

Universal Periodic Review (UPR)

27th session

Human Rights Situation in Brazil

Joint Submission presented by:

Conference of the Franciscan Family of Brazil - CFFB

The Brazilian Commission for Justice and Peace – CBJP

Caritas Brazil

Pastoral Land Commission – CPT

Interfranciscan Service for Justice, Peace and Ecology - SINFRAJUPE



Geneva, 4 October 2016

INTRODUCTION

1. The present submission seeks to contribute to the Universal Periodic Review (UPR) of Brazil during its third cycle that will take place in 2017, at the 27th session of the Universal Periodic Review Working Group. This report has been elaborated by a coalition of organizations from Brazil - **Conference of the Franciscan Family of Brazil – CFFB** (Conferência da Família Franciscana do Brasil), **The Brazilian Commission for Justice and Peace – CBJP** (Comissão Brasileira de Justiça e Paz), **Caritas Brazil** (Caritas Brasileira), **Pastoral Land Commission – CPT** (Comissão Pastoral da Terra), **Interfranciscan Service for Justice, Peace and Ecology – SINFRAJUPE** (Serviço Interfranciscano de Justiça, Paz e Ecologia) - through collaborative research and analysis of the information collected and compiled on the ground.
2. The submission focuses on structural changes in institutions and policies that are of great concern to civil society organizations because of the foreseeable negative effects on the realization of human rights, especially those of the most marginalized and discriminated against sectors of the population. In particular, referring to official data, it describes the dismantling of social rights and public policies in Brazil triggered by the government of President Michel Temer since taking office after the impeachment of the elected President Dilma Vana Rousseff.
3. Indeed, in 2012, in the course of the debates held at the second cycle of the UPR, the Brazilian government received a substantial number of recommendations urging for the strengthening of the human rights system in the country. During the last four years, this process revealed itself to be slow and fragile, and could not lead to meet the expectations from the second cycle. However, after the 2016 parliamentary coup, this situation has been greatly exacerbated by the recent political events and the coming to power of the new administration led by President Temer. Brazil is on a downward path in the fulfillment of the recommendations made in 2012. For this reasons, the dismantling of social rights and public policies will be the primary focus of the present report.

I. A fragile process of building institutions and policies for the promotion and protection of human rights.

4. At the end of the dictatorship and the beginning of the democratic process, the Constituent Congress was elected with the mandate of drafting a new Federal Constitution. The 1988 Federal Constitution was drafted with a broad involvement of society. It was marked by contributions from organized popular sectors, which gave the text a clear content of Welfare State, as the guarantor of individual, social, economic and cultural rights, and created a social safety net and participative processes as critical in designing public policies and ensuring social control.
5. In addition to the obligations contracted by Brazil as a party to various human rights law instruments at the regional and international level the Constitution of 1988 encompasses a set of articles recognizing rights and mandating their progressive implementation. The

Constitution and the mechanism of social participation allowed for the creation of several programs, rights protection systems, and networks during the last decades.

6. Since the adoption of the new Constitution, elected governments promoted social participation in the development of public policies aiming at the universalization of rights; developed a social safety net and secured resources for their implementation. This historical process occurred at a time when neoliberal ideologies were predominant on the international stage, advocating for a minimal State and policies of privatization. As of the government of Fernando Henrique Cardoso (1995-2002), and in particular, the last four administrations, of President Luis Inácio Lula da Silva (2003-2010) and President Dilma Vana Rousseff (2011-2016) stood out for implementing social inclusion processes. These initiatives induced changes in budget priorities towards the reduction of social and regional inequalities and in increased implementation of the rights of millions of families which previously suffered from social exclusion and poverty.

II. Failure to comply with the previous recommendations

7. The Report of the Working Group on the Universal Periodic Review of 9 July 2012, brought the conclusions and /or recommendations to Brazil. In our view, these recommendations were not fully implemented and nor assumed as state policies, which would prevent setbacks in times of institutional crisis like the current one.
8. However, while recognizing and welcoming these advances, the submitting organizations insist on the fact that, although the project of both Luiz Inácio Lula da Silva and Dilma Vana Rousseff's administrations had the objective of social inclusion, it was marked by continued discrimination and violations of the rights of indigenous, quilombola and traditional communities. The recommendations aimed at ensuring the rights of indigenous peoples and afro-descendants (such as recommendation 119.162) and at ensuring territorial and cultural rights of indigenous peoples (such as recommendations 119.163 through 119.169), were not fully implemented.
9. The government's economic growth and development policies led to various and numerous infringements on the rights of these peoples and communities. In the same vein, the realization of large infrastructure projects in the host cities of the World Cup (2014) and the Olympics (2016) impacted negatively on the rights of large groups of the population, both civil and political, such as freedom of expression, and economic, social and cultural rights such as the right to housing.
10. The failure of the State to implement necessary measures to protect and promote the access to land and to other natural resources of traditional peasant, indigenous and quilombolas communities has led to numerous and widespread violations of a range of human rights of these communities. In particular, the rights to an adequate standard of living, to adequate housing, food and water were infringed upon. In the context of the second cycle of the UPR, the fulfillment of these rights were the object of various recommendations (119.131 through 119.145, reduction of poverty and social and regional inequalities). As a party to various international human rights instruments guaranteeing these rights, and notably the International

Covenant on Economic, Social and Cultural Rights, Brazil has obligations to respect, protect and fulfill these rights for all.

11. The submitting organizations are deeply concerned that the human rights of traditional peasant, indigenous and quilombolas communities were weakened by the slow and fragile implementation of the policies relating to the demarcation of their territories. Further, the agrarian reform was not implemented by Luiz Inácio Lula da Silva and Dilma Vana Rousseff's administrations, since the main policies and budget priorities were directed to strengthening large land ownership dedicated to monoculture agribusiness.
12. The United Nations Special Rapporteur of on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, asserted in her statement at the end of the mission which took place in March 2016: "Indigenous peoples from throughout the country have repeatedly stressed to me that the prolonged absence of effective protection by the State is pushing them to reclaim their lands in order to guarantee their survival. Many of them have even stated that if faced with evictions they will not leave their lands and are prepared to die there if necessary. In effect, through its paralysis the Brazilian state appears to be establishing the conditions conducive to conflict which will ultimately have a devastating impact on indigenous peoples and society as a whole."¹
13. Regardless the shortcomings, delays, and weaknesses in building a human rights machinery for the most vulnerable categories of the population, conservative sectors which felt impaired by the ongoing political process articulated the fall of President Dilma Vana Rousseff through a parliamentary coup and an impeachment process. Despite the realization of a formal process, no sufficient evidence of an impeachable crime was presented.
14. Since March 2016 and the statement of the Special Rapporteur, the reasons for concern have not diminished. Since Vice-President Michel Temer assumed interim the Presidency in April 2016, he has triggered the process of dismantling public policies, social rights, social safety net and various mechanisms of social participation, social inclusion and social control established after the promulgation of the 1988 Federal Constitution.

III. Budget cuts and threats to the realization of rights: The project of Constitutional Amendment Bill 241/2016 (PEC 241) and the Draft Budget Law 2017 (dismantling of the 1988 Federal Constitution)

15. The PEC 241/2016 was developed to limit public spending and, is a constitutional amendment bill, that, if passed, will introduce a new tax regime due to run for the next twenty financial years and establishes, for each year, a ceiling for global primary expenditure applicable to the

¹ United Nations Special Rapporteur on the rights of indigenous peoples, *End of Mission Statement*, 17 March 2016.

Executive and other government branches of the federal government.² The submitting organizations, as well as many other civil society organizations, anticipate with great preoccupation that the cuts and limits in the public resources that can be allocated to fundamental social programs and to the effective accessibility and functioning of key public services, will severely impair the enjoyment of human rights, especially by the most marginalized and disadvantaged individuals and groups. Important to note that two research institutions, one linked to the federal government, the Institute for Applied Economic Research (Ipea) and other to the civil society, the Inter-Union Department of Statistics and Socio-Economic Studies (DIEESE), come to these same conclusions.³

16. In other words, this proposal freezes public spending in real terms, removing the expenditure decision from the political realm, by establishing a fixed economic index. This index has no relation to the State income (revenue) capacity nor with the demand for public goods and services (expenditure), which are the core variables of the allocation function of any government.⁴

17. Thus, the PEC 241 if passed will disrupt the financing of Brazilian social policies by eliminating the earmarking of revenues for education and social protection budget, comprised of health policies, social security, and social assistance. Such earmarking reflects social achievements that were guaranteed by the 1988 Constitution, intending to establishing priorities and to preserving public spending in these social areas, regardless of the incumbent government. The PEC 241 will reduce the State's ability to comply with its national and international human rights obligations. It may become a fundamental problem for social protection in Brazil, established by the 1988 Constitution and in particular through its section on the Social Order, from article 193 to article 232. All rights therein enshrined or inspired are threatened. This section includes seven chapters: Social Security (Health, Social Security, and Social Assistance); Education, Culture and Sports; Science and Technology; Communication; Environment; Family, Children; Adolescents and the Elderly; and Indigenous Peoples.

² For 2017, the limit will be calculated by applying the National Index of Consumer Price (IPCA-IBGE) to the primary expenditure incurred for the fiscal year 2016. For subsequent years, it will be calculated according to the ceiling from each preceding year, adjusted to the applicable inflation rate. With the aim of the verification of the compliance with each annual limit, the overall expenditure for a given year, including the residual debts related to primary expenditure, will be taken into account

³ *The New Tax Regime and its implications for social assistance policy in Brazil*, Institute for Applied Economic Research (Ipea) - Ministry of Planning, Development and Management, Technical Note – number 27 – September 2016 – DISOC http://www.ipea.gov.br/portal/images/stories/PDFs/nota_tecnica/160920_nt_27_disoc.pdf; *The impact of the new tax regime for the financing of the Unified Health System and the realization of the right to health in Brazil*, Institute for Applied Economic Research (Ipea) - Ministry of Planning, Development and Management, Technical Note - September 2016 - number 28 - DISOC http://www.ipea.gov.br/portal/images/stories/PDFs/nota_tecnica/160920_nt_28_disoc.pdf; *PEC 241/2016: the new tax system and its possible impacts*, Inter-Union Department of Statistics and Socio-Economic Studies (DIEESE), Technical Note September 2016 - number 161.

⁴ Ibid. Daniel Arias Vazquez, *O Plano Temer/Meireles contra o povo: O Desmonte Social Proposto pela PEC 241*, online : <http://plataformapoliticasocial.com.br/wp-content/uploads/2016/07/DesmonteSocialPlanoTemer.pdf>

18. The global losses of federal funds previously allocated to social areas would be very significant if PEC 241 is approved in Congress. In a simulation for the period 2003 to 2015, which applied real currency values of December 2015, the PEC 241 would have cut R\$ 3.2 trillion from federal funds invested in social policy. The Federal Public Spending would be 37% lower than the resources allocated to social policies in previous administrations. The PEC 241 intends to extend to the next 20 years the current budget constraint, even if the country resumes growth and government revenues grow again above inflation level.⁵
19. Inequality and poverty remain high in Brazil, despite the fact that under the administration of the previous two governments, the "proportion of the population classified as poor decreased about 10 percentage points [and] the Gini coefficient, which measures the concentration of per capita income, decreased from 0.5942 in 2002 to 0.5227 in 2014"⁶. This downward inequality trend in Brazil is similar to that observed in developed countries today, but this current path would need to be maintained for a longer time - 25 or 30 years - to reach levels similar to those existing today in those countries.
20. In fact, the preoccupation of the submitting organizations is confirmed by the 2017 Draft Budgetary Law that provides for the cutback of several billions of reais in the resources allocated to sectors such as social housing, regional development, and agrarian reform. Other programs will also suffer from budgetary cuts (fisheries and aquaculture; reduction of the social impact caused by alcohol and other drugs; sports, citizenship, and development; water resources; racial equality promotion; women's rights and development, etc).⁷
21. The proposed budget for 2017 took into account the proposed ceiling for public spending, although Congress has not yet approved the mechanism provided for by the PEC 241. If PEC 241 is adopted, next year's government spending could not grow above the rate of inflation of the previous year. Thus, government spending in 2017 could not grow more than 7.2%, which is the expected inflation throughout the year 2016.
22. In absolute terms, the largest cutback in the proposed budget for 2017 was in programs relating to adequate housing, representing R\$ 8.14 billion or 51% compared to last year. Through this program, the government coordinates actions including technical support to States, municipalities and productive sectors, support of mechanisms for participation and social

⁵ Ibid.

⁶ *Social expenditure of the Central Government: 2002-2015*, National treasure - Ministry of Finance, online: <http://www.stn.fazenda.gov.br/documents/10180/318974/Gasto+Social+Governo+Central/c4c3d5b6-8791-46fb-b5e9-57a016db24ec>.

⁷ The 2017 Union budget, which President Temer proposed to Congress, imposes an average 30% reduction in the values for the 11 top social area government programs, considering the inflation period (Market General Price Index - IGP-M - in the last 12 months). This reduction corresponds to R\$ 29.2 billion less for this set of programs (after application of the period's inflation rate), compared to what was presented by Rousseff, already under the effect of the economic crisis last year. This data can be observed if we compare the programs and values, in the 2017 Federal Budget and the 2016. (after application of the period's inflation rate) To see the 2017 and 2016 Union Budgets consult:

<http://www.camara.leg.br/internet/comissao/index/mista/orca/orcamento/OR2017/proposta/proposta.pdf>
http://www.camara.leg.br/internet/comissao/index/mista/orca/orcamento/OR2016/Proposta/projeto/volume2/01_progrematicos.pdf.

control in federal housing programs, and development for the production, acquisition or rehabilitation of housing properties.

23. At a time when the governors of the Northern and Northeastern States require more resources to compensate the loss of the downfall of transfers from the Federal government, the Federal government also decreased proposed amounts allocated to the regional development program seeking to diminish the “Brazilian regional differences”. The cutback amounted to R\$ 3,69 billion, the equivalent of 79%, the biggest cut in percentage terms.
24. The draft law for the 2017 budget also proposes to reduce the allocation of resources to programs related to people living in rural areas. Ineed, the resources allocated for land acquisition in the context of the agrarian reform will drop by 52%; the resources allocated for the promotion of education in rural areas will drop by 56%; the resources allocated to the Food Acquisition Program (PAA), which seeks to foster the production of food through family-based agriculture, will drop by 55%; the resources allocated for the extension of warehouses used to store food will drop by 97%; the resources allocated for regional and territorial development will drop by 82,8%; the resources allocated for the sustainable development of quilombolas communities, indigenous people, and traditional communities, will drop by 26%; the resources allocated to the “Protection and Promotion of Rights of Indigenous Peoples” program will drop by 14,4%; the resources allocated to the recognition and compensation of quilombolas territories will drop by 48,8%; the resources allocated for the acquisition of rural properties for the creation of settlements under the Agrarian Reform will drop by 52%; the resources allocated for the inclusion of productive sectors in rural areas will drop by 47,4%; the resources allocated for fisheries and agriculture will drop by 68,3%; the resources allocated for the strengthening of the Single Unified System of Agricultural Health - SUASA - will drop by 23,2%; and the resources allocated for subsidies relating to the mobile fluvial supplies in the Amazon will drop by 96,6%.⁸
25. In global terms, the expenditure for the agrarian reform program already showed a significant reduction, from R\$ 2,08 billion in 2016 to R\$1,1 billion in 2017, the equivalent to 47% in percentage terms. In comparison, the amount allocated to Sport and Citizenship was reduced by R\$ 618 million and shall drop to R\$ 722 million next year, equivalent to a downfall of 46,11%. Smaller programs also suffered from this trend. This is the case for policies for women, for which R\$ 121 million were allocated in the budget proposal for 2016, compared to R \$81,6 million in 2017, a cutback equivalent to 32,5%. The forecast of the expenditure also dropped for the promotion of racial equality, which suffered a reduction of R\$ 13,3 million equal to 35,4% in percentage terms, and to the promotion of fundamental rights for the youth, with a cutback R\$ 7,8 million equivalent to 33,9%.⁹

⁸ Gerson Teixeira, *Um Panorama do Agrário na PLOA 2017*, National Congress internal publication.

⁹ Alexandro Martello, *Habitação e reforma agrária podem ter corte bilionário no orçamento 2017*, G1 Globo, 7 September 2016, online : <http://g1.globo.com/economia/noticia/2016/09/habitacao-e-reforma-agraria-podem-ter-corte-bilionario-no-orcamento-2017.html>.

26. In addition, the submitting organizations anticipate a regression in gender equality as the proposed budget 2017 presents a cut of the program “Policies for women: promotion of equality and fight against violence” cut by 40% in comparison with the budget planned by the government of Dilma Rousseff one year ago. This percentage is similar to the cutback of 42,2% foreseen by the government for the program “Promotion of racial equality and overcoming racism” in 2017. In this regard, the submitting organizations draw the attention on the fact that only one woman was appointed at the head of a Secretariat (and none as Minister) under the new government.

IV. Weakening of policies and resources in the areas of territorial development, forced labour, public health, and public education

27. A **territorial development policy** was adopted in Brazil as a model of governance of decentralized and participative public policies, and of inclusion of marginalized groups and areas. The public entity in charge of the enforcement of territorial development policies in Brazil. As a result of the adoption of the “Territories of Citizenship” program, various ministries adopted the territorial approach to implement integrated public policies in the smallest and most remote municipalities of Brazil. The territorial approach to development also obtained membership of small rural towns, where is concentrate a part of the poor population. In these regions, characterized by inadequate access to public services and public facilities that guarantee rights and quality of life were covered by the territorial development policy 243 municipalities already recognized by the “National Program of Rural Territories”.¹⁰ With the cuts above described, Temer government interrupts and undermines the implementation of this territorial policy.

28. Furthermore, Brazil had become an international reference in the fight against **forced labour**, both from the point of view of its public policies and their implementation. This was particularly the case in relation to its activities of protecting enslaved workers, promoting their social inclusion and punishing companies using forced labour. Since 1995, these policies helped save more than 50,000 people from forced labour.

29. However, those benefitting from modern slavery started to show considerable resistance.¹¹ Attacks from the detractors of the fight against forced labour took the form of many legal proceedings and attempts of demolishing the legal and institutional structure underpinning the policy. Their specific targets are the following: the legal concept in force since 2003 (Law 10.803 amending article 149 of the Penal Code), the *Dirty List* (“lista suja”), the loosening of legislation and the liberalization of outsourcing. It is worth pointing out, for example, the fact that Brazil has not yet ratified relevant conventions such as the *International Convention on*

¹⁰ Huberto Oliveira, *et al.*, *Territorial and Sustainable Development Goals Politics: Without democracy there is no development, no hope for rural areas in Brazil*, Plataforma Política Social, 25 June 2016, online: <http://plataformapoliticasocial.com.br/artigo-29-politica-territorial-e-objetivos-de-desenvolvimento-sustentavel-sem-democracia-nao-ha-desenvolvimento-sustentavel-nem-esperanca-para-os-territorios-rurais-do-brasil>.

¹¹ Xavier Plassat, OP, *Forced Labor, 2015: Retreat of numbers, growth of threats*, Comissão Pastoral da Terra, 10 January 2016, online: <http://www.cptnacional.org.br/index.php/publicacoes/noticias/trabalho-escravo/3050-trabalho-escravo-2015-recuo-dos-numeros-crescimento-das-ameacas>.

the Protection of the Rights of All Migrant Workers and Members of their Families. Also, the adaptation of its legislation in line with the provisions of the Palermo Protocol is still pending.

30. With the government installed by the parliamentary coup of August 2016, the sectors who strived for years to loosen workers' rights and labour law have clearly increased pressure on social rights. In particular, they seek to maximize and facilitate outsourcing in labour relations; to favour negotiation with workers over strong legislative safeguards; to restrict the definition of forced labour; and to weaken labour inspection, both in qualitative and quantitative terms. In a nutshell: to open the door to recrudescence of forced labour.
31. We are heading backward in the fight against forced labour and towards the eventual dismantling of key policy instruments and to an increased invisibility of the issue. In that context, the recommendations made by the UN office in Brazil¹² summarize adequately the expectations of civil society and other sectors involved in the effective eradication of forced labour.
32. On the issue of Health, in little more than three decades, the **Unified Health System (SUS)** revealed itself sustainable and essential. It constitutes a pillar ensuring the realization of social rights, in contraposition to the market. The SUS is in charge of 90% to 95% of heart surgeries, oncological treatments, and organ transplants. It is responsible for one million hospitalizations per month; 3,5 billion medical services per year, and primary health care covers 60% of the population with the Family Health Strategy.¹³
33. The SUS as a public system is currently being dismantled through various proposals made by the new government to limit its scope or to privatize it. It is important to note that the PEC 241 will promote the dismantling of the SUS, with the fixation of its budget by the federal government without taking into account population growth and its related age structure, or the surge or new epidemics.
34. As approved by the Senate, the end of the "pré-sal" petroleum exploration by Petrobrás will prove to compromise one of the most important revenue sources allocated to **public education** in the long run. The trend is to reduce the oil royalty incomes for the National Fund of "pré-sal", which allocates 75% of its resources to public education. Since last year, budgetary resources for education have dropped. Recently, the Ministry of Education and Culture interrupted its new scholarships for the international exchange program "Science Without Borders" for undergraduate students. Further, the Ministry suspended the opening of new

12 ONU.BR Position Paper - *Trabalho Escravo* ABR 2016.pdf
<https://www.dropbox.com/s/2mgu47p650pixgk/ONU.BR%20-%20Position-paper-trabalho-escravo%20ABR%202016.pdf?dl=0>.

13 Amélia Cohn, *A ofensiva raivosa no desmonte do SUS, Plataforma Política Social*, 11 June 2016, online: <http://plataformapoliticasocial.com.br/artigo-15-a-ofensiva-raivosa-no-desmonte-do-sus/>.

vacancies and will not provide more opportunities for students of universities and technical schools for the year 2016.¹⁴

V. CONCLUSION AND RECOMMENDATIONS

35. In the light of the above, the submitting organizations call on the Brazilian State to protect the gains made in matters relating to social protection and to keep consolidating the institutional, policy and legal framework that supported past progress. This process should be based on democratic dialogue with the society as a whole and on the participation of organized civil society in the entities in charge of designing, monitoring and permanently improving public policies.

In particular, we call on the Brazilian State to:

- Refrain to adopt the draft amendment PEC241 which authorizes the cuts and limits to social public spending, etc.;
- Ensure that the transformation of the MDA into a secretariat under the “Casa civil” does not affect the capacities, prerogatives/powers and resources of the institutions to pursue the programs;
- Ensure and guarantees the rights of quilombolas and indigenous peoples;
- Ensure gender equality and its promotion. In particular, reverse the latest trends that led to the reduction of the representation of women in the executive branch;
- Refrain from passing any laws and policies that would made prevention and combating of forced labour more difficult (eg. the 2013 draft law).

36. Finally, the Brazilian State should respect popular mobilization and welcome social participation in the consolidation of its undertakings, always enhancing these processes and never allowing the dismantling of public policies and constitutional rights.

¹⁴ Miguel Martins, *Escola sem Estado*, Revista Carta Capital, 14 September 2016, online: <http://www.cartacapital.com.br/revista/918/em-curso-o-desmonte-da-educacao-publica>.