

PUBLIC STATEMENT ABOUT THE RISKS IN APPROVING DRAFT BILL NO. 3,283/2021

THROUGH THIS PUBLIC STATEMENT, THE UNDERSIGNED CIVIL SOCIETY ORGANIZATIONS AND SOCIAL MOVEMENTS WISH TO STATE THEIR CONCERN WITH THE VOTING OF **DRAFT BILL NO. 3,283/2021**, WHICH, AMONG OTHER PROPOSALS, INTENDS TO ALTER **LAW NO. 13,260/2016 – KNOWN AS THE ANTITERRORISM LAW**. CURRENTLY UNDER DISCUSSION AT THE FEDERAL SENATE LEVEL, THIS PROPOSITION RECENTLY PASSED THE PUBLIC SAFETY COMMISSION AND IS ON TRACK TO BE APPRAISED AND VOTED ON THIS WEEK AT THE CONSTITUTION AND JUSTICE COMMISSION.

THE ENTITIES SIGNING THIS NOTE HAVE BEEN MONITORING DEBATES ON THE TOPIC IN CONGRESS SINCE THE FIRST ARTICULATIONS THAT LED TO THE APPROVAL AND SANCTIONING OF THE ANTITERRORISM LAW IN 2016. THE APPROVED TEXT, IN SPITE OF THE CLAIMS BY CIVIL SOCIETY ORGANIZATIONS AND SOCIAL MOVEMENTS, WHICH ASKED FOR IT TO BE VETOED, AND THE ACCELERATED PROCESSING WITHOUT PROPER PUBLIC DISCUSSIONS, IS THE MAIN PIECE OF LEGISLATION ON THE SUBJECT IN BRAZIL.

THE INITIAL VERSION OF THE ANTITERRORISM LAW INCLUDED **TROUBLING PROVISIONS** BECAUSE IT CONSIDERED “**POLITICAL AND IDEOLOGICAL**” MOTIVATIONS AS ELEMENTS THAT COULD CHARACTERIZE A TERRORIST ACTION. **WITH ITS HIGHLY CRIMINALIZING POTENTIAL**, THE TEXT WAS CRITICIZED BY THE ORGANIZATION OF AMERICAN STATES (OAS) AND THE UNITED NATIONS (UN), WHICH CONSIDERED THAT ITS BROAD DEFINITION COULD RESTRICT FUNDAMENTAL LIBERTIES. ONE OF THE MAIN VICTORIES OF CIVIL SOCIETY AFTER EXERTING INTENSE PRESSURE WAS STRIKING THIS ITEM OUT OF THE BILL. **THIS GUARANTEE, HOWEVER, HAS SINCE BEEN ATTACKED IN MULTIPLE LEGISLATIVE BILLS.**

BRAZIL IS FACING A REDUCTION OF ITS DEMOCRATIC SPACE, WITH THE LEGISLATIVE BRANCH EMPLOYING EACH AND EVERY MECHANISM AT ITS DISPOSAL TO FOSTER ANIMOSITY AND ATTACK SOCIAL MOVEMENTS AND SPECIFIC POPULATIONS.

UPON ANALYZING **DRAFT BILL 3,283/2021**, WE NOTICED THAT SEVERAL OF ITS PROPOSITIONS REPRESENT ISSUES ALREADY FOUND IN OTHER PROPOSALS UNDER PROCESSING IN CONGRESS INVOLVING THE SUBJECT OF TERRORISM AND THAT ARE OFTEN THE TARGET OF CRITICISM, INCLUDING FROM INTERNATIONAL ENTITIES OR ITEMS THAT HAD ALREADY BEEN VETOED IN THE PROCESS OF DEBATING AND PASSING THE LAW IN 2016.

THESE ISSUES INCLUDE:



CIVIL UNREST BEING EQUATED TO TERRORISM

THE INCLUSION AND EQUATION BETWEEN “**CIVIL UNREST**” AND TERRORIST ACTS IN §3 OF THE TEXT OF **DRAFT BILL 3,283/2021** ARE CARRIED OUT IN A **GENERIC, BROAD, AND IMPRECISE MANNER**, LEADING TO THE RISK OF IT BEING MISUSED AND IMPROPERLY ENFORCED. NORMATIVE PROVISIONS OF THIS NATURE, AS POSITED BY CIVIL SOCIETY WHEN LAW NO. 13,260/2016 WAS UNDER DISCUSSION, **VIOLATE THE PRINCIPLE OF SPECIFICITY IN CRIMINAL LAW**, ACCORDING TO WHICH THE INCRIMINATING RULE MUST BE WRITTEN IN A CLEAR AND PRECISE MANNER, SO AS TO AVOID EXTENDED INTERPRETATIONS. THE EXCESSIVE SCOPE OF THE EXPRESSION “**CIVIL UNREST**” **CONTRADICTS INTERNATIONAL HUMAN RIGHTS PRINCIPLES AND NECESSARILY IMPLICATES THE FLEXIBILIZATION OF CONSTITUTIONAL RIGHTS AND GUARANTEES.**

FURTHERMORE, THE CONCEPT OF “**CIVIL UNREST**”, FAR REMOVED FROM LEGAL VOCABULARY, **ORIGINATES FROM THE LAW ENFORCEMENT LANGUAGE OF THE “RIOT POLICE”**, CREATED TO CONTAIN “SOCIAL MOVEMENTS, POLITICAL ORGANIZATIONS, OR LARGE VIOLENT GATHERINGS”^[1]. **THUS, THE DEFINITION PROVIDED IN §3**, WHEN STATING THAT “THE FOLLOWING BEHAVIORS ARE EQUAL TO TERRORIST ACTS WHEN PRACTICED FOR ANY REASON WITH THE INTENTION OF CAUSING CIVIL UNREST, IN THE NAME OR IN FAVOR OF A TERRORIST ORGANIZATION OR AN ORGANIZED CRIME MOVEMENT [...]”, **HARKENS BACK TO THE ORDINARY ACTIONS OF SOCIAL MOVEMENTS, IN SPITE OF THEIR LEGITIMATE PURPOSES.**

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THE INSULAR ACTION PROVIDED IN ITEM I OF §3 CRIMINALIZES THE WORK OF SOCIAL MOVEMENTS THAT CLAIM FOR CHANGE, SINCE IT PROHIBITS THE CONDUCT OF CREATING OBSTACLES OR LIMITING THE FREE MOVEMENT OF PEOPLE, GOODS, AND SERVICES. THE CAVEAT OF §2 OF THE ANTITERRORISM LAW SEEMS INSUFFICIENT TO ENSURE THE EXCLUSION FROM CONSIDERATION AS AN OFFENSE BY TRANSFERRING THE DEFINITION OF THE LEGITIMACY OF POPULAR CLAIMS TO LAW ENFORCEMENT AND THE JUDICIARY BRANCH.

THEREFORE, **THE PROPOSAL CONTAINED IN §3**, BY DISMISSING THE TYPICAL ELEMENTS OF THE HEAD PROVISION OF ART. 1 OF THE ANTITERRORISM LAW, DEFINING AS EQUIVALENTS TO TERRORISM CONDUCTS ADOPTED FOR ANY REASON – WITH AN **EXCESSIVELY BROAD DEFINITION FOR THE MOTIVATION**, SUCH AS “POLITICAL-IDEOLOGICAL” – WITH THE PURPOSE OF CAUSING “CIVIL UNREST” – BRINGING TO MIND THE WORK OF THE RIOT POLICE –, **DEALS A CATASTROPHIC BLOW AGAINST THE FUNDAMENTAL LIBERTIES ENSHRINED IN ARTICLE 5 OF THE FEDERAL CONSTITUTION AND MUST BE REJECTED BY THIS HOUSE OF PARLIAMENT.**



INTERNATIONAL RECOMMENDATIONS ON RESTRICTIONS TO CIVIC SPACE BY COUNTER-TERRORISM POLICIES

THE 52ND SESSION OF THE HUMAN RIGHTS COUNCIL OF THE UNITED NATIONS HELD IN GENEVA BETWEEN MARCH 27 AND APRIL 4, 2023, CONCLUDED BRAZIL'S UNIVERSAL PERIODIC REVIEW PROCESS. WITH THE END OF THE 3RD CYCLE (2017-2022) AND THE START OF THE 4TH (2023-2027), BRAZIL RECEIVED 304 RECOMMENDATIONS BY COUNTRIES THAT ARE PART OF THE COUNCIL TO ENSURE AND PROTECT HUMAN RIGHTS IN THE UPCOMING CYCLE. TWO OF THEM EMPHASIZE THE IMPORTANCE OF LISTENING TO CIVIL SOCIETY IN LEGISLATIVE DISCUSSIONS ON THE SUBJECT OF TERRORISM, WARNING OF THE IMPORTANCE OF OBSERVING INTERNATIONAL HUMAN RIGHTS AGREEMENTS THAT BRAZIL HAS SIGNED, AND MENTIONING DRAFT BILLS THAT ARE SIMILAR TO THE CHANGES PROPOSED BY **DRAFT BILL NO. 3,283/2021**. WHAT FOLLOWS IS THE CONTENT OF BOTH APPROVED RECOMMENDATIONS:

149.38 RECONSTRUCTING THE CIVIL SOCIETY ORGANIZATION PARTICIPATION SYSTEM IN PUBLIC POLICY COUNCILS AND OPPOSING LEGISLATIVE PROPOSALS SUCH AS DRAFT BILLS 1,585/2019, 732/2022, AND 272/2016, WHICH INTEND TO EXPAND ANTITERRORISM LEGISLATION IN THE CONTEXT OF SOCIAL MOVEMENTS AND CIVIL SOCIETY ORGANIZATIONS (NETHERLANDS).

149.42 ENSURING THAT LEGISLATION REFERRING TO THE FIGHT AGAINST TERRORISM OBSERVES INTERNATIONAL OBLIGATIONS IN TERMS OF HUMAN RIGHTS AND DOES NOT RESTRICT FUNDAMENTAL LIBERTIES (MEXICO).

IN 2022, THE UN SPECIAL RAPPORTEUR ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION, CLÉMENT VOULE, STATED HIS **SIMILAR CONCERNS** WITH DRAFT BILLS THAT, BASED ON **BROAD DEFINITIONS OF TERRORISM**, COULD GIVE WAY TO LEGISLATION THAT ALLOWS ACTIVISM AND SOCIAL MOVEMENTS TO BE CRIMINALIZED, **RESTRICTING FUNDAMENTAL LIBERTIES AND CONFIRMING A TREND OF RESTRICTIONS TO THE CIVIC SPACE**[2].

ONE YEAR BEFORE THAT, **SEVEN OF THE ORGANIZATION'S RAPPORTEURS** (ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN COUNTERTERRORISM; ON THE ISSUE OF HUMAN RIGHTS OBLIGATIONS RELATING TO THE ENJOYMENT OF A SAFE, CLEAN, HEALTHY AND SUSTAINABLE ENVIRONMENT; ON THE PROMOTION OF FREEDOM OF OPINION AND EXPRESSION; ON THE RIGHTS TO FREEDOM OF PEACEFUL ASSEMBLY AND ASSOCIATION; ON THE SITUATION OF HUMAN RIGHTS DEFENDERS; ON ARBITRARY DETENTION; AND ON THE RIGHT TO PRIVACY) **PUBLISHED A TECHNICAL NOTE STATING THEIR "PROFOUND CONCERNS" WITH THE PROJECTS OF LEGISLATIVE REFORM ON THE SUBJECT IN BRAZIL.**

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THESE LEGAL TEXTS, WHICH SEEK TO EXPAND THE DEFINITION OF TERRORISM, BROADENING THE LIST OF ACTIONS SEEN AS TERRORIST ACTS, AND SUGGESTING INCREASED SENTENCES WITH **POORLY DEFINED TERMS**, WERE CONSIDERED A HAZARD DUE TO THEIR JEOPARDIZING OF THE **PRINCIPLES OF LEGALITY AND LEGAL SECURITY**, COLLIDING WITH HUMAN RIGHTS PROTECTION PRINCIPLES. FURTHERMORE, THE RAPPORTEURS ALSO HIGHLIGHTED THAT **LEGISLATIVE PROCESSES SUCH AS THESE SHOULD INCLUDE THE PARTICIPATION OF SOCIETY AS A WHOLE, WITHOUT BEING PROCESSED UNDER EMERGENCY PROCEEDINGS**[3].

ALSO IN 2021, THE REGIONAL REPRESENTATIVE FOR SOUTH AMERICA OF THE OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS, JAN JARAB, SENT A NOTE TO THE THEN-CHAIRMAN OF THE HUMAN RIGHTS COMMISSION OF THE BRAZILIAN CHAMBER OF DEPUTIES, STATING HIS **CONCERN WITH PROPOSALS TO EXPAND THE DEFINITION OF TERRORISM AND EMPHASIZING THAT LEGISLATION SHOULD NOT CURTAIL OR DISCOURAGE THE EXERCISE OF THE RIGHT TO PEACEFUL ASSEMBLY**[4]. IN ITS RESOLUTION NO. 7/36, THE HUMAN RIGHTS COUNCIL OF THE UN ESTABLISHED THE NEED TO ENSURE THAT THE INVOKING OF NATIONAL SECURITY, INCLUDING WHEN USED TO COUNTER TERRORISM, WOULD NOT BE USED IN AN UNJUST OR ARBITRARY MANNER, RESTRICTING THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION.



INCREASED FINES IMPOSED ON THE FELONY OF ASSOCIATION WITH DRUG TRAFFICKING

ONE MUST ALSO PAY ATTENTION TO THE **INCREASED FINES PRESCRIBED IN CASES INVOLVING THE FELONY OF ASSOCIATION WITH DRUG TRAFFICKING**, INSERTED THROUGH AN AMENDMENT AT THE PUBLIC SAFETY COMMISSION. CURRENTLY, ALTHOUGH FINES SEEK TO ESTABLISH A SANCTION ON ASSETS FOR CRIMES THAT INVOLVE PROPERTY AND THAT, THEREFORE, HAVE THE INTENTION OF INCREASING THE PERPETRATOR'S ASSETS, THEY CONSIST OF SEVERE "EXCLUSION SENTENCES". **FOR AS LONG AS THE FINES ARE NOT SETTLED, THE PENALTY WILL CONTINUE IN EFFECT, AND THE EXTRA-CRIMINAL EFFECTS OF THE CONVICTION REMAIN ACTIVE. DEFAULTING ON A FINE LEADS TO THE SUSPENSION OF POLITICAL RIGHTS (ART. 15, III, FEDERAL CONSTITUTION), WHICH CULMINATES ON A DOMINO EFFECT IN THE LIFE OF THE CITIZEN, WHO IS PREVENTED FROM DOING ANYTHING THAT REQUIRES ELECTORAL GOOD STANDING, SUCH AS HAVING A CURRENT INDIVIDUAL TAXPAYER ID (CPF), HAVING A LABOR CARD ISSUE, OPENING A BANK ACCOUNT OR EVEN ENTERING CONTRACTS FOR UTILITIES IN THEIR OWN NAME. THESE ARE THE SIDE-EFFECTS OF THE CRIMINAL CONVICTION.**

IT IS A WELL-KNOWN FACT THAT THE MAJORITY OF THE PRISON POPULATION IN BRAZIL COMPRISES YOUNG MEN OF AFRICAN DESCENT, LOWER EDUCATION LEVEL, AND WITH FEW OPPORTUNITIES IN LIFE BEFORE OR AFTER INCARCERATION. **THE INCREASE OF FINE PENALTIES WORSENS THE PERVERSE SOCIAL EFFECTS OF CRIMINAL CONVICTION**, PREVENTING THE SOCIAL REINTEGRATION OF FORMER CONVICTS WHO HAVE SERVED THEIR TIME IN PENITENTIARIES.

THE FOLLOWING DATA WAS OBTAINED BY GABRIEL BROLLO FORTES THROUGH THE ACCESS TO INFORMATION LAW ABOUT THE STATE OF SÃO PAULO: FOR A DRUG TRAFFICKING OFFENSE COMMITTED IN 2021, THE FINE VARIED BETWEEN A MINIMUM OF 18,300.00 BRL AND A MAXIMUM OF 8,250,000.00 BRL. ON AVERAGE, THE FINE ESTABLISHED FOR TRAFFICKING WAS 38,300.00 BRL. IN TURN, ONLY 0.03% OF THE FINES STIPULATED FOR DRUG TRAFFICKING WERE SETTLED WITHIN THAT SAME PERIOD. THIS MEANS THAT, **FOR THE VAST MAJORITY OF CONVICTED PEOPLE, THE EFFECTS OF THE PENALTY NOT ONLY PROLONG THEMSELVES BUT ARE HIGH UNSOLVABLE, FOR THE SETTLEMENT OF THESE FINES BECOMES UNFEASIBLE.**

THE OFFENSE OF ASSOCIATION WITH TRAFFICKING, OFTEN PRESCRIBED WHEN TWO PEOPLE ARE FOUND IN FLAGRANTE DELICTO, WHETHER OR NOT THERE ARE ANY ELEMENTS PRESENT INDICATING ASSOCIATION WITH A CRIMINAL ORGANIZATION, HAS THE PERVERSE EFFECT OF ELEVATING THE PENALTIES OF DEPRIVATION OF LIBERTY. THEREFORE, THE ABSURD PENALTY INCREASE CONTAINED IN THE PROPOSAL MERELY WORSENS THIS SCENARIO, WHICH IS WHY THE ORGANIZATIONS ASK THE SENATORS TO REJECT IT.

[3] AVAILABLE AT: <DISPONÍVEL EM: <[HTTPS://SPCOMMREPORTS.OHCHR.ORG/TMRESULTSBASE/DOWNLOADPUBLICCOMMUNICATIONFILE?GID=26450](https://spcommreports.ohchr.org/tmresultsbases/downloadpubliccommunicationfile?gid=26450)>.

[4] AVAILABLE AT: <DISPONÍVEL EM: <[HTTPS://WWW2.CAMARA.LEG.BR/ATIVIDADE-LEGISLATIVA/COMISSOES/COMISSOES-PERMANENTES/CDHM/NOTICIAS/ONU-DEMONSTRA-Preocupacao-com-projeto-de-lei-sobre-Terrorismo](https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/noticias/ONU-DEMONSTRA-Preocupacao-com-projeto-de-lei-sobre-Terrorismo)>.

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CONCLUSIONS AND REQUEST:

GIVEN WHAT WAS EXPOSED, THE SIGNING ENTITIES UNDERSTAND THAT **DRAFT BILL 3,283/2021** SHOULD BE CONSIDERED UNCONSTITUTIONAL, SINCE IT DOES NOT MEET THE REQUIREMENTS OF THE CONSTITUTION WHEN IT COMES TO THE PRINCIPLE OF SEVERITY; THUS, IT DISREGARDS THE PRINCIPLE OF LEGALITY, THE ULTIMATE GROUNDS FOR THE CRIMINAL LAW SYSTEM. AS SUCH, THE ENTITIES REQUEST THAT CIVIL SOCIETY BE HEARD IN THIS DEBATE AND THAT THE PROPOSAL, AS IT STANDS, BE REJECTED AT THE FEDERAL SENATE'S CONSTITUTION AND JUSTICE COMMISSION.

THE FOLLOWING ENTITIES SIGN THIS NOTE:

ARTIGO 19

CONECTAS DIREITOS HUMANOS

INSTITUTO BRASILEIRO DE CIÊNCIAS CRIMINAIS - IBCCRIM

INSTITUTO DE DEFESA DO DIREITO DE DEFESA - IDDD

INSTITUTO SOU DA PAZ

JUSTIÇA GLOBAL

MOVIMENTO DOS TRABALHADORES RURAIS SEM TERRA - MST

NÚCLEO DE ASSESSORIA JURÍDICA UNIVERSITÁRIA POPULAR (NAJUP) LUISA MAHIN/UFRJ

REDE JUSTIÇA CRIMINAL

TERRA DE DIREITOS