

ANALYSIS ON THE COMPLIANCE WITH THE RULES SET FORTH IN THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) BY BRAZIL

**PUBLIC DEFENDER'S OFFICE OF THE STATE OF SÃO PAULO:
SPECIALIZED CENTER FOR CITIZENSHIP AND HUMAN RIGHTS (NCDH)**

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INTRODUCTION

HUMAN RIGHTS COMMITTEE

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THE PUBLIC DEFENDER'S OFFICE OF THE STATE OF SÃO PAULO is a permanent institution, essential to the State's jurisdictional function. Article 134 of the Constitution provides, amongst the Office of the Public Defender's duties, as an expression and instrument of democracy, fundamentally, the legal guidance, the promotion of human rights and the defense of individual and collective rights of those in need, in all judicial and extrajudicial instances. As an autonomous institution, the Office of the Public Defender is not part of the government, but a body composed by legal professionals selected through a rigorous public process, to whom it is also granted functional independence. The Constitution ensures functional and administrative autonomy to the Office of the Public Defender (paragraphs 2 and 3 of the above-mentioned article), making it, therefore, an independent (public) human rights monitoring body.

In accordance with this essential role, federal legislation (Complementary Law n. 80/1994) enables the Office of the Public Defender to act before international human rights mechanisms. In that sense, Article 4, VI, of the mentioned federal law states, as one of its institutional functions, to access the international systems of human rights protection, postulating before their bodies.

Taking into to account, the proximity to the sessions in which Brazil's report will be analyzed and the increase of the complaints regarding the ICCPR in Brazil, THE PUBLIC DEFENDER'S OFFICE OF THE STATE OF SÃO PAULO respectfully come to the HUMAN RIGHTS COMMITTEE, to present this brief document, hoping to contribute with the review of Brazil's report under LoIPR during the 138^a Session.

REPORT OF SPECIALIZED CENTER FOR CITIZENSHIP AND HUMAN RIGHTS OF THE PUBLIC DEFENDER'S OFFICE OF THE STATE OF SÃO PAULO

1. RIGHT TO LIFE (ARTICLE 6 OF THE ICCPR)

„ Deaths by police action

The Report with the answers to the list of issues sent by the Brazilian State mentions data from the Brazilian Public Security Annual indicating the reduction in deaths between 2020 and 2021 (paragraph 60, question 11). Despite the reduction, the number of deaths due to police intervention remains alarming, as well as the profile of the victim of police lethality remains the same. The police brutality is racialized and affect disproportionality black men's living in poor communities¹.

Police violence in Brazil is endemic². Brazil has the deadliest police in the world. In the last 4 years, the number of deaths was always above 6 thousand occurrences. That's 16 deaths a day at the hands of police. Specifically in the State of São Paulo, the police have killed 7,310 people in the last ten years³.

As of 2014, deaths caused by military police interventions (MDIP) remained at very high levels. Between 2014 and 2020, there were an average of 824 annual deaths involving military police officers, and 78% of the victims died in situations where the police were on duty. In April 2020, the highest number of people killed in military police interventions was recorded in São Paulo, with 102 victims, an increase of 43.7% compared to the same period of the previous year, when 71 people had been killed⁴.

By March 2023, São Paulo state registered an increase in deaths caused by civil and military police, compared to 2022. In the first quarter of 2022, 108 deaths by police action were recorded. In the first quarter of 2023, 116 deaths were recorded⁵.

[1] According to data from the Brazilian Forum on Public Security, among the 6,145 people killed by police in 2022, 99% were male, 84.1% were black and 74% were up to 29 years old. Available at: <https://forumseguranca.org.br/anuario-brasileiro-seguranca-publica/>

[2] Available at: <https://forumseguranca.org.br/anuario-brasileiro-seguranca-publica/>.

[3] Available at: <https://www.ssp.sp.gov.br/estatistica/trimestrais.aspx>.

[4] Available at: <https://forumseguranca.org.br/wp-content/uploads/2023/05/cameras-corporais-pmesp.pdf>.

[5] Data available at: <https://www.ssp.sp.gov.br/transparenciassp/Consulta2022.aspx>.

When comparing the data on deaths resulting from police action in the month of January 2022, and in the month of January 2023, a growth of 23% is revealed⁶ In January 2023, most of the victims were killed due to the action of military police officers on duty, with a total of 23 cases. Off-duty military police appear in second place as the perpetrators of homicides, with a total of 13 cases⁷.

As a measure to combat police violence, cameras were attached to the officers' uniforms. The cameras have contributed to inhibiting police abuse. After the implementation of the cameras, in a study done in 2020 in the Military Police of the State of São Paulo, regarding policing in the capital, it was concluded that the use of cameras had a fundamental contribution to the reduction of the levels of use of lethal force, estimating 104 deaths avoided over 14 months, when considering only the metropolitan region of the capital. The study also demonstrated an increase in police productivity indicators, as well as a reduction in records of contempt and resistance to arrest⁸.

Although cameras attached to police uniforms are effective measures to combat police violence, they do not capture abuses committed by police officers on days off. In addition, there are many police battalions in which cameras have not been installed yet.

Battalions that incorporated the use of body cameras saw a 76.2 percent reduction in police lethality, caused by on-duty officers, between 2019 and 2022. The number of teenagers killed by on-duty police decreased by 6.7%, from 102 victims in 2019 to 34 victims in 2022. The significant drop in the number of deaths resulting from police intervention in São Paulo since the adoption of body cameras represents an opportunity for the state to adopt a pattern of police professionalization that structurally changes the scale of police violence⁹. This policy should be replicated in other regions of Brazil.

The use of body cameras alone is not sufficient to reduce the disproportionated use of violence by the police in Brazil. Furthermore, the policy should be improved. Firstly, not only should the military police use these technological devices, but also civil police and municipal guards. Secondly, the implementation of the policy should count with civil society participation as well as public hearings of the people most affected by the police violence.

[6] Available at: < <https://agenciabrasil.ebc.com.br/geral/noticia/2023-04/letalidade-policial-aumenta-29-em-fevereiro-em-sao-paulo> >.

[7] Available at: < <https://agenciabrasil.ebc.com.br/geral/noticia/2023-04/letalidade-policial-aumenta-29-em-fevereiro-em-sao-paulo> >

[8] Available at: < <https://forumseguranca.org.br/wp-content/uploads/2023/05/cameras-corporais-pmesp.pdf> > ; Monteiro, Joana; Fagundes, Eduardo; Guerra, Julia; Piquet, Leandro. (2022). Evaluation of the impact of the use of body cameras by the Military Police of the State of São Paulo. Center for Science Applied to Public Security, Fundação Getúlio Vargas.

[9] Available at: < https://forumseguranca.org.br/publicacoes_posts/as-cameras-corporais-na-policia-militar-do-estado-de-sao-paulo/ >.

Thirdly, some structural improvements should be made, such as instructions on where the camera should be positioned, how it will be fixed on the uniform, the need for uninterrupted image recording, and how the images will be stored. There can be no possibility to edit the stored images. And the image storage system must keep records of all accesses to any image, allowing to reconstitute all accesses to evidence in criminal cases.

In addition, the access of the Public Prosecutor's Office and the Public Defender's Office to the images should be facilitated, including the signing of agreements that give legal certainty to these actors to use the recordings. It is necessary to develop a specific regulation on access to these images also by parties involved in confrontations with the police or their families.

Therefore, despite the use of cameras in the police officers' uniforms as an effective measure combating the police violence, there is a lack of public policies that guarantee the permanence of the cameras, or the adequate usage of the images.

Police violence in Brazil takes advantage of the complete absence of accountability by the Criminal Judicial System. The police officers who commit abuses are rarely punished.

In this sense, research has pointed out that inquiries are summarily archived: analyzing the cases of death by police intervention that occurred in 2016 in the states of São Paulo and Rio de Janeiro, the conclusion was that 9 out of 10 cases are close without any further investigation¹⁰. The narrative of the police officer is taken as truth by judges and prosecutors and most of the time the responsibility for the death is attributed to the victims themselves¹¹. This scenario points out for the systematic violation of the duty to investigate.

Despite the reduction in deaths resulting from police intervention in 2022 in São Paulo, there were still 256 people killed by on-duty police officers and 126 by off-duty police officers¹². For each of these deaths, as for intentional violent death, an effort is needed to strengthen investigations and offer definitive answers. One of the main desires of families of people who die violently is to gain clarity about the circumstances of the death, and to see the attribution and accountability of the perpetrators. Impunity deepens and broadens the grief of family and friends, increases the population's sense of insecurity, and multiplies the damage to communities impacted by violence, leaving them more vulnerable to cycles of aggression, coercion, and retribution.

[10] Available at: <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2021/11/12/denuncias-e-arquivamentos-mortes-policiais-rj-sp.htm>

[11] Available at: <https://portal.fgv.br/noticias/estudo-mostra-justica-brasileira-evita-responsabilizar-letalidade-policia-contra-negros>

[12] Available at: <https://www.ssp.sp.gov.br/transparenciassp/Default.aspx>.

In Brazil, the victim has a secondary role and is treated as a mere witness, lacking effective participating during the investigation procedures. The lack of legal provision prevents the possibility for victims or their relatives to actively participate in the investigation during de extrajudicial procedure.

On the participation of the victim in the criminal process, there was a timid advance brought by Law 13.964/2019, known as the anti-crime package, which modified Article 28 of the Code of Criminal Procedure and established rules for the filing of police investigations. Withe the new legislation, the Public Prosecutor's Office should communicate the victim, the investigated and the police in the case of closure of the investigation. In addition the Public Prosecutor's Office must forward the case to the Prosecutor's review body for homologation purposes" This provision allowed at least the victim or their family members to be aware of the closure of the investigation as well as a review the decision by the supervisory body Public Prosecutor's Office . However, even such law had its effectiveness suspended by the Federal Supreme Court, on 01/22/2020, who understood that the measure disregarded the financial impacts under the MP throughout the country¹³.

This scenario shows the importance of the State party guarantee free, comprehensive, and specialized legal assistance to victims of police violence, through the creation of institutional policies within the scope of the State and Federal Public Defenders' Offices.

On the other hand, most families of the victims of police lethality do not receive any reparation measures. Civil lawsuit also failed to provide access to justice to the families, since there are many obstacles impose to receive the indemnity. It is worth noting that the court-ordered government payment procedure ("precatórios") may take many years. Therefore, the compensation will not be received immediately for the families even after a court decision recognizing the violation..

Furthermore, the State do not provide psychological assistance for the victims of police violence. The bill (PL 2.999/2022) that creates the "Mothers of May Law" in order develop a Program to Confront the impacts of institutional violence and revictimization of mothers and relatives of victims and/or survivors of violent actions, through comprehensive social care has not yet been approved by the Congress.

2. RIGHT TO LIFE AND RIGHT TO LIBERTY AND PERSONAL SECURITY (ARTICLES 6 AND 9 OF THE ICCPR):

„ VIOLENCE AGAINST PEOPLE IN STREET SITUATION AND THE REMOVAL OF ITS BELONGINGS

The Report with the answers to the list of issues sent by the Brazilian State mentioned that “the goal is to build a democratic public security model with the participation of various social segments and not focused merely on security entities” (paragraph 64, question 11). However, there is no democratic public security model. On the contrary, there is a very violent one.

[13] ADI 6298, ADI 6299, ADI 6300 e ADI 6305.

The increase in the number of people in street situation from September 2012 to March 2020 was 139%. These numbers show the incapacity of the public power in granting housing to all people. Also, according to data from the Brazilian Institute of Geography and Statistics (IBGE, for its Portuguese abbreviation), the Southeast Region (where São Paulo city is located) hold the second highest concentration in Brazil of people in extreme poverty with a per capita income under US\$ 1.90 (26.7%)¹⁴.

In 2022, in São Paulo City, 12% of the population (of 12 million inhabitants) is in extreme poverty. According to a survey carried out by the Brazilian Observatory of Public Policies with the Homeless Population (POLOS-UFGM), and released in 2023, it pointed out that 52,226 people lived on the streets of the city of São Paulo until February this year, indicating an increase of 8.2% compared to November 2022¹⁵.

Moreover, many people in street situation stay in public spaces as a palliative housing strategy, using camping tents set up with blankets and other objects to protect themselves from the cold and other bad weather. People in street situation who stay in tents in the city center are victims of violent actions of removal of their belongings by urban janitors. In those 'cleaning actions', their belongings are thrown in the trash¹⁶.

The Public Defender's Office routinely receives complaints about urban janitorial actions in conjunction with the municipal guards. In addition to the psychological violence of treating these people's only belongings like trash, lots of those 'cleaning' actions are characterized by physical violence. In some of these 'cleaning' actions, municipal guards act together with urban janitorial agents, attacking people in street situation who try to get their belongings back (such as blankets, mattresses, clothes, and work tools). Those violent actions include kicking, punching, and using pepper spray, evidently violating the human rights of people in street situation.

Municipal guards are not public security agents. They are public agents with attributions established in the Federal Constitution related to municipal property. According to art. 144, § 8, of the Federal Constitution, municipal guards are intended to "protect their assets, services and facilities", with more specific regulations established by each municipality.

Although it is not their duty to carry out police activities, the municipal guards carry out these unregulated activities, exceeding their duties, and acting illegally against people in street situation. Furthermore, it is important to point out that there are no regulations regarding the inclusion of cameras in guards' uniforms, only in police uniforms (as mentioned in the topics above).

[14] Brazilian Institute of Geography and Statistics, 2021. Available at: <https://biblioteca.ibge.gov.br/visualizacao/livros/liv101892.pdf>.

[15] Available at: <https://g1.globo.com/sp/sao-paulo/noticia/2023/04/05/cidade-de-sp-contabiliza-mais-de-52-mil-moradores-de-rua-alta-de-82percent-em-2023-afirma-pesquisa.ghtml>

[16] Available at: <https://www1.folha.uol.com.br/cotidiano/2023/02/prefeitura-intensifica-remocao-de-barracas-de-sem-teto-no-centro-de-sp.shtml>

Thus, regarding municipal guards, this important mechanism for controlling abuses by public agents does not exist. According to São Paulo city's regulations, the municipal guard should accompany urban janitorial actions to collaborate in the mediation of conflicts and ensure citizen protection of all those involved in the actions, employees, the general population, and people in street situation. However, the municipal guards do not act as they should. They act violently in the constriction of goods and belongings of the people in street situation who are in the place they supposedly want to clean. Furthermore, there is, in those actions, a clear discretion for the municipal guard agent to decide on which object the person may keep in their possession or not. The images below illustrate one (among many) situation in which there was violence by the municipal civil guard against people in street situation in an urban janitorial action:



Photo 1: Attempt to violently remove a stroller from a homeless person. Source: Public Defender of the State of São Paulo.



Photo 2: Municipal guards deciding which belongings the people in street situation can keep with them. Source: Public Defender of the State of São Paulo.

The city of São Paulo has Decree 59,246, of February 28, 2020, which provides for the procedures and treatment of the homeless population during urban janitorial actions. Of note is article 10, paragraph 1 of the mentioned decree, which prohibits the subtraction, destruction, destruction, or seizure of property of people in street situation. The procedures provided for in Decree 59,246 are disciplined in INTERSECRETARIAL ORDINANCE No. 04/SMPR/SMDHC/SMADS/17. This ordinance provides, in its article 7, that “urban janitorial procedures and actions will be preceded by carrying out a social approach to the homeless population”, valuing dialogue.

Although the legal regulation of these procedures should be considered an important step forward, they have not been respected. Furthermore, in other states in Brazil such actions are not regulated. In this way, the lack of regulation in other states is revealed, and the lack of compliance with regulations in states where there are already regulations.

Regarding repairing and eradicating the violation of the rights of people in street situation, in 2022, it was proposed before the Federal Supreme Court the *Arguição de Descumprimento de Preceito Fundamental (ADPF) 976*¹⁷. The ADPF is one of the actions that make part of concentrated judicial review on constitutionality control.

In the ADPF 976, situations of violation of several human rights are described in relation to people in street situation including the dignity of the human person and the rights to life, equality, health and housing. They also ask that federal entities promote actions to preserve the health and life of this part of the population and that the adoption of legislative, budgetary and administrative measures be determined in order to help people in vulnerable conditions.

There are several requests related to urgent measures for material support to people in street situation, as well as specific determinations on public policies implemented by various entities and public bodies. This ADPF is still being processed, but it illustrates how the lack of protection of the rights of people in street situation is a national problem, not just a local one.

3. RIGHTS OF PEACEFUL ASSEMBLY AND TO FREEDOM OF ASSOCIATION (ARTICLES 21 AND 22 OF THE ICCPR):

In the List of Issues presented by the State, Question 26 mentioned some cases of the excessive and lethal use of force during the policing of peaceful assemblies, including the case of the student Deborah Fabri.

Regarding this case, it is described that on August 31, 2016, student Deborah Gonçalves Fabri and some fellow students participated in a peaceful protest. Even without any confrontation with the military police, the police began to throw bombs towards the protesters that caused a great explosive noise. Deborah Fabri was hit by shrapnel from the bomb and became blind in her left eye. In the Military Police Inquiry, it was pointed out that Deborah may have been the victim of “friend fire”, that is, fired by another protester.

[17] Available at: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=6410647>

The Final Report of the Inquiry concludes that all legal precepts were observed and that the actions taken by the institution were duly justified and based on the current rules. The inquiry was shelved in June 2019 for the alleged difficulty in identifying the person responsible for the injury. Given the lack of accountability, the case was sent in 2019 by the Public Defender's Office of the State of São Paulo to the Inter-American Commission on Human Rights, waiting for the admissibility. In addition to this case, the Specialized Center for Citizenship and Human Rights of the Public Defender Office of the State of São Paulo has acted in other cases that people were injured by bombs of moral effect or rubber bullet in the context of political or cultural manifestations claiming compensation and reparation¹⁸.

Deborah's case is also similar to that of administrative assistant Vitor Araújo, 22. He was also 19 years old when, on September 7, 2013, he was hit in the right eye by shrapnel from bombs thrown by military police during a protest in front of the City Council in downtown São Paulo. Two press professionals, photographers Alex Silveira and Sérgio Silva, also lost one of their eyes as a result of the police repression of the street demonstration. Both were hit directly in the eye by rubber bullets while working covering demonstrations¹⁹.

On other occasions, the police repression of cultural manifestations, such as the funk of the periphery, also caused loss of vision, as in the recent case of the 16-year-old Gabriela Talhaferro²⁰, which occurred in 2019, or the young 12-year-old Douglas Santana²¹, in 2016, or Dayane de Oliveira, 17 years old, in 2013²², or a teenager who was not named in 2015²³.

In 2019, after reports of violence that occurred during the carnival period in São Paulo, in which several street cultural manifestations took place, the Public Defender Office of the State of São Paulo sent an official letter to public authorities recommending measures to safeguard the physical integrity of the people participating in such events. In 2022 and 2023 a meeting was held with the organizers of such cultural events to listen to the complaints. Once again, an official letter of recommendation was sent to the public authorities. However, in February 2023, during the cultural manifestation of carnival, the military police and the municipal guards used non-lethal weapons against the people participating in the “Bloco Fuá” and “Bloco Charanga do França”²⁴. At the time, many 1.people got injured²⁵. The preliminary investigation was closed (Preliminary Investigation N° 11BPMM-019/06/23) and the Public Defender Office of the State of São Paulo Submitted petition for reopening of the investigation.

[18] Some of the cases can be found here: <https://ponte.org/a-pm-cega-a-justica-nao-ve-a-interminavel-luta-das-vitimas-de-armas-menos-letais/>

[19] <https://politica.estadao.com.br/noticias/geral,estudante-perde-a-visao-apos-ser-ferida-em-protesto-contra-impeachment,10000073517>

[20] <https://noticias.r7.com/sao-paulo/operacao-da-pm-em-baile-funk-deixa-jovem-cega-com-bala-de-borracha-12112019>

[21] https://www.vice.com/pt_br/article/pge83z/fluxo-marcone-baile-de-favela-douglas-santana-policia-militar-cega-crianca

[22] <https://catracalivre.com.br/cidadania/justica-de-sp-proibe-pm-de-usar-balas-de-borracha-em-manifestacoes/>

[23] <http://g1.globo.com/sao-paulo/noticia/2015/10/jovem-fica-cego-apos-pm-atirar-com-bala-de-borracha-em-sp-diz-familia.html>

[24] The violence was registred in a video sent to the Public Defenders Office. Available at:

<<https://drive.google.com/file/d/1XR2XfbV0hN4365LpczObOdPy6A-7EFuK/view?usp=sharing> >.

[25] Available at: <https://www1.folha.uol.com.br/cotidiano/2023/02/folhoes-dizem-ter-sido-agredidos-com-cassetetes-por-guardas-da-gcm-no-carnaval-de-sp.shtml> and <https://www1.folha.uol.com.br/cotidiano/2023/03/defensoria-apura-aumento-de-violencia-policial-contra-blocos-de-carnaval-em-sp.shtml>

On December 1, 2019 nine young adults were killed after Military Police action to disperse a street cultural demonstration known as the funk street party of the D17 in Paraisópolis, a community in the south part of the city of São Paulo. Some young adults and teenagers were trapped in an alley and died of indirect mechanical asphyxiation. Since then, the Specialized Centers for Childhood and Youth (NEIJ) and Citizenship and Human Rights (NCDH) have assisted families, seeking criminal accountability of the agents involved, as well as the payment of compensation for the families. The police officers involved in the case have been indicted and the criminal lawsuit is still ongoing in the jury court. Monetary compensation was obtained in the administrative sphere, that is, without civil lawsuit, after the articulation of the Public Defender with the executive branch. The initiative Paraisópolis: 3 acts, 9 lives" marked the two years of the deaths, consisting of nine videos with the result of the multidisciplinary analysis on the episode. Videos can be found here: <https://www.youtube.com/watch?v=WpctMuve-ys>.

All these cases reveal a systematic pattern of misuse of less lethal and lethal weapons by public security forces in the State of São Paulo, with other cases in which there was no loss of vision in demonstrations, but other occasions, in addition to other types of injuries²⁶.

According to current Brazilian legislation, the right to protest is constitutionally guaranteed by the combination of three rights listed in Article 5 of the Federal Constitution of Brazil that deal with the following rights.

[26] See: <https://www1.folha.uol.com.br/cotidiano/2017/07/1898561-usuario-de-droga-perdeu-olho-em-acao-da-policia-militar-na-cracolandia-de-sp.shtml>; <https://noticias.r7.com/sao-paulo/homem-fica-cego-do-olho-esquerdo-apos-acao-da-policia-em-reintegracao-de-posse-12072017> <https://noticias.uol.com.br/cotidiano/ultimas-noticias/2013/06/14/existe-terror-em-sp-o-dia-em-que-pms-atiraram-a-aplausos-e-a-pedidos-de-nao-violencia.htm>

Although it is a right guaranteed in the Constitution, through the interrelation of these other rights, what occurs in Brazil is a legal vacuum regarding the protection of the right to protest. This can be observed in 1.the absence of specific legislation regulating the use of police force during social protests, which is in line with international standards.

The absence of a law for the use of police forces in the context of social demonstrations in Brazil is harmful to freedom of expression since it generates a margin of expressive discretion for the State to use its power of coercion disproportionately and arbitrarily against protesters. In addition, other repercussions are related to the lack of regulation of the right to protest, taking as an example, the guarantees that citizens have in relation to this right, the limitations to which the right to protest may be subject when in confrontation with some other right, the form and limits of the action of state agents in relation to protests and in relation to demonstrators and the sanctions applicable to both, citizens and state agents, when committing abuses and violations of other norms and rights in the context of social protests.

The use of less lethal weapons – such as rubber bullets, pepper spray, tear gas and stun grenades – remains one of the biggest problems at protests, as they are used in an abusive and non-procedural manner, causing injuries to protesters, communicators and bystanders.

The Military Police of the State of São Paulo has not respected its own protocols for the use of this type of weaponry, shooting randomly in the direction of protesters, above the waistline, less than 20 meters away, without providing the aid afterwards and without making the necessary reports²⁷.

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. 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. 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.

The Judiciary has not yet ruled it definitively on the matter: 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. 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, expressing disappointment with the suspension of the local court judge's decision²⁸.

Furthermore, the criminalization of social movements also affects the right of association in Brazil. The "Mothers of May Independent Movement", a social movement that has been fighting for truth and justice since May 2006²⁹, has been victim of a criminalization after the dissemination in judicial proceedings of a video containing speech of the Prosecutor of the State of São Paulo, Ana Maria Frigério Molinari, attentive to the dignity of activists of the "Mothers of May Independent Movement", as it implied that the group would be formed by mothers of drug dealers and that they would manage the trafficking points.

[27] ARTICLE 19. The streets under attack - Protests 2014 - 2015. Available in: <https://artigo19.org/centro/wp-content/uploads/2017/04/As-ruas-sob-ataque-protestos-2014-e-2015.pdf>

[28] Available at: <<http://freeassembly.net/news/brazil-court-decision-portugues/>>

[29] The period between 12th to 20th of May 2006 became known as the week of the "Crimes of May", when police officers and extermination groups murdered about 500 people, mostly young residents of peripheral neighborhoods in the metropolitan region of São Paulo and coast region named "baixada Santista". After this episode, the mothers of the victims organized themselves in the "Mothers of May Independent Movement" and, since then, have been fighting for truth and justice, since there was no accountability of the agents involved.

The video resulted in the revictimizing of the mothers, who are nothing more than victims of the State. In view of this situation, together with the "Mothers of May Independent Movement" and the NGO Conectas Human Rights, the 1.Specialized Center for Citizenship and Human Rights of the Public Defender Office of the State of São Paulo sent a document to the Internal Affairs of the Public Prosecutor's Office of São Paulo and the National Council of Public Prosecutors asking for criminal and civil accountability, as well as retraction measures.

All those actions have been causing the non-observation by Brazilian State of rights of peaceful assembly and to freedom of association, guaranteed by articles 21 and 22 of the ICCPR.



CONCLUSION: SUGGESTED RECOMMENDATIONS

In conclusion, taking under consideration the information and arguments above, The Public Defender Office of the State of São Paulo respectfully urges the UN Human Rights Committee to adopt the following recommendations:

In relation to Article 6, about the deaths by police action:

- That the State Party should devise effective actions and measures to reduce the death rates due to police actions throughout its territory.

- That the State Party That the State Party implement the necessary methods to improve the policy of using cameras, with indications on where the camera should be positioned, how it will be fixed on the uniform, on the need for uninterrupted image recording, how the images will be stored.
 - Those protocols should require the police officers to activate their body cameras when attending to any service and during all the service.
 - Those protocols should prescribe administrative measures in case of failing to record some activity.
 - Those mechanisms should include measures to prevent data tampering, deleting, and copying. It should also prevent unauthorized access or release of recorded data.

- That the State Party create the necessary mechanisms to facilitate access by the Public Prosecutor's Office and the Public Defender's Office to the images captured by body cameras.

- That the State party implement a program of psychosocial care on a permanent basis, aimed at victims and their families directly or indirectly affected by police violence.
- That the State party should guarantee free, comprehensive, and specialized legal assistance to victims of police violence, through the creation of institutional policies within the scope of the State and Federal Public Defenders' Offices.
- That the State adopt measures to improve the institutional capacity of the Public Power to act in accordance with a public policy of citizen security, with adequate human, technical and economic resources, from the creation of mechanisms of supervision, correction and prevention attentive to institutional and structural racism, so that they are able to effectively requalify the public security system from a human right perspective.

In relation to Articles 6 and 9, about the violence against people in street situation and the removal of their belongings:

- That the State Party explains how a human rights approach will be integrated into the municipal guards and urban janitorial agents, in cleaning actions in São Paulo City, and in other cities of Brazil, including social perspectives.
- That the State Party creates regulations and legislations to regulate cleaning actions in its territory and adopt measures to prohibit the removal of personal belongings of homeless people.

In relation to articles 21 and 22 of the ICCPR:

- That the State Party regulates the right to protest, mainly on the provisions about the use of less lethal weapons, and the procedures and protocols that the Military Police of the State of São Paulo must follow, such as limitations for the use of firearms, visible identification of police officers, indication of a civil negotiator, clear communication when there is a need for dispersion, use of body cameras and others.
- That the State Party regulates the use of force and create adequate methods to verify that the proportionality of the use of force is being respected by police officers in protests.