

Criminalization and punishment of homelessness and extreme poverty:

An Updated Input to the United Nations regarding Brazil

Type of Stakeholder: Academic institution.

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Can we attribute responses to this questionnaire publicly? Yes.

Introduction

Adopted by Human Rights Council Resolution 21/11 in September 2012, the *Guiding Principles on Extreme Poverty and Human Rights (A/HRC/21/39)* underline that States should “repeal and reform any laws that criminalize life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities.” Furthermore, States should “review sanctions procedures that require the payment of disproportionate fines by persons living in poverty, especially those related to begging, use of public space and welfare fraud, and consider abolishing prison sentences for non-payment of fines for those unable to pay.”

Additionally, the *Guidelines for the Implementation of the Right to Adequate Housing (A/HRC/43/43)*, specify that “States should prohibit and address discrimination on the ground of homelessness or other housing status and repeal all laws and measures that criminalize or penalize homeless people or behaviour associated with being homeless, such as sleeping or eating in public spaces. The forced eviction of homeless persons from public spaces and the destruction of their personal belongings must be prohibited. Homeless persons should be equally protected from interference with privacy and the home, wherever they are living.” They further recommend: “States should provide, within their justice system, alternative procedures for dealing with minor offences of homeless people to help them break the cycle of criminalization, incarceration and homelessness and secure the right to housing.” Similarly, in June 2020 the Human Rights Council called in Resolution 43/14 on States to “take all measures necessary to eliminate legislation that criminalized homelessness.”

In June 2021, the United Nations *Special Rapporteur on the Right to Adequate Housing* and the *Special Rapporteur on Extreme Poverty and Human Rights* have sent a request to all Member States of the Council of Europe and to European and National City Networks and Associations for information concerning any laws and regulations that may still be in place in several European countries at national, federal state or local level which may result in criminalization of persons living in extreme poverty or homelessness.

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[‡] Disclaimer: authors’ views are exclusively on behalf of [Facts and Norms Institute](#).

On 30 August 2021, the cited Special Rapporteurs invited all other States, local Governments, civil society organizations, National Human Rights Institutions, national associations working with the homeless, and other relevant stakeholders to submit information on laws and regulations at national, federal state or local level that may still prohibit or sanction begging, staying, sleeping, eating or undertaking any other life sustaining activities in public spaces.

The Facts and Norms Institute accepted the invitation and prepared a report containing three inputs, each with relevant information about the countries of Brazil, France, and Poland. Authored by researchers Henrique Napoleão Alves, Fernanda Alves de Carvalho and Mosabbir Hossain, the report was filed on 30 November 2021.

Since the 2021 report, the controversy over "hostile architecture" designed to deter homeless people from public spaces led to legislative changes with the endorsement of the *Father Júlio Lancellotti Act* (Law No. 14.489/2022). Inspired by activism against such exclusionary practices, this law aimed to foster inclusivity by prohibiting architectural elements that prevent access to public spaces for the homeless. Despite its approval by both legislative chambers, President Bolsonaro vetoed the bill; nonetheless, the veto was overturned by Congress in December 2022 and the bill was finally converted into positive law. This and other developments are described in the Section "Recent developments" below.

The Institute's work

The [Facts and Norms Institute](#) is an independent academic institution based in the Global South, with members present in all continents. The Institute's mission is straightforward: to promote a rational, human rights-based approach to social issues.

Since its establishment, the Institute conducted social and legal research in collaboration with the Inter-American Court of Human Rights in the form of written Amici Curiae Memorials. The Institute's record includes, *v.g.*, i) an Amicus Curiae Memorial in the proceedings of the case *Leite de Souza and Others vs. Brazil*, also known as the Massacre of Acari case, a comprehensive argument regarding the systemic violence perpetrated by state agents in Brazil, particularly focusing on police violence, the limits of transitional justice, and the dehumanization of poor and Afro-descendant populations; ii) and an Amicus Curiae Memorial in the proceedings of the Advisory Jurisdiction of the Court regarding Human Rights and the Climate Emergency.

Moreover, the Institute conducted research about varied human rights topics in collaboration with the United Nations, including human rights and infectious diseases; torture and torture prevention; the notion of short-term enforced disappearances; religious intolerance, violence, and racism; social participation; transitional justice and sustainable development; poverty, post-growth and SDGs; sustainable development and the human rights of persons with albinism; the role of non-state actors (particularly businesses) in transitional justice; memorialization and the Roma; the protection of lawyers; the human rights of indigenous and rural communities to water and sanitation; militarization of indigenous and quilombola land; human rights and internet shutdowns; mercury, artisanal and small-scale gold-mining and human rights; contemporary forms of slavery and the informal

economy; technology and contemporary forms of slavery; human rights and voluntourism; digital education and online protection of young people; adequate housing and climate change; the extractive sector, just transition, and human rights; and the present *update submission* on criminalization of persons living in the street and in extreme poverty.

The 2021 input's methodology

The 2021 Submission provided an in-depth analysis of various legal and social issues surrounding poverty, homelessness, and the criminalization of certain behaviors in Brazil. In terms of methodology, it included, *v.g.*,

- *Legal Analysis:* The report began by examining Brazilian criminal legislation related to begging and other behaviors often associated with poverty. It delved into specific articles of the Criminal Misdemeanour Act and the Brazilian Penal Code to outline the penalties associated with idleness, begging, public annoyance, drunkenness, and intellectual abandonment.
- *Case Studies and Examples:* To illustrate the practical implications of these laws, the report included several case studies and examples of individuals who have been affected by them. These examples ranged from individuals arrested for minor offenses such as stealing food to survive to instances of hostile architecture designed to deter homeless people from occupying public spaces.
- *Review of Legal Doctrines:* The report explored legal doctrines such as the principle of insignificance and necessity, which are used to argue for the justification or exoneration of certain actions, particularly those committed out of desperation or need. It discussed how these doctrines are applied in Brazilian law and provided examples of cases where they have been both accepted and rejected by the judicial system.
- *Analysis of Human Rights Violations:* Additionally, the report examined instances of human rights violations, including threats, aggressions, and massacres against individuals living on the streets. It cited reports from international organizations such as the Inter-American Commission on Human Rights to highlight systemic issues of police violence, impunity, and discrimination faced by marginalized populations in Brazil.
- *Evaluation of Municipal Policies:* The report evaluated municipal policies and practices related to the confiscation of personal belongings, the implementation of anti-beggar architecture, and the regulation of street vendors. It included specific examples of legal challenges and court rulings regarding these policies, illustrating how they intersected with broader legal frameworks and human rights principles.

- *Analysis of Social and Economic Factors*: The report considered broader social and economic factors contributing to the criminalization of poverty and the marginalization of vulnerable populations in Brazil. It discussed the impact of rising unemployment rates, urbanization, and neoliberal economic policies on the ability of individuals to access basic necessities, and engage in informal work.

The 2021 input's results

The 2021 Submission encompassed, *v.g.*, the following results:

- *Criminal legislation related to begging and other conducts*: In Brazil, the Criminal Misdemeanour Act (Decree-Law No. 3.688/1941) establishes possible prison and fine sanctions for misdemeanours like "idleness", "public annoyance", "begging", and "drunkenness" in its articles 59 to 62. Although articles 60 and 61 were formally revoked by Federal Laws No. 11.983/2009 and No. 13.718/2018, the other described misdemeanours remain valid. Additionally, the Brazilian Penal Code (Decree-Law No. 2.848/1940) establishes the crime of "intellectual abandonment" in its Article 247, penalizing actions such as allowing someone under eighteen to beg.
- *Crimes of necessity and the principle of insignificance*: In Brazil, necessity can justify breaking the law, as stated in the Brazilian Penal Code, articles 23 and 24. Another legal concept, "the principle of insignificance", argues that minor nonviolent offences, like stealing small-value items, do not warrant the costly penal system's involvement. However, these arguments are not always accepted uniformly by law enforcement and courts.
- *Confiscation of personal belongings*: several reports indicate instances of State agents forcefully confiscating personal belongings from people living on the streets in various Brazilian cities. Legal battles over these practices, such as the case in Belo Horizonte, highlight ongoing debates and legal challenges concerning confiscation.
- *Anti-beggar architecture*: "Hostile architecture," aimed at deterring homeless individuals from public spaces, has been observed in major Brazilian cities. Examples include electric fences, barbed wires, and benches designed to prevent lying down. In São Paulo, hostile architecture met the opposition from religious and social activist Father [Julio Lancellotti](#), a prominent figure in the defence of the homeless.
- *Reports of threats, aggressions, and massacres*: Instances of police violence and impunity against street people have been documented, including massacres like the 1993 *Candelária Massacre* in Rio de Janeiro and the 2004 *Massacre of Sé* in São Paulo. Recent reports by the Inter-American Commission on Human Rights highlight ongoing concerns about violence and discrimination against vulnerable populations.

- *Impediments to the activities of street vendors:* Street vendors, often living in poverty, face criminalization and obstacles to their work due to urban policies. Organizations like the National Union of Brazilian Street Workers advocate for better municipal laws to protect the rights of street vendors, highlighting the challenges they face in accessing legal recognition and support.



Recent developments

The issue surrounding the so-called "hostile architecture," implemented in public spaces to prevent or hinder the permanence of homeless people, gained prominence in Brazil. The practice of installing elements such as stones, grates, and iron spikes, aiming to deter the most vulnerable population has been denounced as a form of aversion to the poorest, or "aporophobia", a term initially coined by the Spanish philosopher Adela Cortina.¹

The debate about the issue gained national proportions, culminating in the approval of specific legislation aimed at curbing hostile architecture. In 2021, Senator Fabiano Contarato introduced a bill to be converted into the *Father Júlio Lancellotti Act* with the purpose of prohibiting the adoption of methods and buildings that use equipment with the purpose of preventing or limiting access to public spaces, especially by homeless people. Senator Contarato emphasized the severe hardships endured by Brazil's homeless population, who lack protection from environmental elements including rain, extreme heat, and cold. These individuals, stressed Mr. Contarato, are deprived of access to basic sanitation and hygiene essentials, cohabit with rats and cockroaches—vectors of diseases—and are exposed to daily occurrences of urban violence.² Father Júlio Lancellotti, the religious activist whose advocacy inspired the legislation, further highlighted that the bill carries a symbolic goal of fostering inclusion and hospitality. It seeks to ban the hostility embedded in architectural designs that symbolize the marginalization and exclusion of the homeless population.³

After receiving endorsement from the Federal Senate (the Upper House), the legislation was sent to the House of Representatives for additional assessment and discussion. This process culminated in its final approval and its forwarding to the President for his signature.⁴ On December 13, 2022, however, then-President Jair Bolsonaro vetoed the bill, stating that the veto aimed to "preserve the autonomy of [local] governance in urban policy."⁵ Yet, on Friday, December 16, 2022, Congress successfully overturned the former president's veto. Within the House of Representatives, the motion to overturn the veto received 354 votes in favor, with only 39 against it. In the Senate, the vote to overturn garnered substantial support with 60 votes, while only 4 voted to maintain the veto.⁶

Despite the entrance in force of the *Father Júlio Lancellotti Act* (Law No. 14.489/2022), the homeless population still faces significant challenges. The city of São Paulo, for example, the largest in the country, has been criticized for actions

¹ Souza, Felipe. [Padre Júlio Lancellotti: o que é a arquitetura 'antipobres' denunciada por religioso em São Paulo](#). BBC Brasil. 6 Jan. 2022.

² Agência Câmara de Notícias. [Debatedores criticam 'arquitetura hostil' em espaços públicos para afastar moradores de ruas](#). 06 Oct. 2021.

³ Agência Câmara de Notícias. [Debatedores criticam 'arquitetura hostil' em espaços públicos para afastar moradores de ruas](#). 06 Oct. 2021.

⁴ Agência Câmara de Notícias. [Debatedores criticam 'arquitetura hostil' em espaços públicos para afastar moradores de ruas](#). 06 Oct. 2021; Souza, Felipe. [Padre Júlio Lancellotti: o que é a arquitetura 'antipobres' denunciada por religioso em São Paulo](#). BBC Brasil. 6 Jan. 2022.

⁵ Nexo Jornal. [Congresso derruba veto à proibição de arquitetura hostil](#). 14 December 2022.

⁶ Oliveira, Caroline. [Congresso derruba veto de Bolsonaro e promulga Lei Padre Julio Lancellotti](#). Brasil de Fato. 23 December 2022.

involving the seizure of tents and belongings of homeless people, raising questions about human rights violations and the need for more humanized and inclusive approaches. The situation is exacerbated by the increasing number of people living on the streets, especially during the pandemic, demanding a more comprehensive and effective response from the government.⁷

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In May 2022, the *Sustainability, Socialism and Freedom Party* (PSOL) along with the *Homeless Workers' Movement* (MTST) initiated a constitutional challenge, ADPF 976, at the Supreme Federal Tribunal (STF), the Brazilian constitutional court. They argued that the nation's homeless population endures deplorable living conditions, a direct result of neglect at all three levels of government in the Executive and Legislative branches (Federal, State and Local / Municipal levels). They stated that the situation constitutes a state of unconstitutional affairs and urged for immediate intervention.⁸ As part of the proceedings for this case, Justice Alexandre de Moraes convened a comprehensive two-day public hearing in November 2022. This session brought together 81 stakeholders, including members from the Executive, Legislative, the Attorney General's Office, the Attorney General of the Union, various public agencies, and civil society organizations, to deliberate on the matter.⁹

On July 25, 2023, Justice Moraes mandated immediate compliance with Federal Decree 7.053/2009 by the states, the Federal District, and municipalities. This decree outlines the National Policy for the Homeless Population. Justice Moraes stipulated a 120-day timeframe for the federal government to develop a detailed action and monitoring plan aimed at the policy's successful enactment with measures that respect the specificities of different family groups and prevent their separation. Furthermore, he instructed state and municipal authorities to ensure the personal safety and the security of the belongings of the homeless within existing institutional shelters, including support for their animals, as well as to prohibit the forced collection of goods and belongings, the removal and compulsory transport of homeless people, and the use of hostile architecture techniques against this population.¹⁰ On 21 August 2023, the Plenary (full court) of the STF endorsed the decision of Justice Alexandre de Moraes. The collegiate decision upheld the 120-day deadline and the prohibition of the forced collection of goods and belongings, the removal and compulsory transport of people, and the use of hostile architecture.¹¹

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⁷ Moncau, Gabriela. [Com 45 mil pessoas em situação de rua em SP, prefeitura apreende barracas com aval da Justiça](#). Brasil de Fato. 03 April 2023.

⁸ Supremo Tribunal Federal. [STF determina que entes federados adotem providências para atendimento à população em situação de rua](#). 25 July 2023.

⁹ Supremo Tribunal Federal. [STF determina que entes federados adotem providências para atendimento à população em situação de rua](#). 25 July 2023.

¹⁰ Supremo Tribunal Federal. [STF determina que entes federados adotem providências para atendimento à população em situação de rua](#). 25 July 2023.

¹¹ Supremo Tribunal Federal. [Plenário referenda decisão sobre atendimento a população de rua](#). 22 August 2023.

On 11 December 2023, the Brazilian federal government has published a decree regulating the *Father Júlio Lancellotti Act*. This regulation is part of a broader plan to address homelessness, initiated after the 120-day deadline set by the STF. Despite initial expectations for a June release, the proposal's progression through various ministries delayed its publication. In this context, the Ministry of Human Rights is set establish a reporting hotline enabling the public to submit evidence of hostile architecture. The federal government plans to finalize an agreement with municipalities by December 2024 to comply with the decree, as well as to allocate resources for the creation of a guide on hostile architecture for engineers, architects, and urban planners.¹²

Suggested citation: Alves, Henrique Napoleão. **Criminalization of Homelessness and Extreme Poverty: An Updated Input to the United Nations regarding Brazil.** Facts and Norms Institute, March 2024.

¹² Leite, Isabela. [Governo federal regulamenta Lei Padre Júlio Lancellotti e confirma canal de denúncias para 'arquitetura hostil'](#). *GloboNews*, 11 Dec. 2023.