

## **A) Introduction:**

1. **Article 19** is a non-governmental human rights organization born in 1987, in London, with the mission to defend and promote the right to freedom of expression and access to information worldwide. Its name comes from the 19th article of the UN Universal Declaration of Human Rights.

2. **Conectas Human Rights** is a non-governmental and not-for-profit organization founded in São Paulo/Brazil in September 2001. Its mission is to enforce and promote human rights and combat inequalities to build a fair, free and democratic society from a Global South perspective.

3. In this document Article 19 and Conectas examine the Government of Brazil's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyze Brazil's fulfillment of the rights to freedom of association, assembly, and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in 2017. To this end, we assess Brazil's implementation of recommendations received during the 3rd UPR cycle relating to these issues and provide a number of specific, action-orientated follow-up recommendations.

4. During the 3rd UPR cycle, the Government of Brazil received and accepted twenty-five recommendations relating to the above-mentioned freedoms/civic space. An evaluation of a range of legal sources, news and human rights documentation addressed in the subsequent sections of this submission, it is intended to demonstrate that Brazil has not complied with the agreed recommendations. On the contrary, a worsening in the situation of the Brazilian civic space has been observed, especially considering the increased inequalities and access restrictions fostered during the COVID-19 pandemic.

5. Article 19 and Conectas are deeply concerned by the endemic levels of threats, persecutions and violence against Brazilian journalists, human rights defenders, social movements, advocacy organizations and specific populations, such as women, black, indigenous and LGBTI people.

6. Article 19 and Conectas are further alarmed by the increasingly frequent invocation and use of legal and extra-legal restrictions on the right to free assembly and expression in Brazil.

7. This document is divided into other three sections, beyond the attachment, in which there is a matrix of recommendations that we suggest being made to the Brazilian state, which are:

- In Section B, Article 19 and Conectas examine Brazil's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of association; freedom of opinion, expression, and information; and the right to peaceful reunion.
- In Section C, Article 19 and Conectas evaluate Brazil's implementation of UPR recommendations and compliance regarding efforts to strengthen the national human rights institutions.
- In Section D, we finalize with some recommendations that are to be suggested to Brazil based on the analysis made through this contribution.

## **B) Freedom of association; freedom of opinion, expression, and information; and the right to peaceful reunion:**

8. The freedoms of association and expression, won after the Brazilian re-democratization and enshrined in the 1988 Federal Constitution, guarantee the existence of civil society, composed of non-governmental organizations, social movements, and other groups that act on various fronts, agendas, and causes. A strong and independent civil society is synonymous with a healthy and participatory democracy.

9. In Brazil, attacks on those who do not align with government positions, at all federal levels, have intensified since the 2018 elections, but cannot be considered new. The tactics include delegitimization of civil society entities, criminalization of movements, persecution, intimidation and violence against defenders, espionage, creation of legal mechanisms of control and cutting of funding.

10. Regarding Articles 2, 17, 19, 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), promulgated in July 1992 by Decree No. 592/1992, it is important to mention that Brazil is in a context of shrinking democratic space in which the Executive Branch has been using the mechanisms it has to feed animosities and promote concrete attacks against journalists, human rights defenders, social movements, advocacy organizations and specific populations.

11. Take, for example, the case of “Brigadistas de Alter do Chão”<sup>1</sup> in which a group of activists was the target of an investigation without any ballast and managed to obtain authorization for telephone interceptions in 2019. From an absolutely biased interpretation of the conversations, an absolutely

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<sup>1</sup> Source: <https://www.conectas.org/en/noticias/ngos-criticize-indictment-of-firefighters-from-alter-do-chao/>. Access on: 30 mar. 2022.

vexing police operation was structured, in which there was the invasion of the Brigadistas' houses and their workplace and resulted in their preventive detention without concrete proofs or legal basis<sup>2</sup>.

12. Regarding to paragraphs 2, 213, 221, 228, 234 and 237 of the ICCPR, more recently, provisions of the National Security Law, a law created during the military dictatorship in Brazil, were frequently being used to harass opponents, to intimidate people who speak out against the President of the Republic, like lawyers, journalists and even politicians<sup>3</sup>. The law established, among other things, sentences of up to four years in prison for anyone who slanders or defames the President of the Republic, the presidents of the Supreme Court and the Senate or the speaker of the Lower House of Congress.

13. The records show that the average number of people investigated for crimes against national security was 9.3 per year between 2000 and 2017. The number doubled in 2018, almost tripled in 2019 and more than quadrupled in 2020. According to the organizations Conectas, Article 19, the Vladimir Herzog Institute, IDMJR (Right to Memory and Racial Justice Initiative) and GAJOP (Office of Legal Counsel to Grassroots Organizations), this shows that the legislation created during the military dictatorship was being used as a political weapon for ideological persecution, for silencing criticism and for establishing widespread fear, with serious consequences for individual rights and freedoms<sup>4</sup>.

14. In September 2021, National Security Law was repealed. In its place, the National Congress approved the inclusion in the Criminal Code of crimes against the Democratic Rule of Law. The changes to the text made by the Presidency, however, attempt to shield law enforcement officers who repress peaceful demonstrations. One of the articles vetoed by the president (article 359-S) established a ban on “preventing, through violence or serious threat, the free and peaceful exercise of demonstrations by political parties, social movements, unions, trade associations or other political, sector, ethnic, racial, cultural or religious groups”.

15. The Bill on the Defense of the Democratic State passed through Congress in 2021 after criticisms of the indiscriminate use of the National Security Law (No. 7,170/1983) to persecute critics of the government. According to a survey by LAUT – Center for the Analysis of Freedom and Authoritarianism, in the first two years of the Bolsonaro’s government, there was a 285% increase in

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<sup>2</sup> Source: <https://www.cartacapital.com.br/sustentabilidade/um-ano-apos-prisao-brigadista-de-alter-do-chao-diz-viver-tortura-juridica/>. Access on: 30 mar. 2022.

<sup>3</sup> Source: <https://www1.folha.uol.com.br/poder/2021/05/conheca-20-atingidos-por-investigacoes-de-crimes-da-lei-de-seguranca-nacional-e-opositores-de-bolsonaro.shtml>. Access on: 30 mar. 2022.

<sup>4</sup> Source: <https://www.conectas.org/en/litigiopt/the-national-security-law-and-the-silencing-of-democracy/>. Access on: 30 mar. 2022.

the number of investigations opened with basis on the National Security Law compared to the same period under the government of Dilma Rousseff and Michel Temer<sup>5</sup>.

16. On the other hand, in the Legislative Branch, where at the moment the efforts of parliamentarians should concentrate on measures that respond to the needs of the population in the face of the serious scenario of the COVID-19 pandemic in Brazil, there is an attempt to accelerate the approval of an already known agenda of projects that aim to increase the “anti-terrorism” legislation and, under this pretext, create mechanisms for the persecution, vigilance and criminalization of social movements and civil society organizations. These initiatives contradict the recommendations 136.56, 136.57, 136.58, 136.111, 136.114 and 136.120 received in the 3rd cycle of the UPR, as they expand the anti-terrorism law to include human rights defenders as possible threats, breaking international human rights standards.

17. Throughout 2020, due to the pandemic and negotiations with the Congress presidency, these projects made little progress. However, since the beginning of March 2021, the government base has been making attempts to speed up the processing of one of the most worrying projects under analysis in the Chamber of Deputies, Bill 1595/2019. At the same time, precisely because of the need to adopt deliberation remotely during the pandemic, there is now less permeability by the National Congress to social participation. That is why it is with extreme concern that we see the accelerated resumption of the consideration of Bill 1595/19 in the Chamber of Deputies and the real possibility that the other projects will also be processed again without the necessary discussion, maturation and the effective analysis of their pertinence and compliance with human rights standards.

18. Once again, regarding paragraphs 2, 213, 221, 228, 234 and 237 of the ICCPR, the Brazilian State should be asked about the possible impacts of this bill. The authoritarian proposal from the government’s support base sets up a parallel surveillance system under the control of the President of the Republic and creates mechanisms for the persecution of opponents. Approved in a special committee of the Lower House in September 2021, Bill 1595/2019 uses vague “counter-terrorist” justifications to create mechanisms that can criminalize social movements and other organizations, expand unconstitutional surveillance and exempt government agents who commit crimes. The bill is a rewriting of a proposal submitted in 2016 by President Jair Bolsonaro when he was a federal congressman.

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<sup>5</sup> Source: <https://www.conectas.org/en/noticias/military-dictatorship-era-national-security-law-is-repealed/>. Access on: 30 mar. 2022.

19. According to more than 100 civil society organizations, the most critical aspect of the bill is the creation of a National Counter-Terrorism System and a National Counter-Terrorism Policy, which will be established by the Institutional Security Office of the Presidency of the Republic. These mechanisms will have the purpose of coordinating the preparation and employment of military, police and intelligence units in counter-terrorist actions and they will provide information for possible decrees for federal intervention, state of defense or state of siege in the event of “repressive actions in national territory”. In practice, the project creates a “secret police” formed by the Armed Forces, the Federal Police and ABIN (Brazilian Intelligence Agency), under the direct control of the President of the Republic, which will have broad access to private data and privileged information on all citizens, especially opponents of the government<sup>6</sup>.

20. In addition to creating a “secret police”, the bill establishes a concept of terrorism that is based on broad and poorly defined criteria. In a technical report on the bill, Conectas, the Criminal Justice Network, the Brazilian Criminal Sciences Institute and Article 19 stated that “in this proposal, there is no element that differentiates an ‘act of terrorism’ from common crimes, as the only requirements to constitute such an act are that they be ‘hostile to human life or effectively destructive in relation to any critical infrastructure, essential public service or key resource’. Furthermore, these acts do not even need to materialize, since it is enough for the agent to ‘appear to have the intention’ of causing them”.

21. The bill also authorizes the investigation and punishment of so-called “preparatory acts”. In other words, it creates forms of police intervention without the need for a crime to actually have happened, as mere intentions can be considered crimes. Another problematic aspect of the bill is the part that states that if a government agent, in legitimate self-defense, causes the death or injury of people in a counter-terrorist action, they may be exempt from liability.

22. United Nations Special Rapporteurs have already requested that Brazil not proceed with the passage of the bill during the Covid-19 pandemic, due to the high risks it poses to fundamental rights, in particular freedom of expression and association. In September 2021, the United Nations High Commissioner for Human Rights, Michelle Bachelet, expressed concern over the bill and warned about possible abuses against social activists and human rights defenders if the proposal is approved by Congress<sup>7</sup>.

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<sup>6</sup> Source: <https://www.conectas.org/en/noticias/lower-house-wants-to-speed-up-vote-on-bill-that-creates-bolsonaros-secret-police/>. Access on: 30 mar. 2022.

<sup>7</sup> Source: <https://politica.estadao.com.br/noticias/geral,onu-cita-preocupacao-com-projeto-de-contraterrorista-e-ataques-a-indigenas-no-brasil,70003838949>. Access on: 30 mar. 2022.

23. However, in October 2021 a new bill with almost identical provisions was presented in the Chamber of Deputies, being attached to the mentioned 1595/2019. With this, the two bills are ready for analysis by the Plenary of the Brazilian Chamber of Deputies and can be quickly approved.

24. And if that weren't enough, other equally worrisome bills have received movements that favor their eventual approval, or even have been proposed in direct government initiative. One of those that deserves to be highlighted, either because of its progress or the content of the text, is the PLS 272/2016, currently in progress in the Federal Senate. Authored by Senator Lasier Martins, the project aims to amend certain provisions of Law No. 13,260/2016, the Anti-Terrorism Law, approved in March 2016. It was distributed to the Commission of Constitution, Justice and Citizenship (CCJC), in terminative character, in which it received the report of Senator Magno Malta, who in March 2018 gave an opinion for approval in the form of a substitute, proposing substantial changes to the original text.

25. In February 2022, the PLS 272/2016 was included in the agenda to be voted by the CCJC of the Federal Senate, and after intense mobilizations by civil society and institutions that recognize its risk, it will be the object of a thematic session on April 07, 2022. However, it is still under discussion and with real chances of being moved forward.

26. The PLS 272/2016 is seen with extreme concern by organized civil society, since it seeks to insert, in an unconstitutional way, political and ideological motivation among the reasons for committing the crime of terrorism, in addition to expanding the list of acts considered terrorist and reinserting some provisions that no longer appear in the final version approved to the Law No. 13,260/2016, with special emphasis on what is referred as the apology and financing of the crime of terrorism.

27. And on March 29, 2022, the Presidency of the Republic presented, directly to the Brazilian Chamber of Deputies, two bills that propose changes to the Criminal Code, the Code of Criminal Procedure, the Anti-Terrorism Law, the Criminal Organizations Law (Law No. 12,850/2013), the Heinous Crimes Law (Law No. 8,072/1990) and the Criminal Enforcement Law (Law No. 7,210/1984). With the numbers 732 and 733/2022, the proposals expand the definition of terrorism to contemplate "violent actions with political or ideological purposes", creating a new possibility of criminalization of social movements. They also suggest to alleviate punishments to police officers who commit excesses during the exercise of their function, in the face of threats justified by them as

possible terrorist actions, for example. It is important to remember that Brazil is in an election year for the main executive and legislative positions, both at the federal and state levels.

### **C) Efforts to strengthen the national human rights institutions:**

28. Considering Articles 1, 2, 22 and 25 of the International Covenant on Civil and Political Rights (ICCPR), it is recommended that the Brazilian State be questioned about the mechanisms for guaranteeing social participation in the National Human Rights Program (PNDH), a set of public policies created over years of debates at regional and national conferences, with broad civil society participation, which have been systematically dismantled by the current federal government.

29. Although the paragraphs 2, 26, 36, 41, 42 and 237 of the ICCPR, in the “Third periodic report submitted by Brazil under article 40 of the Covenant, due in 2009” reports that civil society organizations are participating in the Interministerial Committee for Follow-up on and Monitoring of the PNDH-3, this is not happening in relation to PNDH-4. Nowadays, there is an Interministerial Committee created to design the new edition of this program. However, it does not include civil society.

30. In February 2021, the Ministry of Women, Family and Human Rights announced the establishment of a working group to review the PNDH. According to the ministerial order, no civil society representative will serve on the group responsible for the review and its discussions will be confidential. In other words, the Ministry is proposing to change the policies that resulted in the PNDH, with a potential impact on the lives of millions of people and without any social participation or transparency. The PCdoB (Communist Party of Brazil) filed the ADPF Case (Allegation of Violation of a Fundamental Precept) No. 795 in the Supreme Court to challenge the constitutionality of the measure. The party says that the matter is especially important for historically vulnerable groups for which the PNDH is an instrument of protection and action.

31. In May 2021, Conectas, Article 19 and Comissão Arns filed a request for *amicus curiae* status in the case and endorsed the arguments and requests made in the initial petition. The position of the organizations consists of two main points: the right to social participation and the violation of rules on transparency and access to information. With regard to the first point, the organizations referred to a series of international treaties, ratified by Brazil, that guarantee the right to direct participation as

a central component of democracy – among them, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the American Convention on Human Rights.<sup>8</sup>

32. In October 2021, the Ministry of Women, Family and Human Rights announced, in another ministerial order, the working group to review the PNDH may invite some “representatives of rights councils linked to the Ministry and other public bodies, and public and private entities operating in the field of human rights”<sup>9</sup> to participate in meetings. Due to the minimal progress in the group's performance, its duration was extended until the end of June 2022, without a new activity plan or updated information having been released. And until the date of these contributions, there is no news that civil society entities have received invitations to participate in meetings with the objective of collaborating in the process of reviewing the PNDH.

33. Such attacks promoted by authorities against the proper functioning of national human rights institutions prevent the implementation of recommendations 136.23, 136.24, 136.113, 136.115, 136.116, 136.117, 136.118, 136.119 and 136.121 of the 3rd UPR cycle. Now, Brazil should be requested to provide an explanation about the generic mention of social participation in the revision of the PNDH-4 and to explain how (and if) the supposed invitations are being carried out. So far, according to the information provided by official bodies, as by the National Human Rights Council, the review process of the National Human Rights Program (PNDH) remains without transparency and dialogue with civil society.

#### **D) Suggested Recommendations to the Brazilian State:**

- Reject legislative proposals that aim to increase the “anti-terrorism” legislation and, under this pretext, create mechanisms for the persecution, vigilance and criminalization of social movements and civil society organizations, such as the Bills 1595/2019, 732/2022 and 733/2022, the three actually at the Chamber of Deputies, and the Bill 272/2016, in progress in the Federal Senate.
- Stop the attacks on the National Human Rights Program (PNDH), a set of public policies created over years of debates at regional and national conferences, with broad civil society participation, which have been systematically dismantled by the current federal government.
- Guarantee the social participation in the National Human Rights Program (PNDH).

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<sup>8</sup> Source: <https://www.conectas.org/en/litigiopt/adpf-795-dismantling-the-national-human-rights-plan-in-the-shadows/>. Access on: 30 mar. 2022.

<sup>9</sup> Source: <https://www.in.gov.br/en/web/dou/-/portaria-n-3.661-de-28-de-outubro-de-2021-355854818>. Access on: 30 mar. 2022.



- Provide an explanation about the generic mention of social participation in the revision of the PNDH-4 and explain how (and if) the supposed invitations are being carried out.
- Engage and advocate for a positive resolution at the ADPF Case No. 795 in the Supreme Court, to maintain the right to social participation, the transparency and the access to information in the regular operation of the PNDH.