

SUMMARY OF THE INDICTMENT MINUTE

ARNS COMMISSION

BRAZIL'S INDIGENOUS PEOPLE'S ARTICULATION

BLACK COALITION FOR RIGHTS

PUBLIC SERVICES INTERNATIONAL – Brazil

VERSUS

JAIR MESSIAS BOLSONARO

PRESIDENT OF THE FEDERATIVE REPUBLIC OF BRAZIL

APRIL 2022

Summary of the indictment minute

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I. Indictment Overview:

1. Arns Commission, Brazil's Indigenous People's Articulation, Black Coalition For Rights, and Public Services International Brazil denounce the President of the Federative Republic of Brazil, Jair Messias Bolsonaro, of having, in the use of his powers, intentionally spread the COVID-19 pandemic in Brazil, causing the avoidable death and illness of thousands of people.
2. Since before his electoral campaign, Jair Bolsonaro made it explicit that he would only govern a specific part of the population. Using rhetoric contrary to human rights, the president has openly attacked minority groups through numerous racist, misogynistic¹, and homophobic² speeches. Without any difficulty, it is possible to identify which population groups are deemed disposable, useless, and unworthy of any protection by Bolsonaro. In 2017, the then federal deputy openly stated: *"I visited a quilombo, and the least heavy afro-descendant there weighed seven arrobas [approximately 230 pounds/105 kilograms]. They do nothing! They are not even good for procreation. More than BRL 1 billion a year is spent with them"*³. In 1998, Bolsonaro was already preaching the decimation of Indigenous peoples: *"The Brazilian cavalry was very incompetent. The North American cavalry were the competent ones because they decimated their Indigenous people in the past, and today, they don't have this problem*

¹ The list of misogynistic statements from Jair Bolsonaro is long. Among the several opportunities where Brazil's current president made his hatred of women clear, we shall cite the following comments: *"I've got five children. I had four men, but on the fifth, I had a moment of weakness, and a woman came out"*, *"I would not employ a woman with the same salary of a man. But there are many women who are competent"*, and *"If you want to come to Brazil and have sex with a woman, feel free. Brazil must not become a country of gay tourism. We have families"*. Available at: <https://www1.folha.uol.com.br/poder/2020/01/veja-falas-preconceituosas-de-bolsonaro-e-o-que-diz-a-lei-sobre-injuria-e-racismo.shtml> - Access on 02/16/2022.

² There is also a long list of homophobic remarks by Jair Bolsonaro. Statements from the current president range from *"Nobody likes homosexuals; we tolerate them"* to *"I would be incapable of loving a homosexual child. I'm not going to be a hypocrite here: I'd rather have my son die in an accident than show up with some mustachioed guy. For me, he would have died anyway"*. Available at: https://www.em.com.br/app/noticia/politica/2021/10/30/interna_politica,1318523/bolsonaro-ninguem-gosta-de-homossexual-a-gente-suporta.shtml and <https://observatoriog.bol.uol.com.br/noticias/comportamento/relembre-as-polemicas-de-jair-bolsonaro-com-a-comunidade-lgbtqia> - Both accesses on 02/16/2022.

³ Available at: <https://www.nexojornal.com.br/ensaio/2020/O-racismo-de-Jair-Bolsonaro-origens-e-consequ%C3%A2ncias> - Access on 02/16/2022.

in their country”⁴. Twenty-two years later, in 2020, the current President of the Republic stated: “Indians are increasingly becoming a human being just like us”⁵.

3. Therefore, it is no surprise that Jair Bolsonaro has taken measures that constitute apparent attacks against human rights and vulnerable populations since the beginning of his government. Under his administration, the Ministry of Human Rights became the Ministry of Women, Family, and Human Rights, under the command of Damara Alves, a fundamentalist evangelical pastor⁶. The ministerial reorganization – achieved in the first years of the new administration – sought to remove the competence to demarcate Indigenous lands from the National Indian Foundation (*Fundação Nacional do Índio* – FUNAI, in Portuguese) and submit it to the Ministry of Agriculture⁷. These and other measures taken during the first year of Bolsonaro’s presidency, the year that preceded the COVID-19 pandemic, led the “World Report 2020” published by the international NGO Human Rights Watch to conclude that: “*During his first year in office, President Jair Bolsonaro has embraced an anti-rights agenda, pursuing policies that would put vulnerable populations at greater risk.*”⁸
4. In the second year of government, in 2020, the COVID-19 pandemic has shown an opportunity for aggravation of human rights violations that were already in the course in the country. As demonstrated in this indictment, the sanitary emergency was used as a tool by Jair Bolsonaro to attack populations deemed disposable by the President. As summarized by the former Minister of Environment, Ricardo Salles, the government used the pandemic to “run the cattle herd”, allowing the government to directly attack the most vulnerable populations through decrees and ordinances from the Executive branch. On April 22, 2020, in a cabinet meeting, Salles stated:

“There is a need to have an effort on our side here, while we are at this moment of tranquility in terms of press coverage, because it only talks

⁴ Available at: <https://piaui.folha.uol.com.br/lupa/2018/12/06/verificamos-bolsonaro-cavalaria/> - Access on 02/16/2022.

⁵ Available at: <https://g1.globo.com/politica/noticia/2020/01/24/cada-vez-mais-o-indio-e-um-ser-humano-igual-a-nos-diz-bolsonaro-em-transmissao-nas-redes-sociais.ghtml> - Access on 02/16/2022.

⁶ Available at: <https://www.politize.com.br/ministerios-do-governo-federal-2/> - Access on 02/16/2022.

⁷ Available at: <https://www.bbc.com/portuguese/brasil-49187664> - Access on 02/16/2022.

⁸ Available at: <https://www.hrw.org/pt/world-report/2020/country-chapters/336671#36371b> - Access on 02/16/2022.

*about COVID and running the cattle herd, changing all the rules and simplifying standards. From IPHAN [National Institute of Historical and Artistic Heritage], the Ministry of Agriculture, the Ministry of the Environment, etc. Now it's the time to join efforts to simplify everything; it's regulatory that we need, in all aspects."*⁹

5. COVID-19 served as a distraction for the destruction of social policies to protect vulnerable groups in the country. Under President Jair Bolsonaro, the federal government has adopted a deliberate strategy of contaminating Brazilians and foreigners living in the country through the instrumentalization and corruption of Brazilian institutions and the abuse of presidential normative powers. The spread of the pandemic is, from this perspective, another chapter of the democratic erosion and systematic violation of human rights perpetrated by President Jair Bolsonaro.
6. The indictment also points out that such policy of spreading the virus has disproportionately affected the Indigenous and Black populations and healthcare workers. It has increased vulnerabilities and inequalities in accessing public services and enjoying human rights. Hence, in addition to the deliberate contamination by the coronavirus disease, Covid-19, massacres perpetrated by the Brazilian State – which Jair Bolsonaro praised¹⁰ - predominantly affected the Black population. There was also an increase in Indigenous lands' invasions, which are also affected by the vertiginous rise in deforestation and illegal mining¹¹. Last but not least, the virus found healthcare workers weakened by the setbacks in their labor rights in the previous few years and by Jair Bolsonaro's anti-science discourse¹².
7. **Jair** Bolsonaro does not conceal his opposition to constructing a diverse and pluralistic country. His statements and the measures taken by his government demonstrate his

⁹ Available at: <https://g1.globo.com/politica/noticia/2020/05/22/ministro-do-meio-ambiente-defende-passar-a-boiada-e-mudar-regramento-e-simplificar-normas.ghtml> - Access on 02/16/2022.

¹⁰ Bolsonaro congratulated Rio de Janeiro's Civil Police three days after the institution commanded an operation that resulted in 29 deaths – most of them of Black people. The Jacarezinho Massacre will be further addressed below. Available at: <https://congressoemfoco.uol.com.br/area/governo/bolsonaro-parabeniza-policia-civil-rj/> - Access on 02/16/2022.

¹¹ CIMI, *Violência Contra Povos Indígenas do Brasil* – data from 2019, fls. 78, available at: <https://cimi.org.br/wp-content/uploads/2020/10/relatorio-violencia-contra-os-povos-indigenas-brasil-2019-cimi.pdf> - Access on 02/16/2022.

¹² FETTER, Giselle Liana. Discurso anticientífico e Covid-19: tensões entre política e jornalismo. *Macabéa-Revista Eletrônica do Netlli*, v. 9, n. 4, p. 562-584, 2020.

populist, authoritarian, and nationalist bias. Jair Bolsonaro does not hide his opposition to constructing a diverse and plural country. His speeches and the measures of his government demonstrate his populist, authoritarian and nationalist bias. In this distorted conception of democracy and this Brazilian Non-Rule of Law, there is no institutional capacity to hold the president accountable or protect diversity and pluralism.

8. To prove the criminal conduct of President Jair Bolsonaro, the indictment includes statements given by President Jair Bolsonaro, regulatory acts, and omissions that corroborate the spread of the pandemic among Brazilians and foreigners residing in the country was deliberate, organized, and intentional.
9. The impacts of President Jair Bolsonaro's criminal conduct are demonstrated in the testimonies of specially affected groups, petitioners of this indictment, and scientific studies produced over the last few years by national and international research institutions.
10. The intentional spread of the COVID-19 pandemic by President Jair Bolsonaro violates several national and international norms. But unfortunately, there is not, in the Brazilian judiciary or any other global jurisdictional instance, to date, a process capable of holding him accountable for the integrality of his acts, which generated risk and caused the avoidable illness and death of many Brazilians and foreigners residing in the country.
11. Therefore, Arns Commission, Brazil's Indigenous People Articulation, Black Coalition for Rights, and Public Services International ask the Permanent Peoples' Tribunal to recognize the human rights violations perpetrated in the COVID-19 pandemic and its intentional spread by the Brazilian government at the behest of President Jair Bolsonaro, in violation of Articles 1, 2 and 19; 7 and 20; 8 and 10 of the Universal Declaration of Peoples' Rights, per Article 1 of the New Statute of the Permanent Peoples' Tribunal.
12. Arns Commission, Brazil's Indigenous People Articulation, Black Coalition for Rights, and Public Services International request, above all, that the Permanent Peoples' Tribunal individually condemn President Jair Bolsonaro for the practice of **crimes**

against humanity against the Brazilian population, recognizing the disproportionate effects on the black population, on health professionals and indigenous peoples, and for committing the **crime of genocide** against indigenous peoples, under Article 2 and 3 of the New Statute of the Permanent Peoples' Tribunal and Article 6 and 7 of the Rome Statute, according to international law and interpretation.

II. About the complainant organizations

13. The D. Paulo Evaristo Arns Commission for the Defense of Human Rights – Arns Commission – is a non-profit, non-economic, and non-political association whose goal is to contribute to the visibility and juridical follow-up, in national and international forums, regarding cases of gross human rights violations occurring in Brazil. The entity gathers twenty-two from the political, legal, and academic world and reunites intellectuals, journalists, and political activists from different generations, with the common denominator of constantly and relentlessly defending human rights throughout their careers.
14. Motivated by the increase in hate speech all over Brazil, the Arns Commission was created in February 2019 and since then has worked in partnership with countless organizations that protect and research human rights in Brazil, defending the inviolability of these rights under the auspices of international treaties and conventions that the Brazilian State has agreed to respect. Its objective is to draw attention to international norms dealing with violations against human dignity, freedom, and physical integrity, mainly when perpetrated by State agents against persons and populations subject to discrimination, such as the Black population, Indigenous peoples, *quilombolas*¹³, LGBTQ+persons, women, the youth, and urban or rural communities living in extreme poverty.
15. Brazil's Indigenous Peoples Articulation (*Articulação dos Povos Indígenas do Brasil* – *APIB*, in Portuguese) is an Indigenous organization representing and defending

¹³ A quilombola is an Afro-Brazilian resident of quilombo settlements first established by escaped slaves in Brazil. They are the descendants of Afro-Brazilian slaves who escaped from slave plantations that existed in Brazil until abolition in 1888 (Wikipedia).

Indigenous peoples' rights in Brazil. The Indigenous movement created it during the Free Land Camp (*Acampamento Terra Livre – ATL*, in Portuguese) in 2005. The *ATL* is an annual national mobilization held since 2004 to make the situation of Indigenous people in Brazil visible, as well as to uncover and discuss violations against their rights, and to demand that the Brazilian State complies with their demands and claims.

16. *APIB* is an instance of national reference for the Indigenous movement in Brazil, created from the bottom up. It gathers regional Indigenous organizations¹⁴. It was established to strengthen the union of peoples, the articulation between different regions and Indigenous organizations in the country, and to mobilize Indigenous peoples and such organizations against threats and violations of Indigenous rights. Thus, *APIB* aims to promote mobilizations and permanent articulations of the Indigenous movement in different regions and at the national level. In its organic structure, *APIB* gathers Indigenous leaderships representative of all regions of Brazil, encompassing the immeasurable ethnic diversity of Indigenous peoples in Brazil.
17. The Black Coalition for Rights comprises more than 250 organizations (see Annex I), entities, groups, and collectives of the Brazilian Black movement, articulated to fight against racism, genocide, and the inequalities, injustices, and violence that affect the Black Brazilian population. Hence, the Coalition has gathered to promote political incidence in the first person, based on the values of collaboration, ancestrality, circularity, sharing *axé* (the inherited and transmitted life force), orality, transparency, self-care, solidarity, collectivism, memory, acknowledgment, and respect for differences.
18. The Coalition seeks the construction of a just country with equality of rights and opportunities, which, to be materialized, requires a long and profound process of

¹⁴ Currently, *APIB* is composed of the following regional Indigenous organizations: Articulation of Indigenous Peoples of the Northeast, Minas Gerais and Espírito Santo (*Articulação dos Povos Indígenas do Nordeste, Minas Gerais e Espírito Santo – APOINME*, in Portuguese); Terena People's Council (*Conselho do Povo Terena*, in Portuguese); Articulation of Indigenous Peoples of the Southeast (*Articulação dos Povos Indígenas do Sudeste – ARPINSUDESTE*, in Portuguese); Articulation of Indigenous Peoples of the South (*Articulação dos Povos Indígenas do Sul – ARPINSUL*, in Portuguese); Great Assembly of the Guarani Kaiowá Peoples (*Grande Assembleia dos Povos Guarani Kaiowá – ATY GUASU*, in Portuguese); Coordination of Indigenous Organizations of the Brazilian Amazon (*Coordenação das Organizações Indígenas da Amazônia Brasileira – COIAB*, in Portuguese), and Guarani Yvyrupa Commission (*Comissão Guarani Yvyrupa*, in Portuguese). It is worth highlighting that each of *APIB*'s grassroots organizations operates in a regional area representative of certain peoples, without necessarily corresponding to the geographical division of the Brazilian State and its official regions. The definitions are mainly established by the biome in which the peoples are located. For additional information regarding *APIB*'s grassroots organizations, see: <<https://apiboficial.org/sobre/>>.

historical reparations for the Black Brazilian population. In this regard, the organization acts by confronting racial asymmetries and inequalities and by seeking to implement redistributive social justice and restorative racial justice.

19. Lastly, Public Services International is a worldwide trade union federation representing 30 million workers who provide essential public services in 154 countries. PSI defends human rights and promotes social justice and universal access to quality public services. PSI works with the United Nations system, civil society, trade unions, and other organizations.
20. Since 2001, PSI has been duly constituted in Brazil and acts to organize male and female public and/or private service workers whose service provision is public.
21. During the COVID-19 pandemic, Public Services International has been promoting research and campaigns in favor of essential service professionals in the country, including healthcare workers.
22. It has also denounced how the Brazilian State has denied the right to social dialogue and collective negotiation, which are ensured in the national legislation and the international ILO conventions ratified by Brazil. Likewise, it has denounced anti-union practices that attack democracy and repress freedom of expression and union organization.
23. Public Services International brings together trade unions, federations and confederations, from the public and private sectors, in several areas. In the health sector, it congregates as affiliates the Association of Employees of the Oswaldo Cruz Foundation/Trade Union of Civil Servants of Science, Technology, Production and Innovation in Public Health (*Associação dos Funcionários da Fundação Oswaldo Cruz/Sindicato dos Servidores de Ciência, Tecnologia, Produção e Inovação em Saúde Pública – ASFOC-SN*, in Portuguese), the National Confederation of Health Workers (*Confederação Nacional dos Trabalhadores na Saúde – CNTS*, in Portuguese), the National Confederation of Social Security Workers (*Confederação Nacional dos Trabalhadores em Seguridade Social – CNTSS*, in Portuguese), the Confederation of Workers in the Federal Public Service (*Confederação dos Trabalhadores no Serviço*

Público Federal – CONDSEF, in Portuguese), the Confederation of Public Servants of Brazil (*Confederação dos Servidores Públicos do Brasil – CSPB*, in Portuguese), the National Federation of Nurses (*Federação Nacional dos Enfermeiros – FNE*, in Portuguese), the Federation of Workers Unions of Brazilian Universities (*Federação de Sindicatos de Trabalhadores das Universidades Brasileiras – FASUBRA*, in Portuguese), the Federation of Employees in Health Service Businesses in the State of Rio Grande do Sul (*Federação dos Empregados em Estabelecimentos de Serviços de Saúde do Estado do Rio Grande do Sul – FEESSEERS*, in Portuguese), the Union of Nurses of the State of São Paulo (*Sindicato dos Enfermeiros do Estado de São Paulo – SEESP*, in Portuguese), the Union of Nurses of Rio de Janeiro (*Sindicato dos Enfermeiros do Rio de Janeiro – SINDENFRJ*, in Portuguese), the Union of Nurses in the State of Pernambuco (*Sindicato dos Enfermeiros no Estado de Pernambuco – SEEPE*, in Portuguese), the Union of Psychologists in the State of São Paulo (*Sindicato dos Psicólogos no Estado de São Paulo – SINPSI*, in Portuguese), the Union of Public Health Workers in the State of São Paulo (*Sindicato dos Trabalhadores Públicos da Saúde no Estado de São Paulo – SINDSAÚDE/SP*, in Portuguese), Union of Workers in Public Administration and Its Branches in the Municipality of São Paulo (*Sindicato dos Trabalhadores na Administração Pública e Autarquias no Município de São Paulo – SINDSEP/SP*, in Portuguese), the Union of Workers in the Municipal Public Service of Blumenau (*Sindicato dos Trabalhadores no Serviço Público Municipal de Blumenau – SINTRASEB*, in Portuguese), the Federation of Administration and Municipal Public Service Workers of the State of São Paulo (*Federação dos Trabalhadores da Administração e do Serviço Público Municipal do Estado de São Paulo – FETAM/SP*, in Portuguese), Federation of Workers in the Municipal Public Service of the State of Ceará (*Federação dos Trabalhadores no Serviço Público Municipal do Estado do Ceará – FETAMCE*, in Portuguese), the Federation of Municipal Public Administration Workers of Rio Grande do Norte (*Federação dos Trabalhadores em Administração Pública Municipal do Rio Grande do Norte – FETAM/RN*, in Portuguese), the Federation of Municipal Workers of Santa Catarina (*Federação dos Trabalhadores Municipais de Santa Catarina – FETRAM/SC*, in Portuguese), Federation of Workers in the Municipal Public Service of the State of Minas Gerais (*Federação dos*

Trabalhadores no Serviço Público Municipal do Estado de Minas Gerais – FETAM/MG, in Portuguese), the Union Federation of Public Servants in the State of Rio Grande do Sul (*Federação Sindical dos Servidores Públicos no Estado do Rio Grande do Sul – FESSERGS*, in Portuguese), the Federation of Public Servants Unions in the State of São Paulo (*Federação dos Sindicatos dos Servidores Públicos no Estado de São Paulo – FESSP-ESP*, in Portuguese), and the Union of Physicians of São Paulo (*Sindicato dos Médicos de São Paulo – SEMESP*, in Portuguese).

III. Introduction: Human Rights violations by the government of President Jair Bolsonaro in the pandemic context

24. The President of the Republic, Jair Bolsonaro, promotes a government contrary to the Constitution, the country's laws, and international treaties. Since the first day of his term, January 1, 2019, President Jair Bolsonaro has instrumentalized the Brazilian government to implement a populist and authoritarian ruling project through which plurality is seen as something to be eliminated. And he does so through different strategies, which are based, above all, on the militarization of politics, abuse of the normative powers of the Executive branch, and undermining of institutional control mechanisms.
25. Bolsonaro's administration used the COVID-19 pandemic as an opportunity to expand his authoritarian populist project. So far, the result of three years of Bolsonaro administration – two of which were under the COVID-19 pandemic – is the deepening of social inequalities, deterioration of democracy, and systematic human rights violations.
26. Inequality has been rising since 2019 and is even worse during the pandemic. Hunger and extreme poverty are on the rise again.

The pandemic has deepened social inequality, increasing the number of people in situations of extreme poverty, according to data from the Unified Registry for Social Programs of the Brazilian government (*Cadastro Único para programas sociais – CadÚnico*, in Portuguese). In March 2020, at the

beginning of the pandemic in Brazil, there were approximately 13.5 million people in this condition, a contingent that in March of this has increased to 784 thousand people, representing a 5.8% increase. It is also worth noting that the number of people in extreme poverty had already increased between 2019 and 2020, before the pandemic, by 3.0%. This means that between the beginning of 2019 and the beginning of 2021, 1.2 million people were under the extreme poverty line in Brazil, which corresponds to a 9.0% increase¹⁵.

27. Conditions in the country have worsened not only from the socioeconomic perspective.

A recent publication regarding the state of democracy in the world and analyzing the electoral, fundamental rights, social participation, control over the government, and impartiality of public administration dimensions points out that Brazil is one of the countries where democratic attributes have declined the most worldwide:

Brazil was the democracy with the most significant number of declining attributes in 2020. The pandemic management has been plagued by corruption scandals and protests, while President Jair Bolsonaro has downplayed the pandemic and given mixed messages. The President has openly tested Brazil's democratic institutions, accusing magistrates of the Superior Electoral Court of preparing to conduct fraudulent activities about the 2022 elections and attacking the media. The President has also declared that he will not obey the rulings of the Federal Supreme Court, which is investigating him for spreading false news regarding the electoral system in the country¹⁶.

28. Jair Bolsonaro's government drives human rights violations. Violations against Indigenous and socio-environmental rights are notorious and generated the granting of several precautionary measures by the Inter-American Commission on Human Rights (IACHR/OAS) and requests for investigation in the International Criminal Court. The president is accused of crimes against humanity and genocide¹⁷.

¹⁵ Inter-Union Department of Statistics and Socio-Economic Studies (*Dieese*, in Portuguese), *Boletim de Conjuntura* 29, 2021, available at <https://www.dieese.org.br/boletimdeconjuntura/2021/boletimconjuntura29.pdf>

¹⁶ International Institute for Democracy and Electoral Assistance (IDEA), *The global state of democracy 2021*, 2021, p. 9., available at https://static.poder360.com.br/2021/11/integra-the-global-state-of-democracy-2021_0.pdf

¹⁷ Petitions under evaluation in the Office of the Prosecutor of the International Criminal Court, No. OTP 536/2019: Human Rights Advocacy Collective (*Coletivo de Advocacia em Direitos Humanos – CADHu*, in Portuguese) and Arns Commission vs. President Jair Bolsonaro, November 2019, available at <https://apublica.org/wp-content/uploads/2019/11/e-muito-triste-levar-um-brasileiro-para-o-tribunal-penal-internacional-diz-co-autora-da-peticao.pdf>; Brazil's Indigenous People Articulation (APIB) vs. President Jair Bolsonaro, August 2021, available at https://apiboficial.org/files/2021/08/APIB_ICC_.pdf; Cacique Raoni and Cacique Almir Suruí vs. President Jair Bolsonaro, January 2021, available at

29. As shown below, manifestations from international human rights protection systems demonstrate increased violations during Jair Bolsonaro's administration compared to previous years. In fact, in three years of Bolsonaro's government, between 2019 and 2021, the IACHR/OAS has granted nine precautionary measures to Brazilians¹⁸⁻¹⁹⁻²⁰. As a parameter, in the nine previous years, between 2010 and 2018, 12 precautionary measures were granted. Jair Bolsonaro is responsible for 42% of all precautionary measures granted to Brazil in just three years²¹.
30. In the UN system, there are several statements of concern from special rapporteurs and the Office of the High Commissioner for Human Rights.
31. The analysis of manifestations on the part of the Human Rights Council is significant. The Council has special procedures to observe and monitor human rights violations in the member states through thematic or country-based perspectives. These mechanisms comprise special rapporteurs, such as torture and other cruel, inhuman, or degrading

https://documentacao.socioambiental.org/noticias/anexo_noticia/53148_20210125_091016.PDF; All Rise vs. President Jair Bolsonaro, October 2021, available at <https://static.poder360.com.br/2021/10/Bolsonaro-Haia-crimes-ambientais-out-2021.pdf>

¹⁸ In 2021, two precautionary measures were granted (PM 869-21 and PM 754-20). The first one was granted in favor of Antonio Martins Alves, a traditional rural worker in the Canaã Settlement region. He actively participated in defense of his lands and the environment, which historically has reportedly generated conflicts with people or groups with an interest in road construction, deforestation, tourism exploitation, or other efforts with significant environmental impact. The second precautionary measure was granted to members of the Guajajara and Awá Indigenous Peoples of the Araribóia Indigenous Lands, Brazil, due to the COVID-19 pandemic. Available at: <https://oas.org/pt/cidh/decisiones/cautelares.asp?Country=BRA&Year=2021> – Access on 01/19/2022.

¹⁹ In 2020, the IACHR granted four precautionary measures to Brazilians. First, the PM 679-20 was granted in December to the Mundurucu Indigenous People members due to the COVID-19 pandemic and constant invasions of their territories. Second, in August, the PM-1211-19 was granted to members of the Remnant Community of Quilombo Rio dos Macacos in Brazil due to a series of threats, harassment, and acts of violence perpetrated against them in the context of their dispute for recognition of their territory. Third, in July, the IACHR decided to grant precautionary measure PM 56320 to the Yanomami and Ye'kwana Indigenous Peoples members because of the COVID-19 pandemic, illegal presence of third parties in their territory, mercury contamination, and several acts of violence against Indigenous leaders. Lastly, PM 888-19 was granted at the beginning of the year, in February, to persons deprived of their liberty in the Jorge Santana Public Penitentiary in Brazil because of imprisonment conditions and lack of medical care. Available at: <https://oas.org/pt/cidh/decisiones/cautelares.asp?Year=2020&Country=BRA> – Access on 01/19/2022.

²⁰ In the first year of Jair Bolsonaro's administration, the IACHR granted three precautionary measures. In March, the first one was granted in favor of human rights defenders Julio Renato Lancellotti and Daniel Guerra Feitosa (PM 1450-18). Then, in August, the IACHR decided to grant precautionary measures for the persons deprived of liberty at the Penitentiary Evaristo de Moraes because of severe detention conditions and a lack of appropriate medical attention (PM 379-19). Finally, in September 2019, a precautionary measure was granted in favor of the members of the Guayraroká community of the Guarani Kaiowá Indigenous People because of acts of violence in the context of a dispute over land ownership. Available at: <https://oas.org/pt/cidh/decisiones/cautelares.asp?Country=BRA&Year=2019> – Access on 01/19/2022.

²¹ Available at: <https://oas.org/pt/cidh/decisiones/cautelares.asp?Year=2021&Country=BRA> – Access on 01/19/2022.

treatment or punishment, independent experts, and working groups, such as the Working Group of Experts on People of African descent.

32. Communications are one of the work methods of these experts and consist of official letters sent to governments, intergovernmental organizations, companies, or other bodies, regarding denouncements of human rights violations communicated to them by the victims or local civil society.
33. In these communications, which may have as object violations that already occurred, are occurring, or are in the imminence of happening and legislations or public policies harmful to human rights, the Special Rapporteurs present the received complaint and demand additional information, as well as suggest the adoption of actions to cease or prevent violations, among other measures seeking respect for human rights and justice for the victims. Although the decisions of those mechanisms are not binding, their communications express concern from the UN system with the situation of human rights in the notified country.
34. Between January 1st, 2019, and December 31, 2021 – the three first years of Jair Bolsonaro’s administration – Brazil has received 38 communications sent by the UN’s Special Procedures mechanisms: 14 in 2019, 11 in 2020, and 13 in 2021²². In the previous three-year term, there were 32 communications, which represents a considerable growth of 18.75%.
35. In this universe of 38 communications, six dealt with issues directly related to the Black Brazilian population and racism. The first communication sent in 2019 concerned Decree No. 9759 of April 11, 2019, which extinguishes and establishes guidelines, rules, and limitations for “collegiate bodies of the federal public administration”, restricting civil society participation in the National Councils²³, such as the National Council on Drugs Policy (*Conselho Nacional de Políticas sobre Drogas – CONAD*, in Portuguese) and the National Council of Traditional People and Communities (*Conselho Nacional dos Povos e Comunidades Tradicionais – CNPCT*, in Portuguese). The second communication, sent in the same year, recommends that Brazil ratifies the

²² All communications can be consulted here: <https://spcommreports.ohchr.org/TmSearch/Results>

²³ Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24621>

Escazú Agreement, which establishes measures for the protection and promotion of groups, persons, and organizations defending human rights and socio-environmental rights, among other measures²⁴. Up to the moment, the Escazú Agreement has not yet been ratified, despite the vulnerabilities faced by social leaders representing minority groups and human rights in Brazilian rural and urban areas.

36. The other four communications were sent in 2021. In January, Special Rapporteurs on contemporary forms of racism, racial discrimination, xenophobia, and the promotion and protection of freedom of opinion and expression, and the Working Group of Experts on People of African Descent expressed concern regarding racist statements and conducts from Sérgio Camargo, president of the Palmares Foundation, who has been working to undermine the institution's performance, whose main objective is the promotion and preservation of Afro-Brazilian culture²⁵. In May of the same year, a group of special rapporteurs spoke out against the Jacarezinho massacre. At least 24 residents and a state agent were killed in a violent operation by the Civil Police of the State of Rio de Janeiro²⁶. Two communications were sent in October 2021, the first concerning the intimidation of *quilombola* leaders by farmers in a dispute over territory in the state of Maranhão²⁸; the second and most recent one alerts the Brazilian State to political violence against Black women, especially transsexuals and travesties²⁹.
37. The situation of Indigenous peoples was also the subject of four communications, two in 2019, one in 2020, and one in 2021. The February 2019 communication points out the negative impacts of the dissolution of the National Food and Nutritional Security Council³⁰, and the April one expresses concern about the death threats against an Indigenous leader in the state of Bahia³¹. In 2020, the Special Rapporteur on the rights of Indigenous peoples spoke about the judgment of the "Timeframe Limitation" (*Marco Temporal*, in Portuguese), highlighting the importance of rejecting the thesis for the

²⁴ Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24730>

²⁵ Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25743>

²⁶ As further discussed below, the Inter-American Human Rights System has also spoken about the police operation several times.

²⁷ Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26422>

²⁸ Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26749>

²⁹ Available at <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26742>

³⁰ Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24339>

³¹ Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24520>

protection of Indigenous rights in Brazil³². Finally, in 2021, given the upsurge of violence by gold miners (*garimpeiros*) against the Munduruku and Yanomami peoples, and the proposition of Draft Bill 191/2020, several Special Procedures experts reported the seriousness of the situation, suggesting the adoption of measures that guarantee the safety of these indigenous peoples to the Brazilian State³³.

38. Indigenous peoples have also come under the attention of the Inter-American Human Rights System. In September 2021, IACHR expressed concern about draft bills that could threaten the human rights of Indigenous peoples in Brazil. On this occasion, the Commission expressed concerns about the drafting of legislative acts that (i) were aimed at denouncing International Labour Organization Convention No. 169 (Legislative Decree No. 177/2021); (ii) made more flexible or extinguished environmental requirements for agricultural and energy projects (Draft Bill No. 3,729/2004); (iii) fostered mining, and hydrocarbon activities and the use of water resources in Indigenous territories (Draft Bill No. 191/2020), and (iv) sought to amend the Brazilian Constitution to restrict the demarcation of Indigenous lands (Draft Bill No. 490/2007)³⁴. In the previous month, the IACHR also expressed concern about the legal thesis of the “Timeframe Limitation” and its impact on the human rights of Indigenous and tribal peoples³⁵.
39. The UN Special Procedures mechanisms have notified Brazil on issues related to the COVID-19 pandemic on three occasions. In July 2020, the Special Rapporteur on the Right to Adequate Housing spoke about the evictions that had taken place and were underway in the state of São Paulo during the health crisis³⁶. In October of the same year, the communication dealt with the situation of vulnerability of persons who have Hansen’s disease, which was aggravated by the pandemic³⁷. A year later, in October 2021, a group of experts expressed concern about the inequality of access to health

³² Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25062>

³³ Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26420>

³⁴ Available at: <https://www.oas.org/pt/CIDH/jsForm/?File=/pt/cidh/prensa/notas/2021/236.asp> - Access on 01/19/2022

³⁵ Available at: <https://www.oas.org/pt/CIDH/jsForm/?File=/pt/cidh/prensa/notas/2021/236.asp> - Access on 01/19/2022.

³⁶ Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25411>

³⁷ Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25599>

between and within different countries, Brazil being one of them, which impacts not only the quality of life but also the realization of democracy itself³⁸.

40. In addition to communications, Special Rapporteurs and the United Nations High Commissioner for Human Rights spoke several times about the deterioration of human rights policies and the Brazilian civil and democratic space after Jair Bolsonaro.
41. This was the case, for example, of the statement by Ravina Shamdasani, spokesperson for the OHCHR, who described the killing of João Alberto Silveira Freitas – a Black man beaten to death by security guards at a supermarket in southern Brazil – as a deplorable act and highlighted the connection between this fact and the racism suffered by the Black population³⁹.
42. Another example of the UN's constant alert on the human rights situation in Brazil was the statement of Michelle Bachelet, High Commissioner for Human Rights, on the murder of the Indigenous leader Emrya Wajãpi from the state of Amapá, in which she urged the Brazilian State to modify policies aimed at Indigenous peoples and their territories⁴⁰.
43. Along the same lines, monitoring reports on the human rights situation by organizations, such as a report by Amnesty International, describe the authoritarian escalation against human rights and the intensification of violations amidst the COVID-19 pandemic:

Anti-human rights rhetoric continued to escalate, increasing the risks to human rights defenders. The shrinking of civic space fomented by an official narrative that stigmatized NGOs, journalists, activists, human rights defenders, and social movements continued. Obstacles to freedom of expression and attempts to restrict this right impacted the work of journalists and media workers. Attacks and killings of human rights defenders, members of Indigenous Peoples, Quilombola communities, and environmental defenders remained chronic problems. Protection of natural resources and traditional territories was neglected as government structures to protect Indigenous Peoples and the environment was further dismantled and weakened. Violence against women increased in the context of measures

³⁸ Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26690>

³⁹ Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26535&LangID=E>

⁴⁰ Available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24859&LangID=E>

introduced to curb the spread of COVID-19. The pandemic exposed deep-seated inequalities in Brazilian society, impacting communities that face discrimination disproportionately. The President's ongoing denial of the gravity of the COVID-19 pandemic only exacerbated the situation⁴¹.

44. In this severe context of increasing inequality and systematic violation of human rights, President Jair Bolsonaro used the Brazilian State's structure to implement a policy of spreading the COVID-19 pandemic. As a consequence of that policy, the Indigenous and Black populations were those more affected by its effects.

IV. Facts: the spread of the pandemic as a policy of the Brazilian State by order of President Jair Bolsonaro

"The destructive power of this virus is overestimated. Maybe it's even being overestimated for economic reasons".

Jair Bolsonaro, in February 2020. 0 deaths by COVID-19 in the country.

"Look, the economy was doing well. This virus has brought a certain hysteria. Some state governors, who, in my understanding, I might even be wrong, are taking measures that will significantly harm our economy." Jair Bolsonaro, in March 2020, the day following the first death in the country.

"Some people will die, that's life. [...] For 90% of the population, this will be a little flu or nothing at all".

Jair Bolsonaro, in March 2020, with less than 100 deaths in the country.

"The use of Chloroquine is increasingly seen as efficient".
"It seems that this virus issue is beginning to go away".

Jair Bolsonaro, in April 2020, with 1,000 deaths in the country.

"I'm not a gravedigger, ok?"

Jair Bolsonaro, in April 2020, with 2,575 deaths in the country.

⁴¹ Amnesty International Report 2020/21: The state of the world's human rights, available at <https://anistia.org.br/informe-anual/informe-anual-2020-o-estado-dos-direitos-humanos-no-mundo/>, p. 64. In the same sense, there is the report from Human Rights Watch, available at <https://www.hrw.org/pt/news/2021/09/15/379911>

"So what? I'm sorry. What do you want me to do? My name's Messiah, but I don't do miracles".

Jair [Messias] Bolsonaro, in April 2020, with 5,000 deaths in the country.

"This is a neurosis 70% of the population will catch the virus. There's no way. It's madness".

Jair Bolsonaro, in May 2020, 12 thousand deaths in the country.

"Maybe there was some overreaction" [on the part of WHO – World Health Organization].

"The countryside has not stopped, but cities and many states have. It won't be easy to boost the economy again. So, we urge governors and mayors to – with responsibility, obviously – reopen businesses".

"I remind the nation that, by a Supreme Court ruling, actions to contain the pandemic (e.g., closing businesses and lockdown.) were under total responsibility of state governors and mayors".

Jair Bolsonaro, in June 2020, with 50 thousand deaths in the country.

"Let's go on with our lives. Go on with our lives and seek a way to escape this problem".

Jair Bolsonaro, in August 2020, with 100 thousand deaths in the country.

"The Brazilian people will not be anyone's lab rats. Therefore, a billionaire's financial contribution to a drug that has not even passed its test phase is not justified. Because of this, I decided not to acquire the vaccine mentioned above".

Jair Bolsonaro, in October 2020, about the vaccines in advanced stages of clinical trials in Brazil.

"Death, disability and anomaly. This is the vaccine that Doria wants to force everyone in São Paulo to take. The president said that vaccination should never be mandatory. Another victory for Bolsonaro".

"And this mask is not very effective [in protecting against COVID-19]".

"[Hydroxychloroquine] has no side-effects".

"Everything now is pandemic-related; we need to end this. I'm sorry for the dead; I'm sorry. We're all going to die one day; everyone here will die. There's

no point running away from this, running away from reality. [Brazil] needs to stop being a country of sissies. "

Jair Bolsonaro, in November 2020, with 163 thousand deaths in the country.

"The pandemic is truly coming to an end".

"If you turn into an alligator, that's your problem. If you become Superman, if some woman is born with a beard, or if a man starts to have a high voice, they (Pfizer) have nothing to do with it."

"I'm not getting the vaccine, period. If someone thinks my life is in danger, that's my problem".

Jair Bolsonaro, in December 2020, with 185 thousand deaths in the country.

"Some studies are starting to show here (...) regarding the use of masks, that, in a first moment here, a German university says that they are harmful to children, and show several aspects like irritability, headache, difficulty concentrating, decreased perception of happiness, refusal to go to school or daycare, discouragement, impaired learning ability, dizziness, fatigue".

Jair Bolsonaro, in February 2021, with 250 thousand deaths in the country.

"Let's not cry over spilled milk. We're still going through a pandemic that, in part, is being used politically – not to defeat the virus but to bring down the president".

Jair Bolsonaro, January 2021, with 340 thousand deaths in the country.

Many [victims] had some kind of comorbidity, so COVID only shortened their lives by a few days or a few weeks

Jair Bolsonaro, in September 2021, with 596 thousand deaths in the country.

No deaths of children are happening to justify something as an emergency.

Jair Bolsonaro, in January 2022, with 621 thousand deaths in the country, out of which 301 children between 5 and 11 years of age.

45. On February 26, 2020, the Ministry of Health confirmed the first COVID-19 case in Brazilian territory, marking the beginning of the country's pandemic caused by the

SARS-CoV-2⁴². Almost two years later, in January 2022, the number of deaths surpassed 621 thousand⁴³, and Brazil ranked third among countries with the highest numbers of deaths⁴⁴⁻⁴⁵.

46. The analysis of the Federal Government's handling of the pandemic, whose maximum representative is Jair Bolsonaro, explains such numbers. A study carried out by the University of Cape Town, in South Africa, in partnership with the Oswaldo Cruz Foundation (Fiocruz), the Getulio Vargas Foundation, and the University of São Paulo, has revealed a pattern of negationist discourses by the Brazilian president, who has frequently underestimated the severity of the pandemic, stimulated the spread of misinformation as a political strategy, and promoted pseudoscience⁴⁶.
47. As of April 2020, the federal government has started to promote population immunity (also known as "herd immunity") as a response to the pandemic. In other words, Bolsonaro chose to encourage the free circulation of the new coronavirus under the pretext that the infection would naturally induce the immunity of individuals and that the reduction in economic activity would cause more significant damage than the deaths and after-effects caused by the disease⁴⁷.
48. In health policies, this resulted in actions that have obstructed measures to contain the illness, omissions to create policies, normative acts contrary to the contention of the disease, and propaganda against public health, such as delays in the acquisition of

⁴² Available at: <http://coc.fiocruz.br/index.php/pt/todas-as-noticias/1809-especial-covid-19-quando-as-doencas-viram-numeros-as-estatisticas-da-covid-19.html#Xuo288RKjIU> - Access on 01/17/2022.

⁴³ Available at: <https://ourworldindata.org/coronavirus-data> - Access on 01/15/2021. The data, however, do not reflect the Brazilian reality. The underreporting of COVID-19 deaths in Brazil has been denounced by academia since the pandemic's start (among others, ORELLANA *et al.*, 2021). However, the scenario was further aggravated by the fact that the official notification system of the Ministry of Health was taken offline. Moreover, since December, it has ceased to present official data related to the disease due to a cyberattack.

⁴⁴ Available at: <https://news.google.com/covid19/map?hl=pt-BR&mid=%2Fm%2F02j71&gl=BR&ceid=BR%3Apt-419> - Access on 01/17/2021.

⁴⁵ At least until October 2021, however, Brazil ranked first in the list of countries with the highest rates of COVID-19 deaths worldwide. At that time, Brazil recorded more deaths than the United States and India and almost the same number of deaths as all 27 countries of the European Union combined. Available at: <https://g1.globo.com/mundo/noticia/2021/10/08/mortes-por-covid-despencam-mas-brasil-ainda-e-o-pais-com-mais-obitos-do-mundo-em-2021.ghtml> - Access on 01/17/2022.

⁴⁶ Available at: <https://jornal.usp.br/ciencias/estudo-atesta-discurso-negacionista-de-bolsonaro-nos-primeiros-seis-meses-de-pandemia/> - Access on 01/17/2022.

⁴⁷ Ventura, Aith e Reis. Estratégia federal de disseminação da Covid-19: um ataque sem precedentes aos direitos humanos no Brasil, em Bolsonaro Genocida. São Paulo: ed. Elefante, p. 23.

vaccines, incitement to non-compliance with health measures adopted by states and municipalities, as well as the promotion of treatments that are known to be ineffective⁴⁸.

49. In the economic sector, the intentional spread of COVID-19 was promoted through obstacles to the conditions that would allow the implementation of measures to contain the disease, through opposing and suspending the provision of stimulus checks, not establishing resources in the 2021 Annual Budget Bill (*Projeto de Lei Orçamentária Anual – PLOA*, in Portuguese) to combat the pandemic and a deliberate omission in creating and executing the Emergency Employment and Income Maintenance Program.
50. These policies have increased contamination, death, and poverty rates, the most devastating impact on the Black population.
51. According to data from the Unified Registry for Social Programs (*CadÚnico*), the pandemic has deepened social, racial, gender, and regional inequalities, increasing the number of people in extreme poverty. In the first year of the pandemic, between 2020 and 2021, the number of people - which was already 13.5 million - increased by 784,000 people. It is also noteworthy that the number of people in extreme poverty had already increased between 2019 and 2020, therefore before the pandemic, by 3.0%. Between the beginning of 2019 and the beginning of 2021, almost 1.2 million people entered extreme poverty in Brazil, corresponding to an increase of 9.0%⁴⁹. Since then, that number has only increased.
52. The government of Jair Bolsonaro is responsible for throwing 2 million people back under the extreme poverty line and 19 million in the Hunger Map⁵⁰, whose immense majority comprises Black people.
53. Government measures in several areas have been in line with the discursive pattern that denied the pandemic's severity and promoted non-compliance with sanitary standards.

⁴⁸ Ventura, Aith e Reis. Estratégia federal de disseminação da Covid-19: um ataque sem precedentes aos direitos humanos no Brasil, em Bolsonaro Genocida. São Paulo: ed. Elefante, p. 23-26.

⁴⁹ DIESSE, *Boletim de conjuntura* No. 29, June-July 2021, available at <https://www.dieese.org.br/boletimdeconjuntura/2021/boletimconjuntura29.html>; OBSERVATÓRIO DIREITOS HUMANOS – CRISE COVID 19. *Impactos econômicos da pandemia no Brasil: renda, trabalho e desigualdades*, available at <https://observadhecovid.org.br/pesquisas/impactos-economicos-da-pandemia-no-brasil-renda-trabalho-e-desigualdades/>

⁵⁰ Between 2013 and 2018, according to data from the PNAD and the POF (Family Budget Survey), severe food insecurity grew by 8.0% per year. The acceleration was even more intense: from 2018 to 2020, as shown by the *VigiSAN* survey, the increase in hunger was 27.6%. Source: <http://olheparaafome.com.br/>

In another study conducted by the University of São Paulo, this time based on the mapping and analysis of legal norms for responding to COVID-19 in Brazil, it was found that there was a confluence between the normative, management, and discursive spheres of the federal government's response to the pandemic. The analysis of the collected data concluded the existence of a deliberate strategy to spread COVID-19 throughout the country, which was constructed through a series of acts and omissions⁵¹.

54. According to the research, this perverse strategy could be identified from six fronts: (i) The support given to the thesis of a herd (or population) immunity by infection (or transmission) as a form of response to COVID-19, which was carried out by disseminating the belief that the “natural immunization” resulting from the infection would be capable of controlling the pandemic; (ii) Constant incitement to population exposure to the virus and non-compliance with preventive sanitary measures; (iii) Trivialization of deaths and after-effects caused by COVID-19; (iv) Systematic obstruction of containment measures promoted by state governors and mayors; (v) Focus on assistance measures and abstention of measures to prevent the disease, and (vi) Attacks on critics of the federal response, the press, and professional journalism, especially by questioning the disease's dimension in the country⁵².
55. Because of this concrete situation and shortly after the episodes of deaths resulting from the lack of oxygen equipment in the state of Amazonas⁵³, on 04/27/2021, a Parliamentary Commission of Inquiry (*Comissão Parlamentar de Inquérito – CPI*) was established to investigate acts and omissions by the Federal Government in the

⁵¹ Available at: https://cepedisa.org.br/wp-content/uploads/2021/06/CEPEDISA-USP-Linha-do-Tempo-Maio-2021_v3.pdf - Access on 01/17/2022.

⁵² See: “*A Linha do Tempo da Estratégia Federal de Disseminação da COVID-19*”, produced by the Centro de Estudos e Pesquisas de Direito Sanitário (CEPEDISA) from the Faculty of Public Health (FSP) of the University of São Paulo (USP). Available at: https://cepedisa.org.br/wp-content/uploads/2021/06/CEPEDISA-USP-Linha-do-Tempo-Maio-2021_v3.pdf - Access on 01/17/2022.

⁵³ The so-called “Oxygen Crisis” occurred in January 2021 in the state of Amazonas. In that month, the state's health system collapsed, and several people died due to the lack of oxygen cylinders. The company White Martins, responsible for supplying this product, informed that on January 14th, the state capital city of Manaus ran out of cylinders. As a result, the need for oxygen in the state of Amazonas exceeded 70,000m³ a day, an amount that before the pandemic did not reach 15.000m³ daily. The company had already warned the Ministry of Health about the incapability to cope with the vast demand but was ignored by the ministry. Available at: <https://www.nexojournal.com.br/expresso/2021/03/14/A-cronologia-da-crise-em-Manaus-que-p%C3%B4s-Pazuello-na-berlinda> - Access on 01/18/2022.

confrontation of the COVID-19 pandemic in Brazil⁵⁴. After almost six months since its establishment, on October 26, 2021, the *CPI*'s Final Report was published⁵⁵, the date on which Brazil reached the sad figure of 603,521 deaths due to COVID-19.

56. The conclusion of this procedure clearly and directly indicated that the Federal Government “*was omissive and chose to act in a non-technical and neglectful way to confront the new coronavirus pandemic, deliberately exposing the population to a concrete risk of mass infection*”⁵⁶. The investigations proved the existence of a parallel office/cabinet, the intention of immunizing the population through natural contamination, the prioritization of an early treatment without any scientific support of efficacy, and the discouragement of using non-pharmacological measures, all accompanied by the deliberate delay in the acquisition of immunizing agents, as well as the constant propagation of so-called fake news, whose content, sponsored by the government, presented statements contrary to technical and scientific evidence⁵⁷. This scenario demonstrated that the President of the Republic, Jair Bolsonaro, was responsible for the government mistakes committed during the COVID-19 pandemic⁵⁸.
57. According to the *CPI*'s Final Report, the so-called “parallel cabinet” consisted of a group composed of physicians, politicians, and businessmen who, without formal

⁵⁴ The Parliamentary Commission of Inquiry was installed according to Requirements No. 1,371 and 1,372 of 2021 to investigate the Federal Government's acts and omissions in facing the COVID-19 pandemic in Brazil and, particularly, the worsening of the health crisis in the state of Amazonas, which suffered from a complete lack of oxygen to treat hospitalized patients. In the Brazilian legal system, *CPIs* are created to investigate specific facts and must operate for a fixed period. They have investigative powers typical of judicial authorities, which include hearing the accused, questioning witnesses, the ability to request documents, and determining the breach of a bank, tax, and telephone secrecy. Conducted by the Legislative Power in its typical function of inspecting the acts performed by the Public Administration, a *CPI* created at the federal level, such as this one, restricts the investigations to the Federal Government, and actions that occur in the States, the Federal District, and Municipalities are outside of its competence.

⁵⁵ The final report, 1,288 pages long, can be accessed through this official web link: https://senadofederal-my.sharepoint.com/personal/cpipandemia_arquivos_senado_leg_br/_layouts/15/onedrive.aspx?id=%2Fpersonal%2Fcpipandemia%5Farquivos%5Fsenado%5Fleg%5Fbr%2FDocuments%2FRelat%C3%B3rio%20Final%2FRelatorio%5FFinal%5Faprovado%2Epdf&parent=%2Fpersonal%2Fcpipandemia%5Farquivos%5Fsenado%5Fleg%5Fbr%2FDocuments%2FRelat%C3%B3rio%20Final - Access on 11.17.2021.

⁵⁶ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 1270 and 1271.

⁵⁷ In addition to measures taken, the Report has also demonstrated how the government's omissive behavior contributed decisively to the worsening of the pandemic in Brazil. According to this document, there was no articulation between the federal government and the states, Federal District, and municipalities for planning actions for the acquisition of strategic inputs and the elaboration of tactical-operational plans, in addition to not having minimized the risks of shortages and loss of products due to expiration date.

⁵⁸ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 1273.

admission into the public office, provided guidance to the President of the Republic on how the COVID-19 pandemic should be confronted in the country and directly participated in decisions regarding public policies without observing the technical guidelines of the Ministry of Health. According to the investigation carried out, the main goal of the parallel cabinet was to implement “herd immunity”, combined with the imposition of “early treatment”, which included the use of medication of unproven efficacy in the treatment of COVID-19⁵⁹.

58. The endorsement of natural contamination to create the so-called “herd immunity”, in addition to being constantly used in Jair Bolsonaro’s speeches, was also replicated through the diffusion by official Brazilian public bodies, such as the Ministry of Education and the Social Communication Secretariat of the Presidency of the Republic (*SECOM*, in Portuguese), which produced the video titled “Brazil cannot stop” (“*O Brasil não pode parar*”, in Portuguese) in a moment when the WHO and the Ministry of Health were recommending the adoption of social distancing measures⁶⁰.
59. The study carried out by the University of São Paulo (USP) demonstrated how the Federal Government dismissed preventive measures. Instead of acquiring vaccines, the Federal Government prioritized using the so-called early treatment, which included pharmacological actions with no evidence of effectiveness against COVID-19⁶¹. Besides Bolsonaro’s constant propaganda for its use, the *CPI*’s Report informed that the early treatment constituted an open public policy of the federal government, being prescribed in an official app of the Ministry of Health⁶². Another proof of that official guideline was the Brazilian Army’s deliberate effort of industrial chloroquine production⁶³. As if that were not enough, the drug was even distributed to Indigenous

⁵⁹ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 34.

⁶⁰ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 51.

⁶¹ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 59.

⁶² Available at: <https://olhardigital.com.br/2021/01/20/coronavirus/app-do-governo-federal-recomenda-kit-covid-para-qualquer-sintoma-e-ate-para-recem-nascidos/> - Access on 01/17/2021.

⁶³ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 112.

people through the Special Secretary of Indigenous Health (*Secretaria Especial de Saúde Indígena* – *SESAI*, in Portuguese)⁶⁴, which will be discussed further ahead.

60. Besides frequent discouragements to adopting non-pharmacological measures that could have contributed to avoiding infection by the virus, such as encouraging masks and social distancing⁶⁵, the Government deliberately delayed the acquisition of vaccines. The *CPI*'s report demonstrated the dynamics involved in the negotiations with vaccine manufacturers, all marked by the Federal Government's negligence, which frequently delayed and even ignored proposals from manufacturers with a high degree of reliability that presented solid offers⁶⁶.
61. Although several countries started vaccination in early December 2020⁶⁷, Brazil only applied the first vaccine in mid-January 2021⁶⁸. According to experts, 400,000 deaths could have been avoided if the Federal Government had adopted stances to support masks, social distancing measures, public information campaigns, and accelerated the acquisition of vaccines⁶⁹.
62. In addition, even with the population's firm adherence to vaccination campaigns, despite the contrary incentives promoted by Bolsonaro and the Federal Government, the process of immunization of the Brazilian population was slower than it could have been. This is because the federal government delayed the distribution of vaccines on several occasions⁷⁰.
63. In 2022, the Federal Government's stance on immunization was repeated regarding the vaccination of children. In December 2021, while more than 39 countries worldwide were already vaccinating children and the World Health Organization (WHO) alerted

⁶⁴ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 622.

⁶⁵ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 155-156.

⁶⁶ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 205-206.

⁶⁷ Available at: <https://www.cnnbrasil.com.br/saude/quais-os-paises-que-ja-comecaram-a-vacinacao-contr-a-covid-19/> - Access on 01/17/2022.

⁶⁸ Available at: <https://agenciabrasil.ebc.com.br/saude/noticia/2021-01/vacinacao-contr-a-covid-19-comes-a-em-todo-o-pais> - 01/17/2022.

⁶⁹ Available at: <https://www12.senado.leg.br/noticias/materias/2021/06/24/pesquisas-apontam-que-400-mil-mortes-poderiam-ser-evitadas-governistas-questionam> - Access on 01/17/2022.

⁷⁰ Among other occasions: <https://exame.com/brasil/entrega-vacinas-ministerio-da-saude/> - Access on 01/17/2022.

to the need to get this part of the population vaccinated⁷¹, the Ministry of Health launched a Public Consultation – to non-experts – on the decision of vaccinating children between 5 and 11 years of age⁷², an act seen as a measure to delay the start of vaccination⁷³. At the time, the use of vaccines had already been authorized by the Brazilian Health Regulatory Agency (*Agência Nacional de Vigilância Sanitária – Anvisa*, in Portuguese), the specialized agency responsible for approving the use of vaccines in the country⁷⁴.

64. In that month, even though 301 children between 5 and 11 had already died due to COVID-19 in Brazil, Jair Bolsonaro stated that there was no justification for adopting an “*emergency action for the vaccination of children*” against the coronavirus⁷⁵. After much reluctance on the part of the Federal Government, on 01/14/2022, Brazil began vaccinating children⁷⁶. However, at least ten federative states had not received the necessary doses⁷⁷.

65. The repetition of the Federal Government’s behavior regarding the COVID-19 pandemic, even after almost two years since its onset, can also be identified in other areas. With the emergence of the Omicron variant, whose transmissibility rate has increased the infection rates worldwide⁷⁸, a debate started regarding the need for proof of vaccination to enter Brazil to prevent the variant’s arrival in the country. After much criticism by Jair Bolsonaro⁷⁹, the government only started to require proof of

⁷¹ Available at: <https://www.bbc.com/portuguese/internacional-59151980> - Access on 01/17/2022.

⁷² Available at: <https://www.gov.br/saude/pt-br/acao-a-informacao/participacao-social/consultas-publicas/2021/consulta-publica-para-esclarecimentos-quanto-a-vacinacao-de-criancas-de-5-a-11-anos> - Access on 01/17/2022.

⁷³ Available at: <https://www.correiobraziliense.com.br/brasil/2021/12/4974197-pesquisadora-da-fiocruz-critica-consulta-publica-para-vacinacao-de-criancas.html> - Access on 01/17/2022.

⁷⁴ Available at: <https://www.gov.br/anvisa/pt-br/assuntos/noticias-anvisa/2021/anvisa-aprova-vacina-da-pfizer-contracovid-para-criancas-de-5-a-11-anos> - Access on 01/17/2022.

⁷⁵ Available at: <https://g1.globo.com/politica/noticia/2021/12/24/vacinacao-infantil-bolsonaro-diz-que-nao-ha-morte-de-criancas-que-justifique-algo-emergencial.ghtml> - Access on 01/17/2022.

⁷⁶ Available at: <https://g1.globo.com/saude/coronavirus/noticia/2022/01/15/vacinacao-contracovid-para-criancas-comecamos-estados-veja-calendario.ghtml> - Access on 01/17/2022.

⁷⁷ Available at: <https://www.cnnbrasil.com.br/saude/estados-relatam-atrasos-em-entrega-da-vacina-infantil/> - Access on 01/17/2022.

⁷⁸ Available at: <https://noticias.r7.com/internacional/apos-omicron-mundo-ultrapassa-300-milhoes-de-casos-de-covid-19-07012022> - Access on 01/17/2022.

⁷⁹ Available at: <https://www.brasildefato.com.br/2021/12/06/enquanto-mundo-tenta-conter-a-omicron-bolsonaro-anuncia-mp-contrapassaporte-da-vacina> - Access on 01/17/2022.

vaccination to authorize the entrance of travelers after a ruling from the Federal Supreme Court⁸⁰. This repeated behavior can also be verified in the way Omicron's severity was downplayed by the president, who even said that the new variant would be "welcome"⁸¹, which the WHO immediately rebutted⁸².

66. The Omicron variant has been generating an increase in the search for healthcare services in the country. At the beginning of 2022, it alerted the variant's effect on the healthcare system. A technical note stated that a third of the states of the Brazilian federation and ten state capitals were in an intermediate or critical alert zone regarding the occupation of intensive care unit beds due to the increase in infections⁸³.
67. However, the increase in the number of cases and deaths caused by the variant cannot be precisely assessed. This is because the suspension of data disclosure hampered the monitoring of the epidemiological scenario by the Ministry of Health caused by an alleged cyberattack in the context of the controversy related to the vaccine passport still in early December 2021⁸⁴.
68. After almost two years since the beginning of the COVID-19 pandemic in Brazil, Jair Bolsonaro and the Federal Government continue to act with negligence in managing this public health emergency.
69. Technical and scientific guidelines continue to be ignored and discredited, and the government is still trying its best to increase the number of preventable deaths in our country.

A. Violations against Indigenous people's rights in the COVID-19 pandemic

⁸⁰ Available at: <https://www1.folha.uol.com.br/eqilibrioesaude/2021/12/governo-atende-stf-e-publica-portaria-para-exigir-passaporte-da-vacina-contracovid.shtml> - Access on 01/17/2022.

⁸¹ Available at: <https://www1.folha.uol.com.br/eqilibrioesaude/2022/01/bolsonaro-minimiza-omicron-e-sugere-que-variante-e-bem-vinda.shtml> - Access on 01/17/2022.

⁸² Available at: <https://www.poder360.com.br/coronavirus/oms-rebate-fala-de-bolsonaro-sobre-omicron-ser-bem-vinda/> - Access on 01/17/2022.

⁸³ Available at: <https://agenciabrasil.ebc.com.br/radioagencia-nacional/saude/audio/2022-01/fiocruz-faz-alerta-sobre-efeitos-da-omicron-sobre-hospitais-e-utis> - Access on 01/17/2022.

⁸⁴ Available at: <https://www.cnnbrasil.com.br/saude/apagao-de-dados-do-ministerio-da-saude-deixa-monitoramento-da-pandemia-a-deriva/> - Access on 01/17/2022.

70. In June 2020, after the death of 378 Indigenous people as a result of COVID-19 and the infection of another 9,166 by the coronavirus, in a situation that affected, at the time, 112 of the 305 Brazilian Indigenous peoples, Brazil's Indigenous Peoples Articulation (*Articulação dos Povos Indígenas do Brasil – APIB*, in Portuguese) lodged a claim to the Federal Supreme Court requesting for measures to prevent the extermination of Indigenous peoples from being carried out. The Claim of Non-compliance with a Fundamental Precept (*Arguição de Descumprimento de Preceito Fundamental*) No. 709 presented a set of acts and omissions from public authorities related to the fight against the COVID-19 pandemic, which would imply a high risk of infection and even annihilation of several Indigenous peoples. Faced with such a scenario, *APIB*, which gathers the largest regional Indigenous organizations from all parts of the country, appealed to the Brazilian Supreme Court, seeking to ascertain a series of measures aimed at the federal government to resolve the situation.
71. Brazilian Supreme Court acknowledged the omissions; however, the insufficiency of measures taken within the scope of this Claim by the country's highest court and the state of generalized violations of human rights of Indigenous peoples made it imperative that, in August 2021, *APIB* had to denounce Jair Bolsonaro before the International Criminal Court for perpetrating the crime of genocide and crimes against humanity. Among other accusations, it included the fact that the COVID-19 pandemic was used as an opportunity by the president to continue and further develop his anti-Indigenous policies⁸⁵.
72. The acts and omissions by Jair Bolsonaro regarding the COVID-19 pandemic and the health of Indigenous people further aggravated violations that were already extremely serious. In addition to the president's encouragement of intentionally spreading the virus throughout the country to achieve herd immunity, specific acts have particularly affected Indigenous peoples, such as the systematic refusal to establish protective sanitary barriers to prevent the disease from arriving in Indigenous villages, the

⁸⁵ OTP-CR-479/19.

difficulties imposed for vaccinating Indigenous people, and the leniency towards the successive attacks by missionaries against isolated or recently contacted peoples.

73. However, these attacks that have enlightened us on the shocking data regarding the impact of the pandemic on Indigenous people have been occurring since the beginning of Jair Bolsonaro's administration, who has been instituting an anti-Indigenous policy that dismantles the institutionalism of Indigenous and socio-environmental rights, to destroy Brazilian Indigenous peoples and their traditional lifestyle purposely.
74. As early as March 2019, Indigenous health policies came under attack. Since the beginning of the 21st century, particular public policies have been aimed at Indigenous health care. The Indigenous Health Care Subsystem (*Subsistema de Atenção à Saúde Indígena – SASI/SUS*) is one of the branches of the Brazilian Unified Healthcare System (*Sistema Único de Saúde – SUS*), under the responsibility of the Special Secretariat of Indigenous Health (*Secretaria Especial de Saúde Indígena – SESAI*, in Portuguese). Under orders from President Jair Bolsonaro, *SESAI* sought to dismantle the National Policy for the Health Care of Indigenous Peoples (*Política Nacional de Atenção à Saúde dos Povos Indígenas – PNASPI*, in)⁸⁶. After months of mobilization of Indigenous peoples, healthcare policies for Indigenous people were safeguarded, although with a deficit of services provided to Indigenous peoples, which would later be felt in the precariousness of the response to the COVID-19 pandemic.
75. The pandemic has exposed the weaknesses that the Primary Health Care (PHC) staff of the Unified Healthcare System (*SUS*) and, more intensely, those that the Indigenous Health Care Subsystem (*SASISUS*) have been facing daily for years. Among them, we can enumerate lack of adequate infrastructure; insufficiency of Personal Protective Equipment (PPE); reduced stock of supplies and medication; high staff turnover; difficulties in ensuring good training and in implementing permanent education with the staff; and the precarious and insalubrious situation of Indigenous Health Support Houses (*Casas de Saúde do Índio – CASAI*, in Portuguese).

⁸⁶ Available at: <<https://apiboficial.org/2019/03/24/governo-bolsonaro-e-sua-politica-genocida/>>; <<https://www.dw.com/pt-br/sa%C3%BAde-%C3%A9-novo-conflito-entre-ind%C3%ADgenas-e-governo-bolsonaro/a-48086879>>. Access on 01/16/2022.

76. The reality of remote areas and the more inland Special Indigenous Sanitary Districts (*Distrito Sanitário Especial Indígena – DSEI*) also face other difficulties, such as communication obstacles (some areas have communication exclusively via radio); the problem of access, and logistical challenges due to geographic isolation (some *DSEI* can be accessed only by river or air); and the complexity of providing healthcare for Indigenous populations by taking the intercultural context into account.
77. Although the government of Jair Bolsonaro is aware of such weaknesses, there is evidence that the virus was brought to Indigenous peoples by the State's healthcare agents or through acts and activities directly promoted by the government of President Jair Bolsonaro. For example, in *Parque Tumucumaqui*, located on the border between Pará and Amapá, in one of the most challenging areas to access in the country, Indigenous peoples were contaminated by members of the Brazilian Army⁸⁷.
78. Thus, in the accomplishment of President Jair Bolsonaro's anti-Indigenous policy, *SESAI* exposed Indigenous people to the virus (e.g., by recommending that infected Indigenous people remain in quarantine at home, in contact with other Indigenous people; by denying healthcare services to Indigenous people who live in cities; by ignoring the importance of testing). If that were not enough, the nation's agency for Indigenous peoples itself, the National Indigenous Foundation (*Fundação Nacional do Índio – FUNAI*, in Portuguese), facilitated the contamination of these populations by failing to remove invaders from Indigenous lands⁸⁸.
79. The Final Report of the *CPI*, aimed at investigating the acts and omissions of the Federal Government in the face of the COVID-19 pandemic in Brazil, recognized the existence of this anti-Indigenous policy and its perverse effects during the public health emergency. The document stated that the result of how the federal government has conducted its indigenous policy in general, and, in particular, its attitudes of attack and

⁸⁷ Available at: <https://terrasindigenas.org.br/pt-br/noticia/206738> - Access on 01/16/2022.

⁸⁸ Information on the performance of *SESAI* and *FUNAI* during the COVID-19 pandemic can be seen at <https://covid19.socioambiental.org/> and also in the Research Report of the center for university extension and research in Development and Law of Indigenous Peoples (*Desenvolvimento e Direito dos Povos Indígenas – DPI*, in Portuguese), accredited by the Culture and Extension Commission of the Faculty of Law of the University of São Paulo (*Comissão de Cultura e Extensão da Faculdade de Direito da Universidade de São Paulo – FDUSP*, in Portuguese), p. 5 to 29.

contempt against Indigenous peoples during the pandemic, contributed to deliberately inflicting conditions to totally or partially destroy these groups, in addition to generating intense suffering and the disappearance of critical cultural references, given the deaths of elders and central figures in the communities⁸⁹.

80. In this sense, the *CPI* highlighted a whole set of acts of harassment, negligence, defamatory campaigns, consummated or attempted suppression of rights, manifestations of intolerance, and formal or implicit encouragement of the invasions carried out by the government led by Jair Bolsonaro that converge to the occurrence of violations of Indigenous rights.

81. The Report acknowledged that this process was already underway before the onset of the pandemic in Brazil, with the increase in invasions and attacks stimulated by the decrease in monitoring and the expectation of repeal of norms that protect Indigenous people and their lands, which has caused the pandemic to find Indigenous peoples already distraught and weakened. Therefore, it was found that, by connecting this situation to the negligence of the Federal Government and the encouragement of invasions, the impact of COVID-19 on native peoples was made more severe and disproportionate, in addition to having been deliberately amplified⁹⁰.

82. The data presented by the Report demonstrate the disproportionate impact of the pandemic on these populations. For example, research on antibody seroprevalence carried out by the Federal University of Pelotas showed that, even at the end of June 2020, Indigenous people were four and a half times more likely to be infected than white people⁹¹. The chart below is taken from a study published by *Editora Fiocruz* entitled “The social impacts of COVID-19 in Brazil: vulnerable populations and responses to the pandemic” (“*Os impactos sociais da COVID-19 no Brasil: populações vulnerabilizadas e respostas à pandemia*”), and shows that Indigenous people in all

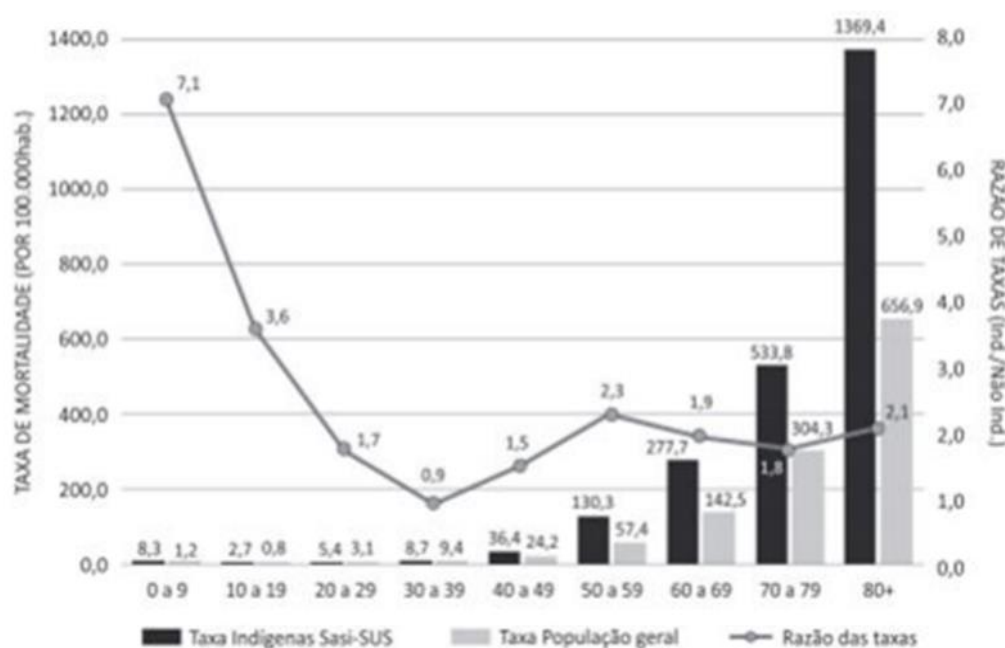
⁸⁹ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 642.

⁹⁰ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 587.

⁹¹ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 573.

age groups die proportionately more, except for the range between 30 and 39 years of age⁹²:

GRAPH I - Specific mortality rates due to acute respiratory syndrome due to Covid-19 (Srag-Covid) and age group in the general Brazilian population and indigenous people served by the Indigenous Health Care Subsystem - Brazil, 2020.



83. In an article published in the journal *The Lancet* on June 10, 2021, it was ascertained that Indigenous children and adolescents were three times more likely to die from COVID-19 than non-Indigenous people. Another study published by the Bulletin of the COVID-19 Observatory of the Oswaldo Cruz Foundation (Fiocruz) also showed that, from the age of 50, when deaths begin to concentrate, the mortality rate among Indigenous people was up to 150% higher than among non-Indigenous people⁹³.

⁹² BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 574.

⁹³ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 573.

84. The investigations carried out by the *CPI* and disclosed in its Final Report showcase the reasons for such a disparity. Documents analyzed by the Commission made it possible to identify the distribution of ineffective drugs to Indigenous people. For example, the Special Secretariat for Indigenous Health (*SESAI*) verified the provision of drugs such as Chloroquine and Azithromycin, which stated that the pills would be intended for use according to the respective descriptions contained in the package leaflet but that they could also be given to patients with COVID-19 by their personal decision together with their doctor⁹⁴. In a similar practice, it was verified that kits with Azithromycin and Ivermectin were prescribed for symptomatic cases in the villages under the Special Indigenous Sanitary District (*DSEI*)⁹⁵.
85. When measures that effectively combat the coronavirus began to be taken, such as mass vaccination, there was a complaint made by the Hutukara Yanomami Association that the staff from the Yanomami Special Indigenous Health District (*Distrito Sanitário Especial Indígena Yanomami – DSEI-Y*, in Portuguese) were diverting vaccines intended to Indigenous people for gold miners in exchange for gold⁹⁶. Furthermore, as the Report rightly pointed out, even the priority eventually given to Indigenous peoples during the national vaccination plan was partial, covering only villagers, who represent only half of the Brazilian Indigenous peoples. When, in contrast to this position, the Federal Supreme Court ruled on comprehensive vaccination, there was resistance on the part of the Federal Government⁹⁷.
86. The Report also unveiled structural measures aimed at increasing the vulnerability of Indigenous people. Among them was the constant lack of access to potable water by Indigenous communities and vetoes by President Jair Bolsonaro of law provisions that provided Indigenous peoples with universal access to potable water⁹⁸. The document demonstrated the dynamics behind the deliberate creation of obstacles to access to water in an event particularly illustrative of the anti-Indigenous policy: the information

⁹⁴ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 622.

⁹⁵ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 623.

⁹⁶ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 627 e 628.

⁹⁷ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 1284

⁹⁸ Presidential Veto Message No. 378, of July 7, 2020, vetoed provisions of Draft Bill 1,142/2020, which preceded the Law above No.14,021/2020, including the norm that provided for universal access to potable water.

provided by the Ministry of Citizenship (*Ministério da Cidadania*) to the *CPI* in response to Request No. 409 included Technical Note No. 57/2021, prepared by the General Coordination for Access to Water (*Coordenação-Geral de Acesso à Água*). The Note reported that the Cisternas Program (*Programa Cisternas*, in Portuguese), which served Indigenous lands, was interrupted in 2020 during the administration of Minister Onyx Lorenzoni.

87. Ironically, the pandemic was the reason for the decision to interrupt the Program mentioned above. Through Ordinance No. 419 of March 17, 2020, the President of *Funai* restricted entry to Indigenous lands to essential services, not including water distribution. The Report concluded that, in addition to the presidential veto of universal access to water, the interruption of this program demonstrates the ill-concealed intention of subjecting Indigenous peoples to precarious living conditions to destroy this part of the population, also mentioning that this would be a hypothesis of the crime of extermination provided for in Article. 7, paragraph 2, b, of the Rome Statute since it constitutes part of a systematic and multi-vector attack on Indigenous peoples⁹⁹.
88. Furthermore, the deliberate and widespread dismantling was also exemplified by the *CPI* from the budget data obtained by the investigations. The Final Report stated that, in response to the inquiries made by the Parliamentary Commission, the Ministry of Health reported that the total budget amount destined for Indigenous health expenditures in 2020 was BRL 59.6 million, with the opening of notable credits in the amount of BRL 29.2 million in 2021.
89. However, considering that there are approximately 900 thousand Indigenous people in Brazil, these values are highly insufficient, given that they have not reached the amount of BRL 100.00 per person since 2020. If that were not enough, the Brazilian media has already reported that *Funai* uses only 1% of the funds allocated to combating COVID

⁹⁹ ⁹⁹ Available at: <https://noticias.uol.com.br/ultimas-noticias/agencia-estado/2021/07/21/funai-executa-so-1-da-verba-anticovid.htm> - Access on 01/17/2022

among Indigenous peoples¹⁰⁰, which, according to the *CPI*, demonstrates an absolute neglectfulness¹⁰¹.

90. As early as June 2020, the United Nations Special Rapporteur on the Rights of Indigenous Peoples, José Francisco Cali Tzay, warned that the challenge of dealing with the pandemic among Indigenous peoples goes far beyond only preventing them from contracting the disease. He informed that the challenge is, above all, to prevent what potentiates it.

91. According to Tzay:

Indigenous peoples who lose their lands and livelihoods are pushed further into poverty, have higher malnutrition rates, lack access to clean water and sanitation, and are excluded from medical services, making them particularly vulnerable to the disease¹⁰².

92. Based on these and other collected data, the *CPI* Report was unequivocal in asserting that the causal link between the President's anti-indigenous prejudice and the damage native peoples suffered is clear. Furthermore, the constant aggression and the deliberate negligence exercised by the head of the Executive Branch were responsible for the extremely high death rates within one of the countries most affected by the pandemic¹⁰³. Thus, there was an explicit acknowledgment that President Jair Bolsonaro commanded an anti-Indigenous policy that deliberately exposed native peoples to lack of assistance, harassment, invasions, and violence before the pandemic, intensifying these acts of open hostility and adding disinformation after the emergence of the virus¹⁰⁴.

93. Based on the documents sent to the *CPI*, Sylvia H. Steiner, former judge of the International Criminal Court (2003-2016), prepared a report on the possible crimes against humanity contained in the facts narrated there. After analyzing the events,

¹⁰⁰ Available at: <https://noticias.uol.com.br/ultimas-noticias/agencia-estado/2021/07/21/funai-executa-so-1-da-verba-anticovid.htm> - Access on 11/17/2021.

¹⁰¹ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 633

¹⁰² Available at: <https://news.un.org/en/story/2020/05/1064322> Access on 03/20/2021.

¹⁰³ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 579 e 580.

¹⁰⁴ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 579 e 581.

Steiner concluded that the repeated government policy of deliberately forcing the prescription and consumption of medicinal drugs without any effectiveness for the prevention or treatment of COVID-19 had particular repercussions on Indigenous populations, who served as human guinea pigs for the empirical assertion of the efficacy of such drugs¹⁰⁵.

94. In this sense, the activities of the Ministry of Health staff to publicize the importance of the ineffective “early treatment kit”, instead of responding to the urgencies necessary to save dozens of lives, demonstrated not the sheer and simple ignorance of those who planned and carried out such conduct, but rather the execution of a deliberate plan to render Indigenous populations test groups for the empirical testing of medications, *“which in itself would already configure, in theory, crimes against the public health in any civilized country in the world”*¹⁰⁶.
95. Thus, the analyzes carried out by Steiner in that report led her to state that there is reasonable evidence to believe that there was, on the part of the Federal Government – in particular on the role of the President of the Republic Jair Bolsonaro and the Health Minister –, an attack directed against the Indigenous peoples, carried out through a State policy of adopting concrete measures and deliberate omissions that resulted in the proportionally higher number of contaminations and deaths among Indigenous populations than that which affected urban people.
96. In addition, the former judge indicated that there was reasonable probative evidence to believe that this intentional attack against the civilian population was widespread, insofar as it indiscriminately affected several Indigenous groups and communities, in addition to having been implemented systematically, in compliance with a deliberate, reiterated, and uniformly executed planning, through acts and omissions deliberated by the Presidency of the Republic, in the person of Jair Messias Bolsonaro. They were carried out directly by the President or by his public bodies and reflect the existence of

¹⁰⁵ STEINER, Sylvia H. “Crimes contra a humanidade”, in *Imputações penais potencialmente cabíveis aos agentes públicos e privados responsáveis por ações e omissões no combate à pandemia – conf. requerimento 826/21 para comissão de especialistas*. São Paulo, 2021, p. 226-227.

¹⁰⁶ Ibid.

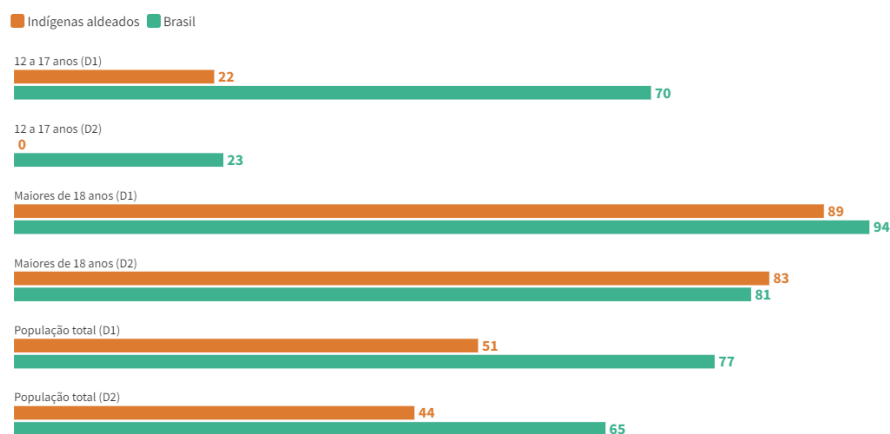
the contextual elements of crimes against humanity established in Article 7 (1) (k) of the Rome Statute of the International Criminal Court¹⁰⁷.

97. The specificities in the management of the pandemic concerning indigenous peoples and the overly severe impacts on this population can be seen, for instance, in the vaccination rate. By December 2021, when approximately 65% of Brazilians had completed the Covid-19 vaccination system, only 44% of indigenous people living in villages had received two doses of the vaccine¹⁰⁸. The graph below is representative of the difference in the speed of vaccination of the Brazilian population compared to the indigenous people living in villages that month:

Compare Covid vaccination between indigenous villagers (orange) and the general population of Brazil (green) - in % - Immunization rates are shown according to age group and total population for the 1st dose (D1) and 2nd dose (D2)

Compare a vacinação da Covid entre indígenas aldeados e a população do Brasil em geral (em %)

Índices de imunização são mostrados conforme faixa etária e população total, para a 1ª dose (D1) e 2ª dose (D2)



Fonte: Ministério da Saúde e consórcio de veículos de imprensa

98. Thus, many months after the conclusion of the *CPI*, it is not possible to state that the situation has changed. Despite the progress of vaccination coverage throughout the country, indigenous peoples were not protected in the same way as the rest of the

¹⁰⁷ STEINER, Sylvia H. "Crimes contra a humanidade", in *Imputações penais potencialmente cabíveis aos agentes públicos e privados responsáveis por ações e omissões no combate à pandemia – conf. requerimento 826/21 para comissão de especialistas*. São Paulo, 2021, p. 230.

¹⁰⁸ Available at: <https://reporterbrasil.org.br/2021/12/apos-10-meses-governo-bolsonaro-vacinou-44-por-cento-dos-indigenas-contra-covid/> - Access on 03/25/2022.

Brazilian population and continued to be subject to high levels of contamination and the loss of influential cultural and spiritual leaders.

99. The slow pace of the vaccination of indigenous peoples living in villages is even more shocking when we consider that they are part of the group defined as a priority for immunization by the Ministry of Health. However, it is worth noting that this priority was initially intended only for indigenous people living on demarcated indigenous lands, which does not cover the entire Brazilian indigenous population, representing only 57.7% of its members¹⁰⁹. Only after a decision by the Federal Supreme Court indigenous people located in an urban context or on indigenous lands whose demarcation process has not yet been finalized were included in the priority group, contrary to what had been advocated and applied by the Federal Government¹¹⁰.

100. Although the priority of indigenous people living in villages has been assured since the beginning of the national vaccination calendar, such criteria did not guarantee their fast and complete immunization.

101. In the Vale do Javari Indigenous Land, the territory with the highest reference of recently contacted peoples and isolated groups in Brazil, in February 2022, the application of the booster dose was well behind schedule, with only 22% of eligible people having received the third dose of the vaccine. In this indigenous land, the situation was even worse for those under eighteen years old. In February 2022, the vaccination of indigenous youths between 12 and 17 had not yet been started, even though the National Health Surveillance Agency (ANVISA) had authorized the beginning of immunization for this age group in June 2021¹¹¹. In that month, neither

¹⁰⁹ According to the 2010 census of the Brazilian Institute of Geography and Statistics (IBGE), of the 896.9 thousand indigenous people living in Brazil, 57.7% were on indigenous lands, and 42.3% were outside them. Available at: <https://www.camara.leg.br/noticias/748432-debatedores-pedem-prioridade-para-a-vacinacao-de-indigenas-que-vivem-em-areas-urbanas/> - Access on 03/28/2022.

¹¹⁰ Since the beginning of the Covid-19 pandemic, the government of Jair Bolsonaro has denied differentiated assistance to indigenous communities, which the Supreme Court has partly challenged since the Claim of Noncompliance with a Fundamental Precept (*Arguição de Descumprimento de Preceito Fundamental*, in Portuguese) No. 709 filed by the APIB as mentioned before.

¹¹¹ Available at: <https://reporterbrasil.org.br/2022/02/governo-demora-8-meses-para-comecar-vacinacao-de-adolescentes-em-terra-indigena-na-amazonia/> - Access on 03/28/2022.

had children under the age of 12 been vaccinated, even though the agency's authorization occurred in December 2021¹¹².

102. The gap between indigenous and national vaccination is even more evident when considering the immunization of young people, whose contingent represents approximately 50% of the indigenous village population. As mentioned, ANVISA authorized the beginning of the immunization process for the 12 to 17-year-old age group as early as June 2021. However, the Ministry of Health only approved the specific vaccination for indigenous youth in October 2022, when the vaccination campaign was initiated¹¹³. By December 2021, of the 34 indigenous health districts, only 15 had already applied doses to indigenous adolescents, which helps explain the considerable discrepancy in data: by November 27, while 70% of non-indigenous adolescents had already received the initial dose, only 22% of indigenous adolescents had started the immunization process¹¹⁴.

103. In São Gabriel da Cachoeira, Amazonas, a city popularly known as the "most indigenous city in Brazil", in December 2021, young indigenous people of the Baré, Koripako, Tariano, Tukano, and Yanomami peoples, aged 12 to 17 years old, had also not been vaccinated¹¹⁵. In January 2022, the municipality suffered from a surge in cases of Covid-19 due to the Omicron variant, reaching 1,081 confirmed cases, up 2,988% from the previous month. The situation was extremely worrying because, in that month, only 54.3% of the city's population was fully vaccinated, and the vaccination of the 5-11 age group had not even been started¹¹⁶.

¹¹² Available at: <https://www.gov.br/anvisa/pt-br/assuntos/noticias-anvisa/2021/anvisa-aprova-vacina-da-pfizer-contracovid-para-criancas-de-5-a-11-anos> - Access on 03/28/2022.

¹¹³ Available at: https://saudeindigena1.websiteseuro.com/coronavirus/pdf/Informe%20Epidemiol%C3%B3gico%20SE%2047_2021_SESA_I_COVID-19.pdf - Access on 03/28/2022,

¹¹⁴ Available at: <https://www1.folha.uol.com.br/equlibrioesaude/2021/12/governo-bolsonaro-vacinou-44-dos-indigenas-contracovid-19-apos-10-meses.shtml?origin=folha> - Access on 03/28/2022.

¹¹⁵ Available at: <https://amazoniareal.com.br/com-atraso-de-seis-meses-sesai-vacina-adolescentes-aldeados-de-sao-gabriel/> - Access on 03/28/2022.

¹¹⁶ Available at: <https://www.socioambiental.org/pt-br/noticias-socioambientais/com-nova-variante-casos-de-covid-19-disparam-em-sao-gabriel-da-cachoeira-am> - Access on 03/28/2022.

104. The fact that the urgency for vaccination in this city has been widely reported since - at least - April 2021¹¹⁷ shows that the high level of contamination is not a mere incident or just a consequence of the spread of a new variant but also an act of deliberate negligence on the part of the government of Jair Bolsonaro. Referred to as the "capital" of 23 indigenous peoples of the region, São Gabriel da Cachoeira was the object of a letter sent by the Federation of Indigenous Organizations of Rio Negro to the Amazonas government requesting urgency in the vaccination of the city's indigenous population as early as the first half of 2021. Of the 86 deaths by Covid-19 registered in the municipality, 79 were of indigenous people. In comparison, the statistic shows that the mortality rate for indigenous people in that urban area was 717 per 100,000 inhabitants, while the rate for non-indigenous people was 87 per 100,000 inhabitants. At the national level, the mortality rate was 40 per 100,000 inhabitants¹¹⁸.

105. Therefore, it is clear that there is a wide discrepancy between the management of the pandemic for those whom Jair Bolsonaro considers being true Brazilians and the protection given to the indigenous peoples. Also, it is crystal clear the absolute difference in the impacts generated by the virus on these people.

B. Violations of the Black population's rights in the COVID-19 pandemic

106. Until January 2022, the COVID-19 pandemic caused by the Sars-CoV-2 virus resulted in at least 621,000 deaths in Brazil. However, the number of deaths and the impacts caused by the virus are not evenly distributed among the Brazilian population. Two years after the beginning of the health emergency, studies show that social markers such as race, gender, territory, and economic situation directly impact infection, death, and vaccination rates¹¹⁹.

¹¹⁷ Available at: <https://www1.folha.uol.com.br/equlibrioesaude/2021/04/cidade-mais-indigena-do-pais-exige-vacinacao-em-massa-contra-covid.shtml> – Access on 03/28/2022.

¹¹⁸ Available at: <https://www1.folha.uol.com.br/equlibrioesaude/2021/04/cidade-mais-indigena-do-pais-exige-vacinacao-em-massa-contra-covid.shtml> – Access on 03/28/2022.

¹¹⁹ Associação Brasileira de Saúde Coletiva. *População Negra e COVID-19 / Associação Brasileira de Saúde Coletiva (ABRASCO); Organização Grupo Temático Racismo e Saúde da ABRASCO. – Rio de Janeiro, RJ: ABRASCO, 2021. Ver em ORELLANA, Jesem Douglas Yamall et al. Excesso de mortes durante a pandemia de COVID-19: subnotificação e desigualdades regionais no Brasil. Cadernos de Saúde Pública, v. 37, p. e00259120, 2021.*

107. In this sense, the Final Report of the *CPI* regarding the COVID-19 pandemic stated that the health emergency generated by the coronavirus constitutes a syndemic, given that the profile of people who die and become infected is not random, varying according to socioeconomic conditions, which make some demographic segments more vulnerable than others. Furthermore, the document recognized that the disease disproportionately affected disadvantaged communities and marginalized ethnic or racial groups, such as Indigenous and Black people¹²⁰.
108. According to research carried out by the Brazilian Association of Collective Health (*Associação Brasileira de Saúde Coletiva – ABRASCO*), with the support of the United Nations Population Fund (UNFPA), the structural problems of Brazilian society, such as racism, exclusion, and lack of access to essential services, resulting in the Black population showing the worst rates in terms of the number of vaccinated and infected, and, consequently, in the total number of deaths due to the pandemic¹²¹.
109. According to Batista, Proença and Silva, the excess mortality of the Black population is the result of a series of omissions and disarticulations on the part of public authorities. However, even the indicative of the high lethality rate was not made accessible voluntarily by the Brazilian State, whose president is Jair Messias Bolsonaro. In a common concealment strategy inherent to structural racism, at the beginning of the pandemic, the race/ethnicity issue was not considered when analyzing the epidemiological situation of COVID-19 in Brazil. The inclusion of this data in the analysis only took place after the efforts of the Racism and Health Advocacy Group of *ABRASCO*, the Black Coalition for Rights, and the Brazilian Society of Family and Community Physicians (*Sociedade Brasileira de Médicos de Família e Comunidade*). Even after the instruction to carry out the inclusions, due to the lack of monitoring by

¹²⁰ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 646 and 647.

¹²¹ Available at: https://www.abrasco.org.br/site/wp-content/uploads/2021/10/E-book_saude_pop_negra_covid_19_VF.pdf - Access on 01/15/2022.

public health agencies, this information has not been correctly filled out or analyzed in epidemiological bulletins¹²².

110. In a report produced by the Black Coalition for Rights and sent to the Parliamentary Commission of Inquiry¹²³, data demonstrating the impacts that the negligent and criminal handling of the pandemic caused on the Black population was collected. According to the association, in addition to the thousands of lives lost directly as a result of the virus, the Black population was the most impacted by the social and economic consequences of the pandemic, which included increased hunger, food insecurity, rising unemployment rates, and precarious jobs, in addition to the occurrence – even in times of social distancing – of massacres against young Black people. All of this collaborates with and constitutes the practice of necro politics against Brazilian Black people.

111. The Dossier points out that, when there was an obligation to collect data with ethnic and racial markers regarding the pandemic, surveys carried out from the epidemiological bulletins of the Ministry of Health in May 2020 reported that, among Blacks, the lethality rate was one death for every three people hospitalized for the acute respiratory syndrome. Among the Whites, that index indicated one end for every 4.4 hospitalizations¹²⁴. At the same time, a study conducted by PUC-Rio pointed out that while 55% of infected Blacks died from COVID, the proportion among whites was 38%¹²⁵.

112. The scenario becomes even more severe by including the social marker of gender. According to a study published by the Solidary Research Network (*Rede de Pesquisa Solidária*, in Portuguese) in September 2021, Black women die more from

¹²² BATISTA, Luís Eduardo; PROENÇA, Adriana; SILVA, Alexandre da. Covid-19 e a população negra. *Interface-Comunicação, Saúde, Educação*, v. 25, p. e210470, 2021.

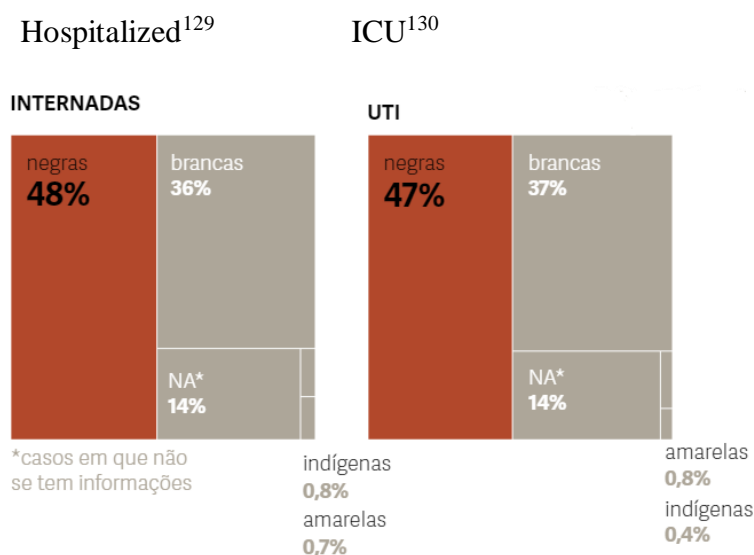
¹²³ Available at: https://coalizaonegrapordireitos.org.br/wp-content/uploads/2021/10/DossieGenocidioNegro_CPI_CoalizacaoNegra.pdf - Access on 01/15/2022.

¹²⁴ Available at: <https://apublica.org/2020/05/em-duas-semanas-numero-de-negros-mortos-por-coronavirus-e-cinco-vezes-maior-no-brasil/> - Access on 01/15/2022.

¹²⁵ Available at: <https://www.ctc.puc-rio.br/diferencas-sociais-confirmam-que-pretos-e-pardos-morrem-mais-de-covid-19-do-que-brancos-segundo-nt11-do-nois/#:~:text=Apesar%20da%20proximidade%20dos%20n%C3%BAmeros,esse%20valor%20ficou%20em%2038%25.&text=Entre%20os%20cerca%20de%2030,%2C%20aproximadamente%2055%25%20tiveram%20alta> - Access on 01/15/2022.

COVID-19 than all other social groups (i.e., white women, white men, and Black men) at the bottom of the labor market, regardless of occupation¹²⁶. The first Brazilian victim of the pandemic was a Black female domestic service worker¹²⁷.

113. In March 2022, a survey conducted by the Brazilian Obstetric Observatory concluded that this disparity also persisted among pregnant women. The publication of data on maternal mortality due to Covid-19 showed that since the pandemic, 1,095 black pregnant and postpartum women have died from the disease, representing 54% of the deaths in this group. The study also showed that black pregnant and postpartum women were also the most contaminated by the virus (56%), compared to white (42%), indigenous (0.9%), and yellow (0.8%) women. In 2021 alone, 5941 black pregnant and postpartum women were infected¹²⁸. On the levels of hospitalization and the need for intensive care, the same research showed that:



114. This, however, was not an unpredictable scenario for the government. In July 2020, Oxford University¹³¹ had already conducted a study showing that the mortality

¹²⁶ Available at: <https://redepesquisasolidaria.org/wp-content/uploads/2021/09/boletimpps-34-20set2021-1.pdf> - Access on 01/15/2022.

¹²⁷ Available at: <https://noticias.uol.com.br/saude/ultimas-noticias/redacao/2020/03/19/primeira-vitima-do-rj-era-domestica-e-pegou-coronavirus-da-patroa.htm> - Access on 01/15/2022.

¹²⁸ Available at: <https://www.generonumero.media/gestantes-negras-covid/> - Access on 04/12/2022.

¹²⁹ 48% black; 36% white; 0,8% indigenous; 0,7% yellow; 14% no information available.

¹³⁰ 47% black; 37% white; 0,4% indigenous; 0,8% yellow; 14% no information available.

¹³¹ Available at: <https://academic.oup.com/cid/article/72/11/2068/5877027?login=false> - Access on 04/12/2022.

of black women during pregnancy or in the postpartum period was almost twice compared to that of white women. Furthermore, the research also showed that black women were hospitalized in worse conditions and had higher rates of intensive care unit admission, mechanical ventilation, and death, even at that time. Note that the research was published only three months into the pandemic, and, even with the knowledge of these conditions, absolutely nothing was done by the government of Jair Bolsonaro.

115. Considering a broader scenario, a report published by the Organization for Economic Cooperation and Development (OECD) in 2021¹³² pointed out that, in Brazil, the risk of mortality from COVID-19 was 1.5 times higher among the Black population, despite the higher incidence rate of the virus among the white population. According to the study, Black and *Pardo* (mixed-race) Brazilians admitted to hospitals had between 1.3 times and 1.5 times more significant mortality risks than white Brazilians¹³³.

116. The start of vaccination could not alleviate inequalities in access to healthcare. For example, in April 2021, data collected by the investigative journalism organization *Agência Pública* indicated that two white people had been vaccinated for every Black person who received a dose of the vaccine. The same survey revealed that Black people died more from COVID-19 and were more infected by the disease than white people¹³⁴. Among the reasons for such a discrepancy, the criteria defined for the vaccination priority groups and order were indicated, disregarding racial issues and even the current contamination levels. Therefore, according to the Black Coalition for Rights, vaccination in Brazil occurred disproportionately between the most vulnerable groups and the group that the Brazilian State chose to prioritize in terms of immunization.

117. In the words of the Coalition, it consisted of a policy that, by excluding the racial element, corroborated structural racism and the continuity of deaths from COVID-19,

¹³² Available at: https://www.oecd-ilibrary.org/social-issues-migration-health/health-at-a-glance-2021_919b5f62-en - Access on 01/16/2022.

¹³³ Available at: <https://www.cnnbrasil.com.br/saude/negros-tem-15-mais-chance-de-morrer-por-covid-19-no-brasil-diz-ocde/> - Access on 01/16/2022.

¹³⁴ Available at: <https://apublica.org/2021/03/brasil-registra-duas-vezes-mais-pessoas-brancas-vacinadas-que-negras/> - Access on 01/16/2022.

which are concentrated in the Black population. As a result of this scenario, it was pointed out that only 1.7 million Black people had received the vaccine in a country with a majority Black population, whereas 3.2 million white people had already been immunized¹³⁵.

118. The Final Report of the Pandemic *CPI* acknowledged this reality. The document stated that the Federal Government's National Immunization Program disregarded the most acute effects of the pandemic on the Black population. In Brazil's National Immunization Program, priorities were defined by age criteria, presence of comorbidities, and certain professions. Thus, there was no adequate consideration of demographic disparities between Black and white people, despite the more accentuated risks exposed to the former¹³⁶.

119. Furthermore, structural racism is so present that not even the data on the vaccination progress among the black population is reliable. If the specificities to which the black population is subjected were ignored when designing the vaccination program, they were also not taken into account to evaluate the progress of the immunization process. Until at least February 2022, researchers were still denouncing the absence of an effective monitoring method to assess the proportion of vaccinated black men and women¹³⁷. Researchers and activists have widely reported that this is a deliberate omission. As is well known, without a correct evaluation of the data, it is not possible to carry out evidence-based public policies and effective accountability for intentionally constructed insufficiencies.

120. The gross human rights violations suffered by the Black Brazilian population precede the COVID-19 pandemic, given the structural racism that exists in the country. However, the health emergency accentuated such previous violations – as will be demonstrated below – and, in a logical and cruel correlation, it can be said that such past situations of structural disadvantage also accentuated the impacts caused by the

¹³⁵ Available at: https://coalizaonegrapordireitos.org.br/wp-content/uploads/2021/10/DossieGenocidioNegro_CPI_CoalizacaoNegra.pdf - Access on 01/15/2022.

¹³⁶ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 657.

¹³⁷ Available at: <https://drauzioavarella.uol.com.br/coronavirus/avanco-da-vacinacao-entre-os-negros-e-uma-incognita-no-brasil/> - Access on 04/14/2022.

virus. This reality, accompanied by the racist handling of the pandemic, which ignored the specific demands of this population and abandoned it on several fronts, resulted in several preventable deaths and losses that will last for a long time, given the notorious negligence related not only to the right to health but to all other social rights broadly guaranteed in International Human Rights Law, especially the right to work and education¹³⁸.

121. Left unassisted by the Federal Government, the Black population had to expose itself to contamination by the virus. While technical and scientific guidelines called for quarantine and social distancing as a way of preventing the disease, high unemployment rates and the lack of adequate financial assistance from the government forced Black men and women to subject themselves to precarious jobs, which included the use of public transport that is often overcrowded. However, it should be noted that even the existence of this type of employment was scarce during the most severe periods of the pandemic.
122. Even the belated Emergency Aid Package/Stimulus Check¹³⁹, established as a measure to contain the social and economic impacts of the pandemic, had unequal access. By privileging access through digital means and using outdated government records, many people struggled to gain access to the benefit. In June 2020, a study was published indicating that most of those who requested aid were Black people. However, the rate of granting the use was higher among non-Blacks. Only 74% of requests made by Black people were given, while among non-Blacks, this rate was 81%¹⁴⁰.
123. The National Household Sample Survey (*Pesquisa Nacional por Amostra de Domicílios Contínua – PNAD*) carried out by the Brazilian Institute of Geography and Statistics (*Instituto Brasileiro de Geografia e Estatística – IBGE*) presented elucidating

¹³⁸ Among other international treaties, the rights to work and education are guaranteed by the International Covenant on Economic, Social and Cultural Rights adopted by the XXI Session of the United Nations General Assembly on December 19, 1966, and incorporated by Brazil through the Decree No. 591 of July 6, 1992.

¹³⁹ The Emergency Aid Package was a Brazilian federal government program that granted monthly payments to the most vulnerable people during the COVID-19 pandemic. However, studies have shown the insufficiency of the amount paid by the government. Among others, see <https://diap.org.br/index.php/noticias/noticias/90382-estudo-do-dieese-mostra-insuficiencia-do-novo-auxilio-emergencial> - Access on 01/18/2022.

¹⁴⁰ Available at: <https://exame.com/brasil/neros-pediram-mais-auxilio-emergencial-mas-brancos-tiveram-maior-sucesso/> - Access on 01/15/2022.

data on the discrepancy between Blacks and whites regarding their material living conditions during the COVID-19 pandemic¹⁴¹. According to the study, between the first and second half of 2020, 8.9 million men and women lost their jobs or stopped looking for a job because they believed it would not be possible to find a place in the job market. Of this total, 6.4 million were Black, and 2.5 million were non-Black workers¹⁴².

124. This reality of increasing inequalities and precarious work and wages generated a severe hunger scenario. The Dossier prepared by the Black Coalition for Rights indicated research carried out by the Brazilian Research Network on Food and Nutrition Sovereignty and Security (*Rede Brasileira de Pesquisa em Soberania e Segurança Alimentar e Nutricional – Rede PENSSAN*) in 2020, when the Emergency Aid ended, which demonstrated the increase in food insecurity in the pandemic context, with indicators of race, territory, and gender. The study observed that Brazil's Northeast Region (59.8% Blacks and *Pardos*) and North Region (67.2% Blacks and *Pardos*) concentrate the highest percentages of job loss, reduction of family income, cuts in expenses, and indebtedness. Furthermore, the data indicate that, once again, Black women were hit especially hard: the lowest conditions of Food Security were identified in families headed by Black women¹⁴³.

125. The pandemic has also disproportionately affected Black students. The research entitled *Non-in-person Education from the Perspective of Students and Their Families (Educação não Presencial na Perspectiva dos Estudantes e suas Famílias, in Portuguese)*¹⁴⁴ demonstrated that the poorest Black students suffered more from the negative impacts of the COVID-19 pandemic in the country, given that, in the period when schools were closed, this was the group that took the longest to have access to remote activities, and that was unable to increase its access to computers with internet access. Regarding the risk of dropping out of school, the study indicated that half of the

¹⁴¹ Available at: http://repositorio.ipea.gov.br/bitstream/11058/10303/1/NT_46_Diest_TrabalhoPopula%C3%A7%C3%A3oNegraePandemia.pdf - Access on 01/15/2022.

¹⁴² Available at: <https://www.dieese.org.br/boletimespecial/2021/conscienciaNegra.html> - Access on 01/15/2022.

¹⁴³ Available at: http://olheparaafome.com.br/VIGISAN_Inseguranca_alimentar.pdf - Access on 01/15/2022.

¹⁴⁴ Available at: <https://www.itausocial.org.br/wp-content/uploads/2021/06/Educacao-nao-presencial-na-perspectiva-dos-estudantes-e-suas-familias-Onda-6.pdf> - Access on 01/15/2022.

Black students who earn an income of up to two minimum wages were at risk of falling out of school, while among whites with a payment of more than two minimum wages this rate was at 31%¹⁴⁵.

126. If all the data presented above were not enough, the Black population also suffered attacks on their safety. Despite the need for social distancing and the existence of a ruling by the Federal Supreme Court suspending police operations in favelas during the COVID-19 pandemic, issued within the scope of the Claim of Non-compliance with a Fundamental Precept No. 635, the Public Security Yearbook (*Anuário de Segurança Pública*,) published by the Brazilian Public Security Forum (*Fórum Brasileiro de Segurança Pública*,) reported that police lethality increased in 18 of the 27 units of the Brazilian Federation in 2020. The victims were predominantly Black people, corresponding to 78.9% of the 6,416 people killed by police in 2020. Samira Bueno, executive director of the Forum, attributed the increase in deaths to an escalation of violence in Brazilian society and the support provided by President Jair Bolsonaro to violent police actions, which would act as a kind of stimulus for these actions¹⁴⁶.

127. Among the heinous episodes of police lethality that have occurred since the pandemic, the Jacarezinho and the Salgueiro massacre, both in Rio de Janeiro, clearly stand out. In the first one, 27 people were murdered, most of whom were young Black people living in the community¹⁴⁷. In the second massacre, eight people were killed. Their family members removed their bodies from a mangrove swamp¹⁴⁸. The Black Coalition for Rights had already pointed out the Jacarezinho massacre as one of the examples of the increase in violence against the Black population in the context of the coronavirus pandemic, and the Salgueiro massacre seems to confirm the basis of the

¹⁴⁵ Available at: <https://agenciabrasil.ebc.com.br/educacao/noticia/2021-11/pesquisa-mostra-que-estudantes-negros-foram-mais-afetados-na-pandemia> - Access on 01/15/2022.

¹⁴⁶ Available at: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2021/07/15/letalidade-policial-e-a-mais-alta-da-historia-negros-sao-78-dos-mortos.htm> - Access on 01/15/2022.

¹⁴⁷ News report from *Portal G1* “Jacarezinho: saiba quem são, onde morreram e o que dizem as famílias e polícia sobre os 27 mortos”. Available at: <https://g1.globo.com/rj/rio-de-janeiro/noticia/2021/05/14/jacarezinho-saiba-quem-sao-onde-morreram-e-o-que-dizem-familias-epolicia-sobre-os-27-mortos.ghtml>

¹⁴⁸ Available at: <https://www1.folha.uol.com.br/cotidiano/2022/01/mortes-em-chacinas-crescem-50-em-um-ano-na-regiao-metropolitana-do-rio.shtml> - Access on 01/15/2022.

complaint. The Federal Supreme Court ruling banning police operations in communities during the pandemic has been systematically flouted.

128. IACHR performed the same assessment. On December 13, 2021, it published a press release informing that it condemned the police raid carried out in the Salgueiro shantytown (*favela*) in the city of São Gonçalo (state of Rio de Janeiro)¹⁴⁹. On this occasion, the Commission reiterated its concern with the persistence of institutional violence in Brazil, urging the country to investigate the facts, punish those responsibly, and provide full reparation to the victims and their families thoroughly and diligently.

129. Furthermore, the IACHR stated that it was aware of the aggravation of violent police operations in the pandemic context in Brazil, drawing attention to the fact that these were more frequently recorded in geographic areas with a high concentration of Black populations.

130. On May 7, 2021, the Commission condemned the police raid in Favela do Jacarezinho¹⁵⁰⁻¹⁵¹. Therefore, the IACHR stated that it reiterated to the Brazilian State its duty to ensure compliance with international standards on the use of force based on the principles of legality, proportionality, and necessity. Furthermore, it reinforced the urgency of complying with the recommendation to punish institutional violence acts that are linked to racial discrimination.

¹⁴⁹ Available at: <https://www.oas.org/pt/CIDH/jsForm/?File=/pt/cidh/prensa/notas/2021/339.asp> - Access on 01/18/2022.

¹⁵⁰ Available at: <https://www.oas.org/pt/cidh/jsForm/?File=/pt/cidh/prensa/notas/2021/117.asp> - Access on 01/18/2022.

¹⁵¹ The Jacarezinho massacre also raised a request to adopt a provisional measure by the Inter-American Court of Human Rights. The proposal was made within the scope of Monitoring Compliance with Judgment in the case of *Favela Nova Brasília v. Brazil*. In this ruling, the country was held accountable for violating the judicial safeguards of independence and impartiality of investigations, due diligence and reasonable time, the right to judicial protection, and the right to personal integrity regarding the inquiry of two raids by the Civil Police carried out in the Nova Brasília favela, in the city of Rio de Janeiro, in 1994 and 1995. Based on the provisions of Article 63 of the American Convention and Article 27 of the Rules of Procedure of the IACHR, the representatives of the victims requested, on May 10, 2021, the adoption of new provisional measures in favor of the family members of the 27 victims murdered during the police operation that took place in the Jacarezinho favela. The request demanded intervention to prevent irreparable damage to their rights of access to justice and judicial safeguards as a result of the fact that the investigations into the incident were being carried out by the same police force involved in the facts, in breach of the provisions in the sentence of the Favela Nova Brasília Case, including the violation of the guarantee of non-repetition established in the Court's decision. The provisional measure was not granted because the Court understood that the request was based on specific facts that occurred in the Favela do Jacarezinho, which were, therefore, different events from those analyzed in the Favela Nova Brasília Case, and, thus, the object of the case under analysis was other. Available at: https://www.corteidh.or.cr/docs/supervisiones/favelanova_21_06_21_por.pdf - Access on 01/18/2022.

131. The scenario above of violations led the Black Coalition for Rights to assert that the COVID-19 pandemic, or rather, the handling of the pandemic, can be considered this century's most effective instrument of the genocide of the Black and poor population in Brazil. Along the same vein, the Final Report of the COVID-19 *CPI* stressed that the Black Brazilian population was the one that died the most as a result of the mismanagement of the pandemic, concluding that the government's indifference, disguised in the form of neutrality and isonomy, once again materialized the harms caused by structural racism¹⁵².

132. Five United Nations Special Rapporteurs have made similar assessments of the events herein narrated. As they have pointed out:

We are deeply concerned that Afro-Brazilians have historically faced high levels of systemic racial discrimination, which has been recently exacerbated by the COVID-19 pandemic¹⁵³.

C. Violations of health professionals' rights in the COVID-19 pandemic

133. Health workers are at extreme risk in Brazil. The ongoing pandemic is unprecedented in our recent history and would pose a considerable challenge for all those on the front lines of the fight against COVID-19. However, in Brazil, the scenario is worsened by i) lack of coordination between the actions of the federal government and local governments (state and municipal governments); ii) the adoption of measures to deliberately spread the pandemic.

134. The way the Brazilian State acts about the COVID-19 pandemic has intensified the risks to health workers' lives, health, physical, and mental integrity, whether by act or omission.

¹⁵² BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 658.

¹⁵³ Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26986> – Access on 04/22/2022.

135. Indeed, since the COVID-19 pandemic was declared a public health emergency of national importance by Brazil's Ministry of Health on February 3, 2020¹⁵⁴, the lack of coordination between the actions of the federal government and local governments (state and municipal), as well as the adoption of measures to spread the pandemic have generated multiple violations of human and fundamental rights of Brazilians.
136. As has been proven throughout this indictment, on the one hand, the federal government, under orders from President Jair Bolsonaro, abdicated its role of coordinating health policies – including policies for the acquisition of inputs, vaccines, medication, and equipment, as well as procedures for the establishment of clinical and immunization guidelines and protocols – thus creating divergent and unequal responses on the part of sub-national bodies. This lack of coordination led to a shortage of supplies, oxygen, safety equipment, medication, and vaccines. Health professionals immediately felt the effects of this policy.
137. On the other hand, the federal government and subnational bodies have repeatedly disseminated contradictory and false information in disagreement with scientific recommendations for dealing with the COVID-19 pandemic. Public campaigns against social distancing and the use of masks were promoted, as well as statements denying vaccine safety; in addition to the indiscriminate production, distribution, and recommendation of medication such as chloroquine, hydroxychloroquine, and ivermectin (commonly called the “COVID kit”) that are known to be ineffective against COVID-19, whose consumption causes harmful effects on the population.
138. A detailed study conducted by the Center for Studies and Research on Health Law (*Centro de Pesquisas e Estudos de Direito Sanitário – CEPEDISA*) and Conectas Human Rights indicates systematicity and intentionality in the acts of the Brazilian State to create health insecurity and spread the pandemic:

At a federal level, in addition to the absence of a focus on rights, which has already been confirmed, our research has revealed the existence of

¹⁵⁴ Ordinance No. 188 of February 3, 2020, published in the Federal Official Gazette (*Diário Oficial da União*, in Portuguese): <https://www.in.gov.br/web/dou/-/portaria-n-188-de-3-de-fevereiro-de-2020-241408388>

an institutional strategy that attempts to spread the virus, promoted by the Brazilian government and spearheaded by the Presidency of the Republic.

[...]

As a result of the strategy that, according to the Federal Court of Accounts, represents the “political choice made by the heads of Government of prioritizing economic protection”, Brazil surpassed the figure of 200 thousand deaths in January 2021, many of which would've been preventable had there been a strategy to contain the disease. This constitutes an unprecedented violation of the right to life and the right to health for Brazilians without accountability for those in charge, even though institutions such as the Federal Supreme Court and the Federal Court of Accounts have pointed out, on numerous occasions, the lack of compliance with Brazilian legal order in the willful and conscious actions and omissions of federal officers¹⁵⁵.

139. Likewise, Amnesty International Report 2020/2021 recognizes the role of the Brazilian State in the spread of the COVID-19 pandemic – in a more pronounced and dire way:

Brazil was an epicenter of the pandemic, with more than 7 million cases of infection. Although dealing with the COVID-19 pandemic was a challenge worldwide, the outbreak in Brazil was exacerbated by ongoing tensions between the federal and state authorities, the absence of a clear plan of action based on the best available scientific information, and the lack of transparency in public policies, among other failings¹⁵⁶.

140. On March 16, 2021, the Inter-American Commission and the Special Rapporteurship on Economic, Social, Cultural and Environmental Rights

¹⁵⁵ CEPEDISA – Centro de Pesquisas e Estudos de Direito Sanitário e Conectas Direitos Humanos, *Boletim Direitos nas Pandemia* nº 10, 20/01/2021, p. 6-7, Available at: <https://www.conectas.org/wp-content/uploads/2021/01/Boletim-Direitos-na-Pandemia-ed-10.pdf> and <https://cepedisa.org.br/wp-content/uploads/2021/08/LexAtlas-C19-Brazil-The-Timeline-of-the-Federal-Governments-Strategy-to-spread-Covid-19.pdf>

¹⁵⁶ Anistia Internacional, *O Estado dos Direitos Humanos no Mundo, Informe 2020/2021*, p. 65. Available at: <https://www.amnesty.org/download/Documents/POL1032022021BRAZILIAN%20PORTUGUESE.PDF>

(REDESCA) expressed, in a press release, their concern with the vertiginous increase in cases and deaths from COVID-19 in Brazil. According to the press release:

Finally, the Inter-American Commission and its Special Rapporteurship urge the State of Brazil to brace the measures it has implemented to protect the rights to life, physical integrity, and health of affected individuals. In particular, the State should adopt broader public health measures, provide adequate medical supplies, materials, and services to ensure appropriate care for anyone requiring treatment for COVID-19, and protect the labor rights and the biosecurity of healthcare workers.

The Commission and its Special Rapporteurship further call for the adoption of urgent, decisive measures to prevent the spread of the virus and contain the pandemic, based on the best available scientific evidence and in keeping with the recommendations of specialist international institutions. They also call for campaigns to guide people to scientifically proven risk-mitigation measures, efforts to improve transparency, and full access to public information and actions to contain the pandemic¹⁵⁷.

141. The months of January, February, March, and April 2021 were, so far, the worst months of the COVID-19 pandemic in the country. **The health system had collapsed.**

142. In January 2021, the health system in the state of Amazonas collapsed. At least 51 people died without oxygen due to criminal omissions by the Brazilian State, whether from the federal or local governments. The problem of lack of supplies soon spread: more than 47% of Brazilian municipalities were at risk of running out of oxygen¹⁵⁸, which, indeed, occurred in hospitals in the states of Goiás and Minas Gerais.

¹⁵⁷ IACHR and Redesca, Press Release of March 16, 2021, “IACHR and Its Special Rapporteurship on Economic, Social, Cultural, and Environmental Rights Concerned about the Serious Public Health Situation Regarding COVID-19 in Brazil”. Available at https://www.oas.org/en/IACHR/jsForm/?File=en/iachr/media_center/PReleases/2021/061.asp

¹⁵⁸ Data from the National Council of Municipal Health Secretaries (*Conselho Nacional de Secretarias Municipais de Saúde – CONASEMS*, in Portuguese). Available at: <https://www.conasems.org.br/o-globo-levantamento-alerta-para-escassez-de-oxigenio-em-1-105-cidades-do-brasil/>

143. Unfortunately, the absence of a coordinated response and the deliberate policy of spreading the virus achieved results. In March 2021, ICU beds across the whole country were saturated. As a result, thousands of people were left untreated. A survey carried out by the newspaper *O Globo* based on official data estimates that at least 28,000 people died between January and March 2021 in Brazil waiting for a bed to be treated for COVID-19¹⁵⁹.
144. In addition to oxygen and ICU beds, other essential supplies were lacking, such as drugs used to sedate intubated people¹⁶⁰. Called “intubation kit”, the drugs were not adequately distributed to hospitals by the Brazilian State, causing people to wake up intubated and tied to their beds¹⁶¹ by healthcare professionals.
145. Medical associations, led by *ABRASCO*, signed the manifesto “We cannot wait: we need to breathe! Intubation without sedation is torture (*“Não podemos esperar: precisamos respirar! Intubação sem sedação é tortura”*)”, on April 20, 2021, denouncing the lack of medication and indicating that intubation – or its maintenance – without good sedatives is a practice analogous to torture¹⁶².
146. The lack of coordination between the actions of the federal government and local governments and the adoption of measures to spread the pandemic by the Brazilian State has taken health workers to the limit: to save lives, they had to adopt practices equivalent to torture. The physical and mental damage to patients and health workers is already immeasurable. The violations reported above affect all Brazilians, particularly those in situations of vulnerability, and represent a global risk to public health.

¹⁵⁹ Newspaper *O Globo*, edition of March 28, 2021. Complete survey available at: <https://oglobo.globo.com/sociedade/em-2021-38-dos-mortos-por-covid-em-hospitais-nao-chegaram-uti-1-24944189>

¹⁶⁰ Data from the National Council of Municipal Health Secretaries (*Conselho Nacional de Secretarias Municipais de Saúde – CONASEMS*, in Portuguese). Available at: <https://www.conasems.org.br/jornal-nacional-conasems-alerta-para-o-risco-de-desabastecimento-dos-remedios-usados-para-intubacao/>

¹⁶¹ Called physical restraint, connecting patients to beds has been more common due to a lack of medications for intubation. Available at: <https://www1.folha.uol.com.br/equilibrioesaude/2021/04/nas-utis-de-covid-pratica-de-contencao-se-espalha-e-pacientes-intubados-sao-amarrados-as-camas.shtml>

¹⁶² The manifesto states: “The drugs needed for the sedation of intubated patients have run out in more than 600 municipalities in the country, and oxygen supplies are dwindling every day. There are intubated patients receiving less effective sedative drugs and being constrained to beds because of the agitation resulting from the lack of oxygen in their brains and bodies and the enormous discomfort caused by the respirator tube in their airways”. The entirety of the manifesto can be read (in Portuguese) at: <https://www.abrasco.org.br/site/noticias/posicionamentos-oficiais-abrasco/nota-intubacao-sedacao-e-tortura/58310/>

147. In this context, male and female health personnel, essential workers who work on the front line of the battle against COVID-19, are placed at additional, avoidable, and intentional risk by the acts of the Brazilian State, in violation of their rights to life, to physical and mental integrity, health, and dignity at work.
148. In summary, President Jair Bolsonaro, by stimulating the lack of coordination between federal agencies and local governments (state and municipal) and adopting measures to spread the pandemic, has aggravated it to one of the worst global scenarios, caused avoidable illnesses and deaths of health workers, as well as intense physical and mental suffering due to exhausting working hours and without minimum safety conditions, in addition to promoting harassment and attacks on health workers.
149. Furthermore, measures to protect health workers were not adopted in the normative scope of the range of concrete public policies¹⁶³. Information produced by Public Services International and brought to the attention of the International Labour Organization indicates a series of norms (among laws, decrees, and ordinances) that not only did not reflect the sanitary measures recommended by the World Health Organization but also weakened the protection of male and female health workers¹⁶⁴.
150. In April 2019, the Brazilian State extinguished¹⁶⁵ the National Table of Permanent Negotiation (*Mesa Nacional de Negociação Permanente*, in Portuguese) of SUS – the Brazilian Unified Healthcare System – demonstrates the lack of willingness, respect, and commitment to practice social dialogue in direct disregard of ILO Convention 151.
151. In the National Table above, there were dialogues and negotiations between workers, managers, and employers in the private and public health sectors from the

¹⁶³ Technical Note from the Public Labor Prosecution Office alerts the Brazilian State to the need to adopt a series of measures to protect health workers.

¹⁶⁴ ISP, *OBSERVAÇÕES SOBRE A APLICAÇÃO DAS SEGUINTE CONVENÇÕES NO BRASIL: Convenção no 98, sobre Direito de Sindicalização e de Negociação Coletiva; Convenção no 144, sobre Consultas Tripartites para promover a Aplicação das Normas Internacionais do Trabalho; Convenção no 151, sobre o Direito de Sindicalização e Relações de Trabalho na Administração Pública; Convenção no 154, sobre Fomento à Negociação Coletiva; e Convenção no 155, sobre Segurança e Saúde dos Trabalhadores*, September 29 2020.

¹⁶⁵ Decree No. 9,759/2019, published in the Federal Official Gazette (*Diário Oficial da União*, in Portuguese), available at https://www.in.gov.br/materia/-/asset_publisher/Kujrw0TZC2Mb/content/id/71137350/do1e-2019-04-11-decreto-n-9-759-de-11-de-abril-de-2019-71137335

three federative spheres, municipal, state, and federal. This space, during the pandemic, would be essential to negotiate and regulate labor relations in public and private health sectors and minimize the negative consequences and impacts on the working conditions of this essential service. The result: health workers were excluded from these spaces for claiming their rights.

152. The epidemiological surveillance carried out by the Ministry of Health shows that in 2021 alone, 650,456 health professionals reported symptoms of COVID-19. Not all cases have been tested, yet 153,247 patients have been confirmed. In 2021, 2,477 health professionals had severe cases and were hospitalized, of which 775 died.

In 2021, until November 6, 650,456 cases of flu-like syndrome by COVID-19 were reported by health professionals in the *e-SUS Notifica* information system. Of these, 153,247 (23.6%) were confirmed for COVID-19. The health professions with the highest records among confirmed cases of flu-like syndrome by COVID-19 were nursing technicians/assistants (45,631; 29.8%), followed by nurses and the like (25,853; 16.9%), and physicians (16,574; 10.8%).

The data presented on SARS cases and deaths of hospitalized health professionals reflect a cutback of severe cases in these categories. They do not inform the total number of those affected by the disease in the country.

Up to Epidemiological Week 48, 2,477 cases of SARS in hospitalized healthcare professionals were reported in the *SIVEP-Gripe* system. Of these, 1,999 (80.7%) were caused by COVID-19 and 265 (10.7%) are under investigation. Among the most registered professions suffering SARS cases that were hospitalized due to COVID-19, 485 (24.3%) were nursing technicians/assistants, 317 (15.9%) were physicians, and 226 (11.3%) were nurses. Among the reported cases of SARS due to COVID-19 in health professionals, 1,211 (60.6%) are female.

Among the 2,477 reported cases of SARS in hospitalized healthcare professionals, 775 (31.3%) died, the majority (733; 94.6%) due to COVID-19. Among the deaths from confirmed SARS due to COVID-19, the professional categories that stood out were nursing

technician/assistant (191; 26.1%), physician (111; 15.1%), and nurse (73; 10.0%, respectively), up to Epidemiological Week 48. Again, females were the most frequent victims, with 439 (59.9%) registered SARS deaths due to COVID-19 among health professionals¹⁶⁶.

153. With the arrival of the Omicron variant in Brazil in February 2022, a survey of 3,517 physicians conducted by the Brazilian Medical Association (AMB) revealed that 87% of the respondents had either caught Covid-19 or knew other colleagues in the work environment who were infected at some point in the two months before the study. With a high rate of absence due to the infections, the physicians that remained working suffered from a much higher workload at the time of the most significant number of infections during the pandemic in Brazil. The result is that professionals were under great physical and mental exhaustion. According to the data collected, 51.1% of the interviewees said they were exhausted, and 51.6% were apprehensive about the pandemic. The perception of 62.4% of the doctors was that their work colleagues were also stressed and overloaded (64.2%)¹⁶⁷.

154. The Ministry of Health¹⁶⁸ informed that a health professional died in Brazil every 19 hours. Medical and nursing professional councils report that the numbers are underreported and that a health professional fails every 8 hours in the country due to the COVID-19 pandemic. According to the National Association of Registrars of Natural Persons (*Associação Nacional dos Registradores de Pessoas Naturais – Arpen-Brasil*, in Portuguese), nearly 25% increase in deaths over the past year¹⁶⁹. Pleas and

¹⁶⁶ Ministério da Saúde, *Boletim Epidemiológico* n° 92, 15 de dezembro de 2021, p. 44. Available at: https://www.gov.br/saude/pt-br/centrais-de-conteudo/publicacoes/boletins/boletins-epidemiologicos/covid-19/2021/boletim-epidemiologico-covid-92_10dez21.pdf/view

¹⁶⁷ Available at: <https://www1.folha.uol.com.br/eqilibrioesaude/2022/02/87-dos-medicos-dizem-ter-pegado-covid-nos-ultimos-dois-meses.shtml> - Access on 04/14/2022.

¹⁶⁸ Based on the data from Brazil's Mortality Information System (*Sistema de Informação de Mortalidade – SIM*, in Portuguese), which is supplied with death certificates, and the Information System of Epidemiological Surveillance of Influenza Virus in Brazil (*Sistema de Informação da Vigilância Epidemiológica da Gripe – Sivep-Gripe*, in Portuguese). Widely publicized by the press: <https://saude.ig.com.br/coronavirus/2021-03-09/levantamento-brasil-perde-um-profissional-de-saude-a-cada-19-horas-para-a-covid.html>; <https://noticias.r7.com/saude/ao-menos-um-profissional-de-saude-morre-por-dia-de-covid-no-brasil-09032021>.

¹⁶⁹ Available at: <http://sindsaude.org.br/novo/congresso/noticia.php?id=6737>.

manifestos were sent to the Brazilian State indicating the severity of the situation, but there was no response¹⁷⁰.

155. Research¹⁷¹ promoted by Public Services International (PSI) and partner organizations, conducted between March 31 and June 15, 2020, with 3,636 health workers from all over the country, whether in primary care, high complexity care, or other areas, revealed an alarming reality of lack of personal protective equipment, exhausting working hours, and lack of training for health and safety measures during the COVID-19 pandemic in the country:

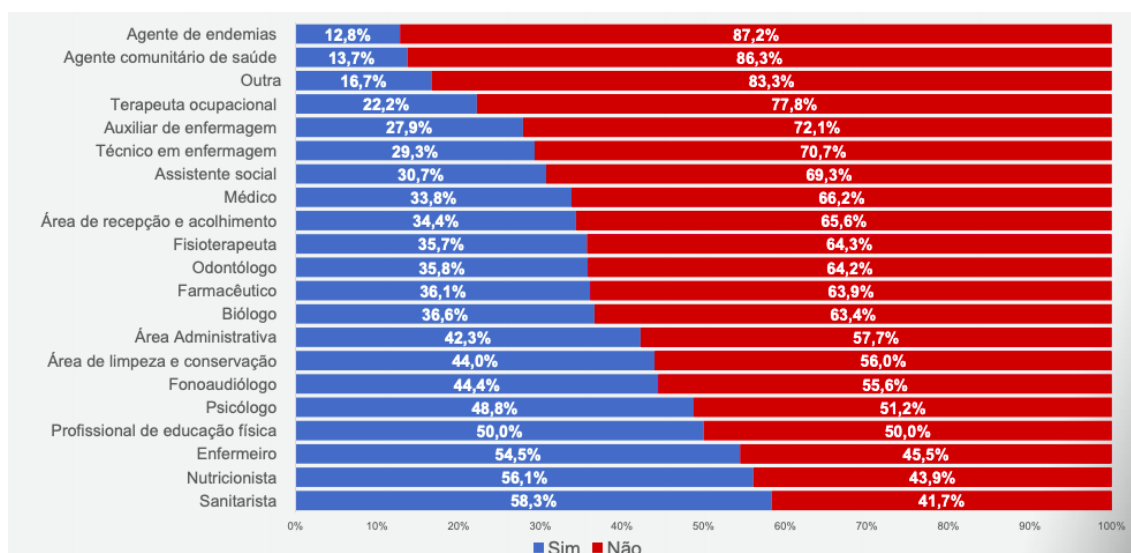
- 63% of health workers participating in the survey indicated that there was not enough personal protective equipment (PPE) to be replaced and sanitized during the workday.

Figure 2. PPE provided by occupation/area of activity¹⁷²

¹⁷⁰ Letter from Public Services International (PSI) to the Ministry of Women, Family and Human Rights, in the context of the 65th session of the United Nations Commission on the Status of Women (UNCSW 65); PSI Manifesto “Protect to Save Lives - The Future of Work in Health and Essential Services”; PSI Brazil, the epicenter of the pandemic, calls for international solidarity.

¹⁷¹ PSI – Public Services International, Inter-Union Department of Statistics and Socio-Economic Studies (*DIEESE – Departamento Intersindical de Estatística e Estudos Socio econômicos*, in Portuguese), and Center for Public Administration Studies (*CEAP – Centro de Educação e Assessoramento Popular, Trabalhadores e Trabalhadoras Protegidos Salvam Vidas*, in Portuguese), 2020, p. 10-23. Available at: http://trabalhadoresprotegidos.com.br/wp-content/uploads/2020/08/Apresentacao_Campanha_final.pdf.

¹⁷² Endemic agent; community health agent; other; occupational therapist; nursing assistant; nursing technician; social worker; doctor; reception area; physiotherapist; dentist; pharmaceutical; biologist; administrative area; cleaning and conservation area; speech therapist; psychologist; physical education professional; nurse; nutritionist; sanitary agent.



Source: Public Services International, Inter-Union Department of Statistics and Socio-Economic Studies (Dieese), and Center for Public Administration Studies (Ceap).

- 73.3% of health workers working 12 hours or more indicated that they did not have enough personal protective equipment (PPE) to be replaced and sanitized during work;
- The absence of appropriate safety equipment was reported in over 50% of all areas of activity (primary care, high complexity care, or others) and all age groups;
- 70% of health workers participating in the survey indicated that they had not undergone any training to deal with the reality of the COVID-19 pandemic;
- 69.6% of male and female health workers in the survey indicated that they had not undergone any training on the care protocol for people with COVID-19.
- The lack of minimum working conditions, such as the absence of personal protective equipment for health workers working on the front lines of the COVID-19 pandemic, was a source of mental suffering. The same research¹⁷³ reveals that as early as between March and June 2020:

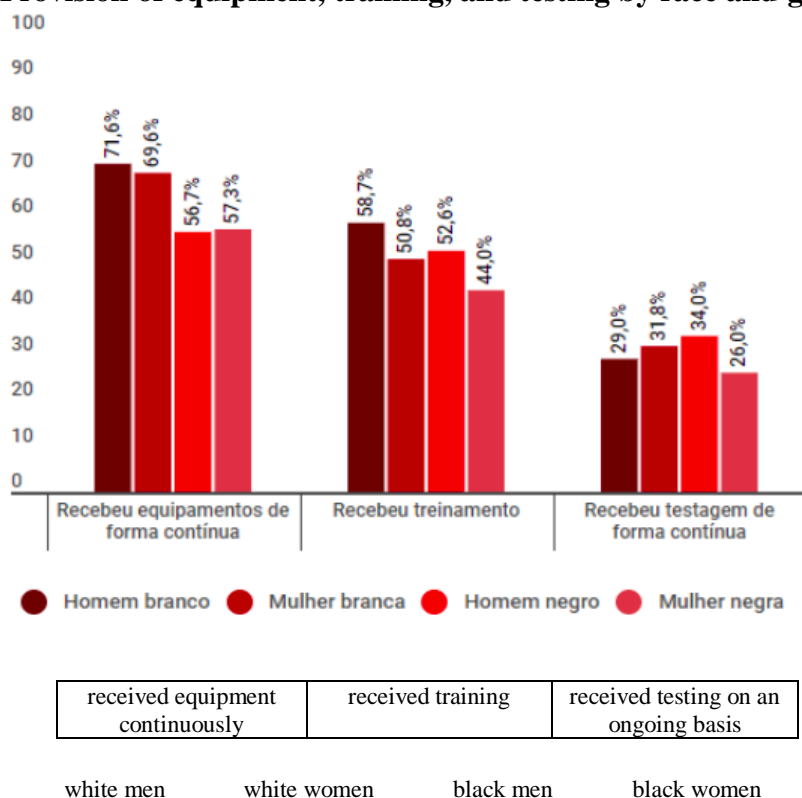
¹⁷³ ISP – Internacional de Serviços Públicos, Dieese - Departamento Intersindical de Estatística e Estudos Socio- Econômicos and CEAP - Centro de Educação e Assessoramento Popular, *Trabalhadores e Trabalhadoras Protegidos Salvam Vidas*, 2020, p. 26-32. Available at http://trabalhadoresprotegidos.com.br/wp-content/uploads/2020/08/Apresentacao_Campanha_final.pdf

- 54% of male and female health workers participating in the survey were in mental distress, with rates above 50% for all areas of activity (primary care, high complexity care, or others) and in all age groups;
- Professionals in high complexity care sectors have the most increased workloads (12 hours or more daily). The more they work, the more unprotected and affected by psychological distress they are;
- Mental suffering was superior the more extended the working day, affecting 63.58% of health professionals with 12 hours or more of uninterrupted work;
- 94% of male and female workers reported that they were not offered accommodation at the workplace for those who could not return home because they lived with people at higher risk of developing severe illness from COVID-19.
- The data were corroborated in a recent survey¹⁷⁴ by the Oswaldo Cruz Foundation – *Fiocruz*. The study was conducted between March 1st and 20, 2021, with 1,829 health professionals from across the country and published in April 2021. The survey revealed that:
 - 55.6% of participating health professionals had not received personal protective equipment (PPE) (6.2%) or had received them only once or a few times (49.4%);
 - 72.6% did not receive any training on how to deal with the pandemic or on specific protocols for caring for people with COVID-19, including physicians and nurses;
 - 96.6% know fellow healthcare professionals who have been infected with COVID-19, and 31.2% of respondents already had the disease;
 - 87.6% of health professionals fear COVID-19;
 - 80.2% of health professionals indicate that their mental health is affected by their work with COVID-19;

¹⁷⁴ Fundação Oswaldo Cruz – *Fiocruz* and Fundação Getúlio Vargas – FGV (Núcleo de Estudos da Burocracia – EAESP), *A pandemia de COVID-19 e os(as) profissionais de saúde no Brasil*, Technical Note 4th Phase, April 2021, available at https://portal.fiocruz.br/sites/portal.fiocruz.br/files/documentos/a-pandemia-de-covid-19-e-os-profissionais-de-saude-publica-no-brasil_fase-4.pdf

156. The human rights violations of male and female health workers in Brazil are marked by racial and gender inequalities and discrimination: Black women are the most exposed among all health workers.

Figure 3. Provision of equipment, training, and testing by race and gender



Source: Research “Impacts of COVID-19 on the work of public health professionals: 3rd phase” Bureaucracy Studies Center of Getúlio Vargas Foundation (*Núcleo de Estudos da Burocracia – NEBFGV*)¹⁷⁵.

157. The collapse of the health system – saturation of ICU beds, lack of medication, and health workers – is among the leading causes of feelings of fear that affect health

¹⁷⁵ Author's note: the percentages correspond to affirmative responses to the three questions, with 100% corresponding to the total number of respondents in each intersectional variable of gender and race: (i) Black women (n = 361); (ii) white women (n = 573); (iii) Black men (n = 97); (iv) white men (n = 155). *Fiocruz, FGV, A pandemia de COVID-19 e (os)as profissionais de saúde pública: uma perspectiva de gênero e raça sobre a linha de frente*, February 2021, p. 10. Available at: <https://portal.fiocruz.br/sites/portal.fiocruz.br/files/documentos/a-pandemia-de-covid-19-e-osas-profissionais-de-saude-publica-uma-perspectiva-de-genero-e-raca-sobre-a-linha-de-frente.pdf>

workers in Brazil. However, as proven above, the collapse of Brazil's healthcare system is closely associated with the acts and omissions of the Brazilian State.

158. Therefore, the feelings of fear, powerlessness, and unpreparedness that affect health workers are associated with how the Brazilian State has not coordinated the response to the pandemic but adopted measures that helped spread the virus.

159. There is, therefore, a direct relationship between the acts and omissions of President Jair Bolsonaro and the harms inflicted on health workers.

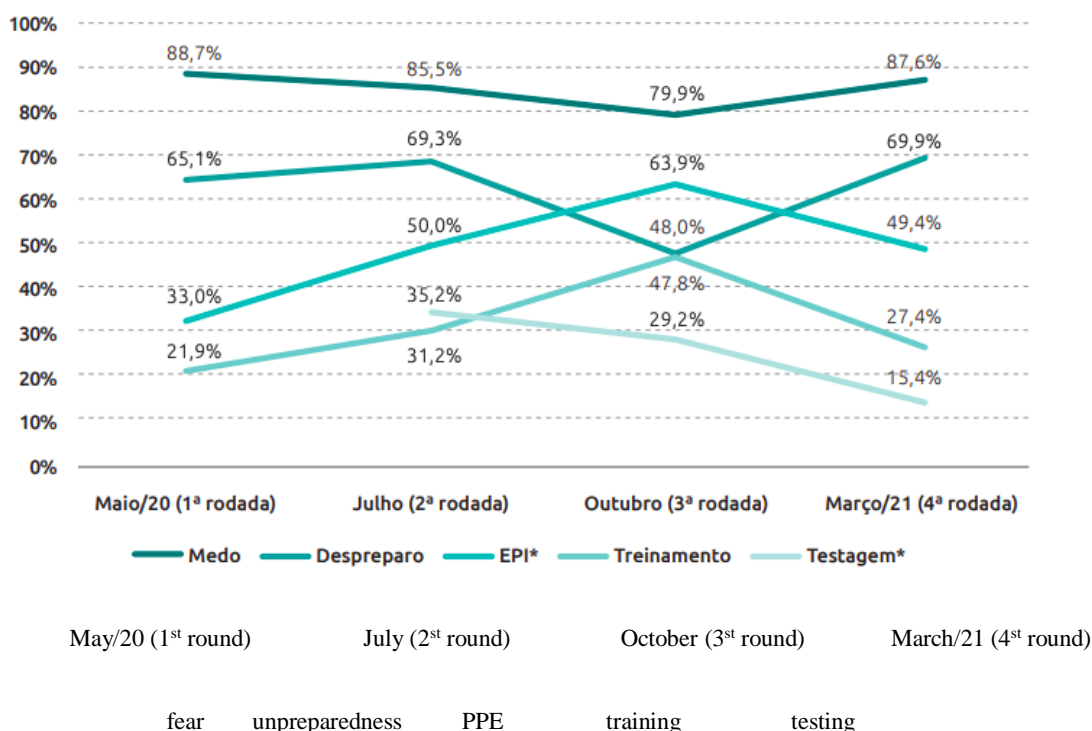
160. The political situation and the poor handling of the pandemic, in addition to the widespread denialism among the population; the fear and insecurity of being a frontline professional and being exposed to the virus and/or infecting family members; the lack of support from superiors and the municipal administration, who do not offer training and guidance; lack of PPE, vaccines, and testing; the lack of consolidated information about the disease and uncertainties; the increase in the number of cases and deaths and the collapsing health system are the main explanations given by health workers to their feelings of fear and distress¹⁷⁶.

161. The Brazilian State did not act as it should to respect, protect, and realize health workers' human and fundamental rights. Even worse, it did not perform when the pandemic hit the country in 2020, nor now, in 2022.

162. By comparing both surveys, it is clear that the lack of personal protective equipment, training, testing, and unpreparedness and fear, are constant throughout the pandemic.

Figure 4. Positive perception of material working conditions in the four rounds of the survey (%)

¹⁷⁶ Fundação Oswaldo Cruz – Fiocruz e Fundação Getulio Vargas – FGV (Núcleo de Estudos da Burocracia – EAESP), *A pandemia de COVID-19 e os(as) profissionais de saúde no Brasil, Nota Técnica 4ª Fase*, April 2021, p. 9. Available at: https://portal.fiocruz.br/sites/portal.fiocruz.br/files/documentos/a-pandemia-de-covid-19-e-os-profissionais-de-saude-publica-no-brasil_fase-4.pdf



Source: *Fiocruz*; *FGV*.

163. Another survey by *Fiocruz* carried out at a local level in Rio de Janeiro shows that 17.3% of health professionals **did not even have access to soap and water** in the workplace environment¹⁷⁷.

164. It consists, therefore, in a deliberate, intentional, and systematic action by the Brazilian State to weaken the response to the COVID-19 pandemic, which disproportionately affects the most vulnerable groups and health workers. Amnesty International makes the same conclusion:

The state failed to provide health workers with adequate assistance during the COVID-19 pandemic. According to the Brazilian Association of Collective Health and the Brazilian Society of Family and Community Medicine, health care professionals faced challenging working conditions, including

¹⁷⁷ *Fiocruz*, *Boletim da Pesquisa Monitoramento da saúde, acesso a EPIs por técnicos de enfermagem, agentes de combate às endemias, enfermeiros, médicos e psicólogos no município do Rio de Janeiro em tempos de Covid-19*. Available at https://portal.fiocruz.br/sites/portal.fiocruz.br/files/documentos/boletim_pesquisa.pdf, March 2021, p. 6-7.

insufficient personal protective equipment, a lack of clear protocols to manage infections, the absence of mental health support, lack of social protection for workers' families and precarious employment contracts¹⁷⁸.

165. The interdependence of human and fundamental rights has never been more evident. The poor working conditions generated by the violating acts and omissions of the Brazilian State in the fight against the COVID-19 pandemic affected the physical integrity, mental integrity, health, life, and labor dignity of health workers.

166. These facts describe an urgent and challenging situation that keeps inflicting continuous harm to health workers in Brazil.

V. The impunity of President Jair Bolsonaro in the national justice system

167. After three years of President Jair Bolsonaro's administration and a profusion of violations of national and international human rights norms in the context of the pandemic, there is not even a formally open investigation to investigate his acts.

168. Even more seriously, the people affected by the criminal policy of the Jair Bolsonaro government were not heard by Brazilian authorities and, therefore, resorted to international bodies for legal, political, and moral accountability.

169. There is no investigation opened by the Office of the Prosecutor General of the Republic, whose investigative procedures must be supervised by the Federal Supreme Court for the crimes against humanity described in this indictment. This is because the Brazilian justice system is not able to promote an effective investigation against the acts of President Jair Bolsonaro if, for example, the parameters established in articles 17.1.b, 17.2.a and c, and 17.3 of the Rome Statute are used.

170. The Brazilian justice system does not have the personal, procedural, and legal conditions to promote, at any time, criminal accountability for severe violations of

¹⁷⁸ Anistia Internacional, *O Estado dos Direitos Humanos no Mundo, Informe 2020/2021*, p. 64. Available at <https://www.amnesty.org/> and <https://www.ecoi.net/de/dokument/2048645.html>

human rights that are characterized as crimes against humanity. There is not in the Brazilian justice system an independent body to encourage an investigation against the President of the Republic, Jair Messias Bolsonaro:

“Independence in the proceedings at hand may be assessed in light of such indicators as, inter alia, the alleged involvement of the State apparatus, including those departments responsible for law and order, in the commission of the alleged crimes; the constitutional role and powers vested in the different institutions of the criminal justice system; the extent to which appointment and dismissal of investigators, prosecutors and judges affect the due process in the case; the application of a regime of immunity and jurisdictional privileges for alleged perpetrators belonging to governmental institutions; political interference in the investigation, prosecution or trial; recourse to extra-judicial bodies; and corruption of investigators, prosecutors, and judges”¹⁷⁹.

171. This is due to the criminal immunity regime granted to the President of the Republic by the 1988 Constitution and, above all, due to the unprecedented political interference in Brazilian democratic constitutional history to the position of Prosecutor General of the Republic.

172. The 1988 Constitution of the Federative Republic of Brazil, which governs the entire Brazilian legal framework, guarantees criminal immunity to the President of the Republic and political control over criminal investigations. Article 86 of the Brazilian Constitution subordinates the action of the Federal Supreme Court, which is the competent body to prosecute and judge common criminal offenses committed by the President of the Republic (Article. 102, item I, subitem b), to the political control of the Chamber of Deputies, which only by a majority of two-thirds of its members can authorize the criminal investigation of a President of the Republic. In addition, it guarantees complete immunity for committed crimes that are not related to the performance of the functions of the public office (Article 86, Paragraph 4).

¹⁷⁹ Policy Paper on Preliminary Examinations, ICC.

173. As a result of this norm, no President of the Republic has ever been criminally prosecuted during their term, even though all former Brazilian presidents have suffered investigations and criminal prosecutions for acts committed as representatives after their terms of office.
174. There is, at the moment, political interference in investigative bodies. The Federal Public Prosecutor's Office is headed by the Prosecutor General of the Republic (Article 127 and Article 128, paragraph 1), who has the exclusive competence to propose investigations and criminal proceedings before the Federal Supreme Court against the President of the Republic. Who appoints the Prosecutor General of the Republic is the President of the Republic (Article 84, item XIV).
175. Despite the formal institutional safeguards granted to the Prosecutor General of the Republic, the body is going through an unprecedented crisis due to the interference planned by the President of the Republic, Jair Messias Bolsonaro. For the first time in democratic constitutional history, the institution's nominations of candidates for internal elections were not respected; the President of the Republic, Jair Messias Bolsonaro, announced that he chose someone with whom he was "politically aligned".
176. The omission of the Prosecutor General's Office in holding Jair Bolsonaro accountable has been criticized¹⁸⁰. The Prosecutor General of the Republic stated that the investigation of illicit acts would be the responsibility of the Brazilian legislative branch, even though the 1988 Constitution establishes otherwise¹⁸¹. Research by

¹⁸⁰ The National Association of Prosecutors of the Republic (*Associação Nacional dos Procuradores da República – ANPR*, in Portuguese) and the Superior Council of the Public Prosecutor's Office (*Conselho Superior do Ministério Público*, in Portuguese), in January 2021, issued critical notes on the performance of the Prosecutor General of the Republic in terms of controlling the acts of the Jair Bolsonaro government. The complete notes can be read at <https://congressoemfoco.uol.com.br/judiciario/procuradores-rebatem-aras-e-dizem-que-nao-permitirao-omissao-do-mp/>. Access on 02/05/2021. The notes were reactions to the official statement issued by the Prosecutor General of the Republic, who, in the face of requests for investigation and actions of control regarding Jair Bolsonaro's administration, said that they were the same applied to the legislative branch and not to the Public Prosecutor's Office.

¹⁸¹ The Prosecutor's General's Office note and its reaction to the career can be read in the Migalhas legal news portal. Federal Public Prosecutor's Office says it has fulfilled constitutional duties amid the pandemic, January 19, 2021. Available at: <https://www.migalhas.com.br/quentes/339152/mpf-diz-que-cumpriu-com-deveres-constitucionais-em-meio-a-pandemia>. Access on 07/31/2021.

Almeida and Ferraro indicated an unprecedented alignment between the Prosecutor General's Office and the defense of President Jair Bolsonaro¹⁸².

177. While co-opting the central investigative bodies of the nation, President Jair Bolsonaro attacks and encourages attacks on justices of the Federal Supreme Court.

178. Such facts show the absence of independence and impartiality of the national justice system in dealing with this issue.

Impartiality in the proceedings at hand may be assessed in light of such indicators as, *inter alia*, connections between the suspected perpetrators and competent authorities responsible for the investigation, prosecution, or adjudication of the crimes, as well as public statements, awards, sanctions, promotions or demotions, deployments, dismissals or reprisals about investigative, prosecutorial or judicial personnel concerned¹⁸³.

179. The regime of constitutional immunities shows that the Brazilian justice system is, in practice, incapable of investigating crimes committed by the President of the Republic.

180. In the political sphere, there is also a shield regarding the accountability of President Jair Bolsonaro. There are 143 impeachment requests awaiting deliberation by the Chamber of Deputies related to crimes of responsibility committed by President Jair Bolsonaro; among these, 89 are associated with the president's conduct in the spread of the COVID-19 pandemic in the country¹⁸⁴. But unfortunately, none of them have made any progress.

181. The certainty of impunity that President Jair Bolsonaro enjoys allows his criminal practices to continue, increasingly and more profoundly violating the rights of Brazilians and foreigners in the country.

¹⁸² Data available at: <https://www1.folha.uol.com.br/poder/2021/08/pgr-e-agu-se-alinham-na-defesa-de-atos-de-bolsonaro-aponta-estudo-sobre-acoes-movidas-no-supremo.shtml>

¹⁸³ Policy Paper on Preliminary Examinations, ICC.

¹⁸⁴ Available on: <https://apublica.org/impeachment-bolsonaro/page/3/>. Access on 04/22/2022.

VI. The intentional spread of the COVID-19 pandemic is a crime against humanity

182. The facts described above indicate violations of the human rights to life, health, and security, to the extent that President Jair Bolsonaro used the state machinery to spread the COVID-19 pandemic. As a result of his actions at the head of the federal public administration, there was an excess of illness, deaths, and grief during the COVID-19 pandemic.

183. A recent report¹⁸⁵ by notable human rights organizations in the country compiled a series of arguments on human rights violations in Brazil during the COVID-19 pandemic, emphasizing the violations of the rights to life and health based on international standards for human rights protection.

184. The report concluded:

This violation [of the right to life and the right to non-discrimination] is confirmed by the lack of protection of millions of Brazilians against premature death, discriminatory acts, and disrespect for the right to life. There was no guarantee that everyone could enjoy a life with dignity without distinction in the policies adopted, especially the most vulnerable people. [...]

As we present below, the Brazilian State severely violated the human right to health. Furthermore, due to the acts performed and his omissions in the COVID-19 pandemic, the President of the Republic violated the precepts contained in international human rights treaties that guarantee the right to health, which gives rise to the related accountability at the international level.

¹⁸⁵ *Denúncia de violações dos direitos à vida e à saúde no contexto da pandemia da Covid-19 no Brasil*, Sociedade Maranhense de Direitos Humanos e outros, *Passo Fundo: Saluz*, 2021. Available at: <http://conselho.saude.gov.br/ultimas-noticias-cns/2220-cns-e-cndh-denunciam-violacoes-de-direitos-das-pessoas-com-deficiencia-durante-a-pandemia>

The duty of the country's highest authority regarding anticipatory governance and the adoption of emergency health measures were not observed¹⁸⁶.

185. However, **in addition to the facts that give rise to holding the Brazilian State accountable for not meeting its obligations to respect, protect, and realize the rights to life and health, they configure the practice of the most serious crimes within the scope of national and international jurisdictions, whose political and symbolic responsibility must fall on the person of President Jair Bolsonaro. Therefore, this is the request for the Permanent Peoples' Tribunal.**

186. Under the Permanent Peoples' Statute terms, Brazil's indigenous peoples, black population, and health care workers have been exposed to severe and systematic violations of their rights by Jair Bolsonaro. They do not have access to the competent bodies of the organized international community to hold him accountable. Filled with the desire for reparation, these populations turn to the Tribunal seeking recognition of the existence of these violations, their gravity, and the accountability of Jair Bolsonaro for committing them.

187. At the national level, concerning President Jair Messias Bolsonaro, the Final Report of the Parliamentary Commission of Inquiry on the COVID-19 pandemic recorded evidence of authorship and materiality related to the practice of 07 (seven) crimes provided for in the Brazilian Criminal Code. Copies of the report, documents, and hearings related to the practice of such crimes were forwarded to the Prosecutor General of the Republic in October 2021. As previously stated, the *PGR* has the competence to act alongside the Federal Supreme Court, the Federal Police Department, and the Prosecutor of the International Criminal Court. However, to date, no action has been taken.

¹⁸⁶ *Denúncia de violações dos direitos à vida e à saúde no contexto da pandemia da Covid-19 no Brasil, Sociedade Maranhense de Direitos Humanos e outros, Passo Fundo: Saluz, 2021. Available at: <http://conselho.saude.gov.br/ultimas-noticias-cns/2220-cns-e-cndh-denunciam-violacoes-de-direitos-das-pessoas-com-deficiencia-durante-a-pandemia>, p. 26-27 and 34.*

188. Regarding the crimes provided for in the Brazilian legal framework, Jair Messias Bolsonaro was accused by the *CPI* of the practice of the crime of epidemic resulting in death (Brazilian Criminal Code, Article 267, paragraph 1), infraction of preventive sanitary measures (Brazilian Criminal Code, Article 268, heading), quackery/charlatanism (Brazilian Criminal Code, Article 283), incitement to crime (Brazilian Penal Code, Article 286), forgery of private documents (Brazilian Criminal Code, Article 298), irregular use of public funds (Brazilian Criminal Code, Article 315), and malfeasance (Brazilian Criminal Code, Article 319)¹⁸⁷.
189. The Report also indicted the President for committing crimes within international jurisdiction. According to the *CPI*, Jair Bolsonaro committed crimes against humanity in the modalities of extermination, persecution, and other inhuman acts (Article 7, paragraph 1, (b), (h) and (k), and paragraph 2, (b) and (g) of the Rome Statute)¹⁸⁸.
190. The indictment for having committed these crimes was supported by an analysis carried out in a legal opinion prepared to the Commission by expert jurists, which included, among other renowned names, the former judge of the International Criminal Court, Sylvia Steiner¹⁸⁹. The commission of crimes against humanity was verified in two sets of facts related to (i) the lack of assistance to Indigenous peoples and (ii) the collapse of the health system in Manaus.
191. However, the proposed indictment must also include the crime of genocide against Indigenous peoples, carried out in the form of causing serious bodily or mental harm to these peoples (Article 6.b of the Rome Statute) and deliberately inflicting conditions of life calculated to bring about its physical destruction in whole or in part (Article 6.c of the Rome Statute).

¹⁸⁷ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021, p. 1112.

¹⁸⁸ Ibid.

¹⁸⁹ See *Imputações penais potencialmente cabíveis aos agentes públicos e privados responsáveis por ações e omissões no combate à pandemia – conf. requerimento 826/21 para comissão de especialistas*. Available at: <https://legis.senado.leg.br/sdleg-getter/documento/download/e69c8817-43cb-4b3b-8d57-3f9526f95542> - Access on 01/18/2022.

192. The deliberate spread of COVID-19 and the practice of acts contrary to technical and scientific guidelines affected the life, health, integrity, and the very existence of Brazil's Indigenous peoples, the Black population, and health workers in Brazil.
193. Under the Permanent Peoples' Tribunal, Jair Bolsonaro's actions violated (i) the right to existence (Article 1 of the Universal Declaration of The Rights of Peoples); (ii) the right to respect of its cultural identity, traditions and cultural heritage, since he deliberated disrespected and rendered impossible the funeral rites of indigenous peoples (Articles 2 and 19 of the Universal Declaration of The Rights of Peoples); (iii) the right to a democratic government that represents all citizens without any distinction as race, sex, belief or color, by forging a management of the pandemic that deliberately affected the black and indigenous populations differently (Articles 7 and 20 of the Universal Declaration of The Rights of Peoples); (iv) the right to access to technical and scientific progress by intentionally creating barriers to vaccinating certain priority groups for vaccination (Article 9 of the Universal Declaration of The Rights of Peoples); and (v) the right to fair labor evaluation by infringing inhumane conditions to health workers (Article 10 of the Universal Declaration of The Rights of Peoples).
194. The actions of President Jair Bolsonaro also amount to the crimes against humanity in their forms of extermination and persecution (Article 3, a and h of the New Statute of the Permanent Peoples' Tribunal) and indigenous genocide, on which this complaint is focused. As we will see below, all the elements of the crimes considered in the jurisprudence of the International Criminal Court are present so that the Permanent Peoples' Tribunal can hold Jair Messias Bolsonaro accountable.

A) Objective and subjective aspects of crimes against humanity

195. The Statute of the Permanent Peoples' Tribunal employs a similar construction to the Rome Statute to select conduct constituting crimes against humanity. However, for the PPT, the definition of crimes against humanity is based on a more

straightforward observation that these crimes "generate a direct attack on humanity itself.

196. According to the Rome Statute of the ICC, crimes against humanity comprise a contextual element, namely, the “widespread or systematic attack directed against any civilian population”; an objective/material element, namely, the act(s) that make up the attack, or *actus reus*; and the subjective/mental element, or *mens rea*.

197. The “widespread or systematic attack directed against any civilian population” is a significant element of the crimes against humanity and is also present in the typification employed by the Permanent Peoples' Tribunal in Article 3 of its Statute. Such construction enables the Courts to delimit their sphere of action. According to Article 7 of the Statute, “a widespread or systematic attack directed against any civilian population” consists of “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, according to or in furtherance of a State or organizational policy to commit such attack” (Article 7.2.a). According to the Elements of Crimes that inform the Court's interpretations, there is no need for the acts to constitute a military attack. The attacks do not need to involve armed forces or be carried out in the context of hostilities¹⁹⁰. In the *Kunarac* and *Stakic* cases, the International Criminal Tribunal for the former Yugoslavia (ICTY) found that acts that constitute an attack in the sense of international criminal law may involve, for example, a policy of mistreatment of a specific civilian population¹⁹¹.

198. Also, according to the Elements of Crimes, the term “State or organizational policy” means that the State or an organization promotes or encourages a systematic or widespread attack against a civilian population, which may even be socially identifiable, for example, in terms of religion, race, ethnicity, or gender. The ICC understands that this State or organizational policy does not need to be formalized. According to the Elements of Crimes, it may stem from a deliberate absence of State action that knowingly encourages such an attack in exceptional cases. Under the

¹⁹⁰ See ICC, Situation in Kenya (Authorisation Decision), para. 80.

¹⁹¹ See ICTY, *Kunarac* (Trial Chamber Judgment), para. 416; ICTY, *Stakic*, No. IT-97-24-T, Judgment, Trial Chamber, 31 July 2003, para. 623.

Elements of Crimes, “such a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such attack. Such a policy cannot be inferred solely from the absence of governmental or organizational action.”

199. The requirement that the act(s) be committed in the context of a systematic or widespread attack against any civilian population does not imply the need for each action listed in paragraph 1 of the article to be committed in a generalized or systematic manner. The requirement to be frequent or widespread is imposed about the attack – which, as stated above, is not restricted to a military invasion and must fall on any civilian population – not to acts taken individually¹⁹².
200. There isn’t, neither in the Rome Statute nor in the Statute of the Permanent Peoples’ Tribunal, one definition of how individual acts must relate to one another for an “attack” to be configured in the Court’s sense term. However, international criminal jurisprudence provides elements that facilitate this analysis. In this jurisprudence, it is well defined, for example, that the practice of a single type of conduct does not constitute an “attack” in the sense of the Statute. The term does not designate the identity of acts with each other, and it is also understood that it does not necessarily refer to armed or even violent actions. In its ruling in the *Akayesu* case, the International Criminal Tribunal for Rwanda (ICTR) expressly established that acts constituting an “attack” do not need to be carried out by armed force or conflict. “The concept of attack’ may be defined as an unlawful act of the kind enumerated in Article 3(a) to (I) of the Statute, like murder, extermination, enslavement, etc. An attack may also be non-violent in nature, like imposing a system of apartheid, which is declared a crime against humanity in Article 1 of the Apartheid Convention of 1973, or exerting pressure on the population to act in a particular manner, may come under the purview of an attack, if orchestrated on a massive scale or in a systematic way”¹⁹³.

¹⁹² See ICTY, *Mrksic* (Vukovar Hospital Decision), Review of the Indictment under Rule 61 of the Rules of Procedure and Evidence, 3 April 1996 (PURL: <http://www.legal-tools.org/doc/9d99b6/>), para. 30.

¹⁹³ See ICTR, *Akayesu* (Trial Chamber Judgment), para. 581.

201. The ICC Statute provides that an “attack” is configured through the practice of any multiple acts listed in Article 7, which makes it possible to build the understanding that an attack, for its jurisdiction, can also be configured through “the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population”, as stated in the Statute’s definition of “extermination” and also replicated by the PPT Statute in its article 03, paragraph b. To the ICC, the important thing is that the multiple acts conform to a course of conduct. According to the Court's understanding, a particular pattern of behavior demonstrates some planning, direction, or organization.
202. In addition to the interpretation given to the term “attack”, the International Criminal Court has also developed, in its jurisprudence, the concepts of “systematic” and “widespread” in the context of crimes against humanity.
203. In Article 7 of the Rome Statute, “widespread” thus refers to the scale of the attack or the number of people affected¹⁹⁴. In the *Tadic* case, the International Criminal Tribunal for the former Yugoslavia understood that it referred to a “massive, frequent, large-scale action, carried out collectively with considerable seriousness and directed against a multiplicity of victims”¹⁹⁵.
204. On the other hand, “systematic” referred to a qualitative attack aspect against a civilian population and was defined by the UN International Law Commission as “according to a preconceived plan or policy. Implementing this plan or policy could result in the repeated or continuous commission of inhumane acts. Therefore, the thrust of this requirement is to exclude a random act which was not committed as part of a broader plan or policy”.¹⁹⁶
205. Article 7 of the Rome Statute and Article 3 of the Statute of the Permanent Peoples' Tribunal speak, moreover, of “any civilian population”. This category dates back to the emergence of crimes against humanity in the post-World War II period,

¹⁹⁴ See ICTY, *Tadic* (Trial Chamber Judgment), para. 648; ICTY, *Kayishema and Ruzindana* (Trial Chamber Judgment), note 30, para. 123; *Blaskic* (Trial Chamber Judgment), para. 206.

¹⁹⁵ See ICTY, *Tadic*, (Trial Chamber judgment), para. 648.

¹⁹⁶ *Comissão de Direito Internacional*, 1 YbILC 47 (1996).

which is linked to the purpose of responding to the attacks by the German State, first, against its population and, later, against nationals of other countries without any relation to the war efforts. Nearly five decades later, in 1997, the International Criminal Tribunal for the former Yugoslavia specified, in the *Tadic* case, that “the inclusion of the word ‘any’ makes it clear that crimes against humanity can be committed against civilians of the same nationality as the perpetrator or those who are stateless, as well as those of a different nationality.”¹⁹⁷ As the same Court later stated, in the *Kunarac* case, the attack does not need to be directed against the entire population in a given locality. However, it must be directed against a people, not a limited number of randomly selected individuals. In the words of the Trial Chamber of the Tribunal for the former Yugoslavia¹⁹⁸, “[t]he expression “population” does not mean that the entire population of the geographical entity in which the attack is taking place (a state, a municipality or another circumscribed area) must be subject to the attack”.

206. Although there is no complete equivalence between the typification, the preamble of the Statute of the Permanent Peoples' Tribunal states that it is intended to complement the existing gaps in the doctrines and institutions of international law, always to guarantee the victims of severe human rights violations the possibility of having their rights affirmed and the perpetrators of the crimes held accountable. Therefore, an analysis of Jair Bolsonaro's crimes considering the broader typification made by the International Criminal Court can only contribute to the dimension of the crimes committed by the Brazilian president.

207. Among the acts listed in the Article 7 of the ICC Rome Statute, three are especially relevant concerning crimes against humanity resulting from the actions of Jair Bolsonaro in the context of the COVID-19 pandemic: extermination (Article 7.1.b, replicated by art. 3, b of the PPT Statute), persecution (Article 7.1 .h, contemplated in part by art. 3, h of the PPT Statute), and “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health.” (Article 7.1.k).

¹⁹⁷ See ICTY, *Tadić*, (Trial Chamber judgment), para. 635.

¹⁹⁸ Ver *Kunarac* (Trial Chamber Judgment) para. 1097 (internal notes omitted).

208. The ICC Statute defines “extermination” as “the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population” (Article 7.2.b). It is, therefore, necessary that a civilian population be subjected intentionally and in the context of a systematic or widespread attack to conditions of life such as to cause its destruction in whole or in part.

209. In the Elements of Crimes, the conduct comprises the following elements: i) that the perpetrator has killed one or more persons; ii) that the conduct consisted of, or as part of, the murder of members of the civilian population; iii) that it was committed as part of a systematic or widespread attack against a civilian population; iv) that the perpetrator knew that the conduct was part of a widespread or systematic attack directed against a civilian population or that the conduct was intended to be part of such an attack. It is important to note that the murder or commission of an act that is part of the murder of members of a civilian population includes the infliction of conditions of life calculated to bring about the destruction of part of the population. The Statute cites the deprivation of access to food or medicine as an example of such conduct. As indicated in the description of the facts in this indictment, President Jair Bolsonaro inflicted on Brazilians particularly devastating effects on Indigenous peoples.

210. In the *Seromba* case¹⁹⁹, the Appeal Chamber of the International Criminal Tribunal for Rwanda considered, concerning extermination in the practice of crimes against humanity, that “[...] in the jurisprudence of both *ad hoc* Tribunals, the necessary *actus reus* underlying the crime of extermination consists of any act, omission, or combination thereof which contributes directly or indirectly to the killing of a large number of individuals. Therefore, as the Appeals Chamber has previously considered in the Ndindabahizi Appeal Judgement, for the *actus reus* of extermination to be fulfilled, it is sufficient that the accused participated in measures indirectly causing death” (internal notes omitted). According to the International Criminal Tribunal for Rwanda, the jurisprudence of the *ad hoc* tribunals has thus understood that, in the case of the crime of extermination, crimes against humanity by extermination are configured

¹⁹⁹ See *Seromba* (Appeal Chamber Judgment), para. 189.

when actions, omissions, or a combination of acts and omissions directly or indirectly contribute to the intentional killing of a large number of individuals.

211. Regarding the crime of persecution, the ICC Rome Statute establishes that “persecution against any identifiable group or collectivity” means “the intentional and severe deprivation of fundamental rights contrary to international law because of the identity of the group or collectivity” (Article 7.2.g). Among these motivations for persecutory conduct is the ethnicity of the persecuted group, as is the case of Indigenous peoples.
212. The Elements of Crimes establish that persecution constitutes a crime against humanity if i) the perpetrator has deprived one or more persons of their fundamental rights in contravention of international law; ii) the perpetrator directed his conduct towards that person or persons based on the identity of a group or collectivity or against the group or collectivity as such; iii) whether the conduct was directed against such persons for political, racial, national, ethnic, cultural, religious or gender reasons, as defined in paragraph 3 of Article 7 of the ICC Rome Statute, or for reasons universally recognized as unacceptable according to international law; iv) whether the conduct was committed in connection with any act referred to in Article 7, paragraph 1, of the Rome Statute or any crime within the jurisdiction of the International Criminal Court. In addition to these elements, and as is the case with all conducts established in Article 7 of the Rome Statute, the conduct must have been committed as part of a systematic or widespread direct attack against a civilian population. The perpetrator must have known that the conduct was part of a widespread or systematic attack directed against a civilian population or that he intended the conduct to be part of such an attack.
213. In a decision issued in the context of the *Popovic* case²⁰⁰, dealing with the crime of persecution, derogatory language about a particular group may even be a relevant aspect of the accused’s behavior to determine his discriminatory intent regardless of whether such use is recurrent in the context or if it is shared. In the words of the Court, “[t]he Appeals Chamber observes that when considering whether an accused has the

²⁰⁰ See *Popovic* (Appeal Chamber Judgment), para. 713.

required intent for the crime of persecution, trial chambers are allowed to consider “the general attitude of the alleged perpetrator as demonstrated by his behaviour”. The use of derogatory language about a particular group – even where such usage is commonplace – is one aspect of an accused’s behaviour that may be considered, together with other evidence, to determine the existence of discriminatory intent” (internal notes omitted). Likewise, “[t]he Appeals Chamber reiterates that persecution as a crime against humanity does not require that the underlying acts are crimes under international law. Accordingly, a trial chamber does not need to establish the elements of the underlying acts, including the *mens rea*, even when the underlying act also constitutes a crime under international law.”²⁰¹

214. Finally, item k provides the possibility that a crime against humanity can be configured through the intentional practice of “Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental or physical health”. This type of residual clause allows the International Criminal Court to be *pari passu* with the circumstances in which international criminal law will be applied, having, even so, the Statute as a reference and without being able to legislate. Its interpretation must be prudential and not uncritically expand the scope of crimes against humanity²⁰². The parameter for the interpretation and application of international criminal law by the International Criminal Court, in these circumstances, is the similarity between an act unforeseen in the Statute and one of the acts that Article 7 provides for. Accordingly, the Elements of Crimes clarifies that a crime against humanity resulting from other inhumane acts is configured when, in addition to the elements common to the different modalities, the perpetrator inflicts enormous suffering or serious injury to the body or mental or physical health through an inhumane act and when such action is similar to any other action provided for in that article. On a note, the Elements of Crimes specify that similarity is established according to severity. As the ICC Pre-Trial Chamber understood in the *Ongwen* case, it determines a crime against humanity by another inhuman act, both a point of fact and a point of law²⁰³.

²⁰¹ See Popovic (Appeal Chamber Judgment), para. 738.

²⁰² See ICC, Kenyatta (Decision on the Confirmation of Charges), para. 269.

²⁰³ See ICC, Ongwen (Pre-Trial Chamber Judgment), para. 88.

215. As previously stated, for crimes against humanity to be configured, in addition to the contextual element and the perpetrator's act(s), the following subjective/mental aspects must be present: i) the intent of performing the conduct, and ii) the knowledge of the systematic or widespread attack against a civilian population. The intent of performing the criminal behavior comprises (a) the awareness that, by acting in a particular way or omitting to act, one obtains a specific result and (b) the desire to obtain that result or the awareness that, if everything goes typically, such will be the result.
216. Regarding the first subjective/mental element, the perpetrator must be aware of the link between his conduct and a systematic or widespread attack against a civilian population. The International Criminal Tribunal for the former Yugoslavia found, in the *Tadic* case, that the perpetrator must be aware that there is an attack directed at a civilian population and that his act is part of that attack. In the *Blaskic* case, the same Tribunal adopted a milder interpretation of the subjective/mental element, understanding that the risk of its activities being part of an attack is enough for the crime to be configured. The perpetrator assumes that risk.
217. The Elements of Crimes of the ICC clarify, in turn, that the last two elements of the heading of Article 7 – that the act is committed as part of a widespread or systematic attack directed against a civilian population and that it is carried out with the knowledge of the attack:

[...] clarify the requisite participation in and knowledge of a widespread or systematic attack against a civilian population. However, the last element should not be interpreted as requiring proof that the perpetrator knew all characteristics of the attack or the precise details of the plan or policy of the State or organization. In the case of an emerging widespread or systematic attack against a civilian population, the intent clause of the last element indicates that this mental element is satisfied if the perpetrator intended to further such an attack²⁰⁴.

²⁰⁴ See Elements of crimes, ICC, <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>

218. All these elements are present in the imputations made against President Jair Bolsonaro.

B. Spreading the COVID-19 pandemic among indigenous peoples as a strategy of genocide.

219. There are specific aspects of the spread of the pandemic on Indigenous peoples, especially if considered within the scope of the anti-Indigenous state policy implemented by Jair Messias Bolsonaro, being characterized as one of the elements of accusation of genocide before the authority's international penalties.

220. Unlike crimes against humanity, the crime of genocide is characterized in precisely the same way by Article 6 of the Rome Statute and Article 2 of the Statute of the Permanent Peoples' Tribunal.

221. Thus, the elements of the crime of genocide brought to the attention of international criminal authorities indicate that: i) the perpetrator inflicted certain conditions of life on one or more persons; ii) that person or those persons belong or belonged to a particular national, ethnic, racial, or religious group; iii) the perpetrator acted with intent to destroy, in whole or in part, a national, ethnic, racial, or religious group as such; iv) the conditions of life – which may include but are not restricted to deliberate deprivation of resources indispensable to their survival, such as water, food, and medical services - were calculatedly affected to bring about the group's destruction; and v) the acts took place in the context of a similar pattern of conduct directed against the group, or the conduct was such as to destroy by itself.

222. The crime of genocide by inflicting on the group life conditions calculated to bring about its physical destruction has, on the one hand, the peculiarity of not requiring material damage from the effective physical destruction of the group in whole or in part. On the other hand, for it to be configured, the acts must be calculated to cause the physical or biological destruction of the group deliberately. In this sense, the Trial

Chamber²⁰⁵ of the International Criminal Tribunal for the former Yugoslavia considered that “[u]nlike Articles 4(2)(a) and (b), Article 4(2)(c) does not require proof of a result such as the ultimate physical destruction of the group in whole or in part. However, Article 4(2)(c) applies only to acts calculated to cause a group’s physical or biological destruction deliberately, and, as such, these acts must be clearly distinguished from those acts designed to bring about the mere dissolution of the group.” In a 2012 decision, the Appeals Chamber²⁰⁶ of the International Criminal Tribunal for the former Yugoslavia upheld this understanding of the Trial Chamber by establishing that method of destruction does not need to bring about the immediate death of members of the group: intentional acts that result in the slow death of individuals of a national, ethnic, racial, or religious group with the intent of destroying it in whole or in part also constitute the crime of genocide

223. The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia listed some acts punishable as the crime of genocide by the infliction of living conditions calculated to bring about the total or partial destruction of the group when intentionally committed. Among these acts is subjection to a subsistence diet, the lack of adequate medical care, and the creation of circumstances that would lead to death, albeit slowly, such as the lack of food, water, and shelter. In the words of the Appeals Chamber, “[e]xamples of such acts punishable under Article 4(2)(c) include, inter alia, subjecting the group to a subsistence diet; failing to provide adequate medical care; systematically expelling members of the group from their homes; and generally creating circumstances that would lead to a slow death such as the lack of proper food, water, shelter, clothing, sanitation, or subjecting members of the group to excessive work or physical exertion” (internal notes omitted)²⁰⁷. In this, the Appeals Chamber upholds an understanding reiterated in its practice and the International Criminal Tribunal for Rwanda, within the scope of which “[t]he Chamber holds that the means of deliberately inflicting on the group conditions of life calculated to bring about its

²⁰⁵ ICTY, Tolimir (Trial Chamber Judgment), para. 741.

²⁰⁶ ICTY, Tolimir (Appeals Chamber Judgment), paras. 225-6.

²⁰⁷ ICTY, Tolimir (Appeals Chamber Judgment), paras. 225-6 (internal notes omitted)

physical destruction, in whole or in part, include subjecting a group of people to a subsistence diet, systematic expulsion from their homes and deprivation of essential medical supplies below a minimum vital standard.”²⁰⁸.

224. As demonstrated in the facts of this indictment concerning Brazilian Indigenous peoples, President Jair Bolsonaro.

- (i) Deliberately contributed to the spread of COVID-19 across the country, seeking the so-called “herd immunity”, disregarding the historic immunological vulnerability of Indigenous peoples, especially isolated and recently contacted Indigenous peoples. To achieve this objective, Bolsonaro stopped installing sanitary barriers on Indigenous lands, although he was legally required to do so by the Federal Supreme Court;
- (ii) He imposed obstacles to vaccinating Indigenous peoples, even though he was also legally obliged to ensure their vaccination with priority;
- (iii) He acted with permissiveness and even encouraged invasions of Indigenous lands, causing the contamination of entire peoples. His permissiveness also extended to official visits that also brought the virus to Indigenous territories;
- (iv) He repeatedly encouraged the so-called “early treatment”, using drugs with no proven effectiveness for the treatment of COVID-19. Nevertheless, indigenous public health institutions ended up applying the medication.
- (v) He contributed to the dismantling of the Indigenous Health Care Subsystem (*Subsistema de Atenção à Saúde Indígena – SASISUS*, in Portuguese), which had severe consequences with the onset of the COVID-19 pandemic.
- (vi) He made it difficult for indigenous peoples to access potable water.
- (vii) Distributed, through the public apparatus, drugs whose efficacy had not been scientifically proven for the treatment of Covid-19

²⁰⁸ ICTR, Musema (Trial Chamber Judgment), para. 157. See also ICTR, Akayesu (Trial Chamber Judgment), para. 505, and Rutaganda (Trial Chamber Judgment), para. 57.

225. Thus, it has been demonstrated that Jair Bolsonaro did not provide adequate medical care to Indigenous peoples during the COVID-19 pandemic, despite the demands of these peoples to the federal government and what the Supreme Court has repeatedly determined. Such deliberate omissions, accompanied by actions contrary to technical-scientific guidelines, demonstrate the genocidal intent of the Brazilian president.
226. The acts narrated here were carried out within the scope of Jair Bolsonaro's anti-Indigenous policy, for which he is aware and is directly responsible.
227. These are all acts articulated with each other by President Jair Bolsonaro, practiced consistently in his more than two years of government and guided by a clear purpose, which the president himself states: the production of a Brazilian nation without Indigenous people, whether through the destruction of these peoples, as in the case of isolated peoples and recently contacted peoples, or resulting from assimilation, as in the case of other Indigenous peoples, against whom crimes against humanity have been committed. Therefore, it is pertinent to take the president's acts as a systematic attack against Indigenous peoples and consider that he used the Brazilian public machinery to fulfill his intentions when he did not perform the acts directly.
228. The harms inflicted on Indigenous peoples and the threat of their destruction in Brazil are real. Moreover, they have been accelerated: illness, death, and suffering are currently imposed on Indigenous people.
229. The anti-Indigenous policy developed and carried out by President Jair Bolsonaro has been ongoing since 2019 but found in the COVID-19 pandemic an opportunity to achieve its purpose of destroying Indigenous peoples. During the entire pandemic, the president insisted on a policy of producing a natural mass immunity, the “herd immunity”, despite what Brazilian and foreign scientists, national public servants, and international organizations such as the WHO informed him. It is the adoption of this policy that gives meaning:
- (i) his opposition to measures of known effectiveness, such as the use of masks and quarantine measures;

- (ii) his challenge to the need and safety of vaccines;
- (iii) the promotion of drugs with no proven efficacy for the treatment of COVID-19, with an investment of public resources in their production;
- (iv) the refusal to provide means for Brazilians to adhere to quarantine measures that mayors and state governors tried to implement, as a result of the federal government's omission and the opposition to quarantine measures by the President of the Republic;
- (v) the disinformation campaigns related to the disease in the country, including the use of the Communication Department and the failure to carry out information campaigns for Brazilian society.

230. In contrast to the health policy based on quarantine and other measures, the president mobilized public bodies and various ministries to implement his policy of producing natural mass immunity. It configures, therefore, a State policy directed against Brazilian society with full knowledge that its implementation would result in the death of Brazilians and foreigners living in the country. It was within the scope of acts directly linked to President Jair Bolsonaro that, in the pandemic context and with the “herd immunity” policy underway, the readjustment and dismantling of Indigenous health programs took place. Combined, the anti-Indigenous policy and the intentional spread of the COVID-19 pandemic are destroying Indigenous peoples. As previously demonstrated, given their known immunological vulnerability, the epidemic is a risk of annihilating a people, especially if we consider that the spread of COVID-19 among Indigenous peoples has created an excess mortality rate: Indigenous people suffer a 50% lethality rate due to COVID-19.

231. In the case of Indigenous peoples, as described in this indictment, we are talking about ethnically distinct groups that are few in number compared to the Brazilian population. The diversity and plurality of Indigenous peoples in Brazil present a unique vulnerability. Their small population, associated with ethnic diversity, justifies the status of these peoples as groups protected by international criminal law: some peoples, with only hundreds or a few thousands of Indigenous peoples, might disappear.

232. As the facts narrated in this Communication demonstrate, Jair Bolsonaro facilitated the infection of Indigenous people during the COVID-19 pandemic. In the case of isolated people, he even acted by forcing contact.

233. It was widely known in Brazil and, in particular, by President Jair Bolsonaro that COVID-19 was a severe health problem and a more lethal disease among Indigenous people. Accordingly, *APIB* sought to inform him by all means. Knowing the lethality of the disease and its particular effects on Indigenous peoples, the president did not, however, protect these peoples from his policy that sought mass immunity from natural infection (“herd immunity”), which he implemented in Brazilian society. On the contrary: he encouraged and facilitated contact between Indigenous and non-Indigenous people, knowing what would be the results of these practices in Brazilian society in general and among Indigenous peoples in particular. It is not surprising, therefore, that the deprivation of access to medications and means to ensure that Indigenous people would not get in contact with non-Indigenous people imposed by the president, in breach of rulings from the Federal Supreme Court, produced the result that he knew would be made and which he had ample means of knowing in advance: the greater lethality of COVID-19 among Indigenous people in proportion to that of other groups of the Brazilian population.

234. In this regard, the Final Report from the *CPI* on COVID-19 states:

“Although the Brazilian government has acted to promote herd immunity by natural infection, the deaths in the general population were considered an acceptable burden to preserve the economy, but not an objective in itself. **On the other hand, in the case of Indigenous people, the virus presented itself as an opportunity to intensify multiple attacks that were already underway, promoted by the current administration. Furthermore, the encouragement of the presence of intruders on Indigenous lands and the deliberate neglect of the federal**

government to protect and assist Indigenous peoples were allies of the virus, producing combined effects.”²⁰⁹

235. The former judge of the International Criminal Court, Sylvia H. Steiner, also recognized reasonable evidence to believe that there was – on the part of the Federal Government, and particularly on the role of the President of the Republic, Jair Bolsonaro, and the Minister of Health – a direct attack against the Indigenous population, carried out through a State policy of adopting concrete measures and deliberate omissions that resulted in the vast number of infections and deaths among Indigenous people, proportionally higher than that which affected urban populations. According to Steiner:

(vi) In the specific case of failures and deliberate omissions in serving Indigenous communities, there are reasonable indications in the pieces of evidence presented in the process to believe that the acts and omissions of the Federal Government, calculated by President Bolsonaro and implemented by his Ministers of Health and the Minister of the Environment, Mr. Ricardo de Aquino Salles, followed a deliberate policy of attacking that part of the population in the sense of ignoring their unique needs in the face of their particular vulnerability. This policy consisted of (i) denying, by regulatory and government acts, the access of the Indigenous population to the prophylactic means necessary to guarantee their protection, (ii) the relaxation, by normative and government acts, of special isolation measures, including those determined in successive court rulings, (iii) the constant and deliberate disregard for the invasion of Indigenous lands by miners, loggers, and deforestation players, with the approval and encouragement of the President of the Republic and implementation by the Minister of the Environment, Mr. Ricardo Salles, who, in addition, to directly attacking Indigenous populations on their lands, transmitted diseases to which these populations have no resistance, including COVID-19; (iv) the directed and indiscriminate use of drugs without any efficacy for the prevention or treatment of the disease, among

²⁰⁹ BRASIL. Senado Federal. Comissão Parlamentar de Inquérito da Pandemia. Relatório Final. Brasília, 2021. P. 572

other acts and omissions described in the extensive documentation collected by the *CPI*. This policy, which targeted the Indigenous population, caused a high percentage of deaths among these populations that, according to detailed surveys, exceeds the rate of deaths among people living in urban centers”. The number of Indigenous people who were infected and, as a result, suffered temporary or permanent harm to their physical and mental health has yet to be duly determined²¹⁰

236. In January 2022, six United Nations Special Rapporteurs also presented similar considerations in expressing deep concerns regarding allegations that Jair Bolsonaro is undertaking a “systemic and structural discrimination against indigenous peoples that have been exacerbated due to the COVID-19 pandemic”²¹¹. In this regard, Special Rapporteurs Tendayi Achiume²¹², David R. Boyd²¹³, Michael Fakhri²¹⁴, Irene Khan²¹⁵, Mary Lawlor²¹⁶, and Jose Francisco Cali Tzay²¹⁷ pointed out that:

The information received by our mandates indicates that the COVID-19 pandemic has exacerbated the systemic violation of international legal obligations on a racialized basis. These include the right to political participation; the right to freedom of expression and opinion; the right to freedom of thought, conscience, and religion or belief; the right to health; the right to a healthy environment, the right to food; and the right to social security²¹⁸.

237. Therefore, the acts of Jair Bolsonaro constitute a systematic, widespread, and intentional attack against Brazilian Indigenous peoples, carried out through a State

²¹⁰ STEINER, Sylvia H. “Crimes contra a humanidade”, in *Imputações penais potencialmente cabíveis aos agentes públicos e privados responsáveis por ações e omissões no combate à pandemia – conf. requerimento 826/21 para comissão de especialistas*. São Paulo, 2021, p. 227-228.

²¹¹ Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26913> – Access on 03/28/2022.

²¹² Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

²¹³ Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.

²¹⁴ Special Rapporteur on the right to food.

²¹⁵ Special Rapporteur on promoting and protecting of the right to freedom of opinion and expression.

²¹⁶ Special Rapporteur on the situation of human rights defenders.

²¹⁷ Special Rapporteur on the rights of indigenous peoples.

²¹⁸ Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26913> – Access on 03/28/2022.

policy that obeyed a deliberate, reiterated, and uniformly executed planning of acts and omissions calculated by the President of the Republic.

VII. Conclusion and requirements

238. Jair Messias Bolsonaro does not govern for everyone. His country and nation project includes only part of the Brazilian population, seeking to exterminate existing diversity and plurality. Since the beginning of his government, the President has actively acted toward destroying institutional safeguards that would enable the dignified existence of parts of the population that he deems disposable. To this end, he mobilized discriminatory speeches, demoralized institutions for human and socio-environmental rights protection, and dismantled accountability mechanisms.
239. In this sufficiently severe context of increasing inequality, retraction, and systematic violation of human rights, the COVID-19 Pandemic emerged in Brazil. Far from undermining the policy of systematic attack on minorities, the health emergency started to be used as another tool for constructing a country divided between the worthy and the unworthy of life. After one year of Jair Bolsonaro's administration, the coronavirus found Brazilian institutions already fragile. The president used it as an opportunity to develop further his authoritarian populist project, within which the protection of rights is not extended to all individuals.
240. Aware that the disease would affect different segments of the Brazilian population differently, Jair Bolsonaro intentionally spread the virus: he underestimated the severity of the pandemic, encouraged agglomerations of people, spread misinformation and pseudoscience, and deliberately exposed the population to the substantial risk of mass infection. The result was the transformation of the COVID-19 pandemic into a syndemic. Moreover, the dead and infected profile is not random, varying according to social and economic conditions, making some groups that make up the Brazilian population more vulnerable.
241. For these reasons, the petitioning organizations request the Permanent Peoples' Tribunal to recognize that President Jair Bolsonaro and his government, as part of a broader

policy of human rights violations, democratic erosion, and discrimination against minorities, intentionally spread the COVID-19 pandemic among Brazilians and foreigners residing in the country, generating preventable deaths and illnesses that more sharply affected the Indigenous and Black populations, as well as health professionals. By doing so, Bolsonaro committed the crime of intentional spread of a pandemic resulting in death and crimes against humanity as part of a genocidal policy against Brazilian Indigenous peoples.

242. Acknowledging that the government of Jair Bolsonaro intentionally spread the COVID-19 pandemic as part of its authoritarian and violent policy, disproportionately affecting the Indigenous and Black populations, accentuating inequalities and vulnerabilities, putting health workers at risk, is **an essential step in recording the truth** about the more than 640,000 deaths that occurred in Brazil, most of which were preventable. Listening to the testimony of Black and Indigenous people and workers in Brazil – which has not happened so far – allows that **their memory of grief and resistance** will not be despised. To acknowledge the responsibility of the Jair Bolsonaro government for the acts described in this complaint and to acknowledge him as the perpetrator of the most severe international crimes is a form of **moral reparation to all those who still suffer** from his acts.

243. Therefore, the organizations request that this Permanent Peoples' Tribunal:

(i) Recognize the human rights violations perpetrated in the context of the Covid-19 pandemic and its intentional spread by the Brazilian government at the behest of President Jair Bolsonaro, in affront of Articles 1, 2 and 19; 7 and 20; 9 and 10 of the Universal Declaration of The Rights of Peoples, under Article 1 of the New Statute of the Permanent Peoples' Tribunal;

(ii) Individually condemn President Jair Bolsonaro, under Article 8 New Statute of the Permanent Peoples' Tribunal, for the commission of crimes i) against humanity against the Brazilian population, with disproportionate effects on the black population, on health care workers, and indigenous peoples under Articles 3, paragraphs b and h of the New Statute of the Permanent Peoples' Tribunal and Article 7 of the Rome Statute, and ii) genocide

against indigenous peoples under Article 2 of the New Statute of the Permanent Peoples' Tribunal and Article 6 of the Rome Statute, international law, and interpretation.

244. With memory, truth, and justice, the path shall be paved for safeguarding the rights of the people and for the democratic and constitutional reconstruction in Brazil.

This is what is asked of this Permanent Peoples' Tribunal.

Brazil, April 22, 2022.

Eloísa Machado de Almeida and Joana Zylbersztajn

Arns Commission and Public Services International - Brazil

Luiz Henrique Eloy Amado

Terena Indigenous Attorney

Brazil's Indigenous People's Articulation

Sheila de Carvalho

Black Coalition for Rights

With support from:

Irene Jacomini Bonetti

Giovanna Dutra Silva Valentim

Renata Reverendo Vidal Kawano Nagamine

Annex 1:

ARE PART OF THE BLACK COALITION FOR RIGHTS:

1. Agenda Feminista Antirracista Pelo Desencarceramento
2. AFROUNEB – Núcleo Interdisciplinar de Estudos Africanos e Afro-Brasileiros da Universidade do Estado da Bahia
3. AfirmAção Rede de Cursinhos Populares
4. AGANJU – Afro Gabinete de Articulação Institucional e Jurídica
5. Agentes de Pastoral Negros do Brasil – APNs
6. Aliança Hip Hop Taquaril – BH
7. Alma Preta
8. ANEPE- Articulação Negra de Pernambuco
9. AMI – Associação dos Moradores de Itapua
10. AMPARAR – Associação de Amigos e Familiares de Presos – SP
11. Articulação Nacional de Pescadoras
12. Articulação Nacional de Psicólogas(as) Negras(os) e Pesquisadores – ANPSINEP
13. Aparelha Luzia
14. Assessoria Popular Maria Felipa – BH
15. Associação Cultural Bloco CarnavalescoIlê Aiyê
16. Bando de Teatro Olodum
17. Bloco Afro Olodum
18. CECUNE Centro Ecumênico de Cultural Negra - RS
19. Bloco Afro Ilú Oba De Min
20. Casa do Hip Hop do Taquaril – BH
21. CEDECA Mônica Paião Trevisan – SP
22. Ceert – Centro de Estudos das Relações de Trabalho e Desigualdades
23. Centro de Direitos Humanos de Sapopemba – SP
24. CEN – Coletivo de Entidades Negras
25. CFNTX - Centro De Formação Do Negro Da Transamazonica Xingu
26. Centro de Estudos e Defesa do Negro do Pará – CEDENPA
27. Círculo Palmarino
28. Coletivo Faremos Palmares de Novo
29. Coletivo Força Ativa – SP
30. Coletivo Luiza Bairros – UFBA
31. Coletivo Negro Vozes da UFABC – SP
32. Coletivo de Juventude Negra Cara Preta
33. Coletivo Negro Afromack
34. Coletivo Sapato Preto Lésbicas Negras da Amazonia
35. Coletivo 4 de novembro - BA
36. COMUNEMA - coletivo de mulheres negras maria maria de Altamira
37. Comunidade Cultural Quilombaque
38. Comunidade de Samba Maria Cursi
39. Comunidade de Samba Pagode na Disciplina Jardim Miriam
40. CONAQ – Coordenação Nacional de Articulação das Comunidades Negras Rurais Quilombolas
41. Conselho Pastoral de Pescadoras e Pescadores
42. Coordenação Nacional de Articulação das Comunidades Negras Rurais
43. Cooperifa
44. Criola
45. Cursinho Popular Carolina de Jesus
46. Desenrola e Não me Enrola
47. Educafro – Educação e Cidadania de Afrodescendentes
48. Evangélicos Pelo Estado de Direito
49. Festival da Mulher Afro-Latina-Americana e Caribenha – Latinidades
50. Frente de Mulheres Negras do DF e Entorno
51. Frente Favela Brasil
52. Frente Nacional de Mulheres do Funk
53. Frente Nacional Makota Valdina
54. Gajop – Gabinete Assessoria Jurídica Organizações Populares
55. Geledés – Instituto da Mulher Negra
56. Grupo de Amigos e Familiares de Pessoas em Privação de Liberdade
57. Grupo Kilombagem
58. IDEAS – Assessoria Popular
59. Ilê Omolu Oxum
60. Iniciativa Direito a Memória e Justiça Racial
61. INNPd – Iniciativa Negra por Uma Nova Política Sobre Drogas
62. IMUNE – Instituto de Mulheres Negras de Mato Grosso
63. Instituto Equânime Afro Brasil
64. Instituto Negra do Ceará – Inegra
65. Instituto AMMA Psique e Negritude
66. Instituto Cultural Steve Biko
67. Instituto Marielle Franco
68. Irohin – Comunicação e Memória Afrobrasileira
69. Kombativa – Cooperativa Social Latino-Americana de Direitos Humanos
70. Mães da Bahia

71. Mahin Organização de Mulheres Negras
72. Mandata Quilombo da Deputada Estadual Erica Malunguinho
73. Maré – Núcleo de Estudos em Cultura Jurídica e Atlântico Negro
74. Marcha das Mulheres Negras de São Paulo
75. Movimento das Favelas – RJ
76. Movimento dos Atingidos pela Base Especial de Alcântara
77. Movimento de Mães do Socioeducativo do Ceará
78. Movimento IFBA Negro
79. Movimento Independente MÃES DE MAIO
80. Movimento Nacional de Pescadoras e Pescadores
81. MNU – Movimento Negro Unificado
82. Movimento Negro Evangélico - PE
83. Mulheres de Axé do Brasil
84. NEGRARIA – Coletivo de Artistas Negros de Belo Horizonte e Região Metropolitana/MG
85. Nova Frente Negra Brasileira
86. Okán Dimó – Coletivo de Matriz Africana
87. ONDJANGO – Núcleo de Estudos Afro-Brasileiros
88. PDRR – Programa Direito e Relações Raciais – Faculdade de Direito da Universidade Federal da Bahia
89. PerifaConnection
90. Pretas em Movimento – BH
91. Protagonismo Negro da UFSM
92. PVNC – Movimento Pré-Vestibular para Negros e Carentes

93. Rede Fulanas NAB - Negras da Amazônia Brasileira
94. Rede de HistoriadorXs NegrXs
95. Rede de Mulheres Negras de Minas Gerais – MG
96. Rede de Mulheres Negras de Pernambuco
97. Rede Nacional de Feministas Antiproibicionistas
98. Rede de Proteção e Resistência Contra Genocídio – SP
99. Rede de Mulheres Negras da Bahia
100. Rede Sapatà
101. Rede Urbana de Ações Socioculturais- RUAS – DF
102. Renafro – Rede Nacional de Religiões Afrobrasileiras e Saúde
103. Teatro Negro e Atitude - BH
104. Ubuntu Cursinhos – SP
105. UNEafro Brasil
106. Unegro – União de Negras e Negros pela Igualdade
107. Voz da Baixada

