

Rio de Janeiro, May 7, 2021

Mr. Fabian Salvioli, Special Rapporteur on the promotion of truth, justice, reparation and guarantees of nonrecurrence

Re: Response to the Questionnaire: Transitional justice measures to address the legacy of serious violations of human rights and humanitarian law committed in colonial contexts. The case of Brazil.

1. Please indicate which mechanisms have been established in the concerned country to hold accountable persons accused of committing or bearing responsibility for gross violations of human rights and serious violations of international humanitarian law in colonial contexts. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in investigating, prosecuting and sanctioning such crimes.

In 1890, two years after the signing of the law that legally ended the slavery regime in Brazil, Ruy Barbosa, then Minister of Finance, signed an order for the burning of all files related to slavery. As a consequence, today we do not have the elements that are indispensable for understanding and analyzing the African experience and that of its descendants in the country¹, nor of the whites who have taken advantage of it. This erasure promoted in 1890, in fact, has persisted through all of Brazilian history and its relationship with racism.

Historically, Brazil is a country that tries to hide and deny its racism. Therefore, there are no accountability measures and slavery is seen as something of the past, a “black spot”, which clashes with the so-called “myth of racial democracy”. A myth which posits that Afro-descendant and white people live in harmony in the country, in a “harmonious fusion of a variety of races who have learned to live together and work together in an exemplary community”² and enjoying equal opportunities. This fallacy was used to reinforce the notion that there is no racism in Brazil, thus denying its existence and ensuring a white dominant group would remain in power. In this sense, the creation of accountability mechanisms would be a way of recognizing the consequences and permanence of the slavery period - something that Brazil's racist structure does not allow.

3. Please indicate which measures have been established in the concerned country to provide reparation to victims of gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such processes were established, please indicate which type of reparation was provided to victims (for example: restitution, compensation, satisfaction, and /or rehabilitation). If such measures were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and

¹ NASCIMENTO, Abdias. O genocídio do povo brasileiro. Processo de um racismo mascarado. 2nd edition. São Paulo: Perspectiva, 2017.

² Idem.

affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

In Brazil, no individual reparation measures were adopted for the victims of slavery. However, some of the policies historically claimed by the Afrodescendent movement as a way to minimize some of the effects of racism in Brazil were adopted during the administrations of presidents Lula da Silva and Dilma Rouseff, from 2002 through 2016. In that period, Brazil went through a period of advances and heated disputes in the human rights agenda. Despite the fact that there were various limitations, important initiatives were undertaken to combat the inequalities existing in the country and to promote human rights.

In a visit to Brazil in the year 2013, during the administration of Dilma Rouseff, the UN Working Group of Experts on People of African Descent declared its satisfaction at seeing the many programs and initiatives implemented by the State to combat racial discrimination during the period since the first election of President Lula da Silva.

These initiatives included the creation of the National Secretariat of Policies for the Promotion of Racial Equality (SEPPIR),³ the creation of the National Policy for Promotion of Racial Equality, (PNPIR),⁴ the publication of the Law of Quotas for admission to federal universities and federal institutions of secondary technical education,⁵ and the creation of the National Policy for Whole Health for the Afro-descendant population,⁶ among other measures that began the process of institutionalization of a racial agenda.

However, right after Dilma's Rouseff, impeachment, a variety of structural measures were taken that had a direct, negative effect on the lives of Afro-descendant people, women, and LGBTI+ people, such as a reform that made labor relations more flexible,⁷ and a Constitutional Amendment that froze public spending on health and education for 20 years,⁸ deepening social exclusions.

Brazil lives a period where anti-rights groups are dominating the creation of public policies and conservative ideals permeate its government. One of the clearest examples was the election, in 2018, of the ultraconservative politician Jair Bolsonaro as President

³ EBC. *Ministra diz que Seppir foi criada em 2003 após décadas de negação do racismo no país*. March 21, 2013. Available at: <https://www.ebc.com.br/noticias/brasil/2013/03/ministra-diz-que-seppir-foi-criada-em-2003-apos-decadas-de-negacao-do>

⁴ Decree n° 4.886, of November 20, 2003. Available at: www.planalto.gov.br/ccivil_03/decreto/2003/D4886.htm

⁵ Law n° 12.711, of August 29, 2012. Available at: www.planalto.gov.br/ccivil_03/ato2011-2014/2012/lei/112711.htm

⁶ Brazil. Ministry of Health. Secretariat of Strategic and Participative Management. Department of Support for Participative Management. National Policy for Whole Health for the black Population: a policy for SUS / Ministry of Health. Secretariat of Strategic and Participative Management. Department of Support for Participative Management. – 2. ed. – Brasília: Editora do Ministério da Saúde, 2013. Available at: https://bvsm.s.saude.gov.br/bvs/publicacoes/politica_nacional_saude_integral_populacao.pdf

⁷ Law n° 13.467 July 13, 2017. Available at: www.planalto.gov.br/ccivil_03/ato2015-2018/2017/lei/113467.htm

⁸ Constitutional Amendment n° 95, of December 15, 2016. Available at: www.planalto.gov.br/ccivil_03/Constituicao/Emendas/Emc/emc95.htm

of the Republic. The presidential election of 2018 was marked by hate-filled discourse that legitimized attacks on LGBTI+ people all over the country and was also accompanied by religious fundamentalism consecrated as government policy. In this context, there have been material and symbolic setbacks in the area of human rights. Jair Bolsonaro insists on denying the existence of racism in Brazil, alleging that this represents self-pity. SEPPIR, which in the Lula administration had the status of a Cabinet ministry, has been continually losing influence. Recognition of families in *quilombola* communities diminished by 91.3%.⁹ In addition, Bolsonaro's appointee for the presidency of *Fundação Palmares* (The Palmares Foundation)- an entity whose objective is to promote the preservation of cultural, social, and economic values arising from Afro-descendant influence in the formation of Brazilian society – was an administrator who constantly uttered offenses toward the Afro-descendant movement¹⁰ and who, recently, created an “anti-racist seal” that was awarded to people who, in his opinion, were unjustly accused of racism.¹¹

In addition to this, Bolsonaro has eliminated the institutional spaces of popular participation for the social control of public policies¹², as another act intended to prevent citizen participation spaces, as a way to maintain a system that kills, above all, the Afro-descendants, indigenous, and LGBTI+ population. In Brazil, no individual reparation measures were given for the victims of slavery, but the Afro-descendant movement has historically called for some policies as a way to minimize some of the consequences of racism in Brazil

5. Please indicate which measures have been established in the concerned country to guarantee non-recurrence of the gross violations of human rights and serious violations of international humanitarian law committed in colonial contexts. If such mechanisms were not adopted, please explain why. Please indicate the challenges and opportunities encountered in this regard, whether victims and affected communities have been effectively consulted in the design and implementation of these measures, and whether a gender perspective was adopted.

In Brazil, there is no effective reparation policy regarding the crimes committed in the colonial period. The advances highlighted were mainly due to the struggle of the Brazilian Afro-descendant movement, in search of recognition of the structural racism that imprisons Brazilian society and prevents the development of public policies aimed at preventing the continuation of serious human rights violations faced daily by the Afro-descendant, indigenous and LGBTI+ population.

⁹ Metr p les. Com Bolsonaro, reconhecimento de fam lias quilombolas caiu 91,3%. September 29, 2019. Available at: <https://www.metropoles.com/brasil/direitos-humanos-br/com-bolsonaro-reconhecimento-de-familias-quilombolas-caiu-913>

¹⁰ Carta Capital. *Ataques a Marielle, L zaro Ramos e mais: as pol micas de S rgio de Camargo*. November 28, 2019. Available at: <https://www.cartacapital.com.br/politica/ataques-a-marielle-lazaro-ramos-e-mais-as-polemicas-de-sergio-de-camargo/>

¹¹ G1. *Fundação Palmares lan a selo para quem for 'injustamente' acusado de racismo; entidades reagem*. May 29, 2020. Available at: <https://g1.globo.com/jornal-nacional/noticia/2020/05/29/fundacao-palmares-lanca-selo-para-quem-for-injustamente-acusado-de-racismo-entidades-reagem.ghtml>

¹² Conjur. Presidente Jair Bolsonaro extingue centenas de conselhos federais. April 14 2019. Available at: <https://www.conjur.com.br/2019-abr-14/presidente-jair-bolsonaro-extingue-centenas-conselhos-federais>

Indeed, there are countless enduring colonial practices in the structure of Brazilian society, which pose an obstacle to any attempts to push the State to adopt measures to curb serious human rights violations at the international level. For example, it is worth mentioning the case of Fazenda Verde v. Brazil.¹³

The Inter-American Court of Human Rights issued a ruling in which it condemned the Brazilian State for submitting 128 workers to conditions analogous to slavery. It was the first time that a State was condemned for slave labor in the Inter-American system. Moreover, in its decision, the Inter-American Court established parameters for the concept of slave labor and human trafficking within the Inter-American human rights protection system, addressing the Brazilian slave heritage, and highlighting the perpetuation of structural discrimination of enslaved workers, mainly due to their situation of economic vulnerability.¹⁴

However, especially because of the current government, there is weakening of the fight against slave labor, with the flexibilization of labor legislation and the absence of regulation of Constitutional Amendment 81.¹⁵ To make things worse, there are several pronouncements of the President of the Republic Jair Bolsonaro,¹⁶ which aim to favor ruralists and private property even in the case of slave labor on site.

Another absurd case is that of Madalena Gordiano who was rescued in November 2020 after being held in a condition analogous to slavery for 38 years by a white middle-class Brazilian family. The justification given by the family was that they considered her a “member of the family.” Magdalena lived in an unhealthy environment, without any right to vacation, pay, or weekly rest. Cases like these demonstrate how racism and slavery are constitutive of the Brazilian State, practicing and authorizing multiple forms of violence directed at the non-white and non-cis-heterosexual population of Brazil.

However, it should not be thought that working conditions analogous to slavery are the only example of the enduring legacy of colonialism in Brazil. It should not be forgotten that, in the colonial world, the language and the way of relating the metropolis to the colony were through the use of pure violence which was expressed through the soldier. Gunfire, massacres, forced slavery, and other forms of domination and extermination were used by soldiers and the military. They constituted themselves as the legal and institutionalized spokesman for the settler and the oppression regime.¹⁷

¹³ Inter-American Court of Human Rights. Case of Fazenda Brasil Verde workers vs. Brazil. Judgment of October 20, 2016. Available at: https://www.corteidh.or.cr/docs/casos/articulos/seriec_318_por.pdf

¹⁴ CONATRAE. Trabalho Escravo: Condenação do Brasil pela Corte Interamericana de Direitos Humanos no caso Fazenda Brasil Verde. Brasília, 2017. 106p.

¹⁵ G1. Bolsonaro diz que emenda sobre trabalho escravo não será regulamentada em seu governo. May 1st, 2021. Available at: <https://g1.globo.com/mg/triangulo-mineiro/noticia/2021/05/01/bolsonaro-diz-que-emenda-sobre-trabalho-escravo-nao-sera-regulamentada-em-seu-governo.ghtml>

¹⁶ IG. Bolsonaro minimiza trabalho escravo e diz que fazendeiro não pode perder terras. November 13, 2020. Available at: <https://economia.ig.com.br/2020-11-13/bolsonaro-minimiza-trabalho-escravo-e-diz-que-fazendeiro-nao-pode-perder-terras.html>

¹⁷FANON, Frantz. The damned of the land. Rio de Janeiro: Editora Civilização Brasileira SA, 1968, p. 28. Available at: https://edisciplinas.usp.br/pluginfile.php/2688237/mod_resource/content/1/Os_condenados_da_Terra-Frantz-Fanon.pdf

The view that colonized beings were not endowed with a soul or humanity allowed the colonial regime to expropriate them of any dignity, authorizing the violent and racist practices described above. However, even after the colonial period, for certain groups, violence continued to be the only or the main language used by the State. This formulated a cycle of repetition-continuity-reenactment of colonial practices and relations, anchored in the view that certain lives are not considered as human. That's why the indigenous leader Aílton Krenak states that “We usually debate colonization from a post-colonial perspective. Colonization is, it is here and now. The thought that we are discussing colonial practices as something that is in the past, which is gone and now we are just cleaning up, is a joke”.¹⁸ In this sense, researchers and social movements have been claiming the term “decoloniality” for decades, demarcating that colonization inaugurates a world in which race, gender, sexuality and class remain organizing and structuring states and social relations marked by violence until today.

Indeed, this repetition-continuity-reenactment of violent colonial practices is intrinsically present in the police brutality authorized by the Brazilian State and in its relationship with indigenous people, the Afro-descendant population of the favelas and LGBTI + (especially in the case of Afro-descendant *travestis*¹⁹ and transsexuals). Therefore, it is not surprising, that the main suspects of the murder of Marielle Franco, an Afro-descendant and bisexual councilor, are police officers or that so many *travestis* reinforce that, in a country where 90% of the population of transsexual women and *travestis* are sex workers, police violence on the streets is a daily reality in their lives. Likewise, the scandalous number of police operations culminating in deaths in slums is not surprising. The latest example of this happened just yesterday (May 6, 2021) when 25 people were killed in a favela operation. It is clear, therefore, how much the Brazilian police is a central element in the formula repetition-continuity-reenactment of colonialism, making it evident how there were no measures for the non-repetition of colonial practices.

¹⁸KRENANK, Ailton. Of time. N-1. Critical pandemic. Available in: https://pospsi.com.br/wp-content/uploads/2020/09/TEXTOS_38-ailton-krenak.pdf

¹⁹ *Travesti* is a political identity existing in Brazil to refer to a person who was assigned male at birth, but who identifies themselves as being of female gender and express themselves as being of female gender, even though they are not recognized as women according to the social constructs of the society in which they live.