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## الجمعية العامة



## مجلس حقوق الإنسان

الدورة الثالثة والخمسون

19 حزيران/يونيه - 14 تموز/يوليه 2023

البند 3 من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

## زيارة إلى البرازيل

تقرير المقرر الخاص المعني بالحق في حرية التجمع السلمي والحق في حرية تكوين جمعيات، كليمون نيالتسوسي فولبي \*\*

موجز

أجرى المقرر الخاص المعني بالحق في حرية التجمع السلمي والحق في حرية تكوين جمعيات زيارة رسمية إلى البرازيل في الفترة من 28 آذار/مارس إلى 9 نيسان/أبريل 2022 لتقييم الوضع فيما يخص الحق في حرية التجمع السلمي والحق في تكوين جمعيات في البلد، عملاً بقراري مجلس حقوق الإنسان 21/15 و12/41.

ويعرب المقرر الخاص في هذا التقرير عن قلقه إزاء إغلاق الحيز المدني وتصاعد العنف السياسي في البرازيل، وهو ما هدد التمتع الفعلي بالحق في حرية التجمع السلمي والحق في حرية تكوين الجمعيات على مدى السنوات القليلة الماضية. ويرحب المقرر الخاص بالخطوات التي اتخذتها الحكومة الجديدة لعكس هذا الاتجاه المقلق واعتماد تدابير لتعزيز بيئة مواتية لممارسة الحريات الأساسية. وفي هذا السياق، يوصي المقرر الخاص الحكومة بأن تجري حواراً وطنياً واسعاً وعميقاً مع المجتمع المدني، بما في ذلك منظمات حقوق الإنسان، والأوساط الأكاديمية، والنقابات، من أجل تعزيز المؤسسات الديمقراطية. ولا يزال المقرر الخاص ملتزماً بالعمل مع حكومة البرازيل وشعبها في جهودهما الرامية إلى الوفاء بالتزامات الدولة بموجب القانون الدولي لحقوق الإنسان.

\* يعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه، الوارد في مرفق هذا الموجز، فيُعمم باللغة التي قُدِّم بها فقط.

\*\* قُدِّم هذا التقرير بعد الموعد النهائي بسبب ظروف خارجة عن إرادة الجهة التي قدمته.



الرجاء إعادة الاستعمال

## Annex

# Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, on his visit to Brazil

## I. Introduction

1. The Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément Nyaletsossi Voule, visited Brazil from 28 March to 9 April 2022 at the invitation of the Government. The purpose of the visit was to assess the exercise, promotion and protection of the rights under his mandate.
2. The Special Rapporteur held various meetings in Brasília, São Paulo, Rio de Janeiro and Salvador. He and his team held meetings with government officials, including the Minister of Justice and representatives of the Ministry for Foreign Affairs and of the legislative and judicial branches, including ministers of the Supreme Federal Court and legislators from the Human Rights Commissions of the Congress and the Senate, and with representatives of the National Council of Justice and the National Council of Human Rights, public prosecutors at the federal and state levels from the Public Prosecutor's Office, representatives of the Public Defender's Office and police authorities. He also held meetings with representatives of international organizations and the diplomatic corps.
3. The Special Rapporteur held meetings with a wide range of civil society representatives, including human rights defenders and trade union leaders. He also held meetings with representatives of Indigenous, Quilombola and local communities. He would like to thank all those individuals he met for their hospitality and openness in sharing their experiences with him.
4. The Special Rapporteur is grateful to the Government for inviting him to undertake the visit and for facilitating meetings with representatives of government institutions. He valued the collaboration and the constructive and open discussions on improving the human rights situation in the country. He thanks the Resident Coordinator Office and the Regional Office for South America of the Office of the United Nations High Commissioner for Human Rights (OHCHR), including the country team and the Human Rights Adviser, for their valuable support during the preparation for and conduct of the visit.
5. The Special Rapporteur presents his findings and recommendations in a spirit of shared commitment and support in relations to the obligations of Brazil to promote and protect human rights.

## II. Legal framework

### A. International legal framework

6. Brazil acceded to the International Covenant on Civil and Political Rights on 24 January 1992, thereby committing to respecting, protecting and fulfilling the rights to freedom of peaceful assembly and of association as provided in articles 21 and 22 of the Covenant. Brazil is also a party to various international and regional human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the American Convention on Human Rights, that contain provisions on the protection of these fundamental freedoms.

7. Moreover, Brazil issued a standing invitation to the special procedure mandate holders on 10 December 2001.<sup>1</sup> Brazil was reviewed under the universal periodic review process in 2008, 2012, 2017 and 2022.<sup>2</sup>

8. The right to freedom of peaceful assembly is guaranteed in article 21 of the International Covenant on Civil and Political Rights and the right to freedom of association in article 22. These rights are essential to the full enjoyment of other human rights and freedoms and constitute fundamental pillars for building a democratic society, strengthening democracy and enabling the participation and mobilization of all stakeholders in support of the implementation of the 2030 Agenda for Sustainable Development.

9. States may limit the rights to freedom of peaceful assembly and of association only in strictly defined circumstances necessitated by narrowly defined legitimate aims. Such restrictions must be prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. They must also be proportionate to the pursuance of legitimate aims.<sup>3</sup>

10. Articles 21 and 22 of the International Covenant on Civil and Political Rights impose on States the obligation to respect, protect and fulfil the rights to freedom of peaceful assembly and of association. The obligation to respect requires States to refrain from unduly interfering with the enjoyment of those fundamental freedoms. This would include refraining from conducting acts that, intentionally or inadvertently, suppress collective action and amplify the pre-existing barriers of those seeking to exercise those fundamental freedoms. Moreover, under the obligation to respect, State authorities must not retaliate, including through violence, criminalization or harassment, against those who criticize or oppose them.

11. The obligation to protect requires States to take steps to prevent third parties – including business enterprises and private individuals – from interfering in the enjoyment of the rights to freedom of peaceful assembly and of association. The obligation to fulfil requires States to facilitate, promote and provide for the full realization of those rights through appropriate legislative, administrative, judicial and other measures.

12. Under international human rights law, the rights to freedom of peaceful assembly and of association are guaranteed to everyone without distinction.<sup>4</sup> In particular, international instruments that protect the rights of particular groups specifically recognize the rights to freedom of peaceful assembly and of association for those groups. Those provisions recognize that everyone should have equal and effective opportunities to make their views known to other members of society and to be part of decision-making processes.

13. Ensuring effective enjoyment of the rights to peaceful assembly and association requires that a broad set of interlinked human rights, in particular the rights to freedom of expression and information, the right to participate in public affairs, the right to work and form trade unions and the right to a fair trial and effective remedy, are respected, protected and fulfilled by the State.

## B. Legal framework

14. The Federal Constitution of 1988 guarantees the rights to freedom of assembly and of association to all Brazilians without discrimination. It also prescribes the limitations to fundamental human rights and freedoms, including during a public emergency.

15. Article 5 (XVI) of the Constitution of Brazil states that all persons may hold peaceful meetings, without weapons, in places open to the public, without need for authorization, so long as they do not interfere with another meeting previously called for at the same place,

<sup>1</sup> See <https://spinternet.ohchr.org/ViewCountryvisits.aspx?visitType=all&lang=en>.

<sup>2</sup> See <https://www.ohchr.org/en/hr-bodies/upr/br-index>.

<sup>3</sup> Human Rights Council resolution 50/17; and Human Rights Committee, general comment No. 37 (2020) on the right of peaceful assembly.

<sup>4</sup> For example, International Covenant on Civil and Political Rights, arts. 2 and 26.

subject only to prior notice to the relevant authority. Under article 139 (IV), freedom of assembly may be suspended during a state of siege.

16. There is no comprehensive legislation on the right of peaceful assembly or the policing of assemblies. General guidelines on the use of force by law enforcement officials were established by decree No. 4226/2010 of the Ministry of Justice and the Human Rights Secretariat. The guidelines affirm that the use of force should be based on international documents for the protection of human rights. However, no specific legislation or guidelines exist at the federal level governing the use of force by law enforcement officials during protests and other gatherings.

17. While the Constitution subjects the right to peaceful assembly to prior notification to authorities, the Supreme Federal Court ruled in 2021 that meetings and demonstrations were permitted in public places regardless of whether a prior official communication had been made to the authorities. Notably, the court ruled that the constitutional requirement of prior notice was satisfied by the dissemination of information that allowed public authorities to ensure that the exercise of the meeting took place in a peaceful manner or that it did not frustrate another meeting in the same place.<sup>5</sup>

18. Article 5 of the Constitution also recognizes the right to freedom of association for lawful purposes. The establishment of an association is not subject to government authorization, and State interference in their functioning is explicitly forbidden (para. XVIII). Associations may represent their members, judicially or extrajudicially, when expressly authorized (para. XXI). The Constitution ensures the participation of associations in the formulation and implementation of policies on the participation of civil society in areas such as social assistance (art. 199), health, education (art. 205), culture (art. 216), environmental protection (art. 225) and children and adolescents (art. 227).<sup>6</sup> The Civil Code further regulates the establishment and operations of associations, companies and foundations.

### **III. Main findings**

#### **A. Regression in democratic and human rights and sustainability values and commitments**

19. At the time of the Special Rapporteur's visit, democracy in Brazil had for years been experiencing a significant level of backsliding. The regression from democratic values and commitments, while years in the making, had been marked by an increase in illiberal values, political violence and attacks on democratic institutions. The general elections that were scheduled for October 2022 heightened that democratic crisis. In that context, the Special Rapporteur observed with concern increased incidents of hate speech and political violence.

20. International and regional human rights bodies, including OHCHR, the special procedures of the Human Rights Council and the Inter-American Commission on Human Rights, have closely followed the situation in Brazil and expressed their strong criticism of measures adopted that contravene human rights norms and standards and have weakened democratic institutions and commitments.

##### **1. Increase in illiberal values and attacks on human rights and democratic institutions**

21. Over the past decade, democracy in Brazil has faced varied political, economic, social and health crises that have been exploited to entrench distrust and deep divisions among the population and fuel incitement of violence, hatred and intolerance within a society challenged by structural discrimination and growing inequality.

22. When the Special Rapporteur's visit took place, Jair Bolsonaro was still President.<sup>7</sup> He had been elected in October 2018 and served from January 2019 until the end of his term,

<sup>5</sup> See <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=458512&ori=1>.

<sup>6</sup> See <https://www.icnl.org/resources/civic-freedom-monitor/brazil>.

<sup>7</sup> Brazil is a democracy with a presidential and federal system of government. Presidents are elected every four years using a two-round system.

on 31 December 2022. Mr. Bolsonaro had come to power with an electoral coalition closely tied to the agroindustry and conservative economic and religious movements in Brazil. During his presidency, he promoted military influence in State bodies and appointed military officers to various positions in the Government, including high-level positions such as the Chief of Staff to the President and the Minister of Health.<sup>8</sup> In 2021, the Federal Court of Accounts reported that there were 6,157 active and reserve military personnel in civilian positions in Government. That was double the military participation compared with the previous Government, which had 2,765 military personnel in civilian positions.<sup>9</sup>

23. Mr. Bolsonaro's Government expressed ambivalence about core democratic values, openly defending the authoritarian military rule that had been in place between 1964 and 1985 and attacking democratic institutions. During his administration, Mr. Bolsonaro and members of his Government frequently denied the existence of a military dictatorship in Brazil from 1964 to 1985, gave positive assessments of the events that had occurred during the dictatorship, which included serious human rights violations, trivialized such violations and glorified persons convicted of having participated in the commission of crimes against humanity or who were under investigation for such crimes. They were not isolated comments, but rather formed part of a sustained narrative that sought to undermine important efforts to memorialize the history of past human rights violations and provide recognition to victims and their families.<sup>10</sup>

24. Human rights policies and programmes were progressively dismantled, in particular in relation to women's rights, health, labour rights, culture, racial equality, environmental protection and the rights of Indigenous Peoples and Quilombolas. Civil society groups described to the Special Rapporteur a consistent pattern of discontinuation of government human rights mechanisms through the alteration of responsibilities and the reduction of budgets. In addition, such changes were carried out without the participation of civil society, or despite its opposition thereto.

25. Mr. Bolsonaro's Government also adopted measures that promoted citizens' possession of guns and facilitated access to guns and ammunition in the country. During his visit, almost all actors who met with the Special Rapporteur expressed strong concerns about those measures and the risks that they posed to democracy and human rights, including the right to participate in public affairs without fear of violence.

26. As in other illiberal democracies, Mr. Bolsonaro responded to the coronavirus disease (COVID-19) pandemic by minimizing the disease, criticizing social distancing and other protective measures and attacking medical experts and scientific institutions. In a country where almost 700,000 people died from COVID-19, the Government's response not only endangered the lives of millions of people, but deepened polarization and distrust in Government.

27. The Special Rapporteur expressed special concern about the fact that, ahead of the general election, Mr. Bolsonaro's campaign involved continued attacks against democratic institutions, the judiciary and the electoral system in Brazil, including the electronic electoral system.<sup>11</sup> In meetings with the Special Rapporteur, experts also identified links between widespread disinformation campaigns attacking the electoral systems and Mr. Bolsonaro's party coalition and supporters.

28. The Special Rapporteur emphasizes that elections constitute a significant event in the life of a nation that provide a unique opportunity to strengthen democratic principles and

<sup>8</sup> See <https://www1.folha.uol.com.br/poder/2019/01/militares-ja-se-espalham-por-21-areas-do-governo-bolsonaro-de-banco-estatal-a-educacao.shtml>; <https://theconversation.com/brazil-the-road-to-jair-bolsonaros-militarised-democracy-162377>; and <https://g1.globo.com/politica/noticia/2020/07/17/governo-bolsonaro-tem-6157-militares-em-cargos-civis-diz-tcu.ghtml>.

<sup>9</sup> See <https://www.poder360.com.br/governo/bolsonaro-mais-que-dobrou-contingente-de-militares-no-governo-aponta-tcu/>.

<sup>10</sup> See communications BRA 5/2019, BRA 12/2019 and BRA 4/2020. All communications mentioned in the present report are available from <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>11</sup> See <https://www.ohchr.org/en/press-releases/2022/09/brazil-un-experts-call-peaceful-elections>; <https://istoe.com.br/bolsonaro-diz-que-7/>; and <https://www.bbc.com/portuguese/brasil-58479785>.

values and for civil society to engage with would-be elected representatives, highlight concerns and interests and, in general, exercise the rights to participate in public affairs. Efforts by government officials to undermine the transparent election process, discourage political participation and reject unfavourable election results are unacceptable in a democratic system.

29. The Special Rapporteur finds deeply troubling that the rise of illiberal politics corresponds with decreasing support for democracy among Brazilians. Recent studies have shown that support for an authoritarian regime under some circumstances reached 41 per cent in 2018 in Brazil, compared with 19 per cent in 2013.<sup>12</sup> Reversing this negative trend should be a priority of the State. The Special Rapporteur reminds the authorities that civil society can play an important role in rebuilding democratic trust and opening public dialogue in Brazil. Among other things, civil society can promote civic education and political participation, undertake voter education campaigns, including to counter disinformation, and provide a vehicle for the expression of different interests, in particular those of the most marginalized in society.

## 2. Increased political violence

30. Increased political violence is another marker of the backsliding of democracy backsliding in Brazil. While police violence is a challenge in Brazil when it comes to human rights protection, in recent years, the emergence of political violence as a consequence of the backsliding of democracy has been noted. The Special Rapporteur received information about physical violence, death threats, hate speech and harassment aimed at preventing people, in particular women and underrepresented groups such as Afro-Brazilian and Indigenous Peoples, human rights defenders and LGBTI+ communities – often on the basis of intersecting identities – from accessing representative and decision-making positions.<sup>13</sup> It is especially troubling that the hate speech and harassment came not only from private actors but also from high-level public and law enforcement officials.

31. Afro-Brazilian women and LGBTI+ women, in particular transgender women, have been targeted in particular. The killing of Marielle Franco and her driver is just the most egregious example of this worrying trend. Ms. Franco was an Afro-Brazilian human rights defender working for the rights of women, people of African descent, LGBTI+ people, young people living in the favelas of Rio de Janeiro and socially excluded communities. As an elected member of the city council of Rio de Janeiro, she identified as a woman, as a feminist, as Black, as *favelada*, as bisexual and as married to another woman. Her killing remains unpunished.<sup>14</sup> According to the information received, the perpetrators have already been identified, although not yet prosecuted or tried.

32. The Special Rapporteur expresses alarm at the high number of killings in Baixada Fluminense in Rio de Janeiro. Such actions generate terror among the population and prevent those willing to run for office from feeling safe putting themselves forward as candidates. As such, the risk of being a victim of violence increases considerably if there is a chance of succeeding in elections. Although new legislation on political violence against women<sup>15</sup> is an important measure for the protection for women candidates and elected representatives, civil society representatives who spoke with the Special Rapporteur expressed concern about the law not covering other women who engaged in politics and also faced the risk of political violence, for example, those who work with and support the campaigns and mandates of women politicians.

33. The Special Rapporteur warns that the increase in political violence and hate speech threatens to destroy fundamental democratic values within a society already battling with the legacy of racism and discrimination against Indigenous and traditional communities<sup>16</sup> and

<sup>12</sup> See <https://bti-project.org/en/reports/country-report/BRA>.

<sup>13</sup> See BRA 11/2021.

<sup>14</sup> See BRA 3/2018.

<sup>15</sup> Law No. 14.192, adopted on 4 August 2021 (available at: <https://www.in.gov.br/en/web/dou/-/lei-n-14.192-de-4-de-agosto-de-2021-336315417>).

<sup>16</sup> See BRA 1/2022.

historic intolerance against other minority groups, such as LGBTI+ persons and refugees, asylum-seekers and migrants.<sup>17</sup>

34. The Special Rapporteur urges authorities and others to publicly express their rejection of any form of threat and intimidation against civil society actors, including human rights defenders and political activists, and to initiate prompt and impartial investigations and prosecutions. He calls upon the Government to adopt legal, policy and educational measures to address hate speech and political intolerance, in line with international law and human rights standards. In particular, he calls upon the authorities to involve affected groups, including Indigenous and traditional peoples and women human rights defenders, in the design and implementation of those measures.

### **3. Regression from sustainability commitments**

35. Recent government policies challenged many of the sustainability commitments of Brazil. In particular, during Mr Bolsonaro's presidency, the Government allowed the deforestation of the Amazon rainforest to increase and prioritized the economic exploitation of such territories over the territorial rights of Indigenous Peoples and the serious impact on the environment.

36. The expanded deforestation was carried out while promoting stigmatization and harmful stereotypes of Indigenous Peoples and increased violence against human rights defenders working in defence of the environment. As explained in further detail below, several Indigenous and traditional communities have been the subject of violence, threats, hate speech and discriminatory treatment.

## **B. Restricting cooperation and space for dialogue with civil society and social movements**

### **1. Vital role of civil society and social movements in Brazil**

37. There are at least 820,000 civil society organizations active in Brazil. These organizations not only contribute to advancing the public interest but also have an undeniable economic importance in the labour market. Organizations that aim to defend rights and advocate for public interests and religiously oriented organizations represent more than 60 per cent of active organizations. Of those organizations, 86 per cent are private associations, 12 per cent are religious organizations and 2 per cent are private foundations.<sup>18</sup>

38. During his visit, the Special Rapporteur was impressed by how robust, active and diverse civil society organizations in Brazil are. He was inspired by those who join others to the fight for social justice, resist polarization and division and preserve democracy and the rule of law against democratic backsliding. He was moved by the commitment, partnership and creativity shown by non-governmental organizations, community based-organizations, medical associations and trade unions in responding to the many challenges brought by the COVID-19 pandemic. The Special Rapporteur was inspired by the multiracial, feminist organizations that are working to overcome racism and inequality in Brazil. In Rio de Janeiro, the Special Rapporteur visited the Mare Favela and met with community organizers and collectives of Black women leaders who are demanding accountability for the unlawful killing of their children at the hands of police and an end to racism. The Special Rapporteur also met representatives of Indigenous Peoples' groups who courageously protect the Amazon and its biodiversity from deforestation and environmental devastation.

39. The Special Rapporteur reiterates that a vibrant civil society helps to strengthen a State's democratic credentials and should therefore benefit from support and protection similar to the public and private sectors to enable it to make an effective contribution.<sup>19</sup> Civil society acts as both a counterweight and a complement to government and business in a

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<sup>17</sup> See BRA 3/2022.

<sup>18</sup> See [https://bti-project.org/fileadmin/api/content/en/downloads/reports/country\\_report\\_2020\\_BRA.pdf](https://bti-project.org/fileadmin/api/content/en/downloads/reports/country_report_2020_BRA.pdf).

<sup>19</sup> See A/70/266.

democracy, providing avenues through which people directly or indirectly exert their influence on public affairs and matters that affect them.<sup>20</sup> He recalls that civil society organizations are critical contributors to the 2030 Agenda and to the protection and strengthening of democracy.<sup>21</sup>

40. An enabling and conducive environment for civil society organizations begins by recognizing the legitimacy of their work and the value of an inclusive and independent civil society. The Special Rapporteur reminds the Brazilian authorities that speaking out on national and international political issues does not equate to an affiliation to a political party. He calls upon the authorities to consider civil society action as a necessary and essential complement to government action. In particular, authorities should recognize the essential role played by civil society in transforming Brazil into a more equal and just society and in safeguarding Brazilian democracy against those working to undermine it.

## **2. Participation in government decision-making**

41. The Special Rapporteur is concerned about the adoption of policies restricting social and political participation and limiting spaces for consultation concerning public policies and decision-making in the country. Since 2019, at least 650 councils, committees and other participatory mechanisms have been dissolved by presidential decree, while the remaining ones, such as the National Human Rights Council, are facing serious obstacles to their functioning, including budgetary and administrative issues that hinder the holding of their meetings.

42. Presidential decree No. 9759/2019 of 11 April 2019 extinguished and established guidelines, rules and limitations for the administration of federal public collegiate bodies. It dissolved federal councils and commissions, bodies in which civil society directly participates.

43. Those councils and committees had been important spaces for ensuring dialogue between the Government, civil society and communities and ensuring interministerial cooperation and, most importantly, civil society participation within the federal Government on important human rights issues such as food security, land, environment, culture, access to education, the rights of Indigenous and other traditional communities and the rights of LGBTI+ persons, women and persons with disabilities. Those spaces for dialogue and participation allowed different sectors of the population to become more directly involved in public administration, including in the design, implementation and control of public policies, which is core to the right to participate in public affairs.

44. The Special Rapporteur would like to emphasize that the right to participation in public affairs is an essential component of the right to peaceful assembly and association. When States reduce the space for participation in the public affairs they close avenues for the effective exercise of the rights to association and assembly.

45. Indeed, during his visit to Brazil, the Special Rapporteur was informed that the implementation of presidential decree No. 9759/2019 had reduced important spaces for dialogue between authorities and civil society actors, such as those provided by the National Council on the Rights of Persons with Disabilities, the National Council for Combating Discrimination and Promoting the Rights of Lesbian, Gay, Bisexual and Transgender Persons, the National Council on the Rights of Older Persons, the National Council on Drug Policy, the Council for Public Transparency and Combating Corruption, the National Council on Public Security, the National Commission on the Eradication of Child Labour, the National Commission on Biodiversity, the National Commission for the Eradication of Slave Labour, the National Commission on Sustainable Development of Traditional Communities, the National Commission on Indigenous Policies and the National Sustainable Development Goals Commission, among others.

46. Formal participation structures, such as the committees and working groups abolished under the decree, are considered a good practice to ensure participation in decision-making.

<sup>20</sup> A/HRC/35/28, para. 23.

<sup>21</sup> See A/77/171.



These participatory structures have the added benefit of reducing discrimination and inequalities by allowing the participation of diverse sectors of society that may be marginalized or discriminated against. The elimination of these structures could reinforce the exclusion of those groups and the effects of the implementation of the decree on participatory structures could further limit participation, opportunities and peoples' capacity to organize themselves and establish a dialogue with authorities.

47. The dismantling of this framework for civic participation has been prejudicial to Brazilian democracy, the rule of law, social inclusion and economic development. The decree further undermines principles of democratic governance such as openness, transparency and accountability, reduces the independence and autonomy of civil society and threatens the promotion and protection of human rights, including the right to participate in the conduct of public affairs and the right to access information.<sup>22</sup>

48. The Special Rapporteur reiterates that the right to participate requires an environment that values and takes into account the work and contribution of all members of society, supports and encourages their engagement and ensures that they are empowered and equipped with the knowledge and capacity necessary to claim and exercise their rights. Collaboration with civil society actors for the identification and articulation of gaps, needs and solutions to political, economic and social problems is crucial. Brazil should take all measures necessary to build mutual respect, understanding and trust between public authorities and civil society actors.<sup>23</sup>

49. In this context, the Special Rapporteur welcomes the enactment, on 7 October 2021, of a new law (No. 14.215) that provided more certainty for partnerships between civil society and public authorities in the context of the COVID-19 pandemic. The Special Rapporteur considers that this law is an example of the role that civil society can play in shaping legislation and ensuring the ongoing work of civil society organizations. In this specific case, he learned that the legislation was the result of collaboration between the Platform for a New Regulatory Framework for Civil Society Organizations and the Joint Parliamentary Front in Defence of Civil Society Organizations. He encourages civil society and the Government to replicate that collaboration in the adoption of other key legislation.

## C. Legal reforms on counter-terrorism and national security

50. Over the past decade, several bills have been discussed in the legislature in Brazil concerning counter-terrorism and national security. Laws proposed have often included broad and imprecise terminology that may open the door for arbitrary application and the criminalization of otherwise peaceful and legitimate activities, including peaceful assemblies. The Special Rapporteur wants to acknowledge Brazilian civil society groups that have systematically engaged in developing and revising those laws and have played a crucial role in warning about their negative human rights impacts, including to him and other special procedure mandate holders.

### 1. Anti-terrorism draft bills criminalizing social movements

51. Between 2013 and 2016, Brazil passed several pieces of anti-terrorism legislation. Law No. 101/2015 was the subject of a joint allegation letter and press release in which four special rapporteurs expressed their concern about its potential impact on the exercise of human rights and fundamental freedoms in Brazil.<sup>24</sup> Shortly after the passage of Law No. 101/2015, another piece of legislation, Law No. 13.260/16 (Anti-Terrorism Law), was passed. The proceedings and approval of that legislation drew concern and criticism from international organizations such as the United Nations<sup>25</sup> and the Organization of American

<sup>22</sup> See BRA 8/2019.

<sup>23</sup> A/HRC/39/28, para. 19 (h).

<sup>24</sup> See BRA 8/2015.

<sup>25</sup> Office of the United Nations High Commissioner for Human Rights, "Brazil anti-terrorism law too broad, UN experts warn", 4 November 2015.

States.<sup>26</sup> Fortunately, the federal executive exercised its veto power in order to reduce the excessively wide scope in the legal provisions and to better protect freedom of expression and peaceful protest.

52. However, 20 bills remain in the National Congress that are intended to or might have the effect of creating a hostile environment that criminalizes activism and the activities of social movements by using the excuse of national security and the fight against terrorism. The most concerning are Senate bill No. 272/2016, which would restore the vetoed provisions of the 2016 Anti-Terrorism Law, and draft bill No. 1595/2019, another anti-terrorism bill, which has been moved to a different committee and marked as urgent.

53. In June 2021, the Special Rapporteur and other special procedure mandate holders expressed concern about both bills.<sup>27</sup> In their view, bill No. 272/2016 and bill No. 1595/2019 unduly broaden the concept of “terrorism” and the types of actions considered to be terrorist acts by using imprecise language that goes far beyond the settled understanding of what constitutes terrorism or terrorist acts under international law. The broad scope and imprecision of those terms make individuals susceptible to the violation of numerous rights enumerated in the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights in undertaking legitimate activities protected by international law.

54. In particular, bill No. 272/2016 would expand the list of activities that are defined as the motivating factors behind terrorism to include actions that put pressure on the Government, public authorities or government officers to do or stop doing something, for political, ideological or social reasons. Such a broad understanding of motives for terrorism could have adverse effects on political opposition or robust public discourse and could lead to disproportionate sentencing for the commission of violent crimes, including in the context of peaceful protests.<sup>28</sup>

55. Similarly, bill No. 1595/2019 would criminalize people and groups that appear to have the intention of carrying out actions that may intimidate or coerce the population or affect the definition of public policies, through a wide list of actions such as intimidation, coercion, mass destruction, murders, kidnappings or any other form of violence. The Special Rapporteur reiterates his concerns about the vagueness of those concepts, which could be misinterpreted as covering public demonstrations, protests and strikes, as well as the expression of views online and offline that may affect the definition of public policies. Bill No. 1595/2019 would also authorize the use of new monitoring techniques and surveillance mechanisms by law enforcement entities against those who are regarded as suspicious or who could be associated with terrorism. Given the broad definition of terrorism found in the bill, this may result in the violation of the right to privacy of civil society organizations and human rights defenders.

56. During his visit, the Special Rapporteur learned that a new amendment to the anti-terrorism law had been proposed by the Government, aimed at broadening even further the definition of terrorism to include politically and ideologically motivated activities.

57. The Special Rapporteur reminds the authorities that the necessity of measures that restrict the rights to freedom of peaceful assembly and of association must be demonstrated. Authorities may only take such measures as are proportionate to the pursuance of legitimate aims in a democratic society. The counter-terrorism bills that have been introduced and are pending legislative discussion in Brazil fail to meet those conditions. The bills open the door to the misuse of counter-terrorism measures against those exercising their fundamental freedoms, and risk the criminalization of protests and human rights advocacy. The Special Rapporteur is especially concerned that the bills could be used to criminalize any form of expression that articulates a view contrary to the official position of the State and could categorize human rights activities as terrorist activities. The Special Rapporteur emphasizes that, even when those participating in peaceful protests commit violent acts, they must be

<sup>26</sup> Inter-American Commission on Human Rights, *Preliminary Observations of IACHR's In Loco Visit to Brazil* (2018).

<sup>27</sup> See BRA 6/2021.

<sup>28</sup> *Ibid.*

dealt with fairly under ordinary penal law. States should avoid loosely applying anti-terrorism laws to such situations.

58. The Special Rapporteur urges the Government to ensure that the bills are not adopted as drafted and to consider the chilling effect that they could have on the rights to freedom of peaceful assembly and of association. The Special Rapporteur also urges the Government to ensure that civil society can participate in any legislative process concerning counter-terrorism measures and to hold public forums and consultations that allow authorities to gather civil society's input.

## 2. National Security Law reforms

59. The dictatorship-era National Security Law (Law No. 7170/1983) was repealed on 1 September 2021 and new legislation (Law No. 14.197) was adopted.<sup>29</sup> The Special Rapporteur was informed that civil society organizations had participated in hearings during the legislative process and had raised concerns about the text, including about the use of imprecise concepts that threatened fundamental freedoms. The text was revised, taking into account the important input provided by civil society groups. In particular, thanks to civil society advocacy, the new law includes important safeguards for the enjoyment of the rights to freedom of expression, peaceful assembly and association. Notably, the new law expressly states that it is not considered a crime to criticize constitutional powers or journalistic activity or to claim constitutional rights and guarantees through marches, meetings, strikes, crowds or any other form of political manifestation with social purposes.

60. The Special Rapporteur welcomes the repeal of Law No. 7170/1983 and the adoption of Law No. 14.197, introducing some safeguards against misuse. However, he regrets that Mr. Bolsonaro weakened some of the safeguards by vetoing five articles of the new law that sought to promote accountability for law enforcement officers whose conduct violated human rights during peaceful protests. He also is concerned that, under the new law, penalties have been increased for the crime of defamation when criticism is directed at public officials and heads of Congress and the judiciary.

61. Ensuring that national security laws are not arbitrarily used to silence civil society and undermine the rights to freedom of peaceful assembly and of association must be a priority of all democratic States.<sup>30</sup> As the history of Brazil shows, overly broad national security laws may be invoked to criminalize legitimate expression and the activities of civil society organizations, human rights defenders, trade unions and political opponents. The Special Rapporteur urges the authorities to ensure that the new law is strictly applied in compliance with international human rights norms and standards. He calls upon the authorities to ensure that the positive aspects of this new law, namely ensuring that the legitimate exercise of fundamental freedoms is not criminalized, is replicated in any other legislative reform concerning national security, including the anti-terrorism legislation reform discussed above. Criminal defamation laws should be repealed.

## D. Repression of peaceful assemblies

62. Brazil has a long history of violence against peaceful demonstrators and the criminalization of social movements. Since June 2013, when mass protests erupted in opposition to an increase in public transport fares, human rights groups have documented an intensification of undue restrictions on the right to peaceful assembly, characterized by the excessive and unlawful use of force, arbitrary arrests and criminalization of peaceful assemblies.

63. During the country visit, the Special Rapporteur heard testimonies about the recurrent and indiscriminate use of less-lethal weapons – such as rubber bullets, pepper spray and tear gas – by the police against protestors, journalists covering demonstrations and even those simply passing by. The use of rubber bullets in particular has resulted in the loss of eyesight

<sup>29</sup> See <https://www.in.gov.br/en/web/dou/-/lei-n-14.197-de-1-de-setembro-de-2021-342334198>.

<sup>30</sup> Human Rights Committee, general comment No. 37 (2020), para. 36.

of protestors and journalists on various occasions in Brazil and has generated enormous suffering for victims and their families.

64. Intimidation tactics have also been reported, including the recording and photographing of protestors and even infiltration of protest movements by police. For instance, intelligence officers in Brazil have used the dating application Tinder to form relationships with and then conduct surveillance on women activists engaged in protests.<sup>31</sup>

65. Brazilian civil society has been working for years to change the State's response to protests, including by calling for the establishment of a protocol for the facilitation of peaceful assemblies in line with international standards and best practices and for a ban on certain less-lethal weapons owing to their indiscriminate effect. However, the State's standard response continues to be based on the use of force and on the criminalization of activists.

66. Government officials indicated to the Special Rapporteur the commitment of Brazil to the right to peaceful assembly. They insisted that authorities did not discriminate against assemblies on the basis of their content or message and that abuses by law enforcement officials were punished. However, the testimonies heard by the Special Rapporteur during his visit indicate otherwise.

67. Instances of excessive use of force and arbitrary detention of protestors take place frequently across the country. In particular, peaceful protests voicing dissent and criticizing government policies are reportedly the most affected. For instance, between May and July 2021, anti-government protestors repeatedly took to the streets to demand the impeachment of Mr. Bolsonaro, more COVID-19 vaccines and emergency relief during the pandemic. On 29 May 2021, in Recife, Pernambuco State, protestors were repressed by the military police with tear gas and rubber bullets. Similar protests were held on 3 and 24 July 2021 in São Paulo, when the police used tear gas against protestors. This contrasted with marches and demonstrations held in support of the former president, which were not subjected to repression.

68. The Special Rapporteur also learned that, during another wave of pro-democracy demonstrations in 2020, the police in Rio de Janeiro used tear gas and rubber bullets to disperse an anti-racism protest. In 2019, the use of the armed forces was authorized to monitor the annual demonstration of Indigenous Peoples in Brasília, the Acampamento Terra Livre (Free Land Camping). These are just a few of the examples that were brought to the attention of the Special Rapporteur.

69. Press coverage, which is key in any democracy and an important tool for preventing violence and ensuring accountability for misconduct during protests, has been facing serious obstacles. Media outlets, journalist, artists and other communications professionals, in particular women and LGBTI+ persons, have been subjected to physical violence and psychological attacks, including online.

70. The Special Rapporteur is concerned that Brazil has not yet built effective institutional mechanisms that integrate a national policy for public security, nor has it implemented effective oversight mechanisms in line with international standards. Such oversight mechanisms are essential to build trust between populations, in particular minorities and persons of African descent, with the police in a country where police violence mainly affects those groups. The few attempts by regional governments to establish protocols for the use of force have been incipient and ineffective. There is neither a clear unified protocol for the use of force during protests nor effective control of law enforcement agents.

71. During meetings held with the Special Rapporteur, human rights organizations expressed concern about the alleged use of digital surveillance technologies, such as facial recognition, by law enforcement entities during peaceful protests. In particular, they warned that there was limited to no transparency about the acquisition and use of those technologies and that such use remained unregulated.

<sup>31</sup> Privacy International, "State of privacy Brazil", 26 January 2019.

72. The lack of oversight of police activity leaves room for excessive and unlawful police actions, with repressive responses to protests in different territories, in rural and urban areas. Although some law enforcement agents have been removed from duty in different states, the testimonies of those affected by police violence indicate that impunity remains in most cases.

73. In its resolution 50/17, the Human Rights Council called upon States to refrain from the arbitrary or unlawful use of force by law enforcement officials against those taking part in peaceful assemblies, and from the use of digital technology to silence, unlawfully or arbitrarily surveil or harass individuals or groups for having organized, taken part in or observed, monitored or recorded peaceful assemblies.

## **E. Harassment and criminalization of human rights defenders and Indigenous and Quilombola leaders**

74. Human rights defenders in Brazil work in an environment marked by increasing stigmatization, threats, harassment, physical attacks and killings. Indigenous, land and environmental defenders face severe risks and traditional communities, such as those of African descent, are frequently targeted.

75. The Coalition of Indigenous Peoples of Brazil has denounced the techniques of persecution and criminalization, including arrest, coercive warrants, home invasions, stalking, threats through social networks, the exposure of family members, police and judicial harassment and political persecution, used to silence Indigenous leaders. The Special Rapporteur received concerning information that the Brazilian Intelligence Agency (ABIN) frequently investigates Indigenous leaders and non-governmental organizations engaged in criticism of development projects in the Amazon, such as the Belo Monte and Tapajós dams. Non-State actors are also responsible for many threats and attacks.

76. The Special Rapporteur learned that, in recent years, there had been an increase in the entry of miners, loggers and land grabbers into Indigenous territories, which had created serious threats to Indigenous communities and their leaders.<sup>32</sup> Authorities in Brazil are failing to protect the rights of Indigenous Peoples and those who are affected by such threats.<sup>33</sup>

77. The case of the Munduruku community<sup>34</sup> is emblematic of the pressure from illegal mining (*garimpo*) in the Legal Amazon and the failure of state authorities to protect Indigenous communities. On 25 March 2021, a group of miners and their supporters allegedly broke into the premises of the Munduruku Wakoborün Indigenous Women's Association and set fire to documents, office materials, furniture and Indigenous handicrafts. The Association is based in the municipality of Jacareanga, in the State of Pará, and is engaged in defending Indigenous territory in the region. The Association has been active in the defence of land and Indigenous Peoples' rights against the impacts of *garimpo* in their territory. Shortly after the attacks, Alessandra Korap Munduruku, a Munduruku Indigenous woman, environmental human rights defender and a key Indigenous leader in Brazil, received threats and was the victim of intimidation tactics.<sup>35</sup> Her house was burgled and vandalized. The perpetrators stole memory cards of security cameras, documents and money. Those incidents took place during a time of development projects in and encroachment on Munduruku territories, including hydroelectric and mining projects. Attacks against Ms. Munduruku also took place after she attended the twenty-sixth Conference of the Parties to the United Nations Framework Convention on Climate Change, held in Glasgow, United Kingdom of Great Britain and Northern Ireland.

78. The Special Rapporteur received testimonies of reprisals and threats against members of the Quilombola community for forming associations and networks. For example, the Quilombola community of Rio dos Macacos, in the State of Bahia, frequently faces intimidations and attacks to their territory and is restricted from freely using its community resources. Traditional communities establish associations and networks to strengthen their

<sup>32</sup> See BRA 15/2021.

<sup>33</sup> See BRA 6/2016.

<sup>34</sup> See BRA 3/2021.

<sup>35</sup> See BRA 2/2022.

capacities to defend and protect their rights to access essential resources and traditional forms of economy, social life and religion. However, persecution of and attacks against leaders make those communities more fragile and endanger the continuity of their groups and associations.

79. The Special Rapporteur is appalled by the levels of violence against human rights defenders that is motivated by structural factors, such as racism, and is dismayed by policies that restrict participation and limit spaces for consultation on public policies and decision-making.

80. Human rights defenders in other locations, such as favelas, also face major difficulties in maintaining their associations safely. The Special Rapporteur met with women human rights defenders in the Mare Favela whose family members had been victims of police violence and who had been persecuted and intimidated by law enforcement officials because of their work to denounce such violence and seek justice for victims. People living in socioeconomic vulnerability are often more exposed to violence, including police violence, when organizing peaceful assemblies or taking part in groups and social movements.

81. The Special Rapporteur was informed that, in the context of the Jacarezinho massacre, in which 25 people (mostly Black men living in poverty) were killed in a police operation in May 2021, the official discourse had played down their deaths and discredited the work undertaken by civil society organizations to expose police abuse and demand justice. The Special Rapporteur is concerned that victims receive little support, even when reporting multiple attacks. This creates an environment of impunity that is not conducive for the work of human rights defenders.

82. The attacks, harassment, threats and other forms of gender-based violence suffered by feminist activists and Christian religious leaders engaged in the struggle for women's rights deserve equal attention. The Special Rapporteur received concerning information about the intimidation and harassment suffered by a young evangelical activist campaigning for the legalization of abortion who was forced to leave the country for fear of her life.<sup>36</sup>

83. The Special Rapporteur reminds the authorities of their obligations to ensure that those exercising their rights to freedom of peaceful assembly and of association are protected from any form of stigmatization, intimidation, threats or defamation. This includes the adoption of broad and holistic protection measures in line with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. In particular, he calls upon the authorities to strengthen its protection mechanisms for human rights defenders, taking into account the intersectional dimensions of violations against women human rights defenders, Indigenous Peoples, people of African descent, LGBTI+ people, rural and marginalized communities and persons belonging to minorities. Human rights defenders must be meaningfully consulted in this process and in the provision and implementation of any protection measures.

## F. Impunity

84. An enabling environment for the development of civil society requires not only protection against attacks and acts of harassment and intimidation but also proactive efforts to bring perpetrators of human rights violations to justice. The Constitution of 1988 guarantees, in its article 5 (XXXV), access to justice for all citizens of Brazil. However, in meetings with the Special Rapporteur, many civil society organizations noted poor access to justice and lack of accountability for human rights violations.

85. The most compelling example is that of the killing of human rights defender and city council member Marielle Franco, which still has not been fully investigated (see para. 31 above). Her case illustrates the pervasiveness of impunity for human rights violations in Brazil. The Special Rapporteur reiterates his calls to the authorities to investigate her murder

<sup>36</sup> Information submitted by Amnesty International.

effectively, promptly, thoroughly and impartially and to take action against those responsible, in accordance with domestic and international law.

86. The Special Rapporteur considers that the lack of accountability and impunity for crimes committed against human rights defenders directly contradicts the promises and expressions of commitments issued by all political leaders and government officials who call themselves human rights advocates in Brazil. Impunity sends a worrying message to the people in Brazil and demonstrates a lack of respect and value for the people who speak up to defend their rights and protect their communities.

87. In a positive development, in June 2021, the Supreme Federal Court ruled that it was the State's duty to compensate media professionals injured by police officers during news coverage of demonstrations.<sup>37</sup> This followed a legal appeal by a photojournalist<sup>38</sup> who had lost 90 per cent of his vision after being shot in the left eye by a rubber bullet fired by the military police while he was covering a protest in São Paulo in 2000. The Special Rapporteur calls upon the judiciary to build on this example and effectively combat impunity for violations to the rights to peaceful assembly and of association.

#### IV. Subsequent developments

88. Following the visit of the Special Rapporteur, Brazil held general elections. On 2 October 2022, a first round of elections were held to elect the President, the Vice-President, the National Congress, governors, deputy governors and the legislative assemblies of all states. On 30 October, a run-off election was held between then-President Jair Bolsonaro, who was seeking a second term, and former President (2002–2010) Luis Inácio Lula da Silva. Mr. Lula da Silva won the election, with 50.9 per cent of the vote, and took office on 1 January 2023.

89. While the elections were recognized by the international community and election observers as free, fair and transparent, they were marked by disinformation and political violence.<sup>39</sup> As previously warned, Mr. Bolsonaro challenged the results without providing substantive evidence and continued his attacks on the electoral system and institutions. On 8 January 2023, his supporters stormed and vandalized the buildings of the National Congress, the Planalto Palace and the Supreme Federal Court, calling for a military intervention to unseat the democratically elected President, Mr. Lula da Silva.

90. The Special Rapporteur condemned this attack against democratic institutions and attempts to undermine the democratic vote of Brazilian people and called upon the supporters to leave the buildings they had stormed.

91. In the words of the United Nations High Commissioner for Human Rights, the attacks on the government institutions were the culmination of the sustained distortion of facts and incitement to violence and hatred by political, social and economic actors who had been fuelling an atmosphere of distrust, division and destruction by rejecting the results of democratic elections.<sup>40</sup>

92. The current Government has announced its commitment to pursuing institutional renewal and to promoting the values of democracy, human rights and equality. The Government has prioritized efforts to address the acute malnutrition and health crisis faced by the Yanomami Indigenous Peoples as a result of the illegal miners' invasions of their lands and the lack of access to basic services.

93. The Special Rapporteur welcomes the establishment of the post of Minister for Indigenous Peoples and Racial Equality and the appointment of the first Indigenous minister in the history of Brazil. The Special Rapporteur notes with appreciation the creation, in February 2023, of the Social Participation Council and the Interministerial Social

<sup>37</sup> See <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=467401&ori=1>.

<sup>38</sup> See <https://latamjournalismreview.org/articles/journalists-rubber-bullet-blind-eye-legal-battle/>.

<sup>39</sup> See, for example, [https://www.oas.org/en/media\\_center/press\\_release.asp?sCodigo=S-023/22](https://www.oas.org/en/media_center/press_release.asp?sCodigo=S-023/22).

<sup>40</sup> See <https://www.ohchr.org/en/statements/2023/01/comment-un-high-commissioner-human-rights-volker-turk-brazil>.

Participation System. Through these bodies, the Government will maintain dialogue with social movements and civil society organizations in the design of public policies.

94. The Special Rapporteur also welcomes the executive order passed in March 2023, according to which Afro-Brazilians and Brazilians of mixed race should hold at least 30 per cent of appointed federal government positions.

## **V. Conclusions and recommendations**

### **A. Conclusions**

95. The transitioning of Brazil from the dictatorship regime to democracy was formalized by the 1998 Constitution, which guarantees the right to freedom of free speech, association and assembly. Constitutional guarantees, however, have been negatively affected in recent years as a result of the proliferation of laws and decrees adopted by Brazilian authorities in an attempt to undermine those rights. Such laws and decrees have weakened the country's democracy and the participation of civil society and marginalized communities in public affairs.

96. The most significant challenge for Brazil lies in the fact that the country has not been able to overcome the police violence that has been coupled in recent years with political violence as a consequence of the emerging populist narrative. This situation seriously affects the civic space in the country and in particular the ability of minorities and Indigenous populations to organize and assemble freely without facing discriminatory restrictions or violent responses from law enforcement.

97. The country's vibrant civil society has an important role to play in safeguarding the democracy and cohesion of Brazil. As seen in recent years, civil society has resisted populist discourse undermining the legitimacy of its work and has also resisted the increased legal measures and laws aimed at restricting civic space and participation in public affairs. Thanks to the important role played by civil society in the recent elections, communities have been able to peacefully exercise their right to vote and to elect a president to represent them. It is therefore important for the new authorities to rebuild trust with civil society through the creation of a conducive environment enabling its work. Recognizing civil society and reversing the negative narrative, at the highest level of the State, about the work of civil society and its essential contribution to the country's development will be critical for the creation of such an enabling environment. Overcoming the challenges of discrimination, deep inequalities and the protection of land and Amazonian, Indigenous and marginalized communities will require the free and meaningful participation of civil society.

98. The following recommendations are made bearing in mind the country's recent political and social crisis and reflecting the need for the President, Mr. Lula Da Silva, and his Government to take strong and effective actions to prevent future crises susceptible of jeopardizing democracy and social cohesion. The Special Rapporteur is confident that Brazil has the capacity, political will and maturity to restore trust and hope among those who have suffered from marginalization and years of human rights violations, including as a result of exercising their fundamental freedoms. In this regard, the Special Rapporteur stands ready to provide any technical assistance deemed necessary to the Government.

### **B. Recommendations**

99. The Special Rapporteur would like to offer the following general recommendations to the Government of Brazil:

(a) Ensure, in law and in practice, that the rights to freedom of peaceful assembly and of association are freely exercised so that they may play a decisive role in the transition to and maintenance of an effective democratic system and act as a channel for dialogue, pluralism, inclusiveness, tolerance and broad-mindedness;



(b) Ensure a conducive and safe environment for everyone exercising or seeking to exercise the rights to freedom of peaceful assembly and of association and ensure that there is no discrimination in the application of the laws governing the rights to freedom of peaceful assembly and of association, in particular regarding the groups most at risk and those expressing dissenting voices;

(c) Provide to individuals exercising their rights to freedom of peaceful assembly and of association the protection offered by the right to freedom of expression;

(d) Ensure that no one is criminalized or subjected to threats, harassment, persecution, intimidation or reprisals for exercising the rights to freedom of peaceful assembly and of association;

(e) Ensure that any restrictions on the rights to freedom of peaceful assembly and of association are prescribed by the law, necessary in a democratic society and proportionate to the aim pursued, that they do not harm the principles of pluralism, tolerance and broad-mindedness and that they are subject to an independent, impartial and prompt judicial review;

(f) Ensure that victims of violations and abuses of the rights to freedom of peaceful assembly and of association have the right to an effective judicial remedy and obtain redress;

(g) Ensure that a wide range of civil society actors with diverse views are systematically consulted before the adoption of any legislative initiative and policies.

100. The Special Rapporteur would like to offer the following specific recommendations to the Government of Brazil:

(a) Develop a unified protocol for law enforcement officials on the facilitation of peaceful protest that is in compliance with international standards and reflects best practices. Such a protocol should prioritize de-escalation and negotiation strategies aimed at preventing and minimizing the use of force;

(b) Create an effective, well-resourced and independent federal oversight mechanism to effectively investigate complaints with regard to the conduct of law enforcement officers in the context of protests, including of those in positions of authority;

(c) Consult with civil society and other relevant stakeholders for the development of the above-mentioned protocol for law enforcement officials and oversight mechanism;

(d) Ensure that police officers exhaust non-violent means before resorting to force and, when force is justified and absolutely unavoidable, that they exercise restraint in proportion to the seriousness of the offence and to the law enforcement objectives pursued, with due respect to human rights;

(e) Refrain from the arbitrary or unlawful use of force by law enforcement officials against those taking part in peaceful assemblies and also refrain from the use of digital technology to silence, unlawfully or arbitrarily surveil or harass individuals or groups for having organized, taken part in or observed, monitored or recorded peaceful assemblies;

(f) Ban the use of rubber bullets and other indiscriminate less-lethal weapons in response to assemblies;

(g) Amend anti-terrorism laws in line with international human rights norms and standards and refrain from adopting any reforms to existing counter-terrorism laws and policies contradicting those norms and standards;

(h) Ensure that the new national security law is applied in strict compliance with international human rights norms and standards;

(i) Repeal criminal defamation laws;

(j) Create and maintain a safe and enabling environment that is conducive to the exercise of the right to participate in public affairs, including by repealing presidential decree No. 9759/2019 and re-establishing and strengthening pre-existing formal mechanisms that facilitate civil society's participation in decision-making;

(k) Ensure that all individuals exercising their rights to freedom of peaceful assembly and of association, including human rights defenders, political candidates, trade union leaders, Indigenous Peoples, rural and marginalized communities and persons belonging to minorities, as well as their family members and associates, are protected from violence, harassment and intimidation. In particular, the State should strengthen its protection mechanisms for human rights defenders, taking into account the intersectional dimensions of the threats they face. Human rights defenders must be meaningfully consulted in this process and in the provision and implementation of any protection measures;

(l) Conduct prompt, impartial and independent investigations and pursue accountability for all attacks and threats by State and non-State actors against human rights defenders and all individuals exercising their rights to freedom of peaceful assembly and of association;

(m) Indigenous and traditional communities should be free from fear of persecution and should have access to full and detailed information to organize themselves freely in order to build up autonomous decision-making processes. States should adopt all necessary measures to ensure the demarcation of Indigenous and traditional peoples' lands;

(n) Investigate effectively, promptly, thoroughly and impartially Marielle Franco's murder and take action against those responsible, including the organizer, in accordance with domestic and international law;

(o) Conduct a thorough social study on the impact of populism discourse and hate speech, online and offline, on the enjoyment of fundamental freedoms, in particular on the rights to freedom of peaceful assembly and of association, by all segments of society and take measures compliant with international human rights standards to counter threats to those freedoms and human rights.

101. The Special Rapporteur recommends that the representatives of international organizations in Brazil, and donors thereof, continue to support the work of the Government and civil society organizations in creating an enabling civic space and building participatory democracy.

102. The Special Rapporteur calls upon the United Nations, other intergovernmental organizations and other stakeholders:

(a) To advocate with the relevant authorities for the respect, protection and fulfilment of the rights to freedom of peaceful assembly and of association;

(b) To contribute to strengthening the capacities of the relevant authorities, independent constitutional institutions and civil society organizations;

(c) To monitor the implementation of the recommendations contained in the present report.

103. The Special Rapporteur recommends that the resources available for the future work of the Human Rights Adviser in Brazil be increased to support the Government's efforts to promote and protect human rights.