio No Brasil*, March, 2018.

122 Instituto de Pesquisa Econômica Aplicada (Ipea) e o Fórum Brasileiro de Segurança Pública (FBSP). *Atlas da Violência 2017*. 2017

123 IACHR. *Preliminary observations of IACHR's In Loco visit to Brazil*. November 5-12, 2018

124 Fórum Brasileiro de Segurança Pública, *Visível e invisível: a vitimização de mulheres no Brasil*, March 2017; El País, *América Latina é a região mais letal para as mulheres*, November 27, 2018; Correio Braziliense, *Femicídios e tentativas de assassinato disparam no Brasil em 2018*, January 8, 2019.

125 GLOBO, *Casos de estupro aumentam no Brasil: foram 60 mil registros apenas em 2017*, August 10, 2018.

126 G1, *País tem recorde nos registros de estupros; casos de injúria racial aumentam 20%*, September 10, 2019.

of cases of collective sexual violence increasing from 1,570 in 2011 to 3,526 in 2016, and according to hospital records the number of victims of collective sexual violence doubled in that period given the average of 10 cases per day nationwide¹²⁷. Over one fifth of those rapes (20.4%) were committed in São Paulo¹²⁸, the city that heads the world list of large urban centers (megacities) posing the greatest sexual risk to women¹²⁹. According to data put out by the Public Safety Institute (*Instituto de Segurança Pública*) in Rio de Janeiro, 80% of rape victims in that state were aged 30 or younger¹³⁰.

97. The IACHR notes with immense concern that young women of African descent make up a disproportionately large percentage of the victims of these crimes. According to data published by the Crime Notification Information System (SINAN/MS) – a database in which variables, such as race, can be cross-compared – the national rape rate involving women of that ethnic/racial background in 2017 was 247 for every 100,000, compared to 175 for other women¹³¹.
98. For its part, the State pointed out that the increase in the registered number of case of violence and other forms of sexual aggression is explained “in large part by a positive shift in the stance taken by victims, who have now begun reporting sexual aggression and violence,” in a country in which, according to the information available, barely 10% of cases of violence are reported. According to data received by the Commission, the state of São Paulo has fostered awareness-raising campaigns aimed at encouraging the denunciation of sex crimes and identification of the culprits, while at the same time bolstering support facilities for victims.
99. The Commission was also apprised of the public policy known as the Love-Me-Do (*Bem-Me-Quer*) Program, which since 2001 has been providing integrated safety, health, and social assistance services to women victims of sexual violence in the capital of the state of São Paulo. According to Brazilian State figures, in 2018 the Program assisted 1,322 victims of sex crimes, 90% of whom had been raped. In October 2018, São Paulo also became the state with the largest number of entries in the National Genetic Profile Database (*Banco Nacional de Perfis Genéticos*), with 2,899 profiles. Reportedly, that database helped detect 64 serial rapists, including one previously undetected person responsible for six rapes¹³².

127 Folha de São Paulo, *País registra 10 estupros coletivos por dia; notificações dobram em 5 anos*, August 20, 2017.

128 El Mundo, *Música para violar en grupo en Sao Paulo*, April 1, 2018.

129 Thomas Reuters Foundation, *The world's most dangerous megacities for women*, 2017.

130 O Globo, *Mais de 80% das mulheres vítimas de estupro no Rio têm até 30 anos*, April 30, 2019.

131 Gênero e Número, *Mapa da Violência de Gênero*, June 11, 2020.

132 Federative Republic of Brazil, Inter-American Commission on Human Rights, On-site Visit, Report containing additional information (*Relatório Com Informações Adicionais*), May 2019, Correspondence with the IACHR, Note No. 141, May 17, 2019. IACHR archive.

- 100.** The IACHR welcomes the State's efforts to modernize investigation into sex crimes and lend assistance to victims. Nonetheless, it reiterates that the occurrence and growth in the number of those crimes has repeatedly demonstrated widespread tolerance of violence against women and the tendency to blame the victims of those violations¹³³. The Commission likewise reiterates its recommendations regarding the importance of promoting laws and public policies that seeks, through education in human rights, to address and eradicate structurally embedded prejudices, historical discrimination, as well as stereotypes and false notions about women; and, in particular, the importance of combating the "culture of rape." In this sense, the IACHR highlights the information provided by the State about the legislation N^o. 7,835/2018, from Rio de Janeiro, which establishes a fine and order to remove from broadcasting any show that could have misogynist, sexist characteristics or that encourages gender violence¹³⁴.
- 101.** The Commission takes note of information from the State on recent changes in legislation that allow more protection and rights for women. In this regard, the Commission welcomes Legislative Decree N^o. 172/2017, which establishes that domestic workers, who are mostly women, have the same labor rights as other workers. Likewise, it observes in a positive way the decision of the Superior Electoral Court in 2018, which establishes that a minimum investment of 30% of the total financial resources transferred to the parties by the Electoral must be used to support women candidacy¹³⁵.

B. SOCIO-ECONOMIC DISCRIMINATION

1. Rural workers, campesinos, and forced migration

- 102.** Brazil's widespread land disputes are closely tied to its long history of economic, structural discrimination, combined with pervasive patterns of social inequality. According to Brazilian State archives, the land distribution process remained largely unaltered from the time when the country was a Portuguese colony until mid-1945, with land ownership and tenure in the hands of relatively few individuals or families. Despite the arrival of immigrants from 1889 to 1930 and their access to a larger number of properties, the underlying structure remained practically intact¹³⁶.

133 Instituto Avon, *O papel do homem na desconstrução do machismo*, 2016; Instituto de Pesquisa Econômica Aplicada (Ipea), *Tolerância social à violência contra as mulheres*, 2014.

134 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 25.

135 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 23.

136 INCRA, *Reforma Agrária Compromisso de todos*, 1997.

- 103.** Likewise according to official information, it was only in 1964, following heated discussions in the years before that progress was made with democratizing land ownership through the signing of a presidential decree providing for the expropriation of public land for agrarian reform. Despite that first major move and the drawing up of the Land Statute (1964), during the years of military rule (1964 to 1984), the agrarian reform plan was eclipsed by the modernization of large landed estates, a strategy that involved incorporating smaller properties to build large areas for planting crops like soybean for export¹³⁷. It was only with the restoration of democracy that land distribution for agrarian reform purposes got under way, based on the notion of the social function of ownership upheld in Article 186 of the Brazilian Constitution of 1984¹³⁸. Here, the Commission underscores the fact that, despite the major efforts of the State to democratize land and reduce inequalities up to the year 2019, the land distribution process was suspended by a memorandum issued on January 3, 2019, which directly impacted 250 such processes under way at that time¹³⁹.
- 104.** The land concentration process and the quest for access to and democratization of subsistence farming properties (*bens rurais próprios de produção de subsistência*) triggered a huge process of rural conflicts among the owners of large landed estates and campesinos and rural workers. Since 2017, the IACHR has paid close attention to rural violence in Brazil and has been voicing its concern at the forced displacement of rural communities¹⁴⁰; the murder of human rights defenders linked to environmental and land rights and to rural laborers in Brazil¹⁴¹; massacres of families in connection with the agrarian reform process; and the impunity surrounding those occurrences¹⁴².
- 105.** In this regard, the Inter-American Commission was informed that some 1, 254 land disputes were reported in Brazil in 2019. They involved 53,313, 244 hectares and 578,968 people, and resulted in 28 deaths¹⁴³. That number of conflicts represented an increase of 47% over 9 years. Furthermore, according to civil society, that number was recorded during the same time as a change in the strategy calling for agrarian reform, as can be seen in the difference between the 238 land occupations reported in 2012 and the 43 registered in 2019. Here, the IACHR underscores reports that that phenomenon had to do with the crisis in social movements, de-politicization, in-

137 INCRA, *Reforma Agrária Compromisso de todos*, 1997.

138 Federal Public Ministry (Ministério Público Federal), *A Reforma Agrária e o Sistema de Justiça*, 2019.

139 Repórter Brasil, *Governo Bolsonaro suspende reforma agrária por tempo indeterminado*, January 8, 2019.

140 IACHR, Press release No. 57/17/ IACHR Expresses Concern over Increase in Rural Violence in Brazil, May 2, 2017

141 IACHR, Press release No 168/18 IACHR Condemns Murders of Human Rights Defenders Linked to Environmental and Land Rights and to Rural Laborers in Brazil, July 27, 2018.

142 IACHR, Press release N^o. 9/19, *IACHR Expresses Concern about Acts of Violence against Rural Workers in Brazil*, January 18, 2019.

143 Comissão Pastoral da Terra (CPT), *Relatório Anual: Conflitos no Campo Brasil 2019*, 2020.

tervention by conservative religious groups, and the dismantling of public (health and education) policies to assist people living in camps¹⁴⁴.

- 106.** During its visit, the Commission observed the situation at the Hugo Chavez camp, located in the Santa Tereza Estate in the municipality of Marabá, in south-west Pará. According to testimony collected at the time, in addition to the precarious living conditions of the 450 occupying families, including their having to provide their own education for their children, there were still signs of the violent attempt to evict them by the security forces and private security guards known as “*jagunços*” (hired gunmen). Reportedly, shots were fired at the time and homes, commonly known as “*barracos*” (shacks), were set fire to.
- 107.** The Commission further stresses that this type of violence during eviction is not an isolated phenomenon, but occurs regularly during land disputes and looks very much like a public policy. For instance, during its visit, the Commission received information about the Pau D’Arco massacre, in the state of Pará, in 2017, in which 10 rural workers were murdered by security forces and privately hired guards during the Santa Lúcia Estate eviction. According to information provided by civil society sources, that massacre was the second largest massacre in 20 years. The IACHR underscores the fact that 17 policemen were involved in the massacre and that to this day there has been no significant progress with trying and convicting the accused¹⁴⁵.
- 108.** It is striking that the Pau D’Arco massacre was perpetrated in the same place as the 1996 Eldorado dos Carajás massacre, which left 21 rural workers dead. According to information regarding that massacre, when 1,500 landless persons camping in the area were demonstrating on a State highway, the state Secretary for Public Security authorized the security forces to use violence against the march and they executed the demonstrators. According to information in the public domain, to this day none of those involved has been convicted.¹⁴⁶
- 109.** The Commission likewise heard with concern that the State is reportedly promoting the legalization and arming of militias in rural territories¹⁴⁷, in addition to seeking ways to get rid of the ban on military involvement in property repossession operations¹⁴⁸.
- 110.** The Inter-American Commission takes note of the information provided by the Brazilian State that reports on the National Land Credit Program, which, since 2003, has allowed rural farmers to acquire their land. Likewise, the Program to Promote Rural Activities, created by Law N^o. 12,512/2011, as a strategy for tackling poverty and

144 Comissão Pastoral da Terra (CPT), *Relatório Anual: Conflitos no Campo Brasil 2019*, 2020.

145 Frontline Defenders, *Brazil: two years since the Pau d’Arco massacre, still no justice*, May 24, 2019.

146 Comissão Pastoral da Terra, *Eldorado dos Carajás 17/04/1996*, July 8, 2020.

147 Comissão Pastoral da Terra, *Balanço da Reforma Agrária 2019*, July 8, 2020.

148 Agência Brasil, *Governo prepara lei de uso de GLO em reintegração de posse no campo*, November 25, 2019.

fighting hunger, through those people who are registered in the Single Registry for Social Programs (CadÚnico)¹⁴⁹.

2. Street people, the homeless, and persons living in shantytowns or on the outskirts of cities

111. According to Inter-American norms, “the right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one’s head or views shelter exclusively as a commodity. Rather it should be seen as the right to live somewhere in security, peace and dignity”¹⁵⁰. Accordingly, the IACHR underscores that the right to a dwelling must include adequate housing, which means “... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost”¹⁵¹. During its on-site visit to Brazil, the IACHR received information regarding the historical lack of public policies for occupancy of urban land and actual realization of the right to housing in the country, in which, all too often, the interests of real estate companies prevail over those of the historically vulnerable street population.

112. The Commission highlights the fact that the Brazilian State’s 2007-2008 survey identified an adult street population of 31,992, 82% of whom were male; 52% were aged between 22 and 44; and 67% described themselves as being of African descent. The data further revealed that 70.9% were working or engaged in some form of paid activity (1.9% had formal, registered jobs), while only 15.7% lived off money they asked for on the streets (begging). It is also striking that 24.8% of that population had no I.D., which, in the IACHR’s opinion, could constitute an impediment to their accessing essential rights and services. The Commission also stresses that, according to the survey data, 88.5% said they received some kind of State assistance, including a pension, family welfare (*Bolsa Família*), or Continuous Cash Benefits (*Benefício de Prestação Continuada*)¹⁵².

113. For its part, a study by the Brazilian Institute for Applied Economic Research (IPEA), published in October 2016, estimated that the country’s street population by then to-

149 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 26.

150 United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4. The Right to Adequate Housing, United Nations Doc.E/1991/23, para. 7.

151 United Nations Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4. The Right to Adequate Housing, United Nations Doc.E/1991/23, para. 7.

152 The Ministry of Social Development and Fight Against Hunger (*Ministério do Desenvolvimento Social e Combate à Fome*), *Rua: Aprendendo a Contar: Pesquisa Nacional sobre a População em Situação de Rua*, 2009.

talled 101,854 persons¹⁵³, a figure roughly similar to the 112,000-homelessness persons mentioned to the IACHR by the then Ministry of Human Rights during the Commission's visit. According to the Single Social Programs Census (CADÚnico), by 2019, 107,576 families were living on the street in Brazil¹⁵⁴. The Commission is therefore extremely concerned not just about the large number of street people in the country, but also about the almost 300% increase in that number over the past 8 years. In addition to that, the IACHR points out that the absence of accurate official data on this phenomenon makes it very difficult to forge appropriate public policies to deal with the problem.

- 114.** In São Paulo alone, the number of street people is estimated to have grown by 53% between 2015 and 2019¹⁵⁵, while municipal agents' outreach to street people (*a abordagem de pessoas que vivem nas ruas*) is said to have quadrupled between 2018 and end-2019¹⁵⁶.
- 115.** For its part, the State furnished information to the Commission regarding its bodies and public policies for attending to street people. According to a Citizens' Ministry document remitted in 2018, the National Secretariat of Social Assistance (SNAS) is the body with overall responsibility for managing policies regarding street people. Those policies form part of the Single Social Welfare System (SUAS).
- 116.** Against that backdrop, the IACHR points to the National Street Population Plan, established by Decree No. 7.053 of December 23, 2009, which defines the street population as "the population group characterized by extreme poverty, disrupted or weakened family ties, and the lack of a normal dwelling, which uses public parks and rundown areas, either temporarily or permanently, as places to stay and subsist in, be it as temporary shelters to stay the night in or as provisional dwellings"¹⁵⁷. In that regard, according to Ministry data, services specifically tailored to the street population are provided, in an institutionalized manner, in so-called "Pop Centers" designed primarily to assist the street population during the day. The Ministry of Women, Family and Human Rights reports that efforts are also under way to offer night-time services as well.
- 117.** At all the meetings held during its on-site visit, the IACHR ascertained that people living on the street or in shantytowns, like the community living in Vila Nova Palestina, in São Paulo, lack adequate housing as well as the safety, peace, and dignity required for compliance with the right to housing. That has been the case since 2013, when

153 IPEA, *Estimativa da população em situação de rua no Brasil*, October 2016.

154 Federative Republic of Brazil, Inter-American Commission on Human Rights, On-site Visit, Report containing additional information, May 2019.

155 Secretaria de Comunicação de São Paulo, *Prefeitura de São Paulo divulga Censo da População em Situação de Rua 2019*, January 31, 2020.

156 UOL, *Abordagens a moradores de rua quadruplicam e somam meio milhão em São Paulo*.

157 Office of the President of the Republic, *Decree nº 7.053*, December 23, 2009.

members of the Sem Teto Workers Movement occupied a 1,000 square-meter urban area: an occupation that the community have been trying to regularize ever since¹⁵⁸. In Coroadinho, in the state of Maranhão, the Commission visited the two poorest districts in Brazil and observed their inhabitants socially marginalized and abandoned by the State, bereft of assistance with their most basic needs. The Commission takes this opportunity to pay tribute to the part played by the women in this community who are striving to prevent the exacerbation of their already dire social situation.

- 118.** In São Paulo, the IACHR heard complaints by street people regarding abuses and mistreatment by the police and, above all, regarding the lack of any prospects of a decent life and their lack of access to basic public services. There are no sources of drinking water on the streets of the city and access to water as such is difficult given the absence of any policy to supply it to this segment of the population¹⁵⁹. In the same vein, the Commission was also told that when street people are forcibly displaced, no strategies or alternatives are in place to guarantee their right to housing.
- 119.** Another aspect of the vulnerability of street people has to do with the ability to keep nuclear families together. The IACHR was told of cases in which the assistance given to women who have recently given birth does not take into account their right to maternity and to look after their children. Reportedly, mother and child are often separated very early on when the child is sent to a shelter, either temporarily (when there is a possibility of it being returned to its biological family) or permanently, in which the family's say is lost irreversibly, and the child will either be adopted or have to stay in the center until he or she is 18 years old¹⁶⁰. Likewise, the Commission's attention was drawn to the 2016 technical note of the Ministry of Health and Social Development and the Fight against Hunger which establishes a protocol for attending to women in this situation. However, failure to disseminate the technical note and budget constraints have impaired its effectiveness¹⁶¹.
- 120.** The IACHR underscores the importance of addressing violations of the right to housing and its intersection with poverty and the vulnerability derived from other forms of exclusion. Those factors led, on the one hand, to a disorderly expansion of urban settlements, popularly known as "*favelas*" (shantytowns) and, on the other, to a sizable increase in the street population. In addition to that, the relocation of poor families forces them to leave central areas and to live in more remote districts lacking in

158 Fundação Fiocruz, *Mapa de Conflitos Envolvendo Injustiça Ambiental e Saúde no Brasil*, June 10, 2020.

159 Unisol e Movimento Nacional da População em Situação de Rua, Final Report of the "*Mais direitos para população em situação de rua*" [More rights for street people] project, December 2018.

160 Clínica de Direitos Humanos Luiz Gama, *Relatório de pesquisa sobre o exercício da maternidade em situação de rua no município de São Paulo*, November 8, 2018.

161 Folha de São Paulo, June 24, 2018; Oscar Vilhena Vieira, *Justiça, ainda que tardia*, June 9, 2018.

infrastructure. Accordingly, despite fiscal austerity measures, it is necessary to keep and broaden housing policies and other policies to attend to the street population.

- 121.** In this area, the Commission notes that in 2014 the “qualitative” demand for dwellings (without infrastructure services) totaled 11.3 million units and the “quantitative” demand (for new homes) 6.1 million units (5.3 million in urban areas and 750,000 in rural areas). Of that demand, 83.9% came from families receiving up to 3 minimum wages. The Commission also notes that Brazil has 7.2 million empty homes, 79% of which are in the urban sector and 6.4 million are suitable for families¹⁶². Lack of access to food, water, sanitation, and other essential public services, such as electricity, was observed by the Commission for several segments of the population in Brazil, including those living in shantytowns, on the outskirts of cities, and on the street.
- 122.** Here, the IACHR acknowledges that Brazil had made an effort to forge a broad and effective housing policy. This is the case of the State’s so-called “*Centro POP*” (POP Centers), that offer specialized services for the homeless persons¹⁶³, as well as the “*Minha Casa Minha Vida*” (My House My Life) program aimed at enabling families classified as low-income to buy houses. According to a Federal Senate study, between 2009 and 2016, 4,542 houses were purchased under that program. In that program, 91% of the families had monthly income placing them in program categories 1 and 2, i.e. the lowest-income categories¹⁶⁴. However, it is to be noted that due to budget cuts and reconfigurations, that policy is being curtailed. Data for 2019 show the “Band 1” category, that is to say, that comprising families with income of up to R\$ 1,800 (equivalent to approximately US\$360.00) being hardest hit by delays in the transfers of State funds to construction companies, which resulted in 57% fewer houses being delivered compared to the previous year¹⁶⁵. The IACHR also note that for 2020 the estimated budget for the sector is half what it was in 2019¹⁶⁶.
- 123.** In the Commission’s analysis of the situation, public policies for stepping up access to housing are an extremely important component of the fight against poverty and extreme poverty, as they open up opportunities for people in the economically most vulnerable segments of the population. Apart from that, the IACHR deems it essential to guarantee the participation in housing programs of social movements organized by the homeless, in order to ensure that their demands are met. Accordingly, the IACHR reiterates its recommendation regarding the duty of States to develop intersectoral

162 Federal Senate, *Avaliação de Políticas Públicas: Programa Minha Casa Minha Vida*, October, 2017.

163 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 27.

164 Senado Federal, *Avaliação de Políticas Públicas: Programa Minha Casa Minha Vida*, October, 2017.

165 Folha de São Paulo (with official data), *No 1º ano de Bolsonaro, educação, saúde e social pioram, criminalidade recua e economia vê equilíbrio*

166 Exame, *Em 2020, recursos para Minha Casa Minha Vida serão 50% menores.*

coordinated strategies, combining the right to housing, democratic participation, and the empowerment of persons living in poverty and extreme poverty.¹⁶⁷

C. CONSEQUENCES OF SOCIO-ECONOMIC DISCRIMINATION: VICTIMS OF FORCED LABOUR OR WORKING IN CONDITIONS AKIN TO SLAVERY AND TRAFFICKING IN PERSONS

- 124.** The Inter-American Commission stresses that the human rights violations repeatedly taking place in rural areas, internal and international migration, and the numerous people living on the streets expose the population to enticement to commit heinous crimes, such as trafficking in persons and forced or slave-like labor.
- 125.** That process was observed in emblematic cases analyzed by the inter-American human rights system, some of which were already judged by the Inter-American Court, which found the State guilty. In the case of *Garibaldo v. Brazil*, the judgment handed down on September 23, 2009 established the responsibility of the State for failing to investigate and punish the extrajudicial execution of a rural worker¹⁶⁸. More recently, in the *Case of the Hacienda Brasil Verde Workers v. Brazil*, in its judgment of October 20, 2016, the Inter-American Court condemned the State for failing to protect workers against forced labor practices and servitude through debt bondage¹⁶⁹. This latter case illustrates how land disputes combined with rural labor exploitation practices, some of them akin to slavery. The Commission underscores that, just as Brazil was the last country in the region to abolish slavery, in 1888, international case law dealing with human rights in the country points to the persistence of practices rooted in slavery.

1. Victims of forced labor or subject to conditions akin to slavery

- 126.** Despite changing definitions of the concept of forced labor or labor akin to slavery, pursuant to a ruling by the Inter-American Court of Human Rights, the IACHR's understanding is that they are not restricted to exercising "ownership" of a given person

167 IACHR, *Poverty and Human Rights*, OEA/Ser.L/V/II.164, Doc. 147, September 7, 2017, Recommendation 6.

168 I/A Court of H.R., *Case of Garibaldi v. Brazil*, Judgment of September 23, 2009.

169 I/A Court of H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*, Judgment of October 20, 2016.

or group, but associated with the presence of two central factors: the status or condition of the individual and the exercise of power or control over the enslaved person to a degree at which the victim's personality is annulled¹⁷⁰. Often works do not see or identify themselves as persons in a situation akin to slavery, even when they are subjected to degrading working conditions or misled into debt bondage, deprived of I.D.s and made to work exhausting numbers of hours.

127. Here, the IACHR takes note that, according to the information received, in Brazil work under conditions akin to slavery follows a perpetual cycle in which numerous workers have to be liberated over and over again. Their extreme social and economic vulnerability forces them to leave their cities of origin in search of better paid activities. Allured by false promises or driven by the poor living conditions in the places where they live, people put up with working conditions that deprive them of dignity and freedom and often expose them to extreme physical and/or psychological violence. The information provided to the IACGR confirms that in cases in which those workers manage to escape conditions akin to slavery, be it thanks to workplace inspections (*ação da fiscalização*) or because they flee from those workplaces, the absence of public policies to effectively mitigate their socio-economic vulnerability means that they remain prone to accept other work that, once again, plunges them back into the contemporary cycle of forced labor¹⁷¹. According to information from the Brazilian State, in the last 20 years, around 50 thousand workers have been rescued from this situation¹⁷².

128. In this regard, the Commission stresses that in the case of the *Hacienda Brasil Verde Workers v. Brazil*, the Inter-American Court of Human Rights already found the State responsible for not protecting workers against forced labor and established its duty to provide the victims with reparation and measures to avoid recurrence¹⁷³. The IACHR underlines the fact that, in that judgment, the Court found the State internationally responsible for violating Article 6.1 of the American Convention and argued that forced labor and labor under conditions akin to slavery constitute crimes against humanity. In that connection, the State has an international responsibility to adopt pro-active measures to protect people exposed to such conditions, take steps to reduce the demand that incites exploitation of this form of human rights violation, and to prosecute, prevent, investigate, and punish cases of forced labor or slavery¹⁷⁴.

129. In Brazil, contemporary practices of forced labor or labor “under conditions akin to slavery” have been identified and recognized by the State since 1995, when the Ex-

170 I/A Court of H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*, Judgment of October 20, 2016. Par. 269.

171 *Escravo Nem Pensar, O ciclo do trabalho escravo contemporâneo*, March 24, 2014.

172 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 28.

173 I/A Court of H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*, Judgment of October 20, 2016.

174 I/A Court of H.R., *Case of the Hacienda Brasil Verde Workers v. Brazil*, Judgment of October 20, 2016. Par. 315 a 321.

ecutive Group for the Repression of Forced Labor (GERTRAF) was established¹⁷⁵. In rural areas, those practices have been verified in livestock activities, sugar plantations, and coal mining; and, in urban areas, in construction and textile manufacturing¹⁷⁶. According to the Digital Observatory of Slave Labor in Brazil, based on data from the former Ministry of Labor, between 1995 and 2018, 53,607 people working in conditions akin to slavery were liberated¹⁷⁷, 45,028 of them in just the period between 2003 and 2018. Of all the victims rescued, 38.54% had not complete 5th grade and 31.44% were illiterate. A large majority (73.25%) worked in the agricultural and livestock sector¹⁷⁸. In general, those liberated from work under conditions akin to slavery are internal migrants. The data also show that the states with the highest prevalence of forced labor were Pará (10,043 workers liberated), followed by Mato Grosso (4,394), Goiás (3,944), Minas Gerais (3,711) and Bahia (3,256)¹⁷⁹. Many of those liberated from work under conditions akin to slavery were indigenous workers, such as those pertaining to the Terena ethnic group in Mato Grosso do Sul¹⁸⁰.

- 130.** The IACHR observes that numerous institutions have worked together to fight forced labor in Brazil. The inspectors coordinated by the Special Mobile Inspection Group (GEFM or Mobile Group), comprising labor inspectors and members of the Labor Prosecutors' Office (MPT) or Federal Public Prosecutors' Office (*Ministério Público Federal*), with the support of the Feral Police and Federal Highway Police conduct inspections of properties denounced for exploiting labor under conditions akin to slavery. Here, the Commission underscores with concern that, even though the large number of workers liberated since 1995 and the sums paid to them point to fairly positive outcomes, related criminal convictions are still rare. According to the information received by the delegation, there have been relatively few convictions for exploiting labor under conditions akin to slavery¹⁸¹.
- 131.** Likewise worth noting is the list of companies and individuals charged with exploiting slave labor, better known as the "Dirty List"¹⁸². It serves as a mechanism for publicizing the names of employers engaging in these practices and facilitating the monitor-

175 International Labour Organization, *Fighting Forced Labour: The Example of Brazil*/ International Labour Office; ILO Office in Brazil. - Brasília: ILO, v. 1, 2010.

176 Repórter Brasil, *Trabalho escravo contemporâneo: 20 anos de combate (1995 – 2015)*, January 24, 2015.

177 Labor Prosecutors' Office in Brazil (Ministério Público do Trabalho- MTP), ILO, *Digital Observatory of Slave Labour in Brazil*.

178 Labor Prosecutors' Office in Brazil (Ministério Público do Trabalho- MTP), ILO, *Digital Observatory of Slave Labour in Brazil*.

179 Labor Prosecutors' Office in Brazil (Ministério Público do Trabalho- MTP), ILO, *Digital Observatory of Slave Labour in Brazil*.

180 Sakamoto, L. "*Trabalhar por comida: indígenas são resgatados da escravidão em MS e SP*". *Uol Notícias*, September 15, 2019.

181 CONJUR, *Em aplicação rara de artigo, juiz condena dois a prisão por trabalho escravo*, January 22, 2020.

182 Ministry of Women, Family and Human Rights, *Cadastro de Empregadores - "Lista Suja"*.

ing of production chains by enterprises keen to know how effectively their suppliers comply with labor laws. However, the IACHR notes with concern that said list was not published in 2015 or 2016. In 2017 and 2018, the Executive Branch also delayed publishing its list and only did so following a court order requested by the Labor Prosecutors' Office (MPT)¹⁸³. In 2019, the published list contained the names of 187 employers responsible for alluring 2,375 workers. For the most part, they were on landed estates, in construction works, textile workshops, diamond beds, gold fields, and other mining projects¹⁸⁴. The Commission was also alarmed to discover that, when it sought to access the 2019 list on its official website, the updated version was nowhere to be found¹⁸⁵.

- 132.** The expropriation of urban and rural properties where there had been blatant exploitation of labor under conditions akin to slavery marked an important step in efforts to combat that practice. Thus, the IACHR highlights the amendment of Article 243 of the Federal Constitution (Constitutional Amendment No. 81/2014), which greatly advanced efforts to combat labor under conditions akin to slavery and was a major factor in dissuading companies from hiring workers on terms that deprived them of both dignity and freedom and in appropriately punishing those that did so.
- 133.** The Commission likewise points out that assistance and preventive measures in this field have yet to be developed in Brazil. With the exception of unemployment insurance and projected progress toward a National Employment System – which does not take into account all the characteristics of liberated workers in a way that might enable them to be relocated in the labor market – there are no specific guidelines for providing social protection to victims of labor under conditions akin to slavery or for interrupting the cycle of return to that practice.
- 134.** According to Comissão Pastoral da Terra (CPT) data, between 2017 and 2018, 25 cases of forced labor under such conditions were reported in urban areas. The number of workers involved was 382, 209 of whom were liberated¹⁸⁶. In urban areas, work under conditions akin to slavery is most often found in the construction sector and in the garment industry, apart from forced labor for sexual exploitation purposes¹⁸⁷.
- 135.** In addition, in connection with its visit, the IACHR was told that 613 workers had been rescued from exploitation conditions at least twice¹⁸⁸, which goes to show that Brazil's current public policies are not preventing the practice of exploiting labor under conditions akin to slavery and are not preventing its recurrence. What is more, there are

183 Ministério Público do Trabalho [Labor Prosecutors' Office], *MPT pede a publicação atualizada da lista suja do trabalho escravo*, October 25, 2017.

184 Agência Brasil, *Atualização da Lista Suja do Trabalho Escravo tem 187 empregadores*, March 3, 2019.

185 Labor Ministry, *Cadastro de Empregadores*, June 10, 2020.

186 Comissão Pastoral da Terra, *Trabalho Escravo 2017 – 2018*, June 10, 2020.

187 Repórter Brasil, *Trabalho Escravo Urbano*, June 10, 2020.

188 ILO, *613 Brazilian workers rescued at least twice from slavery in past 15 years*, February 2, 2018.

employers repeatedly caught exploiting slave labor. The case of Fazenda Santa Vicunha, an estate located in the state of Mato Grosso, illustrates the problem: one and the same family was caught exploiting labor under conditions akin to slavery on three different properties and on five separate occasions. The number of workers liberated in those five separate rescues was 324¹⁸⁹.

- 136.** The IACHR welcomes the information regarding local and regional initiatives under way, such as Integrated Action (*Ação Integrada*), aimed at fostering the socio-economic inclusion of liberated workers, and of vulnerable families and communities¹⁹⁰. It also observes that workers' ignorance of their rights is another challenge that the Brazilian State needs to overcome. In that respect, during its visit, the Commission was apprised of the current status of public policy for getting rid of work done under conditions akin to slavery in Brazil. On that, it took note of Government Edict (*Portaria*) No. 1.129/2017¹⁹¹ narrowed the concept of work done under conditions akin to slavery, which marked a step backwards in the defense of rural workers' rights. Accordingly, the IACHR welcomes the decision by the Federal Supreme Court on October 23, 2017 to provisionally suspend (*suspender liminarmente*) Edict No. 1.129/2017¹⁹².
- 137.** The Commission also highlights the creation of the Digital Observatory on Slave Labor in Brazil, an initiative of the Public Labor Ministry (MPT) and the International Labor Organization (ILO), which brings together, in an integrated manner, the content of several databases and reports on the theme¹⁹³. Likewise, the IACHR welcomes the information on the creation of intersectoral institutional bodies aimed at working on the issue, such as the National Commission for the Eradication of Slave Labor (CONATRAE). Moreover, similar commissions at the state level. And also the sanction of Law No. 10,608 / 2002, which guaranteed unemployment insurance to workers who were provenly rescued from slave labor. According to information provided by the State, between 2013 and 2016, 4,735 unemployment insurance was granted under this rule¹⁹⁴.
- 138.** Nevertheless, it was noted that the budget allocated for eradication of labor under conditions akin to slavery fell by half between 2014 and 2017¹⁹⁵. Apart from that, the number of labor inspectors and government agents empowered to liberate persons working under conditions akin to slavery is below what is needed, given that one third of the po-

189 G1, *Justiça condena dono de fazenda a pagar R\$ 6 milhões por manter dezenas de trabalhadores em situação de escravidão em MT*, October 5, 2018.

190 INAI, *Instituto Ação Integrada*.

191 General Secretariat of the Office of the President of the Republic, *Portaria Nº 1.129*, October 13, 2017.

192 Federal Supreme Court. *Ministra Rosa weber suspende efeitos da portaria ministerial sobre trabalho escravo*, October 24, 2017.

193 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 29.

194 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 29.

195 *Aos fatos, Dinheiro gasto no combate ao trabalho escravo cai à metade em três anos*, October 23, 2017.

sitions for those agents is currently vacant¹⁹⁶. The Commission also ascertained that the budget for the Labor Prosecutors' Office was cut by about half in 2019¹⁹⁷, which could make it more difficult for members of that body to take part in inspections backed by the Mobile Group. On that, bearing in mind that Brazil committed to strengthening the Labor Prosecutors' Office and the Mobile Group in the friendly settlement agreement reached in connection with Case No. 11,289 (José Pereira), the IACHR stresses that maintaining that scenario could constitute failure to comply with that agreement.

- 139.** The Commission acknowledges that the way public policy has been officially designed to suppress labor under conditions akin to slavery, especially in labor law, has led to Brazil being regarded as a model for eradicating that practice. However, the downgrading of the labor inspector career, the failure to publish the "Dirty List," the attempt to limit the concept of work done under conditions akin to slavery established in Article 149 of the Code of Criminal Procedure, and the fact that the Inter-American Court of Human Rights found Brazil guilty in the Case of the Hacienda Brasil Verde Workers v. Brazil called that assessment into question¹⁹⁸. In addition, the IACHR notes that the Committee of Experts of the International Labour Organization (ILO) made recommendations to the Brazilian Government in its 2016 annual report pointing to the need to take steps to endow the Labor Inspectors' Office with sufficient human and financial resources for it to be able to combat cases of labor under conditions akin to slavery and to support labor inspections and other activities of the Office¹⁹⁹.
- 140.** In 2019, the Commission was informed about Provisional Measure No. 870/18 becoming Law No. 13.844/2019²⁰⁰, which got rid of the Labor Ministry and transferred its remit to other non-specialized government bodies, such as the Ministry of Justice and Public Security, the Ministry of Citizenship, and the Ministry of Economy, a move that could impair the articulation and coordination of governmental labor policies. Under the new institutional arrangements, the eradication of work under conditions akin to slavery and the drafting of policies to reduce the social vulnerability of the workers most likely to fall victim to that kind of exploitation have been left up to a variety of bodies, which could impede the forging of solutions and development of policies for getting rid of labor under those conditions in Brazil.
- 141.** In the same vein, the Commission notes with concern the assignment to the Ministry of Economy of some labor inspection and regulation responsibilities. The IA-

196 Federal Senate, *A inspeção do trabalho no Brasil enfrenta falta de auditores fiscais e de recursos financeiros*, April 3, 2018.

197 O Globo, *Conselho do MP dá cinco dias para Dodge refazer proposta orçamentária do MPU*, August 19, 2018.

198 United Nations, *Brasil pode deixar de ser referência mundial no combate ao trabalho escravo, alerta OIT*, February 9, 2017.

199 International Labor Organization, *Observation (CEACR) – Forced labour convention, 1930 (No. 29) – Brazil*, June 2016.

200 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, *Law N° 13.844*, June 18, 2019.

CHR warns that a potential conflict of interest between the way that ministry is structured and the chief objectives of labor inspections could weaken workers' social protection mechanisms.

- 142.** Moreover, based on information from the Labor Prosecutors' Office, the Commission observes that some items in the Brazilian Labor Reform, adopted in July 2017, could make work relations less stable or, in extreme circumstances, could lead to an increase of practices in which labor is exploited under conditions akin to slavery, as well as pose obstacles to workers seeking reparation in the judiciary, such as restrictions on access to justice and limits to reparation for moral damages, based on the worker's wages.

2. Victims of trafficking in persons

- 143.** The Inter-American Commission on Human Rights considers that social discrimination and the socio-economic inequality it triggers render the persons exposed to the aforementioned violations more vulnerable to the enticements offered by the individuals known as "coyotes" (smugglers) or organized groups of human traffickers. The IACHR stresses that such persons exploit the hopes and desires of people in vulnerable circumstances to get them to accept displacement to other areas in search of better living conditions. At that point, such people find themselves, financially, physically, or psychologically, totally prey to recruiters exploiting different aspects of their lives. According to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, without prejudice to other forms, trafficking in persons may occur for labor exploitation purposes (forced labor or labor under conditions akin to slavery), either within a national territory or internationally, of for trafficking in human organs; or for sex work; or trafficking in children for illegal international adoption²⁰¹.

- 144.** The Commission recalls that the links between forced labor and trafficking in persons were revealed in the Case of the Hacienda Brasil Verde Workers v. Brazil. Although in that case the trafficking involved rural workers, it can also be found in urban settings, where many of the victims are migrants. Thus, the additional vulnerabilities besetting migrant families make them particularly prone to the allurements of human trafficking and forced labor networks.

- 145.** That explains why, in addition to the innumerable cases of forced labor identified in rural areas, the IACHR was able to detect forced labor in urban areas, often in con-

201 United Nations Office on Drugs and Crimes, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, December 25, 2003.

nection with human trafficking²⁰². While combating this phenomenon requires international cooperation, it is incumbent upon States to adopt such measures as are needed to liberate both rural and urban workers subjected to working conditions akin to slavery. News of persistent cases of forced labor in urban areas are not uncommon, especially in large capitals such as São Paulo, where migrant victims of trafficking in persons have been rescued from garment workshops outsourced by large business groups, including transnational corporations. Some of those migrants come from South American countries, such as Bolivia and Paraguay²⁰³. In São Paulo, 60% of rescued workers were found in garment workshops and almost one third of them (30%) were women²⁰⁴.

- 146.** At the same time, the Commission notes that trafficking in persons is also an international phenomenon involving not just Brazilian citizens seeking opportunities abroad, but also citizens from other countries looking for better living conditions in Brazil. Thus, the IACHR was told about the case of a 17-year-old Chinese boy, who was a victim of an international trafficking in persons network. The adolescent was liberated from work under conditions akin to slavery in the state of Rio de Janeiro, having arrived in Brazil, according to information in the public domain, in 2012, on a tick paid for by his own mother²⁰⁵.
- 147.** On the other hand, the IACHR was also apprised on the passing of Law No. 13.334/2016, on the prevention and punishment of domestic and international trafficking in persons, and protection measures for victims/ According to information provided by the Ministry of Justice and Public Security, the new legislation seeks to bring the Brazilian legal order into line with the Additional Protocol to the United Nations Convention against Transnational Organized Crime (Palermo Convention) concerning the Prevention, Suppression and Punishment of Trafficking in Persons. The Ministry also referred to the promulgation of the Third National Plan to Combat Trafficking Persons, established in 2018, which will cover the 2018-2021 period²⁰⁶.
- 148.** The IACHR also commends the Government of Brazil on the passing of the Migration Law²⁰⁷, in 2017, which constitutes progress vis-a-vis the previous (1980) law on immigrants. The Commission observes that the new law consolidates the guarantees and protections needed to ensure that immigrants and their families are shielded

202 Repórter Brasil, *Trabalho Escravo Urbano*, June 10, 2020.

203 Repórter Brasil, *Trabalho escravo nas oficinas de costuras*, 2016.

204 Labor Prosecutors' Office in Brazil (Ministério Público do Trabalho- MTP), ILO, *Digital Observatory of Slave Labour in Brazil*. June 10, 2020.

205 Repórter Brasil, *Adolescente chinês é resgatado da escravidão com ajuda de tradutor online*, October 23, 2014.

206 Office of the President of the Republic, *Decree N.º. 9.440*, July 3, 2018.

207 Office of the President of the Republic, *Law N.º. 13.445*, May 24, 2017.

from trafficking in persons and forced labor, in accordance with the Federal Constitution of 1988. It is worth to note that the articles 3rd and 4th of such law provide residence permits for those persons who have been victims of human trafficking²⁰⁸.

- 149.** In this regard, while the Commission acknowledges the daunting challenges entailed in halting these crimes, it warns the State that any long-term solution needs to be rooted in cooperation among Brazil's federative entities and with international bodies to reduce the structural inequalities people face in the places where they live. That will open up paths to forging a substantive solution to the problem as a whole, not just on a case-by-case basis.

208 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 30.



**OTHER GROUPS AT
SPECIAL RISK**

CHAPTER 3 OTHER GROUPS AT SPECIAL RISK

A. PERSONS DEPRIVED OF LIBERTY, THE SOCIO-EDUCATIONAL SYSTEM, AND “THERAPEUTIC COMMUNITIES” (TREATMENT CENTERS)

- 150.** Over the past 20 years, the Commission has been paying special attention to the deplorable prison conditions typical of institutions for deprivation of liberty in Brazil, which, apart from posing serious risks to the life and integrity of persons deprived of liberty, constitute per se cruel, inhuman, and degrading treatment²⁰⁹. Those conditions include alarming levels of overcrowding, mostly of persons of African descent, precarious infrastructure, the lack of separation of persons who are being tried and convicts, and a marked shortage of prison staff. Likewise, the medical care provided is negligent, the food inadequate in quantity and in nutritional value, hygiene and access to water are deficient, essential items are lacking, as are effective social rehabilitation or reintegration programs, and there is little or no differentiation in the treatment meted out to different segments of the prison population²¹⁰. Detention centers also typically pose threats to the personal integrity of persons visiting detainees, chiefly in the form of intrusive so-called body searches.
- 151.** Violations of human rights in Brazil’s penitentiaries have, in fact, been the subject of a growing number of cases submitted for consideration to the Inter-American Commission on Human Rights, resulting in 9,009 people (adults and adolescents) benefiting from such consideration in the past 5 years. In some of those cases, the Commission granted precautionary measures because it understood that the conditions in which people were being deprived of their liberty violated the principle of respect for human dignity and therefore required urgent measures to prevent irreparable harm²¹¹.

209 IACHR, Preliminary observations of IACHR’s In Loco visit to Brazil, November 12, 2018. See also: Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil from 3 to 14 August 2015, A/HRC/57/Add.4, 29 January 2016, para. 113

210 Federal Senate, *Em Discussão! Os principais debates do Senado Federal*, 2016.

211 PM 114-10– Persons Deprived of Liberty in the Judicial Police Department (DPJ) of Vila Velha, Brazil; PM 199/11 – People deprived of their freedom at Professor Aníbal Bruno Prison, Brazil; PM 367/13 -Persons Deprived of Liberty at the Pedrinhas Prison Complex, Brazil; PM 60/15 – Adolescents deprived of freedom in facilities of juvenile detention reform for men in the state of Ceará, Brazil; PM 302/15 – Adolescents Deprived of Liberty at the Center for Socio-Educational Services for Adolescents (CASA), Brazil;

- 152.** While the prison system, the socio-educational system, and the therapeutic communities are governed by different laws and regulatory frameworks, the IACHR observed in all three cases that the State has been unable to guarantee the protection that institutionalized persons need, be those institutions public or private. Cases of torture and maltreatment violating inter-American and international human rights standards have been documented in all of them²¹². The IACHR observes how the absence of State supervision in those facilities, the consequent self-governance and the deplorable detention conditions in deprivation of liberty institutions lead to clashes and tensions that create high levels of violence and harm both lives and personal integrity. Accordingly, both the Inter-American Commission and the Court have observed with profound concern that the deaths that have occurred form part of a systematic context of repeated acts of violence, which has prompted the granting of precautionary and provisional measures²¹³.
- 153.** The IACHR acknowledges that the Socio-Educational System is guided and regulated by the Statute of the Child and Adolescent (ECA), which, in turn, abides by the Convention on the Rights of the Child. It therefore needs to be borne in mind that the Socio-Educational System and the Prison System are very different and that, for children and adolescents special protection measures are required that are tailored to their age and stage of development. Nevertheless, for the purposes of this report and in light of the pattern of violations observed during the on-site visit to Brazil, some parallels will be drawn between the two systems.

1. Persons deprived of liberty

- 154.** Brazil is the country with the third largest prison population in the world. It had 755,274 people deprived of liberty in 2019 and a prison overcrowding rate of 170.74%. The number of persons in pre-trial detention (*presos provisórios*) was 229,823, or 30.43% of the total prison population. Of the total population deprived of liberty under that regime, 94.16% are men and 5.83% women. The IACHR highlights the fact that between 2000 and 2019, the prison population increased by 224.5%²¹⁴.
- 155.** As the Commission has already stated, Brazil has a historical, structurally embedded, racial discrimination problem that subjects persons of African descent to inequality

212 Human Rights Watch, *World Report 2020*, 2020.

213 For instance, the IACHR has issued the following precautionary measures: Persons Deprived of Liberty at the Porto Alegre Central Prison, Brazil; PM 367/13 -Persons Deprived of Liberty at the Pedrinhas Prison Complex, Brazil; and PM 60/15 - Adolescents deprived of freedom in facilities of juvenile detention reform for men in the state of Ceará, Brazil. The Court, for its part, has issued provisional measures relating to, inter alia, the Plácido de Sá Carvalho Penal Institute, the Pedrinhas Prison Complex, the Curado Prison Complex, and the Urso Branco Penitentiary.

214 Ministry of Justice and Public Security, *Infopen Relatórios Analíticos*, December 2020.

and exclusion. In particular, the Commission notes with profound concern that Afro-descendants make up nearly two-thirds (65.9%) of the prison population²¹⁵. This statistic demonstrates that the racial discrimination these people face also renders them more likely to be incarcerated.

- 156.** In this regard, the Special Rapporteur of the United Nations Human Rights Council on torture and other cruel, inhuman and degrading treatment or punishment established that the high level of institutional racism found in Brazil causes Afro-Brazilians to be at significantly higher risk of mass incarceration, police abuse, torture, ill-treatment, and discrimination in prisons²¹⁶. Likewise, according to the Brazilian Institute for Applied Economic Research (*Instituto de Pesquisa Econômica Aplicada - IPEA*), Afro-Brazilians receive longer sentences for the same crimes than the rest of the population²¹⁷. Accordingly, when a person of African descent is accused, he or she is more likely to be imprisoned or kept in prison without the possibility of accessing alternatives to incarceration²¹⁸.
- 157.** Similarly, the IACHR underscores that, while the majority of the prison population in Brazil is made up of black and young men, the segment that is increasing most is (also black and young) women. Thus, between 2006 and 2019, the female prison population grew by 116.27%²¹⁹. As informed by the State, although only 4.91% of the prison system is composed of women, when comparing the year 2000 with that of 2017, the rate of female imprisonment increased by 675%²²⁰.
- 158.** The Brazilian State, recognizing the increase in the number of detentions of women and the reflection of gender discrimination in the prison system, provided information on the construction of the 2014 National Policy of Attention to Women in Situation of Deprivation of Liberty and Prisoners which seeks to encourage the elaboration of state policies for the care of women deprived of liberty²²¹. The Commission welcomes the initiative and urges the State to continue investing and strengthening this proposal.
- 159.** The IACHR acknowledges a number of efforts being undertaken by the Brazilian State in this area, especially those aimed at reducing pre-trial detention and at ren-

215 Ministry of Justice and Public Security, *Infopen Relatórios Analíticos*, December 2020.

216 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Report on his mission to Brazil from 3 to 14 August 2015, A/HRC/57/Add.4*, 29 January 2016, par 29.

217 Instituto de Pesquisa Econômica Aplicada. *A aplicação de penas e medidas alternativas: relatório de pesquisa*. 2015.

218 Instituto de Pesquisa Econômica Aplicada. *A aplicação de penas e medidas alternativas: relatório de pesquisa*. 2015.

219 Ministry of Justice and Public Security, *Infopen*, March 9, 2020.

220 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 35.

221 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 35.

dering judicial oversight of detentions more effective by holding custody hearings in (*audiências de custódia*) and promoting alternatives to incarceration²²². In particular, the IACHR underscores the incorporation of a gender perspective in ordering house arrest, as in the February 2018 decision by the Federal Supreme Court to grant house arrest to women and adolescents in pre-trial detention who are pregnant, have children up to the age of 12, or responsible for looking after persons with disabilities²²³. In addition, during its visit, the Commission was told about several programs focusing on reintegration into society²²⁴.

- 160.** The IACHR observes that the increase in the prison population and severe overcrowding derive mainly from a crime policy bent on resolving security issues by prioritizing incarceration. The IACHR reiterates that there is no empirical evidence that policies based on tighter restrictions on personal liberty help reduce crime and violence or, more broadly, resolve citizen insecurity problems²²⁵.
- 161.** An example of that can be seen in the drug policies embarked on since the 1990s and directed chiefly at criminalizing the use and trafficking of those substances. Even though the State has taken several steps to differentiate the treatment of drug-related crimes (use and trafficking), there has been a large increase in the number of persons deprived of liberty on account of drug offenses in Brazil. According to official data, that contingent grew by 272% between 2006 and 2016²²⁶.
- 162.** The IACHR underscores the impact of this policy on impoverished and marginalized communities, on the exacerbation of racial disparities in prisons, and on the disproportionate share of Afro-descendants caught up in the criminal justice system.

222 That promotion was evidenced, for example, in the establishment of the National Policy of Alternatives to Imprisonment and Administrative Act (portaria) No. 42 of the Ministry of Justice of Brazil on a management model for electronic monitoring. These efforts were already singled out in previous statements by the IACHR. IACHR, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas](#), OEA/Ser.L/V/II.163. Doc. 105, July 3, 2017, paras. 112 and 126.

223 IACHR, Press release No. 049/18, [IACHR Welcomes decision in favor of women imprisoned in Brazil](#). Washington, D.C., Wednesday, March 14, 2018

224 Those actions include, notably, educational, reading, and handicraft programs. In the same vein, the IACHR was also apprised of initiatives geared to involving other segments of the population in those efforts, such as civil society organizations. Information given to the IACHR by prison authorities in Maranhão during the Commission's visit to the Pedrinhas Prison Complex, from November 6-8, 2018. The state of São Paulo also reported that the social reintegration process is a key factor for reducing recidivism and mass incarceration. Federative Republic of Brazil, Report containing additional information on the on-site visit, May 2019, p.53. Report sent to the IACHR via Note 141 of the Permanent Mission of Brazil to the OAS, May 17, 2019.

225 IACHR, [Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas](#), OEA/Ser.L/V/II.163. Doc. 105, July 3, 2017, par. 86, and CIDH, [Report on the Use of Pretrial Detention in the Americas](#), OEA/Ser.L/V/II., Doc. 46/13, December 30, 2013, par. 100.

226 Thus, in 2006, the National Penitentiary Department reported that 47,472 were imprisoned for drug-related crimes. Ministry of Justice, National Penitentiary Department, [Sistema integrado de informaciones penitenciarias \[Integrated Prison Information System\]- InfoPen](#), December 2006. In 2016, that figure increased to 176,808 people. Ministry of Justice, National Penitentiary Department, [Sistema integrado de informaciones penitenciarias \[Integrated Prison Information System\]- InfoPen](#), June 2016.

- 163.** The IACHR also emphasizes that those policies disproportionately impact women, for whom the principal cause of incarceration is, by far, trafficking and use of drugs. Thus, 62% of women are deprived of liberty for that kind of crime²²⁷, compared to 26% in the case of men. Between 2003 and 2016, the female prison population went from 9,683 to 41,087, an increase of 62% of whom were Afro-descendant women²²⁸. Those figures are especially worrisome for the IACHR considering that the majority of those women barely perform a “supporting” role as carriers or small-scale sellers of drugs²²⁹.
- 164.** With regard to pretrial detention, despite efforts by the State to reduce its use, mainly by introducing custody hearings and incorporating a gender perspective to the use of alternatives to incarceration, several challenges persist to bring Brazil’s criminal and prison policy into line with international human rights standards. Those challenges include overcoming: criminal policies bent on incarceration as a solution to citizen insecurity; pressure from the media and public opinion to combat insecurity using deprivation of liberty and inadequate legal defense (*defesa jurídica inadequada*)²³⁰.
- 165.** As already mentioned, the IACHR also observes that 30.43% of the prison population, equal to 229,823 persons deprived of liberty, are in pretrial detention²³¹. Those numbers show that pretrial detention is being used in a manner clearly at variance with its (officially) exceptional nature. Here, the Commission reiterates that the use of pretrial detention must be restricted by the right to presumption of innocence, as well as the principles of exceptionality, legality, necessity, and proportionality.
- 166.** In that sense, the Commission reiterates that one of the major steps forward taken to reduce the use of pretrial detention and a sound practice in the region has been the introduction of custody hearings.²³² The IACHR takes note that these hearings are a measure recently espoused by the Brazilian State to avoid unnecessary deprivations

227 National Penitentiary Department, Brazil, *Levantamento Nacional de Informações Penitenciárias – Infopen Mulheres*, 2nd edition, 2018.

228 Ministry of Justice and Public Security, *Levantamento Nacional de Informações Penitenciárias – INFOPEN Mulheres*, Brasília, 2018.

229 National Penitentiary Department, Brazil, *Levantamento Nacional de Informações Penitenciárias, “Infopen Mulheres”*, November 5, 2015; *Conectas Direitos Humanos e Plataforma Brasileira de Políticas sobre Drogas (PBPDP)*, Request for a hearing on “Human rights, incarceration, and drug policies in Brazil”, 162nd regular period of sessions. Information provided to the Commission on March 1, 2017.

230 In particular, as regards Public Defenders’ Office services the IACHR was told that at both the federal and state levels, they are understaffed. Information furnished to the IACHR by the Federal Public Defenders’ Office and by the Defenders’ Office of the state of Maranhão, on November 10, 2018.

231 Ministry of Justice and Public Security, *Infopen Relatórios Analíticos*, December 2020.

232 This position has already been put forward in previous statements by the IACHR. IACHR, *Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II.163. Doc. 105. July 3, 2017, paras. 186ff., and IACHR Press Release No. 29/16, *IACHR Celebrates the Anniversary of the Implementation of the Custody Hearings in Brazil*, March 7, 2016.

of liberty and ascertain whether continuing incarceration is indispensable²³³. According to Resolution No. 213 of December 15, 2015 of the National Council of Justice (CNJ), those hearings require that persons detained in the act of committing a crime, regardless of the motives or nature of the crime, must be brought before a judicial authority within 24 hours of being deprived of liberty to be heard in the presence of the Public Prosecutors' Office or the Public Defenders' Office²³⁴.

167. Custody hearings are currently being conducted in the capitals of 26 states in Brazil and in the Federal District. According to Judiciary data, since they began being implemented and until June 2017, 258,485 custody hearings have been held nationwide. Of those, 55.32% (142,988 cases) ended in pre-trial detention. In the State of Rio Grande do Sul, the percentage of cases resulting in pretrial detention is 84.83. For the states of Mato Grosso do Sul, Rondônia, Tocantins, and Pernambuco, the figure exceeds 60%. States with fewer than 50% are Bahia, with 38.75%; Amapá with 42.14%, and Mato Grosso with 43.72%²³⁵. Those figures represent progress, above all considering that, according to information available to the Commission after 2011, when the Precautionary Measures Law entered into force²³⁶, the percentage of pretrial detention orders in cases of crimes in flagrante delicto was higher²³⁷. That said, the application of pre-trial detention in approximately 55% of cases shows that it is still not being used as the exception it is meant to be.

168. While the use of custody hearings is an important step forward, the Inter-American Court found those mechanisms “have not in fact been implemented in all of Brazil’s municipalities”²³⁸. Moreover, the IACHR was apprised of a number of challenges encountered in conducting such hearings, such as lack of time and lack of privacy between the accused and his or her defense counsel; failure of the judicial authority to clearly explain the procedure at the start of hearings; insufficient coordination

233 IACHR Press Release No. 29/16, *IACHR Celebrates the Anniversary of the Implementation of the Custody Hearings in Brazil*, March 7, 2016.

234 Accordingly, the judicial authority will rule on the inadmissibility of any punitive measures, the decision to order pretrial detention, the application of alternatives to incarceration or related to the adoption of other measures needed to protect the rights of the accused. National Council of Justice of Brazil, *Resolution 213* of December 15, 2015, Article 1.

235 National Council of Justice (CNJ), *“Dados Estatísticos / Mapa de Implantação de audiências de custódia”*, June, 2017.

236 Through this regulation, Brazil’s Code of Criminal Procedure was amended to guarantee the exceptional nature of pretrial detention by expanding alternatives to it, such as bail, electronic monitoring mechanisms, house arrest, and so on. Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, *Law N° 12.403*, of May 4, 2011.

237 For example, in the cases of Rio de Janeiro and São Paulo, the pretrial detention confirmation ratios were 72.3% and 61.3%, respectively. Following the introduction of custody hearings, the rates fell to 57% in Rio de Janeiro and 53% in São Paulo. Ministry of Justice and National Penitentiary Department, Brazil, *“Implementação das Audiências de Custódia no Brasil: Análise de experiências e recomendações de aprimoramento”*, p. 25, 2016.

238 I/A Court of H.R., *Matter of the Plácido de Sá Carvalho Penal Institute regarding Brazil*. Provisional Measures. Order of the Court of August 31, 2017, par. 27.

among judicial institutions; and the failure to provide translation and interpretation in cases involving migrants and members of traditional communities. Likewise, the Commission has voiced its concern at the figures indicating failure to investigate and address allegations of ill-treatment and torture made during custody hearings²³⁹.

- 169.** In addition, the IACHR is seriously worried about draft Legislative Decree No. 317/2016²⁴⁰, which would annul the effects of Resolution N^o. 231/2015 of the CNJ. If it is approved, in the Commission's view the Legislative Decree could mark a step backwards in terms of progress made with guaranteeing the rights of persons deprived of liberty.
- 170.** The IACHR also highlights the inclusion of gender perspective in decisions on ordering house arrest. Law N^o. 13.257/2016, amending Article 318 of the Code of Criminal Procedure, expanded the grounds on which pre-trial detention can be replaced by house arrest²⁴¹. Unlike previous legislation, which contemplated the possibility of house arrest just for women seven months or more pregnant or with high-risk pregnancies, the new text does not specify a particular period of time and provides for house arrest for both pregnant women (subparagraph IV) and those with children under the age of 12 (subparagraph V)²⁴².
- 171.** Apart from that, the decision handed down by the Second Division of the Federal Supreme Court (STF) on February 20, 2018, allows house arrest for women and adolescents in pre-trial detention who are pregnant, have children under the age of 12, or who are responsible for looking after persons with disabilities. The STF ruling grants courts in Brazil up to 30 days to comply with this decision²⁴³.
- 172.** The IACHR also welcomes the decision by the Federal Supreme Court which orders that trans women serving sentences in men's prisons be transferred to prisons for women, in recognition that "incarcerated transsexuals and transvestites are a doubly vulnerable group" (*sic*)²⁴⁴. In the Commission's opinion, the decision is an import-

239 IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163. Doc. 105. July 3, 2017, par. 192. In particular, the Commission warned that, despite the large number of complaints filed regarding cruelty and torture and even though investigation had begun in 74% of the 1,152 complaints filed with the Court of Justice of São Paulo, as of February 2016, security agents had not been found guilty in any of those cases/ *Conectas, Nota à Imprensa "Audiências de custódia fazem um ano: o que mudou?"*, February 25, 2016.

240 Chamber of Deputies, *Proposta de Decreto Legislativo n. 317/2016*, 2016.

241 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, *Law No. 13.257*, of March 8, 2016.; IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163. Doc. 105. July 3, 2017, par. 213.

242 Law 13.257/2016 amending Article 318 of the Code of Criminal Procedure (Early Childhood Statute), Brazil, in effect as of March 8, 2016, Article 318.IV and Article 318.V; IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163. Doc. 105. July 3, 2017, par. 213.

243 IACHR, Press release No. 049/18, IACHR Welcomes decision in favor of women imprisoned in Brazil. Washington, D.C., March 14, 2018.

244 Federal Supreme Court, Medida Cautelar na Arguição de Descumprimento de Preceito Fundamental 527 Distrito Federal [Precautionary Measure in Claim of Non-Compliance with Federal District Fundamental Precept 527], June 26, 2019.

ant step for preventing deprivation of liberty resulting in multiple violations for vulnerable and stigmatized groups and for moving toward application of the principles of equality and nondiscrimination based on gender identity and/or expression.

- 173.** During its visit, the IACHR also observed disturbing conditions, such as overcrowding, in detention centers it went to. Thus, according to information furnished by prison authorities, the Monte Cristo Agricultural Penitentiary – designed to accommodate 650 people – in fact had almost twice as many inmates (1,248). Likewise, the Plácido de Sá Carvalho Penal Institute, built for 1,699 inmates, had 4,093 at the time of the IACHR visit. The Jorge Santana Public Prison, with room for 750, had 1,833 detainees²⁴⁵. On this matter, the Commission emphasizes the recent pronouncement by the Inter-American Court that, when conditions in a detention center deteriorate due to overcrowding or other violations derived from it, “the distress caused by the penalty or pre-trial deprivation of liberty is heightened to a point at which it becomes illegal or contrary to law (*antijurídica*)”²⁴⁶.
- 174.** In the prisons it visited, the IACHR also observed with particular concern the permanent confinement of persons deprived of liberty, including even adolescents, owing to an alleged shortage of prison staff. The Jorge Santana Public Prison, for instance had one officer per 366 inmates. The Commission noted that that state of affairs means that detainees spend practically all their time in their cells (which are generally overcrowded), in deplorable conditions, with no access to educational or work-related programs. Accordingly, the IACHR reaffirms to the State that deprivation of liberty with prolonged confinement and with no opportunity to attend such public policy programs, not only exposes inmates to more abuses and human rights violations; it also renders their reintegration into society well-nigh impossible.
- 175.** The prolonged confinement to cells, practiced in Brazilian prisons, has also been a matter of concern to the National Mechanism for Preventing and Combating Torture, which points out that shortages of prison staff violate Brazilian regulations. In particular, Resolution No. 1/2009 of the National Council on Criminal and Prison Policy stipulates that each prison officer should be responsible for no more than 5 inmates²⁴⁷.
- 176.** The Commission voices particular concern regarding the alarming conditions at the Jorge Santana prison, which is part of the Gericinó (Bangú) Penitentiary Complex. Those conditions pose a serious threat to the lives and integrity of the 1,833 inmates. Those people, all of whom are in pretrial detention, are permanently locked up in

245 The data on overcrowding at these detention centers were obtained during on-site visits by the IACHR on November 9 and 10, 2018.

246 I/A Court of H.R., *Matter of the Plácido de Sá Carvalho Penal Institute regarding Brazil*. Provisional Measures. Order of the Inter-American Court of Human Rights, November 22, 2018, par. 92.

247 Mecanismo Nacional de Prevención y Combate de la Tortura [National Mechanism for Preventing and Combating, *Informe de misión a unidades de privación de la libertad en el estado de Roraima*, 2017, par. 143

cells with almost triple the number of prisoners they were built for²⁴⁸, without access to activities of any kind and deprived of sunlight. On the day of the IACHR visit, there were just 5 prison officers for the entire population of inmates. The IACHR hereby sounds an alarm that prison conditions are deplorable and a blatant threat to the dignity of those incarcerated. Apart from the overcrowding, the stench was unbearable, the ventilation inadequate and lighting was poor, with no access to sunlight. The Commission was able to ascertain, on top of all that, that cells were infested with cockroaches and rats.

- 177.** The approximately 400 people in “A” and “B” cells are at especially high risk, above all because many of them are in poor health. In many cases, those people were caught red-handed in police operation and reportedly had bullet wounds. The IACHR pointed out that many of those wounds were visibly infected and was told, in that connection, by the Mechanism for Preventing and Combating Torture in Rio de Janeiro about the lack of medical personnel to care for detainees²⁴⁹. With respect to persons detained and wounded in the course of armed operations, the IACHR received alarming information that they not being presented at custody hearings.
- 178.** The Commission takes note of a meeting in 2020 of state entities at various levels to discuss the measures to be taken by each of the parties involved in relation to the problems faced at the Evaristo de Morais Prison, at the Jorge Santana Public Prison and in the Instituto Plácido de Sá Carvalho. The IACHR highlights that those penitentiary are subject of precautionary and provisional measures by the Inter-American System²⁵⁰. In this regard, while the IACHR welcomes the initiative, it recalls that such problems must be resolved with the utmost urgency.
- 179.** Another matter that caught the Commission’s attention was the precariousness of the health care services provided in Brazilian prisons. Accordingly, and despite the progress reported by the State in this area²⁵¹, the Commission both saw and was informed about negligence in the care provided, derived primarily from the lack of medical personnel, medicines, and equipment. In particular, the IACHR warned that the overcrowding, lack of hygiene, and poor ventilation pose a serious threat to the

248 On the day of the visit (November 9), for instance, in “A” and “B” cells built for 75 people and 65 people, respectively, there approximately 200 inmates.

249 Mechanism for Preventing and Combating Torture in Rio de Janeiro, “*Recomendações sobre Sistema Prisional, Sistema Socioeducativo e Fortalecimento Institucional do Sistema Estadual de Prevenção à Tortura*” [Recommendations regarding the Prison System, Socio-Educational System, and Institutional Strengthening of the State’s Torture Prevention System], Report drawn up for the IACHR, November 10, 2018, p.10.

250 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 37 e 38.

251 That progress includes: the publication of the National Policy for Comprehensive Health Care for Persons Deprived of Liberty (2014) and implementation of the Horus System for managing and facilitating the dispensing of medical care in the prison system. (2017). National Penitentiary Department, Health Coordination of the Office of the Coordinator-General for the Advancement of Citizens and of the Basic Care Department of the Ministry of Health, “Saúde Prisional”, June 2018, pp. 3 and 5.

health of detainees. That is due above all to the heightened risk of the spread of infectious diseases, such as tuberculosis, a factor that is also acknowledged by the National Penitentiary Department (DEPEN)²⁵². In this regard, the Commission issues a reminder that the organs of the Inter-American system have repeatedly affirmed the obligation of States to provide timely and adequate health care services to persons in their custody. In the case of tuberculosis, especially, it is essential to take appropriate administrative and environmental steps to eliminate the risk of transmission, following provisions issued on that subject by the World Health Organization (WHO) and the Pan American Health Organization (PAHO)²⁵³.

- 180.** At the same time, despite the adoption of some measures to mainstream the gender perspective in prisons²⁵⁴, the IACHR observed a lack of women's health care and the absence of effective social reintegration programs. Particularly as regards medical care, the Commission observed that in many establishment women do not receive gynecological care or even have access to necessary female hygiene products²⁵⁵. Nor do transgender women receive hormone treatment²⁵⁶. The IACHR was also recently informed about a lack of proper food for pregnant women²⁵⁷.
- 181.** On this matter, the IACHR recalls that, pursuant to the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, women deprived of liberty have a right to access the specialized medical care taking their physical and biological characteristics into account, as well as their reproductive health needs²⁵⁸. Apart from that, States must regularly provide women with the essential items they

252 The National Penitentiary Department, in particular, established that the physical conditions and overcrowding exacerbate the intramural spread of tuberculosis. In addition, it pointed out that, given that it is a disease transmitted by air, human resources are not enough to control, diagnose, and provide early treatment for cases identified. National Penitentiary Department, Health Coordination of the Office of the Coordinator-General for the Advancement of Citizens and of the Basic Care Department of the Ministry of Health, "Saúde Prisional", June 2018, p. 5.

253 For further information, see Pan American Health Organization, "Guide for Tuberculosis Control in Populations Deprived of Liberty in Latin America and the Caribbean", 2008. p. 75; World Health Organization, "Tuberculosis control in prisons : a manual for programme managers"; I/A Court of H.R. Matter of the Plácido de Sá Carvalho Penal Institute regarding Brazil. Provisional Measures. Order of the Inter-American Court of Human Rights, August 31, 2017, par. 54.

254 For instance, the IACHR was told that the DEPEN is currently in the process of buying vehicles to transport women during pregnancy, or in labor, or with disabilities. In addition, it encourages ongoing training of prison staff in the gender perspective and differentiated approaches. Coordination Office for Policies for Women and Promotion of Diversity, Office of the Coordinator-General for the Advancement of Citizens, and the National Penitentiary Department, November 2018.

255 General Ombudsperson's Office of the Public Defenders' Office of Rio de Janeiro, Network and Movements against Violence, and other organizations, "Sistema Prisional e Gênero: Informações e Recomendações". Information given to the IACHR on November 19, 2018 and Criminal Justice Network; "Discriminação de gênero no Sistema Penal", 9th edition, September 2016.

256 General Ombudsperson's Office of the Public Defenders' Office of Rio de Janeiro, Network and Movements against Violence, and other organizations, "Sistema Prisional e Gênero: Informações e Recomendações"; information given to the IACHR on November 10, 2018.

257 Information provided to the IACHR during the virtual meeting with civil society organizations on June 29, 2020.

258 IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, OEA/Ser/L/V/II.131, Document approved by the Commission at its 131st regular period of sessions, from March 3-14, 2008. Principle X: Health

need to meet their needs²⁵⁹. As regards trans women, States have an obligation to provide medical assistance that acknowledges any specific need based on gender identity and/or expression²⁶⁰.

- 182.** The IACHR was also briefed about arbitrary body searches in prisons for adults and adolescent detention centers, which constitute a violation of the right to personal integrity of the persons visiting them. Thus visitors, especially women, are in many cases reportedly forced to strip and expose their genitals, to bend over, and do “squats”²⁶¹. Thus, the Subcommittee on the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment has been warning, since 2012, about the large number of complaints about invasive and humiliating searches of visitors, including older women, boys and girls²⁶² and pointing out that those body searches cannot be justified as attempts to prevent the entry of illegal objects²⁶³. In that context, the Commission recalls that such procedures have to be conducted under hygienic conditions, by qualified personnel of the same sex, in addition to being compatible with human dignity and respect for fundamental rights. To that end, the State must use alternative methods, applying technological procedures and equipment, such as metal detectors or other appropriate methods²⁶⁴.
- 183.** Finally, and bearing in mind the alarming conditions in Brazilian prisons, the IACHR recalls the point made by the Inter-American Court that they could violate Article 5.6 of the American Convention, in the sense that they would not be able to comply with the essential aim of deprivation of liberty which is the “reform and social re-adaptation of prisoners”²⁶⁵.
- 184.** Overcrowding and staff shortages make it difficult for prison authorities to administer prisons appropriately. That leads to the delegation of authority to inmates and to the predominance of informal oversight mechanisms. In that vein, the Sub-

259 IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, OEA/Ser/L/V/II.131, Document approved by the Commission at its 131st regular period of sessions, from March 3-14, 2008. Principle XII “Accommodation, hygiene, and clothing”.

260 The Yogyakarta Principles, Yogyakarta Principles - Principles on the application of international human rights law in relation to sexual orientation and gender identity, Principle 9.B.

261 DPEN, *As Revistas Íntimas Realizadas em Visitantes dos Presos no Sistema Penitenciário Brasileiro*, 2016; Organización de Derechos Humanos, Proyecto Legal; Asociación de Familiares y Amigos de Presos (AMPARAR), Conectas, Instituto Brasileño de Ciencias Criminales (IBCCRIM), Instituto Pro Bono; Núcleo Especializado de Situación Carcelaria de la Defensoría Pública del estado de São Paulo. Information provided to the IACHR on July 17, 2018, in connection with the working meeting during the 169th period of session, held in Boulder Colorado on October 2, 2018; and Criminal Justice Network “Gender Discrimination in the Criminal Justice System,” 9th edition, September 2016.

262 Subcommittee on the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, “Report on th Visit to Brazil,” CAT/OP/BRA/1, July 5, 2012.

263 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil from 3 to 14 August 2015*, A/HRC/57/Add.4, 29 January 2016, para. 38

264 IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 590 and IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, OEA/Ser/L/V/II.131, Document approved by the Commission at its 131st regular period of sessions, from March 3-14, 2008. Principle XXI.

265 I/A Court of H.R., Matter of the Plácido de Sá Carvalho Penal Institute regarding Brazil. Provisional Measures. Order of the Inter-American Court of Human Rights, November 22, 2018, par. 85.

committee on the Prevention of Torture notes that, in some states, inmates known as “*chaveiros*” (locksmiths) are authorized to open and close entrances, supervise or control their pavilions, allocate cleaning or cooking chores²⁶⁶, and discipline or punish “less powerful prisoners”²⁶⁷. These oversight structures increase the likelihood of inmates being subjected to mistreatment and torture or even killed, while the perpetrators of such acts go unpunished²⁶⁸.

- 185.** The lack of control by prison authorities was observed by the Commission when it visited the Monte Cristo Agricultural Prison in Roraima. That facility would appear to be governed in practice by a criminal faction that prevents prison personnel and authorities from entering the parts of the prison occupied by inmates, who are the ones who open and close cells. That state of affairs was also observed by the Penitentiary Council of the state of Roraima and by the National Mechanism for Preventing and Combating Torture²⁶⁹.
- 186.** In January 2017, there were three prison massacres resulting in the deaths of at least 130 people: the first was in Manaus (Amazonas); the second in Boa Vista (Roraima); and the third in Nísia Floresta (Rio Grande do Norte). The IACHR condemned those acts of violence in a press release, asking the State to investigate them with a view to identifying and punishing those responsible²⁷⁰. Once again, in 2018, the IACHR issued a statement on acts of violence in Brazilian prisons in Pará, Ceará, and Goiás, which led to the deaths of at least 24 people²⁷¹. Similar patterns of violence were observed in the Socio-Educational System²⁷².

266 Subcommittee on the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *Visit to Brazil from October 19 to 30, 2015: Observations and Recommendations, CAT/OP/BRA/3*, February 16, 2017, par. 41; Human Rights Watch, *The State let Evil Take Over. The Prison Crisis in the Brazilian State of Pernambuco*, October 15, 2015.

267 Subcommittee on the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *Visit to Brazil from October 19 to 30, 2015: Observations and Recommendations, CAT/OP/BRA/3*, February 16, 2017, par. 41.

268 Subcommittee on the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *Visit to Brazil from October 19 to 30, 2015: Observations and Recommendations, CAT/OP/BRA/3*, February 16, 2017, par. 41.

269 Penitentiary Council of the state of Roraima, Official Letter No. 003/2018. Boa Vista, Roraima, November 7, 2018; Mecanismo Nacional de Prevención y Combate de la Tortura [National Mechanism for Preventing and Combating Torture], *Informe de misión a unidades de privación de la libertad en el estado de Roraima*, 2017, par 121.

270 IACHR, Press Release No. 2/17, *IACHR Condemns the Deaths of Nearly One Hundred People in Prisons in Brazil*. Washington, D.C., Wednesday, January 11, 2017.

271 Thus, on April 10, 2018, in an attempted mass escape from the Recuperação do Pará III Penitentiary, a unit pertaining to the Santa Izabel Penitentiary Complex, at least 21 people lost their lives, including a prison guard, 5 interns, and 15 mmbtrs of the organized group. On January 29, 2018, there was a revolt in the Itapajé public prison, located in the state of Ceará, in which 10 people lost their lives. On January 1, similar acts of violence occurred, resulting in the deaths of 9 persons deprived of liberty in the semi-open agro-industrial penal colony of Aparecida de Goiânia, in the state of Goiás. IACHR, Press Release No. 084/18, *IACHR Condemns Deaths of at least 21 People in Brazilian Prison*. Washington, D.C., April 23, 2018. IACHR, Press Release No. 030/18, *IACHR Condemns the Death of [at least 10] People at Ceará Prison, Brazil*. Washington, D.C., February 16, 2018 and IACHR, Press Release No. 003/18, *IACHR Condemns the Deaths of People Deprived of Their Liberty in Brazilian Prisons*. Washington, D.C., Thursday, January 11, 2018.

272 IACHR, Press Release No. 209/17 - *IACHR Rapporteurs Wrap Up Visit to Brazil*. Washington, D.C., December 15, 2017.

- 187.** Another topic especially worth highlighting are the multiple and solid testimonies of torture and inhuman and degrading treatment meted out by prison guards. In particular, the IACHR received information regarding such treatment committed by special forces guards, such as the Rapid Intervention Group (GIR) and the Tactical Intelligence Group (GIT), which reportedly have received military training and have been assigned the task of guaranteeing security and order in the event of revolts or attempts to escape, in addition to carrying out searches for weapons, cell phones, and drugs²⁷³.
- 188.** For example, during its visits to the Jorge Santana prison and the Monte Cristo agricultural prison, in Roraima, the IACHR observed the presence of members of the GIT (Tactical Intervention Group), who typically and ostensibly bear arms and hide their faces behind hoods so as not to be recognized and identified. On this, the Commission underscores the importance of the work done by auditing and oversight institutions, such as the Public Prosecutors' Office (*Ministério Público*) and the Mechanisms for Preventing and Combating Torture, in order to deter abusive practice and, when they do occur, to ensure that those responsible are tried and punished.
- 189.** Regarding the acts of the aforementioned special forces, the Commission recently received complaints of excessive force and cruelty committed by the GIR in São Paulo, the Prison Intervention Task Force in Rio Grande do Norte and GIRs in other Brazilian states²⁷⁴. Especially marked, according to civil society, is the use of dogs trained to intimidate inmates; humiliating body searches of women; damage to inmates' belongings; indiscriminate use of rubber bullets, pepper gas, and tear gas; in addition to collective punishments and beatings²⁷⁵. The IACHR recalls that the United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had already pronounced on this matter and said it had received "several allegations concerning the use of force by specialized units of the military police conducting raids inside prisons"²⁷⁶. The Commission notes with concern that the

273 National Mechanism for Preventing and Combating Torture, *Información* No. 4/2018MNPCT/SNC/MDH, November 10, 2018, p. 3, e *Informe de misión a unidades de privación de la libertad en el estado de Roraima*, 2017, paras. 120 and 283. In the same vein: Asociación de Familiares y Amigos de Presos (AMPARAR); Conectas Derechos Humanos; Instituto Brasileño de Ciencias Criminales (IBCCRIM); Instituto Pro Bono; Núcleo Especializado de Situación Carcelaria de la Defensoría Pública del estado de São Paulo, information provided to the IACHR on July 17, 2018, in connection with the working meeting during the 169th period of sessions, held in Boulder, Colorado, on October 2, 2018.

274 National Mechanism for Preventing and Combating Torture, *Información* No. 4/2018MNPCT/SNC/MDH, November 10, 2018, p. 3, e *Informe de misión a unidades de privación de la libertad en el estado de Roraima*, 2017, paras. 120 and 283. In the same vein: Asociación de Familiares y Amigos de Presos (AMPARAR); Conectas Derechos Humanos; Instituto Brasileño de Ciencias Criminales (IBCCRIM); Instituto Pro Bono; Núcleo Especializado de Situación Carcelaria de la Defensoría Pública del estado de São Paulo, information provided to the IACHR on July 17, 2018, in connection with the working meeting during the 169th period of sessions, held in Boulder, Colorado, on October 2, 2018.

275 Asociación de Familiares y Amigos de Presos (AMPARAR); Conectas Derechos Humanos; Instituto Brasileño de Ciencias Criminales (IBCCRIM); Instituto Pro Bono; Núcleo Especializado de Situación Carcelaria de la Defensoría Pública del estado de São Paulo, information provided to the IACHR on July 17, 2018, in connection with the working meeting during the 169th period of sessions, held in Boulder, Colorado, on October 2, 2018.

276 Subcommittee on the Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *Visit to Brazil from October 19 to 30, 2015: Observations and Recommendations*, CAT/OP/BRA/3, February 16, 2017, par. 17.

increasing use of those operations could be related to extrajudicial punishment techniques against persons deprived of liberty, as well as the adoption of exceptional disciplinary regimes and the suspension of rights²⁷⁷.

- 190.** The IACHR also stresses that, according to several testimonies, most people, including adolescents do not report the practice of torture and ill-treatment in Brazilian prisons for fear of reprisals, which gives cause for concern as it could be a sign that this human rights violation is becoming increasingly widespread. Likewise, in the cases in which complaints of this kind are in fact registered, the Commission received information that the oversight authorities, like the Public Prosecutors' Office (Ministério Público), were taking a lenient approach to these abuses and did not undertake the corresponding investigations²⁷⁸. In this context, the Commission condemns any form of torture and issues a reminder that torture and ill-treatment are prohibited under any circumstances²⁷⁹.
- 191.** Furthermore, in this area, the IACHR has drawn attention to the fact that just six states have laws establishing a mechanism to prevent torture and that, of those, only two effectively implement a prevention mechanism. The Commission therefore reiterates its request to the Brazilian State to take appropriate steps to foster the establishment of mechanisms to prevent and combat torture and to provide all the conditions needed for them to work, including personnel and physical and technical resources²⁸⁰. Likewise, the IACHR notes that recently measures were adopted that hamper the work of these kinds of mechanisms, especially in the case of the National Mechanism to Prevent and Combat Torture and the Mechanism to Prevent and Combat Torture of the state of São Paulo, where some of the staff have been dismissed and there are virtually no resources to enable them to do their work²⁸¹.
- 192.** In this regard, the IACHR underscores the part played by the National Committee to Prevent and Combat Torture (CNPCT) and the National Mechanism to Prevent and Combat Torture (MNPCT), which together make up the National System to Prevent and Combat Torture²⁸², in the consolidation of human rights institutions in Brazil. Accordingly, it reaffirms that the work of those institutions is fundamental if the

277 IACHR, Preliminary observations of IACHR's In Loco visit to Brazil, November 12, 2018; *Mecanismo Nacional de Prevención y Combate de la Tortura* [National Mechanism for Preventing and Combating Torture], Informação No. 4/2018MNPCT/SNC/MDH, November 10, 2018, p. 3.

278 Information provided to the IACHR by the mothers of detainees in Minas Gerais, during the meeting with civil society on July 30, November 10, 2018, Rio de Janeiro.

279 IACHR, Gross Human Rights Violations in the Context of Social Protests in Nicaragua. OEA OEA/Ser.L/V/II. Doc. 86, June 21, 2018, par. 190. In the same vein, IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, OEA/Ser.L/V/II. Doc. 64, December 31, 2011, par. 343

280 IACHR, Press Release No. 209/17 - IACHR Rapporteurs Wrap Up Visit to Brazil - Annex to the Press Release on the Visit with conclusions and observations°. Washington, D.C., Friday, December 15, 2017.

281 IACHR, Press Release No.149/19 - IACHR Concerned About Actions that Affect Brazil's National Mechanism to Prevent and Fight Torture. Washington, D.C., Friday, June 14, 2019.

282 Report of the State, containing Additional Information, May 2019.

State is to meet its commitments to defend, promote, and consolidate the human rights agenda. The National Mechanism, established by Law No. 12.847 of August 2, 2013²⁸³, and its state counterparts, are vital for identifying, reporting, and monitoring torture cases in Brazil.

- 193.** Nevertheless, the IACHR reiterates its particular concern regarding Presidential Decree No. 9.831 of June 10, 2019²⁸⁴, ordering the dismissal of members of the National Mechanism to Prevent and Combat Torture, thereby putting an end to execution of its mandate to protect persons deprived of liberty. That decision means that the aforementioned Mechanism will not function until new personnel is appointed, who, according to one of the provisions and contrary to current practice, will not be paid for their work²⁸⁵. Similarly, when it requested information from the Brazilian State in February 2019, the IACHR voiced concern with certain restrictions the Mechanism was reportedly facing with respect to its function of inspecting detention centers. Nevertheless, the Commission welcomes the information provided by the State on the Federal Court's preliminary decision to suspend such Decree²⁸⁶.
- 194.** At the same time, as regards the Mechanism to Prevent and Combat Torture of the state of São Paulo, on January 16, 2019, the government of the state vetoed bill No.1257/2014, approved by the Legislative Assembly, which sought to create that mechanism at the local level²⁸⁷. The Commission underscores civil society's demonstrations repudiating that decision²⁸⁸, reinforced by a public note on January 23, 2019 issued by the Federal Public Ministry for Citizens' Rights²⁸⁹. Parallel to that, in a letter dated February 5, 2019, addressed to the state Legislative Assembly, both the IACHR and UNHCHR pleaded for the establishment, installation, and operation of a state Mechanism to Prevent and Combat Torture. On that occasion, the Commission reaffirmed the inalienable responsibility of the state to prevent torture, condemn the practice of it, and invariably punish its perpetrators and instigators.
- 195.** In this connection, the IACHR reiterates that deprivation of liberty centers must be subject to constant monitoring and independent oversight. The way persons deprived of

283 Office of the President of the Republic, Deputy Head of Legal Affairs, *Law n° 12.847*, August 2, 2013.

284 Office of the President of the Republic, Deputy Head of Legal Affairs, *Decree n° 9.831*, June 10, 2019.

285 IACHR, Press Release No.149/19 – *IACHR Concerned About Actions that Affect Brazil's National Mechanism to Prevent and Fight Torture*. Washington, D.C., Friday, June 14, 2019.

286 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 41 e 42.

287 Total veto of the Bill No. 1257 of 2014, *Diário Oficial [Official Gazette] Executive Branch – Section I*, January 17, 2019.

288 IBCCRIM, Press Release *"IBCCRIM e organizações parceiras manifestam indignação com veto de João Dória ao Comitê e o Mecanismo de Prevenção e Enfrentamento à Tortura no Estado de São Paulo"*, January 18, 2019.

289 Procuradoria Federal dos Direitos do Cidadão [Federal Attorney General's Office for Citizens' Rights], Press release *"PFDC defende projeto de lei que institui Comitê e Mecanismo de Prevenção e Combate à Tortura em São Paulo"*, January 23, 2019.

liberty are treated must be subject to rigorous control, given the special risk they face due to conditions inside the centers, and to full State oversight of the exercise of their human rights. The monitoring mechanisms established in the Optional Protocol to the United Nations Convention against Torture, which was ratified by Brazil on January 12, 2007, are especially important for protecting the fundamental rights of persons deprived of liberty and complying with Brazil's international human rights obligations.

2. Privatization²⁹⁰ of correctional institutions (*estabelecimentos penais*)

196. During its visit and while drafting this report, the IACHR also verified that the management of correctional institutions is being increasingly outsourced to the private sector. According to data put out by the National Penitentiary Department of the Ministry of Justice and Public Security²⁹¹, in 2018 there were 32 prisons being managed by private enterprises under co-management²⁹² or public-private partnership (PPP) contracts.²⁹³ There were 29 co-managed establishments holding up to 12,223 inmates and 3 PPP establishments with room for 2,016. At the same time, according to the report of the Parliamentary Commission of Inquiry into the Prison System (2015), eight states were conducting studies on introducing PPP in units holding altogether another 23,130 inmates²⁹⁴.

197. Thus, in January 2019 the government of the state of São Paulo posted a proposal to use PPPs to transfer to the private sector the management of 12 units under construction, with space for 12,000 inmates, along with three other complexes (to hold an unspecified number of inmates) to be built as part of the expansion of the state prison system²⁹⁵. At the federal level, during the 2018 election campaign, well-known public figures even announced that they intended to include correctional institutions in privatization packages²⁹⁶.

198. In response to the announcement made by the government of São Paulo, various civil society organizations issued a Technical Note²⁹⁷, giving technical and legal grounds

290 In this report, as in the specialized literature on the subject, privatization may include various forms by which the State outsources a public service.

291 Dados Gerais Brasil, *Parcerias Público-Privadas no sistema prisional* [General Data on Brazil, Public-Private Partnerships in the Prison System], Ministry of Justice (2018, p.3).

292 An arrangement whereby the private entity provides personnel, equipment, and services tailored to the prison population.

293 An arrangement whereby the private entity provides not just personnel, equipment, and services tailored to the prison population, but may also take on construction or prison reform tasks.

294 IPEA. *Boletim de Análise Político-Institucional*, 2018.

295 Agência Brasil, *Governo paulista anuncia privatização de quatro presídios*, January 18, 2019.

296 Partido Social Liberal – PSL channel on Youtube, *O Brasil Entrevista Bolsonaro*, August 2, 2018.

297 Consultor Jurídico, *Privatizar gestão dos presídios aumentará violação a presos, dizem entidades*, May 10, 2019.

for opposing the state Executive's decision to privatize prisons. One such ground is the commitment undertaken by the Brazilian State before the United Nations during the last Universal Periodic Review (UPR) to reduce its prison population by 10%. Also, according to reports, all over the world, granting prison management concessions to the private sector correlated closely with an expansion in the number of inmates, that is to say, mass incarceration.

- 199.** From a human rights perspective, it is important to underscore Brazil's experience with the privatization of correctional institutions and the large number of violent acts that have taken place in those establishments, as in the Pedrinhas Penitentiary Complex in Maranhão and the Anísio Jobim Penitentiary Complex (COMPJ) in Amazonas²⁹⁸. In both those privatized complexes, the IACHR points to episodes that resulted in gross human rights violations, such as the massacres of 2013²⁹⁹ and 2019³⁰⁰ respectively.
- 200.** The Commission is aware of the seriousness of prison issues in Brazil and of the pressing need to find solutions to the problems experienced in prisons, as well as of the Brazilian State's autonomy in deciding on appropriate means to improve those establishments. Nevertheless, it reiterates that the decisions regarding those means need to be shaped by the country's human rights commitments. The privatization option does not appear to advance the achievement of a harmonization between local policies and inter-American standards.
- 201.** On this matter, the Commission takes note of the argument used by States regarding the savings and reduction in the public sector deficit that privatized models can offer. Nevertheless, the IACHR points to information that many of these co-management or PPP establishments have higher costs per vacancy/inmate and, generally, give preference to inmates charged with non-violent crimes or who are more likely to achieve social reintegration, which would not represent any saving for the Treasury³⁰¹. Accordingly, the IACHR underscores the paradox that comes with the private sector model, namely that it is a system that, in order to be viable, requires a larger volume of incarceration. Here, the Commission reminds the State that the focus of the criminal justice system must be on reducing incarceration and thereby reducing costs, by implementing social policies that enable these people to have access to means of subsistence that are not dependent on illicit activities.

298 COMPJ was run by the Umanizzare company during the 2017 and 2019 massacres, whereas in the Pedrinhas Complex, part of the services, especially security, had been outsourced to the private sector (the Atlântica company).

299 Conselho Nacional de Justiça [National Council of Justice], *Relatório de Inspeção nos Estabelecimentos Prisionais do Maranhão – Ofício 363/GB/2013*, December 27, 2013.

300 G1, *Em 2017, 56 presos foram assassinados em massacre no Compaj*, May 27, 2019.

301 Conectas, *Proposta de Privatização de Presídios em SP é Inconstitucional e Fere Tratado da Onu*, May 30, 2019.

3. The socio-educational services system and accountability of adolescents in conflict with the law

202. The IACHR has ascertained a preference in Brazil for public policy solutions based on deprivation of liberty, to the detriment of alternatives. The figures given in the survey conducted by the National Socio-Educational Services [Tr. Correctional] System (SINASE), for example, show that of the 27,799 offenses allegedly committed by the 26,450 adolescents covered by the system, 32% correspond to conduct that did not pose a threat to life or personal integrity (trafficking, theft, bearing of firearms, and receiving of stolen goods). Acts committed using serious threats or violence against a person (murder, attempted murder, armed robbery, rape, and death threat) account for 17% of the total³⁰². Even so, 70% of the adolescents are being deprived of liberty, which shows disregard of the principle of exceptionality required under Article 40.4 of the Convention on the Rights of the Child.

203. Regarding this matter, already during its 2017 visit, the IACHR had observed the structurally embedded and widespread context of acts of violence in detention centers for adolescents, such as: alleged abuse and cruelty committed by other inmates and by, or with the acquiescence of, staff, homicides, torture, revolts, escapes, overcrowding, unhygienic installations, and the dearth of programs effectively pursuing socio-educational purposes and the social reintegration of adolescents at odds with the law, along with other human rights violations³⁰³.

204. Thus, during its visit to Brazil, the IACHR observed in units of the socio-educational services system issues similar to those observed in the prison system, such as overcrowding, deplorable health conditions, inadequate nutrition, ill-treatment, and torture. While the purpose of the socio-educational services system is to transform the situation in which adolescents at odds with the law find themselves, in practice the Commission observed deprivation of liberty under circumstances that, like the prison system, reflect patterns of institutional racism, the criminalization of poverty, and human rights violations by State agents, completely at variance with inter-American human rights standards³⁰⁴.

205. In that context, the IACHR received information regarding the latest survey conducted by the State indicating that, in 2018, Brazil, there were 453 establishments for serving sentences, including both confinement (330) and semi-confinement (123) re-

302 Ministry of Human Rights, *Levantamento Anual do Sistema Nacional de Atendimento Socioeducativo 2016*, Figure 10, January 15, 2018.

303 IACHR, Press Release No. 209/17 - *IACHR Rapporteurs Wrap Up Visit to Brazil*, Washington, D.C., December 15, 2017.

304 IACHR, Press Release No. 209/17 - *IACHR Rapporteurs Wrap Up Visit to Brazil - Annex to the Press Release on the Visit with conclusions and observations*. Washington, D.C., Friday, December 15, 2017.

gimes, most of them located in the south-east of the country, followed by units in the north-east³⁰⁵. Those units are governed by the National Socio-Educational Services System (SINASE), established by Law No. 12.594, of January 18, 2012³⁰⁶.

- 206.** The IACHR observes that Brazil's socio-educational services system continue to suffer grave defects, particularly degrading conditions for persons deprived of liberty. In fact, in recent years the Commission granted Precautionary Measure No. 60-15 on behalf of adolescents held in internment centers in Ceará and Precautionary Measures No. 302-15, on behalf of adolescents held at the Socio-Educational Services Center for Adolescents (CASA) in São Paulo, which shows how pressing and serious the situation is.
- 207.** During its on-site visit, the Commission went and saw the Dom Bosco socio-educational services center in Rio de Janeiro, where is ascertained structural/architectural issues and received complaints of cruelty, torture, and violence. The IACHR was also told that the number of adolescents at the Center at that time exceeded the Center's capacity by 42%³⁰⁷. In the state of Pernambuco, in 2018, the occupancy rate in the units was 209.35% according to data put out by the National Council of the Public Prosecutors' Office, clearly demonstrating the critical extent of overcrowding in the system. Likewise, the Commission observes that the lack of vacancies in detention units is a national problem, as it also received reports of overcrowding in Acre, Sergipe, Rio Grande do Sul, Rio de Janeiro, Espírito Santo, Paraíba, Roraima, Bahia, Paraná, Maranhã and the Federal District³⁰⁸.
- 208.** In the same vein, the Commission stresses that even though Law No. 12.594/2012 set parameters governing the construction of internment facilities³⁰⁹, today's buildings still follow the architectural designs of adult detention centers, thereby contravening the principle of socio-educational services and restorative justice. Besides, information received by the Commission during its visit describes the appalling conditions in which these adolescents are held³¹⁰.

305 Conselho Nacional do Ministério Público (CNMP) [National Council of the Public Prosecutors' Office], *Panorama da execução dos programas socioeducativos de internação e semiliberdade nos estados brasileiros*, 2019.

306 Office of the President of the Republic, Deputy Head of Legal Affairs, *Law nº 12.594*, of January 18, 2012, establishing the *Sistema Nacional de Atendimento Socioeducativo (Sinase)*.

307 IACHR, In loco visit to Brazil, from November 5-12, 2018, visit to the Dom Bosco socio-educational services center.

308 Conselho Nacional do Ministério Público (CNMP) [National Council of the Public Prosecutors' Office], *Panorama da execução dos programas socioeducativos de internação e semiliberdade nos estados brasileiros*, 2019.

309 Office of the President of the Republic, *Law Nº. 12.594*, of January 18, 2012.

310 ANCED, Relatório da situação dos direitos humanos de crianças e adolescentes no Brasil no âmbito da justiça juvenil, p. 15, November 2018. See also, Defensoria Pública do Estado de Goiás (Public Defenders' Office in the state of Goiás -DPE/GO), Relatório de inspeção do Centro de Atendimento Socioeducativo (CASE) de Goiânia/GO, pp. 2-6, July 2017; Projeto Legal, Juventudes privadas de liberdade e suas famílias, pág. 10, novembro de 2018.

- 209.** The IACHR notes that, with regard to the deficit of 5,000 vacancies reported in 2019, the Ministry of Women, Family and Human Rights (MMFDH) will invest R\$165,163,373.53 to build additional units that will implement 612 vacancies in the States of Amapá, Bahia, Goiás, Minas Gerais, Rio de Janeiro, Santa Catarina and Tocantins, as by the information provided by the State³¹¹.
- 210.** In addition to the above, there have been serious reports of acts of violence inside the units. According to the official data available, 39 adolescents died in internment units in 2016, 97% of them during violent incidents³¹². According to information provided by the Federal Senate Parliamentary Commission of Inquiry, on average more than 2 adolescents per month die in these socio-educational services units³¹³.
- 211.** Along similar lines, the Commission receive a large number of reports of violence perpetrated by State agents. According to the information received, on pretext of maintaining “order” and discipline, personnel in the internment units and police have used force with truncheons, pepper spray, punches, kicking, and indiscriminate use of tasers, and have no protocols regulating actions of this kind³¹⁴.
- 212.** The IACHR observes that security in the units of the socio-educational service system may also be impaired by changes in Brazilian weapons control policy, particularly initiatives aiming to authorize the bearing of firearms by socio-educational system personnel, along the lines of laws already passed in Rondônia, Minas Gerais, and Santa Catarina and the bill still being processed in Rio de Janeiro³¹⁵. While those laws authorizing the bearing of arms outside the units, there is a heightened risk of their exacerbating violence within the socio-educational services system.
- 213.** There are also reports that adolescents who manage to use Ombudsperson mechanisms to report acts of violence are suffering physical and psychological reprisals, thereby making it even more unlikely that aggressors will be punished³¹⁶. There

311 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 43.

312 Ministry of Human Rights, *Levantamento Anual do Sistema Nacional de Atendimento Socioeducativo 2016*, Figure 16, January 15, 2018.

313 Federal Senate, “*CPI Assassinato de Jovens*”, 2016.

314 Defensoria Pública do Estado de Goiás (Public Defenders’ Office in the state of Goiás -DPE/GO), Relatório de inspeção do Centro de Atendimento Socioeducativo (CASE) de Goiânia/GO, p. 20, July 2017. ANCED, *Relatório da situação dos direitos humanos de crianças e adolescentes no Brasil no âmbito da justiça juvenil*, p. 10, November 2018. CNDH, CONANDA, PFDC/MPF, *Relatório de monitoramento das medidas cautelares 60-15 da Comissão Interamericana de Direitos Humanos (CIDH) outorgadas em face das violações de direitos humanos do Sistema Socioeducativo do Estado do Ceará*, [Report on the monitoring of Precautionary Measures 60-15 of the Inter-American Commission on Human Rights (IACHR) granted in response to human rights violations in the Socio-Educational Services System in the state of Ceará], p. 55, October 2017.

315 Mecanismo Nacional de Prevenção e Combate à Tortura (National Mechanism for Preventing and Combating Torture - MNPCT), *Nota Técnica nº 04: análise sobre leis e projetos de lei estaduais para porte de armas de fogo a agentes socioeducativos*, December 14, 2018.

316 ANCED, *Relatório da situação dos direitos humanos de crianças e adolescentes no Brasil no âmbito da justiça juvenil*, p. 11, November 2018.

have also been reports of cases in which cruel reprimands have been used, such as depriving adolescents in the units of parts of their beds and forcing them to sleep on cold concrete floors, without a mattress or blankets³¹⁷.

- 214.** The IACHR further observes the existence of internment units that do not have appropriate multidisciplinary equipment for providing access to health and education services. According to information received by the Commission, some units leave adolescents without classrooms for months on end, thereby thwarting efforts to bring about their social and professional integration³¹⁸. The same applies to health care services. Serving the health care needs of the adolescents requires the use of equipment outside the units and therefore also transportation and escort services which are reportedly not always available due to staff shortages³¹⁹.
- 215.** In this regard, the Commission issues a reminder that depriving adolescents of their liberty because they have broken the law does not authorize the State to curtail other human rights³²⁰. On a number of occasions, the IACHR has pointed out that, when they enforce deprivation of liberty, States must always take the best interest of the adolescents into account, which means granting all rights not restricted by the correctional measure, including, in particular, the right to proper nutrition, education, and health³²¹.
- 216.** Furthermore, it is to be noted that since the visit to the socio-educational services system units in 2017, the State has not taken any significant steps to remedy the defects observed at the time, when the IACHR noted the major ongoing challenges encountered in SINASE's modus operandi, with its patterns of abuse, cruelty, torture, lack of security, and structural deficiencies in the installations and in management of those centers³²².
- 217.** As regards the educational system, it is necessary to tackle the question of non-liability in criminal matters (*inimputabilidade penal*). The Statute of the Child and Adolescent (Law No.8.069, of July 13, 1990, also known as ECA), establishes that children are persons of less than 12 years of age, while adolescents are those aged 12 to 18³²³.

317 Defensoria Pública do Estado de Goiás (Public Defenders' Office in the state of Goiás -DPE/GO), *Relatório de inspeção do Centro de Atendimento Socioeducativo* (CASE) de Goiânia/GO, pp. 20-23, July 2017.

318 Defensoria Pública do Estado de Goiás (Public Defenders' Office in the state of Goiás -DPE/GO), *Relatório de inspeção do Centro de Atendimento Socioeducativo* (CASE) de Goiânia/GO, p. 13, July 2017.

319 Defensoria Pública do Estado de Goiás (Public Defenders' Office in the state of Goiás -DPE/GO), *Relatório de inspeção do Centro de Atendimento Socioeducativo* (CASE) de Goiânia/GO, p. 33, July 2017.

320 IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Serv.L/V/II. Doc. 78, par. 443, Wednesday, July 13, 2011.

321 IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Serv.L/V/II. Doc. 78, par. 443, Wednesday, July 13, 2011.

322 IACHR, Press Release No. 209/17 - *IACHR Rapporteurs Wrap Up Visit to Brazil*, Washington, D.C., December 15, 2017.

323 Office of the President of the Republic, Deputy Head of Legal Affairs, *Estatuto da Criança e do Adolescente. Lei nº 8.069*, [Statute of the Child and Adolescent], Law nº 8.069, of July 13, 1990, Article 2º. It is to be noted that the law does not include the same "less than" proviso regarding age, as that made in the definition of "child". It is therefor assumed that the language used is intentional, in the sense of including people who have completed the age of 18 in the definition of adolescent.

Accordingly, the Commission notes with satisfaction that the definition of child and adolescent in Brazilian law matches that of the Convention on the Rights of the Child, ratified by Brazil on November 21, 1990³²⁴.

- 218.** Article 104 of the Statute establishes that minors under the age of 18 cannot be indicted on criminal charges (*são criminalmente inimputáveis*), so that they shall not be liable for criminal conduct under criminal law and the code of criminal procedure, which are only applicable to adults. The ECA further establishes that the socio-educational measures contemplated in Article 112 are applicable to adolescents committing an offense (*ato infracional*). Those measures range from a warning to internment in an educational (correctional) facility³²⁵. When conduct characterized as an offense is committed by a child, the Statute calls for application of the protection measures described in Article 101, which preclude socio-educational measures for children. That way, the Statute establishes a minimum age of 12 for adolescents to be subject to specialized juvenile justice, in accordance with Article 40.3.a of the Convention on the Rights of the Child.
- 219.** When it adopted the Beijing rules, the United Nations General Assembly recommended that the minimum age of criminal responsibility should not be too low, given that a person's emotional, mental, and intellectual maturity has to be taken into account³²⁶. For its part, the Committee on the Rights of the Child, when it interpreted paragraph 4 of the Beijing Rules, concluded that establishing a minimum age of criminal responsibility (MACR) of less than 12 is internationally unacceptable and recommended that States should start by taking that age as the absolute minimum and gradually increase it³²⁷. The IACHR also declared that States must guarantee that children and adolescents charged with committing a crime are not criminally prosecuted under the same indictment rules as adults, and that no child below the minimum age is subjected to specialized juvenile justice³²⁸.
- 220.** Accordingly, the Commission observes that current Brazilian legislation complies with international standards by establishing that all children and adolescents are below the age of criminal responsibility and that only adolescents may be subject to the juvenile

324 Office of the President of the Republic, Deputy Head of Legal Affairs, Decree n° 99.710, of November 21 de 1990, promulgating the Convention on the Rights of the Child.

325 Office of the President of the Republic, Deputy Head of Legal Affairs, Estatuto da Criança e do Adolescente, Lei n° 8.069, [Statute of the Child and Adolescent], Law n° 8.069, of July 13, 1990, Article 103. Offense means conduct described by law as a crime or misdemeanor (contravenção penal). The law takes for "age" purposes the date on which the offense was committed.

326 United Nations, Standard Minimum Rules for the Administration of Juvenile Justice, Resolution A/40/33, para. 4.1, Friday, November 29, 1985.

327 Committee on the Rights of the Child, General Comment No. 10 (2007) Children's rights in juvenile justice, CRC/C/GC/10, para. 32, Wednesday, April 25, 2007.

328 IACHR, Juvenile Justice and Human Rights in the Americas, OEA/Serv.L/V/II. Doc. 78, par. 36, Wednesday, July 13, 2011.

justice system and giving preference to the application of special socio-educational measures, as a way to encourage their constructive reintegration into society³²⁹.

221. Nevertheless, the IACHR notes with the utmost concern, the legislative initiatives seeking to lower the age of criminal responsibility in Brazil, such as the proposed amendment to the Constitution (PEC) No. 171/1993, already passed by the Chamber of Deputies and now being debated in the Federal Senate³³⁰. The draft seeks to lower the age of criminal responsibility to 16 for heinous crimes, murder, and bodily injury resulting in death. More recently, the Federal Senate was asked to examine PEC No. 15/2019, which would make adolescents aged 15 or more criminally responsible depending on the judge's appraisal of his or her awareness of the illegality of the conduct concerned³³¹.
222. In particular, the Commission points out that relativizing the age of criminal responsibility contravenes international and inter-American standards and is a major step backwards with respect to guarantees of the rights of children and adolescents. Apart from that, PEC No. 15/2019 greatly expands judges' discretionary powers, which could trigger discriminatory practices, as already pointed out by the Committee on the Rights of the Child³³². The aforementioned PEC also places adolescents aged between 15 and 18 who commit offenses not contemplated in sub-paragraphs I through VII of Article 228, §2 of the Criminal Code of Brazil in a real legal limbo, once the general age of criminal responsibility is established as including persons under the age of 15 and the relative age of criminal responsibility applies just to those committing acts contemplated in the exhaustive list of offenses.
223. The Commission reiterates that the application of specialized juvenile justice, focusing on restorative justice and social reintegration, is the policy that best addresses the higher interest of children and adolescents, particularly given their physical and psychological differences from adults³³³. For that reason, any lowering of the age of criminal responsibility is to be avoided. The high percentage of adolescents subject to provisional measures is also worrisome, given that it runs counter to the principle of the best interests of the child and to international standards applicable to deprivation of liberty measures. The Commission reiterates that provisional deprivation of liberty needs to be applied strictly according to the rules, according preference, wherever possible, to alternative, precautionary

329 The restorative justice principle is upheld in Article 40 of the Convention on the Rights of the Child. See also: IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Serv.L/V/II. Doc. 78, par. 26 July 13, 2011.

330 PEC No. 171/1993 was presented to the Federal Senate and is being processed as item 115/2015.

331 Federal Senate, *Proposta de Emenda à Constituição nº 15 de 2019: prescreve a inimputabilidade penal dos menores de dezesseis anos e estabelece as condições para imputabilidade dos maiores de quinze e menores de dezoito anos*, March 14, 2019.

332 Committee on the Rights of the Child, *General Comment No. 10 (2007) Children's rights in juvenile justice*, CRC/C/GC/10, para. 30, Wednesday, April 25, 2007.

333 IACHR, *Juvenile Justice and Human Rights in the Americas*, OEA/Serv.L/V/II. Doc. 78, par. 26, July 13, 2011.

measures. Especially in cases involving adolescents, the IACHR already declared that provisional measures must be used as a last resort and always for as short a time as possible³³⁴.

4. Therapeutic communities

224. According to IPEA, therapeutic communities in Brazil are private entities treating persons with allegedly drug and alcohol use issues. In particular, they operate as temporary collective residences in which patients are housed and often isolated to keep them abstinent³³⁵. As explained above when analyzing the socio-educational services (correctional) system, the IACHR notes that parallels can be drawn between the problematic conditions found in therapeutic communities and in the prison system. In many cases observed by the Commission, forced internment turns into deprivation of liberty in which individuals are also subjected to ill-treatment, torture, and other denial of their rights. Even though they are not public institutions, it is the Commission's understanding that the State is also responsible for those institutions, notable those financed with government funds.

225. The Federal Government lists 2,000 therapeutic communities in Brazil, more than 316 of which are financed using government funds³³⁶. That notwithstanding, the National Mechanism for Preventing and Combating Torture and other bodies report that there may be as many as 6,000 of these communities, given that there is little government oversight of them³³⁷.

226. The Commission notes that in April 2018, the Executive announced the allocation of 87 million reais to attend to the population in therapeutic communities³³⁸. A variety of local institutions, such as the Federal Council of Psychology or Federal Public Ministry opposed that decision, arguing that financing those entities ran counter to the need for a community approach to promote mental health³³⁹. Moreover, several civil society institutions made similar pronouncements, pointing

334 IACHR, *Report on the Use of Pretrial Detention in the Americas*, OEA/Ser.L/V/II. Doc. 46/13, par. 213, December 30, 2013.

335 Instituto de Pesquisa Econômica Aplicada, Secretaria Nacional de Política de Drogas [National Drugs Policy Secretariat], Ministry of Justice, *Perfil das Comunidades Terapêuticas no Brasil*, 2017.

336 Ministry of Justice, *"Comunidades Terapêuticas são tema de Conferência Latino-Americana"*, July 12, 2017.

337 Mecanismo Nacional de Prevenção e Combate à Tortura, Conectas Direitos Humanos, Conselho Federal de Psicologia and Plataforma Brasileira de Política de Drogas, Open Society Foundations, October 25, 2018. p. 2. Information provided to the IACHR during its on-site visit.

338 Ministry of Justice, *Governo destina R\$ 87 milhões a comunidades terapêuticas*, April 25, 2018.

339 Conselho Federal de Psicologia, Mecanismo Nacional de Prevenção e Combate à Tortura, Procuradora Federal dos Direitos do Cidadão, *Relatório da Inspeção Nacional em Comunidades Terapêuticas*, 2018.

out that that kind of investment would be to the detriment of treatments mainly geared to rehabilitation, not internment³⁴⁰.

- 227.** Thus, a report published in 2017 by the Federal Council of Psychology, the Public Prosecutors' Office (*Ministério Público*), and the National Mechanism to Prevent and Combat Torture, pointed to the absence of a coherent regulatory framework to govern the workings of therapeutic communities in Brazil. The main government bodies in this field have been working with norms reflecting different levels of understanding of the part to be played by these institutions with the framework of a care and rehabilitation policy³⁴¹.
- 228.** Moreover, according to the report, the increase in the number of therapeutic communities in Brazil, combined with the increased public funding, was occurring in a legislative vacuum, without laws defining the nature of such institutions, the services they are authorized to provide, and their responsibility to guarantee the dignity of those receiving their services. The legal provision currently in force is contained in Law No. 13.840, which amended the Law on Drugs in June 2019. That instrument defines therapeutic communities as “non-profit legal entities that attend to drug users or addicts”³⁴². Besides, the law authorizes public funding for those institutions without, however, specifying standards for their oversight and inspection. Here, the Commission notes that the regulatory provisions such as Directive No. 3.449 of the Ministry of Health³⁴³, and in Directive No. 562, of the Ministry of Citizenship³⁴⁴, represent important, albeit timid, steps to configure a regulatory framework on this subject.
- 229.** The absence of State control mechanisms leaves the door open to arbitrary practices and human rights violations within these institutions. Thus, the IACHR was apprised of a variety of rights violations committed in these therapeutic communities, including, in particular, forced internment, arbitrary medication, restrictions on contact with family members, forced labor, physical abuse, violation of freedom of religion and conscience, and the internment of adolescents.³⁴⁵ Likewise, the information re-

340 Conectas Direitos Humanos, Conselho Federal de Psicologia e Plataforma Brasileira de Política de Drogas, Information provided to the IACHR in connection with the IACHR working meeting held on July 7, 2018 during the 169th regular period of sessions.

341 CFP, MNPCT, PFDC, *“Relatório da Inspeção Nacional em Comunidades Terapêuticas”*, 2018.

342 Office of the President of the Republic, Deputy Head of Legal Affairs, *Law N° 13.840*, de 5 de junho de 2019.

343 Ministry of Health, *Directive N° 3.449*, of October 25, 2018.

344 Ministério da Citizenship, *Directive N° 562*, of March 19, 2019.

345 Conectas Direitos Humanos, Conselho Federal de Psicologia e Plataforma Brasileira de Política de Drogas, Information provided to the IACHR on July 7, 2018 in connection with the IACHR working meeting held during the 169th regular period of sessions in Boulder, Colorado. October 2018. Mecanismo Nacional de Prevenção e Combate à Tortura, Conectas Direitos Humanos, Conselho Federal de Psicologia, Plataforma Brasileira de Políticas sobre Drogas, Open Society Foundations, Information given to the IACHR during the on-site visit, October 25, 2018. p. 5.; Conselho Federal de Psicologia, Mecanismo Nacional de Prevenção e Combate à Tortura, Procuradora Federal dos Direitos do Cidadão *Relatório da Inspeção Nacional em Comunidades Terapêuticas*, 2018.

ceived included complaints about deficient State oversight of these institutions, evidenced primarily in the unlawful granting of operating licenses³⁴⁶. In the same vein, the United Nations rapporteur on torture voiced concern at the poor conditions and cases of ill-treatment in therapeutic communities³⁴⁷.

230. In addition, the Commission was told of a markedly religious element in the way these institutions are run. In that regard, the IACHR was told that in many of these therapeutic institutions the treatment offered is based on religious practices, at times to the detriment of medical care or specialized treatment. Reportedly, those interned are required to submit to religious beliefs that differ from her or her own, in a form of imposition³⁴⁸, which in the Commission's view could violate people's right to religious freedom. Civil society organizations likewise complained of religious indoctrination measures, the banning of manifestations of religions other than that espoused by the institution, and the obligation imposed on patients to take part in religious activities under threat of corporal punishment³⁴⁹.

231. As regards forced internment, notwithstanding the information provided by the State of the peremptory ban to carry out voluntary or involuntary hospitalizations³⁵⁰, the Commission notes that both the National Mechanism to Prevent Torture and civil society organizations reported restrictions on leaving the institution, even for those interned on a voluntary basis. In such information are reported cases of persons who were prohibited contact with family members, withdrawal of access to financial resources and personal documents, and the imposition of contractual heavy fines on those leaving the communities ahead of the originally planned date³⁵¹.

346 Conselho Federal de Psicologia, Mecanismo Nacional de Prevenção e Combate à Tortura, Procuradora Federal dos Direitos do Cidadão, Ministério Público Federal, *Relatório da Inspeção Nacional em Comunidades Terapêuticas*, 2018, pp. 80 e 141; Mecanismo Nacional de Prevenção e Combate à Tortura, *Relatório de missão a unidades de privação de liberdade no estado de Roraima*, 2017, par. 58.

347 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Brazil from 3 to 14 August 2015, A/HRC/57/Add.4, 29 January 2016, para. 147.

348 Conselho Federal de Psicologia, Mecanismo Nacional de Prevenção e Combate à Tortura, Procuradora Federal dos Direitos do Cidadão, *Relatório da Inspeção Nacional em Comunidades Terapêuticas*, 2018, p. 80; Mecanismo Nacional de Prevenção e Combate à Tortura, *Relatório de missão a unidades de privação de liberdade no estado de Roraima*, 2017, paras. 67 and 92.

349 Conectas Direitos Humanos, Conselho Federal de Psicologia e Plataforma Brasileira de Política de Drogas, Information provided to the IACHR on July 7, 2018 in connection with the IACHR working meetin during the 169th regular period of sessions in Boulder, Colorado.

350 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020, p. 48.

351 Conselho Federal de Psicologia, Mecanismo Nacional de Prevenção e Combate à Tortura, Procuradora Federal dos Direitos do Cidadão, Ministério Público Federal, *Relatório da Inspeção Nacional em Comunidades Terapêuticas*, 2018, pp. 57, 58, and 72; Conectas Direitos Humanos, Conselho Federal de Psicologia e Plataforma Brasileira de Política de Drogas, Information provided to the IACHR on July 7, 2018 in connection with the IACHR working meetin during the 169th regular period of sessions in Boulder, Colorado. October 2018; Conselho Federal de Psicologia, Mecanismo Nacional de Prevenção e Combate à Tortura, Procuradora Federal dos Direitos do Cidadão, Ministério Público Federal, *Relatório da Inspeção Nacional em Comunidades Terapêuticas*, 2018.

There are reportedly also restrictions on contact with the outside world, in the form of limitations on phone calls and restricted access to the media³⁵².

- 232.** The IACHR draws attention to additional information it has received showing that adolescents have been subjected to treatments in therapeutic communities. Given their added vulnerability and the importance at that age of family and community life, this could result in a number of violations. In particular, the Commission expresses concern that, even though the Ministry of Health has established that therapeutic communities can only take in adults, national inspection of those establishments has ascertained that some of the were interning adolescents, thereby contravening the ECA. Moreover, those institutions were not taking steps, using a differentiated approach, to ensure the protection and rehabilitation of those adolescents³⁵³.
- 233.** The Commission notes that the presence of adolescents in therapeutic communities can also be ascertained thanks to data disseminated by the Federal Government itself on its Transparency Portal, which could, moreover, entail an additional violation of their right to privacy and heighten the risk of stigmatization. While the personal information regarding adolescents was subsequently withdrawn from the public eye, it confirmed that federal resources have been systematically used to intern people at a formative stage in their development therapeutic communities³⁵⁴. It should be pointed out that, despite the regulation of the reception of adolescents through Resolution 01/2015 of the National Drug Policy Council (CONAD), as informed by the State³⁵⁵, the National Council on the Rights of the Child and Adolescent (CONANDA) had already protested against the internment of adolescents in therapeutic communities back in 2016³⁵⁶.
- 234.** Finally, as pointed out by various United Nations bodies, the IACHR recalls that it is not scientifically proven that depriving drug users of their liberty in hospitals actually helps with their rehabilitation³⁵⁷. Thus, the IACHR reiterates the importance of fostering alternatives to deprivation of liberty for problematic drug users, using

352 Conselho Federal de Psicologia, Mecanismo Nacional de Prevenção e Combate à Tortura, Procuradora Federal dos Direitos do Cidadão, Ministério Público Federal, *Relatório da Inspeção Nacional em Comunidades Terapêuticas*, 2018, p. 57. Mecanismo Nacional de Prevenção e Combate à Tortura, Conectas Direitos Humanos, Conselho Federal de Psicologia and Plataforma Brasileira de Política de Drogas, Open Society Foundations, October 25, 2018. p. 2. Information provided to the IACHR during its on-site visit.

353 Conselho Federal de Psicologia, Mecanismo Nacional de Prevenção e Combate à Tortura, Procuradora Federal dos Direitos do Cidadão, Ministério Público Federal, *Relatório da Inspeção Nacional em Comunidades Terapêuticas*, 2018.

354 BBC News Brasil, *Governo expôs dados pessoais de 1,3 mil adolescentes e outros 30 mil dependentes químicos por 3 anos*, July 2, 2019.

355 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 48.

356 Conselho Federal de Psicologia, *Conanda se posiciona contra a presença de adolescentes nas comunidades terapêuticas*, June 3, 2016.

357 World Health Organization, *Principles of Drug Dependence Treatment*, March, 2008.

ambulatory care treatments which avoid institutionalizing them and permit a health and human rights-based approach to this issue³⁵⁸.

B. MIGRANT PERSONS

- 235.** The Commission has established that while migration can trigger innumerable benefits, such as enhancing multiculturalism and economic growth, it also poses huge challenges with respect to migrants' human rights. The main challenges have to do with ongoing State policies, laws, and practices, as well as acts or omissions by both States and individuals, that deny migrants the status of individuals with rights (*sujeitos de direito*), thereby exacerbating the situation of special vulnerability they tend to find themselves in³⁵⁹.
- 236.** In connection with its visit, the IACHR ascertained the increased migration among Southern Cone countries facilitated by the MERCOSUR Migratory Agreements, notably the migration of Bolivians to São Paulo. Special mention should also be made of the migration of Haitians following the 2010 earthquake; the mass emigration of Venezuelans as a result of the grave socio-economic, political, and human rights crisis, as well as the food shortage and difficult access to medical treatment and medicines in Venezuela. Thus, between 2006 and 2015, the number of migrants increased by 160%³⁶⁰. Between 2005 and 2016, that increase was actually 178%. Through 2018, Haitians represented the largest group of new migrants, followed by Bolivians, Venezuelans, and Syrians³⁶¹.
- 237.** As regards immigration law in Brazil, the Commission underscores the new Migration Law (Law 13.445/2017), which modernized immigration and nationality rules and focused on migrants' human rights. In that respect, the law espoused the principle that migration must not be criminalized and the principle of nondiscrimination, and it repudiates xenophobia. Likewise, it established humanitarian protection mechanisms for migrants, by issuing residence permits for circumstances not previously envisaged, drawing on Brazil's experience with Haitians and protection for stateless persons³⁶². The IACHR also highlights the Decree No. 9,199/2017 which regulated this law³⁶³.

358 IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163. Doc. 105, July 3, par. 155.

359 IACHR, Human rights of migrants, refugees, stateless persons, victims of human trafficking and internally displaced persons: Norms and Standards of the Inter-American Human Rights System.

360 G1, *Em 10 anos, número de imigrantes aumenta 160% no Brasil, diz PE*, June 25, 2016.

361 Ministry of Justice and Public Security, *Brasil registra mais de 700 mil migrantes entre 2010 e 2018*, August 22, 2018.

362 CIDH. *CIDH saluda aprobación de la nueva Ley de Migración en Brasil*, 16 de junho de 2017.

363 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 49.

- 238.** As regards the process surrounding recognition of refugee status in Brazil, the Commission acknowledges the changes made, aimed at guaranteeing these persons access to the most basic rights. These range from the issuance of an I.D. that entitles a person to temporary residence to guaranteeing the right to possess a Work and Social Security Card (CTPS) and a natural person registration number (CPF). With these documents, people requesting recognition of their refugee status can apply for a formal sector job with all its associated labor rights. In the same way, they are entitled to and can effectively access all economic, social, and cultural rights, as well as health, education, and cash transfer policy rights³⁶⁴.
- 239.** As the IACHR took note that Brazil received almost 80,000 applications for refugee status in 2018, making it the sixth most sought after country in the world for refugees³⁶⁵, the Commission received information regarding challenges in the processes for evaluating those application, such as procedural delays in which some applications took up to two years awaiting a decision by the National Committee for Refugees (CONARE)³⁶⁶. According to State institutions, that state of affairs is to be explained, in part, by the fact that Brazilian law does not establish deadlines for completion of these procedures. Add to that the fact that by March 2018, there were 86.000 asylum applications to be processed by just 14 government officials³⁶⁷. In the same vein, civil society organizations complained not just about lack of organization and the absence of criteria for processing refugee status but also about issues with family reunification processes³⁶⁸.
- 240.** During its visit, the Commission was apprised of serious cases of refugees not being admitted at the airport in Rio de Janeiro. It was also told about the existence of the Working Group on Inadmissibility in Guarulhos³⁶⁹, which provides important support from the Guarulhos City Hall (*Prefeitura*), the Federal Public Ministry, the Public Defender's Office of the Union (DPU), the Ministry of Social Development and Welfare Assistance of the Municipality of Guarulhos (SDAS) and from UNHCR to the Humane Treatment for Migrants Outpost³⁷⁰.

364 Civil society contribution for the IACHR regarding migrants and refugees, November 9, 2018.

365 Caritas, *Atuação com migrantes e refugiados*.

366 Folha de S.Paulo, *Estrangeiro espera 2 anos por análise de pedido de refúgio no Brasil*, June 20, 2018.

367 G1, *Brasil tem 86 mil estrangeiros aguardando resposta sobre refúgio e 14 funcionários para avaliar pedidos*, March 3, 2018.

368 Civil society contribution for the IACHR regarding migrants and refugees, November 9, 2018.

369 Civil society contribution for the IACHR regarding migrants and refugees, November 9, 2018.

370 Federal Public Ministry, *MPE, instituições públicas e sociedade reforçam parceria para proteger migrantes retidos no aeroporto de Guarulhos (SP)*, February 25, 2019.

1. Venezuelan migrant persons

241. During its visit, the IACHR received information regarding the situation of Venezuelans migrating to Brazil, in what amounted to the largest migratory movement in Brazil's recent history. According to official estimates, in 2019, on average, 500 Venezuelans crossed over the border into Brazil every day. Apart from that, it is estimate that some 264,000 Venezuelans currently live in Brazil, of whom 37,000 have refugee status recognized by the State, which makes Brazil the country with the largest number of officially recognized Venezuelan refugees in Latin America³⁷¹.
242. On this, the Commission notes with satisfaction the June 2019 decision of the National Committee for Refugees (CONARE) to recognize the condition of refugees to Venezuelans. This step was taken considering the hypothesis of a serious and widespread violation of human rights to the situation in Venezuela³⁷². By October 2019, Brazil had received more than 120,000 applications by Venezuelans seeking refugee status³⁷³, of which 46 thousand had been granted³⁷⁴.
243. That surge in migration was also driven by the extension of MERCOSUR residence to Venezuela, which implemented a temporary residence permit for up to two years for nationals of bordering countries for whom the Residence Agreement had not previously entered into force³⁷⁵. Furthermore, that measure was followed by the announcement that Venezuela citizens with a temporary residence permit for up to two years could apply for permanent residence within three months of the expiration date of their temporary permit, provided they could show proof of means of subsistence and had no criminal record³⁷⁶.
244. A large proportion of Venezuelan migrants and persons eligible for international protection arrived in Brazil requesting urgent humanitarian assistance, which triggered a 3,500% increase in the demand for medical care services in Roraima as of

371 UNHCR, *Brasil torna-se o país com o maior número de refugiados venezuelanos reconhecidos na América Latina*, January 31, 2020.

372 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 50.

373 Agência Brasil, *Acnur: concessão de refúgio a venezuelanos pelo Brasil é um "marco"*, December 6, 2019.

374 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 50.

375 Conselho Nacional de Imigração [National Immigration Council], *Resolução Normativa No. 126*, March 2, 2017.

376 Ministry of Justice and Public Security, Ministry of Foreign Affairs, Ministry of Labor, *Portaria Interministerial N° 9*, [Interministerial Directive N° 9], of March 14, 2018. "Article 3 - An immigrant may, within 90 days of the expiration of the two-year permit provided for in Article 1 § 1º, request a permit for indefinite residence provided that: I - he or she has no criminal record in Brazil; and II - shows proof of means of subsistence."

2015³⁷⁷. Likewise, the IACHR was notified of hundreds of Venezuelan women emigrating in search of maternity assistance. That led to 1,024 assisted births, a 255% increase over the figure for 2016³⁷⁸.

245. On the other hand, the Commission was able to ascertain implementation of “Operation Welcome” as a best practice espoused by the State, consisting of a cooperation program between federal, state, and municipal governments. That program focused on dealing with the mass arrival of Venezuelans at two care centers and through a voluntary relocation program, the distribution of three meals a day, hygiene kits, insurance, Portuguese classes, children’s activities, the delivery of raw materials for Warao indigenous artisans, telephone calls to relatives in Venezuela, and other activities. The IACHR congratulates the government on its decision to continue implementing the aforementioned program³⁷⁹.

246. Apart from visiting Pacaraima and Boa Vista, in the state of Roraima, especially the Migrant Screening and Assistance Center in Pacaraima, the IACHR observed that measures were introduced to guarantee the right to seek and receive asylum, with a view to allowing Venezuelans to apply immediately for residence, temporary shelter, or to access documents such as the Natural Person Registration Card (CPF) and the Work and Social Security Card (CTPS). Thus, the Commission received information to the effect that, in the first year of “Operation Welcome”, 21,106 Venezuelans were attended to. Of them, 10,020 sought asylum and 10,970 requested temporary residence³⁸⁰. In that period, 56,000 CPFs were issued. There were more than 22,000 medical consultations and 53,000 vaccinations were carried out³⁸¹. In addition, in 2017 and 2018, 35,515 CTPS were issued³⁸².

247. As for the setting up of assistance centers for migrants, according to official data, 5,723 were welcomed at 13 centers³⁸³, supported by the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and 50 other national and international institutions.

377 BBC, *Ataque a venezolanos en Brasil: disturbios en Pacaraima contra campamento de inmigrantes*, August 20, 2018.

378 G1, *Os ‘brasilanos’: a geração de brasileiros filhos de venezuelanos que nasce em Roraima*, November 3, 2018.

379 Agência Brasil, *Gobierno extiende programa de acogida a venezolanos*, January 18, 2019.

380 Office of the President of the Republic, *Comitê Federal apresenta balanço de ações de acolhimento de venezuelanos*, December 4, 2018.

381 United Nations, *Agências da ONU lembram um ano da operação de acolhimento de venezuelanos*, 29 March 2019.

382 Office of the President of the Republic, *Comitê Federal apresenta balanço de ações de acolhimento de venezuelanos*, December 4, 2018.

383 Office of the President of the Republic, *Comitê Federal apresenta balanço de ações de acolhimento de venezuelanos*, December 4, 2018.

- 248.** As regards the assimilation program (*programa de internalização*) for Venezuelan migrants and refugees, the IACHR observes that the Federal Government announced its commitment to relocate an average of 1,000 people per month and to minimize the number of Venezuelans living on the street, in addition to facilitating their socio-economic integration into the cities receiving them. Thus, between April and December 2018, 3,217 Venezuelans were relocated to 29 municipalities in 13 states and in the Federal District, where they had access to vaccines and the necessary immigration papers. The relocation municipalities included: São Paulo (523), Manaus (500), Canoas (308), Esteio (224), Balneário Camburiú (220), Brasília (183), Cuiabá (169), Rio de Janeiro (158), Curitiba (131), and Igarassu (120)³⁸⁴.
- 249.** Nevertheless, the IACHR worries about the situation of migrants living on the street while awaiting reception at the above-mentioned centers. Those persons find themselves in extremely vulnerable circumstances, so that it is to be recommended that the State expand the coverage provided by “Operation Welcome” to include those street people and guarantee their rights.
- 250.** Apart from that, the IACHR was notified that, on August 5, 2018, the border in Roraima was closed by a court order³⁸⁵ and only reopened on August 7 when the First Region Federal Court revoked that order³⁸⁶. The Commission repudiates that kind of measures because it violates people’s right to freely leave Venezuelan soil and to seek and receive asylum, supplementary protection, or other form of protection in Brazil³⁸⁷.
- 251.** Apart from the significant number of Venezuelans, in recent years Brazil has also received migrants of other nationalities. Between 2011 and 2015, for instance, the country registered the arrival of 65,000 Haitians³⁸⁸. Reportedly, Syrians account for 36% of all migrants granted refugee status in Brazil³⁸⁹. The Commission observes that immigrants of those nationalities also have difficulty accessing essential papers, educational and health services, and employment, as is the case of Haitian immigrants, who are exposed by the shortcomings of the process for granting humanitarian visas to illegal actions by intermediaries and human trafficking³⁹⁰.

384 Office of the President of the Republic, *Comitê Federal apresenta balanço de ações de acolhimento de venezuelanos*, December 4, 2018.

385 G1, *Juiz manda suspender entrada de venezuelanos no Brasil pela fronteira de RR*, August 6, 2018.

386 France 24, *Brasil reabre la frontera con Venezuela tras nueva orden judicial*, August 8, 2018.

387 IACHR, *Resolution 2/18. Forced Migration of Venezuelans*.

388 Geledes, *Haitianos relatam rotina de humilhações e preconceito no Brasil*, May 21, 2018.

389 UNHCR, *Dados sobre Refúgio no Brasil*, 2019.

390 The Intercept Brasil, *Nova onda de haitianos está vindo do Chile para o Brasil com a ajuda de coíotes*, August 16, 2018.

2. Xenophobia, social and formal challenges

252. The IACHR observes with concern news of acts of discrimination and xenophobia against immigrants in Brazil. On August 18, 2018, in Pacaraima, there were attacks on Venezuelans perpetrated by local citizens who destroyed the camp they were living in and set fire to their belongings³⁹¹. In addition to those acts, in 2019 there were constant cases of violence and attacks against Venezuelans in Roraima, including at least two murders³⁹². According to news reports, some 1,200 immigrants were forced to leave the city due to the fear created by those attacks³⁹³. Subsequently, local media reported the presence of “armed patrols” seeking to intimidate Venezuelans, including member of the Warao indigenous people³⁹⁴. Some months later, a Venezuelan was reportedly attacked and beaten to death³⁹⁵. The IACHR also received testimony from Venezuelan migrants who refused to stay in Pacaraima and preferred to walk to Manaus, for fear of being attacked.
253. In addition, civil society organizations drew the Commission’s attention to discriminatory practices and assimilation issues due to the document given to people seeking recognition of their refugee status. Since it is just a piece of paper, many officials and individuals refuse to recognize it as an official document, which translates into difficulties in finding a home or a job, or with opening bank accounts. In light of the above, the Commission urges the Brazilian State to issue clearly recognizable I.D.s or to educate officials and the general population, so as to ensure that asylum-seekers rights are recognized³⁹⁶.
254. In this regard, the Commission takes note of the information provided by the State that reports that Brazilian legislation repudiates and provides for the prevention of xenophobia, racism and any forms of discrimination³⁹⁷.
255. Finally, the IACHR was told of complaints about exploitation and discrimination in the workplace, in which immigrants and refugees reported working longer hours, or receiving lower wages, than the other, Brazilian workers, apart from being subjected to degrading working conditions and exhausting hours³⁹⁸. According to a survey con-

391 BBC, *Ataque a venezolanos en Brasil: disturbios en Pacaraima contra campamento de inmigrantes*, August 20, 2018.

392 The Intercept Brasil, *Virou rotina agredir e assassinar venezuelanos em Roraima*, November 28, 2019.

393 DW, *Após conflito, 1.200 venezuelanos deixam Roraima*, August 19, 2018.

394 DW, *Inmigrantes venezolanos en Brasil: “Somos tratados como animales”*, August 24, 2018.

395 BBC, *Crisis en Venezuela: centenares de migrantes venezolanos en Brasil huyen de vuelta a su país después de que uno de ellos fuera linchado*, September 10, 2018.

396 Civil society contribution for the IACHR regarding migrants and refugees, November 9, 2018.

397 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 51.

398 DW, *Venezolanos explotados en el norte de Brasil*, August 30, 2018.

ducted by the IOM, 38.9% of Venezuelan immigrants in Brazil regard themselves as victims of labor exploitation³⁹⁹.

- 256.** The Commission also heard of migrant workers rescued from forced labor, some in a human trafficking context, such as the case of four Chinese migrants living in conditions akin to slavery in bakeries in Rio de Janeiro⁴⁰⁰. Here, the IACHR acknowledges State efforts to combat forced labor, such as the operations that resulted in the rescue of 10 Venezuelan immigrants⁴⁰¹. In that regard, the IACHR emphasizes the need to redouble efforts regarding the adoption of measures to respond to victims' complaints by preventing, investigating, and, where applicable, punishing such deeds, without discrimination and incorporating a gender perspective, and to conduct massive State-sponsored awareness campaigns encouraging the population to combat xenophobia.
- 257.** In addition, the IACHR welcomes the information received from the State regarding the Observatory on International Migration (ObMigra), which aims to expand knowledge about migratory flows and to point out strategies for the construction of new public policies aimed at migratory phenomena⁴⁰².

C. LGBTI PERSONS

- 258.** Brazil faces enormous challenges when it comes to defending and promoting the rights of the LGBTI population. While some significant progress has been made, according to the data Brazil has one of the highest incidences of violence against persons whose sexual orientation, gender identity and/or expression, and sexual characteristics differ from the pattern accepted by society *with respect to all endemic discrimination and violence found in the country*. For the IACHR, achieving that protection essentially involves creating and strengthening the mechanisms aimed at attending to those persons, apart from policies and projects to advance their rights, including bringing about a cultural shift through inclusive education with a diversified gender perspective.
- 259.** The IACHR has highlighted a number of instances of progress made by Brazil with regard to protecting the human rights of LGBTI persons. Acknowledgment that the LGBTI population is at special risk enabled the Brazilian State to forge a participatory insti-

399 OIM, *Monitoreo de flujo migratorio venezolano. Con énfasis en niñez y adolescencia*, October 2018.

400 Agência Brasil, *Quatro Chineses são Resgatados de trabalho Escravo em Pastelarias do Rio*, March 22, 2016.

401 Office of the President of the Republica, *Comitê Federal apresenta balanço de ações de acolhimento de venezuelanos*, December 4, 2018.

402 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 53.

tutional framework represented by the National Council to Combat Discrimination and Promote the Rights of Lesbians, Gays, Bisexuals, Transvestites, and Transgender Persons (CNCD/LGBT)⁴⁰³ and its equivalents in the states and municipalities. The IACHR observes that the existence of councils representing segments of the LGBT population has been essential to draw the State's attention to today's priorities and challenges.

260. Also as regards the Executive Branch, Brazil is notable for having a Board (*Diretoria*) for Promoting the Rights of Lesbian, Gay, Bisexual, Transvestite, and Transgender Persons, responsible for coordinating and articulating public policies for the LGBT population. That institutional framework, established in 2009 in the form of a General Coordination Office⁴⁰⁴, has proved vital for creating LGBTI-sensitive public policies. In this regard, the Commission underscores the Program to Combat Violence and Discrimination against LGBT Persons⁴⁰⁵, the National System to Promote Rights and Confront Violence against Lesbians, Bisexuals, Transvestites, and Transgender persons (National LGBT System)⁴⁰⁶, and the Rio Without Homophobia (*Rio Sem Homofobia*) program. The IACHR calls upon Brazil to continue fostering institutionalization of the human rights agenda by guaranteeing its ongoing existence, the allocation of an adequate budget, and the provision of trained personnel to keep working to ensure effective guarantees for these rights.

261. The IACHR observes that Brazil continues to post one of the highest indices of violence against LGBTI persons in the region. It further observes that LGBTI persons are victims of high levels of violence practiced with special cruelty and that trans persons are particularly hard-hit. Apart from that, the Commission observes with concern a regressive tendency when it comes to the protection and promotion of LGBTI persons' rights in Brazil, a weakening of the institutional framework of mechanisms for guaranteeing human rights, especially those of LGBTI persons, as well as an increase in hate speech inciting increased attacks against people with different sexual orientations and gender identities.

262. In recent years, the Inter-American Commission on Human Rights has received abundant information on violence against LGBTI persons in Brazil. That information, often hard to detect due to official data collection policies⁴⁰⁷, put the Brazilian States among those with the highest rates for murder and attacks based on

403 Initially established in 2001 through Provisional Measure 2216-37 of August 31, 2001 and amended by Decree No. 7388, of December 9, 2010.

404 Office of the President of the Republic, Deputy Head of Legal Affairs, Decree n° 6.980, October 13, 2009.

405 Office of the President, *Brasil sem homofobia: Programa de Combate à Violência e à Discriminação contra LGBT e de Promoção da Cidadania Homossexual*, 2004.

406 Lex Magister, Portaria [Directive] N° 766, July 3, 2013.

407 Universa, *Falta de Dados Camufla Aumento da Violência contra População LGBTI*, June 5, 2019.

sexual orientation and gender identity⁴⁰⁸. According to civil society data, 1,644 people died in hate crime attacks between 2014 and 2019⁴⁰⁹.

- 263.** As regards the victims' profiles, according to data received by the IACHR for 2018, gay men are those hardest-hit by the violence (191), followed by trans persons (164), most of whom are of African descent (intersectional discrimination). In addition, the statistics reveal that transgender persons are more at risk of violent death and, in absolute numbers, 17 times more likely to be killed than gay men⁴¹⁰. Likewise, the Commission underscores the high suicide rate among LGBTI persons. According to data provided by civil society organizations, 100 cases were reported in 2018, equal to 24% of total deaths of LGBTI persons in the State⁴¹¹.
- 264.** The IACHR is also worried about the violence suffered by lesbians, especially those who are victims of sexual violence. Data for 2017 show that 2,379 lesbians were raped nationwide: 6 victims per day. In 61% of those cases, the same victim was raped more than once⁴¹².
- 265.** At the same time, although Brazil does not have laws specifically criminalizing homophobic and transphobic acts, the Commission noted with satisfaction the ruling by the Federal Supreme Court of Brazil that all violence based on prejudice and discrimination on grounds of the victims' sexual orientation and gender identity was equivalent to the crime of racism (which is covered by Law 7.716/1989)⁴¹³. Despite that ruling, a legislative framework still needs to be forged in Brazil or protect the LGBTI population unequivocally against manifestations of hate and discrimination.
- 266.** The Commission calls upon the State to take all necessary steps to ensure due diligence in preventing, investigating, and punishing violence against LGBTI persons, regardless of whether such violence occurs in a family context, in the community, or in the public sphere, including educational and health establishments. In the same vein, concerning investigation of crimes against LGBTI persons, or persons who regard themselves as such, the Commission calls upon States to investigate the possibility of violent acts having been committed due to the sexual orientation and to the gender identity and/or expression of the victim.

408 Rádio Senado, *Brasil é o país onde mais se assassina homossexuais no mundo*, May 17, 2018.

409 Grupo Gay da Bahia, *População LGBT Morta no Brasil 2018*, p. 01, September 22, 2017.

410 Grupo Gay da Bahia, *População LGBT Morta no Brasil 2018*, p. 02, September 22, 2017.

411 Grupo Gay da Bahia, *População LGBT Morta no Brasil 2018*, p. 10, September 22, 2017.

412 Gênero e Número, *"No Brasil, 6 mulheres lésbicas são estupradas por dia"*, August 22, 2019.

413 BBC, *STF aprova a criminalização da homofobia*, June 13, 2019.

- 267.** Likewise, the IACHR notes with special concern the information it receives regarding acts of violence committed against transgender and diverse gender persons. According to civil society data, 164 such persons were murdered in 2018⁴¹⁴ and 124 in 2019, mostly in the north-eastern part of the country⁴¹⁵. According to the 2019 survey, 80% of those crimes were especially cruel, as in the case of Quelly da Silva, a trans women whose heart was ripped out after she died in the city of Campinas, in the state of São Paulo, and replaced with a religious image⁴¹⁶. Apart from that, the Commission observes a tendency for those victims to be, for the most part, persons of African descent, who encounter that violence on the street, due to the extreme vulnerability to which they are exposed⁴¹⁷.
- 268.** The Commission also received with concern information to the effect that the prevalence of HIV among transgender persons in Brazil ranges from 18% to 31%, compared to a prevalence rate of 0.4% for the population as a whole⁴¹⁸. The IACHR reminds the State that it is not LGBTI persons who facilitate the spread of HIV; on the contrary, it is the discrimination and vulnerability those people face that render them more vulnerable to infection⁴¹⁹, and it calls upon Brazil to establish and implement comprehensive policies to guarantee the right of LGBTI persons, especially transgender persons, to access health care services without being subject to discrimination or violence.
- 269.** The Commission likewise was apprised of the decision handed down by the Federal Supreme Court of Brazil in April 2018 recognizing a change in gender identity based on the gender perceived by the person concerned and effected in an expedited process, without the need for court authorization or medical opinions. Nevertheless, according to information furnished to the IAHR during its visit, Provision No. 73 of the National Council of Justice (CNJ), which regulates the change procedure, requires presentation of a large number of documents and the proceedings are far from expeditious. Add to that a series of Registry Office, and sometimes even judicial, requirements⁴²⁰. Hopefully, Brazil's three branches of government will be able to establish public policies that consolidate the progress made in terms of franchise and dignity for the trans population.

414 Grupo Gay da Bahia, *População LGBT Morta no Brasil, relatório GGB 2018*, June 13, 2019.

415 Brasil de Fato, *Em 2019, 124 pessoas trans foram assassinadas no Brasil*, January 29, 2020. ANTRA and IBTE, *Dossiê: assassinatos e violência contra travestis e transexuais brasileiras em 2019*, 2020.

416 IACHR, Press Release No. 065/2019 – *IACHR Expresses Concern over Recent Violent Attacks against LGBTI People in the Americas*, March 14, 2019.

417 IACHR, *Report on Poverty and Human Rights*, OEA/Ser.L/V/II.164 Doc. 147, September 7, 2017, par. 443.

418 United Nations, *No Dia Laranja, ONU Brasil aborda violência de gênero contra mulheres trans e travestis*, February 25, 2019.

419 IACHR, *Advances and Challenges towards the Recognition of the Rights of LGBTI Persons in the Americas*, OAS/Ser.L/V/II.170, Doc. 184. December 7, 2018, p. 10, par. 10.

420 Information received by the IACHR in connection with its on-site visit in 2018.

270. Finally, the IACHR notes with satisfaction that reportedly in the 2018 elections there were a record number of transgender candidates. Civil society organizations identified at least 53 candidacies of persons identifying themselves as trans or of diverse gender⁴²¹. That figure is almost 10 times higher than in 2014, when only five such candidacies were recorded⁴²². The Commission takes note of the fact that said increase followed the decision by the Electoral Higher Court (TSE) to broaden the interpretation of the term “sex” contained in the Electoral Law of 1997, which should read “gender”. In that way, the 30% quota for female candidates can now also include trans women⁴²³.

421 Nexo Jornal, *O recorde de candidaturas de trans. E seus desafios*, September 27, 2018.

422 Nexo Jornal, *O recorde de candidaturas de trans. E seus desafios*, September 27, 2018.

423 Nexo Jornal, *O recorde de candidaturas de trans. E seus desafios*, September 27, 2018.



CITIZEN SECURITY

CHAPTER 4 CITIZEN SECURITY

- 271.** Since its last country report on Brazil in 1997, the Commission has observed a deterioration in security indicators and data on violence. It notes that that entails impairment of several human rights, such as the rights to life, integrity, and personal liberty and security⁴²⁴. While the IACHR recognizes that society as a whole is impacted by the deterioration, it notes with concern that it impinges in particular on groups in vulnerable situations, such as young people of African descent, indigenous persons, transgender persons, journalists and other media workers, and human rights defenders. The IACHR also sees a serious problem of violence against women, including attacks and threats to their life, bodily integrity, and sexual freedom.
- 272.** As regards the State's response, the Commission notes an effort to articulate public policies, as well as attempts to forge public security policies based on the citizen security and human safety paradigm supported by government programs involving investment in education, social welfare, and the health of the population. However, the IACHR views with profound concern the persistence and increased emphasis on measures based on national security doctrine, as can be observed in the increasingly frequent use of military techniques, training, and equipment in public security. In the Commission's analysis, this type of paradigm rooted in the notion of "war," not only fails to solve the problem in the long run; it also has a direct and disastrous effect on the growing number of deaths caused by actions undertaken by the security forces and, more recently, on incitement of private violence, with trends toward relaxing arms controls and proposals to amend legislation so as to expand the "*excludente de ilicitude*" [Tr. an article in Brazilian law that allows impunity for some acts generally considered illegal].
- 273.** On a series of occasions, the Commission has come out against the militarization – and privatization – of the security forces. Thus, the IACHR reminds the State that the nature of the military as an institution differs substantially in terms of the purposes it is supposed to serve and in the training and preparation it receives, which are ill-suited to handle citizen security issues⁴²⁵. Along similar lines, the Commission has again asserted that the effect of privatizing security functions is loss of control over acts undertaken with the use of force and insensitivity to the notion of human rights, which the State has a duty to defend, protect, and guarantee. Security becomes a mere commodity that can be bought on the market and usually only by those sectors of society that can afford it⁴²⁶. That being so, the IACHR urges the Brazilian State to

424 IACHR, [Report on Citizen Security and Human Rights](#), OEA/Ser.L/V/II. Doc. 57, December 31, 2009, Par. 18.

425 IACHR, Press Release No. 271 - [IACHR Concludes 170th Period of Sessions](#), December 18, 2018

426 IACHR, [Report on Citizen Security and Human Rights](#), OEA/Ser.L/V/II. Doc. 57, December 31, 2009

reconsider certain measures and proposals it is tending to espouse and to bear in mind Inter-American rules and parameters regarding human rights.

A. SELECTIVE VIOLENCE

274. The most recent data available show that 57,358 murders were committed in 2018⁴²⁷. That is equivalent to 31.6 homicides per 100,000 inhabitants, a 10.8% decline over 2017⁴²⁸, when, for the first time in Brazil's history the rate surpassed 30.8 per 100,000 inhabitants⁴²⁹. Notwithstanding the reduction, the Commission points out that young people between the ages of 15 and 29 accounted for more than 77.9% of homicide victims in 2018⁴³⁰. Furthermore, according to 2017 data, Brazil is the country with the fifth largest number of children murdered in the world⁴³¹.

275. Nevertheless, the Commission calls attention to the link between these deaths and the segment of the population exposed to structural discrimination and the groups exposed to especially vulnerable situations. In that sense, these homicides both reflect and foster the reproduction of inequality in the country, be it socioeconomically – by disproportionately victimizing Afro-descendants and persons living in poverty and extreme poverty – or in their impact on democracy, through the increasing victimization of human rights defenders, journalists and other social communicators.

1. Violent deaths and socio-economic inequality

276. The IACHR ascertained with profound concern that violent deaths are not randomly distributed among different segments of the population. They tend to hit, to a disproportionate extent, the sectors in society that suffer most from structural discrimination and who consequently are exposed to intersectional structural violence, based mainly on ethnic/racial and socio-economic characteristics. Thus, three-quarters (75.4%) of all murder victims in 2018 were identified as persons of African descent⁴³², a proportion that was similar in 2017 (75.5%)⁴³³ and 2016 (76.2%)⁴³⁴.

427 Fórum Brasileiro de Segurança Pública, *Violência em Números 2019*, June 26, 2019.

428 Fórum Brasileiro de Segurança Pública, *Violência em Números 2019*, June 26, 2019.

429 Fórum Brasileiro de Segurança Pública, *Edição 2018 do Anuário Brasileiro de Segurança Pública*, 2018.

430 Fórum Brasileiro de Segurança Pública, *Violência em Números 2019*, July 12, 2020.

431 Save the Children, *End of Childhood – Global Childhood Report 2017*, May 31, 2017.

432 Fórum Brasileiro de Segurança Pública, *Violência em Números 2019*, July 12, 2020.

433 *Atlas da Violência 2019*. Brasília: Ipea and FBSP, pp. 49ff.

434 Fórum Brasileiro de Segurança Pública, *Edição 2017 do Anuário Brasileiro de Segurança Pública*, 2017.

- 277.** That yielded a homicide rate for that segment of the population of 43.1 per 100,000 inhabitants, compared to a rate of 17 per 100,000 for the rest of the population⁴³⁵. Inferential analyses, which calculate the likelihood of someone being a victim of murder based on his or her socio-demographic characteristics, also find that ethnic-racial factors are a major determinant⁴³⁶.
- 278.** Murders in Brazil also follow a geographically unequal and perverse pattern. The aggregate numbers disguise the stark contrast between extremely dangerous and extremely safe areas (even compared with developed countries) between (and within) geographic regions, states, municipalities, or even neighborhoods⁴³⁷. The IACHR therefore underscores the intersection between lethal violence and other (especially social and economic) vulnerability factors in the Brazilian population, which are manifested in the precariousness of public services, infrastructure, and educational and employment opportunities.
- 279.** The Commission observes that risk factors for being a murder victim associated with race and class are not independent but rather combine to the extent that they apply to persons placed at the intersection of those factors, so that a young person, who is already statistically more likely to be a homicide victim, is even more at risk if he is a male of African descent and/or lives on the outskirts of a major city. Accordingly, the IACHR can see that the odds are stacked against the consolidation of a robust culture of peace and observance of human rights in Brazil, given that whole segments of the population live with a sense of constant danger and uncertainty. That, too, triggers mistrust in State institutions as well.
- 280.** The Commission also notes the data on police incidents in 2018 compiled by the National Information System on Public Security, Prisons, and Drugs - SINESP, which were presented by the State at the public hearing on the Criminal Justice System and Complaints of Violations of the Human Rights of Persons of African Descent in Brazil and purportedly suggest a reversal of the historical trend toward increasing lethal violence in the country⁴³⁸. At the same time, the IACHR takes note of the queries raised by public security experts regarding the reliability of the data used by SINESP, given the difficulties surrounding uniform data collection by the states in the federation⁴³⁹.

435 *Atlas da Violência 2019*. Brasília: Ipea and FBSP, pp. 49ff.

436 Daniel Cerqueira and Danilo Santa Cruz Coelho. "Democracia Racial e Homicídios de Jovens Negros na Cidade Partida". Discussion Paper No. 2267. Brasília: Ipea, 2017.

437 RIBEIRO, Eduardo; CANO, Ignacio. *Vitimização letal e desigualdade no Brasil: evidências em nível municipal. Civitas - Revista de Ciências Sociais*. [S.l.], v. 16, n. 2, pp. 285-305, September 2016. ISSN 1984-7289. Accessed on: June 12, 2020. P. 288 and 289.

438 IACHR, 172nd period of sessions. Public Hearing: Criminal System and alleged violations of the rights of African descendants in Brazil, May 9, 2019.

439 Folha de São Paulo, *Governo Bolsonaro monitora crimes com banco de dados incompleto*, 2019.

- 281.** Likewise, the Commission observes that these new numbers show that the decline in homicides is not uniform in the country as a whole. On the contrary, while in some subnational units (states and municipalities) there was a considerable decline, the IACHR stresses that in others there was a notable increase in the homicide numbers. Furthermore, it is to be noted that while the aggregate number of all violent deaths may be falling, there is a larger number of deaths resulting from police actions, in which, for the most part, the victims are young males of African descent living in poverty or extreme poverty⁴⁴⁰. The state of Rio de Janeiro, in particular, is experiencing record numbers of such deaths, which reportedly has led some experts to refer to a “state takeover” or “nationalization” (*estatização*) of deaths⁴⁴¹.
- 282.** The IACHR therefore reiterates its recommendation that the State guarantee citizens’ right to security, especially in the case of those historically exposed to structural discrimination, pursuant to the standards adopted by the inter-American system. Thus, it urges Brazil to devise and implement social, community, and tailored prevention plans and programs geared to tackling, in particular, the factors that propitiate the reproduction of violent behavior in society. In addition, the Commission urges that the police receive training regarding the use of lethal force in accordance with international norms, especially the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

B. LACK OF SECURITY AND ORGANIZED CRIME

- 283.** In its visit to the country, the Inter-American Commission received, with concern, a number of reports and data in the emergence, activities, and expansion of criminal organizations in Brazil, known locally as Primeiro Comando da Capital, Comando Vermelho, Família do Norte, Terceiro Comando Puro, Amigo dos Amigos, militias, or other associations. The IACHR observes that these organized groups or “gangs” (*facções criminosas*)⁴⁴², engage in illegal activities – especially drug trafficking – which invariably then lead to cargo theft, kidnappings, money laundering, and so on. Those businesses in turn depend on control over “turf” (normally, communities exposed to particular types of vulnerability) and consumer markets for the products produced or traded illegally. This process of securing control of territories triggers clashes with government security forces as well as with rival criminal gangs.

440 O Globo, *Vítimas de letalidade policial são mais jovens’, diz pesquisador: em 80 horas, cinco morreram no Rio*, 2019.

441 Rede de observatórios de Segurança, *Operações policiais no Rio: helicópteros e mortes*, 2019.

442 A number of cultural works have helped spread knowledge about these gangs, in the form of books, films, and TV series, such as *Elite da Tropa*, *Cidade de Deus*, and *Tropa de Elite*.

- 284.** According to information received by the IACHR, the diversification and expansion of these criminal organizations have impacted various aspects of public security, such as the way detention centers are run, corruption of government officials, control over socially vulnerable areas and communities, and violent deaths⁴⁴³. Thus, according to information that the Commission has had access to, there are links between variations in the homicide figures per state and conflicts within these criminal gangs, or in some of them⁴⁴⁴. The IACHR notes that, in the prison system, in particular, conflicts between criminal gangs have proved to be directly relate to massacres and riots resulting in hundreds of deaths.
- 285.** At the same time, the Commission draws attention to information regarding the existence of paramilitary groups, known as militias. These criminal gangs comprise policemen or former police. Originally, their alleged aim was to fight drug trafficking, but they ended up pursuing a series of illegal activities, committing murders and engaging in other types of violence⁴⁴⁵. As with drug trafficking, the militias' control over territories takes advantage of the absence, or insufficient presence, of the State (and even of the market) in the provision of services for poor communities (such as transportation and butane gas for cooking). The delivery of such services by the militias is, however, despotic, in the sense they come at exorbitant prices, with compulsory payment enforced by using violence or heavy threats⁴⁴⁶. A survey of communities in Rio de Janeiro revealed that the local people fear the "militias" more than drug-trafficking organizations⁴⁴⁷.
- 286.** The data available indicate that the militias' despotic control of territories translates into greater access to State power, which further strengthens them. In areas dominated by "militias," competitiveness in elections is curtailed by the use of force and violence to back candidates to elective office who are committed, or at least not hostile, to the militias and their control over territory and as intermediaries in the provision of services⁴⁴⁸. The Commission notes that promiscuous relationship fosters the formation of a wide network of protection of, or at least favoritism toward, businesses, managed by these criminal gangs, allowing them to remain and flourish in the occupied territories.

443 Bruno Paes Manso and Camila Caldeira Nunes Dias, *A guerra – A ascensão do PCC e o mundo do crime no Brasil*, 2nd. Edition, São Paulo: Todavia, 2018.

444 Instituto de Pesquisa Econômica Aplicada, *Atlas da Violência 2019*, 2019, p 11.

445 Ignácio Cano and Thais Duarte, *No Sapatinho: a evolução das milícias no Rio de Janeiro (2008-2011)*, Rio de Janeiro: Heinrich Böll Foundation, 2012 (using data on militias gathered by the Parliamentary Investigation Commission (CPI) of the Rio de Janeiro State Assembly).

446 Ignácio Cano and Thais Duarte, *No Sapatinho: a evolução das milícias no Rio de Janeiro (2008-2011)*, Rio de Janeiro: Heinrich Böll Foundation, 2012 (using data on militias gathered by the Parliamentary Investigation Commission (CPI) of the Rio de Janeiro State Assembly).

447 G1, *Medo das milícias supera o de traficantes em comunidades do Rio, diz Datafolha*, February 18, 2019.

448 Legislative Assembly of the State of Rio de Janeiro, *Relatório Final da Comissão Parlamentar de Inquérito Destinada a Investigar a Ação de Milícias no Âmbito do Estado do Rio de Janeiro*, [Final Report of the Parliamentary Commission of Inquiry to Investigate the Activities of Militias in the state of Rio de Janeiro], 2008.

- 287.** The IACHR draws attention to the multiple human rights violations associated with the operations of these “militias”, such as the way these gangs recruit and manage their “members” (*filiados*); disputes over control of (in some cases, transnational) drug and arms trafficking routes; the oppression practiced by these gangs in the territories where they set up their businesses; and in conducting their criminal activities⁴⁴⁹.
- 288.** At the same time, the IACHR issues a reminder that the best way to combat violence, lack of security, and crime is through comprehensive and holistic public policies mindful of the various structural causes, tackling risk factors, and bolstering any protection factors available.
- 289.** It further reaffirms that fighting this type of violence requires well-coordinated cooperation among a variety of sectors and institutions, including security agents and forces and judicial institutions. Likewise, as a measure to prevent these gangs spreading and growing stronger, it is essential to grasp the link between organized crime and inequalities and to develop a response that includes guaranteeing access to high quality health care and education, social services, employment, culture, sport, and entertainment/leisure. These policies must be capable of meeting short, medium- and long-term needs with respect to security and the observance of human rights⁴⁵⁰.

1. Violent deaths of activist and human rights defender persons

- 290.** The American Convention on Human Rights guarantees freedom of thought and expression (including “freedom to seek, receive, and impart information”)(Article 13) and freedom of association (Article 16) as fundamental rights of the inhabitants of the Hemisphere. While they are universal in scope, those rights are especially precious in contexts characterized by inequality and in any transition from authoritarianism to democracy, inasmuch as their exercise provides a means by which disadvantaged, or minority groups can demand changes⁴⁵¹.
- 291.** Likewise, the Commission takes note that the 1988 Federal Constitution of Brazil guaranteed freedom of expression in Article 5. IX and Article 220, along with freedom of association (Article 5.XVII)⁴⁵². Nevertheless, statistics on violence and lack of security (in-

449 Karina Biondi, *Sharing This Walk: An Ethnography of Prison Life and the PCC in Brazil*, University of North Carolina Press, 2016; Gabriel Feltran, *Irmãos - Uma história do PCC*, São Paulo: Companhia das Letras, 2018; Estadão, *Domínios do Crime. 10 anos dos Ataques do PCC*; UOL, *25 Anos De PCC*, 2018; Ignácio Cano and Thais Duarte, *No Sapatinho: a evolução das milícias no Rio de Janeiro (2008-2011)*, Rio de Janeiro: Heinrich Böll Foundation, 2012.

450 IACHR, *Violence, Children, and Organized Crime*, OEA/Ser.L/V/II. Doc. 40/15, November 11, 2015.

451 Special Rapporteurship for Freedom of Expression, *Preliminary Evaluation Of Freedom Of Expression In Guatemala*, item 36, 2000.

452 Office of the President of the Republic, *Constituição da República Federativa do Brasil*, June 11, 2020.

cluding violent deaths) show that Brazil continues to exhibit hostility towards the work of journalists and social communicators, as well as activists and human rights defenders. The IACHR observes that phenomenon with concern, given its implications for the perpetuation of structurally embedded and historically entrenched inequalities.

- 292.** With regard to journalists and other social communicators, the Commission registered, in 2015 alone, 11 murders of journalists in Brazil for reasons apparently related to their professional work, apart from dozens of other acts of aggressions⁴⁵³. The National Justice and Public Security Strategy Report (ENASP) and that of the National Council of the Public Prosecutors' Office, published in 2019, show that in the past 5 years, there have been 23 murders of journalists, peaking in 2018, when 4 media professionals were murdered⁴⁵⁴.
- 293.** During its visit to Brazil, the IACHR received information to the effect that social communicators were the object of vicious attacks, both physical and virtual, when they were covering the then recent (2018) election campaign. According to that information, between January and October of that year, in connection with coverage of the elections and of street demonstrations, there were at least 137 such cases (75 virtual and 62 physical attacks)⁴⁵⁵, with women communicators being especially hard hit.
- 294.** During its on-site visit, the Commission was informed by the Brazilian Government that social communicators/journalists threatened in connection with their professional work would be included as one of the groups specifically protected under the Human Rights Defenders Protection Program. The IACHR welcomed the news that, on September 3, 2018, that expansion of the scope of the Program was officially adopted via Directive No. 300 of what was then the Ministry of Human Rights, at which point the name of the policy was changed to "Protection Program for Human Rights Defenders, Media Personnel, and Environmental Activists" [*Programa de Proteção aos Defensores de Direitos Humanos, Comunicadores Sociais e Ambientalistas*]. In addition, the government announced an increase in the budget for this program in fiscal years 2019-2020. The IACHR congratulates the Brazilian State for adopting those measures.
- 295.** As regards activists and human rights defenders, the Commission has repeatedly voiced its concern at the criminalization of their activities using State institutions and State versions of the facts (narratives) to inhibit or deter their work⁴⁵⁶. In recent years, the Commission has watched in horror as activists and human rights defend-

453 IACHR, *2015 Annual Report of the Inter-American Commission on Human Rights*, pp. 76-78.

454 Conselho Nacional do Ministério Público [CNMP - National Council of the Public Prosecutors' Office]. *Violência contra comunicadores no Brasil: um retrato da apuração nos últimos 20 anos*, 2019. The ENASP and the CNMP registered 8 cases in 2015, a lower number than that documented by the IACHR Rapporteurship.

455 Associação Brasileira de Jornalismo Investigativo (Abraji). Monday, October 08, 2018. Abraji lists more than 130 cases of violence against journalists in connection with the political elections.

456 IACHR, *Criminalization of the Work of Human Rights Defenders*, 2015.

ers have frequently been murdered or violently attacked and harassed by private individuals, as well as by State agents acting beyond and counter to their official duties⁴⁵⁷. In the same vein, the IACHR has drawn attention to the possibility and risks of social movements being criminalized by an expansion of the definitions typifying crimes in anti-terrorism laws⁴⁵⁸. Here, the Commission reiterates that those laws cannot be used to criminalize the right to demonstrate and the right of association, which would pose a serious threat to democracy as such⁴⁵⁹.

296. In June 2018, the IACHR condemned the murders of human rights defenders, especially in cases involving defense of the environment, of rural workers' rights, and of the right to land in rural areas. During its visit, the IACHR ascertained, thanks to the information it received, the increase in such murders. According to the report published by the Comissão Pastoral da Terra (CPT)⁴⁶⁰, in 2017, that year 71 activists and defenders of rights in rural areas were murdered, a marked increase over the 61 deaths of that kind registered in 2016 and the 50 murders committed in 2015. Following that increase, as civil society organizations pointed out, Brazil was in 2017 the country with the largest number of murders of environmental rights defenders in the world⁴⁶¹. In the same vein, the IACHR reiterates its repudiation and concern over the particularly cruel murder of Councilor Marielle Franco⁴⁶², which is still being investigated at the state level⁴⁶³, and over the admonishment of Jean Wyllys⁴⁶⁴, both of whom were public figures with legislative mandates who sought to defend human rights. The Commission therefore adamantly reiterates that attacks against elected representatives must be considered attacks on democracy itself and should therefore be thoroughly investigated with a view to throwing light on the motives for the crime in question, and trying and punishing its perpetrators and instigators.

297. The IACHR notes that human rights defenders' exposure to violence in Brazil has caught the attention of the international community. According to a survey by the Front Line Foundation, in 2018, Brazil was the country with the 5th largest number of murders of human rights defenders in the world⁴⁶⁵. Finally, the IACHR voices its

457 This is the case with militias or death squads, sometimes comprised of members of the security forces, which will be addressed later in this chapter and in other parts of this report.

458 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, Law N^o 13.260, of March 16, 2016.

459 IACHR, Press release No. 238/18, IACHR Concludes Visit to Brazil, 2018.

460 CPT, Conflitos no Campo Brasil 2017.

461 Global Witness, At what cost? Irresponsible business and the murder of land and environmental defenders in 2017.

462 IACHR Press Release, IACHR Repudiates Murder of Councilor and Defender of Human Rights in Brazil.

463 The Commission takes note of the decision to deny a change of jurisdiction over the investigation and trial of the case. On this, see: STJ, Caso Marielle: investigação sobre mandantes do crime fica no Rio de Janeiro, May 27, 2020.

464 IACHR, Resolution 85/2018, Precautionary Measure No. 1262-18, Jean Wyllys de Matos Santos and family regarding Brazil.

465 Front Line Defenders, Front Line Defenders Global Analysis 2018, 2019.

concern regarding the security of these people and stresses that the Brazilian State and society are duty-bound to safeguard their life and the liberty and bodily integrity to which they are entitled as citizens of the country and without which they cannot perform their professional, political, and civic activities

C. STATE'S INSTITUTIONAL RESPONSE

298. The IACHR notes that, since its last report on Brazil in 1997, there has been progress with the formulation of public policies compatible with the standards and parameters established as paradigms for citizen security. Even though the State has not managed to fully restructure public security institutions since the transition to democracy, numerous incremental steps forward have been taken, including the promulgation of Law No. 13.675/2018, establishing the Unified Public Security System (*Sistema Único de Segurança Pública – SUSP*). In spite of that progress, the IACHR underscores the persistence and, in many cases, widespread prevalence, in criminal, penitentiary, and public security policy of approaches that are incompatible or barely compatible with the desired citizen security paradigm.

299. As the Commission sees it, those approaches are shaped by two separate trends. One is authoritarianism, which translates into ongoing institutionalized violence and increasing militarization of security operations, repression of social protest, and the adoption of public policies, in such areas as drugs, that exacerbate punitive responses and incarceration. Those measures have disproportionate impacts on persons traditionally exposed to extreme vulnerability, in addition to jeopardizing the lives and physical integrity of the State agents charged with providing public security services. The second trend is the outsourcing of services to private entities, for instance through the privatization of prison establishments, the contracting of therapeutic communities, or the glorification of self-defense, which might be called a kind of shrinking its public character.

1. Advances, interruptions, and risks of backsliding in the formulation of public security policies compatible with human rights standards and parameters (citizen security)

300. The IACHR takes note of the efforts made by Brazil, especially since the 1990s, to reorganize the political-institutional framework and to alter its approach to dealing with violence and crime and, in so doing, ensure respect for human rights. In that regard, the Commission notes the establishment, in 1997, of the National Public Security Secretariat within what was then the Ministry of Justice, which then evolved into a unit for coordinating hitherto scattered reform proposals within the federal

agenda⁴⁶⁶. The IACHR likewise underscores the national public security plan in 2000, known as *O Brasil diz não à violência* [Brazil Says ‘No’ to Violence], which, albeit with some limitations, contained proposals consonant with a citizen security approach, such as “operational integration of the police” and the “integration of social prevention programs”⁴⁶⁷, accompanied by the 2001 National Public Security Fund, set up by the Federal Government to bring about major changes in public security⁴⁶⁸.

301. As a hallmark of that reorientation of public security policy, the Commission highlights the establishment of Integrated Management Offices (*Gabinetes de Gestão Integrada – GGIs*) within the framework of the II National Public Security Plan (2003/2006). Using that system, it proved possible to bring state and municipal authorities together, thereby facilitating the formulation of better coordinated, effective, and comprehensive strategies for advancing security, integrating repressive and preventive approaches, carrying out surveys and engaging in new pioneering data collection efforts, and drawing up national diagnostic assessments⁴⁶⁹.

302. Along similar lines, in 2007, the State launched the National Public Security and Citizenship Program (PRONASCI), which extended the experience acquired with the GGIs to municipalities where municipal guards operate. There, a number of important social policies were put in place for preventing violence and crime⁴⁷⁰. Also worth highlighting is the holistic approach underpinning that policy, which fostered prevention projects in vulnerable territories, encouraged outreach or community policing [*policimento de proximidade*], and promoted professional training and upgrading policies for public security agents via the Bolsa Formação and the National Network for Advanced Studies in Public Security (RENAESP). Thus, the IACHR commends the PRONASCI initiative and its success in implanting a citizen security paradigm in the awareness and practice of security managers and operators in all three branches of government.

303. At the same time, the Commission underscores Brazil’s efforts to fill a longstanding gap in social participation in public security governance in the period under review. In that regard, the IACHR points in particular to the First National Public Security Conference (I CONSEG) in 2009. That same year saw the installation of the first board of the National Public Security Council (CONASP), made up of government rep-

466 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, *Decree nº 2.315*, of September 4, 1997.

467 Fabio de Sá e Silva, ‘Nem isto, nem aquilo’: trajetória e características da política nacional de segurança pública (2000-2012) In: *Revista Brasileira de Segurança Pública*, v. 6, p. 412, 2012; *Entre o Plano e o Sistema: o impasse da segurança pública*, In: *Boletim de Análise Político-Institucional*, v. 3, p. 37-44, Brasília: Ipea, 2013.

468 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, *Law nº 10.201*, of February 14, 2001.

469 Fabio de Sá e Silva, ‘Nem isto, nem aquilo’: trajetória e características da política nacional de segurança pública (2000-2012) In: *Revista Brasileira de Segurança Pública*, v. 6, p. 412, 2012; *Entre o Plano e o Sistema: o impasse da segurança pública*, In: *Boletim de Análise Político-Institucional*, v. 3, p. 37-44, Brasília: Ipea, 2013.

470 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, *Law nº 11.530*, of October 24, 2007.

representatives (1/3), two public security workers (1/3), and civil society (1/3), tasked with debating and proposing changes to security policies⁴⁷¹.

- 304.** The Inter-American takes note of civil society criticism of the limitations of this series of attempts to reorganize, inasmuch as they appear not to have been able to overcome the institutional legacy left by the national security policy enforced in the 1990s. Nevertheless, it also has to be borne in mind that changes to a structural paradigm take time. Thus, changes continued to be implemented through to 2018, when the State promulgated Provisional Measure No. 821 (which later became Law No. 13.690, of July 10, 2018), which created the Ministry of Public Security at the federal level⁴⁷². Shortly thereafter, the National Congress passed Law No. 13.675, of June 11, 2018, which established a National Public Security and Social Defense Policy (PNSPDS) and instituted a Unified Public Security System (SUSP)⁴⁷³.
- 305.** The Commission draws attention to the fact that Law No. 13.675/2018 established, as core principles of the PNSPDS and the SUSP: the equal importance of prevention and repression (Article 4.V and VI); coordinated action by the Union, States, and Municipalities (Article 5.IV) and their respective security forces; strategic and systemic planning of operations (Article 5.II); and social participation (Articles 4.VII, 5.XIV and 24.III), especially through Councils (Articles 6.V, 9. § 1º, II, and 19). The Law also established mechanisms for monitoring and handling information, such as the aforementioned SINESP, as well as for carrying out studies and for professional training in security. It also sought to tie the allocation of resources from the National Public Security Fund and the National Penitentiary Fund to the fulfillment by states and municipalities of the targets and goals to be set by the “system” it established.
- 306.** It is the Commission’s understanding that the remits of the PNSPDS and the SUSP are, generally speaking, in keeping with inter-American citizen security parameters, inasmuch as they combine prevention and repression in a planned and thought-out manner, along with integration between spheres of government and security forces, and constant dialogue between State and society. The IACHR commends Brazil on the progress made IN the period under review and urges the State to continue investing in citizen security policies.
- 307.** In that regard, the Commission underscores that compiling data is a key part of the design, implementation, and monitoring of public security policies. Thus, the Commission reiterates the progress made by Law No. 13.675/2018 (SUSP and PNSPDS), which pro-

471 Alberto Liebling Kopittke Winogron, Fernanda Alves dos Anjos, and Mariana Siqueira de Carvalho Oliveira, “Reestruturação do Conselho Nacional de Segurança Pública: desafios e potencialidades”, *Revista Brasileira de Segurança Pública*, year 4, v. 6, pp. 146-159, 2010; Fabio de Sá e Silva and Fabio Deboni, “Participação social e governança democrática na segurança pública: possibilidades para a atuação do Conselho Nacional de Segurança Pública.” Discussion Paper No. 1714. Brasília: Ipea, 2012.

472 Office of the President of the Republic, [Law No. 13.690](#), July 10, 2018.

473 Office of the President of the Republic, [Law No. 13.675](#), July 10, 2018.

vides for the adoption of a national database containing public security information and indicators. The IACHR considers that implementing that database, with data broken down by age, race/ethnicity, gender and sexual education, and geographical location, would help identify situations in which deaths occur as a result of actions by the police.

- 308.** Likewise, the IACHR again points out that public policies need to consider the conditions under which government officials, such as policemen and other agents responsible for public security, go about their work, in such a way as to avoid their working under stress or in risky conditions, the idea being to establish a clear link between improved working conditions and improvements in security for citizens. Accordingly, it is necessary that the State adopt ongoing and structural measures to ensure professional training for these agents in accordance with human rights parameters, along with a public policy that takes the security and rights of those professionals into account. Public citizen security policies must focus on establishing and consolidating public institutions and policies that effectively and efficiently meet the security demands of a democratic society, while strictly observing international human rights standards.
- 309.** At the same time, the IACHR contrasts this progress made with the appearance of other measures that were, and continue to be, adopted in Brazil to the detriment of the human rights standards established by the inter-American human rights system. In this regard, the IACHR observes with concern the deterioration of security governance structures in the period subsequent to the passing of Law No. 13,675/2018. Worth highlighting in this regard is the fact that, in 2019, during its latest administrative reform, the Brazilian Government again joined the Ministries of Justice and Public Security, a move that, in the Commission's opinion, could trigger setbacks for implementation of the citizen security agenda. The IACHR reminds the State of its international obligations to defend and promote human rights and urges that any institutional changes made need to preserve the capacity to implement public security programs governed by citizen security parameters.
- 310.** The IACHR also voices its concern at backsliding with regard to social participation in security governance, in light of the agenda providing for downsizing the presence of participatory institutions in the State apparatus, which eliminated the Public Security Council⁴⁷⁴, and with it the body allowing for the highest level of civil society participation to the detriment of those whose composition was more restricted to state agents. In addition, the Commission places on record the information provided to the State that that change was an effort to enhance social participation and participation in general once there were abundant opportunities for that purpose⁴⁷⁵.

474 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, [Law 13.675](#), June 11, 2018.

475 IACHR, Press Release No. 248/19: [IACHR Concludes its 173rd Period of Sessions. Annex: Summaries of](#)

2. Violence perpetrated by State agents and institutional racism

- 311.** The IACHR observes with the utmost concern the fact that a significant and growing proportion of lethal violence in Brazil is caused by State agents. According to data provided by State Secretariats, between 2009 and 2018, 35,414 people died as a result of actions by (on or off-duty) police. Between 2013 and 2018, that number increased by 178.5%, coming from 2,212 to 6,620. In the same period, the overall number of deaths increased by 6.5%, from 53,646 to 57,117⁴⁷⁶.
- 312.** In the state of São Paulo, for instance, between April 2007 and May 2017, more than 5,000 people died as a result of military police operations⁴⁷⁷. Although those numbers fell in 2018, they increased again in first quarter 2019, when the data pointed to 182 cases of people dying due to actions by the police, state-wide. That was 24 more than in the same period one year earlier. The IACHR notes that that increase occurred just as the total number of deaths and cases of violent crimes falls by -5% and -9%, respectively, so that the share of police-related deaths as a percentage of all lethal violence increased (from 18% in the first quarter of 2019 to 20% in the same quarter of 2019)⁴⁷⁸.
- 313.** At the same time, according to a UNICEF study, the number of children and adolescents who died in São Paulo between 2014 and 2018 as a result of police activity surpassed the number of deaths from other causes (homicides, armed robbery, traffic accidents, suicide, femicide, and bodily injury resulting in death). Police actions resulted in 580 such deaths, compared to 527 occurrences caused by other factors. The IACHR stresses the fact that the number of deaths not attributable to police actions in the same period fell by half in the same period⁴⁷⁹, this leads to indicate that the police was responsible for the high number of deaths of children and adolescents.
- 314.** Likewise, in Rio de Janeiro, the deaths resulting from police operations in the first five months of 2019 reached truly historic records. According to data of the State Public Security Institute (ISP-RJ), there were 731 such deaths in that period, 20% more than in same period in 2018⁴⁸⁰. The numbers mean that there were on average 4.87 deaths per day, the highest statistic in 21 years⁴⁸¹. It further worries the IACHR

hearings. 173rd period of sessions, October 4, 2019.

476 Fórum Brasileiro de Segurança Pública, *Anuário Brasileiro de Segurança Pública 2019*, June 26, 2019.

477 Universidade Federal de São Paulo (UNIFESP), *Violência de Estado no Brasil: uma análise dos Crimes de Maio de 2006 na perspectiva da antropologia forense e da justiça de transição - relatório final*, 2019. P. 15.

478 Instituto Sou da Paz, *Sou da Paz Analisa – Estatísticas Criminais no Estado de São Paulo*, 1º Trimestre, 2019.

479 Deutsche Welle, *Em São Paulo, crianças e adolescentes na mira da polícia*, June 21, 2019.

480 Rede de observatórios de Segurança, *Operações policiais no Rio: mais frequentes, mais letais, mais assustadoras*, 2019.

481 Estadão, *Com 434 mortes, letalidade policial no Rio no 1º trimestre de 2019 é a maior em 21 anos*, 2019.

that, according to the data for the first five months of each year, police were responsible for 38.7% in 2019, an increase of 22.4% in two years.

- 315.** It also needs to be noted that most of the victims in those deaths were young, black, and poor. According to the data to which the Commission has had access, in certain states persons of African descent are estimated to account for between 60% and 65% of the victims in São Paulo⁴⁸² and 90% in Rio de Janeiro⁴⁸³. Furthermore, in São Paulo, almost 89% of those killed in 2018 were 29 years old or younger⁴⁸⁴.
- 316.** While the data are rarely accompanied by a socio-economic profile, the IACHR stresses that in 2018 the São Paulo Military Police ombudsman commented to the press that 27% of the victims had died due to a “well-founded suspicion” (*fundada suspeita*). i.e. a police prejudice, based on socio-economic status and ethnic/racial origin, that those persons committed or would commit some criminal act⁴⁸⁵. Here, the Commission reminds the State of the need to get rid of all practices using stereotypes based on ethnic or racial origin or socioeconomic status or any other discriminatory bias by public security agents and justice system operators.
- 317.** The IACHR draws attention to the fact that this kind of rights violation by the Brazilian State has already been investigated and litigated in the inter-American human rights system. The Case of “Favela Nova Brasília v. Brazil”⁴⁸⁶, revealed not just serious and structural deficiencies in methods used to investigate, prosecute, and punish criminals but also patterns involving the excessive use of force and institutional racism by security forces against persons living in shanty towns. Accordingly, the Commission issues a reminder regarding the obligation “of the State of Rio de Janeiro to take such measures as are needed to establish goals and policies to reduce the use of lethal force and violence by police”⁴⁸⁷.
- 318.** Nevertheless, according to victims’ testimony received by the IACHR during its visit those patterns persist and there continue to be reports of systematic and en masse extrajudicial executions, for the most part of male youths of African descent living in poverty and extreme poverty. Likewise, the IACHR underscores the case that had to do with an operation by the Special Investigation and Capture Division of the Civilian Police in Alagoas, in the rural area of Santana do Ipanema, in the state of that name, that reportedly resulted in 11 deaths⁴⁸⁸.

482 UFSCAR, *Desigualdade Racial e Segurança Pública em São Paulo*, April 2, 2014; UOL, *Em SP, 64% das pessoas mortas pela PM no ano passado eram pretas ou pardas*, March 4, 2019.

483 UOL, *9 em cada 10 mortos pela polícia no Rio são negros ou pardos*, July 26, 2017.

484 UOL, *Em SP, 64% das pessoas mortas pela PM no ano passado eram pretas ou pardas*, March 4, 2019.

485 UOL, *Em SP, 64% das pessoas mortas pela PM no ano passado eram pretas ou pardas*, March 4, 2019.

486 I/A Court of H.R., *Judgment of February 16, 2017*, preliminary objections, merits, reparations and costs, paras. 01, 208, 323

487 I/A Court of H.R., *Judgment of February 16, 2017*, preliminary objections, merits, reparations and costs, par. 369.

488 UOL, *Polícia vai apurar ação que matou 11 em Alagoas após fotos vazadas e suspeita de execução*. November 10, 2018.

- 319.** The Commission was also informed that extrajudicial executions had become a characteristic feature of the response to attacks against the police by organized gangs or criminal groups, as part of the retaliation by State agents against the unrest triggered by those groups in turf control disputes, as was the case in 2006 in São Paulo. According to the information available, in May of that year, a criminal gang sparked revolts in several prisons in the state against several police and public security headquarters and stations in the state. They unleashed a response by State agents and death squads (*grupos de extermínio*) which exacerbated the violence and led to summary executions, slaughter, hundreds of murders, and a number of disappearances⁴⁸⁹, killing some 564 people⁴⁹⁰.
- 320.** Based on that information, that counterattack by the police typically involved executions in which the victims received large numbers of shots aimed at especially lethal parts of the body (head and torso), mainly from behind and at short range. Reportedly, police also altered the scene of the crimes, which, along with the absence of testimony, hampered or prevented any in-depth investigation⁴⁹¹. Furthermore, the Commission takes note of accounts of security agents forging “proof” against victims to justify the executions. According to information from civil society groups and the mother of one of the victims in the case, “there are two sets of police, one which kills and another that fails to investigate (...) In a country in which, although the death penalty does not exist, it is carried out using a policeman’s rifle [...] as a way to “deal with” poverty (sic). The mother adds: “It is inconceivable that one brings up a child only for him to be killed by the State using bullets bought with taxes paid by those very same working mothers (...)” and she points out that the violence does not just affect the person killed but also has an irreparable impact on his or her family.” According to the mother who lost her son, “that [violence by the State security forces] kills not just their children, but the security forces themselves.” (sic)⁴⁹².
- 321.** Another example has to do with an operation by Bahia State Military Police in Vila Moisés, Bairro do Cabula, on February 6, 2015. The action resulted in the death of 12 youths, a large majority of them black, and 6 people wounded. During the operation 143 shots were fired, 88 of which penetrated the victim’s bodies. According to the police, the purpose of the operation was to capture thieves robbing ATM machines, who tried to hide in the Cabula district, and who engaged in a heavy shoot-out with police. The deaths had therefore occurred, according to the police, in “self-defense” and not in a context of “acts of resistance.” The Public Prosecutors’ Office (*Ministério*

489 Human Rights Secretariat, *Relatório Sobre os Crimes de Maio de 2006*, 2013.

490 Agência Brasil, *Crimes de Maio causaram 564 mortes em 2006: entenda o caso*, May 12, 2016.

491 Universidade Federal de São Paulo (UNIFESP), *Violência de Estado no Brasil: uma análise dos Crimes de Maio de 2006 na perspectiva da antropologia forense e da justiça de transição*, 2018, p. 214.

492 IACHR, Public Hearings during the 167th period of sessions: *Allegations of Extrajudicial Executions by the Police in Brazil*, March 1, 2018.

Público) nevertheless concluded that it had been a case of extrajudicial execution and proceeded to indict and detain the policemen involved. The State justice system, however, promptly acquitted the accused, a ruling that was overturned solely on procedural grounds. The Commission stresses that, according to the information it has received, despite a request by the Federal Public Ministry for jurisdiction in this case to be transferred to a federal court, the case was kept by the Higher Court of Justice with the state justice system⁴⁹³.

322. The IACHR further reports having received news of a possible massacre occurring on February 1, 2018 in the Coroa, Fallet-Fogueteiro, and dos Prazeres shanty towns, in the central district of the city of Rio de Janeiro. According to the information received by the Commission, as a result of a police operation with the participation of the Special Operations Battalion (BOPE) and the Riot Troops (*Batalhão de Choque*), 15 young inhabitants of the region were murdered: the largest number of deaths in a police operation in Rio de Janeiro in the past 12 years⁴⁹⁴. In addition, there was news of the murder of at least 9 people on January 20, 2019, in Marambaia, in the city of Itaboraí, a metropolitan area in the state of Rio de Janeiro. The massacre is said to have taken place following the murder of military police officer Rodrigo Marques Paiva⁴⁹⁵.
323. More recently, the Commission condemned the operation by São Paulo state military police in the Paraisópolis shanty town, on December 1, 2019, which reportedly triggered panic and a stampede among party-goers at a street “funk dance”, with people trampling on each other as they tried to evacuate the site, leaving 9 dead, including two adolescents, one aged 14 and the other 16, as well as 7 people injured⁴⁹⁶.
324. The IACHR also underscored that the social consequences of the effects of institutional violence are devastating for families and greatly weaken the social fabric in communities. In that context, the victims and their family members who met with the IACHR during the visit described the terrible impact on their lives in the aftermath of police violence. That sentiment, combined with the impunity surrounding human rights violations perpetrated by State agents, generates a “culture of violence” and fosters an environment of mistrust of State institutions as well as lack of security.
325. The Commission observes that, as in the case of 26 people executed in the Nova Brasília shanty town, in Rio de Janeiro in 1995 and 1996, the police use an act of resistance pretext that provides impunity (“*excludente de ilicitude*”) and places the

493 Federal Public Ministry, *Incidente de Deslocamento de Competência n. 10 (Chacina do Cabula)*.

494 IACHR, Press Release. *IACHR Concerned about Killings Committed by Police Officers in Brazilian Urban Contexts*, April 25, 2019.

495 IACHR, Press Release. *IACHR Concerned about Killings Committed by Police Officers in Brazilian Urban Contexts*, April 25, 2019.

496 IACHR, *IACHR Condemns Police Raid that Led to the Deaths of Nine People in Paraisópolis, Brazil, and calls on the State of Brazil to review its security protocols with a human rights focus*, December 6, 2019.

burden of responsibility on how the victims responded as a way to cover up police crimes⁴⁹⁷. On this matter, the IACHR stresses that, by virtue of a joint resolution of the Higher Police Council (Conselho Superior de Polícia), a Federal Police body, and the National Council of Civilian Police Chiefs, published on January 4, 2016⁴⁹⁸, deaths such as those caused in May 2006, in São Paulo, like those in Nova Brasília, ceased to be registered as “acts of resistance” and instead were characterized as “homicides resulting from opposition to police intervention.” The IACHR commends the State for this change, as it permits greater transparency and social oversight in connection with the security forces. Nevertheless, the IACHR wonders whether the new terminology might still trigger a presumption that the victim is to blame, because of the supposition that he or she was opposing or resisting police operations⁴⁹⁹.

- 326.** The Commission adamantly reiterates that the State is obliged to respect and guarantee everyone’s right to life and bodily integrity; as well as to investigate, try, and punish human rights violations, in addition to making comprehensive reparation to the victims and their families. The IACHR will address these obligations in a chapter devoted specifically to impunity.
- 327.** The Commission adds, moreover, that in the widespread stepped-up violence practiced by police in Brazil jeopardizes the lives of other public security personnel as well, inasmuch as they exacerbate violence during confrontations with suspects, thereby exposing those professionals to indiscriminate reprisals⁵⁰⁰. On this, the Commission received information that, in 2018, 343 policemen were killed in Brazil (10.4% fewer than in 2017), a large majority of them when they were off duty⁵⁰¹. During its visit to Rio de Janeiro, the Commission met with family members of police victims of violence, who reported that they were not received the support they needed from the State. Here, the IACHR issues a reminder that the State has an obligation to investigate and punish all crimes, including those committed against police officers.
- 328.** The abundant information received during the IACHR visit, as well as that garnered at public hearings⁵⁰² and through other mechanisms used by the Commission, justify the

497 United Nations Human Rights Council, Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston - Follow-up to country recommendations – Brazil, May 28, 2010.

498 Federal Police Department, Higher Police Council [Conselho Superior de Polícia], Resolução conjunta n.º 2, of October 13, 2015.

499 Amnesty International, Nota Pública: Resolução do Conselho Superior de Polícia mantém a lógica dos “autos de resistência”, January 5, 2016.

500 Human Rights Watch. Brazil: Police Abuse Unabated, January 18, 2018

501 Fórum Brasileiro de Segurança Pública, Anuário Brasileiro de Segurança Pública 2019, 2019.

502 On this, see: Inter-American Commission on Human Rights, Public Hearings during the 175th period of sessions: Police violence against the Population of African Descent in Rio de Janeiro and São Paulo, Brazil; 173rd period of sessions: Fight Against Torture in Brazil, 9/27/2019; 168th period of sessions: Reports of Human Rights Violations in the context of federal intervention in Rio de Janeiro, 5/8/2018; 167th period of session: Allegations of Extrajudicial Executions by the Police in Brazil, 3/1/2018; 165th period of sessions: Citizen Security and Human Rights Situation in the Favelas of Rio de Janeiro, Brazil, 10/23/2017; 154th, 168th period of sessions: Reports of Killings of Young People of African Descent in Brazil, 3/20/2015

conclusion regarding the involvement, and even actions by, State agents in violations of the rights to life (Article 4.1 of the American Convention on Human Rights), humane treatment/personal integrity (Article 5), and judicial guarantees (Article 8), established by the inter-American human rights system. Especially as regards the first of these rights, the Commission reiterates that the right to life is the most fundamental of all human rights, since it is the prerequisite for the exercise of all the others. Accordingly, Article 4 of the American Convention declares that “Every person has the right to have his life respected (...). No one shall be arbitrarily deprived of his life.” The Convention establishes with absolute clarity that the right to life cannot be suspended under any circumstance, even in case of blatant confrontation, such as organized crime.

- 329.** The IACHR emphasizes that those violation tend to be to the detriment of specific groups, such as persons of African descent and persons living in poverty and extreme poverty. Thus, considering the extremely serious violations of human rights by inter-American standards regarding the use of force; the systematic, continuous, and massive use of individual and collective extrajudicial executions with the participation of the security forces, the Inter-American Commission stresses that the State could potentially be held internationally responsible for committing crimes against humanity⁵⁰³.
- 330.** Finally, the IACHR reiterates that the use of force must be based on principles of law, absolute necessity, and proportionality. In other words, the use of force is an option of last resort that must be limited both qualitatively and quantitatively and used only to avoid a situation that is worse than that which led to intervention by the State, not as a form of lethal social control. Accordingly, the Commission recalls the obligation of the State to identify, try, and punish those responsible for those and other similar deeds, in an expeditious and exhaustive manner.

3. Militarization of public security

- 331.** In Brazil, a major segment of public security follows a militarized approach, with a large force responsible for overt policing and maintaining public order, that is to say, one that is in closer contact with the population. Following the return to democracy in Brazil, all security operations were placed under the control of civilians, even though the country’s Constitution continued to provide for organization of a military nature (the military police), which reportedly is responsible for much of the violence and many of the deaths at the hands of State agents in Brazil⁵⁰⁴. In addition, the IACHR notes with pro-

503 Interdisciplinary Group of Independent Experts , *IGIE Report on Nicaragua – Report on Acts of Violence Committed between April 18 and May 30*, 2018, p.p. 226 and 226.

504 NY Times, “License to Kill: Inside Rio’s Record Year of Police Killings”, May 18, 2020; see also: G1, *Conselho da ONU recomenda fim da Polícia Militar no Brasil*, May 30, 2012; United Nations Human Rights Council, *Universal Periodic Review – Brazil*, July 9, 2012; Istoé, *Brasil diz não à ideia da ONU de pôr fim à PM*, September 19, 2012.

found concern the trend toward the militarization of security policies in Brazil.

- 332.** The Inter-American Commission takes note that Article 142 of the Constitution of the Federative Republic of Brazil provides that the exercise of police authority by the armed forces is exceptional and temporary and can only be authorized, exclusively by the President of the Republic, in grave circumstances of disruption of law and order; it must also end as soon as normality is restored. Nevertheless, the IACHR has ascertained that it has become common for the Federal Government to issue “Guarantees for Law and Order” (GLO) decrees. Between 1992 and 2019, on average, 4.82 GLO decrees were issued per year, 16.9% of which were issued to contain urban violence and 27.9% were to cover large events, many of them involving popular protests and demonstrations⁵⁰⁵.
- 333.** The IACHR observed with the utmost concern that, on February 16, 2018, the Brazilian Government issued Decree No. 9.288⁵⁰⁶, ordering federal intervention in Rio de Janeiro and handing over the command of the state’s public security forces to an Army general. In that regard, during its visit, the Commission was told about the Strategic Plan of the Rio de Janeiro Federal Intervention Cabinet (GIF-RJ), involving a series of emergency and structural courses of action aimed at bolstering the capacity of both the police and the penitentiary system. For its part, the State underscored that the intervention plan included human rights-related activities, such as the recruitment or health professionals and donation of medical supplies; and it claimed that there was a marked improvement in indicators for crimes against life and property.
- 334.** In contrast, the Intervention Observatory, coordinated by the Security and Citizenship Study Center (CESeC) of the Cândido Mendes University reached the conclusion that implementation of the Strategic Plan resulted in worrisome developments, such as still high levels of indices measuring violence, such as shoot-outs, massacres (*chacinas*), and violent deaths and deaths resulting from actions by State authorities. Between February and December 2018, there were 6,041 deaths, 1,375 of them at the hands of the police, and more than 100,000 robberies⁵⁰⁷. Homicides declines by 8.2%, but deaths resulting from police actions increased by 33.6%⁵⁰⁸. Apart from that, no progress was made with fighting organized crime as a result of the changes in police management, integration, and intelligence. In the same vein, a study organized by the Rio state Ombudsperson (*Ouvidor da Defensoria Pública*), based on 300 reports by inhabitants of the communities, identified 30 types of violation systematically committed by State authorities during the Federal Intervention, including robbery

505 Ministry of Defense, *Histórico de Operações de GLO 1992-2019*.

506 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, Decree N° 9.288, February 16, 2018.

507 CESEC, *Intervenção Federal: um modelo para não copiar*, pág. 5.

508 CESEC, *Intervenção Federal: um modelo para não copiar*, pág. 5.

and theft, damage to property, sexual violence, extortion, threats and physical assault, executions, random shots fired, and so on⁵⁰⁹.

335. In 2018, the IACHR and the United Nations High Commissioner for Human Rights (UNHCHR) expressed deep concern regarding the promulgation and possible consequences of Decree No. 9.288/2018, which authorized federal intervention using the armed forces in Rio de Janeiro. In that regard, they warned about the disproportional impact that a militarized public security intervention could have on human rights, especially those of persons of African descent, adolescents, and those living in poor areas⁵¹⁰. In addition, they issued a reminder that the State should restrict as far as possible the use of the armed forces to control domestic unrest. This is because the training the military receive is designed to inflict military defeat on an enemy, not to promote the protection and oversight of civilians.

336. Paralelamente às sucessivas operações de GLO e ao experimento de intervenção federal-militar no Rio de Janeiro, o Brasil aprovou a Lei N.º. 13.491, a qual emendou o Código Penal Militar para prever que os homicídios dolosos de civis cometidos por agentes das forças armadas sejam julgados por tribunais militares⁵¹¹. Durante os debates parlamentares acerca da matéria, a Comissão enviou manifestação às autoridades do país, recordando o estabelecido pela Corte Interamericana no marco da sentença do Caso Gomes Lund ("*Guerrilha do Araguaia*"), sustentando que o estabelecimento de jurisdição militar para denúncias de violações de direitos humanos cometidas pelos militares, especialmente quando contra civis, impede a possibilidade de investigação independente e imparcial conduzida por autoridades não vinculadas à hierarquia de comando das próprias forças de segurança⁵¹². Furthermore, the IACHR was apprised of the filing of an unconstitutionality lawsuit (*Ação Direta de Inconstitucionalidade - ADI*) against provisions in the aforementioned law, supported by the Office of the Attorney General of the Republic (*Procuradoria Geral da República*)⁵¹³ and by various civil society organizations⁵¹⁴.

337. In accordance with the doctrine and constant jurisprudence of the inter-American system for the protection of human rights, it must also be reiterated that military

509 Defensoria pública do Estado do Rio de Janeiro [Rio de Janeiro State Ombudsperson's Office], *Comunidades do Rio sofrem 30 tipos de violações durante Intervenção*, September 27, 2018.

510 IACHR, Press Release No. 47/2018, *Brazil: OHCHR and IACHR express concern over federal intervention in Rio de Janeiro*, March 13, 2018.

511 Office of the President of the Republic, *Law N.º. 13.491*, October 13, 2017.

512 I/A Court of H.R., *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, Judgment of November 24, 2010, Par. 257.

513 Federal Public Ministry, *Ação Direta de Inconstitucionalidade 5901*, 2018.

514 Instituto Brasileiro de Ciências Criminais, *IBCCRIM pede para atuar como amicus curiae em ADI sobre a lei que transfere para a Justiça Militar o julgamento de oficiais das Forças Armadas acusados da prática de crimes dolosos contra a vida*, March 13, 2018.

jurisdiction not only poses serious problems with ensuring impartial and independent administration of justice; military criminal courts are also not the competent jurisdiction for investigating, prosecuting, and punishing the perpetrators of human rights violations. Indeed, in its report on the case of *Vladimir Herzog v. Brazil*, the IACHR emphasized that military jurisdiction should be applied only when military criminal legal rights are affected, during the particular functions of State defense and security, and never to investigate human rights violations⁵¹⁵.

338. Along those same lines, the Commission has constantly stated that: “[t]he military criminal justice system has certain peculiar characteristics that impede access to an effective and impartial remedy in this jurisdiction. One of these is that the military jurisdiction cannot be considered a real judicial system, as it is not part of the judicial branch, but is organized instead under the Executive. Another aspect is that the judges in the military judicial system are generally active-duty members of the Army, which means that they are in the position of sitting in judgment of their comrades-in-arms, rendering illusory the requirement of impartiality, since the members of the Army often feel compelled to protect those who fight alongside them in a difficult and dangerous context”⁵¹⁶.

339. The very serious concerns raised in this section may be illustrated by the event that occurred on April 7, 2019, when the vehicle carrying musician Evaldo Rosa dos Santos, a man of African descent, accompanied by friends and family members, was hit by 83 shots fired by an army detachment in Guadalupe, in the northern part of Rio de Janeiro. Apart from Evaldo, Luciano Macedo, a man who collected material for recycling, was also killed, when he tried to help those inside the vehicle⁵¹⁷.

340. At the time, the Army issued a note that the military had faced “an attack already under way” and had responded to shots fired by criminals on board the vehicle. The findings of experts, testimony and even videos recorded by locals living nearby⁵¹⁸ showed that in fact the vehicle’s occupants had been a family on their way to a baby shower. Later, the Army claimed that its first note had been issued on the basis of “initial information transmitted by a patrol” and that there had been a “mix-up” with another vehicle which had indeed been involved in the criminal attack. Initially, 10 soldiers present during the action were detained⁵¹⁹. However, on May 23, 2019, they were released by the Higher Military Court (STM). Apart from the completely disproportionate use of force which killed Evaldo and Luciano and the race and class

515 IACHR. *Report No. 71/15 Case 12.879, Report on the Merits Vladimir Herzog et al v. Brazil*, October 28, 2015, par. 174.

516 IACHR. *Report No. 71/15 Case 12.879, Report on the Merits Vladimir Herzog et al v. Brazil*, October 28, 2015, par. 176.

517 *O Globo, Os 257 tiros contra o carro de Evaldo dos Santos Rosa*, May 23, 2019.

518 The Intercept Brasil Channel on Youtube, *80 tiros: Exército fuzilou o carro de uma família em Guadalupe*, April 8, 2019.

519 The Guardian, *Brazil: 10 soldiers arrested after firing more than 80 bullets into family’s car*, April 8, 2019.

bias possibly underlying the operation, the Army also even attempted to justify what happened⁵²⁰. The case therefore reinforces the Commission's doubts about the ability of military courts to judge the conduct of their peers impartially.

- 341.** It is therefore worth reiterating the criticism of militarization of public security and the new rules governing indictment of military personnel for the deaths of civilians, especially in cases characterized by institutional racism, bearing in mind the risks they pose for human rights and their negative impacts on citizen security. The IACHR also issues a reminder regarding its recommendations to the State in connection with Case No. 12.440 (Wallace de Almeida), to “Adopt and implement measures to educate court and police officials to avoid actions involving racial discrimination in police operations, in investigations, in proceedings and in criminal convictions”⁵²¹.
- 342.** Likewise, the IACHR was told about bill No. 9432/17, already approved by the Constitution and Justice Committee of the National Congress, which proposes amending the Military Criminal Code to use a new and broader concept of “self-defense” (“*legítima defesa*”). Reportedly, the new proposal adopts the concept of self-defense contained in Item IV of the Anticrime Bill, which provides for: 1. allowing judges to halve the sentence, or refrain from imposing it, if the excessive act undertaken in self-defense, “stems from excusable fear, surprise, or violent emotion (proposed new language for Article 23 of the Criminal Code); 2. including among the self-defense hypotheses action taken by police “in an armed conflict or risk of armed conflict” and in the presence of hostages (proposed new language for Article 25 of the Criminal Code; and 3. allowing the police authority not to arrest or the judicial authority to provisionally release those accused of crimes apparently committed in “self-defense” (proposed new language for Articles 309 and 310 of the Code of Criminal Procedure)⁵²². Moreover, on December 23, 2019, Decree No. 10.189 was approved, pardoning policemen who, in the performance of their duties or as a result of it, have committed a crime using unintentionally excessive force (*com excesso culposos*)⁵²³.
- 343.** On this, the IACHR received statements from several civil society organizations and the legal profession, warning of the risk that these changes create a kind of “license to kill” for the police and private individuals. To address those views, the IACHR held

520 UOL, *80 tiros: STM decide soltar militares presos por mortes de músico e catador*, May 23, 2019; In the STM judgment, Magistrate (Ministra) Maria Elizabeth Rochastated verbatim: Using a lie, which compromised the Eastern Military Command and the very credibility of the Army, they pressed for the case file to show three photographs of vehicles that had been hit. Those vehicles did indeed show bullet marks. However, those vehicles had nothing to do with the ones used in the operation. In other words, the military pretended, using information that had nothing to do with the case, that they had been targeted in the operation.”

521 IACHR, *Report N° 26/09 - Case 12.440 Admissibility and Merits (Publication) Wallace de Almeida*, 2009, item 4 of the recommendations.

522 Chamber of Deputies, *CCJ aprova mudanças no Código Penal Militar com novo conceito de legítima defesa*, November 28, 2019.

523 Office of the President of the Republic, *Decree N° 10.189*, December 23, 2019.

a public hearing, in which it also heard the State's opinion. That opinion sought to justify the above measures based on the sharp increase in lethal violence (*explosão da violência letal*) and the need to deter the commission of such crimes, and even mentioned economic theories of crime in support of its views.

- 344.** For its part, the Commission underscores that the militarization process and pervasive patterns of violence encouraged by that rationale also create risks for the public servants responsible for citizen security and for their families. The data show that 2,996 security force personnel were killed between 2009 and 2016, both on and off duty⁵²⁴. During its visit, the IACHR met with family members of security force agents who voiced their concern that those crimes were going unpunished. The Commission reminds the State of the need to adopt measures to enhance the professional qualifications of State agents responsible for citizen security as well as a public policy mindful of the security and rights of the State agents responsible for enforcing it.
- 345.** The IACHR reaffirms that, in accordance with the citizen security paradigm, security should be seen not just as a byproduct of the punishment of crimes, even in self-protection (*inclusive por autotutela*), but also, and mainly, as a consequence of the creation of conditions that are more conducive to peaceful coexistence among citizens through interventions that combine repressive and preventive actions, along with public policies that coordinate between different levels and organs of the State, with society being brought into the dialogue⁵²⁵. Accordingly, the IACHR perceives potential incompatibility between that paradigm and the pattern of institutional violence, militarization of security operations, restoration of a special jurisdiction for military who kill civilians, and making it easier for private agents to bear arms, that the Commission found in the State during its visit (see, below, a specific instance of this last trend).
- 346.** Likewise, the IACHR reiterates that States have an obligation to guarantee security and safeguard public order and therefore have the power to use force to guarantee those goals. Nevertheless, that authority is limited by the duty to respect human rights, the enjoyment of which entails not just the obligation of the State not to violate those rights, but also the requirement to protect and preserve human rights. Therefore, actions by the State undertaken to comply with its security obligations must ensure that any risk to fundamental rights is minimized and must guarantee strict compliance with international principles and standards. The IACHR thus asks the Brazilian State to reflect on the extent to which its public security policies are in line with those principles and standards.

524 Ipea - Zilli, Luís. *Letalidade e Vitimização Policial: características gerais do fenômeno em três estados brasileiros. Nº 17. 71-80*, 2018.

525 IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II., 2009, p. 7-8.

4. Arms control

347. The IACHR notes an abundance of evidence that the prevalence of violence in Brazil is closely tied to the availability of firearms and access to them. According to Ministry of Health data, since 1990, most homicides in the country involve the use of firearms and in 2017 homicides using them accounted for more than 70% of the total. The percentage of cases involving the use of firearms against men was 76.9; and against women it accounted for 53.8%⁵²⁶. The IACHR also draws attention to different percentages for the use of firearms in the indicators of gender-based violence against women, i.e. femicides. Thus, the figures show, particularly since 2015, a growing tendency for women to be killed in the home with the use of a firearm⁵²⁷.

348. The IACHR recalls that in 2003 Brazil managed to pass progressive arms control legislation (Law No. 10.826), limiting access to arms to State agents with police authority and to those who could prove that they were really necessary, based on strict requirements⁵²⁸. The Commission underscores the fact that evidence was found that that legislation was able to significantly rein in the increase in intentional violent deaths in Brazil. It was estimated that, without that legislation, the homicide rate would have been 12% higher than that recorded after the law was passed⁵²⁹. In that regard, the Commission urges that the State continue to pursue policies geared to reducing the number of firearms in society, while, in addition, enforcing strict arms control, be it by improving registration system, or buttressing border controls and fighting international arms trafficking.

349. According, the IACHR notes with concern the promulgation of a series of decrees by the State aimed at making it easier for a number of groups of citizens to own arms, as well as Bill No. 3723/19, which seeks to relax current rules on bearing arms⁵³⁰. The Inter-American Commission notes again that those changes are being accompanied by a broadening of the scope of self-defense, which, in the Commission's opinion, could signal self-protection (*autotutela*) and a downsizing (*despublicização*) of security policies.

350. In this regard, the Commission notes that during the public hearing on the Criminal System and Allegations of Violations of the Rights of African descendants in Brazil, the State presented information to the effect that the decrees promulgated do not

526 Ipea and FBSP, *Atlas da Violência 2019*. 2019. P. 42.

527 Ipea and FBSP, *Atlas da Violência 2019*. 2019. P. 42.

528 Office of the President of the Republic, *Decree Nº 10.826*, December 22, 2003.

529 Daniel Cerqueira and João M. P. de Mello, Evaluating a National Anti-Firearm Law and Estimating the Causal Effect of Guns on Crime in: Discussion Paper No. 607, Rio de Janeiro: Department of Economics at the Catholic University in Rio de Janeiro (PUC/RJ), 2013.

530 Chamber Deputies, *Plenário pode votar projeto que amplia porte de armas*, September 25, 2019.

contravene the provisions of Law No. 10.826/03. It argued that there was no correlation between access to firearms and violence, given that Scandinavian countries, which have low rates of violence, have a large number of citizens who own firearms⁵³¹.

- 351.** Moreover, with regard to the possibly dire effects of facilitating access to firearms, the Commission recalls, in particular, the so-called “Suzano Massacre” of March 2019, when two youths entered the Raul Brasil public school, in the municipality of Suzano, and opened fire against pupils, teachers, and school personnel, leaving 10 dead and 11 wounded⁵³². Investigation of these crimes ascertained that most of the weapons used were firearms (especially the caliber 0.38 Taurus revolver), three of them bought from a truck driver, a security guard (*um segurança*), and a member of a rifle club⁵³³.
- 352.** It has also been ascertained that those measures are questioned by many in Brazil, even as regards their legality, as can be seen in opinion polls⁵³⁴, statements by civil society organizations⁵³⁵, parliamentary reactions⁵³⁶, and lawsuits filed by the Federal Public Ministry⁵³⁷. There are also studies showing that for every 1% increase in the number of firearms in circulation in the country, there is a 2% increase in the homicide rate⁵³⁸. The IACHR joins these various voices speaking out about the risks involved in facilitating citizens’ access to firearms, bearing in mind the specific and well documented part that they play in the dynamics of violence in Brazil, and it urges the Brazilian State to reconsider the above-mentioned measures and other measures and proposals currently being toyed with and to take into account that they contravene regional human rights standards and parameters.

531 IACHR, 172nd period of sessions. Public Hearing: *Criminal System and alleged violations of the rights of African descendants in Brazil*, May 9, 2019.

532 BBC, *Um ano após ataque em escola em Suzano, túmulo de assassino recebe visitas de admiradores*, March 13, 2020.

533 Folha de São Paulo, *Investigação de massacre de Suzano aponta fragilidade de controle de arma e munição*, July 8, 2019.

534 VEJA, *Datafolha, 64% dos brasileiros são contra a posse de armas*, April 11, 2019; G1, *Ibope, 73% são contra a flexibilização do porte de armas e 26% são a favor*. June 3, 2019.

535 G1, *Novo decreto de porte de armas é criticado por entidades*. 2019.

536 Federal Senate, *Projeto de Decreto Legislativo nº 233, de 2019*, 2019; [Draft legislative decree No. 233, of 2019.] Suspends Decree No. 9.785, of May 7, 2019, which regulates Law No. 10.826 of December 22, 2003, with respect to the purchase, recording, registration, possession, bearing, and marketing of firearms and ammunition, and to the National Weapons System and the National Military Management of Weapons System. Adopted on 6/18/2019.

537 O Globo, *MPF pede à Justiça para suspender trechos dos decretos das armas de Bolsonaro*, July 10, 2019.

538 Daniel Cerqueira, *Causa e consequências do crime no Brasil*. Doctoral thesis – Department of Economics, Catholic University of Rio de Janeiro, Rio de Janeiro, 2014.

5
IMPUNITY

CHAPTER 5 IMPUNITY

A. IMPUNITY AND DENIAL OF JUSTICE

353. During its visit, the IACHR received abundant information regarding the impunity of persons responsible for human rights violations. While, on the one hand, the Commission took note of the high levels of incarceration and large number of murders committed in the population as a whole, it was also able to ascertain the huge number of deaths at the hands of State agents. However, with respect to murders committed by the police and security forces, the IACHR was able to observe high levels of impunity compared to that enjoyed by other perpetrators of crimes in Brazil. In those cases, the victims or family members of victims of human rights violations had no access to justice. In particular, the IACHR is concerned to see how that impunity is perpetuated by corrupt institutional practices and structures that prevent justice being done in these cases and undermine the rule of law and democracy.⁵³⁹

354. The inter-American human rights system has consolidated doctrine and case law regarding the role of the State with respect to guaranteeing the human rights recognized in regional instruments and its responsibility for fighting impunity. In part, that posture (*construção*) is due to the subsidiary nature of the system vis-a-vis the domestic justice system, which means that most of the cases examined by the Commission and heard by the Court denounce precisely the failure to investigate, prosecute, and punish those responsible for human rights violations, which renders the State internationally responsible.⁵⁴⁰ Likewise, the Commission has underscored that impunity makes people afraid to report crimes suffered, thereby perpetuating cycles of violence and the persistence of criminal organizations.⁵⁴¹

355. In the cases judged in the inter-American system, the Court found Brazil responsible for violating the right to judicial guarantees and protection upheld in Articles 8 and 25 of the American Convention on Human Rights. It is worth highlighting the recent rulings by the Inter-American Court in the cases of Vladimir Herzog⁵⁴² and Gomes Lund et al⁵⁴³ on the total immunity for the crimes against humanity perpe-

539 IACHR, *Corruption and Human Rights in the Americas: Inter-American Standards*, OEA/Ser.L/V/II. Doc. 236, December 6, 2019. Par. 127.

540 I/A Court of H.R., *Case of favela Nova Brasília v. Brazil*, Judgment of Monday, February 05, 2018, Par. 242.

541 IACHR, *Situation of Human Rights in Mexico*, OEA/Ser.L/V/II. Doc. 44/15, December 31, 2015. Par. 412.

542 I/A Court of H.R., *Case of Herzog et al v. Brazil*, Judgment of March 15, 2018.

543 I/A Court of H.R., *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*, Judgment of November 24, 2010.

trated during Brazil's military dictatorship and the country's refusal to comply with its resolutions, which isolated Brazil from other countries in the region that revised their amnesty laws and prosecuted those responsible for human rights violations.

- 356.** Here, the Commission reiterates the doctrine and jurisprudence of the organs of the inter-American system that “impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.”⁵⁴⁴ Thus, failure to investigate human rights violations and to indict the perpetrators transcends the individual right of victims and their next of kin to justice and truth, because it becomes an incentive to repeat those violations.
- 357.** The IACHR received information to the effect that there is a culture of impunity surrounding the modus operandi of public security institutions and the justice system ever since Brazil's civil-military dictatorship, especially with regard to State agents committing human rights violations. That culture would appear to be part of an authoritarian legacy, which persists to this day in the form of rules, procedures, and practices that survived the transition to democracy and are manifested mainly in the actions of police and/or military authorities that, despite being officially contrary to the rule of law, end up being endorsed by the population or even by State authorities themselves.
- 358.** One of this culture's most serious manifestations is the use of lethal force by State security organs and the impunity surrounding those crimes, which ends up influencing people's assessment of the quality of democracy and the rule of law and leads to increasing mistrust of security and justice institutions.⁵⁴⁵ In this regard, the IACHR notes that recent surveys point to a decline in the population's trust in the Judiciary and show that in 2917 only 24% of the population expressed trust in the justice system.⁵⁴⁶
- 359.** Accordingly, the IACHR maintains that it is vital for States to combat impunity in respect of human rights violations as a core feature of their political agenda, which needs to be espoused by State bodies across the board, and to accompany that agenda with a budget appropriation that will enable justice system organs to have the human and technical resources and the organizational structure they need to be able to investigate, prosecute, and punish those responsible for human rights violations. In its report on Citizen Security and Human Rights, the IACHR stressed that “the shortages in this area have always been one of the causes of impunity and of the mistrust in the system of the administration of justice in the Hemisphere.”⁵⁴⁷

544 I/A Court of H.R., *Case of the “White Van” (Paniagua-Morales et al.) v. Guatemala*, Judgment of March 8, 1998. Series C N^o 37, par. 173.

545 FGV, 2015.

546 Getúlio Vargas Foundation, *Relatório ICJBrasil 1o semestre/2017*, 2017, p. 14.

547 IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57, approved on December 31, 2009, par. 112.

- 360.** As noted in Chapter 4, Brazil has high homicide and lethal force rates in police operations. Although there are not enough systematically recorded data to establish nationwide how many of those crimes were fully elucidated, the approximation most often used indicates the percentage of inquiries filed with the justice system, which is eight out of every hundred homicides, which suggests that between 92% and 95% of cases go unpunished.⁵⁴⁸
- 361.** Given that this indicator refers to cases denounced, it could be surmised that the number of convictions is even lower, and that the impunity surrounding these crimes is very high indeed. The report of the Parliamentary Committee of Inquiry on Acts of Resistance (deaths occurring during police operations) produced at the behest of the Legislative Assembly of Rio de Janeiro states that 98% of cases occurring between 2010 and 2015 were shelved.⁵⁴⁹
- 362.** That was typical of the cases that the IACHR got to hear about as a result of individual complaints and of the cases presented by civil society organizations and the State itself during the on-site visit, some of which are highlighted below. In Rio de Janeiro, the Commission received information regarding the impunity surrounding many of the massacres in that city, such as the Massacre of Acari, where the investigation was shelved 25 years after the crime without anyone being charged; and the Borel Massacre, which, after 16 years, has yet to be punished. The same is true of the massacres in Favela Nova Brasília, recently ruled on by the Inter-American Court, in respect of which no judgment has yet been handed down in Brazil, 20 years after it happened.⁵⁵⁰
- 363.** During its visit to São Paulo, the IACHR also received information about the executions carried out in May 2006,⁵⁵¹ both currently being processed by the IACHR, where, despite more than 500 deaths, no one has been convicted in a final court decision nor have those responsible been punished. The IACHR was likewise informed about the Osasco, Barueri, and Itapevi massacre on August 13, 2016, in which 17 people were murdered and another 5 wounded. Reportedly, a complaint was filed by the Public Prosecutors' Office of the state of São Paulo and a conviction handed down by a Juried Court. However, that ruling was annulled by the State Court of Justice (*Tribunal de Justiça do Estado*) and the case had to be re-tried.⁵⁵² The IACHR was also told of other massacres in the past 10 years that failed to end in final judgments convicting those responsible.

548 Conselho Nacional do Ministério Público (National Council of the Public Prosecutors' Office) *Relatório Nacional da Execução da Meta 2: um diagnóstico da investigação de homicídios no país*, 2012. P. 22.

549 G1, *Relatório final da CPI dos Autos de Resistência da Alerj é aprovado*, July 28, 2016.

550 I/A Court of H.R., *Case of favela Nova Brasília v. Brazil*, Judgment of Monday, February 05, 2018.

551 Conectas, *Violência de Estado no Brasil: uma análise dos Crimes de Maio de 2006 na perspectiva da antropologia forense e da justiça de transição*, May 24, 2018.

552 Conjur, *TJ-SP anula julgamentos dos 73 policiais condenados por Massacre do Carandiru*, September 27, 2016.

- 364.** A paradigmatic case of impunity is that involving the Carandiru Complex, described in Report No. 34/2000 of this Commission where, despite an international outcry calling for investigation, prosecution, and indictment, to this day (27 years after the facts) no one has been sentenced for the death of 111 persons deprived of their liberty in the complex, following annulment of the jury in 2016 (*após anulação do Júri nos anos de 2016*).⁵⁵³
- 365.** If that is the pattern of impunity with respect to State violence in urban centers, the ACHR received information to the effect that even more cases of human rights violations go unpunished when they occur in rural areas. Here, the Commission notes that, 24 years after the facts, the execution by police of 271 rural workers and leaders in Eldorado dos Carajás has still not been punished.⁵⁵⁴ Another case is the Corumbiara massacre in Fazenda Santa Elina, in the municipality of Corumbiara, in Rondônia, in 1995. On that occasion, 355 campesinos were tortured, used as shields, and 3 were killed, t of them executive by police and private security guards hired by landowners. The IACHR notes reports that, even though final judgment in this case was handed down on September 6, 2000, reportedly no campesino's testimony was taken and, of the 12 policemen accused, only 3 were found guilty.⁵⁵⁵
- 366.** The Commission voices its concern at the lack of systematically compiled data on the percentage of those crimes that have been elucidated, which would allow for greater transparency regarding actions taken by states with respect to investigations and enhance social oversight of those actions. Here, the IACHR acknowledges the importance of passing Law No. 13.604/18, which instructs states to furnish such data to the National Information System on Public Security, Prisons, and Drugs - SINESP. However, it notes that, as of the drawing up of this report, the data were not available for consultation by the general public.
- 367.** Finally, the IACHR notes that the impunity surrounding those crimes is at odds with the fact that Brazil has the world's third largest prison population. According to information received during the on-site visit, those incarcerations, however, are for the most part (72%) the result of persons caught in flagrante, with no need for prior investigation and almost exclusively based on often subjective and discretionary testimony by police authorities.⁵⁵⁶ In this regard, the Commission draws attention to reports that there is a punishment process shaped by structural discrimination, which corroborates the existence of institutional racism, instead of focusing on police investigation and prompt judicial processing.

553 IACHR, Report Nº 34/00, Case 11.291 – Carandirú v. Brazil, April 13, 2000.

554 Amnesty International, *Massacre de Eldorado dos Carajás: 20 anos de impunidade e violência no campo*, April 15, 2016.

555 Mesquita, H. A., *Corumbiara: o Massacre dos Camponeses. Rondônia, 1995.*, Doctoral thesis in Human Geography. FFCLH/USP. São Paulo. 2001.

556 Sou da Paz, *Análise Estatística Criminais do estado de SP*, 2017.

- 368.** Given the dearth of investigation, prosecution, and conviction encountered by the IACHR during its visit, it is necessary to reiterate the constant doctrine and jurisprudence of the organs of the inter-America system insisting that the State has a duty to investigate every instance of a violation of the human rights protected by the American Convention on Human Rights.⁵⁵⁷ That duty derives from the general obligation to respect rights envisaged in Article 1.1 of the Convention and from the right to judicial guarantees and effective judicial protection of rights established in Articles 8 and 25 of the same instrument. Indeed, the right of victims and their family members to see justice done in connection with human rights violations stems precisely from the aforementioned provisions of the Convention, which, on the one hand, grant persons the right to a remedy when faced with a violation of their rights, and, on the other, the right to be heard by the competent tribunal, as well as the right to a prompt ruling by the competent authorities.
- 369.** Moreover, that duty requires that the investigation be initiated *ex officio* and without delay, in addition to being conducted impartially and effectively. That means that it cannot be a “mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.”⁵⁵⁸ It is to be noted, furthermore, that this duty is heightened when State agents with a monopoly over the use of force are or could be involved.⁵⁵⁹ Thus, the Commission recalls that the duty to investigate is not breached merely because the investigation does not result in a conviction or because it is impossible to prove the facts despite the efforts undertaken, but rather because the State failed to seek out the truth effectively by means of an *ex officio*, exhaustive, serious, and impartial investigation.⁵⁶⁰
- 370.** According to the information received during the Commission’s on-site visit, the chief obstacle to overcoming the impunity surrounding State violence is to be found at the investigative stage, due to an inefficient and outdated criminal process, lack of appropriate infrastructure, personnel and equipment for the civilian police, in addition to the corruption allegedly found in that institution, as was documented in reports on the May 2006 crimes in São Paulo.⁵⁶¹ The information corroborates studies carried out in Brazil that the scant light thrown on homicides in the country is due to the precarious working conditions, infrastructure, and forensic expertise of the civilian police, in addition to the lack of institutional coordination among the bodies that make up the criminal justice system.⁵⁶²

557 I/A Court of H.R., *Case of Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988, Series C No. 4, par. 176.

558 I/A Court of H.R., *Case of Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988, Series C No. 4, par. 177.

559 I/A Court of H.R., *Case of favela Nova Brasília v. Brazil*, Judgment of Monday, February 05, 2018, Par. 177.

560 I/A Court of H.R., *Case of favela Nova Brasília v. Brazil*, Judgment of Monday, February 05, 2018, Par. 181.

561 International Human Rights Clinic, Justiça Global, *São Paulo sob Achaque: Corrupção, Crime Organizado e Violência Institucional em Maio de 2006*, May 2011. P. 7.

562 Ministry of Justice, National Public Security Secretariat (SeNASP), *Investigação criminal de homicídios, 2014*. P. 26.

- 371.** Surveys also show that the lack of due diligence in investigation already occurs at the preliminary phase, with police teams taking too long to arrive at crime scenes, which are often difficult to isolate and preserve because they are not properly marked off, making the work of experts much less precise and effective.⁵⁶³ Likewise, according to information provided by the State itself, the issues encountered in investigation of crimes in Brazil begin already during the initial investigation with time being lost between the commission of the crime and alteration of the crime scene by security agents.
- 372.** That information matches complaints received from civil society during the Commission's visit, reporting the alteration of crime scenes in several of the cases referred to; problems with the gathering of evidence by authorities who do not form part of the chain of custody in the investigation, such as the military police; partiality in investigations because the authorities responsible for conducting them form part of the State apparatus of the institutions accused of committing the crime; and the need to train police forensic scientists.
- 373.** Some of these issues were also observed by the Inter-American Court in its judgment in the Favela Nova Brasília case, which emphasized that: "the consequence of the lack of diligence is that, with the passage of time, it improperly reduces the possibility of obtaining and submitting relevant evidence that could throw light on the facts and determine liabilities; with which the State contributes to impunity."⁵⁶⁴ Likewise, the Court established that, in order for investigation of human rights violations to be effective, it is necessary to avoid omissions in the gathering of evidence and in the pursuit of logical lines of inquiry.⁵⁶⁵
- 374.** Another matter pointed out by the IACHR during its visit to Brazil and which is worth highlighting has to do with the need for independence and impartiality on the part of the bodies responsible for the investigation. Here, the Commission reiterates the conclusions of the Court that in cases of deaths resulting from police intervention it is essential for the investigating entity to be independent of the officers involved in the incident, which means not their independence in practice but also the absence of any institutional or hierarchical ties.⁵⁶⁶
- 375.** In the same vein, the Commission reminds the State that, when an investigation is conducted into a death in which State agent participation is suspected, that crime is aggravated and requires installing a special commission to investigate the acts committed in order to provide sufficient guarantees of independence and impartiality, as established in the Principles on the effective Prevention and Investigation of Extra-le-

563 Ministry of Justice, National Public Security Secretariat (SeNASP), *Investigação criminal de homicídios*, 2014. P. 28.

564 I/A Court of H.R., *Case of favela Nova Brasília v. Brazil*, Judgment of Monday, February 05, 2018, Par. 181.

565 I/A Court of H.R., *Case of favela Nova Brasília v. Brazil*, Judgment of Monday, February 05, 2018, Par. 180.

566 I/A Court of H.R., *Case of favela Nova Brasília v. Brazil*, Judgment of Monday, February 05, 2018, Par. 187.

gal, Arbitrary and Summary Executions (Protocol of Minnesota).⁵⁶⁷ According to the Court, this means that in cases of deaths during police interventions the investigation must be assigned to an independent body unconnected with the police force involved in the incident, such as a judicial authority of Public Prosecutors' Office (*Ministério Público*), assisted by police personnel, forensic scientists, and administrative staff, who have nothing to do with the security body employing the potential culprit(s).⁵⁶⁸

376. In the Favela Nova Brasília case, the IACHR recalls that, according to information provided by the Brazilian State, the Brazilian Public Prosecutors' Office is empowered by the Constitution to assist with investigations and that competence was confirmed by the Federal Supreme Court in Judgment RE No. 593.727.⁵⁶⁹ The State also reported that Resolution No. 129 of September 22, 2015 regulated the role of the Public Prosecutors' Office in outside oversight of an investigation of a death at the hands of the police.⁵⁷⁰ Moreover, regarding the establishment of the National Public Security and Social Defense Policy (PNSPDS), the Public Prosecutors' Office is authorized in a collaborative capacity to draw up strategies and targets for achieving the goals of that Policy set forth in Law No. 13.675/18.⁵⁷¹

377. Nevertheless, the IACHR received information from civil society sources during its visit to the effect that many professionals at the Public Prosecutors' Office, despite the well-defined functions of the institution, lack the resources with which to conduct complementary investigations and often only act in response to initiatives by family members and friends of victims. That being so, the Commission emphasizes the importance of endowing judicial bodies, such as the Public Prosecutors' Office, with the technical and material wherewithal for them to directly conduct investigations into deaths occurring in connection with police interventions.

378. As regards independence and impartiality, the IACHR was told during its visit about the impact of Law No. 13.491/17, which established that the military justice system was competent to try crimes committed by members of the Brazilian Armed Forces.⁵⁷² In that regard, the IACHR has already stated that the investigation or trial by military tribunals of complaints of human rights violations committed by military personnel, especially alleged violations against civilians, preclude the possibility of an independent and impartial investigation by judicial authorities not connected

567 Office of the United Nations High Commissioner for Human Rights, [Minnesota Protocol on the Investigation of Potentially Unlawful Death \(2016\) - Revised Version of the UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions](#), 2017. Par. 20.

568 I/A Court of H.R., *Case of favela Nova Brasília v. Brazil*, Judgment of Monday, February 05, 2018, Par. 188.

569 Federal Supreme Court, [Special resolution \[Recurso Extraordinário\] N.º. 593.727 Minas Gerais](#), May 14, 2015.

570 National Council of the Public Prosecutors' Office, [Resolution N.º. 129](#), Tuesday, September 22, 2015.

571 Office of the President of the Republic, [Law No. 13.675](#), Monday, June 11, 2018.

572 Office of the President of the Republic, [Law No. 13.491](#), Friday, October 13, 2017.

with the hierarchical chain of command of those same security forces.⁵⁷³

- 379.** The inter-American human rights system has already consistently stressed that military courts are not competent to investigate and, where applicable, prosecute and punish the perpetrators of alleged human rights violations. In countries that still have a military criminal justice system, the scope of that jurisdiction must be restricted and exceptional, relating only to specifically military legal interests (*bens jurídicos*); it must never play a part in the investigation of alleged human rights violations.
- 380.** The Commission takes note, in this respect, of information sent by the Brazilian State stating, for its part, that the Military Justice system is a part of the Judiciary and its members enjoy constitutional prerogatives of independence and impartiality. It adds that its judicial proceedings are adversarial, allow for full defense of the accused, and require substantiation of any decisions handed down. Moreover, military jurisdiction is, according to the State, only for crimes committed by the Armed Forces, not the military police. However, the IACHR received information during its visit of instances of judicial rulings expanding application of the Law and granting military jurisdiction over crimes committed by military police against civilians, as in the case of the disappearance of Davi Fiuza, in the state of Bahia.⁵⁷⁴
- 381.** The Commission also received information about the absence of participation by persons directly affected by a human rights violation in the investigation. Apart from formal impediments to participation, the IACHR was also told that many family members and witnesses are afraid to contribute to the investigation or are intimidated by a line of inquiry geared to blaming the victims, leaving it up to the family members to defend the victim's honor and innocence (*idoneidade moral*) not only before the authorities responsible for the investigation but also in the eyes of society.
- 382.** On that, the Commission notes the information furnished by the State regarding Senate Bill No. 135, of 2018, which, according to that information, seeks to add two items to the Criminal Code for compliance with the reparation measure ordered in the Nova Brasília case regarding the participation of victims in the investigation and proceedings.
- 383.** Here, the IACHR reiterates its doctrine and constant case law on the obligation of the State to guarantee the participation of victims and/or their next of kin in all stages of

⁵⁷³ United Nations Brazil, *ONU e CIDH manifestam preocupação com intervenção federal no Rio*, March 13, 2018.

⁵⁷⁴ In the case of David Fiuza (Bahia), an adolescent who disappeared on October 24, 2014 in a police operation carried out by the Operational Tactical Deployment Squad (PETO) and Special Patrols (Rondas Especiais - Rondesp), in the São Cristóvão district, in the city of Salvador, Bahia, the Bahia Court of Justice ruled on September 18, 2018 that the Military Justice system was competent based on Law N° 13.491/17 and judgment has still not been handed down. On this, see: G1, *Sem solução, desaparecimento de Davi Fiuza completa 5 anos: Não temos nenhuma novidade. É aterrorizante', diz mãe*, October 24, 2019.

the investigation and proceedings, in such a way as to enable them to question, receive information, contribute evidence, formulate allegations, and exercise their rights. The Commission further underscores that that participation is based on the right to have access to justice, the truth, and just reparation. Nevertheless, it needs reiterating that the obligation to investigate, try, and punish pertains to the State and should not depend on procedural initiatives by the victims and/or their family members.

- 384.** One way to enhance the participation of victims and/or their family members would be to strengthen Brazil's Public Defender Offices. During its visit, the IACHR received information, especially in northern states about the shortage of public defenders. Some data point to the lack of some 10,000 public defenders nationwide,⁵⁷⁵ which impairs victims' and family members' access to justice and partly explains the socio-economic and racial composition of Brazil's prison population, which, apart from bearing the brunt of State violence, lacks access to justice during imprisonment.
- 385.** The Commission likewise stressed that bolstering Public Defenders' Offices would also assist the right to financial reparation, particularly given the information that judicial actions for reparation are also hampered by lack of access to justice and denial of justice due to the delaying or shelving of investigations. According to the information received, few families receive compensation, proceedings take years in the judiciary, and often end with reparation either not being granted or granted in very low amounts.⁵⁷⁶
- 386.** The State provided information that shows that, in order to guarantee the effectiveness of criminal investigations or prosecutions Brazil has instituted in 2009 the Program for the Protection of Victims and Threatened Witnesses (PROVITA). The program guarantees protection to those persons who have been coerced or exposed to violence in the framework of a judicial process. As reported, the program works in 13 units of the federation and was responsible for the protection of around 900 people in 2018. In addition, the program was complemented, with the National Victims and Witness Information System (SISNAVT), to receive information from those involved in the protection process⁵⁷⁷.
- 387.** Finally, cases like Nova Brasília, as well as the information available regarding the Corumbiara Massacre and the crimes of May 2006, in São Paulo, point to the existence of corruption in the judicial bodies responsible for getting to the bottom of those crimes. The Commission notes that, as reported in Chapter 2, it is not just cases of massacres involving security agents that go unpunished in Brazil. Impunity is also found in cases of people involved in luring and using slave labor. These features

575 FGV, 2017.

576 Mothers of May Meeting - Defenders' Office; Meeting of Carandiru Massacre next of kin.

577 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 62 e 63.

point to the existence of a deliberately structured system of violence and execution of “undesirables” in Brazilian society, which continues to be protected by a justice system that only acts when it comes to incarcerating those who pertain to those groups exposed to extreme vulnerability. Similarly, and contrary to everything the inter-American system stands for, the Commission notes that the cases of torture and disappearance perpetrated back in the time of the civil-military dictatorship remain unpunished to this day. Apart from some minor reparation, there is still no word of the perpetrators being tried and punished.

388. The Commission deplores the pervasive impunity and denial of justice in Brazil and finds the State internationally responsible for cases of human rights violations in that country in which adequate steps are not taken to guarantee that justice is applied fairly, impartially, and appropriately.

B. GROSS VIOLATIONS OF HUMAN RIGHTS COMMITTED UNDER THE CIVIL-MILITARY DICTATORSHIP

389. Following the establishment of a civil-military dictatorship in 1964, the Brazilian State pursued a policy of repression that culminated in the systematic practice of heinous human rights violations.⁵⁷⁸ According to State data, nearly 50,000 people were arrested in the first few months of the dictatorship and innumerable other serious rights violations were committed during that period.⁵⁷⁹ More than 30 years after the restoration of democracy, the IACHR is concerned that the right of victims and their family members to access justice with regard to those events is still not assured. On the other hand, the Commission welcomes the fact that, in recent decades, institutions have arisen, and measures have been adopted that are geared to acknowledging and making reparation for human rights violations committed in that context.⁵⁸⁰

390. Accordingly, the IACHR particularly underscores the key part played by human rights institutions focusing on the right to memory and truth and especially the Spe-

578 IACHR, Action brought before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al (Guerrilha do Araguaia) (Case 11.552) against the Federative Republic of Brazil, March 26, 2009, paras. 51, 74; IACHR, Report on the Merits N° 71/15, Case 12.879, Merits. Vladimir Herzog et al. v. Brazil, October 28, 2015, par. 55, 57.

579 Secretaria Especial dos Direitos Humanos da Presidência da República, Comissão Especial sobre Mortos e Desaparecidos Políticos, [Special Human Rights Secretariat of the Office of the President of the Republic, Special Commission on Politically motivated Deaths and Disappearances *Direito à verdade e à memória*, 2007, p. 30.

580 IACHR, Action brought before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al (Guerrilha do Araguaia) (Case 11.552) against the Federative Republic of Brazil, March 26, 2009, paras. 232.

cial Commission on Politically motivated Deaths and Disappearances [*Comissão Especial sobre Mortos e Desaparecimentos Políticos*]⁵⁸¹ and the Amnesty Commission.⁵⁸² Both institutions have a mandate to protect the right to memory and truth of the victims of human rights violations and their next of kin, pursuant to commitment undertaken by Brazil in keeping with the Inter-American Convention on the Forced Disappearance of Persons.

- 391.** Apart from that, the IACHR welcomes the Brazilian State initiative which established the National Truth Commission (CNV) through Law No. 12.528 of 2011⁵⁸³. The work of the CNV served to reveal the truth about human rights violations committed during the civil-military dictatorship (*período de exceção*) in Brazil, even though it did not prompt indictments and punishments of the instigators and perpetrators. Based on the work done by the CNV, it is necessary that the Brazilian State proceed to identify those responsible for those acts.
- 392.** Through Law No. 9.140/1995, the Brazilian State officially recognized the death and disappearance of 136 persons listed in the “Dossier” organized by family members and human rights defenders based on 25 years of searching.⁵⁸⁴ The law authorized payment of compensation to family members of the victims and set up the Special Commission on Politically motivated Deaths and Disappearances (CEMDP), tasked with analyzing recognition and compensation in other cases of deaths and disappearances resulting from actions by government agents against persons considered to be political opponents.⁵⁸⁵ According to the Report published by the CEMDP, between 1996 and 2006 another 339 applications were analyzed that referred to the death and disappearance of persons between 1961 and 1988. Of those applications, 221 were approved.⁵⁸⁶
- 393.** In 2002, Law No. 10.559 was passed, regulating the status of Person Granted Political Amnesty (*Anistia Político*) envisaged in the 1988 Constitution and setting up the Amnesty Commission (CA).⁵⁸⁷ From then on, the State proceeded to examine other hypotheses of harm done to persons by politically motivated acts between 1946 and

581 Office of the President of the Republic, Deputy Head of Legal Affairs, *Law N^o 9.140*, of December 4, 1995.

582 Office of the President of the Republic, Deputy Head of Legal Affairs, *Law N^o 10.559*, November 13, 2002.

583 Office of the President of the Republic, Deputy Head of Legal Affairs, *Law N^o 12.528*, Friday, November 18, 2011.

584 Brazil, Law No. 9.140, of December 4, 1995; Special Human Rights Secretariat of the Office of the President of the Republic, Special Commission on Politically motivated Deaths and Disappearances *Direito à verdade e à memória*, 2007, p. 17.

585 Brazil, Law No. 9.140, December 4, 1995.

586 Brazil, Law No. 9.140, of December 4, 1995; Special Human Rights Secretariat of the Office of the President of the Republic, Special Commission on Politically motivated Deaths and Disappearances *Direito à verdade e à memória*, 2007, pp. 40-41.

587 Law No. 10,559, Wednesday, November 13, 2002.

1988 and to grant financial reparation measures and measures to restore rights.⁵⁸⁸ According to data published by the Amnesty Commission, as of September 2014, it had received some 74,440 applications for amnesty and had evaluated 64,500.⁵⁸⁹

- 394.** In 2011, the Brazilian State established the National Truth Commission (CNV) to examine and throw light on the gross human rights violations committed between 1946 and 1988, “with a view to putting into effect the right to memory and to the historical truth and to promoting national reconciliation.”⁵⁹⁰ In its Final Report, the CNV concluded that, particularly in the dictatorial regime established in 1964, gross human rights violations were committed as a result of generalized and systematic action by the Brazilian State, and it ascertained that crimes against humanity had been committed.⁵⁹¹ In addition, the National Truth Commission reported that it had been able to confirm 434 deaths and disappearances of victims of the military regime and stated that “those numbers undoubtedly did not constitute the total number of those killed and disappeared.” Thus, the CNV pointed to serious violations perpetrated against campesinos and indigenous peoples and a pattern of violence that had resulted in a significant number of victims in the country.⁵⁹²
- 395.** The IACHR also takes note of the Right to Memory and Truth Project in the Federal Executive Branch; of state reparation commissions; state, municipal, and sectoral truth commissions; and of other bodies charged with identifying, acknowledging, and making reparation for human rights violations perpetrated in this period. The Commission was also informed of the adoption of measures such as: the production of written, electronic, and audiovisual material, along with cultural and educational initiatives, dealing with the period of the dictatorship; the collecting and organization of archives on the period; the holding of public ceremonies in which authorities ask for victims’ forgiveness; psycho-social care for groups of victims; the acknowledgment of State liability in death certificates for those killed and forcibly disappeared; as well as other steps being taken.⁵⁹³ In this regard, the IACHR commends the efforts of the Brazilian State to throw light on, disseminate, and remind people

588 Law No. 10,559, Wednesday, November 13, 2002.

589 Ministry of Justice and Citizenship, *Amnesty Commission Relatório Anual da Comissão de Anistia*, 2014, p. 15.

590 Law No. 12.528, November 18, 2011.

591 National Truth Commission, *Relatório*, 2014. P. 962-964.

592 National Truth Commission, *Relatório*, 2014. P. 963.

593 Casa Civil, *Portaria [Edict] n° 204*, of May 13, 2009; Ministry of Justice and Citizenship, Amnesty Commission, *Relatório Anual da Comissão de Anistia*, 2011; Ministry of Justice and Citizenship, Amnesty Commission, *Relatório Anual da Comissão de Anistia*, 2012; Ministry of Justice and Citizenship, Amnesty Commission, *Relatório Anual da Comissão de Anistia*, 2013; Ministry of Justice and Citizenship, Amnesty Commission, *Relatório Anual da Comissão de Anistia*, 2014; National Truth Commission, *Relatório*, 2014. P. 27; Human Rights Secretariat of the Office of the President of the Republic, *Ações do Projeto — “Direito à Memória e à Verdade”*; Special Commission on Politically motivated Deaths and Disappearances, *Resolução N° 2, de 29 de novembro de 2012*; Ministry of Women, the Family, and Human Rights *Comissão do MDH possibilita retificação da certidão de óbito de diplomata vítima da ditadura*, September 2018; I/A Court of H.R. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Judgment of November 24, 2010. Series C, No. 219, par. 277; I/A Court HR. *Case of Herzog et al. v. Brazil*. Judgment of March 15, 2018. Series C, No. 353, par. 330.

of the facts concerning the human rights violations perpetrated in this context; to try and remedy the harm done to the victims and to society, and to do everything to prevent a repetition of those violations.

396. On the other hand, the Commission received information regarding the challenges faced by victims seeking comprehensive reparation, especially the lacunae when it comes to identifying, acknowledging, and making reparation for the material and non-material damage [*danos morais e materiais*] done to campesino and indigenous victims.⁵⁹⁴ During the period investigated by the CNV, at least 8,350 indigenous died as a result of direct actions taken by government agents or of actions they omitted to take, and yet there are reportedly few cases in which reparation was made.⁵⁹⁵ Furthermore, according to a study published by the State in 2013, out of 1,196 cases of campesinos and their supporters who were killed or disappeared between 1961 and 1988, barely 51 had access to the CEDMP and only 29 had their rights acknowledged.⁵⁹⁶

397. In February 2020, the IACHR was informed that the Amnesty Commission had turned down 307 applications for reparation filed by campesinos who alleged that they had been targets of political persecution in connection with State actions undertaken to combat the Araguaia guerrillas.⁵⁹⁷ It worries the IACHR that the rapporteur in those proceedings justified his ruling on the grounds that the State's actions against those guerrillas did not constitute political persecution but, rather, "defense of the State and society." In connection with those military campaigns, the Commission has already referred to circumstantial evidence that arbitrary arrests and systematic torture were used against campesinos in that region.⁵⁹⁸ The Commission observes that that ruling fits into a context of repeated claims by government authorities and institutions either justifying or denying the existence of human rights violations during the civil-military dictatorship.⁵⁹⁹

594 Núcleo de Pesquisa, Documentação e Referência sobre Movimentos Sociais e Políticas Públicas do Campo (NMSPP/CPDA/UFRJ), Relatório sobre a situação do Brasil acerca da Memória, Verdade, Justiça e Reparação aos camponeses na oportunidade da visita in loco de 2018, 8 de novembro de 2018 (IACHR archives).

595 National Truth Commission. *Relatório: textos temáticos*, 2014, p. 205.

596 Secretariat for Human Rights of the Office of the President of the Republic, *Camponeses mortos e desaparecidos: excluídos da Justiça de Transição*, 2013, p. 48.

597 O Globo, *Com voto do relator em defesa da repressão dos militares durante a Guerrilha do Araguaia, comissão rejeita 307 pedidos de anistia*, February 18, 2020.

598 IACHR, *Action brought before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al (Guerrilha do Araguaia) (Case 11.552) against the Federative Republic of Brazil*, March 26, 2009, par. 104.

599 Justificando, *Entidades denunciam revisionismo histórico e perseguição contra anistiados da ditadura militar*, February 20, 2019; O Globo, *Planalto divulga vídeo que exalta golpe militar de 1964*, March 31, 2019; Rosalina Santa Cruz et al., Declarações do Presidente da República do Brasil referentes ao desaparecimento forçado de Fernando Santa Cruz e desmonte da Comissão Especial sobre Mortos e Desaparecidos Políticos (CEMDP), August 1, 2019 (IACHR archives); Folha, *Golpe de 64 é 'marco para a democracia brasileira', diz Defesa*, March 30, 2020; Estado de Minas, *Tortura é cascata para ganhar indenização, diz Bolsonaro sobre ditadura militar*, March 1, 2020; Conta oficial da Secretaria Especial de Comunicação Social da Presidência da República @SecomVc, *A Guerrilha do Araguaia tentou tomar o Brasil via luta armada [...]*, May 5, 2020.

- 398.** According to information remitted by civil society organizations during and after the on-site visit, the Brazilian State is allegedly taking various steps that would in effect undo the reparation policies developed in the past few decades.⁶⁰⁰ They allegedly include the appointment of members of the Amnesty Commission and the Special Commission on Politically motivated Deaths and Disappearances who could undermine their independence and impartiality with respect to reparation activities and attempts to find the victims of forced disappearance.⁶⁰¹ The IACHR takes note that the Federal Public Ministry has filed judicial suits aimed at annulling those appointments in both bodies. However, the IACHR also observes that one such action was rejected in first instance and another met with a refusal to allow a requested precautionary measure of separation (*teve denegada a medida cautelar de afastamento requerida*).⁶⁰²
- 399.** Recently, the IACHR voiced its concern at modifications of the procedure; the number of possible remedies (*recursos*); the quorum and format of rulings on applications made to the Amnesty Commission; hampering victims' access to reparation.⁶⁰³ According to data remitted by civil society, since 2016, the Amnesty Commission has been drastically reducing the number of approvals of applications for reparation: whereas, in 2015, some 36% of appraised applications were granted, by 2018 that percentage had fallen to around 4%, which amounted to "a severe curtailment of the right to political amnesty."⁶⁰⁴ In 2019, 2,329 applications for amnesty, out of a total of 2,717 applications, were reportedly turned down: a rejection of 85% of all applications filed.⁶⁰⁵ In addition, according to press reports, over the past year the waiting time for payment of the compensation already approved by the Amnesty Commission increased by 141%.⁶⁰⁶
- 400.** On a previous occasion, the IACHR reminded the Brazilian State of the importance of judicial and administrative mechanisms enabling victims to obtain reparation via

600 Grupo de Pesquisa Direito à Verdade e à Memória e Justiça de Transição da PUCRS, *Pendências, Ameaças e Retrocessos no Processo de Justiça de Transição do Brasil*, November 8, 2018, p. 8 (in the IACHR archives); ISER, *Relatório sobre a situação do Brasil acerca da Memória, Verdade, Justiça e Reparação na oportunidade da visita in loco de 2018*, November 2, 2018, pp. 6-7; RESLAC, *Diagnóstico sobre avances y retrocesos en materia de políticas e iniciativas de memoria en el ámbito de los países que integran la RESLAC*, October 2018, p. 14 (in the IACHR archives).

601 Veja, *General que considera Ustra herói integra nova Comissão de Anistia*, March 27, 2019; Folha, *Novo chefe da Comissão da Anistia travou indenização a camponeses do Araguaia*, March 27, 2019; Exame, *Bolsonaro troca membros da Comissão de Mortos e Desaparecidos Políticos*, August 1, 2019.

602 Federal Public Ministry (MPF), *'MPF aciona Justiça e questiona nomeação de membros para a Comissão de Anistia'*, May 6, 2019; MPF, *'MPF pede à Justiça anulação do decreto que alterou composição da Comissão sobre Mortos e Desaparecidos Políticos'*, October 1, 2019; Justiça Federal, *JFRS extingue ação envolvendo a nomeação de membros da Comissão sobre Mortos e Desaparecidos*, October 10, 2019; Agência Brasil, *Justiça nega pedido de afastamento de 7 membros da Comissão de Anistia*, May 10, 2019.

603 IACHR, *2019 Annual Report*, March 6, 2019, p. 320; Grupo de Pesquisa Justiça de Transição do PPGD/UnB, *'Síntese das ocorrências relativas à Comissão de Anistia (CA) a partir de janeiro de 2019'*, August 28, 2019 (In IACHR archives).

604 Coletivo Justiça de Transição, *Informe sobre a Comissão de Anistia do Brasil*, November 9, 2018, p.4 (in IACHR archives).

605 Metrôpoles, *Damare nega 99 pedidos de anistia a vítimas da ditadura militar*, March 25, 2020; Estadão, *'Sob Damare, Comissão da Anistia nega 85% dos pedidos'*, December 16, 2019.

606 O Globo, *Fila de pedidos de anistia com parecer favorável aumenta 141% no primeiro ano de governo*, January 19, 2020.

expeditious, fair, cheap, and accessible ex-officio procedures, given the arduous efforts undertaken by next of kin and the time spent without their receiving replies to most of their inquiries.⁶⁰⁷ In addition, the Inter-American Court also asserted that such mechanisms needed to be guided by objectivity, reasonableness, and effectiveness criteria designed to make adequate reparation for violation of the rights recognized in the American Convention.⁶⁰⁸ For his part, the United Nations Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence recommended that States adopt robust legal frameworks for guaranteeing legal security and the sustainability of reparation programs.⁶⁰⁹ The Commission worries that the changes made to the administrative bodies responsible for reparation may be curtailing the right to access to justice of victims of the human rights violations committed during the dictatorship and disregarding the Brazilian State's historical debt to those victims.

401. In addition, various civil society organizations, amnestied persons or persons applying for amnesty have criticized the cessation of initiatives by the Amnesty Commission relating to memory, historical truth, non-recurrence, and psychological reparation for victims.⁶¹⁰ In the case of Gomes Lund et al. (“Guerrilha do Araguaia”), recognizing that the gross human rights violations committed on that occasion against victims impaired the psychological and moral integrity of their family members, the IACHR recommended offering to provide appropriate care for the latter's physical and psychological suffering, in recognition of their own status as victims of human rights violations.⁶¹¹ Accordingly, the IACHR reiterates the importance of delivering cost-free, immediate, appropriate, and effective physical and psychological rehabilitation measures, at specialized public health establishments, to victims of human rights violations and members of their families.⁶¹² The Commission also stresses that public historical memory policies form part of the State's obligations to provide truth, justice, reparation

607 IACHR, *Action brought before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al. (Guerrilha do Araguaia) (Case 11.552) against the Federative Republic of Brazil*, March 26, 2009, par. 233.

608 I/A Court of H.R. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Judgment of November 24, 2010. Series C, No. 219, par. 303.

609 United Nations, Office of the United Nations High Commissioner for Human Rights (UNHCHR), *Promotion of truth, justice, reparation and guarantees of non-recurrence*. A/HRC/42/45, 11 July 2019.

610 Associação dos Amigos do Memorial da Anistia et al., *Manifesto à nação. A transição democrática está em risco no Brasil: um alerta das vítimas da ditadura militar*, 2019 (in the archives of the IACHR); *Carta-manifesto dos coletivos terapêuticos de ex-perseguidos políticos e seus familiares, atendidos no âmbito do Projeto Clínicas do Testemunho*, November 2018 (in the archives of the IACHR); CASC- Comitê Assessoramento da Sociedade Civil para Anistia et al., *Nota Pública contra o cancelamento do Memorial da Anistia*, August 13, 2019 (in the archives of the IACHR); Coletivo RJ Memória, Verdade e Justiça et al., *Recomendações para a promoção de Memória, Verdade, Justiça e Reparação*, November 8, 2018 (in the archives of the IACHR).

611 I/A Court of H.R. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Judgment of November 24, 2010. Series C, No. 219, par. 41, 232, 264.

612 I/A Court of H.R. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Judgment of November 24, 2010. Series C, No. 219, par. 267.

and measures to avoid the recurrence of gross human rights violations.⁶¹³ The IACHR therefore calls upon the Brazilian State to continue the public policies that call for and conserve the memory and dignity of the victim, disseminate and preserve historical memory, and promote a culture of human rights and democracy.

- 402.** As regards forced disappearance, the National Truth Commission stated that the whereabouts of at least 210 people who were victims of it during the dictatorship were still unknown at the time it published its Report in 2014.⁶¹⁴ Since then, in 2018, the State managed to identify the skeletal remains of two of them (Dimas Antônio Casemiro and Aluísio Palhano Pedreira Ferreira) among bones found in clandestine graves in the Dom Bosco cemetery in Peru, São Paulo.⁶¹⁵ The IACHR observes that the State's efforts in recent decades to locate and identify victims of forced disappearance during the dictatorship have been spotty, poorly coordinated, and mainly driven by pressure from family members.⁶¹⁶
- 403.** While, on the one hand, the State documented the different methods and techniques used by the military regime to prevent the location or identification of victims' moral remains – such as burying the corpses in clandestine graveyards or falsifying public records in cemeteries⁶¹⁷ – on the other, as regards searches for and identification of disappeared victims, by 2007 CEMDP was already pointing out that progress had slowed due to “financial constraints and lack of collaboration from official bodies.”⁶¹⁸ In the Report presented after his resignation (*exoneração*), in July 2019, the former President of the CEDMP stated that in 2016 there had been a restructuring of the institution following a long period in which its activities had been run down.⁶¹⁹ However, the envisaged new work dynamic never materialized.⁶²⁰

613 IACHR, Resolution 3/2019 ‘Principles of Public Policies on Memory in the Americas’, November 9, 2019.

614 National Truth Commission, *Relatório [Report]*, 2014. P. 523.

615 Ministry of Women, the Family, and Human Rights, *Desaparecidos políticos: Remanescentes ósseos de Dimas Casemiro serão entregues à família*, August 2018; Agência Brasil, *Desaparecidos políticos: Remanescentes ósseos de Dimas Casemiro serão entregues à família*, December 3, 2018; Commission on Politically motivated Deaths and Disappearances, *Informações sobre a situação dos direitos humanos no Brasil, com foco no tema Memória, Verdade e Justiça relacionadas às violações de direitos humanos na ditadura militar e seus legados*, November 9, 2018, p. 16 (in the archives of the IACHR).

616 National Truth Commission, *Relatório [Report]*, 2014. P. 500-576.

617 National Truth Commission, *Relatório [Report]*, 2014. P. 502; Human Rights Secretariat of the Office of the President of the Republic, *Habeas Corpus: que se apresente o corpo. A busca dos desaparecidos políticos no Brasil*, 2010.

618 Special Human Rights Secretariat of the Office of the President of the Republic, Special Commission on Politically motivated Deaths and Disappearances *Direito à verdade e à memória*, 2007, p. 41.

619 Federal Public Ministry, *Relatório Final da Presidência da Comissão Especial sobre Mortos e Desaparecidos Políticos exercida entre os anos de 2014 e 2019*, August 9, 2019, p.1.

620 Federal Public Ministry, *Relatório Final da Presidência da Comissão Especial sobre Mortos e Desaparecidos Políticos exercida entre os anos de 2014 e 2019*, August 9, 2019, p.2.

- 404.** In the *Guerrilha do Araguaia* case, the IACHR issued a statement on the Brazilian State's obligations with regard to looking for, identifying, and burying the mortal remains of victims of forced disappearance, recommending that the efforts already underway in that regard be bolstered by more funding and logistical support.⁶²¹ In its judgment the Inter-American Court established that such searches needed to be conducted systematically and rigorously, supported by sufficient human and technical resources, and deployed, following pertinent international norms in the matter, with all means needed to locate and identify the remains of the disappeared, and deliver them to next of kin.⁶²² Nevertheless, in 2014, both the IACHR and the Inter-American Court ascertained no sign of any concrete progress toward fulfilling the commitment to find or determine the whereabouts of victims' remains.⁶²³ In addition, the Court reiterated the importance of the State heeding family members' queries regarding how search and identification actions were going and establishing communication and coordination with family members of the disappeared as required by international protocols.⁶²⁴
- 405.** Following its on-site visit, the Commission was apprised of substantive changes to the Statute of the Special Commission on Politically motivated Deaths and Disappearances, namely: a) withdrawal of the requirement that its members have "recognized familiarity with the subject matter and a commitment to defend the fundamental principles of the human person"; b) the inclusion, as a condition for initiating and pursuing administrative procedures for searching for and locating disappeared victims, of the requirement that family members file an "express application" with the CEMDP; c) the rule that "application for recognition of disappeared persons" must be filed within 120 days "of the date of publication of the Law in effect and any subsequent amendments thereto."⁶²⁵
- 406.** The IACHR observes with concern the changes made and issues a reminder that, in cases of forced disappearance, the duty to investigate requires the State to undertake whatever actions are needed to determine the fate or whereabouts of the disappeared person and that that obligation subsists for as long as any uncertainty persists as to the ultimate fate (*destino final*) of the victim.⁶²⁶ Apart from that, the IACHR emphasize

621 I/A Court of H.R. Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Judgment of November 24, 2010. Series C, No. 219, par. 263.

622 I/A Court of H.R. Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Judgment of November 24, 2010. Series C, No. 219, par. 263.

623 I/A Court of H.R. Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, October 17, 2014, par. 27, 36.

624 I/A Court of H.R. Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil. Monitoring Compliance with Judgment. Order of the Inter-American Court of Human Rights, October 17, 2014, par. 35.

625 Special Commission on Politically motivated Deaths and Disappearances, Resolution N° 1, of January 27, 2016; Special Commission on Politically motivated Deaths and Disappearances, Resolution N° 4, of January 14, 2020, articles. 2, 3, 10.

626 I/A Court of H.R., *Case of Ticona Estrada et al. v. Bolivia* Merits, Reparations, and Costs. Judgment of November 27, 2008, par. 80; I/A Court of H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988, par. 181.

es that the aforementioned obligation to investigate must be acted on *ex officio*, without delay, in a serious, impartial, and effective manner, in such a way that it is not dependent upon any procedural initiative of the victim or his or her family members. or the private provision of evidence.⁶²⁷ Moreover, according to the United Nations Guiding Principles for the Search for Disappeared Persons, in contexts in which the disappearance occurred either frequently or *en masse*, the State must conduct the search as part of a comprehensive public policy toward disappearances.⁶²⁸ Accordingly, and considering the length of time that has elapsed since the violations took place, the Commission urges the State to revise its actions to search for, locate, and identify disappeared victims, and to continue and strengthen procedures yielding results.

- 407.** The Inter-American Commission notes that since 2012, the Amnesty Commission has financed the Testimony Clinics Project, which provides psychological support to people, families and groups affected by acts of state violence between 1946 and 1988 in partnership with civil society.⁶²⁹
- 408.** The IACHR also told the Brazilian State that the various measures designed to make reparation for the gross violations of human rights were insufficient given an environment of total impunity for the crimes concerned.⁶³⁰ During its on-site visit and thereafter, the Commission received abundant information regarding the current status of lawsuits in respect of the crimes committed throughout the civil-military dictatorship, as well as about the obstacles allegedly preventing Brazil from complying with its international obligations to see justice done.
- 409.** According to the Federal Public Ministry (MPF), it was not until 2012 that the first denunciation was filed against an agent of the repressive regime, accusing him of the aggravated kidnapping (*sequestro qualificado*) of five members of the Guerrilha do Araguaia.⁶³¹ At that point, the institution established the Transitional Justice Working Group (*Grupo de Trabalho Justiça de Transição*) to provide legal and operational support to Federal Prosecutors (*Procuradores da República*) investigating and prosecuting cases involving serious human rights violations committed during the military regime. It also established other investigative groups for specific cases in that

627 I/A Court of H.R. *Case of Tenorio Roca et al. v. Peru*. Preliminary objections, Merits, Reparations, and Costs. Judgment of June 22, 2016, par. 168.

628 United Nations Committee on Enforced Disappearances, *Guiding Principles for the Search for Disappeared Persons*, 2019.

629 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 64.

630 I/A Court of H.R. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Judgment of November 24, 2010. Series C, No. 219, par. 247.

631 Federal Public Ministry *Relatório sobre as atividades de persecução penal desenvolvidas pelo MPF em matéria de graves violações a DH cometidas por agentes do Estado durante o regime de exceção*, 2017, pp. 20, 132.

context.⁶³² According to data provided by civil society sources and the MPF – up to April 2020 – the prosecuting body filed 48 complaints accusing more than 59 agents for crimes such as: homicide, hiding of corpses, forging of findings with a view to hiding deaths; genocide of an indigenous community, and others.⁶³³

- 410.** However, in a report published in 2017, the institution pointed out that: “almost all the lawsuits filed have come to a halt, at the appeal stage” (*em grau de recurso*), and concluded that “in general, the Brazilian Judiciary has shown itself to be opposed to recognizing the binding nature of the ruling of the international Court,” a reference to the judgment handed down by the Inter-American Court in the Gomes Lund et al. case.⁶³⁴ A survey conducted by a civil society organization toward the end of 2018 indicated that – of the 37 complaints filed up to then – 27 had been thrown out, some of which were pending appeal decisions, while another 5 had been admitted but were then later suspended.⁶³⁵
- 411.** The Commission ascertains that, despite the efforts made to investigate gross violations committed during the military regime, in fact few suits have made headway in the courts, which amounts to noncompliance with the international obligation to prosecute and punish those acts. The Inter-American Court has already repeatedly established that said obligation is particularly important given the heinous nature of the crimes committed and the nature of the rights violated, factors that are especially relevant in cases of forced disappearance, extra-judicial execution, torture, and other gross violations of human rights.⁶³⁶
- 412.** As regards the gist of the rulings handed down so far and the legal impediments to

632 Federal Public Ministry *Relatório sobre as atividades de persecução penal desenvolvidas pelo MPF em matéria de graves violações a DH cometidas por agentes do Estado durante o regime de exceção*, 2017, pp. 19-20.

633 Centro de Estudos de Justiça de Transição [Transitional Justice Study Center], *Relatório do CJT/UFMG de acompanhamento das ações criminais de responsabilização individual sobre violações de direitos humanos perpetradas na ditadura brasileira*, 2018, p. 28 (in the archives of the IACHR); MPF, ‘*Força-Tarefa Araguaia: MPF denuncia novamente Sebastião Curió por crimes na ditadura militar*’, March 19, 2019; MPF, ‘*Força-Tarefa Araguaia: MPF denuncia militar por crimes praticados na repressão à Guerrilha do Araguaia*’, May 29, 2019; MPF, ‘*MPF denuncia ex-delegado do DOPS por incineração de 12 cadáveres durante a ditadura*’, August 1, 2019; MPF, ‘*MPF denuncia chefe da antiga Guarda Rural Indígena por genocídio contra o Povo Krenak*’, October 18, 2019; MPF, ‘*MPF denuncia ex-agentes da ditadura por morte de advogado em 1975*’, November 14, 2019; MPF, ‘*FT Araguaia: MPF denuncia militares por mais três homicídios e ocultações de cadáveres na repressão à Guerrilha do Araguaia*’, December 19, 2019; MPF, ‘*MPF denuncia ex-agente da ditadura e legistas por morte de militante política em 1976*’, January 24, 2020; MPF, ‘*MPF denuncia seis ex-agentes da ditadura pelo assassinato de Vladimir Herzog*’, March 17, 2019; MPF, ‘*No aniversário do golpe militar, MPF oferece nova denúncia contra ex-agente da ditadura*’, March 31, 2020.

634 Federal Public Ministry *Relatório sobre as atividades de persecução penal desenvolvidas pelo MPF em matéria de graves violações a DH cometidas por agentes do Estado durante o regime de exceção*, 2017, p. 331.

635 Centro de Estudos de Justiça de Transição [Transitional Justice Study Center], *Relatório do CJT/UFMG de acompanhamento das ações criminais de responsabilização individual sobre violações de direitos humanos perpetradas na ditadura brasileira*, 2018, pp. 28-29 (in the archives of the IACHR); MPF, ‘*Força-Tarefa Araguaia*’.

636 I/A Court of H.R. *Case of Herzog et al. v. Brazil*. Judgment of March 15, 2018. Series C, No. 353, par. 232; I/A Court of H.R., *Case of the Massacres of El Mozote and Nearby Places v. El Salvador*. Judgment of October 25, 2012 (Merits, Reparations and Costs), par. 244.

pursuing the cases, several civil society organizations have stated that judges have often resorted to arguments adducing prescription and the Amnesty Law – Law No.6.683/79 – to reject accusations or interrupt the course of judicial proceedings.⁶³⁷ Recently, the IACHR deplored the publication of two judgments applying those legal impediments to order the closing of criminal proceedings in the case of the Riocentro Attack and the Luiz Eduardo Merlino case⁶³⁸. In addition, in some cases, judges are reported to be refusing to categorize the gross human rights violations perpetrated during the dictatorship as crimes against humanity and, as a result, are not recognizing that the crimes being tried never prescribe.⁶³⁹ The Commission also observes that, so far, the Brazilian State has not ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. Nor has it legally defined and established (*tipificou*) the crime of forced disappearance in accordance with inter-American standards.⁶⁴⁰

413. In this regard, the organs of the inter-American system already have already described as inadmissible amnesty and prescription (statute of limitations) provisions, and provisions precluding liability intended to prevent the investigation and punishment of the perpetrators of gross human rights violations.⁶⁴¹ The Commission underscores the position taken by the Inter-American Court that the provisions in Brazil's Amnesty Law have no legal force (*carecem de efeitos jurídicos*) to the extent that they pose an obstacle to the investigation and punishment of such crimes and it reiterates that the State must bring its domestic law into line with the commitments it entered into when it ratified the American Convention.⁶⁴² Furthermore, the IACHR points out that the competent authorities, as well as other government authorities,

637 CEJIL [Center for Justice and International Law], *Documento de Apoio à Dívida Histórica*, November 2, 2018, p. 1 (in the archives of the IACHR); *International Bar Association's Human Rights Institute*, 'Report for the Inter-American Commission on Human Rights: Justiça de Transição em 2019: A judicialização de casos relacionados à Ditadura Militar no Brasil', November 2019, pp. 5, 6; Centro de Estudos de Justiça de Transição, *Relatório do CJT/UFMG de acompanhamento das ações criminais de responsabilização individual sobre violações de direitos humanos perpetradas na ditadura brasileira*, 2018, pp. 28-29 (in the archives of the IACHR); Grupo de Pesquisa Direito à Verdade e à Memória e Justiça de Transição da PUCRS, *Pendências, Ameaças e Retrocessos no Processo de Justiça de Transição do Brasil*, November 8, 2018 (in the archives of the IACHR); Human Rights Watch, *Reunião com Sociedade Civil sobre Memória, Verdade e Justiça*, November 8, 2018 (in the archives of the IACHR); Comissão de Familiares de Mortos e Desaparecidos Políticos [Commission on Politically motivated Deaths and Disappearances], *Informações sobre a situação dos direitos humanos no Brasil, com foco no tema Memória, Verdade e Justiça relacionadas às violações de direitos humanos na ditadura militar e seus legados*, November 9, 2018, pp. 26-28 (in the archives of the IACHR).

638 IACHR, *2019 Annual Report*, March 6, 2019, p. 320.

639 Comissão de Familiares de Mortos e Desaparecidos Políticos [Commission on Politically motivated Deaths and Disappearances], *Informações sobre a situação dos direitos humanos no Brasil, com foco no tema Memória, Verdade e Justiça relacionadas às violações de direitos humanos na ditadura militar e seus legados*, November 9, 2018, pp. 26-27 (in the archives of the IACHR); *International Bar Association's Human Rights Institute*, 'Report for the Inter-American Commission on Human Rights: Justiça de Transição em 2019: A judicialização de casos relacionados à Ditadura Militar no Brasil', November 2019, pp. 27, 28.

640 Center for Justice and International Law (CEJIL) et al, 'Alternative report submitted to the UN Committee on Enforced Disappearances (CED) in the context of the review of Brazil report', 2020.

641 I/A Court of H.R. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Judgment of November 24, 2010. Series C, No. 219, par. 171.

642 I/A Court of H.R. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Judgment of November 24, 2010. Series C, No. 219, par. 174.

are duty-bound to exercise due control over compliance with the convention (*o devido controle de convencionalidade*) and to see to it that international judgments handed down to the Brazilian State are complied with.

- 414.** The Commission also urges the Brazilian State to ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. That notwithstanding, the IACHR deems it pertinent to recall that, in the case of Herzog et al., the Inter-American Court examined the factors that led to characterizing the crimes committed against the victim as crimes against humanity and backed the legal effects of that characterization (*e dispôs dos efeitos jurídicos dessa qualificação*).⁶⁴³ On that occasion, the Court asserted that the torture and death of the journalist were the product of an extremely organized and structured repressive machinery deliberately designed to act in that way and physically eliminate any democratic or party-political opposition to the dictatorial regime, using well-documented practices and techniques authorized and closely monitored by Army High Command and the highest levels of the Executive.⁶⁴⁴ Among the consequences attached to crimes of that nature, the IACHR underscores, in particular, the duty of the State to punish their perpetrators irrespective of the existence of domestic legal provisions that establish those international crimes and the non-applicability to them of the statute of limitations, regardless of ratification of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.⁶⁴⁵
- 415.** According to complaints filed by the MPF, Brazilian Army High Command fully obstructed access to documents relating to the period between 1964 and 1985, to the detriment of investigations into the gross violations committed during the civil-military dictatorship.⁶⁴⁶ On this matter, the Inter-American Court found that, in cases involving investigation of a punishable act, the decision not to deliver information may under no circumstances depend solely on a state organ whose members are charged with committing the illicit act.⁶⁴⁷ Accordingly, the Commission calls upon the Brazilian State to guarantee for both justice operators and the general public technical and systematic access to such information, thereby safeguarding the irrevocable right of the victims, their family members, and society as a whole to know the truth regarding serious violations of human rights.⁶⁴⁸

643 I/A Court of H.R. *Case of Herzog et al. v. Brazil*. Judgment of March 15, 2018. Series C, No. 353, par. 237-241.

644 I/A Court of H.R. *Case of Herzog et al. v. Brazil*. Judgment of March 15, 2018. Series C, No. 353, par. 241.

645 I/A Court of H.R. *Case of Herzog et al. v. Brazil*. Judgment of March 15, 2018. Series C, No. 353, par. 214-216, 231

646 Federal Public Ministry *Relatório sobre as atividades de persecução penal desenvolvidas pelo MPF em matéria de graves violações a DH cometidas por agentes do Estado durante o regime de exceção*, 2017, p. 21.

647 I/A Court of H.R. *Case of Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil*. Judgment of November 24, 2010. Series C, No. 219, par. 202.

648 IACHR. Report “*The Right to Truth in the Americas*”, August 13, 2014, paras. 71, 125; IACHR, *Action brought before the Inter-American Court of Human Rights in the case of Julia Gomes Lund et al (Guerrilha do Araguaia) (Case 11.552)* against the Federative Republic of Brazil, March 26, 2009, paras. 178-180.

- 416.** The IACHR urges the State to maintain resolute institutional support for the historical reparation mechanisms relating to the periods of civil-military dictatorship in order to guarantee the right to memory and truth of the victims of violations and members of their families. The Commission emphasizes that the jurisprudence of the inter-American system has reiterated that everyone, including the next of kin of victims of very serious human rights violations, is entitled to the truth. Consequently, family members and society as a whole must be told everything that happened in connection with those violations.
- 417.** Likewise, the Commission issues a reminder of the inadmissibility of prescription provisions and of provisions ruling out criminal liability intended to prevent the investigation and punishment of those responsible for gross human rights violations, such as torture, summary, extra-judicial or arbitrary executions, and forced disappearances, all of which are prohibited because they violate irrevocable rights recognized by international human rights law.⁶⁴⁹

649 IACHR. Press Release No. 14/19 - [IACHR Asks Guatemalan State Not to Amend National Reconciliation Law](#), Washington D.C., January 25, 2019; IACHR [Report No. 71/15 Case 12.879. Report on the Merits Vladimir Herzog et al v. Brazil](#), October 28, 2015, paras. 230, 235.



**DEMOCRATIC INSTITUTIONS
AND HUMAN RIGHTS**

CHAPTER 6 DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS

418. Since the Commission’s last visit to Brazil in 1995, the country has made considerable efforts to forge institutions geared to strengthening democratic guarantees. In the 23 years that have elapsed between the two visits, the Commission was apprised of some changes that have bolstered the Brazilian State’s commitment to consolidate institutions and public policies for advancing democracy and human rights. Nevertheless, considerable and growing challenges have also emerged with respect to achieving those longed-for outcomes of a country enjoying full, inclusive democracy, guaranteeing the rights of everyone, without distinction.

A. THE DEMOCRATIC INSTITUTIONAL SYSTEM

419. The 1988 Constitution paved the way for establishing a State that could make progress with guaranteeing rights and promoting social inclusion. That same Constitution established independence between the Executive, Legislative, and Judicial branches of government, each of which performs a fundamental role in the consolidation of democracy and the protection of human rights in Brazil. The separation of powers occurs not just at the federal level; it is also reflected in the institutional structure of the states, the Federal District, and the municipalities. Autonomy, independence, and mutual respect among the three branches of government are vital for forging a health and stable democracy.⁶⁵⁰

420. The Federal Constitution arose out of a process of involvement and inclusion of a variety of social sectors and was reflected in a constitutional text that acknowledges the inequalities and injustices that have historically beset the country. Even though the country has, since then, had problems enforcing rights guaranteed in the Federal Constitution, the Commission recognizes that it has served as an important benchmark guiding the harmonious workings of the executive, legislative, and judicial branches of government.

1. Oversight and judicial institutions

421. The Commission recognizes that the Public Prosecutors’ Office (Ministério Público), Public Defenders’ Office (*Defensoria Pública*), and the Judiciary have an important

650 Office of the President of the Republic, *Constituição da República Federativa do Brasil*, June 11, 2020.

part to play when it comes to identifying human rights violations, protecting victims, indicting violators, and making reparation. Thus, human rights are not front and center on their agendas, in a way that would enable historically vulnerable, excluded, and down-trodden segments of society to have their rights protected in a society characterized by political and economic inequality.

- 422.** In particular, the IACHR acknowledges that the Office of the Federal Attorney for Citizens' Rights (*Procuradoria Federal dos Direitos do Cidadão - PFDC*), which is part of the Office of the Attorney General of the Republic (*Procuradoria Geral da República*) has a mandate and the legitimate right to exercise oversight over State actions in line with Brazil's international commitments. Therefore, within the framework of the Federal Public Ministry's remit, the IACHR deems it vital that the PFDC enjoy autonomy, independence, and the necessary resources to remind the State and hold it accountable (*lembrar e cobrar ao Estado*) for its responsibilities to protect everyone. Accordingly, the IACHR voices its concern at reports of moves to intimidate the PFDC in the performance of its duties,⁶⁵¹ according to a note of the National Human Rights Council (CNDH).⁶⁵²
- 423.** In addition, the IACHR recalls that the job of protecting human rights vis-a-vis the State does not fall only to the PFDC. The Federal Public Ministry and state public prosecutors' offices have a duty, in all that they undertake, to prioritize cases in which a violation of human rights is suspected. In Brazil, the Public Prosecutors' Office is in a strategic and key position to monitor observance of human rights principles and standards with a view to combating the pattern of still numerous and serious violations.
- 424.** Given the crucial importance of the Public Defenders' Office for safeguarding rights in Brazil, the IACHR commends the Brazilian Government for issuing Provisional Measure No. 888/2019, which avoided the closure of 43 Federal Public Defender (DPU) offices in various parts of the country.⁶⁵³ As the Commission sees it, reallocating the federal public servants who today work for the DPU from their local branches would make it completely impossible for the organ to establish itself nationwide (*interiorização*), thereby denying the right of access to justice to millions of Brazilian citizens.

651 Comitê Brasileiro de Defensoras e Defensores de Direitos Humanos, *Organizações denunciam Brasil à ONU e OEA por intimidações contra a Procuradora da República Deborah Duprat*, October 23, 2019.

652 CNDH, *Nota em Defesa das Defensoras e Defensores de Direitos Humanos no Brasil*, September 11, 2019.

653 Senado Notícias. *Publicada MP que garante funcionamento de unidades da Defensoria Pública*. Friday, July 19, 2019.

B. INSTITUTIONS FOR PARTICIPATORY DEMOCRACY

- 425.** Brazil became an international model for its development of channels for participatory democracy facilitating open debate and proximity between the State and civil society. The participatory mechanisms figuring on several human rights agendas prompted major legislative progress with promoting the defense of rights in Brazil, be it in the form of committees, commissions, and councils, or in terms of national conferences.
- 426.** That being so, the IACHR is greatly concerned about the content of Decree No. 9.759, of April 11, 2019⁶⁵⁴, and Decree N^o. 9.812, of May 30, 2019⁶⁵⁵, which got rid of dozens of participatory institutions, including collegiate bodies that are of key importance for policies promoting the defense of human rights in Brazil, such as the National Commission for the Eradication of Child Labor (CONAETI); the National Commission for Education in Human Rights; the National Indigenous Policy Commission; the National Commission for Literacy and Youth and Adult Education (CNAEJA); and the National Indigenous School Education Commission. The Commission stresses how important it is to keep institutions operating in Brazil that foster and consolidate participatory democracy in human rights.
- 427.** In addition to the officially terminated mechanisms, the Commission observes that some participatory bodies, even though they are guaranteed by law, are undergoing a worrisome process of depletion and downgrading. Examples include the National Food and Nutritional Security Council (CONSEA), which is being threatened and downgraded as an institution.⁶⁵⁶ CONSEA was responsible for major progress in the dialogue about the policy for fighting hunger in Brazil and weakening it may have irreparable consequences in a country that is currently facing surges in unemployment, poverty, and extreme poverty.
- 428.** In this connection, the IACHR voices concern that getting rid of these channels for dialogue both within government and with organized civil society would remove important instruments for the discussion, oversight, and formulation of human rights policies, debilitating the Brazilian State's ability to address the current maze of inequality, vulnerability, and violence.

654 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, Decree No. 9.759, Thursday, April 11, 2019.

655 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, Decree No. 9.812, Thursday, May 30, 2019.

656 Fórum Brasileiro de Soberania e Segurança Alimentar e Nutricional, *Em defesa da Soberania e Segurança Alimentar e Nutricional: FBSSAN contra a extinção do Consea*, 2019; FASE. Elisabetta Recine, Maria Emília Pacheco, Renato Maluf, and Francisco Menezes. *Extinção do Conselho Nacional de Segurança Alimentar e Nutricional: comida de verdade e cidadania golpeadas*. 2019.

C. THE INSTITUTIONAL UNDERPINNING OF HUMAN RIGHTS

- 429.** The Commission acknowledges that in recent decades Brazil has been a benchmark and that various Brazilian governments have set an example with respect to maintaining and improving human rights policies following an institutional pattern as a commitment espoused by a State and its Constitution. That continuity and increasing maturity are fundamental for national development. Establishing a foreign policy prioritizing human rights has been one of the outstanding achievements of the period since 1988, in line with the country's Constitution. Internationally and within the region, Brazil has always stood out because of its leadership in asserting international human rights standards and its support for multilateralism.
- 430.** As subsequent sections of this report spell out, the IACHR perceives that Brazil's democratic institutional architecture was forged through a series of important political and social developments starting with the restoration of democracy. However, the IACHR observes with concern a drop in the momentum of the quest for stronger institutional underpinning in the area of human rights. In particular, there are indications of significant backsliding with respect to implementation of programs and public policies and budget appropriations for key areas, as the IACHR ascertained on trips and in interviews conducted during its on-site visit to the country. The institutional backing that existed appears now to be less politically empowered, less of a priority, and less central to the State's actions and the messages it conveys. Furthermore, some institutions, like those vital for social participation, are now in the process of being eliminated or undermined, a development that the Commission finds worrisome.

1. Institutions and Public Policies

- 431.** The Commission highlights the fact that, through the Federal Executive Branch, Brazil did make an effort to comply with international commitments calling for an institutional framework supportive of human rights. In particular, on July 2, 2014, took an important step toward establishing the National Human Rights Council (CNDH) based on the Council for the Defense of the Human Person (SDDPH) through Law No. 12,986.⁶⁵⁷ While still dependent for its budget on the Executive Branch, the CNDH has been an important factor in the reflection, discussion, and recommendations put forward regarding cases of gross human rights violations in Brazil. The

⁶⁵⁷ Office of the President of the Republic, Deputy Head of Legal Affairs, [Law N° 12.986](#), of June 2, 2014.

Council resembles a National Human Rights Institution (INDH) according to information from the State.⁶⁵⁸ Nevertheless, its resolutions are not being prioritized by the authorities and institutions within the State apparatus that are responsible for implementing them. Thus, the IACHR voices its concern regarding the restrictions that have been imposed on the work done by the CNDH, above all as regards the executive secretariat support that is supposed to be provided by the Ministry of Women, the Family, and Human Rights.⁶⁵⁹

432. For its part, the State informed the Inter-American Commission that, in order to consolidate the autonomy of the CNDH, the Ministry of Women, Family and Human Rights prioritized, in its strategic planning, the Project N^o. 2, which seeks to “consolidate administrative, infrastructure and budgetary autonomy” of the National Human Rights Council. Among other actions, the budget allocation would be foreseen in the 2020 Annual Budget Law Project (PLOA 2020).⁶⁶⁰

433. The National Human Rights Council has been joined together with the Ministry of Women, the Family, and Human Rights (MMFDH). The Ministry is the product of a long institutional construction process in Brazil’s Federal Executive branch that began in 1997 with the establishment of the National Human Rights Secretariat within the regulatory structure of the Ministry of Justice and then underwent a series of institutional and regulatory amendments.⁶⁶¹ In the more than 20 years since then, that construct acquired greater autonomy and broader responsibilities, such as the job of defending the rights of women, the black population, and youth. The Commission urges the State to continue expanding the Ministry’s remit, while endowing it with the necessary resources and without prejudice to its giving priority to care for the victims of serious human rights violations, especially those committed by the State’s law enforcement apparatus (“*aparato repressivo do Estado*”).

2. Institutions and Policies for the Protection and Defense of Human Rights

434. The Commission underscores that the National Ombudsperson’s Office for Human Rights (*Ouvidoria Nacional de Direitos Humanos*) performs an essential function as a

658 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 65

659 AAJ. Statement by the American Association of Jurists denouncing action by the Government of Brazil against the the National Human Right Council and other Councils.

660 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 65 e 66.

661 Office of the President of the Republic, Deputy Head of Legal Affairs, Law No. 10.683, May 28, 2003; Decree No. 4.671, de April 10, 2003; Decree No. 5.174 of August 9, 2004; Decree No. 6.980 of October 13, 2009; Law No. 12.314 of August 19, 2010; Decree No. 7.256, of August 4, 2010; Law No. 13.266, of April 5, 2020.

mechanism for denouncing gross human rights violations. Especially noteworthy are the services it provides for reporting violations using the Dial 100 and Dial 180 hotlines, which are internationally exemplary practices for communication between citizens and the State. Nevertheless, it is also to be noted that the State still lacks efficient tools and means for dealing with and resolving the complaints received, so that there is a risk that these important whistleblowing channels may not actually be effective.

435. The IACHR also points out that two other State institutions have been important for ensuring that the work of defending human rights is protected by the State: the National Protection Program for Human Rights Defenders, Media Personnel, and Environmental Activists,⁶⁶² along with its regional counterparts, and the Victim Protection Program for Witnesses with Death Threats (*Programa de Proteção a Vítimas de Testemunhas Ameaçadas de Morte*).⁶⁶³ In this regard, the role of the National Protection Program for Human Rights Defenders, Media Personnel, and Environmental Activists is to guarantee protection measures for human rights defenders whose work places them at risk. According to information provided by the Ministry of Women, the Family, and Human Rights, the Program covers 342 defenders.⁶⁶⁴ Nevertheless, at several meetings organized by the Commission during its visit to Brazil, it heard reports of innumerable cases of human rights defenders being threatened, persecuted, and even murdered. This pattern of constant vulnerability is a matter of great concern and leads the IACHR to stress the need to broaden and definitely guarantee protection for Brazil's human rights defenders.

436. On this matter, the IACHR received information from the State that, in 2018, the budget for its operation reached R \$ 11.7 million⁶⁶⁵. Additionally, informed that the program received additional Federal budget funding until the end of 2019, in addition to appropriations that almost tripled the budget of its state network. So far, according to the information available, nine agreements have been signed to implement the program at the regional level, although not all of them are in effect at the moment. The IACHR welcomes this measure and urges the Federal Government and the states to expedite those extra budget payments and endow the program as soon as possible with the structure needed to support and provide effective and comprehensive protection for the human rights defenders covered by the program. In particular, according to information the IACHR received during its visit, that the program achieves effective implementation in rural areas and areas far removed from urban centers, where most of the acts of violence reported occur.

662 Established by [Decree No. 8.724](#), of April 27, 2016, and amended by Decree No. 9.937, of July 24, 2019.

663 Office of the President of the Republic, Deputy Head of Legal Affairs, [Law No. 9.807 of July 13, 1999](#).

664 Ministry of Women, the Family, and Human Rights, *Sobre o PPDDH*.

665 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 69.

- 437.** Along those same lines, it was pointed out at a meeting with the Pará State Public Prosecutors' Office, that there was an urgent need to improve coordination of the protection program with the various security bodies responsible for implementing protection measures. Finally, human rights organizations and defenders notified the Commission of the program's budget shortcomings at the state level, where funds are allocated on the basis of annual agreements.
- 438.** In addition to the federal program, for which the Executive Branch is responsible, it is evident that the Public Prosecutors' Office and the Judiciary have a fundamental part to play to ensure effective protection of human rights defenders. The IACHR emphasizes that, as soon as state authorities become aware of the violation of a defender's right, they must initiate a serious, impartial, effective, and expeditious investigation. That process must be embraced by the State as its duty and not as a mere pre-established and ineffective formality dependent on the initiative of the victims or their next of kin. Investigations into human rights violations must be conducted with all due diligence, using every legal means available and focusing on unveiling the truth of the events at issue and pursuing, capturing, prosecuting, and punishing the perpetrators. The State has an obligation to guarantee that the truth is disclosed about the facts of the case and, where applicable, to ensure that those responsible are punished⁶⁶⁶.
- 439.** In any investigation, the authorities must take all reasonable steps to ensure correct gathering of evidence, including investigations based on the context or the accumulation of similar cases that could point to a possible pattern. That obligation subsists regardless of who the accused might be, even in the case of private individuals, given that failure to conduct an effective investigation could send a public signal that would lead the State to incur international responsibility. Likewise, when a violent murder is committed, the State must act with due diligence during the initial inquiries, rapidly gathering evidence and securing the scene of the crime in accordance with international standards, in addition to acting with due diligence in the pursuit of logical lines of inquiry and gathering and processing of evidence. Whereby it is also imperative that Brazil conduct in-depth investigations of threats and acts of intimidation against human rights defenders, including acts that go beyond physical violence.⁶⁶⁷
- 440.** To combat impunity, the Commission appraised the setting up of specialized bodies to investigate crimes against defenders. In Brazil, despite the legal possibility of federalizing verification and indictment of in cases involving crimes of this nature, the IACHT was surprised at the numerous refusals of requests to federalize the cases filed by the victims or members of their families. In cases ranging from crimes

666 IACHR, Report: "[Towards Effective Integral Protection Policies for Human Rights Defenders](#)" : Approved by the Inter-American Commission on Human Rights on December 30, 2017, par. 338.

667 IACHR, Report: "[Towards Effective Integral Protection Policies for Human Rights Defenders](#)" : Approved by the Inter-American Commission on Human Rights on December 30, 2017, par. 339.

against rural, indigenous, and *quilombola* rights defenders to crimes against those defending freedom of expression nationwide (*defensores de expressão nacional*), the IACHR urges the Brazilian State to take whatever actions are needed to protect human rights defenders.

441. The IACHR reiterates that the right to freedom of association, in the specific case of human rights defenders, constitutes a fundamental tool that allows them to freely go about their work, as it enables them to achieve greater collective impact in the performance of their functions. Thus, any act that directly or indirectly tends to prevent defenders' right of association or, in any manner undermines the purposes for which they formed an association, constitutes a direct attack on the defense of human rights.

3. Institutions and Policies for the Promotion of Human Rights

442. Within the scope of the work of the Ministry of Women, the Family, and Human Rights, notable steps are being taken to develop and consolidate a human rights education policy. Brazil made headway when it drew up a National Human Rights Education Plan, which was adopted by the National Education Council in 2012.⁶⁶⁸ The product of a broad dialogue with civil society and universities organized by the National Committee on Education in Human Rights, Brazil's National Human Rights Education Plan constitutes a regional benchmark. Unfortunately, the IACHR then heard with concern that the Committee had been abolished via Decree No. 9.759, of April 11, 2019⁶⁶⁹, and Decree N^o. 9.812, of Thursday, May 30, 2019.⁶⁷⁰ The National Committee had been playing a key part in the promoting of human rights education guidelines at all educational levels, in both formal and non-formal education, apart from taking on the task of introducing into Brazil – and translating and adapting – international parameters for implementing education to advance human rights for society as a whole.

443. Other institutions in the Federal Executive Branch are worth singling out for the important work they do to promote and defend human rights in Brazil. They include the National Foundation for the Indigenous (FUNAI), as the central institution guaranteeing the fundamental rights of Brazil's diverse indigenous population. In that connection, the IACHR welcomes the decision by the Federal Supreme Court that prevented the transfer of competence to identify, establish the limits of and physically demarcate, and grant title to indigenous lands from specialized bodies such as

668 National Committee on Education in Human Rights, Resolution CNE/CP 1/2012, May 31, 2012 – Section 1 – p. 48.

669 Office of the President of the Republic, Deputy Head of Legal Affairs, Decree N^o 9,759, Thursday, April 11, 2019.

670 Office of the President of the Republic, Deputy Head of Legal Affairs, Decree N^o 9,812, Thursday, May 30, 2019.

FUNAI and the National Colonization and Agrarian Reform Institute (INCRA) to the Ministry of Agriculture, Livestock Farming, and Supply (MAPA).⁶⁷¹ Thus, the IACHR observes that the transfer of mandates, as well as handing supervision of FUNAI to non-specialized bodies, without an inter-cultural perspective, may have a serious impact on the traditional lifestyles of Brazil's indigenous peoples, above all if those bodies have any kind of conflict of interest in the performance of those functions. The indigenous peoples of Brazil encounter huge obstacles to the exercise of their rights and, in order to be able to overcome them, they need to be able to rely on the resolute support of State institutions with the technical ability to work with an inter-cultural perspective. The Commission observes with concern increasing support for actions aimed at undermining the institutional power of those institutions, such as budget cuts, legislative amendments designed to curtail their functions, or even to alter the nature of the work they do.

444. In connection with the recent administrative restructuring of the Federal Executive Branch, the IACHR was told about the transfer of competence from the Ministry of Labor and Employment to other government bodies not specializing in those areas, such as the Ministry of Justice and Public Security, or the Ministry of Citizenship, and the Ministry of Economy.⁶⁷² With regard to those changes, the Commission underscores its concern at possible impairment of the articulation and coordination of public policies on workers' rights. In particular, the Commission observes with concern the absorption by the Ministry of Economy of authority to oversee and regulate labor activities, which could undermine efforts to eradicate work done in conditions akin to slavery and child labor.
445. Apart from that, the transfer of competence with respect to trade union registration to the Ministry of Justice could weaken guarantees of the right of association for trade unions and workers' movements. Once again, the Commission warns of a potential conflict of interest between the original purposes of those government bodies and demands for fair, equitable, and satisfactory working conditions, thereby further exacerbating the weakness of worker protection mechanisms, already impaired by the 2017 labor reform.⁶⁷³

671 Portal of the Federal Supreme Court *Suspensão dispositiva de medida provisória que transferia demarcação de terras indígenas para Ministério de Agricultura*, June 24, 2019; Chamber of Deputies, *Suspensa medida provisória que coloca demarcação de terras indígenas na Agricultura*, June 24, 2019.

672 Provisional Measure No. 870, issued on January 1, 2019, altered the administrative structure of the Federal Executive Branch. Six months later, some of those changes were revoked by the National Congress through the passing of Law No. 13.844 of June 18, 2019 (when Provisional Measures No. 870 was amended). However, on the very same day that the law was promulgated, the Executive Branch issued another Provisional Measure (No. 886/2019, which reincorporated some of the administrative changes introduced by Provisional Measure 870. In response to that, suits were filed in court, and the Judiciary handed down a preliminary judgment on June 24, 2019 declaring that the changes, which had already been rejected by the Legislative Branch, were unconstitutional. Along the same lines, the Chairman of the Board [*Presidente da Mesa*] of the National Congress issued a Declaratory Act on June 25, 2019 annulling the changes introduced by MP 886/2019.

673 G1, *Ministério do Trabalho será dividido entre Justiça, Economia e Cidadania*, December 3, 2018.

- 446.** The IACHR underscored that the right to work, apart from being a basis for the exercise of other rights, such as the right to a dignified life, fulfills a social function and requires special protection by the State for workers and their organizations. In addition, workers' rights are inalienable and the laws recognizing them are binding upon, and benefit, all inhabitants of Brazil. Accordingly, the IACHR calls upon the Brazilian State to apply, in its administrative, legislative, and judicial measures, the principle of progressiveness and non-regression with respect to social rights, pursuant to Article 26 of the American Convention and Article 1 of the Protocol of San Salvador.
- 447.** The IACHR also places on record that the institutional advances made by Brazil over the past few decades represent major steps forward down a long path toward full guarantees for rights in that country. Thus, the Commission reminds the State of the principle that there must be no backsliding (*princípio da não-regressividade*) and calls upon Brazil's authorities to commit to preserving the progress made.

4. Educational policies, inequalities, and at-risk groups

- 448.** Brazil has made outstanding progress with expanding all forms of education at every level. In 2017, the basic education enrollment rate reached 96.3%. In high-school education, the rate was 81.3% and in higher education 51.34%. Those numbers are the reflection of consistent, steady increases throughout the recent past.⁶⁷⁴ Especially notable in this process are the country's National Education Plans (PNE), the Fund for Maintaining and Developing Basic Education and the Upgrading (*Valorização*) of Education Professionals (FUNDEB), and the Basic Education Development Index (IDEB), as core public policy instruments that, inter alia, made it possible to expand access to education and enhance the quality of the education provided. Given Brazil's structurally embedded discrimination and inequalities, as well as the vulnerabilities already highlighted in this report, the Commission underscores the huge importance of ensuring that educational policy is both universal and inclusive, mindful of the groups that, for much of the country's history, were left outside it.
- 449.** Against that backdrop, the IACHR observes with concern the limits imposed by Constitutional Amendment No. 95/2016, which set a 20-year ceiling on Federal expenditure in Brazil. Given persistent challenges with respect to access to both child and higher education, youth and adult literacy, school dropouts, and, especially, the ethnic/racial inequalities as regards access to quality education, the Commission deems it fundamental to increase public investment in education. In addition, bearing in mind that 3% of children are left out of basic education level 1; 4% never make

674 UNESCO [Brazil Education and Literacy](#).

it to basic education level 2; and 17% receive no high-school education,⁶⁷⁵ so that achieving education for all still poses a major challenge, it is alarming that policies designed to overcome those challenges are being discontinued, such as the literacy program known as *Programa Brasil Alfabetizado*.⁶⁷⁶

- 450.** The IACHR further voices its concern at the militarization of public schools through the establishment of the National Civil-Military Schools Program.⁶⁷⁷ Guaranteeing the right to education requires teaching that values individuality, promotes civic-mindedness (*cidadania*), and fosters the socialization of human rights, all of which need to be taught by specialized personnel. Accordingly, the Commission draws attention to the very different nature of the armed forces from that of the personnel needed in the very dynamic sphere of education.
- 451.** On the other hand, the IACHR commends the State for the affirmative actions it has pursued in university education, that have led to an increase in the number of students of African descent enrolled in undergraduate programs. Whereas in 2011, out of 8 million students enrolled 11% were students of that ethnic/racial origin, in 2016 the share of Afro-descendant students had risen to 30%.⁶⁷⁸ Nevertheless, the IACHR worries about Bill No. 1443 of 2019,⁶⁷⁹ which seeks to revoke affirmative measures, like Law No. 12.711, of August 29, 2012, which established ethnic/racial quotas.
- 452.** The IACHR reiterates that the inter-American human rights system has emphasized the duty of States to adopt measures to guarantee actual and legal equality of persons, in addition to combating structural historical discrimination and de facto discrimination against persons of African descent. In that context, it is imperative to implement the affirmative action measures needed to guarantee the rights to equality and nondiscrimination of persons subjected to structurally embedded discrimination. Accordingly, the Commission endorses the measures currently in effect in public universities and deems it important to expand those programs in order to continue expanding the presence of Afro-descendants at university in line with their share of the Brazilian population.
- 453.** Regarding the right to education, the Commission stresses that, in 2015, the National Council to Combat Discrimination and Promote the Rights of Lesbians, Gays, Bisexual

675 UNESCO, *Global Education Monitoring Report: Migration, displacement and education. Building bridges, not walls*, p. 294, 2019.

676 Grupo de Trabalho da Sociedade Civil para a Agenda 2030, *III Relatório Luz da Sociedade Civil da Agenda 2030 de Desenvolvimento Sustentável – Brasil*, 2019.

677 Office of the President of the Republic, Deputy Head of Legal Affairs, *Decree N° 10.004*, Thursday, September 05, 2019.

678 Instituto Nacional de Estudos e Pesquisas Educacionais Anísio Teixeira (INEP), *Censo do Ensino Superior [Higher Education census]*, 2016.

679 Chamber of Deputies, *Projeto de Lei 1443/2019, Revoga a Lei n° 12.711, de 29 de agosto de 2012, que dispõe sobre o ingresso nas universidades federais e nas instituições federais de ensino técnico de nível médio e dá outras providências*, March 13, 2019.

als, Transvestites, and Transgender Persons, which reports to the Ministry of Human Rights, issued Resolution No. 12/2015, establishing standards for guaranteeing the terms on which transvestite and transgender persons (and all those with a gender identity not recognized by in various social sectors) can access and stay enrolled in educational systems and institutions.⁶⁸⁰ For its part, in 2018, the Ministry of Education approved the position taken by the National Education Council and promulgated Edit (*Portaria*) No. 33/2018, which authorized the use of the “social name” [Tr: the name a person is commonly known by] throughout the country’s basic education system by trans and other diverse gender persons aged 18 or over.⁶⁸¹ Notwithstanding the content of those regulations, the Commission received information to the effect that educational professionals still need further preparation for attending to the specific demands of trans students.

454. With respect to higher education, since 2002, some postgraduate programs at public universities in Brazil adopted affirmative policies by establishing quotas in their selection processes for persons subject to structural discrimination. Thus, according to a bulletin published by the Multidisciplinary Affirmative Action Studies Group of the Rio de Janeiro State University (GEMAA - UERJ), there was a surge in affirmative action following the Decree No. 13,2016, issued by the Ministry of Education (MEC)⁶⁸². Although the document does not mention trans and diverse gender persons, some postgraduate programs in Brazil have become aware of the need for quota policies for those persons. According to GEMMA, of the 610 postgraduate programs with affirmative actions in place nationwide, only 12.62% reserve places (vacancies) based on gender identity and/or expression.⁶⁸³
455. Despite the progress made in education to include the perspective of persons whose sexual orientation and identity and/or gender expression differ from socially accepted patterns, the Commission voices its concern with the educational project calling itself “In Defense of Non-Partisan Education” (“*defesa da ‘escola sem partido’*”),⁶⁸⁴ criticizing education with gender perspective.⁶⁸⁵ That project, embodied in Bill N^o 7180/2014, requires that teachers have a neutral stance in the face of alleged “left-wing ideological indoctrination,” which, according to the project’s supporters, is tak-

680 ENAP, *Resolução N^o 12/2015 do Conselho Nacional de Luta contra a Discriminação e Promoção dos Direitos de Lésbicas, Gays, Bissexuais, Travestis e Transexuais, vinculado ao Ministério dos Direitos Humanos*, 2015.

681 General Secretariat of the Office of the President of the Republic, National Press, Diário oficial da União [Official Gazette]. *Edict No. 33, January 17, 2018*.

682 Ministry of Education *Portaria Normativa N^o 13, Wednesday, May 11, 2016*.

683 Jornal O Casarao, *Inclusão e Permanência: Políticas de Cotas para Pessoas Transexuais e Travestis na Pós-Graduação*, October 3, 2018

684 The “non-partisan school” (escuela sin partido) project started as a movement which later turned into a legislative bill seeking to combat an alleged “left-wing doctrine” practised by teachers in school. On this, see *Folha de S. Paulo, Saiba como surgiu o termo ‘ideologia de gênero’*, October 23, 2018; also, *Movimento Escola Sem Partido*, January 31, 2019.

685 *Folha de Sao Paulo, Propostas de Bolsonaro (PSL) e Haddad (PT)*.

ing place in Brazilian schools and includes teaching a “gender ideology.”⁶⁸⁶ The Commission is likewise worried by a statement by authorities opposing education with a gender perspective⁶⁸⁷. Reportedly, the Ministry of Education has issued statements about an effort to combat gender education in schools.⁶⁸⁸

456. That Commission takes the view that Bill No. 7180/2014 could well violate Article 13.2 of the Protocol of San Salvador regarding teachers’ right to freedom of expression. Accordingly, the IACHR recommends that the State discuss changes in education with the parents of the children and adolescents, as well as with educators, seeking to “enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and [should] foster understanding, tolerance, and friendship among all nations and all racial, ethnic, or religious groups and promote activities for the maintenance of peace.”⁶⁸⁹

457. As regards education with a gender perspective, the IACHR reminds the State that the gender perspective is an essential tool for combating discrimination and violence against women and persons with diverse sexual orientations and gender identities; as well as a concept that seeks to draw attention to the inequality and structural subordination of women to men based on their gender. Therefore, the Commission reminds the State also of its obligation to adopt specific measures to modify socio-cultural patterns of heteronormative behavior [Tr: based on the belief that heterosexuality is the default, preferred, or normal mode of sexual orientation], including the design of formal and non-formal educational programs to fight preconceived notions and customs and all other kinds of practices based on the premise of the inferiority of women and of other groups historically discriminated against because of their sexual diversity or gender identity.

5. Health policies, inequalities, and at-risk groups

458. The IACHR acknowledges that Brazil has accomplished the major feat of establishing a universal health system encompassing and coordinating services of all degrees of complexity nationwide. The Unified (National) Health System (SUS) – despite the challenges it has faced with obstetric violence and shortages of medicine, and so on – stands out as a model of universal, cost-free, public health care and reflects the Brazilian State’s commitment to effectively implementing the right to health. Within the

686 Escola Sem Partido, *Por uma lei contra o abuso da liberdade de ensinar*, June 17, 2019.

687 Folha de Sao Paulo, *Bolsonaro pede disciplina e critica ‘ideologia de gênero’ em entrega de colégio da PM*, December 17, 2018.

688 G1, *Bolsonaro anuncia Ricardo Vélez Rodríguez como ministro da Educação*, November 22, 2019.

689 OAS, Protocol of San Salvador, Article 13.2.

SUS, the Indigenous Health Subsystem is another outstanding achievement: an unparalleled example of a health policy embracing the right to have different ways of exercising the right to health.

- 459.** Nevertheless, within that overall framework of important institutional, regulatory, and public policy progress, the IACHR observes some worrisome challenges. Some are tied in with the structurally embedded exclusions, biases, and inequalities described in the initial chapters of this report. For example, the World Health Organization has asserted that female adolescents, unmarried women, women of low socio-economic status, women pertaining to ethnic minorities, women immigrants, and HIV-positive women are more likely to be treated disrespectfully and offensively in health care establishments.⁶⁹⁰ In other cases, however, the challenges stem from decisions taken and implemented by the State that run contrary to what would be needed to realize everyone's right to health.
- 460.** The Commission observed major deficiencies related to the right to health of persons of African descent, particularly with regard to maternity care and obstetric procedures for Afro-descendant women. During its visit, the ACHR received information about high maternal mortality rates among women of African descent.⁶⁹¹ Second, in the 2014 Annual Socio-Economic Report on women, 62.8% of maternal mortality cases involved women of African descent. According to data in that report, while deaths among white women fell from 39 to 15 per 100,000 births, the rate for women of African descent rose from 34 to 51 per 100,000 births.
- 461.** Reports were also received of mistreatment, verbal and physical abuse, and racist acts by health professionals. Notable, too, are cases of medical racism in the form of omissions or negligent care for pregnant women of African descent, and the playing down of the suffering they feel.⁶⁹² In particular, the Commission highlights the fact that the State was found internationally responsible by the Committee of independent experts that monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in the case of *Alyne da Silva Pimentel Teixeira*. In that case, a woman of African descent living in the municipality of Belford Roxo, in the state of Rio de Janeiro, died in 2002 as a result of several deficiencies in the care she received in a public hospital. According to the report, the Committee found the State responsible for medical negligence stemming from institutional racism due to the victim's ethnic/racial origins and socio-economic standing.⁶⁹³

690 WHO, The prevention and elimination of disrespect and abuse during facility-based childbirth, WHO Statement WHO/RHR/14.23, September 2014.

691 Office of the President of the Republic, Secretariat of Policies for Women *RELATÓRIO ANUAL SOCIOECONÔMICO DA MULHER 2014*, March 2015.

692 *Criola, A Situação dos Direitos Humanos das Mulheres Negras no Brasil Violências e Violações*, 2017.

693 United Nations, Committee on the Elimination of Discrimination against Women (CEDAW), Communication No. 17/2008 - Alyne da Silva Pimentel Teixeira v. Brazil, 29 July 2011.

- 462.** In this regard, the IACHR also recommends that a federal law be passed establishing that all medical professionals must receive training on the African diaspora [Tr. the mass dispersion of peoples from Africa during the Transatlantic Slave Trades, from the 1500s to the 1800s], in Brazilian social studies, and in human rights, including their responsibility to respect and protect fundamental rights, such as the rights to life and personal integrity, without discrimination.
- 463.** In its visit to the country, the IACHR also received reports about the weakening of indigenous health policies. According to the information received, during 2019 there was a shift in indigenous health management policies, along with a suspension of contracts with organizations working with the Indigenous Special Health District (DSEI).⁶⁹⁴ For that reason, several indigenous leaders with ties to the Forum of Presidents of the Indigenous Health District Councils and Indigenous Organizations from all over the country complained that the State was taking steps designed to freeze the health care system for those peoples. Reportedly, the idea was to cease transferring funds obtained under contracts with eight civil society organizations providing health services in 34 Indigenous Special Health Districts. In that connection, the IACHR was apprised of the existence of DSEIs with a number of institutional issues, such as lack of funds to pay for medicines; a lack of tests and vaccines; problems with transporting patients to referral centers; and failure to pay personnel working in indigenous communities. According to the reports, structural shortcomings of that nature had already resulted in the deaths of a number of indigenous patients.⁶⁹⁵
- 464.** The IACHR also received worrying reports regarding acts of obstetric violence⁶⁹⁶ committed against women in Brazil, especially the most vulnerable. According to the WHO, women all over the world endure disrespectful, offensive or negligent treatment in health units before, during, and after giving birth. Those acts include physical mistreatment, humiliation, verbal abuse, medical procedures carried out without their consent or under coercion (including sterilization), the violation of confidentiality, failure to obtain full informed consent, failure or refusal to administer painkillers, breaches of privacy, denial of admission to health units, and so on⁶⁹⁷.

694 Conselho Indigenista Missionário, *Abandono da saúde indígena pelo governo pode causar mortes “a cada quatro horas”*, 2019.

695 The Intercept Brasil, “*Transplantada ou cardiopata? Falta de dinheiro faz médicos escolherem qual criança indígena atender*”, April 9, 2019.

696 The World Health Organization has recognized obstetric violence as a form of violence against women in that it imposes a significant amount of avoidable pain and suffering by using, without scientific evidence, excessive medicines, intervention during childbirth, and the use of practices considered disagreeable, painful, or humiliating for the woman. WHO, *Prevention and elimination of disrespect and abuse during childbirth*, September 3, 2014.

697 WHO, *The prevention and elimination of disrespect and abuse during facility-based childbirth*, WHO Statement WHO/RHR/14.23, September 2014.

- 465.** According to a survey conducted in 2010 by the Perseu Abramo Foundation in partnership with Serviço Social do Comércio (SESC), 1 in every 4 women in Brazil had suffered some kind of obstetric violence.⁶⁹⁸ According to data received by the IACHR, cesarean section births have increased to a point at which 56% of the population surveyed had given birth in that way.⁶⁹⁹ That figure would appear to be extremely high, when compared with World Health Organization recommendations (for WHO, an acceptable rate would be between 10% and 15%).⁷⁰⁰ These data suggest that Brazilian pregnant women stand a higher risk of having their preferences ignored and of being subjected to discrimination, mistreatment, and over-medication when they prepare to give birth and are bereft of appropriate legal protection measures. Moreover, the prevalence of discriminatory and racial stereotypes that consider black women “stronger and resistant to pain” is compounded by widespread lack of access to health care services, which means that women of African descent are more likely to suffer obstetric violence.⁷⁰¹
- 466.** In a public hearing organized by the Federal Public Ministry in Mato Grosso do Sul, speakers identified patterns of obstetric violence against indigenous and black women, including “disinformation, lack of privacy, means comments, excessive touching of their vaginas, childbirth in a horizontal position, the absence of anyone to accompany them, the absence of midwives (“*doulas*”), routine episiotomy and cesarean section, as well as disregard of ethnic/racial differences, scientific evidence, and national or state law.⁷⁰² Health care services routinely reproduce the violent practices and ethnic/racial and gender-based discrimination already structurally embedded in society.
- 467.** In this regard, the IACHR received information about the case of Janaína Aparecida Quirino, an Afro-descendant mother to seven children and expecting an eighth, living on the street who was forcibly sterilized as a result of a court order handed down in the city of Mococa, São Paulo, Considering the seriousness of this case, the IACHR requested information from the Brazilian State on August 24, 2018, pursuant to Article 41 of the American Convention on Human Rights.⁷⁰³

698 Fundação Perseu Abramo, “*Mulheres brasileiras e gênero nos espaços público e privado*”, Investigación de opinión pública, August 2010.

699 Request for a hearing by Rede Pela Humanização Do Parto e Nascimento (REHUNA), Obstetric Violence endured by Women in Brazil, in connection with the 165th period of sessions of the IACHR, August 3, 2017.

700 Zanardo, G., Calderón, M., Nadal, A., Habigzang, L., (2017), *Violência obstétrica no Brasil: uma revisão narrativa*, Porto Alegre: Catholic University of Rio Grande do Sul.

701 Humanista, *Violência obstétrica atinge 1 em cada 4 gestantes no Brasil*, diz pesquisa, 28 de enero de 2018.

702 Federal Public Ministry, *Audiência pública promovida pelo MPF debate aspectos da violência obstétrica contra mulheres indígenas e negras*, June 6, 2019.

703 IACHR, Letter requesting information from the Brazilian State. Obstetric Violence against a woman living on the street, who underwent forced sterilization by the State of Brazil. Tuesday, August 14, 2018. In the archives of the IAVHR.

- 468.** In response to questionnaires drawn up by the IACHR, the Brazilian State reported several actions it is taking to guarantee access to health services and protection of women’s sexual and reproductive rights,⁷⁰⁴ including the distribution of cost-free contraceptives throughout the country, training for health personnel, and the publication of specialized manuals and technical standards. In particular, the State asserted that “sexual and reproductive rights must be understood as a right and not as a form of birth control” and, therefore, “they include the right to decide, in a responsible manner whether or not to have children, how many children to have, and at what stage in life; the right to experience responsible sexuality without fear, shame, or blame, regardless of marital status, age, or physical condition; the right to access health services that guarantee privacy, confidentiality, quality, and autonomy; and the right to exercise sexuality and reproduction free from discrimination, imposition, or violence.” The State recalled that family planning is considered a right enjoyed by Brazilian men and women, guaranteed by the Federal Constitution, and regulated by Law No. 9.263 of 1996, which governs sterilization practices⁷⁰⁵ and requires that informed consent be obtained to perform that procedure.
- 469.** The IACHR nevertheless reminds Brazil that under the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women said violence encompasses physical, sexual, and psychological violence occurring in the community and committed by any person, including when it is perpetrated or tolerated by State agents, and it covers, among other forms, rape, sexual abuse, torture, trafficking in women, forced prostitution, kidnapping, and sexual harassment in the workplace and in educational or health care establishments, or any other place.⁷⁰⁶
- 470.** It likewise stresses that the State must guarantee swift, thorough, independent, and impartial investigation obstetric violence and medical negligence incidents, ensuring that all those potentially responsible are investigated, and, where applicable, tried and sentenced. In the same manner, the State must abolish all legal and de facto mechanisms for preventing internal investigations, criminal proceedings, civil proceedings, and federal investigations.
- 471.** Regarding the health of trans and diverse gender persons, the Commission acknowledges the effort made by the State, which, since 2006, through adoption of the Charter on Health Care Users’ Rights by the Unified (National) Health System (SUS), safe-

704 Federative Republic of Brazil, Reply to the request for information regarding sterilization without consent, Janaina Aparecida de Quirino, Correspondence with the IACHR, September 12, 2018. In the archives of the IAVHR.

705 Office of the President of the Republic, Deputy Head of Legal Affairs, Law N^o 9.263, of January 12, 1995. Regulates § 7^o of Article. 226 of the Federal Constitution, which addresses family planning, establishes penalties, and contains other provisions.

706 IACHR, Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, “Convention of Belém Do Pará”, June 8, 1994.

guarded the right of any user to be registered “by the name he or she prefers to be called, irrespective of civil registry records, and not be treated as a number, name of ailment, codes, or, in general, any disrespectful or biased label.”⁷⁰⁷ Such a right enables those persons to be called by the name under which they identify themselves in any public health network unit. Two years later, in August 2008, the Unified (National) Health System began performing sex reassignment surgery, also known as “transgenitalization” procedures, for persons wishing to change their genitals.⁷⁰⁸ In that regard, in the past 10 year, 474 surgical procedures were performed on transsexuals and transvestite, according to Ministry of Health data.⁷⁰⁹

472. However, in 2018, almost 300 trans persons were reportedly awaiting surgery in the public health network 10 years after the SUS order had been issued. Doctors told the media that there was still too little equipment and too few professionals to increase the number of surgeries per month.⁷¹⁰ In general, on average each institution performs one or two surgeries per month. Most doctors say that the number of hospitals performing those operations needs to increase so that patients do not have to travel, say, from Faria de Santana, in Bahia, to have the procedure done in Porto Alegre, in the state of Rio Grande do Sul.⁷¹¹

473. The IACHR was also apprised of a survey conducted in 2018 by the São Paulo University Clinics Hospital (USP) and by the Federal University of Rio Grande do Sul (UFRGS) of 620 trans persons aged between 18 and 64 in the states of São Paulo and Rio Grande do Sul, which came up with alarming data on doctor-patient relations. Thus, 43.2% of those interviewed said they avoided health care services simply because they were trans. Most (58.7%) claimed to have been discriminated against while receiving medical care and would only go to a hospital as a last resort. Only 17.8% of those interviewed said that they had never encountered discrimination during a visit to a doctor.⁷¹²

474. In addition, the IACHR made a statement about attempts to alter people’s sexual orientation or gender identity through alleged psychotherapy treatments, internment in “clinics” or camps, and victims of physical abuse.⁷¹³ On that matter, the Brazilian Federal Council of Psychology (CPF) issued Resolution No. 001/99, in March 1999,

707 Ministry of Health, *Carta dos direitos dos usuários da saúde*, 2007.

708 Drauzio Varella, *Como funciona o SUS para pessoas transexuais?*, December 5, 2017.

709 Globo, *Quase 300 transgêneros esperam cirurgia na rede pública 10 anos após portaria do SUS*, 19 de agosto 2018.

710 Universa, *Transexuais ficam até cinco anos em fila de cirurgia de transgenitalização*, August 19, 2018.

711 Globo, *Quase 300 transgêneros esperam cirurgia na rede pública 10 anos após portaria do SUS*, 19 de agosto 2018.

712 Drauzio Varella, *Como funciona o SUS para pessoas transexuais?*, December 5, 2017.

713 IACHR, *Violence against LGBTI Persons*, OAS/Ser.L/V/II Rev. 2 Doc. 36, November 12, 2015, par. 200.

prohibiting so-called “conversion therapies.”⁷¹⁴ However, in September 2017, the Commission received information to the effect that a federal judge had rejected that resolution.⁷¹⁵ In addition, on July 28, 2018, a report of the Social Security and Family Commission (CSSF) of the Chamber of Deputies backed Bill No. 4931/2016, better known as the “gay cure.”⁷¹⁶

- 475.** At the same time, in January 2018, the Federal Council of Psychology adopted, adopted Resolution No. 001/18, banning psychologists from “proposing, carrying out, or collaborating with and event or service, in either the public or the private sphere, relating to the conversion, reversal, adjustment, or reorientation of the gender identity of trans and diverse gender persons.”⁷¹⁷ The document envisages that professionals in that field will act according to ethical principles and their knowledge of the profession to help eliminate prejudice and will not connive with anything that smacks of discrimination. The resolution is similar to the Council’s in the case of sexual orientation, the promising or reversal of which was prohibited (*cuja promessa ou inversão de orientação sexual foi proibida*) for almost two decades in Brazil.⁷¹⁸
- 476.** The Commission reminds the State that those treatment “are not medically indicated and pose a serious threat to the health and human rights of the persons affected.”⁷¹⁹ It further stresses that the different sexual orientations and gender identities are not ailments and have been withdrawn from the International Statistical Classification of Diseases and Related Health Problems (ICD) of the World Health Organization. Accordingly, the Commission recommends that the State adopt measures to ensure that the governing body for State health services guarantees procedures for effective regulation and oversight of health professionals offering these services, along with the dissemination of scientific evidence-based and objective information regarding the negative health impact of those so-called “therapies.”

714 Conselho Federal de Psicologia, “*Estabelece normas de atuação para os psicólogos em relação à questão da Orientação Sexual*”, March 22, 1999.

715 The Guardian, *Brazilian judge approves ‘gay conversion therapy’, sparking national outrage*, September 19, 2017.

716 Huffpost, *Bancada conservadora tenta aprovar cura gay e outros retrocessos contra LGBTs*, June 28, 2018; Chamber of Deputies, Projeto de Lei 4931/2016, 2016.

717 Conselho Federal de Psicologia, *Estabelece normas de atuação para as psicólogas e os psicólogos em relação às pessoas transexuais e travestis*, January 29, 2018.

718 O Globo, *Conselho de Psicologia proíbe profissionais de realizar ‘cura’ de travestis e transexuais*, January 30, 2018.

719 IACHR, Report “*Violence against Lesbian, Gay, Bisexual, Trans and Intersex Persons in the Americas*”. OEA/Ser.L/V/II.164 Doc. 36. November 12, 2015.



**FREEDOM OF EXPRESSION
AND INFORMATION**

CHAPTER 7 FREEDOM OF EXPRESSION AND INFORMATION

- 477.** In its list of fundamental rights and guarantees, Article 5 of the 1988 Constitution of the Federative Republic of Brazil includes freedom of expression and information. According to the Constitution, these rights and guarantees must be assured for Brazilians and foreigners residing in the country alike, without distinction, and any form of discrimination is forbidden. In its return to democracy, Brazil put an end to State censorship and gave each person freedom of conscience and the right to express their political, intellectual, and artistic views.⁷²⁰
- 478.** Nevertheless, the IACHR observes innumerable ongoing challenges with respect to effective guarantees for freedom of expression in Brazil. Apart from the cases of journalists persecuted and murdered, there are other growing curtailments of freedom of expression, some of them the product of the political polarization in the country. For example, the Commission notes with considerable concern the restrictions on freedom of expression and freedom to teach (*libertade de cátedra*) experienced by teachers at all levels of education faced by threats to denounce the contents of what they teach. Bill No. 867/2015, appended to Bill No. 7180/2014, and which proposes establishing the Non-partisan School program (“Programa Escola sem Partido”)⁷²¹, would, if it is adopted, represent the institutionalization of the violations of freedom of expression and teaching that teachers have already experienced. Apart from that federal bill, similar bills are being processed in 8 state legislative assemblies and in 10 municipal councils (*câmaras municipais de vereadores*).⁷²² The Commission voices its concern regarding exercise of the right to freedom of expression by teachers, should those bills become law.
- 479.** The Commission is also worried about the possibility of guaranteeing education in human rights in a context of persecution and social monitoring based on prejudices supported by the “Escola sem Partido” bills. As established in Article 13.2 of the Protocol of San Salvador, “education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace [...] education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace”.⁷²³

720 Brazil. Constitution of the Federative Republic of Brazil. 1988.

721 Chamber of Deputies. PL867, 2015.

722 Escola sem Partido. PLs em andamento. [Bills being processed].

723 Inter-American Human Rights Institute. X Inter-American Report on Human Rights Education. p. 16, 2011

480. At the same time, the IACHR notes that, in recent years, free access to information was significantly expanded in Brazil as of the promulgation of the Access to Information Law⁷²⁴ (Law No. 12.527/2011), authorizing all citizens to request information produced by, or under the supervision of, the State. Effective implementation of the law, without restrictions or limitations, is important to ensure that citizens are fully informed of all information in the State's possession. The IACHR urges that Law No. 12.527 be fully enforced and that it serves as inspiration for local and regional legislative initiatives.

A. FREEDOM OF ASSOCIATION AND SOCIAL PROTESTS

481. A vibrant space for civic participation, protected against attacks or threats, is a cornerstone of stable democratic societies accountable to citizens. However, during its on-site visit, the Commission received complaints about restrictions on critical views in a context of social protest and the defense of human rights. The IACHR has ascertained that this state of affairs has got worse in recent years, especially since 2013, with a worrying increase in the number of restrictions on the exercise of human rights in connection with several social protests and demonstrations all over the country.⁷²⁵ According to civil society organizations, there was a stepped-up presence of military police at demonstrations in several states, who, instead of affording protection, were bent on dispersing protesters and intimidating those who wanted to demonstrate.

482. One of the acts of violence reported was the attack on photographer Sérgio Silva, who in 2013 (a year in which there were a number of protests originating in São Paulo and then spreading throughout the country) was wounded by a rubber bullet fired by military police while he was covering a demonstration in São Paulo. As a result, he lost all vision in his left eye. Against the backdrop of the 2013 protests, there were two other notorious cases, one involving Rafael Vieira, an Afro-descendant collector of recyclable material, who was arrested in Rio de Janeiro for carrying a bottle of bleach (*água sanitária*) and a bottle of detergent, materials that the court considered "inflammatory." The case resulted in a sentence to five years in prison⁷²⁶ and exemplified the institutional racism found in the Brazilian justice system. The other case was that of Elisa Quadros Pinto, known as by the nickname of "Sininho", along with 2 other activists convicted of conspiracy to commit crimes and other offenses and sentenced to between 5 to 7 years of imprisonment.⁷²⁷

724 Office of the President of the Republic, Casa Civil (Office of the Chief of Staff), Deputy Head of Legal Affairs, *Law N° 12.527*, of November 18, 2011.

725 Artigo 19, *Violações à Liberdade de Expressão. Relatório Anual 2013*, 2014.

726 Artigo 19, *Protestos no Brasil 2013*, 2014.

727 Conectas, *Letter of complaint for human rights violations in the sentencing of 23 activists for exercising their rights to Freedom of Peaceful Assembly and Association*, 2018.

- 483.** Likewise, in August 2016, student Deborah Fabri, who was taking part in a demonstration in São Paulo, was wounded by fragments of a non-lethal armament (*bomba não letal*) tossed by the military police. As a result, she, too, lost all vision in her left eye.⁷²⁸ Then, in March 2017, 19-year-old Edvaldo Alves was wounded by a rubber bullet when he was taking part in a demonstration against violence in the city of Itambé, in the state of Pernambuco, and died from the injury one month later.⁷²⁹ Apart from the above, the IACHR has been told that restrictive laws persist, along with lawsuits and restraining orders (*o Interdito Proibitório*) to curtail demonstrations.⁷³⁰
- 484.** As reported and discussed above, criminal justice or administrative inquiries into these violations are few and far between and they usually go unpunished. In addition, the IACHR has observed the differential impact of those laws and practices on persons or groups who historically bear the brunt of structural discrimination in Brazilian society. For instance, the IACHR was informed of a group of persons claiming land rights in Brazil, comprised, inter alia, of campesinos and members of indigenous, *quilombola*, and other traditional communities, being imprisoned and prosecuted as a form of punishment and intimidation aimed at deterring their calls for agrarian reform.⁷³¹
- 485.** The IACHR notes that the use of the judiciary and the police to repress social movements has already been litigated in the inter-American human rights system and ended in the State being ordered to adopt reparation measures and measures to prevent the recurrence of such acts.⁷³² During its on-site visit, the IACHR received fresh reports of this kind of abuse, especially in relation to social movements pressing for access to land and housing. In one of the cases reported, the investigation conducted by the Public Prosecutors' Office in São Paulo allegedly resulted in the prosecution and imprisonment of several leaders of the struggle for housing, including the black singer Janice Ferreira Silva, known as "Preta Ferreira" [Black Ferreira]. Such leaders are accused of the crimes of "extortion" and "illicit enrichment" for collecting contributions to pay for maintenance of the buildings occupied by members of their respective movements, in what amounts in practice to a strategy for criminalizing those movements.⁷³³

728 Human Rights and Minorities Commission of the Chamber of Deputies, *Comunicado Internacional – direito ao protesto*, 2018.

729 CNDH, *Nota Pública do CNDH Sobre a Morte de Manifestante em Itambé-PE*, 2017.

730 Instituto Humanitas Unisinos, *Indígenas no Paraná são impedidos de realizar manifestação em vias públicas no oeste do Estado*, April 9, 2019.

731 IACHR, Press Release 09/19, *IACHR Expresses Concern about Acts of Violence against Rural Workers in Brazil*, January 18, 2019. [Press Release 320/19 OHCHR, IACHR Condemn Murders of Indigenous Leaders in Maranhão, Brazil](#). Monday, December 09, 2019.

732 Inter-American Court of Human Rights, *Case of Escher et al v. Brazil Judgment of July 6, 2009*.

733 [Text of the complaint](#).

- 486.** Furthermore, the Commission received worrisome information regarding the criminalization and physical and psychological attacks on Brazilian adolescent students during protests and social movements in the country. That was witnessed in connection with the protests against a set of educational reform policies pushed by the State of São Paulo in 2015.⁷³⁴
- 487.** More recently, in connection with the 2018 elections, students from several universities in Brazil staged what they called “anti-fascist” peaceful protests on the night of October 26, 2018. Those protests were forbidden by the Electoral Justice board. In at least nine Brazilian states, universities were raided by police and election inspectors to remove posters and other materials, on the pretext of their amounting to unlawful electoral propaganda. On October 26, the Office of the Attorney General of the Republic (*Procuradora-Geral da Republica*) issued a Precautionary Measure in Claim of Non-Compliance with a Federal District Fundamental Precept (*Arguição de Descumprimento de Preceito Fundamental - ADPF*)⁷³⁵ as a preliminary injunction to suspend those actions by the Electoral Justice board and, on October 31, the Federal Supreme Court (STF) ruled, unanimously, to suspend the judicial and administrative actions involving the entry of government agents into public and private universities in a number of Brazilian states.⁷³⁶ In its ruling, the country’s Supreme Court asserted, along with other arguments that “universities are spaces for freedom and personal and political liberation. As their name shows, they stand for plurality and respect for differences, divergences for forming points of consensus that are legitimate only when they derive from free expression. Discord and nonconformity are inherent to individual freedoms.”⁷³⁷ The IACHR welcomes that ruling by the Brazilian justice system.
- 488.** In connection with the electoral campaign, women who organized activities to demonstrate their views online and in the streets were subjected to a series of episodes in which they were physically attacked and harassed on social networks.⁷³⁸ The IACHR observes with the utmost concern that, reportedly, the organizers of online initiatives received direct threats of physical and sexual violence, their profiles were hacked, and they were victims of “doxing”.⁷³⁹

734 Cf. Thematic hearing on “Brazil: Student Protests in São Paulo, 157th period of sessions (April 2016). Cf. IACHR, *Protest and Human Rights*, 2019.

735 ADPFs are one of the mechanisms for oversight of constitutionality in Brazilian law. Pursuant to *Law n. 9.882/99*, the function of an ADPF is to avoid and abolish from the legal order any Government act that contravenes fundamental precepts (Article 1).

736 Federal Supreme Court, *ADPF 548*,

737 *Ibid.*

738 DW, *Organizadora de grupo contra Bolsonaro no Facebook é agredida no Rio de Janeiro*, September 25, 2018.

739 “Doxing” refers to the practice of searching for and publishing private or identifying information about a particular individual [Tr. on the Internet, typically with malicious intent]. Artigo 19, *Medidas com base na Resolução 33/2 do Conselho de Direitos Humanos da ONU (HRC) sobre a Segurança de Jornalistas*, 2017.

- 489.** The IACHR also received disturbing information about a series of criminal proceedings and prosecution of journalists, human rights activists, and demonstrators, invoking such crimes as contempt of authority (*desacato*) and defamation. Civil society organizations reported that police institutions were making excessive use of the contempt law (*desacato*) against those persons to criminalize the legitimate expression of opinions in a democratic society.⁷⁴⁰ In that regard, the IACHR reaffirms the incompatibility of “desacato” laws with Article 13 of the American Convention. The Commission emphasizes that disproportionate use of criminal law to accord preferential protection of the honor of government or public officials, even in cases in which no criminal conviction is handed down, effectively tends to silence the exercise of journalism and those who want to take part in public debate; apart from weakening the responsibility of officials and the proper workings of the State. The IACHR likewise received information regarding judicial rulings that hamper the continuity of artistic expression on the basis of a notion of public morality that is incompatible with a democratic society.⁷⁴¹
- 490.** Civil society organizations also expressed concern at the processing, in the Brazilian Congress, of bills envisaging changes to the Anti-Terrorist Law, passed in 2916, despite vehement objections by civil society, as they would make the law more repressive and allow authoritarian reactions to social protests. Those bills seek to expand the definition of what is deemed to be a terrorist act, which could then be used to criminalize communicators in the media and human rights defenders in Brazil. The Commission wishes to point out that this bill is currently being examined by the Constitution and Justice Commission of the Federal Senate.⁷⁴²
- 491.** The State informed the Commission about the progress made by Law N^o. 12,527 / 2011 - Access to Information Law (LAI), which establishes the end of confidentiality for official documents and those containing information on human rights violations. This law gave rise to the Electronic System of the Citizen Information Service (e-SIC), which allows anyone to request information from institutions of the Executive Branch. In the same way, further actions have been developed, such as the Digital Citizenship Platform, a central instrument for the provision of information, electronic requests and monitoring of public services.⁷⁴³

740 Fórum Nacional pela Democratização da Comunicação. Calar Jamais. *Um ano de denúncias contra violações à Liberdade de expressão*, 2017. Pp. 18-19.

741 Fórum Nacional pela Democratização da Comunicação. Calar Jamais. *Um ano de denúncias contra violações à Liberdade de expressão*, 2017.

742 Federal Senate, *Projeto de Lei do Senado n^o 272*, of 2016, February 2, 2021.

743 IACHR Archives, Note from the Brazilian State to the Draft Report on Human Rights in Brazil, received on December 22, 2020. p. 71.

1. Hate speech and discrimination

- 492.** The IACHR observes that incitements to hate and discrimination by senior government officials facilitate acts of violence by racist, homophobic, and misogynist groups. For that reason, the IACHR has repeatedly stated that government officials need to espouse a public discourse that helps prevent violence based on discrimination or that requires them to refrain from statements that expose various groups to greater risk of being victims of acts of violence. Thus, the authorities must not only eschew sending hate messages against people based on their gender, sexual orientation, race, or condition, but also resolutely contribute to forging an environment of tolerance and respect in which everyone can voice her or his thoughts and opinions without fear of attack.
- 493.** During its on-site visit, the IACHR observed with the utmost concern reports of an increase in discriminatory hate speech in the public sphere and on social networks, particularly with regard to women, LGTBI persons, persons of African descent in urban settings, or social moments struggling for land, housing, and a safe environment. As already mentioned, many such comments on social networks were either made or endorsed by government officials or candidates to elective office.
- 494.** The Commission draws attention to the persecution endured by the former gay Deputy in the Federal Congress, Jean Wyllys, who, after receiving several death threats for defending the rights of LGBTI persons in parliament, resigned and left the country.⁷⁴⁴ In the same vein, the IACHR highlights the notorious case of councilor Marielle Franco, of African descent, who was brutally murdered while fulfilling her mandate to defend human rights, including those of LGBTI persons, in the state of Rio de Janeiro.⁷⁴⁵ These cases illustrate the multiple vulnerability of defenders of the human rights of Afro-descendant LGBTI persons who, due to the overlapping perceptions of their sexual orientation and gender identity, their ethnic/racial origins, and the agendas they supported, are much more likely to be victims of acts of violence. Here, too, the Commission issues yet another reminder that hate speech and violence against elected representatives also constitute an attack on Brazilian democracy.
- 495.** The IACHR was also apprised of the use of homophobia as a political tool. Thus, in October 2017, thanks to an interview with one of the presidential candidates, information was disseminated claiming that his opponent in the election had been the person chiefly responsible for creating and distributing a “gay kit” in Brazilian schools. Although it was never circulated, that educational material had been put to-

744 Human Rights Watch, *A Voice for LGBT Rights Silenced in Brazil*, January 24, 2019.

745 BBC, *Mujer, negra, lesbiana y pobre: quién era Marielle Franco, la concejala de Río de Janeiro cuyo brutal asesinato hizo que multitudes a salieran a protestar en Brasil*, March 20, 2018.

gether in conjunction with civil society and pursuant to the “Escola sem Homofobia” [Education without Homophobia] plan – a sex and anti-bullying school education policy – that sought to mainstream a gender perspective in schools.⁷⁴⁶ The false nature of the news regarding the “gay kit” was confirmed by the ruling of the Higher Electoral Tribunal (*Tribunal Superior Eleitoral* – TSE), which requested the suspension of websites and social networks using the term.⁷⁴⁷

- 496.** In addition, according to information in the public domain, in October 2018, the United Nations voiced concern about the violence reportedly triggered by certain speeches delivered during the presidential election campaign in Brazil. According to those reports, the spokesperson of the Office of the United Nations High Commissioner for Human Rights pointed out that “the violent and inflammatory language during those elections, especially against LGBTI persons, women, persons of African descent, and persons with different political views, is deeply disturbing.”⁷⁴⁸
- 497.** The IACHR likewise recalls that freedom of expression must be guaranteed not only with respect to the dissemination of ideas and information that are welcomed or considered inoffensive or neutral, but also for those that offend, conflict with, perturb, or upset government officials or a segment of the population. However, Article 13.5 of the American Convention establishes that “Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.”⁷⁴⁹ In particular, the IACHR and its Special Rapporteurship considered that, in light of the general principles governing the interpretation of treaties, “advocating hate” (*apologia ao ódio*) against persons based on their sexual orientation, gender identity, or body diversity constitutes incitement to violence and therefore contravenes the human rights precepts and obligations to which the Brazilian State has committed.

746 Ministry of Health/Conselho Nacional de Combate à Discriminação [National Council to Fight Discrimination], *Brasil Sem Homofobia. Programa de Combate à Violência e à Discriminação contra LGBT e de Promoção da Cidadania Homossexual*, 2004.

747 Consultor Jurídico, *Ministro do TSE determina remoção de vídeo sobre “kit gay”*, October 16, 2018.

748 La Jornada. *Discursos de odio en Brasil causan preocupación: United Nations*, October 13, 2018; Europa Press. *La ONU manifiesta su preocupación por la violenta retórica en la campaña electoral de Brasil*, October 12, 2018; G1. *ONU condena atos de violência durante período eleitoral no Brasil*, October 12, 2018.

749 IACHR, *Inter-American Convention on Human Rights*, Article 13.5.

2. Censorship and stigmatization

498. The IACHR has been particularly concerned about stigmatizing remarks about groups and individuals who, as previous sections of this report have shown, are faced with structural inequalities in Brazil. It therefore reiterates that the State and its authorities are responsible for ensuring that all are free and enjoy equal dignity and rights. That being so, no individual may be stigmatized on account of his or her race, ethnicity, gender, religion, sexual orientation, or gender identity.

499. The IACHR recalls that for democracy to work it requires the highest possible level of public discussion of how society and the State should function in every sphere. In a democratic and pluralist system, the actions and omission of the State and its officials must be subject to rigorous inspection, not only by internal oversight bodies, but also by the press and public opinion. Public administration and matters of interest to all but be subject to oversight by society as a whole. Democratic oversight of public administration through public opinion fosters transparency in government and the accountability of public servants for their actions, in addition to being a means to attain the highest possible level of citizen participation. For that reason, the appropriate exercise of democracy requires ample circulation of reports, opinions, and ideas on matters of public interest.

500. On the other hand, during the Commission's on-site visit to Brazil civil society organizations also voiced their concern about statements made during the election campaign about abolishing "activism" and State funding for civil society.⁷⁵⁰ Accordingly, the IACHR recalls its Declaration of Principles on Freedom of Expression, in which Principle 6 stresses that "Every person has the right to communicate his/her views by any means and in any form."⁷⁵¹ That determination matches Article 13 of the American Convention, which not only guarantees freedom of thought and expression, but also emphasizes the responsibility of member states to prohibit "any advocacy of national, racial, or religious hatred that constitute[s] incitements to" discrimination, hostility, crime or violence.⁷⁵²

501. Consequently, all government authorities or officials have a responsibility to promote, through the statements they make, a democratic environment that is more conducive to freedom of expression, irrespective of political spectrum or activism. Otherwise, "statements by those State agents could accentuate or exacerbate situations of hostility, intolerance, or censure by government officials or other segments of the population toward persons associated with persecuted political parties."⁷⁵³

750 Folha de São Paulo. *Bolsonaro diz que pretende acabar com 'ativismo ambiental xiita' se for presidente*; Vice. October 11, 2018. *Acabar com o ativismo é também cercear a liberdade da direita*, October 9, 2018.

751 IACHR, *Declaration of Principles on Freedom of Expression*, 2000.

752 Inter-American Convention on Human Rights *Artículo 13 Freedom of Thought and Expression*. 1969

753 IACHR, *Annual Report on the work of the Inter-American Court of Human Rights*, 2011.

502. The IACHR recalls that government officials have a duty to ensure that, through statements they utter, they do not impair the rights of those who contribute to public debate by expressing and disseminating their thoughts, such as journalists, the media, and organizations defending human rights. Those officials are duty-bound to bear in mind the context in which they make their remarks in order to ensure that they do not constitute, as the Court has put it, “forms of direct or indirect interference or harmful pressure on the rights of those who seek to contribute with public deliberation through the expression and diffusion of their thoughts.”⁷⁵⁴

B. VIOLENCE AGAINST JOURNALISTS AND OTHER COMMUNICATORS (MEDIA PROFESSIONALS)

503. The IACHR has observed a notable increase in the number of acts of violence and threats against journalists in Brazil, especially since political polarization became more pronounced. In the past 5 years, the Commission has registered the murder of at least 11 journalists in Brazil on grounds allegedly related to their work as journalists, in addition to dozens of other attacks. In 2018 alone, four deaths of communicators were reported.

504. During its visit, the Commission was informed in São Paulo of serious threats of a digital and also physical nature against several journalists, particularly women, during the last election campaign. The Brazilian Investigative Journalism Association (ABRAJI) registered 141 cases of threats and violence against journalist covering the elections between January and October.⁷⁵⁵

505. In addition, the new forms of communication and information provided by social networks have also triggered an increase in attacks and threats against journalists and communicators. On March 16, 2019, the *O Estado de São Paulo* daily newspaper reported the existence of “defamation machine” in Brazil’s social media. The newspaper cites the case of its journalist Constança Rezende, who suffered virtual attacks on March 10, and the newspaper itself which, it said, had been targeted by those “virtual militias,” when it wrote a story about the Rezende case, showing that her statements had been altered. The newspaper *Estado de São Paulo* says that those “virtual militias” attempted to discredit the newspaper by using the hashtag #EstadaoMentiu on Twitter. It also reported that, according to social media specialists, those digital attacks used robots.⁷⁵⁶

754 I/A Court of H.R. Case of Ríos et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of January 28, 2009. Series C, No. 194. par. 139.

755 Associação Brasileira de Jornalismo Investigativo (Abraji), *Brasil: Jornalistas enfrentam intimidação durante campanha eleitoral*, October 25, 2018.

756 Estadão, *Rede bolsonarista ‘jacobina’ promove linchamento virtual até de aliados*, March 16, 2019.

- 506.** In that regard, the IACHR received information to the effect that both the Federal Supreme Tribunal (STF)⁷⁵⁷ and the National Congress⁷⁵⁸ would initiate procedures to investigate possible mechanisms for producing and disseminating fake news. Dismantling those mechanisms would appear to be vital not only to preserve the quality of democracy in the country, but also to protect the human rights of the victims of those attacks, including journalists.
- 507.** The IACHR is also very much concerned about the threats repeatedly received by journalist Glenn Greenwald, who works for the online news channel The Intercept Brasil. After reporting on the Lava-Jato Operation in the first half of 2019, the journalist and his family were the object of innumerable death threats, homophobic insults, and even government threats to deport them. The Commission also voices its utmost concern over information that the Brazilian Federal Police have begun inquiries into the journalist as an intimidation tactic designed to hamper his work.⁷⁵⁹ The IACHR issues a reminder that the free exercise of journalism and freedom of expression are fundamental pillars of a democratic society and that the State is responsible for protecting and respecting that profession. The Commission further calls upon the State to investigate, prosecute, and punish those threats and acts of violence against journalists.
- 508.** In the same vein, during its visit, the IACHR was apprised of the measures adopted by the government to officially include communicators threatened due to their work in the human rights defenders protection program, without their having to show that their work relates specifically to human rights.⁷⁶⁰ Reportedly, the program was re-named “National Protection Program for Human Rights Defenders, Media Personnel [“Social Communicators”], and Environmental Activists,”⁷⁶¹ and its budget was also increased in 2018.⁷⁶² The IACHR reminds the Brazilian State that that mechanism must cater to journalists’ needs and be well publicized among media workers, in order to provide effective guarantees to those at risk for practicing journalism.

757 STF, INQ 4781

758 Federal Senate, *Comissão Parlamentar Mista de Inquérito - Fake News*

759 Washington Post, *Glenn Greenwald becomes focus of Brazil press freedom debate*, July 12, 2019.

760 Knight Center for Journalism in the Americas. *Comunicadores brasileiros ameaçados são incluídos oficialmente em mecanismo de proteção do Ministério de Direitos Humanos*, September 12, 2018; Ministry of Human Rights. *MDH inclui comunicadores e ambientalistas no programa de proteção aos defensores dos direitos humanos*, September 3, 2018.

761 Knight Center for Journalism in the Americas. *Comunicadores brasileiros ameaçados são incluídos oficialmente em mecanismo de proteção do Ministério de Direitos Humanos*, September 12, 2018; Ministry of Human Rights. Edict [Portaria] No. 300. September 3, 2018; Ministry of Human Rights. *MDH inclui comunicadores e ambientalistas no programa de proteção aos defensores dos direitos humanos*, September 3, 2018.

762 Ministry of Human Rights. *MDH inclui comunicadores e ambientalistas no programa de proteção aos defensores dos direitos humanos*, September 3, 2018.

509. Furthermore, the IACHR reiterates that the murdering of journalists is the most extreme form of censorship and that States have an obligation to identify the perpetrators of those crimes, via a thorough, effective, and impartial investigation, and then to prosecute and punish them. In addition, the investigating authorities should not preclude the victim's practice of journalism as the motive for his or her murder and/or attack before the investigation is completed. Lastly, the Commission reminds the State that impunity in these cases tends to exacerbate self-censorship by the press.



**CONCLUSIONS AND
RECOMMENDATIONS**



CHAPTER 8 CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

- 510.** Twenty-three years after its first visit to Brazil, the Inter-American Commission on Human Rights ascertained that Brazil has a democratic system governed by the rule of law, with robust democratic and human rights institutions. Nevertheless, the country continues to be characterized by extreme social inequality based on structurally embedded discrimination against persons of African descent and traditional *quilombola* and indigenous communities, campesinos and rural workers, the poor, street people, women, and LGBTI persons. As the IACHR sees it, the concentration of wealth and the discrimination based on race, social origin, sex and gender stereotypes, sexual orientation, and age led to the historical exclusion of those groups, who, year after year, continue to live in extremely vulnerable conditions.
- 511.** Within that scenario, the vulnerability associated with historical discrimination against indigenous peoples and *quilombola* communities is especially pronounced, given that to this day they have still not managed to exercise the right to live on their ancestral lands acknowledged by the Brazilian Constitution. In both cases, the thwarted right to land has been compounded by increasing agrarian conflicts and development projects executed without the prior, free, and informed consent of the communities affected. Brazilian society is also structurally shaped by the marginalization of those living in poverty in the cities and in rural areas. Their economic inclusion is still precarious, and they have limited access to public services and housing. Because they are often forced to migrate in search of a better life, they encounter stigmatization and systematic exclusion. Rendered vulnerable, many of these people end up being exploited as victims of slave labor or human trafficking networks. Against this backdrop, the Commission reminds the State of its obligation to make headway with the demarcation and titling of the lands of indigenous peoples and traditional tribal communities.
- 512.** In our examination of the human rights situation in Brazil, gender proved to be a factor exacerbating the inequality and discrimination underlying the structural processes of human rights violations in the country. Male chauvinism (*machismo*) and misogyny continue to relegate women to an inferior position in the economy and in public affairs, with marked differences in wages and in the labor market, and under-representation in parliaments and other branches of government, and above all in senior positions. This discrimination reinforces socio-economic and ethnic/racial inequalities, which lie at the heart of Brazil's failure to realize human rights.

- 513.** Likewise, the privation and marginalization of indigenous, *quilombola*, street people and other groups hit women hardest, above all with respect to the burden placed on them to bring up and educate children, in the exercise of their sexual and reproductive rights, and in access to health care. In that context, the IACHR noted the various cases of obstetric violence against indigenous and black women in Mato Grosso do Sul and was especially shocked by the case of Janaína Aparecida Quirino, a homeless woman of African descent forced by a court order in the city of Mocoa, São Paulo, to undergo sterilization against her will.
- 514.** At the same time, while the prison system, the socio-educational system, and the therapeutic communities are governed by different laws and regulatory frameworks, the IACHR observed in all three cases that the State has been unable to guarantee the protection that institutionalized persons need, be those institutions public or private. Cases of torture and maltreatment violating inter-American and international human rights standards have been documented in all of them. The IACHR observes how the absence of State supervision in those facilities, the consequent self-governance and the deplorable detention conditions in deprivation of liberty institutions lead to clashes and tensions that create high levels of violence and harm both lives and personal integrity. Accordingly, both the Inter-American Commission and the Court have observed with profound concern that the deaths that have occurred form part of a systematic context of repeated acts of violence, which has prompted the granting of precautionary and provisional measures.
- 515.** In the report on human mobility, the Commission also acknowledged the special vulnerability of migrants. Between 2005 and 2016, the number of migrants in Brazil increased by 178%. Until 2016, Haitians represented the largest group of new migrants, followed by Colombians, Bolivians, and Syrians. In 2018, Brazil received almost 80,000 requests for asylum. During its visit, the Commission looked into the conditions faced by Venezuelan migrants and gathered information about other groups. While the Commission acknowledges significant legislative and public policy progress in this area – especially the passing of the new Migration Law (Law 13.445/2017), the guaranteeing of social, economic, and cultural rights for refugees, and “Operation Welcome” especially tailored to Venezuelan immigrants – it also ascertained, with concern, shortcomings with implementing rules and acts of discrimination and xenophobia.
- 516.** The IACHR observes that the country has had great difficulty guaranteeing the right to citizen security for a large swathe of the population. The Commission notes that those hardest hit by this are the most vulnerable groups based on ethnic/racial and class traits. Persons of African descent, especially male youths from poor families, make up most of the victims of acts of intentional lethal violence, much of which are committed in connection with police operations. That inequality is reproduced or even amplified by the workings of the criminal justice system: on the one hand, impunity is chronic with respect to crimes committed against those most vulnerable

segments of the population; and, on the other, they, too, are disproportionately impacted by the State's repressive apparatus. Poor youths of African descent also make up the largest contingent of the prison population and of those in socio-educational (i.e. correctional) facilities, where they are often the victims of torture and other forms of cruelty. Since they go unpunished, those violations committed by public security agents have become structurally embedded and systematic, all over the country.

517. Cases like that in Nova Brasília, as well as the information accessed about the Corumbiara Massacre and the crimes of May 2006 in São Paulo, reveal the leniency of the judicial bodies responsible for addressing those crimes, which amounts to intentional denial of justice in those cases. The Commission notes that it is not just cases of massacres involving security agents that go unpunished in Brazil. Impunity is also found in cases of people involved in luring and using slave labor. In the Commission's opinion, these features suggest the possible existence of a structured system of violence and execution of "undesirables" in Brazilian society, protected by the justice system. That system, for its part, appears only to be bent on incarcerating the groups most exposed to vulnerability. Similarly, and contrary to everything the inter-American system stands for, the Commission notes that the cases of torture and disappearance perpetrated back in the time of the civil-military dictatorship remain unpunished to this day. Apart from some minor reparation, there is still no word of the perpetrators being tried and punished, even though many of them have been identified. In particular, the Commission takes note, with concern, of recent processes of a dismantling of policies in that regard, based on the Brazilian State's denial of that part of its history.

518. The IACHR acknowledges that, since the restoration of democracy, Brazil has made significant progress with forging institution and public policies to help reduce the weight of those structural inequalities and that past riddled with human rights violations. In many cases, they have even served as models for other countries in the region and in the developing world. Between 1988 and 2018, the country promulgated a new Constitution and signed and ratified regional and international human rights treaties, in addition to modernizing its domestic laws in several human rights-related areas. Furthermore, the country pushed through reforms in the Executive Branch and in various judicial organs, consolidating structures and endowing them with the powers needed to promote and defend the rights guaranteed by those laws and treaties. In so doing, Brazil stabilized and strengthened its democracy, and went on to hold free, widespread, and competitive elections, as well as creating and bolstering institutions providing social participation and oversight of government actions. Finally, the Commission finds that the country launched successful programs and policies in areas such as civic rights (for example, affirmative actions and measures to combat discrimination); social, economic, and cultural policies (e.g. to combat poverty and inequality; and collective rights (truth and memory, for instance, and environmental protection). Despite all that, the IACHR cannot hide its concern about recent processes appearing to threaten and dismantle those institutions and policies constructed over a period of more than two decades.

- 519.** In particular, the IACHR observes with concern the retraction of institutions that are vital for a participatory democracy, especially Councils, Committees, and Commissions in areas that matter for human rights that are being de-activated, weakened, and stigmatized by the State. Those bodies, while mostly of a consultative nature, were of paramount importance for formulating public policies sensitive to the needs of historically excluded groups and for developing a more mature democracy in Brazil.
- 520.** As regards the content of policies, one area that worries the IACHR involves social, economic, and cultural rights, which, in a context of economic crisis in the country since 2015, are being impaired by fiscal austerity measures. Here, the Commission highlights Constitutional Amendment No. 95, known as the “Stability and Growth Program (SGP) Expenditure Ceiling” (*PEC do teto de gastos*), which has brought a series of severe budget cuts in sectors such as health, education, and efforts to combat hunger and poverty. The IACHR understands the possible need for public spending adjustments, but insists they should strive to preserve those areas, on pain of penalizing precisely the country’s most vulnerable groups.
- 521.** In recent decades, Brazil has also achieved significant progress with recognizing and protecting LGBTI persons, including their right to marry and use a “social name.” Over the same period, the political participation of LGBTI persons has increased, with a record number of trans and diverse gender candidates in the 2018 elections. On the other hand, the IACHR ascertains that Brazil continues to post extraordinarily high rates of violence against LGBTI persons, especially lesbians and trans women; and that, as rhetoric about “defense of the family” and traditions gains ground in society, various rights of LGBTI persons are being threatened.
- 522.** Accordingly, the IACHR worries about changes in the State’s position on the “gender” issue which are having an impact in various public policy areas and in administrative spheres, as discussed in detail throughout this report. Brazil’s social make-up, rooted in rigid hetero-cis-normative roles, has meant that LGBTI persons have always been exposed to patterns of violence, discrimination, and dehumanization in the country. That being so, as the IACHR sees it, the change in the stance taken by the State trigger serious consequences, culminating in a widespread surge in physical and psychological violence against these persons. The IACHR reiterates that it is up to the State to protect the integrity of LGBTI persons, not just through policies that recognize their demands for rights and dignity, but also by forging an environment of respect for diversity.
- 523.** The difficulty the State has had with providing robust, systemic, and substantive responses to address the violence and lack of security in the past 23 years, by coordinating the different levels of the federation and its different police forces and combining preventive and repressive approaches, has created fertile ground for the appearance and expansion of criminal organizations, such as the so-called militias. The IACHR acknowledges that progress has been made in terms of this sector’s institutional frame-

work, slowly and incrementally, thanks to successive national public security plans. At the same time, the Commission notes the persistence of measures that draw on national security doctrine and are reflected in the frequent – and increasingly widespread – deployment of military devices and practices and in the high number of deaths, mainly of black and poor youths, in connection with police operations.

- 524.** The IACHR observes that the issue of crime and violence has been at the forefront of the public policy agenda in Brazil since the 2018 elections. Nevertheless, it points out with concern that the attention it has received since then is straying away from citizen security parameters. Accordingly, the Commission underscores that recent proposals to expand the scope of self-defense hypotheses and relax rules on access to firearms, as well as the transformation of poor communities into veritable trench warfare zones in the states, especially in Rio de Janeiro, are proving to be incapable of making a dent on the root causes of violence, while tending to exacerbate the vulnerability and victimization of Afro-descendant youths, women, and rural workers. In addition, the IACHR stresses the negative long-term impact of such measures, which tend to undermine citizens' trust in the State and deepen historic fissures in the social fabric.
- 525.** With respect to criminal and penitentiary policy, the IACHR observes that the fastest-growing contingent in the prison system are women of African descent. That is a by-product of the decision to put ostensible police action, particularly in connection with the “war on drugs”, at the forefront of the State response to urban violence. Here, the Commission reaffirms the ineffectiveness of this approach for combating organized crime, as well as its potential for reproducing inequalities based on ethnic/racial origin and gender, because of the part that Afro-descendant women play in activities ancillary to drug trafficking and small-scale selling of drugs.
- 526.** In Brazil's prisons, the IACHR observed the widespread dearth of medical care and of women's hygiene products, as well as the inappropriate treatment of trans and diverse gender women, who in many cases are sent to share cells with men. Likewise, the Commission received reports and complaints about humiliating body searches of women visiting people in jail. Within that overall and systematic denial of rights, the Commission welcomes the legal and judicial measures taken to allow pregnant women or adolescents, those with small children, and those responsible for looking after persons with disabilities at home, to serve their sentences under house arrest.
- 527.** Violence against women is still a hallmark of Brazilian society. Significant legislative progress was made with the passing of the Maria da Penha Law and the subsequent legal characterization of femicide. However, the numbers of murders and attacks against women are still very high, making Brazil, in that regard, one of the worst countries in the region. That scenario reinforces the Commission's concerns about measures currently being discussed in Brazil's parliament and in the Executive, particularly talk of relaxing rules on possession of firearms and of clauses broaden-

ing impunity for homicides committed out of “fear” or under the effects of “intense emotion” (*violenta emoção*). The Commission is also appalled by the data on sexual violence, including collective rapes, and draws attention to the fact that, in cases of both domestic violence and sexual violence, most of the victims are young women of African descent. In short, the IACHR calls upon Brazil not only to continue implementation of its existing laws and policies and improve its practices when it comes to investigating and punishing crimes against women, but also to adopt further measures geared to fighting explicit and implicit gender-biased social hierarchies and social tolerance of violence against women, including the “culture of rape,” in addition to acknowledging the intersectional vulnerability when gender combines with ethnic/racial origin and youth.

528. In its first report on Brazil, the IACHR pointed out the extreme vulnerability of human rights defenders and the pressing need for the State to espouse measures to safeguard their life and security. In particular, the IACHR, pointed to the plight of human rights defenders trying to safeguard the environment, indigenous peoples, and the segments of the population caught up in conflicts over land. Nevertheless, that issue was one of the most prominent in litigation against the State in the inter-American system of human rights.

529. Recently, the IACHR issued a number of communiques expressing concern at the increase perpetrated by private individuals against human rights defenders, which has sadly put Brazil at the top of the list of countries with the most murders of human rights defenders. The ACHR also condemned the use of the State apparatus to admonish human rights defenders and criminalize their work. It warned, too, of the risks of expanding the scope of the Anti-Terrorism Law and reiterated that such laws should not be used to criminalize the right to demonstrate and the right of association.

530. During its visit, the IACHR was able not just to confirm the critical circumstances human right defenders now find themselves in, but also to see and place on record the deterioration in the conditions under which they must go about their work. For the IACHR, it is abundantly clear that one of the main problems associated with land conflicts and forced displacements has to do with the harassment, threats, and murders committed against those defenders. The IACHR likewise notes with concern that the impunity surrounding those acts of violence in rural areas both perpetuates and increases them. In many cases, in both rural and urban areas, State security forces serve rather to step up the repression and criminalization of historically vulnerable groups, and fail to protect and guarantee their rights

531. The IACHR draws attention to the fact that risks associated with defending human rights also began to be felt by elected officials, and thus within the State apparatus. The persecution suffered by former member of the Chamber of Deputies Jean Wyllys and the murder of former Rio de Janeiro councilor Marielle Franco are clear exam-

ples of the State's failure to safeguard the life and security of persons who devote themselves to representing excluded sectors.

- 532.** The IACHR is not unaware of important political-institutional progress made by Brazil with regard to the protection of human rights defenders, notably with the National Program for the Protection of Human Rights Defenders, Communicators, and Environmental Activities and its state branches, and the Victim Protection Program for Witnesses with Death Threats. In its talks with the State, the IACHR received assurances that the scope and budget for such programs would be expanded. However, according to reports received by the IACHR, execution of one of them was subsequently impaired by the suspension of transfers of funds and requests for data that could expose its beneficiaries, who are already extremely vulnerable.
- 533.** The IACHR urges the State to maintain and perfect such programs, while at the same time it underscores the importance of effective measures geared to fostering rigorous and expeditious investigation and to putting an end to the blatant impunity surrounding the perpetrators of threats and violence against human rights defenders, all of which are measures that, due to their scope, require commitment not just by the Executive but also by the Judiciary and the Public Prosecutors' Office. In that regard, the IACHR singles out the relative ineffectiveness of the legal provision for federalizing crimes against human rights defenders.
- 534.** Thus, the Commission reminds the State, emphatically, that much of the progress made with respect to human rights is not due only to actions the State has taken. In fact, civil society organizations and leaders were at the forefront, not just in the struggles for the restoration of democracy. They were and are fundamental for the materialization of the rights guaranteed in the democratic system and in international human rights commitments in treaties signed by Brazil. Accordingly, the Commission reaffirms the core contribution made by human rights defenders to the preservation and strengthening of democracy.
- 535.** The IACHR points out that, during its visit, it received information from civil society organizations, representatives of social movements, and the press regarding a gradual narrowing of opportunities for civil society to voice demands and defend human rights. In this regard, the Commission was informed of the use of force by the security forces to disperse demonstrations and protests; the filing of criminal proceedings for contempt of authority (*desacato*) and defamation of human rights defenders, demonstrators, and journalists, as well as stigmatization of persons considered to be "social activists."
- 536.** The Commission is also concerned about increasing violence against journalists, intensified by the new developments in information and communication technology. Apart from the increasing number of physical attacks on media professionals, defamation is frequently practiced on social networks, often accompanied with fake

news. The Commission issues a reminder that the State has a duty to protect and respect the free practice of journalism, in addition to investigating and prosecuting threats and violence against journalists.

537. Finally, the IACHR considers that the proliferation of hate speech and discriminatory discourse in the public sphere and on social networks jeopardizes efforts to combat structural discrimination. The Commission notes that those campaigns are leveled especially at the rights of women, persons of African descent, traditional *quilombola* communities, indigenous peoples, LGBTI persons, the leaders of social movements, and even government agents whose mandates are geared to the defense of human rights. During its visit, the IACHR ascertained that the discourse described above does not stem from isolated individuals or groups, but rather from government authorities and elected politicians who should instead be forging an atmosphere of tolerance and respect. The IACHR has warned of the detrimental effects of hate speech spread by government authorities, which run counter to efforts to hold on to a human rights agenda rooted in democracy.

538. In light of all of the above, the Inter-American Commission on Human Rights makes the following recommendations to the State:

B. RECOMMENDATIONS

The institutional underpinning of human rights

- 1.** Strengthen the State and autonomous bodies responsible for formulating, implementing, and appraising public policies with human rights focus and geared to guaranteeing the rights of the most vulnerable groups. In particular:
 - a.** Restore the comprehensive budget appropriation for the Ministry of Women, the Family, and Human Rights, according priority to the portfolios for promoting the rights of at-risk and/or vulnerable groups and pay special heed to bolstering the structure and budget of the Program to Protect Human Rights Defenders, thereby guaranteeing implementation of effective and efficacious protection measures.
 - b.** Allocate a specific budget appropriation for both the Federal Public Defender's Office and state Public Defenders' Offices. Organizational and managerial autonomy is a key factor for guaranteeing institutional independence and enhancing full and free access to justice for vulnerable groups.

- c. Provide all the resources and functional independence needed to operate both the National Mechanism to Prevent and Combat Torture and the corresponding state mechanism, as established in the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- 2. Ratify the following Conventions:
 - a. The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.
 - b. The Inter-American Convention against All Forms of Discrimination and Intolerance.

Economic, social, cultural, and environmental rights

- 3. Establish a coordinated fiscal policy that can redistribute the wealth needed to overcome equality gaps, correct market shortcomings, and make the investments needed to fulfill human rights, especially economic, social, and cultural rights.
 - a. Revise legislation and other legal provisions that withdraw or curtail funds for policies relating to economic, social, and cultural rights.
 - b. Install technical committees to evaluate fiscal projections, drawing on objective analyses by fiscal and budget experts from the best schools in the country before drafting amendments in accordance with the principles of proactive transparency, timely information, and citizen participation.
 - c. Establish channels for social participation in the processes of drawing up and adopting fiscal laws and policies, especially when the adoption of those instrument could entail violating the principle that there must be no backsliding when it comes to human rights.
- 4. Develop a mechanism for coordination among the three federative branches of government to guarantee the effective incorporation into domestic law and practice of international human rights standards, in relation to both the adoption of positive measures by the State and the abstaining from actions aimed to protect human rights.
- 5. Develop, implement, and finance state systems for gathering accurate and disaggregated data, and statistical and qualitative information regarding the human rights

situation of persons of African descent and traditional *quilombola* communities, indigenous peoples, LGBTI persons, as well as other at-risk and/or vulnerable groups, in order to create and implement appropriate laws and public policies for addressing needs and overcoming the specific hurdles those groups face. In particular, ensure that disaggregated data are collected from a variety of public and private institutions, especially those working in the following sectors: health, education, access to work, justice, social protection, and so on.

6. Design, implement, and finance comprehensive housing policies aimed at both reducing the current dire shortages and improving socio-economic equality from an ethnic/racial and gender perspective. Such policies must take into account the physical characteristics of the territory, the infrastructure in place, and the availability of equipment and basic services, as well as the interests of economic agents and the organic ties that populations establish with the breeding ground where their daily lives play out (*vínculos orgânicos que as populações estabelecem com o local de reprodução do seu cotidiano*).

Citizen security

7. Amend the protocols and guidelines for local, state, and federal law enforcement agencies to ensure that they meet international standards with regard to:
 - a. Permissible use of force in accordance with the principles of legality, proportionality, and absolute necessity.
 - b. Exceptions in which lethal force is authorized based on objective criteria.
 - c. Tactics for reducing tensions and the use of non-lethal weapons.
 - d. Prohibition of torture and of cruel, inhuman, or degrading treatment or punishment.
 - e. In protest situations, respect for, and facilitation of, exercise of the right of freedom of assembly, apart from containment protocols, techniques for handling situations, the use of non-lethal weapons.
8. Adopt whatever measures are needed to exhaustively examine and amend the protocols and guidelines used by local, state, and federal agencies, making sure that the use of racial profiling and other explicit or implicit discriminatory practices on grounds of ethnic/racial or national origin or other grounds are expressly punished.

9. Take all necessary measures to prevent violence against LGBTI persons, as well as to investigate and punish such violence with all due diligence, regardless of whether it is perpetrated in a family setting, within the community, or in the public sphere, including educational and health establishments.
10. Enforce federal legislation with a view to requiring proper training for law enforcement agents and agencies at the local level, as well as for justice operators (including judges, prosecutors, public defenders and other state and federal court personnel), in human rights obligations regarding non-discrimination and combating implicit prejudice, along with other kinds of training to get rid of discrimination.
11. Prioritize the allocation of funds to intelligence actions needed to fight organized crime, criminal gangs, and militias, rather than to armed clashes with them. In particular, strive to track down actions by organized criminal groups, identifying their agents, above all by monitoring capital flows, business and financial transactions, movements of imports and exports triggered by them, and so on.
12. Adopt measures to revert the militarization of police institutions, including:
 - a. Canceling programs that allow the purchase or transfer of military equipment and weapons for local police authorities.
 - b. Federal government monitoring of the military weapons delivered to local police stations, and other measures to control the distribution of military arms; and
 - c. Police training in the proper use of institutional (police) equipment.

Access to justice

13. Guarantee appropriate, quick, and comprehensive reparation for all victims of police violence and their family members, including financial support, medical and psychological care, and measures to avoid re-victimization.
14. Establish independent mechanisms in cases involving police violence, that include participation by victims' next of kin, civil society representatives, ombudspersons, and other interested parties, in such a way as to ensure transparency in investigative and processing procedure, identification of potential obstacles to clarification of the facts, and the prosecution of perpetrators.
15. Adopt resolute measures to guarantee all women victims of violence and discrimination access to justice at every stage (denunciation, investigation, and judicial proceedings),

including access to information in a language and socio-cultural presentation they can understand, with trained personnel to assist them, and appropriate legal counseling.

16. Decriminalize offenses against honor/reputation – contempt (*desacato*), calumny, defamation, and insult – and convert them in the case of government officials or cases involving the public interest – into civil suits, in accordance with international standards and best practices in this field.

Persons of African descent

17. Design, implement, and finance state systems for gathering accurate and disaggregated data, and statistical and qualitative information, regarding the human rights situation of persons of African descent at the various levels of the federation and in areas such as health, education, judicial institutions, and others, in order to create and implement intersectional laws and appropriate public policies for addressing the needs and overcoming the specific hurdles those persons face.
18. Adopt special policies and affirmative actions to guarantee the enjoyment and exercise of the rights and fundamental freedoms of the persons or groups who are victims of racism, racial discrimination, and related intolerance, with a view to promoting equitable conditions for equal opportunities, and actions that foster the inclusion and advancement of those persons or groups/ Affirmative actions should have a special focus on education and the labor market and be conducive not only to those persons' entry into the job market, but to their staying in it, as well.
19. Bolster policies to reduce crime that pursue a comprehensive and intersectional approach, addressing factors associated with ethnic/racial origin and which heighten the risk of violent death, including poverty, sexual orientation and identity and/or gender expression.

Indigenous peoples and traditional *quilombola* communities

20. Build the institutional capacities of the bodies responsible for drawing up social and territorial policies relating to indigenous and *quilombola* peoples, including the National Colonization and Agrarian Reform Institute (INCRA) and the National Foundation for the Indigenous (FUNAI), and endow them with both resources and financial execution capacity.
21. Mainstream an intercultural approach in government development policies that includes recognition and incorporation of the economic and social development plans pursued by indigenous peoples in their respective ancestral territories.

22. Adopt legislative, administrative, or other necessary measures to carry out, within a reasonable period of time, consultation with indigenous peoples and *quilombola* tribal communities to obtain their free, prior, and informed consent to policies, projects, and actions, including projects for the exploitation of natural resources that affect them, in accordance with international human rights standards and with the full participation of those peoples and communities.
23. Revise the regulations governing the granting of environmental permits or licenses, in such a way as to guarantee that the State complies with its international obligations to consult indigenous and *quilombola* peoples to obtain their free, prior, and informed consent before taking steps that may impair their rights.
24. Adopt all necessary measures to implement or strengthen systems for oversight and control over exploration, extractive, and development activities in a manner consistent with international human rights obligations.
25. Guarantee access to justice and reparation for violations of the human rights of indigenous and *quilombola* peoples committed in connection with natural resource mining (extractive), exploration, and exploitation activities.
26. Investigate, punish, and make reparation for threats, attacks, and violence against members of the indigenous and *quilombola* peoples perpetrated by State or private sector agents in connection with actions to defend the environment or in other contexts, including the “Caarapó Massacre: case and other cases mentioned in this Report.
27. Take resolute steps to put an end to the impunity surrounding human rights violations committed in connection with illegal businesses or activities against indigenous and *quilombola* peoples, by conducting exhaustive and independent investigations, ensuring that the perpetrators and instigators are punished, and making reparation to the individual and collective victims.
28. Adopt whatever measures are needed to revise and amend provisions, court orders, and guidelines (including the Timeframe and Suspension of Security [*Marco Temporal e Suspensão da Segurança*] thesis) that are incompatible with international standards and obligations regarding the rights of indigenous peoples to their lands, territories, and natural resources, as well as other human rights of indigenous peoples.
29. Expedite finalization of the application for delimitation, demarcation, and titling of the traditional lands and territories of indigenous and tribal peoples in accordance with applicable international human rights standards.
30. In consultation and coordination with the indigenous and tribal peoples, guarantee their right to health, based on an inter-cultural, gender, and intergenerational solidarity approach, taking into consideration traditional healing practices and medicines.

31. Strengthen measures to protect indigenous peoples living in voluntary isolation and in initial contact, while striving to protect their health, life styles, and territories. Based on the precaution principle, develop public policies and actions to guarantee the survival of these peoples.

Women

32. Prevent and condemn all forms of violence and discrimination against women and girls, including refraining from any gender-based violent or discriminatory act or practice, and guaranteeing that all public servants, including authorities, agents, and institutions abide by this obligation.
33. Implement and reinforce measures with a gender perspective to comply with the duty to act with due diligence to prevent, punish, and eradicate violence and discrimination against women, including concrete efforts to comply with the obligations to prevent, investigate, punish, and make reparation for violations of the human rights of women and girls. This includes training and monitoring the authorities responsible for the investigation, including health services and judicial bodies.
34. Investigate, try, and punish – with a gender perspective and as a priority – violations of the human rights of women and girls, especially femicides of trans women. Likewise, investigate with due diligence acts of violence against female human rights defenders and other groups at special risk mentioned in this Report.
35. Strengthen the institutional capacity of judicial bodies, such as the Public Prosecutor's Office (*Ministério Público*), police agencies, courts, and legal and forensic medicine units, by endowing them with financial, human, and training resources to enable them to fight the pattern of impunity surrounding proceedings relating to violence against women. In addition, step up enforcement of punishments and make headway with reparation projects through effective criminal investigations that avoid re-victimization and are subject to proper judicial monitoring.
36. Implement protocols with a gender perspective for crimes involving violence against women and develop transparent processes for overseeing their correct implementation.
37. Plan, develop, and implement educational initiatives, programs, and policies, from the formative, initial stages onwards, for all citizens, including children, addressing gender-based discrimination, with a view to getting rid of stereotypes about the inferiority of women and girls, promoting their rights to be free from violence and discrimination, advancing gender equality, and guaranteeing respect for the rights of all persons.

38. Draft and implement culturally appropriate policies, with the participation of indigenous, *quilombola*, and traditional community women and girls, and applying an integral and holistic approach, for preventing, investigating, prosecuting, and making reparation for acts of violence and discrimination against them.
39. Adopt comprehensive measures to respect and guarantee women's rights to sexual and reproductive health by, inter alia, reinforcing the availability and ongoing supply of essential services. In particular, guarantee access to high-quality maternal health care; safe access to contraception methods, including emergency contraception; voluntary interruption of pregnancy, when applicable, and access to true, uncensored information, in addition to the comprehensive education needed for women and girls to be able to take free and autonomous decisions.

Children and adolescents

40. Take all necessary steps to ensure that the exceptionality principle is applied to measures aimed at adolescents add odds with the law, particularly so that deprivation of liberty is used as a last resort only, giving preference to open environment options for property-related and non-violent offenses. Accordingly, alternatives must be envisaged in proceedings so that their cases can be resolved through actions that promote the development of their personality and constructive reintegration into society.
41. Bring all "socio-educational" (correctional) facilities into line with international criteria and standards, particularly as regards architectural parameters that should serve the underlying purpose as well as comply with the highest safety, accommodation, educational, health, and social reintegration standards.
42. Adopt measures to allow and foster contact between the adolescents in those centers and their families and communities, by promoting geographical decentralization of the centers in such a way that those adolescents can serve their time in the same place or the center closest to their home or that of their parents or guardian, and friends.
43. Keep a record. and conduct a serious, impartial, effective and expeditious investigation, of all complaints received regarding the way the juvenile justice system operates and reply to all such complaints. In cases in which violations of the rights of the child in such centers are confirmed, adopt measures in administrative, civil and/or criminal proceedings to punish those responsible; avoid a recurrence of what happened; and proceed to make appropriate reparation to the victims and their family members.

44. Establish a juvenile justice indicators system based on international models, designed to be periodically updated, and ensure public access to that information, which needs to contain, at a minimum, data on: i) the total number of adolescents in “socio-educational” correctional facilities; ii) a breakdown of the data by gender, ethnic/racial origin, migratory status, age, sexual orientation, identity and/or gender expression, and sexual characteristics, as well as any other characteristics that could trigger intersectional risks for the adolescents; and iii) the number of adolescents per type of correctional regime, including the different forms of internment.

Lesbians, gays, bisexuals, trans and intersex persons (LGBTI)

45. Make – and properly fund – efforts to systematically compile and analyze official data on the prevalence and nature of violence and discrimination based on sexual orientation or where sexual characteristics vary in accordance with the binary masculine and feminine roles.
46. Adopt such legislative measures and public policies as are needed to prevent violence, discrimination, and prejudice against persons based on their sexual orientation, identity, and/or gender expression, or whose sexual characteristics vary in accordance with masculine and feminine models. Those measures need to take into account the intersection of factors that may heighten the violence, such as ethnic/racial origin.
47. Adopt comprehensive public policies that consolidate progress made as regards civic status (*cidadania*), equality, and dignity for the trans and diverse gender population, including guaranteeing the right to gender identity.
48. Create and implement policies that guarantee the right of LGBTI persons, especially trans and diverse gender persons, to access health care services without being subjected to discrimination and violence.
49. Adopt any legislative and public policy measures needed to promote the rights of LGBTI persons, including those conducive to cultural changes via an inclusive education with a diversified gender perspective.
50. Continue making headway with the institutional framework for the human rights agenda of LGBTI persons and ensuring its consolidation by endowing it with adequate budget and trained personnel who will work effectively to uphold it.

Persons with disabilities

51. Adopt measures designed to guarantee equality before the law for persons with disabilities, safeguarding their legal capacity on an equal footing with other people.
52. Eliminate laws, regulations, and practices that discriminate against persons with disabilities, including in connection with health care and, in particular with respect to medical treatment.
53. Adopt measures designed to guarantee the right of persons with disabilities to the highest possible state of health, on an equal footing with other people, eliminating any barriers that prevent or obstruct access to health information, services, and assets.
54. Put a stop to all coercive practices, guaranteeing the free and informed consent of persons with disabilities to the medical care they receive, and provide them with any support they need to take decisions, including mental health care.
55. Guarantee the rights of persons with disabilities to sexual and reproductive health care, especially as regards consent, privacy, and protection against cruel, inhuman, and degrading treatment.
56. Take steps to ensure that persons with disabilities have access to justice on an equal footing with others, by eliminating discriminatory practices, removing obstacles of any kind, and making reasonable adjustments to facilitate access.

Persons deprived of liberty

57. Adopt judicial, legislative, and administrative measures to reduce overcrowding and use pre-trial detention in accordance with the principles of exceptionality, legality, proportionality, and necessity. Above all, promote the application of alternatives to incarceration, by embracing a gender perspective and differentiated approaches. In particular, the State must do whatever it takes to ensure that the Federal Supreme Court's decision on house arrest with a gender perspective is actually implemented in all states.
58. Devise a drug policy with a social reintegration and public health approach, in such a way as to eschew repressive and criminalizing treatment of persons arrested for using or carrying drugs, or who have committed minor offenses due to their problematic use of, or addiction to, drugs.

59. Guarantee dignified treatment of persons in State custody, in accordance with deprivation of liberty standards and bearing in mind the special risks associated with gender, ethnic/racial origin, migration status, age, sexual orientation, identity, and/or gender expression, and sexual characteristics, as well as any other intersectional risk factors.
60. Facilitate channels through which persons deprived of liberty and those interned in “socio-educational” (correctional) centers can report acts of torture, inhuman, or degrading treatment without suffering reprisals for complaining.
61. In cases of torture and inhuman or degrading treated, immediately initiate, *ex officio*, effective investigations in accordance with the rules, so as to be able to identify, prosecute and punish those responsible.
62. Take the necessary steps to increase financial and human resources for the mechanisms in place for preventing and combating torture, to boost their effectiveness. Likewise, promote the establishment, installation, and workings of these kinds of mechanisms in the federative states that still lack them, in accordance with the standards contemplated in the Optional Protocol to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
63. Adopt such measures as are needed to ensure that all persons detained in flagrante have access to custody hearing, especially people detained in small towns far from the capita and those wounded during police operations.
64. Take the necessary measures to ensure that, within the scope of custody hearing, the determination of pre-trial detention is carried out exceptionally and in accordance with the principles of legality, necessity and proportionality.
65. Take whatever steps are needed to guarantee, in connection with those hearings, that pre-trial detention is ordered only exceptionally and based on the principles of legality, necessity, and proportionality.

Human rights defenders

66. Strengthen and endow the Human Rights Defenders Protection Program with the structural facilities it needs to guarantee effective and comprehensive protection for human rights defenders, including the signing of state agreements to ensure actual implementation of that program nationwide. Similarly, ensure effective coordination with the security agencies responsible for implementing the protection measures, so as to guarantee full compliance with the program.

67. Guarantee effective and comprehensive implementation of the measures to protect human rights defenders, especially those located in rural areas far from urban centers.
68. Investigate, with due diligence, all acts of violence against human rights defenders, bearing in mind any intersection with other especially at-risk groups mentioned in this Report, assuming as an investigative hypothesis, that those acts were committed in retaliation for their activities in defense of human rights.
69. Promote dissemination of the legal provision seeking to federalize crimes committed against human rights defenders.
70. Adopt pro-active measures to foster a human rights culture and an environment free from violence and threats, recognizing the value and importance of the work done by human rights defenders in reaffirming the validity of democratic institutions and of a State governed by the rule of law.

Human trafficking

71. Step up actions to prevent, protect, and assist victims of trafficking in persons by implementing the Third National Plan to Address Trafficking in Persons (2018-2022), fostering cooperation with states, municipalities, civil society organizations, academia, and international organizations specializing in all facets of public policies.

Forced internal displacement

72. Draft and implement public policies for repressing violence and other factors that trigger internal displacement, specifically among campesino populations and rural workers who are forced to abandon the territories they originally came from due to the violence in rural areas.
73. Draw up and implement a regulatory framework with specific laws on identifying and protecting persons and protecting the victims of forced internal displacement in Brazil.

Human mobility migration, asylum, and statelessness

74. Fully implement Law No. 13.445/2017 (New Migration Law) in a transparent process, with civil society participation and in accordance with the inter-American hu-

man rights, principles, norms, and standards; establishing, in particular, the National Migration, Refugees, and Statelessness Policy, envisaged in Article 120 of that Law.

75. Establish national plans for the comprehensive protection of human rights and the social inclusion of all persons in a human mobility situation living in Brazil, taking into account such factors as gender, ethnic/racial origin, migrant status, age, sexual orientation, identity and/or gender expression, and sexual characteristics, as well as any other characteristics capable of triggering intersectional risks.
76. Step up humanitarian welcome actions, provided for in the Migration Law, Law No. 13.3445/2017 and supplemented by the measures established in Law No. 13,684/2018 for persons who find themselves in vulnerable circumstances arising out of the migration flow caused by a humanitarian crisis, particularly with regard to maintaining and bolstering actions to receive persons displaced from Venezuela by the current humanitarian crisis.
77. Maintain and strengthen public policies, programs, and actions to welcome, bring in, include, and provide social welfare for migrants, asylum-seekers, and refugees, undertaken directly by the State or with the support of civil society organizations.
78. Implement and strengthen actions to protect and shelter migrants living on the street in both border areas and in cities inside Brazil.
79. Prevent, raise awareness of, and combat xenophobia and all forms of violence against persons in human mobility situations, including migrants, refugees, those applying for refugee status, stateless persons, and victims of human trafficking.
80. Strengthen government structures relating to protection of the human rights of migrants, refugees, and stateless persons, especially Brazil's National Committee for Refugees (CONARE).
81. Ensure effective access and due process guarantees in connection with administrative procedures regarding immigration and refugee documents.
82. Issue affordable and non-stigmatizing provisional I.D.s for all asylum-seekers, stateless persons, and migrants, while taking additional measures to train public servants and sensitize the general population so as to ensure effective access to rights and services.
83. Strengthen integrated steps to protect migrants from slave labor and guarantee prompt investigation, with all due diligence of any such cases, as well as punishment of those responsible.

Memory, truth, and justice

84. Establish a body to oversee compliance with the recommendations of the National Truth Commission.
85. Strengthen mechanisms and actions for making comprehensive reparation to the victims of human rights violations perpetrated during the civil-military dictatorship, including the deployment of physical and psychological rehabilitation measures for the victims and their next of kin, and continuation and strengthening of historical memory policies.
86. Take, *ex officio*, all steps needed to determine the fate or whereabouts of the victims of forced disappearance, identify their mortal remains, and deliver them to their family members. Search operations should form part of a comprehensive public policy regarding disappearances, and they should be conducted, systematically and rigorously, by independent and impartial entities, using adequate human and technical resources and guaranteeing communication and coordination with the victims' next of kin.
87. Investigate, prosecute, and, wherever criminal liability is determined, punish the perpetrators and instigators of gross human rights violations, while refraining from having recourse to such notions as amnesty, pardon, or prescription due to any statute of limitations, or any other provisions precluding responsibility, and measures intended to prevent criminal prosecution or annul the effects of a conviction.
88. Ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.
89. Classify the crime of enforced disappearance, according to inter-American parameters.