**Preliminary observations by the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr. Clément Voule**

Sao Paulo, 8 April 2022

I would like to begin by expressing my appreciation to the Government of Brazil for having extended an invitation to my mandate to visit the country with the aim of assessing, in a spirit of dialogue and cooperation, the level of enjoyment of these two civil and political rights in the country. I would also like to thank the Government of Brazil for the cooperation given to me prior to and throughout the visit. I hope that after my departure we will continue working jointly towards a better enjoyment of these rights by all.

I also particularly thank representatives of the public defender’s office who engaged constructively in this dialogue as well as a wide-range of civil society representatives from around the country, including leaders of community based organizations, such as Quilombo and black communities as well as trade unions.

I also take this opportunity to sincerely thank the UN Resident Coordinator and her Human Rights Advisor, UNDP Brazil and the OHCHR regional office for the support provided to me before and during my visit.

During my visit, I had the opportunity to travel to Brasilia, Salvador, Rio de Janeiro and São Paulo. I also visited the communities of Rio dos Macacos, Gamboa de Baixo and Abaete, in the state of Bahia, and the Maré Complex, in Rio de Janeiro.

In Brasilia, I met with senior Government authorities at the federal level, including the Minister of Justice, representatives from the Ministry of Foreign Affairs as well as the General Prosecutor and the federal prosecutor on the rights of citizens. I also met with the parliamentarians from the House of Representatives and the Federal Senate, representatives of both Human Rights Commissions. I also held meetings with representatives of the National Council of Justice and the National Council for Human Rights as well as federal and state authorities at the Office of Public Prosecutor Office of Public Defence, and Public Security. I also met with the members of the United Nations Country Team, the diplomatic community, and representatives of civil society organizations working on environmental, gender and racial issues. Last but not least, I also met with national trade unions and community leaders, including from indigenous, Quilombola and other traditional peoples.

I will now present some of the preliminary findings and recommendations in the spirit of holding a constructive dialogue and based on information received before and throughout my visit. I will elaborate on these preliminary findings in a more detailed manner in a report that will be presented at the 53rd session of the UN Human Rights Council in June 2023. These preliminary findings may not reflect all the issues presented to me, nor all the initiatives undertaken by the Government of Brazil.

1. **Political context**

The visit comes at an important and sensitive time ahead of the general elections scheduled to be held in October 2022***.*** I am concerned by the polarised environment which could discourage citizens to vote during the upcoming elections.

The context of threats and violence, including death threats against candidates called my attention. In particular the high number of killings in Baixada Fluminense in Rio de Janeiro is terrifying. Such actions generate terror among the population and prevent those willing to run for office feel safe from presenting themselves as candidates. As such, the risk of being a victim of violence increases considerably once the chance of succeeding in elections arises.

Although the recently adopted legislation on political violence can be seen as a relevant step for the protection of candidates and elected representatives, it does not cover the work of all those supporting their campaigns and mandates.

1. **Encouraging initiatives and best practices**

I welcome the new law (N. 14.215), enacted on 7 October 2021, that provides more certainty to partnerships between civil society and the public authorities in the context of the COVID-19 pandemic. This law is an example of the role civil society can play for shaping legislation and ensuring the continuous work of CSOs. In this specific case, it was a collaboration between the Platform for a New Regulatory Framework for Civil Society Organisations (MROSC) and the Parliamentary Mixed Front in Defence of Civil Society Organizations (FPOSC). I welcome this initiative despite the struggle it went through to come into force.

I congratulate the Parliament for setting up the Parliamentary Observatory on UPR, in the Commission on Human Rights and Minorities of the House of Representatives, in partnership with the United Nations office in Brazil. This observatory has been monitoring the implementation of UPR recommendations and produced specific reports covering a range of human rights themes including freedom of peaceful assembly and association.

I welcome the best practices manuals on the strengthening and expanding of custody hearings a result of the partnership between UNODC, the National Council of Justice and UNDP, through the *Fazendo Justiça* Programme.

I was encouraged to learn that there are many State institutions that deal with the protection of human rights including the rights to peaceful assembly and association such as the Public Defence Office. I express my admiration of the work they do and encourage them to continue their efforts in implementing their mandate. I invite the State to ensure the adequate resources, including budgetary, for establishing public defenders’ offices in all cities throughout the country. This will ensure the accessibility of these institutions by vulnerable and marginalised groups.

1. **Challenges**

During my visit, communities and stakeholders I met raised among others the following challenges that may hinder the full enjoyment of the rights to freedom of peaceful assembly and of association.

***3.1 Decreasing civic space/******Dismantling of spaces for civil society participation in public policies***

The rights to freedom of peaceful assembly and association are essential as an avenue for of participation.

Brazil is experiencing a worrying trend of shrinking civic space. The government's hostile approach to CSOs, social movements and the media creates a hostile environment further shrinks the public space for debate and civil society participation.

I am concerned about policies restricting social and political participation, limiting spaces for consultation concerning public policies and decision making. Since 2019 at least 650 councils, committees and other participatory mechanisms were closed, while the remaining ones such as the National Human Rights Council, are facing serious obstacles for functioning, including budgetary and administrative issues to hold their meetings. These councils are important spaces for ensuring dialogue between the government, civil society and communities, on important human rights challenges such as food security, land, environment, culture, access to education, the rights of indigenous and other traditional communities, LGBTI, women, persons with disabilities, among others.

Human rights policies and programs are being progressively dismantled. In several areas such as women's rights, health, labor rights, culture, racial equality, environmental protection, and rights of indigenous peoples and Quilombolas.

There is also a consistent pattern of discontinuation of human rights mechanisms through the alteration of responsibilities and budget reduction. Additionally, such changes have been carried out without the participation of civil society or despite their disapproval.

It is important that government re-establishes those mechanisms to allow communities and civil society to participate and contribute in policy making in these areas.

***3.2 Anti-terrorism draft bills criminalizing social movements***

There has been a significant decrease in practice and in law since 2013 – there are threats that are negatively affecting and limiting the enjoyment of the rights to freedom of peaceful assembly and of association such as the anti-terrorism laws.

There are about 20 Bills in the National Congress that intend to or might have the effect of creating a hostile environment that criminalizes activism and social movements’ activities by using the excuse of national security and the fight against terrorism. I express deep concern about Bill No 272/2016 and Bill No 1595/2019. Both Bills have been able to advance in the legislative process and are based on broad conceptions of terrorism that will make legislation an easy instrument for criminalizing activism.

Bill 1595/2019 would create a system of counter-terrorist actions based on a new, broad and undefined concept of terrorism. It would expand the Executive’s powers of surveillance and create a dangerous presumption of legality for actions to combat terrorism, without effective mechanisms of control and accountability regarding abusive interventions that may be committed by public agents. This bill could reinforce official acts of intimidation, threats and the silencing of government critics and political opponents while also leading to the criminalisation of social movements and the restriction of fundamental freedoms.

During my mission, a new amendment was proposed by the government, aiming to broader even more the definition of terrorism, including “politically and ideologically motivated activities “, confirming a trend of restricting civic space in the country.

***3.3 Access to guns and ammunition***

I was quite alarmed to know that Brazil has recently adopted legislation for facilitating access to guns and ammunition in the country as well as the possession of guns. The evidence has shown that arming the population leads to more violence instead of preventing it.

Almost all interlocutors I met demonstrated strong concerns with the potential violence during upcoming election processes due to the increased access to weapon and ammunition security. Many also raised their concerns regarding the possible violent interference of armed groups or individuals to prevent protests.

***3.4 Effective access to justice and impunity***

The Brazilian constitution of 1988 guarantees in article 5, XXXV, access to justice for all its citizens.

However, I have heard from many civil society organizations denouncing poor access to justice and lack of accountability for human rights violations. A compelling example is the death of human rights defenders and city councillor Marielle Franco, a case which has never been fully investigated.

The State must investigate effectively, promptly, thoroughly and impartially her murder and take action against those responsible in accordance with domestic and international law.

For all those running for office and supposedly advocating for human rights, the lack of accountability and impunity of crimes committed against human rights defenders gives a wrong sign and sends a worrying message.

Another example of the lack of accountability, among others, is the case of collectives of mothers who are still asking for justice and accountability for the loss of their children. They are not asking for anything that is not already stated in Brazilian legislation yet live under threats and in constant fear of violence.

***3.5 Structural Discrimination and Violence against people of African descent- and indigenous peoples***

People of African descent are disproportionately affected by violence. Official data shows that 77% of homicide victims are Black and they are 2.6 times more likely of being killed than non-Black individuals. According to the Brazilian Forum on Public Security, 78.9% of people killed during police operations in 2021 were of African descent. Most of those deaths occur in the context of the fight against drugs.

I call on the authorities to review the country strategy on fighting against drugs and to move towards the decriminalisation of it use. The current war on drugs has only wrecked many families and destroyed a generation of black youth. Many organisations working in communities affected by drug trafficking told me that they are systematised, and something portray as supporting the criminals or being complicity of drug dealing.

Violence and discrimination against those who practice religions of African origin is still a concern. The National Plan for traditional communities of African descent was not presented and has been in its concluding phase since 2018. Women human rights defenders from religions of African origin report attacks on their places of worship, and Indigenous prayer houses have been set on fire.

Several violations of Quilombola’s human rights have been reported. The violence in territories of traditional communities affects disproportionally women and girls and I condemn these attacks. I visited the Quilombola community at Rio dos Macacos, whose right to preserve their ancestral tradition have been impacted by a protracted territorial dispute with the Brazilian Navy.

***3.6 Land issues and demarcation of land****.*

Land issues and the demarcation of the land has been the main cause of indigenous protests. Brazil has a pending land reform since many years and have never been fully adopted. The action of extractive industries, agribusiness and development projects is marked by wide disinformation and often the harassment against traditional communities. The demarcation and registration of indigenous and Quilombola lands has been discontinued.

I was informed that there are legislative initiatives that aim to weaken the normative frameworks on the right to land and to allow economic and mining exploitation on indigenous lands, which would put the indigenous communities at greater risk.

I call on the authorities to avoid such initiative which will create more tensions and increase the protests with high risk of loss of lives.

I am alarmed by civil society, human rights defenders working on land issue testimonies on increased harassment, physical attacks and criminalisation of their work.

1. **Freedom of Peaceful Assembly**

Brazil is a party to the International Covenant on Civil and Political Rights (ICCPR), and which provides for the rights to freedom of peaceful assembly and of association under articles 21 and 22. The Brazilian Constitution guarantees the freedom of peaceful assembly under article 5, XVI which recognises these rights to all Brazilians without discrimination.

However, I received testimonies of the frequent excessive use of force and human rights violations in protests.

Between May and July 2021, anti-government protesters repeatedly took to the streets to demand President Bolsonaro’s impeachment, more COVID-19 vaccines and emergency relief during the pandemic. On 29 May 2021, in Recife, Pernambuco state, protesters were repressed by the military police with tear gas and rubber bullets. Police actions caused permanent injuries also to bystanders.

Similar protests took place on 3 and 24 July 2021 in São Paulo, when the police used tear gas against protesters.

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.

Also, in 2019 the use of the Armed Forces was authorized for monitoring the annual demonstration of indigenous peoples in the country's capital, Brasilia, the *Acampamento Terra Livre* (Free Land Camping).

Brazilian civil society has been working for years to change the State's response to protests. However, the State's standard response continues to be based on the use of force and on the criminalization of activists. There have also been several initiatives from the State to reform criminal laws, to increase the mechanisms of surveillance as well as the criminal prosecution of activists and social movements leaders. Instances of excessive use of force and arbitrary detention of protesters are recurrent and take place nationwide.

Press coverage, which is key in any democracy and an important tool for preventing violence and ensuring accountability of misconduct during protests, has been facing serious obstacles. Media outlets, journalist, artists and other communication professionals, especially women and LGBTI, have been target by physical and psychological violence, including online.

I am concerned that Brazil has not yet built effective institutional mechanisms that integrate a national policy for public security, nor implemented effective oversight mechanisms in line with international standards. The few attempts by subnational governments to establish protocols for the use of force are incipient and ineffective.

Although I was informed about the number of law enforcement agents expelled by their corporations in different states, the testimonies of those affected by police violence indicate impunity in most cases. The lack of oversight of the police activity leaves room for excessive and unlawful police actions with repressive responses to protests in different territories, in rural and urban areas.

I am concerned that there is neither a clear unified protocol for the use of force during protests nor an effective control of the law enforcement agents.

I am also concerned by unregulated use of digital technology such as facial recognition during the protest.

1. **Freedom of association**

The Constitution guarantees the freedom of association under article5, XVII.

Brazil has a vibrant, active, and diverse civil society that has played a pivotal role in the fight for social justice, to preserve democracy and the rule of law and, more recently, to fight COVID-19. Their work is important and essential to combat many human rights challenges the country is going through.

However, I received testimonies from some groups who face challenges, including persecution, when forming associations and acting in network. For example, the Quilombola community of Quilombo Rio dos Macacos, in the state of Bahia, frequently face intimidations and attacks to their territory, not being able to freely to use the resources of their community. Traditional communities establish associations and networks to strengthen their capacities to defend and protect their rights to access to essential resources for life and traditional forms of economy, social life, and religion. However, the criminalization, persecution and attacks against leaders fragilizes these communities as a whole and endangers the continuity of their groups and associations.

I am appalled by the levels of violence against human rights defenders motivated by structural factors, i.e, racism and even more with the policies restricting participation and limiting spaces for consultation concerning public policies and decision making.

Human rights defenders in other locations, such as favelas, also face major difficulties to maintain their associations safely. Women human rights defenders who had family members victims of police violence, reported to be persecuted and intimidated by law enforcement officials because of their work to denounce such violence and to seek justice for victims. People living in socioeconomic vulnerability are often more exposed to violence, including police violence, when organizing peaceful assemblies or acting in groups and social movements.

I was informed that in the context of the Tragedy in Jacarezinho, in May 2021, the official discourse banalized the deaths of more than 20 people and discredited the work undertaken by civil society organizations on this sad event.

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

I am concerned that victims receive little support even when reporting multiple attacks. This creates an environment of impunity and non-conducive for the work of human right.

I regret that changes to labour laws made in 2017 have considerably reduced the course of action of various trade unions. I call on the Government to amend legislation in line with international human rights standards.

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.

In addition to the fact that the right to association is enshrined in the Brazilian constitution, I remind the authorities that speaking out on national and international political issues does not equate with an affiliation to a political party. I invite the authorities to consider the action of civil society as a necessary and essential complement to government action.

I call on the authorities to create an enabling and conducive environment for civil society work. Such an environment should include among other the protection of human rights defenders when they are at risk, the space for participation, consultation on important issue related to human rights, fight against impunity, recognition of their legitimate work and access to resources without undue restriction.

1. **Recommendations**

I wish to make the following preliminary recommendations:

*Recommendations to the State:*

* Create the conditions for a sincere dialogue between the opposition and the majority in order to preserve the country's democratic gains.
* Establish a dialogue between the authorities and civil society in order to create the conditions conducive to the enjoyment of public freedoms and more particularly the rights of peaceful assembly and of association;
* Provide the justice and penitentiary system with the necessary resources to reduce the number of non-convicted detainees and ensure their independence.

**Freedom of peaceful assembly**

*Recommendations to the State:*

* Amend anti-terrorism laws in line with international human rights standards;
* Develop and implement a clear unified protocol for the use of force during protests and create an effective independent oversight body of the law enforcement agents conduct;
* Ensure that in the exceptional case of prohibition of a planned peaceful demonstration, the prohibition order is notified to the organizers within a reasonable time allowing them to exercise their full right to a legal remedy;
* Refrain from using digital technology for surveillance and criminalisation of human rights defenders and their organizations.

**Freedom of association**

*Recommendations to the State:*

* Repeal laws or bills which limit the right to association in line with international human rights standards.
* Ensure that the right to freedom of association is respected throughout the electoral process; any limitations must comply with the requirements of legality, legitimate objectives, necessity, and proportionality, in accordance with international human rights law;
* Ensure that all individuals, associations, and political parties are protected from violence, harassment, and intimidation;
* Traditional communities need to be free from the fear of persecution, and have access to full and detailed information to gather and organize themselves freely in order to build up autonomous decision-making processes;
* Create and maintain a safe and enabling environment that is conducive to the exercise of the right to participate in public affairs;
* Promote the participation of communities in all public policies affecting them;
* Strengthen measures for protecting candidates, those elected as well as their advisors;
* Improve legislation for the prevention of political violence and the protection of all those advocating for human rights;
* Investigate effectively, promptly, thoroughly and impartially Marielle Franco’s murder and take action against those responsible including mastermind in accordance with domestic and international law;
* Provide those who claim to be victims of a human rights violation with equal and effective access to justice and provide effective remedies to victims, including reparation.

*Recommendations to civil society*

* Establish capacity building programs for civil society actors and vulnerable communities on awareness of the use of international human rights mechanisms and monitoring of human rights violations;
* Strengthen networking to increase action within communities, in particular in the Quilombo community and indigenous communities.

*Recommendations to the international community*

* Support initiatives aimed at strengthening civic space in the country;
* Strengthen support for the work of civil society organizations and communities and especially on activities aimed at the most disadvantaged communities;
* Cooperate with the state at different levels in order to address the root causes of the violence exercised against human rights defenders and their organizations at risk in the country, including racism, gender inequalities and other discriminatory practices;
* Provide technical assistance to the country in the context of the upcoming general election in particular through the monitoring and the observation of the elections.

I reiterate my gratitude to have had the opportunity to visit Brazil during this critical period and look forward to continuing our dialogue and discussing my full report when I present it in June 2023 at the UN Human Rights Council.