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BRAZIL'S FEDERAL PUBLIC DEFENDERS' OFFICE STATEMENT

CONTRIBUTIONS TO A DRAFT UNITED
NATIONS DECLARATION ON THE
PROMOTION AND FULL RESPECT OF
THE HUMAN RIGHTS OF PEOPLE OF
AFRICAN DESCENT

PERMANENT FORUM OF PEOPLE OF AFRICAN DESCENT



THE FEDERAL PUBLIC DEFENDERS' OFFICE (DPU) OF BRAZIL ACKNOWLEDGES THE GREAT IMPORTANCE OF A COMPREHENSIVE DECLARATION ADDRESSING THE PROMOTION AND FULL RESPECT OF THE HUMAN RIGHTS OF PEOPLE OF AFRICAN DESCENT, AND HEREIN PROPOSES THE FOLLOWING INPUTS AND ESSENCIAL COMMITMENTS:

Article XXX The States Parties undertake to encourage measures to rescue and preserve the historical and cultural memory as transitional justice and truth about enslavement, confront structural racism and the erasure of the history of extermination, exploitation and the civilising contribution of the African descent population.

JUSTIFICATION:

In various parts of the world, the concealment of the reflections of the slavery in the past and the invisibilisation of structural racism constitute a policy of forgetfulness that impedes the construction of another civilising framework for societies involved in the African diaspora. The construction of spaces of memory is, therefore, a necessary mechanism for the urgent recognition of the racist bases on which these societies were built. Such recognition is a prerequisite for discussion of the paths to be taken for the construction of a society with less racial inequality in fact and overcoming the myth of racial democracy.

As provided for in Resolution 62/122 of the United Nations General Assembly of December 17, 2007, through the mobilisation of public institutions in conjunction with civil society, it becomes necessary to raise the awareness of current and future generations about the "causes, consequences and lessons of the transatlantic slave trade, and to communicate the dangers of racism as a historical and political process and its consequences, prejudice and discrimination".

The adoption of measures to rescue the memory and acknowledge the historical debt in countries about the enslavement process, a mark of colonialism, aims to provide public debate about this process and its effects on current societies.

It faces the great challenge of post-abolition societies in building paths of reconciliation and lasting peace. It aims to be a symbol of black consciousness, highlighting the contribution of Africans and African descent people to the development of Brazil and of countries involved in the African Diaspora.

It rises in a context of several global justice milestones at the international level in recent years. The most important of these occurred during the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, South Africa. In it, the UN recognised slavery and the transatlantic slave trade as crimes against humanity.

The Durban Conference, as it became known, also highlighted the importance of countries that benefited from black slavery recognising the cultural, economic and scientific contributions of African descent people and admitting the persistence of racial discrimination even today.

As UNESCO (United Nations agency) states, ignorance or concealment of major historical events is an obstacle to mutual understanding, reconciliation and cooperation among peoples. By affirming the need to break the silence on the slave trade and slavery, which affected all continents and caused the great upheavals that have shaped our modern societies, it understands that reconciliation depends on the commitment to assume the past and understand the present, so that it is possible to build the future together. In this line of thought, the creation of Museums of the History of Slavery and of Black Consciousness, for example, is a fundamental contribution to the promotion of social justice, equality and peace among peoples, in the context of the 2030 Agenda for sustainable development.

The proposal is further consolidated under the inspiration of the International Decade for People of African Descent (2015-2024), declared by the UN General Assembly in 2013, through Resolution 68/237, whose theme of the Action Plan is "People of African Descent: recognition, justice and development". It is evident that the achievement of well-living for all does not disregard the recognition of the slavery origins of the construction of countries - especially those marked by historical colonialism - and the consolidation of reparation mechanisms that ensure the overcoming of historical ethno-racial inequalities and the promotion of racial equality, in order to allow the construction of another nation project that effectively includes the black population.

We therefore understand that the International Decade for People of African Descent is a singular occasion for the recognition of transitional justice measures, the right to memory and the truth of the African descent population. It marks the commitment of States to promote greater knowledge, value and respect for the achievements of the African descent population and their contributions to humanity, as well as to enhance human rights and welfare policies for this population.

Some countries have experienced the benefits of building spaces of memory for crimes against humanity that have traumatized their societies. These sites aim not only to record history, but more importantly to engage the public in connecting the past to the present in order to enable a constructive future of social peace.

Internationally, possible references are the Museum of African American History and Culture in Washington/USA, the Apartheid Museum in Johannesburg/South Africa, the Slavery

History Museum in Calabar/Nigeria, the Slavery Museum in Liverpool/England, the Jewish Museum in Berlin/Germany, the Holocaust Museum in Israel and similar museums in other countries, such as the one in Curitiba/PR, and the Memory and Human Rights Space in Argentina and Mexico.

In the Brazilian State, from the first quilombos, through the abolitionist movement to the March of Black Women against Racism, Violence and for Well-living (historical examples of the Brazilian experience) the black population demands reparation for slavery and recognition of its historical and cultural contribution to humanity.

Since the boarding of the first slave ship, the black population has been fighting for justice for centuries of enslavement and racism. The proposal to create a Museum of the History of Slavery and of Black Awareness, defended by the Working Group on Ethno-racial Policies of the Federal Public Defenders' Office, has as its main objective to honour those who perished, those who fought against slavery and their descendants, guaranteeing their right to memory, truth and justice. For contemporary Brazil, it intends to reaffirm black consciousness, praising the historical and cultural contribution of Africans and African descents to the construction of the country and countries involved in the African Diaspora. With an eye to the future, it guarantees future generations knowledge of African and African descent history and culture and their contribution to humanity.

The largest black country outside the African continent was the last to abolish slavery in 1888 and the disastrous consequences of this crime against humanity persist to this day. In the post-abolition period, the myth of racial democracy was created to conform a national identity amalgamated in a Brazil that sought recognition as a nation in the international arena, even if on bases that were strongly hierarchical, violent and oppressive to black people.

As the project initiative of the Slavery and Freedom Museum of Rio de Janeiro narrates "countries touched by the legacy of transatlantic slavery, the largest forced migration movement of humanity, are often faced with the dilemma between forgetting or remembering these pasts in the search for a more fair and humane society."

The tension between memory and forgetting takes place on the stage of perpetuating racial conflicts. Without safe spaces to remember and elaborate these memories, the politics of forgetting prevents new generations from learning important lessons and compromises the possibilities of collectively building a peaceful future.

In our opinion, the Brazilian State owes a national museum to reconstitute, on an international scale, the history of the traffic of enslaved Africans to Brazil and the Americas, so as to insert itself in the circle of memorials in the world that exercise the function of not allowing the gigantic crime that was black transatlantic slavery to be forgotten.

Advancing the cause of reconciliation implies affirming the dignity of the victims, recognising the violations and seeking to prevent them from recurring.

This is why initiatives to guarantee the right to truth and memory, such as the proposal to create a Museum of the History of Slavery and Black Consciousness, constitute a powerful mechanism of transitional justice by encapsulating principles for reconciliation, the ultimate goal of any society that has been traumatised by historical processes of dehumanisation and mass violence.

Several studies recognize that in many cases societies benefit too much from cultural formation coupled with traditional accountability processes. Museums, memorials and other forms of artistic-cultural expression honour victims of the past and present and evoke their struggles for freedom and justice and are important means of collective healing and reconciliation.

Hence the importance of emphasising that creation depends, first and foremost, on the genuine recognition of responsibility by the perpetrator - in the case of slavery in Brazil, the Brazilian State itself. The project makes the States responsible in its creation from this perspective - all other sectors of society can and should be participants in this collective project that concerns the whole of society. However, the primary responsibility for its creation lies with the States Parties.

The recognition of responsibility by the states themselves does not mean excluding from the memory process initiatives from society. Transitional justice efforts should by principle be consultative, participatory and responsive to the memory of affected groups, with an emphasis on including quilombola, favela and terreiro communities, youth and women in their implementation processes, as well as educating society and preserving historical memory.

In Brazil, the Quilombo dos Palmares Memorial Park in Alagoas, the Cais do Valongo Archaeological Site in Rio de Janeiro, the Afro-Brazilian Museum in Salvador, the Afro Brazil Museum in São Paulo, the Abolition Museum in Recife, the Black Route Museum in Porto Alegre, the Archaeological Site of São Miguel das Missões in Rio Grande do Sul, the Indigenous Museum in Rio de Janeiro, and the Memorial of Resistance in São Paulo are sources of inspiration. Such paradigmatic sites of memory and human rights inspired both the museological proposal and the legislative set of the project.

We highlight the valuable efforts undertaken recently to create analogous Museums, such as the Slavery and Freedom Museum/Museum of Afro-Brazilian History and Culture, created in Rio de Janeiro by Municipal Decree No. 43,128, of May 12, 2017, and the Afro-Brazilian Museum/Museum of Black Slavery in Brazil, created by State Law No. 7,851, of January 15, 2018, also in the city of Rio de Janeiro.

The proposal aims to honour and remember those who suffered and died at the hands of the brutal system of slavery, whose worldwide epicentre was Brazil.

We understand that it is not appropriate to point out the excessive memory of initiatives such as the one proposed here. What Brazilian society needs is precisely to know its history based on the silenced voices in order to open the possibility of another nation project that includes historically oppressed groups. Knowing the processes of silencing and ensuring spaces for the amplification of voices for justice is an antidote against the relativisation, or even the recurrence of historical atrocities.

Article XXX The States Parties undertake to make reparation for violations of the human rights of the African descent population in material and immaterial ways.

Article XXX States Parties undertake to define as a crime the enforced disappearance in accordance with international standards and to investigate, diagnose, disrupt, and punish crimes related to institutional racism and state violence diligently, effectively, and within a reasonable period of time.

Article XXX The States Parties undertake to create mechanisms to prevent the repetition of actions of State paramilitary groups ("militias") and other agents that result in the mass killing of persons of African descent, especially in the peripheries of Brazilian cities.

Article XXX The States Parties undertake to implement measures to provide physical and mental health care to the families of victims of State violence, especially those of African descent.

1. Justification. Historic digression. Structural racism. Social stratification and stagnation. Data. Police Lethality. Good practices of the Federal Public Defenders' Office.

Brazilian social and racial inequalities are intertwined since they stem from the process of colonisation, slavery, and its merely formal abolition, in addition to the invisibilisation of black people by public policies and the myth of racial democracy, much encouraged by the intellectual elite and by governments of Brazil, especially during the 20th century.

The unequal distribution of land was materialised by the Land Law (Lei de Terras) of 1850, which prohibited blacks, even if freed, from acquiring rural properties in Brazil. Other segregationist laws such as the criminalisation, by the Penal Code of 1840, of capoeira - a cultural representation that mixes sport, fight, dance, popular culture, music, and religiosity of the black

people - as well as the criminalisation of "vagabondage", by the Misdemeanour Law, helped to marginalise and imprison black people post-abolition.

In this context, a country was built marked by poor income distribution and criminalization of African descent social groups, factors that have deprived millions of black people of fundamental rights, keeping them away from access to quality public services, with restrictions on basic education and higher education, to health, to formal jobs with equal opportunities, which, over time, has fostered daily disrespect and practices of violence and killings by security forces, high incarceration of black people, racial profiling and selectivity of criminal law, gender inequality, even more aggravated against of black women.

The fact is that the formal liberation of tens of thousands of slaves and the subsequently criminalisation of their bodies kept them away from opportunities of social ascension, generating the process of growth of favelas and institutionalisation, in houses of correction and penitentiaries, which impacted on the perpetuation of the intergenerational poverty of their descendants. The difficult social mobility in the political-economic structure of the country "condemns" thousands of people to live on the margins of society, without the knowledge and financial conditions to claim for their most basic rights, while such rights are naturally enjoyed by other social groups. It is a structural process of invisibilisation, very much depicted in the population in street situation, in the mass incarceration, and in the unemployment, in its great part, composed of black people.

The Portrait of Racial and Gender Inequalities made by IPEA (2011) reveals that black women are at the bottom of the social pyramid, followed by black men, white women, and white men. As for access and permanence in education, black men come at the bottom of the pyramid. This is no mere coincidence, but the result of the structural racism that underpins the whole of Brazilian society.

Structural racism, rooted in the socio-economic bases and public policies of the country, is revealed through various facets, among them the current tax system itself, whose burden falls essentially on wages and consumption. Thus, proportionally, black women, because they are less

remunerated, are the most taxed, which perpetuates racial and social segregation, keeping them at the bottom of the pyramid.

The difficulty of access to the labour market and the quality education system by the black population also perpetuate intense intersectionalities of vulnerabilities that link poverty to precarious housing, to greater subjection to spaces of violence, both family and state, and to criminality due to crimes committed by violence or serious threat by and against black people.

The high police lethality against the black population reveals the most atrocious face of the slave heritage. Research from the state of São Paulo has shown that only 1% of these police approaches result in judicialisation. Thus, around 99% of these arrests proved to be unjustified, which is quite a high number if considered that of the 15,488,976 people who were subjected to police action, "only" 151,042 were arrested in flagrante delicto.[1]

According to the Map of Violence by the Latin American Faculty of Social Sciences (Flacso), in 2014, 29,813 black people died by firearm. According to the map, black people are 2.6 times more likely to die violently than white people. Among young people, between 15 and 29 years of age, there are 63 violent deaths per day, one every 23 minutes.[2]

According to the Atlas of Violence of 2020, published by the Institute of Applied Economic Research (Ipea) and the Brazilian Public Security Forum (FBSP), homicides of black people increased by 11.5% between 2008 and 2018, while the rate among non-blacks (white, yellow and indigenous people) was reduced by 12.9%, which shows that for every non-black person murdered in 2018, three black people were killed, moreover, black people represented 75.7% of the victims.

According to the Brazilian Yearbook of Public Security, which compiles information from various official Public Security sources, Brazilian military police killed 6,357 individuals in the year 2019. Of this total, 79.1% are black people, a higher percentage than in 2018, in which these represented 75.4% of those murdered.[3]

Comparing the rate per 100,000 inhabitants in Brazil, the mortality rate among black people as a result of police interventions is 183.2% higher than that among whites. While

among whites the rate is 1.5 per 100,000 white inhabitants, among blacks it is 4.2 per 100,000 blacks.

It is worth highlighting in this context that, despite being a racial-ethnic majority, 56.1% of the Brazilian population declares itself black (black or brown, according to the concepts stipulated by the IBGE).[4]

It is noteworthy that, even during a pandemic crisis caused by the new coronavirus, with the imposition of various rules in favour of social distance and isolation, at least 3,148 people were killed by police officers in the first half of the year throughout Brazil, while in the United States 897 victims were counted up to October of that year. The data corroborates the decision of Supreme-Court Justice Edson Fachin in June 2020, in ADPF 635, determining the temporary suspension of police operations in the communities of Rio de Janeiro during the Covid-19 pandemic.

This decision stipulated that operations could only be carried out in exceptional cases, with the police authorities having to justify them in writing in a communication to the Federal Prosecution Service, which is responsible for the external control of police activity. It is no coincidence that in June the number of deaths as a result of police interventions fell significantly. If in June 2019 the official figures recorded 153 deaths in police interventions in the State of Rio de Janeiro, an average that was maintained throughout the year and in the first months of 2020, exactly one year later the number has reduced by 77.8%, to 34 cases.[5]

These data highlight the existence of structural racism.

It is worth mentioning that on the eve of Black Consciousness Day, November 19, 2020, João Alberto Silveira Freitas, a 40-year-old black man was beaten to death by security guards at the Carrefour supermarket chain in Porto Alegre (Rio Grande do Sul), one of the accused being a temporary military policeman.

In 2021, two black men were tortured and killed after being caught stealing food from one of Brazil's largest supermarket chains - Atakarejo. The killing occurred after the men were handed over to the killers by the supermarket chain's own private security guards.

Based on this data, together with mothers of victims and representatives from Rio de Janeiro's favelas, federal deputy Talíria Petrone (PSOL-RJ) drafted the Bill No. 3873 of 2019, which aims to curb police violence against black children and young people.

The aforementioned Bill, proposes restraints to the practice of police violence, in an attempt to reduce the lethality of children and adolescents, among which, the following stand out: a) creation of plans to reduce risks and human rights violations during operations; b) end of collective search warrants; c) automatic notification to the Federal Prosecution Service in cases of suspected homicides involving police officers; d) prohibiting the use of contempt as a way to censor residents' complaints.

According to a UNICEF study, "the main cause of intentional deaths of children under one year of age and adolescents and young people up to 19 years of age in the city of São Paulo is the action of the police, both Civil or Military".

The Bill, which has priority treatment, is awaiting approval in the Chamber of Deputies, with the last movement in April 2018, attached to Bill No. 9796/2018, which seeks to establish the National Plan to Combat Youth Homicide.

In the same vein, Bill No. 5231 of 2020 aims to curb the conduct of public agents or private security professionals motivated by discrimination or prejudice of any kind, notably race, colour, ethnicity, religion, national origin, gender or sexual orientation; determines the introduction of content related to human rights and combating racism and other forms of discrimination in training courses for public and private security agents; and makes other provisions.

Last moved in March 2021, the Bill is ready for the Human and Minority Rights Commission (CDHM) of the Chamber of Deputies.

By way of historical digression, we should mention the massacres that have taken place in peripheral communities and/or against the homeless population, which is essentially made up of people of African descent, many of them committed by or with the participation of state agents.

- Rocinha Massacre in Curitiba (Paraná)- 2010/2011

- Cabula Massacre in Salvador (Bahia) - 2015
- Pau D'Arco Massacre (Pará) - 2017
- Messejana Massacre (Ceará) - 2017
- Colniza Massacre in Taquaruçu do Norte (Mato Grosso) - 2017
- Crimes of May Massacre (São Paulo) - 2006
- Massacre of Labour Inspectors in Unaí (Minas Gerais) - 2009
- Massacre at the Complexo do Salgueiro (Rio de Janeiro) - 2017
- Massacre of Carandiru (São Paulo) - 1992
- Massacre of Corumbiara (Rondônia) - 1995
- Eldorado de Carajás Massacre (Pará) - 1996;
- Nova Brasília Favela Massacre (Rio de Janeiro) – 1993/1994
- Candelária Massacre and Salgueiro Massacre, both in Rio de Janeiro
- Jacarezinho and Vila Cruzeiro (2021 and 2022), both in Rio de Janeiro

In the face of intense activity by the Public Defenders' Office and civil society, recently, in Habeas Corpus No. 660.930/SP, judged by the Superior Court of Justice, published in the Electronic Justice Gazette (DJE) on 14/09/21, the illegality of imprisonment based on the criterion of approach by "skin colour" was recognised, according to the summary below:[6]

HABEAS CORPUS. TRAFFICKING. 1.53 GRAMS OF COCAINE. JUDGEMENT OF CONVICTION. DOSIMETRY. DISPROPORTIONALITY. NEGATIVE VALUATION OF PERSONALITY BASED ON CRIMINAL BACKGROUND. IMPOSSIBILITY. FLAGRANT ILLEGALITY. QUANTITY OF DRUG THAT DOES NOT JUSTIFY REMOVING THE CAUSE OF DECREASE FROM ARTICLE 33, PARAGRAPH 4th, OF LAW No. 11.343/2006. A VERY SMALL QUANTITY THAT SHOULD PREVAIL OVER RECIDIVISM, ALLOWING FOR THE FIXING OF A MORE LENIENT REGIME AND THE SUBSTITUTION OF A REPRIMAND. FLAGRANT ILLEGALITY. ORDER UNANIMOUSLY GRANTED. REPORT OF DETENTION IN FLAGRANT DELICTO. VITIATED BY NULLITY. PERSONAL SEARCH. GROUNDED

SUSPICION ORIGINATED IN AN UNTRUSTWORTHY ELEMENT. SKIN COLOUR CANNOT CONSTITUTE A CONCRETE ELEMENT THAT INDICATES DISTRUST OF THE PUBLIC SECURITY AGENT. ILLEGALITY OF THE EVIDENCE ON WHICH THE CONVICTION WAS BASED. EVIDENCED CRIMINAL COERCION. CONVICTION OF THE RAPPORTEUR NOT FOLLOWED IN THE SIXTH CHAMBER.

4. Personal search of the patient because he was black, according to the testimony of those responsible for the flagrante: "THAT WHEN PASSING BY THE STREET SANTA TERESA, BLOCK 4, SAW IN THE DISTANCE A BLACK INDIVIDUAL WHO WAS IN A TYPICAL SCENE OF DRUG TRAFFICKING, A VEHICLE WAS STOPPED NEXT TO HIM AS IF HE WAS SELLING/BUYING SOMETHING" and "AS THEY DREW NEARER TO SANTA TERESA STREET, THEY SAW A BLACK INDIVIDUAL WHO WAS 'SERVING'

A DRUG USER IN A LIGHT-COLOURED CAR"⁵. The colour of the patient's skin was what, considering the testimony of the police officers responsible for the flagrante, aroused suspicion that justified the personal search on the patient. Although it was not only the colour of the skin, but the whole context, such as the individual being next to a vehicle, in an attitude of trading, in an area of trafficking, from the experience of the police officers, in my view, the colour of the skin was the factor that first drew the attention of the public security agent, which cannot be admitted. 6. This Superior Court of Justice has on several occasions verified abuses practiced by police forces in carrying out personal and house searches, granting the order to recognize the nullity of evidence obtained in these irregular searches, with the consequent acquittal of the accused. 7. The police officer's conviction based on the colour of the skin, as described in the report of detention in flagrante delicto in the case records, cannot be used as a grounding element for suspicion, under the risk of ratifying tyrannical conduct that violates individual rights and guarantees, constituting both abuse of power and racism. 8. The approach carried out by the military police officers is null and void, given the manifest absence of reasonable suspicion that the patient was carrying drugs at the time of the approach, resulting in the illegality of the evidence obtained through the personal search.

Such recognition demonstrates the effective occurrence of institutional racism in the police and judicial environment in the country.

The Brazilian Supreme Court is currently dealing with the Action For Breach Of Fundamental Precept (APDF) No. 635, also known as "ADPF das favelas", which questions

"necropolitics", that is, the policy based on the extermination of the black population, especially young people from the periphery by the security forces of Brazil.

In this context, the Inter-American Court of Human Rights, after an on-site visit to Brazil in 2018, presented a report in which it pointed out:

"According to data from the 2016 National Household Sample Survey, 112.7 million people self-identify as Afro-descendants, including black and brown-skinned people, representing approximately 54% of Brazil's total population of 207 million people. However, the conjunction of a series of historical causes, as well as the fact that the public policies adopted have been insufficient to achieve effective socio-economic and educational inclusion, have perpetuated a situation of structural discrimination and extreme social inequality in Brazil. Therefore, a large percentage of people of African ancestry remain in a situation of extreme vulnerability, marginalisation and poverty.

The concentration of violence based in areas marked by poverty, as well as the use of racial profiling results in people of African descent, especially young people of African descent, being the most frequent profile of homicide victims in Brazil and the main victims of lethal action by the police and the most prevalent population profile in prisons.

According to data published in the Atlas of Violence of 2018, the homicide rate of African descendants in 2016 was two and a half times higher than that of people of non-African descent (40.2% and 16%, respectively). In a decade-long period between 2006 and 2016, the homicide rate for African descendants increased by 23.1%. In the same period, the rate among non-African descendants fell by 6.8%".

The big debate should be about the "police expertise" based on racist rules of experience. Why do police officers approach more black and poor people than other people? This practice has been called RACIAL PROFILING or RACIAL FILTERING:

"In general, the police officers denied the practice of racial filtering in their activities, crediting founded suspicion as the main mechanism for selecting those who suffer police onslaughts. According to the interlocutors [military policemen from the states of RJ, SP, MG and DF], the suspicion is the result of the experience that the policeman acquires on the streets to identify a suspect at first sight and the signs of suspicion. This acquired experience is called police expertise, a quality that is

positive among the interlocutors and constructed through the 'time on the street' that a policeman has. However, even if the practice of racial filtering is denied among the interlocutors, many of the elements that make up the so-called founded suspicion refer to a specific social group characterised by age group, territorial belonging and that displays signs and a style of dressing, walking and speaking that claims aspects of black culture, and is, in many cases, also constitutive of a culture 'of the periphery'. As the testimonies attest, the clothing and body posture are considered empirical evidence to support police suspicion"[7].

Therefore, the creation of the Public Defenders' Office as an instrument of the Democratic State Ruled by Law takes place in the context of the search for material equality in access to justice and human rights for all citizens, especially for the vulnerable and underprivileged.

It should be noted that the first Constitution to provide for free legal assistance provided by a special body was the 1934 Constitution. However, its activities were limited to the field of judicial representation. It was also provided for by the 1946 Constitution and finally, in 1988, further barriers were overcome by creating the Public Defenders' Office as the institution responsible for providing broad legal assistance, and therefore both in and out of court proceedings.

Constitutionally, the Public Defenders' Offices gained their administrative and financial autonomy through Constitutional Amendment 45/04 (State Public Defenders' Offices), Constitutional Amendment 69/12 (Federal District Public Defenders' Office) and Constitutional Amendment 74/13 (Federal Public Defenders' Office), gaining their own chapter when they were separated from the legal profession after Constitutional Amendment 80/94. The achievement is of special relevance, given the fact that the Institution has a counter-majority role, acting in the interests of vulnerable and socially excluded people, in order to achieve the objectives of the Republic, as listed in art. 3 of the Constitution of the Federative Republic of Brazil: to build a free, just and solidary society; eradicate poverty and substandard living conditions and to reduce social and regional inequalities; to promote the well-being of all, without prejudice as to origin, race, sex, colour, age and any other forms of discrimination.

Currently, after the various constitutional reforms, the Federal Public Defenders' Office is presented as a permanent and essential institution to the jurisdictional function of the

Brazilian State, having as its primary objective the protection, promotion and defence of human rights, through full and free legal assistance to people and socially vulnerable groups, acting both judicially and extrajudicially.

Besides the generic provision of the performance focused on human rights, the Brazilian legislator expanded the performance, including, among the institutional functions of the Public Defenders' Office, the defence of individual and collective interests of children and adolescents, the elderly, the persons with disability, women victims of domestic and family violence, people deprived of freedom and other vulnerable social groups that deserve special protection of the State (Article 4, items II and XI, of Complementary Law No. 80/94).

Within the historical context presented, the actions of the Federal Public Defenders' Office focused on protecting the black population and promoting their rights, especially those who seek a condition of equality with the rest of society, is indispensable condition for the full exercise of rights and the broad technical and effective defence of people of African descent.

This theme is closely related to the duties of the Federal Public Defenders' Office, which acts in a strategic judicial and extrajudicial manner in demands concerning racial equality, seeking respect for citizenship and human dignity and the good of all, without prejudice of origin, race, sex, colour, age and any other forms of discrimination, in accordance with Article 3, Items I to IV of the Federal Constitution, Complementary Law 80/94.

In this context, it is worth mentioning, as examples, some of the actions of the Federal Public Defenders' Office as good practices in the fight against structural and institutional racism.

ETHNO-RACIAL POLICIES: BILL ON PHOTOGRAPHIC RECOGNITION AS A MEANS OF EVIDENCE IN CRIMINAL PROCEEDINGS

A prominent topic in the media and the main judicial decisions in 2021, miscarriage of justice resulting from poor photographic recognition is one of the main reasons for serious injustices in the criminal system.

In this sense, faced with the risks of further deepening the structural racism and selectivity of Brazilian criminal law through Bill No. 676/2021, which aims to amend the Code of Criminal Procedure to discipline the photographic recognition of persons, the Federal Public Defenders' Office, through the National Human Rights Defenders' Office and the Working Group on Ethno-racial Policies, acted extrajudicially through a Technical Note and contact with parliamentarians to suggest relevant changes in the legislative text and call for the expansion of debates with other actors of civil society. [8]

The better regulation of the issue will bring enormous benefits to justice and, in particular, to the more than 700 thousand prisoners in the country, besides offering greater security to vulnerable groups, on whom the Brazilian criminal justice system is preferred and selective. Young black people and their families, residents of the periphery, which totals tens of millions of Brazilians benefited by the actions of the Federal Public Defenders' Office.

Within the scope of measures to combat structural racism, the case involving the work environment maintained by the Atakarejo company - a large supermarket retail chain - stands out. At the time, the DPU was appointed as active co-party of the plaintiffs (victims of violence), and the process is now in the discovery phase. In the same vein, the DPU seeks compensation for the collective moral damage resulting from the criminal fact that occurred on the premises of the supermarket of the Carrefour Comércio e Indústria Ltda group, located in Porto Alegre, on November 19, 2020, which culminated with the murder of João Alberto Silveira Freitas.

PARTICIPATION IN THE DEMOGRAPHIC CENSUS

Given the news of the suspension of the demographic census and considering the indispensability of statistical data for the adequate management of public policies that guarantee fundamental rights, the DPU issued a Recommendation to the Ministry of the Economy and the IBGE to carry out the 2021 Census. It also joined as *amicus curiae* in the original Public Civil Action underway at the Federal Supreme Court on the implementation of the 2021 Census.

On this topic, the STF decided, within the scope of an Action of Violation of a Fundamental Precept, to postpone the Census until 2022, establishing the State's duty to send an annual budget proposal that includes the resources necessary for its implementation. Consequently, DPU's actions were important for the creation and execution of various public policies that depend on the demographic data of Brazilian society, benefiting, in particular, socially excluded and groups of aggravated vulnerability[9], especially the black population, which today occupies the highest percentage of people in a situation of vulnerability in the country.

THE RENDA BÁSICA CIDADÃ PROGRAMME

Historically, Brazil has fought poverty through cash transfer programmes, public policies that aim to ensure monetary transfers to people who meet the eligibility requirements outlined in each programme, such as 'Bolsa Família', the 'Benefício de Prestação Continuada' and the 'Auxílio Emergencial' (Emergency Aid). The purpose of the assistance programmes is to guarantee minimum living conditions through a monetary amount to be paid on a monthly or annual basis. These programmes enable basic material needs to be minimally met, ensuring citizenship and the existential minimum for Brazilians in situations of economic and social vulnerability.

Often, however, the integration of various assistance benefits is challenging, conditioning their registration to bureaucratic barriers, which obstructs access to programmes and hinders the receiving of such important complement to the composition of family income of people in conditions of extreme vulnerability, especially those living on the streets or unemployed.

Aiming to facilitate access to social assistance benefits and to ensure minimum conditions of dignity for all Brazilians living in the country and non-nationals resident for more than 5 years in Brazil, Law No. 10,835/2004 established the Renda Básica Cidadã (Basic Citizen's Income) programme. This is a universal cash transfer programme to be implemented through the payment of a benefit of equal value to all citizens regardless of income, whose central objective is to cover the minimum material costs of adequate food, education and health, fundamental rights set out in Article 6 of the Federal Constitution of 1988.

As stated in Law 10,835/04, the forecast for the implementation of the Renda Básica Cidadã would be from the financial year 2005 onwards, in order to give priority to the most vulnerable groups - mostly the black and brown population. However, after more than 17 years after the Law enforcement, there is still no standard regulating the amount to be paid or how to implement it, which results in the absence of effectiveness of the programme, having as consequence millions of people living below the poverty line in Brazil. This unjustified omission, in a final analysis, violates one of the great objectives of the republic, in the sense of eradicating poverty and marginalisation and reducing social and regional inequalities[2] by denying minimum conditions of survival with dignity, denying access to elementary rights such as food, education and health.

Given this, the Federal Public Defenders' Office filed the Writ of Injunction No. 7,300 against the Union, seeking regulation by the federal government of Law 10,835/2004 which provides for the creation of a basic citizen's income. The action was judged valid by the Federal Supreme Court, which, recognising the legislative delay, determined the regulation of the Programme, defining the profile of the beneficiaries and determining its implementation from the financial year 2022 onwards.

The decision favoured millions of people, who according to a 2020 survey by the Brazilian Institute of Geography and Statistics (IBGE), live in poverty or extreme poverty, with per capita family incomes of up to 178 reais and 89 reais, respectively. Notably, due to the Brazilian historical context, a large part of the beneficiaries are black.

In the extrajudicial field, the Federal Public Defenders' Office monitors the implementation of the programme through the Specialised Thematic Committee on Renda Básica Cidadã, through which it issues Technical Notes that are sent to bodies of the Three Constitutional Branches with clarifications on the Programme.

The Technical Note No. 01/2021, as an example, presented the budgetary and legal frameworks for the implementation of the Renda Básica Cidadã programme, aiming at combating hunger and poverty. It is worth noting that meetings held by the Specialised Thematic Committee on Renda Básica Cidadã with representatives of civil society, members of the Ministry of Citizenship and the Ministry of the Economy, and researchers from IPEA, refined the studies on the Programme and also established vectors to guide previous actions and prepare future measures.

The DPU Committee also carries out education on rights, participating periodically in interviews and specialized programs on the theme of Basic Income, Emergency Aid, Brazil Aid.[10]

EMERGENCY AID

This is a financial program of the Federal Government aimed at informal workers (Individual Micro-Entrepreneurs - MEI), self-employed and unemployed, granted by Law 13,982/2020, which aimed at providing protection and access to basic livelihood conditions to the economically vulnerable population during the period of social isolation and other consequences caused by the Pandemic of Covid-19.

Instituted by Law no. 13,982/2020, and subsequently extended by Provisional Measures 1000/2020 and 1039/2021, the benefit has achieved valuable results on income transfer and distributive policy, providing macroeconomic benefits to the general population, combating the social and economic effects of the pandemic crisis, fulfilling the link between the state budget scope and the activities, by funding rights within the revenue of the Union, under its Article 3, applying justice through the achievement of better distribution of revenue, meeting the provisions of the Federal Constitution.

On policies and standards related to Environmental, Social e Governance risk assessment, considering that the application of the ESG Standardisation is directly linked to good environmental, governance and social practices and considering the institutional division of performances in this Federative Republic, the National Human Rights Defenders' Office highlights norms related to good social practices[4]:

- Policies of inclusion of the prison population composed mostly by black people. An Official Letter sent to the National Council of Justice (CNJ), seeking to guarantee the transvestite and transsexual population the right to opt for custody in a female or male unit, or even in a specific or reserved wing. An Official Letter sent to the CNJ, with the purpose of adapting the electronic proceedings systems at a national level in order to

guarantee the protection of the rights of the LGBTI+ population serving sentences. Additionally, the production of statistics and the participation of the subscribing entities in discussions about the design of these systems are also main objectives. Technical Cooperation Agreement signed with the Aliança LGBTI.

- Contribution to social projects. Acting in the assistance of people experiencing homelessness together with other public and private institutions. Work with social movements aimed at encouraging, organising and regularising the activities of recyclable material collectors. Acting together with public and private institutions in the fight against labour analogous to slavery and forced labour of children and adolescents in several states of the Federation. Acting together with other Institutions in "Global Action" Projects, aiming to provide public services in the most diverse areas, including regularization of documents. Actions at the Brazil-Venezuela border, aimed at document regularisation of undocumented, separated or unaccompanied migrant children and adolescents. Service in prisons for the imprisoned population.
- Investment in employee training. Short-, medium- and long-term training courses at the National School of The Federal Public Defenders' Office (ENADPU). Periodic meetings of Human Rights Defenders to discuss strategic litigation and share experiences and surpassed challenges.
- Diversity in work teams. Selection of staff for the National Human Rights Defender's Office held with a quota exclusively for black and indigenous people. Observance of gender equality in the composition of the Defender's Office with the team currently comprising four men and four women.
- Inclusiveness in senior management positions. The staff of the National Human Rights Defenders' Office is currently composed of the National Human Rights Defender and his team. The Head Advisor is a woman.
- Legal regularisation of activities.[11]

URBAN AND RURAL TERRITORIAL DISPUTES

Especially regarding the right to housing during the State of Calamity of the Covid-19 Pandemic, the National Human Rights Defenders' Office, together with the Working Group on Housing and Land Conflicts, prepared a guide for action in demands involving evictions during the Covid-19 Pandemic.

The system of Regional Offices of Human Rights Defenders has acted strongly on this issue, preventing hundreds of families from being forcibly evicted during the pandemic, through judicial and extrajudicial actions in cooperation with civil society.

In this regard, a constitutional complaint was filed to the STF by the Regional Human Rights Defenders' Office of Pará and Amapá, time at which it was decided the suspension of the decision of the 2nd Civil Federal Court of Amapá, enforcing the immediate repossession of the INFRAERO II neighbourhood in Macapá (AMAPÁ), which was to be carried out on 18 October 2021. More than 900 peripheral families, composed mostly of black people, have benefited.[12]

FIGHT AGAINST LABOUR ANALOGOUS TO SLAVERY AND THE SEXUAL EXPLOITATION OF CHILDREN AND ADOLESCENTS

With the aim of fighting against labour analogous to slavery and the sexual exploitation of children and adolescents, the National Human Rights Defenders' Office, together with the Working Group on Labour Analogous to Slavery, carried out a mission in the rural area of Altamira/PARÁ, through the Primeiro Amparo Project.

The mission aimed to implement the Project to capacitate in the fight against crimes against human rights - human trafficking, slave labour, sexual exploitation of children and adolescents, as well as strengthening the Unified Social Assistance System. On that occasion, besides participating in the human rights course for Federal Highway Police agents, with training on equality of race, gender, origin and religion, inspections were carried out in rural properties and in establishments exploiting minors, which culminated in the rescue of children and adolescents victims of exploitation, most of them black or brown-skinned.

In addition to the people directly impacted by the DPU's mission, the training of federal public security agents offers greater knowledge and proximity to the human rights topic, presenting to them problems related to institutional racism and the vulnerability of certain social groups.'

In the same vein, in Limeira (SÃO PAULO), the actions of the Federal Public Defenders' Office made it possible to sign a Conduct Adjustment Agreement with the companies involved. This aimed at guaranteeing the commitment of non-repetition, as well as the compensation and indemnity of the workers rescued from conditions analogous to slavery.[13]

PRISON POPULATION

Specific, coordinated, and strategic actions were also carried out in states of the federation. As an example, it was issued the Recommendation to the Ministry of Justice and Public Security, later accepted by MJSP Ordinance No. 172 of April 26, 2021, for the planned and gradual departure of the Task Force of Penitentiary Intervention in the State of Roraima, to avoid the functional insufficiency in the local prison system and the escalation of violence. This measure benefited, besides the people in situation of deprivation of liberty, potentially the entire population of the state of Roraima, totalling more than 500 thousand people.

Still on the subject of imprisoned population, Technical Note No. 1 - DPGU/SGAI DPGU/GTPSP DPGU was prepared to support the DPU's request to join the proceedings of ADI 5170, which seeks civil monetary reparations for prisoners held in degrading conditions in Brazil. The DPU's request was granted, and it now acts on behalf of more than 700 thousand prisoners in degrading conditions throughout the country.[14]

TRADITIONAL COMMUNITIES

The National Human Rights Defender conducted an inspection and human rights monitoring in traditional quilombola communities in Alcântara/MARANHÃO, affected by the risk of resettlement resulting from the expansion project of the Brazilian Space Programme carried out in the municipality. On that occasion, he took part in inter-institutional meetings, with a view to resolving conflicts and demanding compliance with the rules relating to the

construction of protocols for free, prior, and informed consultation with quilombola communities.[15]

MIGRATION, STATELESSNESS AND ASYLUM

The DPU, through the actions of the National Human Rights Defender, participated in the "Pacaraima Mission" as a member of the Pacaraima Committee, aiming to defend the rights of people and vulnerable groups of migrants and refugees in the context of the Venezuelan migration flow. In addition to identifying and solving problems faced by the migrant population, also made up of African descendants and indigenous people, the mission aimed to assist unaccompanied, undocumented, and separated children and adolescents, as well as reinstating the DPU's daily service flow at the base of Operation Acolhida.[16]

RIGHT TO HEALTHCARE

Within the scope of the right to healthcare, the Federal Public Defenders' Office, through the National Human Rights Defenders' Office, has worked with the National Council of Justice (CNJ) through the Forum of the Judiciary Branch for Health (FONAJUS). The objective was to ensure the improvement of services provided by the Brazilian Unified Healthcare System (SUS), a universal and free of charge system mostly used by the peripheral population, composed, in essence, of black people.[17]

The Forum aims to optimise and resolve collective and structural demands, converting legal disputes into public policies, thus avoiding, on the one hand, the filing of lawsuits and the overloading of judicial courts and, on the other, dissatisfaction and the violation of people's basic rights to healthcare. The identification and joint construction of public policies between the DPU and other public bodies enhances the legal assistance provided, as it enforces basic and fundamental rights without the need to resort to the justice system.

The initiative favours millions of Brazilians, ensuring greater celerity to personal demands regarding the unified public systems (via SUS) and private systems (supplementary health)

through resolutions of the National Health Agency (ANS) in joint action with the Federal Public Defenders' Office.

The DPU, through the National Human Rights Defenders' Office, has also worked for the inclusion of the treatment entitled "Applied Behaviour Analysis (ABA)" in the services provided by SUS and in supplementary health systems. The treatment remedies the effects of autism spectrum disorder, which affects underprivileged children from the Brazilian periphery, most of whom are deprived of adequate treatment for the disease.

The measure aims at the best interests of children and adolescents with autism spectrum disorder, to the extent that the ABA treatment is currently considered the most efficient one. If included as mandatory public policy, the measure has the potential to benefit more than 2 million Brazilians with Autism Spectrum Disorder.[18]

POLICE VIOLENCE

Within the police violence topic, the "forced disappearance" has special relevance, given its repeated occurrence in cases of police incursion and massacres, especially in Rio de Janeiro's favelas. The Federal Public Defenders' Office, through the work of the National Human Rights Defenders' Office, has acted on the front line in confronting police violence and lethality of police approaches based on racist rules of experience, profiling and racial filtering and facts justified by the criterion "skin colour".

In this perspective, the DPU, through the National Human Rights Defenders' Office, fulfilling its role of monitoring, supervision, and reporting on human rights, released a report on Forced Disappearance[19], which portrays the structural and institutional racism of public security policies in Brazil.

Furthermore, the DPU holds meetings and articulates actions before the international system, in support of social movements, civil society organisations and victims and their families, acting as petitioner before the Inter-American System and, extra-judicially, with parliamentarians, proposing preventive and repressive measures:

- support for the enactment of bills that criminalize acts of forced disappearance and to consider it a crime of permanent nature, extending and setting the beginning of the statute of limitations for crimes of this nature to the moment in which the situation of disappearance is finished, in order to prevent the passage of time from impeding the effective accountability of the aggressors.
- carrying out educational activities to raise awareness that such acts derive from structural racism rooted in Brazilian society and drawing attention to its seriousness, for which the DPU makes itself available to organise Human Rights courses and actions with police and military organisations, as well as with private security institutions.
- inclusion of human rights and anti-discrimination law in public examination exams for the police, the Federal Prosecution Service, the courts and judicature, in order to create an in-depth critical sense on the topic, as a way to prevent new cases by new professionals.
- Implementation of continuous courses on human rights at least once a year, with the participation of representatives of emblematic cases, of the Public Defenders' Offices, of the Federal Prosecution Service and of civil society entities, aimed at ostensive policing and investigative police teams (especially the Military and Civil Police), as well as continuous training courses within the armed forces (especially those groups that carry out missions and interventions with civil society).
- Continuous investigation of the police by the Federal Prosecution Service, as the external control organ of the police, and by the Ministry of Justice and Public Security, with effective civil, administrative and criminal accountability (within the law on abuse of authority), in addition to the strengthening and transparency of police disciplinary boards and Ombudsperson.

The DPU has also proposed governmental initiatives to be adopted in the fight against police violence, for example:

- the prioritisation of legal proceedings involving police violence in order to provide an efficient investigation, a greater chance of obtaining evidence and a rapid response to victims and their relatives.

- the decriminalization of contempt, as decided by the Inter-American Court of Human Rights in Palamara Iribarne vs. Chile, in which the unconventionality of the crime was recognised when it restricts the freedom of expression of the individual.^[20]

[1] SECRETARIAT OF PUBLIC SECURITY OF THE STATE OF SÃO PAULO. QUARTERLY STATISTICS. YEAR 2014. AVAILABLE AT:

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[2] AVAILABLE AT:

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[3] Brazilian Yearbook of Public Security 2020. Available at:

<https://forumseguranca.org.br/wp-content/uploads/2020/10/anuario-14-2020-v1-interativo.pdf>.

[4] Available at:

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[5] Brazilian Yearbook of Public Security 2020. Available at:

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[6] AVAILABLE AT:

HTTPS://WWW.CONJUR.COM.BR/DL/DUVIDA-PRESUNCAO-RACIAL-ABORDAGEM.PDF. ACCESSED ON: 07/06/2022.

[7] SINHORETO ET AL. A FILTRAGEM RACIAL NA SELEÇÃO POLICIAL DE SUSPEITOS: SEGURANÇA PÚBLICA E RELAÇÕES RACIAIS. IN. FIGUEIREDO, ISABEL SEIXAS DE. SEGURANÇA PÚBLICA E DIREITOS HUMANOS: TEMAS TRANSVERSAIS. BRASÍLIA: MINISTRY OF JUSTICE, NATIONAL SECRETARIAT OF PUBLIC SECURITY, 2014, Page 127.)

^[8] Available at DPU's website:

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^[9] Available at DPU's website:

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^[10] Available at DPU's website:

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^[11] Available at DPU's website:

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^[12] Available at: HAOCAL, Luo; GONGDE, Song. Balance and Inbalance in Human Rights Law. In: WEI, Zhang. Human Rights and Good Governance. Leiden: Brill Nijhoff, 2016, pages 180-196.

^[13] Available at DPU's website:

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^[15] Available at DPU's website:

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^[16] Available at DPU's website:

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[17] Available at DPU's website:

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[19] Available at DPU's website:

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