

EXECUTIVE SUMMARY



DENUNCIATION OF VIOLATIONS OF THE HUMAN RIGHTS TO LIFE AND HEALTH IN THE CONTEXT OF THE COVID-19 PANDEMIC IN BRAZIL



Direito Humano à
Saúde na Pandemia



SMDH
Em defesa da vida

monitoramentos dos
direitos
humanos e Brasil

Fórum Nacional de
Defesa do Direito
Humano à Saúde



Conselho Nacional
de Saúde

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2021 - Sociedade Maranhense de Direitos Humanos (SMDH)



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Denunciation of violations of the human rights to life and health in the context of the Covid-19 pandemic in Brazil

Executive Summary

This Denunciation of Violations of The Human Rights to Life and Health in the Context of The Covid-19 Pandemic in Brazil is a joint project. It is a coordinated effort by the Articulation for the Monitoring of Human Rights in Brazil (AMDH), which congregates the National Human Rights Movement (MNDH), the Process for Articulation and Dialogue International (PAD), the ACT Brazil Ecumenical Forum (FeACT), and also the National Forum for The Human Right to Health, all civil society organizations. The Pan American Health Organization (PAHO) is partner cooperator.

This project is hosted and partnered by the National Health Council (CNS) and the National Human Rights Council (CNDH). These are spaces for popular participation and social control of policies, but are also in charge of promoting actions so that threats or violations of human rights are met with due accountability.

This action is based on the responsibility held by civil society organizations that advocate for human rights in Brazil. These organizations believe it is their responsibility to monitor situations, and document and publicly denounce human rights violations in order to seek their processing by the institutions in charge of monitoring the fulfillment of national and international human rights commitments. That is why they sought to find evidence to support the complaint that the Brazilian State and the Bolsonaro government, by acts of commission and of omission, have violated human rights in facing the Covid-19 pandemic, particularly the right to life and to health, both provided for in the International Agreements to which the Brazilian State is a signatory, and also expressly provided for in the Federal Constitution.

The findings reported in the document show that Covid-19 is an event that has had significant impacts on the lives of populations as a whole, especially those who have historically been in a situation of greater vulnerability. They also show that acts of commission and of omission on the part of the Brazilian state and the Bolsonaro government against the realization of the human right to health have greatly contributed to intensify the negative impact of the pandemic against guaranteeing the right to life, and have resulted in a substantial number of avoidable deaths. Even though they might present different figures, several studies show that hundreds of thousands of lives could and should have been preserved.

The first part of the Denunciation Document presents the international and national legal frameworks of the human rights to health and life that govern the actions of the Brazilian State in order to guarantee and realize these rights. The realization of the right to life assumes the realization of the right to health, since the physical well-being ne-

cessary to guarantee all economic or social activity, all material or intellectual pleasure, stems from the perfect harmony of all the elements that constitute the human organism, functioning perfectly together. Based on that legal framework, we demonstrate that it is imperative to adopt measures that are appropriate for both the State and the people during the Covid-19 pandemic, such as a) releasing more resources for investments in health; b) prioritizing patients infected by the virus; c) treating and protecting healthcare workers; d) coordinating actions of the State along with those of the pharmaceutical industry, in order to guarantee all the necessary drugs for the population; f) define criteria for priority care, especially for members of risk groups, vulnerable and indigenous peoples; g) strictly controlling social isolation measures; h) coordinating police efforts in order to avoid non-essential activities and crowds; i) keeping infected people in total isolation; j) providing social assistance to low-income populations; k) developing advertising pieces to encourage prevention and vaccination measures, among others.

Building on the obligations presented, the second part of the Denunciation Document analyzes the actions taken by the Brazilian State, and demonstrates that the right to life was violated, especially by acts of omission by the Bolsonaro government, who failed to protect millions of Brazilians against untimely deaths, as well as by discriminatory **actions** and lack of respect for the right to life of the most vulnerable populations, among which we highlight the black population, quilombolas, indigenous peoples, women, LGBTQIA+ populations, the elderly, the homeless and the incarcerated populations.

The Denunciation Document also points out that these populations' right to health was violated due to the **actions taken** by the President of the country, who took ineffective measures to prevent and treat Covid-19. The violation of the human right to health was also perpetrated by acts of **omission**, as the government did not offer urgent healthcare services and did not provide, among other things: relevant technologies; the best possible epidemiological surveillance; the gathering of disaggregated data; the best possible immunization programs and other strategies to control infectious diseases.

The final conclusions of the Denunciation Document indicate that the original violation, from which all other violations stem, refers to noncompliance with what was laid down in Article 6 of the International Covenant on Civil and Political Rights (ICCPR), that "recognizes and protects the right to life inherent to every human being"; under president Bolsonaro, the Brazilian State has violated the right to health of several million Brazilians infected with the coronavirus, according to the provisions of Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both Covenants have been ratified by the Brazilian State and incorporated into the Brazilian Federal Constitution.

The violations perpetrated against the rights to life and health could have been avoided if the Brazilian government had fully adopted the measures proposed by the World Health Organization (WHO) and the national and international scientific communities, or had the country's highest dignitary supported the national coordination of measures to increase intensive care units, exercise social distancing, use the current national capabilities to produce vaccines, encourage the use of masks and alcohol-based hand sanitizers, instead of ostensibly and systematically denying and fighting those actions in interviews, lives and public appearances, as widely documented in the Denunciation

Document. It is impossible to estimate the magnitude of the long-lasting effects of the disease on those who had it, or how it will hinder their quality of life, and at what cost to the Unified Health System (SUS). It is possible, though, to assess the massive impact of the lives that were lost.

There is overwhelming evidence that the Brazilian State possessed all necessary information to implement timely and adequate strategies to contain the quick expansion of the pandemic, and its high death toll. By not following the anticipatory governance principle, the Brazilian State violated a series of national and international human rights and sanitary provisions.

The pandemic landed in the country in the midst of a recession associated with fiscal austerity measures, most importantly, Constitutional Amendment 95/2016 (CA 95), also known as Public Expenditure Ceiling CA, which limits primary public expenditures, especially those intended to guarantee social security and social rights protected by the Constitution. Until 2036, these expenditures will be corrected solely for annual inflation. Prospective analyses on the impact of significantly reducing resources intended for health actions and public healthcare services indicate that this would be a clear violation of the principle that forbids any retrogressive measures to be taken in relation to the right to health, as they would have a huge negative impact on the realization of such rights, which are universally and fully guaranteed.

The chronic underfunding of SUS, aggravated since AC 95 was passed, now moves on to a situation of defunding. Besides, measures taken in other areas of the government, such as the wide liberation of the use of new agrochemicals, the flexibilization in the process of purchasing fire weapons and the end of policies like the More Doctors Program, make the situation even worse. Back in 2017, the impact of recession and fiscal austerity could already be noticed in the profile of poverty in Brazil.

There is compelling evidence that this process is taking place in a context of planned healthcare rollbacks and increasing disenfranchisement, with an attitude of denial of rights; it intentionally and systematically seeks to destroy the constitutional guarantee of the human right to health, which establishes the universality of SUS, duly regulated and institutionalized. The current government's agenda is to reduce basic public healthcare to a minimum, making it available exclusively for those who cannot afford any other form of healthcare, so that everyone else is compelled to seek paid health services. However, with the progressive increase in the elderly population, there will be increased demand for longitudinal health care. Likewise, chronic degenerative diseases and other health problems that affect the elderly - cancer, diabetes, mental disorders - cannot be solved by "buying" a single doctor's appointment; frequent follow-ups are required, which, if carried out privately, would place a heavy burden on family budgets. Today, there are more than 70 million people living in misery and poverty; more than 30 million unemployed and despondent people; and 45 million informal workers in Brazil. The growth perspectives are the worst possible, according to specialized institutions.

In 2018, even before Bolsonaro's inauguration and the arrival of the pandemic, the food and nutritional conditions of the Brazilian population had suffered considerable deterioration. That process began in 2014, when Brazil left the UN Hunger Map, but it was accelerated after 2016, bringing food insecurity back to 2004 levels. The decisions

taken by Bolsonaro's administration regarding the National Food and Nutritional Security Policy made the situation even worse. The dissolution of the National Food and Nutritional Security Council (Consea), the deactivation of the Inter-ministry Commission of Food and Nutritional Security Chamber, responsible for the executive coordination of the National Food and Nutritional Security Policy, in combination with even deeper cuts in key food and nutritional security programs – such as the Family Farming Support Program (Pronaf), the Food Acquisition Program (PAA) and programs aimed at supporting indigenous peoples and traditional populations and communities –, aggravate the situation of food insecurity and hunger. The rights to life and health are intricately connected to the access to adequate food and nutrition.

At the federal government level, we detected more than the absence of an approach focused on rights: there is also an institutional agenda of propagation of the virus, carried out by the Brazilian government under the leadership of the President of the Republic, who has diligently engaged in the wide dissemination of the virus in the country, with the openly declared aim of resuming economic activity as quickly as possible, and at any cost.

Furthermore, he publicized the use of drugs proven to be ineffective against Covid-19, inexorably associating his personal image with the use of drugs whose ineffectiveness, at the time, had already been verified by the global scientific community and the WHO. Among the numerous infractions committed, the federal government deliberately failed to provide public hospitals with the minimum conditions to face the pandemic, which could be seen in the lack of oxygen for hospitalized patients.

The violation of the international and national legal systems, as detailed in the Denunciation Document, whose fundamental precepts are reproduced in domestic law, has been exhaustively demonstrated. The violation of the Brazilian population's right to health, proudly proclaimed and as a demonstration of power by Mr. Jair Messias Bolsonaro, was also expressed by the violation of the right to life of thousands of citizens: due to the lack of health care, as a means to demonstrate loyalty to the head of State; for lack of adequate treatment and infrastructure; by the absence of other sanitary measures to contain the spread of the virus that could have been taken by the government.

The untimely death of thousands of Brazilians could have been avoided, as well as the limitations resulting from Covid-19 sequelae in survivors. We highlight that the President's outrageous conduct during the pandemic has been routinely reported on international journals. For the sake of the International Human Rights System, the Brazilian State must be held accountable for every piece of evidence brought against it.

Our Denunciation Document states that the Brazilian State did **not respect** its population's rights to health and to life, as it deliberately perpetrated violations that hindered the enjoyment of such rights.

The Brazilian State did **not protect** its population's right to health and, as suggested by the Parliamentary Commission of Inquiry (CPI) on the Covid-19 Pandemic in Brazil, whose final report was approved on 26 October 2021, there is indication that it has associated with third parties whose interests did not include the upkeep of the Brazilian people's health or life, disregarding its obligation to protect those rights.

By failing to take adequate sanitary measures or to develop urgent and necessary public policies, the State has **not facilitated, provided, or promoted** the rights to health and life of its population, as directed by international human rights instruments (ICCPR and ICESCR).

The denialist campaigns and the personal commitment of President Bolsonaro, including his own example of conduct, which has been widely reported in the official media and on social networks, represent a **violation of the duty to promote the right to life and the right to health** in the context of the Covid-19 pandemic, and the Brazilian State should also be held responsible.

The Executive, Legislative and Judicial branches of the Brazilian State are responsible for the preventable deaths of around 480 thousand people as a result of Covid-19. President Jair Messias Bolsonaro, who has not heeded the precepts of human rights in his administration, shares the responsibility for those deaths, since he should have prioritized the interests of the population as a whole in order to achieve the fundamental objective of the Republic: to promote the good of all (Article 3, IV of the Federal Constitution), as well as national development and the eradication of poverty. The non-compliance with human rights precepts was aggravated in the pandemic period and corroborated by the other powers, as they failed to take effective measures to remove Bolsonaro from office even in the face of overwhelming evidence of his choosing a policy that favors death (necropolitics).

The Judiciary did not fulfill the obligation to materialize fundamental rights, since it also failed to control the other branches of power, especially the Executive. The Legislative, in turn, is also responsible, as it did not follow up on the numerous impeachment requests that came to the Chamber of Deputies, and it fell onto the Senate to establish the Covid CPI, which collected ample evidence of numerous potential crimes committed by Bolsonaro, such as liability crimes, charlatanism, malfeasance, and passive corruption. The Denunciation Document claims that this is the greatest humanitarian tragedy in Brazilian history since the enslavement of black people.

The Denunciation Document demands that the Brazilian State, under the leadership of President Jair Bolsonaro, be held responsible for the facts listed below, and also proposes recommendations. The Brazilian State must be held accountable for the following facts:

- a) for not having exercised the anticipatory governance required by the severity of the pandemic and, consequently, for the more than 480,000 (four hundred and eighty thousand) premature and preventable deaths that occurred in the context of the Covid-19 pandemic;
- b) for disrespecting the dignity of Covid-19 victims and their families;
- c) for setting forth a process of planned retrogression in the public health sector, among other areas, denying rights and dismantling the constitutional guarantee of the right to health;
- d) for a higher mortality rate in public Intensive Care Units beds;

- e)** for recommending and acquiring, at the expense of the national treasury, ineffective drugs to treat the Covid-19 infection, contrary to the guidelines laid by international scientific community and the WHO;
- f)** for taking much longer than necessary to purchase vaccines against Covid-19, considerably delaying the beginning of the vaccination campaign in the country, and for not having offered the population proper information and guidance through massive awareness campaigns;
- g)** for widening the structural racism and patriarchy moat, social structures that place, respectively, black people and women in social positions of subordination, as the heaviest weight, in terms of supporting and nurturing life during the pandemic, has fallen on the shoulders of women, especially poor black women, through their care and work - whether productive or reproductive, paid or unpaid; for increasing racist, misogynist, and LGBTQIA+phobic violence during the pandemic, by radicalizing the extermination of black youth in peripheral areas and favelas, increasing the number of deaths of women and LGBTQIA+, in particular transgender people, during the sanitary crisis;
- h)** for violating the duty to protect vulnerable groups against discrimination and for supporting acts of commission and of omission that promote and naturalize the death and extermination of these groups;
- i)** for the long-lasting effects on people affected by Covid-19 that could have been avoided but were not, due to acts of commission or of omission by the Brazilian state;
- j)** for the excessive number of untimely deaths of people from particularly vulnerable groups, caused by structural discrimination, such as indigenous peoples, quilombolas, black men and women, women, the elderly, children and adolescents, family farmers, LGBTQIA+, the incarcerated population and the homeless;
- k)** for suspending healthcare services in several indigenous areas for several months, leaving them unassisted, and also for imposing religious fundamentalism and political extremism, disrespecting indigenous cultures and values;
- l)** for failing to comply with the obligations to respect, protect and guarantee the lives of women and LGBTQIA+, especially transvestites, transgender people and other identities that suffer intra-family violence;
- m)** for failing to take additional measures to protect and assist women, as Brazilians accuse President Jair Messias Bolsonaro of institutionalizing misogyny, promoting repulsion and hatred of women, and instituting femicide;
- n)** for failing to take effective, concrete measures to reduce prison overcrowding, and for the unjustified delay in vaccinating incarcerated people, who, despite being characterized by the National Immunization Plan as members of priority groups, were vaccinated only after the entire non-priority adult population;

- o)** for making bad budgetary decisions in executing and allocating resources for the period of 2020 to 2022, decisions which systematically violate the human right to health in the context of the pandemic, as they have prevented the adoption of measures required to face the pandemic in terms of medical-hospital structure, hence failing to offer what was necessary to care for the population;
- p)** for not following nor localizing international health surveillance standards, breaking national and international rules and laws intended to support the fight against the Covid-19 pandemic;
- q)** for failing to follow guidelines issued by the Ministry of Health to monitor the progression of the pandemic and to assess and revert the sanitary crisis, by not implementing awareness programs to inform the population about preventive and protective measures, both individual and collective;
- r)** for constantly manufacturing and publicizing misinformation about non-pharmacological measures to reduce transmission of the coronavirus (using official means to produce and disseminate denialist information);
- s)** for not prioritizing the National Health Surveillance Policy as an effective measure to fight the pandemic;
- t)** for greatly worsening food insecurity and hunger in the vulnerable population during the pandemic, due to the dismantlement of the National Food and Nutritional Security Policy (SAN), an action that made hunger and food insecurity even more serious for the Brazilian population, with dramatic consequences for affected families and for society as a whole;
- u)** for not protecting the right to housing and the right of squatters to legitimately use public land to grow their living.

The document will be submitted, fully or partially, to organizations in the Global and Regional Human Rights Systems. So, within the United Nations system, the recipients will be the Human Rights Council (HRC), the Office of the High Commissioner for Human Rights (OHCHR), various treaty bodies, especially the Human Rights Committee (CCPR) and the Committee on Economic, Social and Cultural Rights (CESCR), as well as various special human rights rapporteurs. Within the Regional Human Rights System, it will be submitted to the Inter-American Commission on Human Rights (IACHR), as a proposed follow-up to the Report on the Situation of Human Rights in Brazil, published in March 2021. Each of these recipients will receive a specific request, considering their specific nature and attributions. A preliminary version of the document was submitted to the Covid Parliamentary Commission of Inquiry (CPI), conducted by the Federal Senate. The final document will also be submitted to public instances in the Legislative, in the Judiciary and in the Federal Public Attorney's Office, to aid in the preparation of their own instruments and initiatives.

This Denunciation Document was prepared by rapporteur Flavio Luiz Schieck Valente, with invaluable contributions by the following researchers: Armando de Negri, Benilda Britto, Bruno Moretti, Cristian Gamba, Edla Bussinger, Eloy Terena, Euzamara de Carvalho, Maria do Remédios Branco, Pedro Hallal and Soraia Mendes. The assistance and support of the following people was also essential: Jônia Rodrigues de Lima, Enéias da Rosa, Gilnei Oliveira da Silva, Roseane Dias, Nara Peruzzo e Paulo César Carbonari.



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