



São Paulo, April 13th, 2022

Official Letter NCDH 27/2022

Dear Mr. Clément Nyaletsossi Voule,
United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association,

The **SPECIALIZED CENTER OF CITIZENSHIP AND HUMAN RIGHTS (NCDH) of the Public Defender's Office of the State of São Paulo**, created by State Supplementary Law 988 of January 9th, 2006, to act judicially and extrajudicially in the promotion and defense of the right to freedom of expression and the right to demonstrate within the scope of the Brazilian legal system, particularly in the State of São Paulo, Brazil, hereby sets out and requests the following.

The Public Defender's Office, following its constitutional attributions, has the objective and institutional mission of promoting human rights and making the defense of the individual and collective rights of those in need, aiming to guarantee the protection of democracy, especially with regard to freedom of expression and the right of manifestation.

In this context, the Specialized Center for Citizenship and Human Rights of the Public Defender's Office of the State of São Paulo filed a civil public action (lawsuit number 1016019- 17.2014.8.26.0053 proceeding before the 10th Public Court of Capital and the 3rd Chamber of Public Law of the Court of Justice of the State of São Paulo), seeking to guarantee the right to assembly, the right to freedom of expression and the right to the city, and formulating requests that aim to make State action compatible with constitutional dictates, in order to establish parameters for the performance of the Military Police of the State of São Paulo in policing public demonstrations, which are compatible with the principles of human



rights.

The primary objective is for the Military Police to act in a way that favors dialogue over violence and, in cases of unavoidable need to use force, to do so progressively. Thus, in addition to reparation for violations committed by the State, the lawsuit is also intended to condemn the State to obligations in order to improve police work in the context of public demonstrations.

More specifically, in the lawsuit, the Public Defender's Office asks for the State of São Paulo to edit a regulation regarding the use of force in the context of demonstrations. This initiative came after the excessive use of force and human rights violations by the military police during the popular demonstrations that took place in 2013. In this lawsuit, several requests were made aimed at controlling the use of force, such as: dispersal orders can only be given in exceptional circumstances and following clear communication by the authorities, the use of firearms and rubber bullets have no place in the general management of crowds and that officers need to be clearly identifiable, among other requests.¹

The requests resulted from monitoring carried out by the Public Defender's Office, over two years, in eight popular demonstrations, with their own characteristics and objectives (political, festive and sports demonstrations), which demonstrated the absence of protocols and training by the Military Police of the State of São Paulo to deal with certain interurrences during demonstrations, and, in situations in which repressive police intervention would be admissible, an abusive, unnecessary and offensive posture to international protocols on the use of force was found.

Although the civil public action was filed in 2014, the issue, unfortunately, is still

¹ Check:

https://esaj.tjsp.jus.br/cpopg/show.do?processo.codigo=1H0006JQA0000&processo.foro=53&processo.numero=1016019-17.2014.8.26.0053&uuidCaptcha=sajcaptcha_a30ad4c94dd84f7faeb42559cfd68789 Last accessed April 5th, 2022.

Rua Boa Vista, 150, mezanino (NECDH). Centro, São Paulo/SP. CEP 01014-000.
nucleo.dh@defensoria.sp.def.br



current. In an episode that took place in Recife, Brazil, on May 29, 2021, a peaceful protest was violently repressed by the Military Police of Pernambuco, generating serious consequences for the physical and psychological integrity of the people affected².

On the other hand, the Judiciary has not yet ruled it definitively: initially the local court judge's decision had upheld the requests of the Public Defender's Office, but, in the second instance, the State Court of Justice reversed the decision. There are special and extraordinary appeals awaiting judgment in the Brazilian higher courts.

Such appeals were filed by the Public Defender's Office to try to reverse the judgment of the Court of Justice of the State of São Paulo, which rejected all the requests made in the civil public action, which aimed, again, to oblige the State to issue a normative act in accordance with technical guidelines and following the protocols of the same species already existing in the international scope, to define the parameters of action of the Military Police of the State of São Paulo in demonstrations, respecting the fundamental human rights of the citizens, with the preservation of the right to freedom of thought and expression and the right to peaceful assembly.

At the time of the judgment of the appeal by the Court of Justice of the State of São Paulo, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai, sent a letter to the former president of the Court of Justice of the State of São Paulo, Paulo Dimas de Belis Mascaretti (document attached hereto), expressing disappointment with the suspension of the local court judge's decision:

“Indeed, I had drafted a letter welcoming the approach taken by the court to ask the responsible authorities to develop a police plan for action at demonstrations. Unfortunately, the decision was suspended before the letter could be dispatched. I am writing nonetheless to articulate why I believe the initial decision was so

² <https://g1.globo.com/fantastico/noticia/2021/06/06/estou-emocionalmente-desequilibrado-diz-vitima-de-bala-de-borracha-disparada-pela-pm-em-manifestacao-no-recife.ghtml>



important – and potentially useful – for the management of demonstrations in Brazil.”

For all the above, and considering the current stage of the lawsuit (AREsp 2068297 / SP³) – awaiting judgement by the Brazilian Superior Court of Justice –, the Public Defender's Office of the State of São Paulo requests Your Excellency's analysis of the possibility of manifestation to the Brazilian Superior Court of Justice and the Brazilian Federal Supreme Court on the importance of a plan of action for the public security forces in the context of demonstrations, as already carried out by United Nations former Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai.

Finally, we take this opportunity to renew our highest esteem and most distinguished consideration.

DAVI QUINTANILHA FAILDE DE AZEVEDO

Public Defender of the State of São Paulo
Specialized Center for Citizenship and Human Rights

FERNANDA PENTEADO BALERA

Public Defender of the State
Specialized Center for Citizenship and Human Rights

LETICIA MARQUEZ DE AVELAR

Public Defender of the State
Specialized Center for Citizenship and Human Rights

³ www.stj.jus.br