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## **BRAZIL: OPEN LETTER TO PRESIDENT JAIR BOLSONARO**

Re: AMNESTY INTERNATIONAL'S CONCERNS ABOUT HUMAN RIGHTS UNDER YOUR GOVERNMENT

Dear Mr President,

This open letter from Amnesty International sets out some of our concerns regarding human rights under your government. The thoughts and recommendations that follow are the result of analysis of decrees, provisional measures, bills and other legal instruments which, in the context of statements made by various authorities within your government, give us cause for concern due to the negative impact we believe they could have on human rights and on Brazil's compliance with its international obligations.

Foremost among our concerns are: the threats to the right to life posed by the relaxation of laws on possessing and carrying firearms; the rights of indigenous peoples and Quilombolas, including the demarcation of their lands and territories; the regressive steps taken in national drug control policy; the relaxation of the criteria for claiming legitimate self-defence to justify the use of force and firearms by the police; as well as other legal changes set out in the bills collectively known as the "anti-crime package"; the monitoring of civil society organisations and human rights defenders; measures relating to victims' rights to truth, justice and reparations for crimes committed during Brazil's past military regime; and a public rhetoric that belittles human rights.

For each of these issues, Amnesty International presents its analysis and proposes a series of recommendations that we believe should be adopted to ensure compliance with Brazil's obligations under national law and international human rights standards.

### **Concerning the relaxation of laws on possessing and carrying firearms**

The new rules on the possession and carriage of firearms and the sale of ammunition introduced by Decree No. 9,785/2019 could have been a useful tool for promoting a reduction in homicides and threats to life, freedom and security. However, the Decree reduces safeguards on the right to life by making it easier to increase the circulation of such weapons. Amnesty International is extremely concerned that more firearms available could mean more deaths, a concern based on evidence from various studies showing that, in Brazil, increased circulation of firearms is closely connected with rising crime and insecurity. This Decree could make police operations more lethal and cause minor conflicts or crimes to be exacerbated by the presence of firearms.

#### **Recommendations:**

- Revoke Decrees No. 9,785/2019 and adopt new rules under which licences to possess and carry firearms are granted only after the completion of a rigorous procedure to establish a proven need. This procedure must identify risk factors and meet the following minimum requirements:

- Due checks must be performed to verify that a proven need exists. Although personal protection may be used as a justification in exceptional circumstances in which a specific and plausible threat is identified, it must not be used as a widespread justification for firearm possession;

- The previous requirements for obtaining a licence to carry firearms should be maintained, chiefly the minimum age of 25; the requirement that the applicant should present no known risk factors for unlawful use of firearms (such as a criminal record, a history of domestic violence, or problematic use of drugs or alcohol); and renewal every three years.

- Urgently implement a national plan to reduce homicides in Brazil, including specific measures targeting historically marginalised groups, especially young black people. This plan should be allocated a sufficient budget, aim to reduce crimes with firearms and extrajudicial killings by the security forces, and be devised in conjunction with state and city governments.

- Establish governmental working groups and provide support, including financial support, for public scientific research that periodically monitors and assesses the firearm situation in Brazil and its links with changing levels of violence and crime, in order to provide empirical evidence on which to base public policies and legislative reforms that successfully curb violations and threats to the life and limb of Brazilians.

### **Concerning the demarcation of indigenous and Quilombola territories**

Both the Brazilian Constitution and the international treaties the country has ratified contain specific obligations to respect and protect the rights of indigenous peoples and Quilombolas. However, many ancestral communities continue to be put in peril by the fact that their territories have still not been officially recognised or demarcated. Provisional Measure No. 870/2019 initially made the situation more worrying still, as it had the potential to halt ongoing demarcation of indigenous lands and titling of Quilombola territories by transferring demarcation powers from the National Indian Foundation (FUNAI) to the Ministry of Agriculture – a decision criticised by the United Nations’ Special Rapporteur on the Rights of Indigenous Peoples for undermining FUNAI’s role in protecting indigenous people. Recently, after analysis by a Senate special committee, this decision was reversed, returning control of FUNAI to the Ministry of Justice. However, as the Provisional Measure has not yet been adopted in its final form, the situation remains worrying. The transfer of power initially proposed would risk worsening the situation of indigenous peoples and Quilombolas, who are already coming under pressure from loggers and land grabbers in their isolated communities. Government oversight of these places is becoming ever scarcer and, in some cases, non-existent. In addition, community leaders and human rights defenders have received threats and suffered various attacks, verified by Amnesty International. The leaders of the Karipuna and Uru-Eu-Wau-Wau people received death threats recently, for instance.

#### **Recommendations:**

- Bring a swift, fair and final resolution to all pending claims for demarcation of indigenous lands and titling of Quilombola territories, ensuring that indigenous peoples and Quilombolas give free and informed consent prior to any decisions affecting their interests.

- Ensure that FUNAI has the resources and operational independence necessary to meet its institutional objective swiftly and efficiently, respecting the operational autonomy of its personnel and providing appropriate pay to supervisory staff.

- Urgently implement the recommendations made by the UN’s Special Rapporteur on the Rights of Indigenous Peoples after her visit to Brazil in March 2016.

- Protect indigenous and Quilombola leaders, their communities and territories and other human rights defenders in order to avoid attacks and threats against them.

- Promptly investigate the deaths of indigenous and Quilombola leaders, as well as other human rights defenders; massacres in indigenous and Quilombola communities; threats against them and their families; and forced evictions, and try the perpetrators swiftly, independently and impartially, in accordance with national and international standards of due process.

### **Concerning the monitoring of civil society organisations**

Amnesty International sees with concern the adoption of measures such as Decree No. 9,669/2019, recently questioned by the National Congress for the approval of a highlight in Provisional Measure 870 that, in practice, will annul the content of the decree cited when approved in a final vote. Our concern is that this type of measure represents a threat to freedom of association, since it would enable the government to “supervise, coordinate and monitor” the activities and actions of civil society organisations. The specific powers to be granted and the additional criteria that could be created are not clear from the measure as drafted, which could result in undue interference in the actions of civil society organisations and a worrying shrinking of civic space. All official organisations operating in the country are already monitored by bodies responsible for taxation, such as the Federal Revenue Service, and for oversight of public spending, such as the Federal Court of Auditors. Creating an additional body without clearly delimited powers could lead to the imposition of more onerous requirements (such as additional taxes) that would hinder the work of civil society organisations, not least by impinging on their right to seek, receive and use financial resources.

#### **Recommendations:**

- Immediately revoke the part of Decree No. 9,669/2019 that regulates civil society organisations and international bodies and issue a new Decree that guarantees a safe and conducive environment for civil society organisations. The new Decree must, as a minimum, guarantee that:

- The government does not intervene unduly in the activities of the civil society organisations operating in Brazil, does not create onerous bureaucratic procedures that make their work more difficult, and does not hinder the efforts of such organisations to obtain national and international financing;

- Civil society organisations can seek, receive and use financial resources from national, foreign and international sources without interference, and without their work being stymied by onerous additional taxes. There must be a transparent public process allowing organisations, including human rights organisations, to access national public funding without discrimination, and enabling civil society to oversee the financing criteria used.

- Refrain from taking any measures that unduly restrict freedom of association, freedom of expression, freedom of peaceful assembly and the right to defend human rights.

- Adopt measures to effectively protect human rights defenders and civil society organisations who face threats and attacks as a result of their activities in defence of human rights.

- Refrain from using language that discriminates against or stigmatises human rights defenders and civil society organisations (including in relation to financing), avoiding pejorative treatment.

#### **Concerning the regressive steps taken in national drug policy**

Amnesty International is concerned about the regressive steps taken by your government in drug control policy, which appear to favour a punitive, prohibitionist approach, at the expense of policies that protect public health and human rights. Decree No. 9,761/2019 proposes abstinence as a solution to the problems connected with drug use, a policy that has been shown to be ineffective and which facilitates human rights violations. We also fear that the priority given to “therapeutic communities”, making it easier for them to be funded from the public purse without demanding proof of the effectiveness of their methods, and without thorough oversight from the authorities, may generate serious violations of human rights such as the right to health, and even cases of torture and other abuses, such as deprivation of liberty and cruel treatments imposed without patients’ consent.

#### **Recommendations:**

- Immediately revoke Decree No. 9,761/2019, which sets out the new national drug policy, and issue a new Decree based on respect for and protection of human rights and public health, including access to health services and risk and harm reduction.

- Ensure that all drug treatment and rehabilitation services are based on scientific evidence, voluntary, and provided only when medically advised.

- Ensure that all institutions receiving and treating individuals dependent on drugs have exactly the same access to opportunities to obtain public funding for their activities and are periodically assessed to determine the effectiveness of the treatment they offer.

### **Serious concerns about the “anti-crime package”**

The “anti-crime package”, which consists of three bills introducing reforms in various aspects of Brazilian criminal law, proposes worrying changes that could jeopardise human rights. Among those changes, Amnesty International would like to highlight three in particular. Firstly, we believe that the rules on legitimate self-defence are vague and run counter to the principle of legality. Such rules could lead to violations of the right to life and of the state’s obligation to investigate, and impose appropriate punishment for, arbitrary killings. Secondly, the new rules could infringe upon the right to freedom by increasing recourse to pre-trial detention, a measure which should be used only in exceptional circumstances and as a last resort, particularly given the alarming prison overcrowding that exists at present. Lastly, the new rules for defining an organisation as “criminal” are, in Amnesty International’s opinion, too broad and vague, running counter to the principle of legality and straying too far from the definition established in the United Nations Convention against Transnational Organised Crime.

#### **Recommendations:**

- Ensure that any rules on the use of force by state agents complies with the international principles and standards on the use of force in law enforcement, especially those set out in the “Code of Conduct for Law Enforcement Officials” and in the “Basic Principles on the Use of Force and Firearms by Law Enforcement Officials”, which require that firearms be used only in self-defence or in the defence of others against an immediate threat of death or serious injury. In addition, whenever there are indications that excessive force has been used, organise prompt, exhaustive, independent and impartial investigations, and bring those responsible, including those with command responsibility, to justice through fair trials.

- Ensure that pre-trial detention is imposed only as an exceptional measure, in pursuit of a legitimate aim that no alternative measure could effectively achieve, such as dealing with a substantial flight risk, avoiding harm to third parties or preventing undue interference that could make criminal proceedings difficult.

- Ensure that domestic and foreign civil society organisations, as well as social movements, political parties and trade unions, can conduct their peaceful activities in a safe and conducive environment and do not face any kind of reprisals for their activities, including exercising their right to protest. Ensure, too, that people are not detained or prosecuted simply for exercising their right to take part in peaceful assemblies or demonstrations.

### **Concerning victims’ rights to truth, justice and reparations for the crimes under international law committed during the military regime**

Amnesty International is extremely concerned about Decree No. 9,759/2019, issued on 11 April last, which, as of 28 June this year, suspends the activities of the group of forensic anthropologists who, since 2014, have been analysing 1,047 boxes containing human remains found buried in mass graves in the Perus cemetery in western São Paulo. This measure, which conflicts with the right to truth, justice and reparations

for victims, was adopted just days after the 55th anniversary of the military coup. The United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence had urged the Brazilian authorities to reconsider plans to commemorate the anniversary of a military coup that resulted in serious human rights violations against thousands of people over two decades.

**Recommendations:**

- Revoke Decree No. 9,759/2019 and develop historical memory policies that guarantee the rights of victims to truth, justice and reparations, such as opening up archives and establishing museums, to ensure the history of human rights violations in Brazil remains present in people's minds and prevent such violations from happening again
- Revoke the Amnesty Law of 1979, abolishing the mechanisms that prevent the investigation and punishment of serious human rights violations, and investigate and try those responsible for committing human rights violations or crimes under international law during the military regime.
- Pass legislation that incorporates in Brazil's domestic law the provisions of the Rome Statute of the International Criminal Court on crimes against humanity and war crimes.

**Concerning the Inter-American System for the Protection of Human Rights**

Amnesty International would like to draw your attention to the statement made by Brazil, together with the governments of Argentina, Chile, Colombia and Paraguay, to the Executive Secretary of the Inter-American Commission on Human Rights (IACHR) . In this statement, the signatory governments make reference to the critical importance of the principle of subsidiarity: the measure of autonomy enjoyed by states "to decide the most appropriate way of ensuring rights and guarantees, in order to give effect to their democratic processes". Amnesty International deplores the desire to subjugate the operation of the Inter-American regional mechanism to political interests, which puts the rights of victims of human rights violations at risk.

**Recommendations:**

- Refrain from taking any action that adversely affects the independence and autonomy of the bodies constituting the Inter-American System, and redouble efforts to preserve, finance and comply in good faith with the resolutions of this System, which belongs to all people living in the Americas.

**Concerning anti-human-rights rhetoric**

In the opinion of Amnesty International, the measures mentioned in this letter cannot be analysed in isolation, but must be seen within the context of a toxic, overtly anti-human-rights rhetoric on these matters and others, a rhetoric that heightens our concerns about the harmful effects the measures could have and the threat they could pose to human rights in Brazil. Organisations and individuals alike are under threat, often for reasons of race, gender, sexual orientation or gender identity. In this context, the statements made by the authorities could prompt the spread of hate speech, polarising society and removing protections that exist for the benefit of all.

**Recommendations:**

- Ensure that no authority promotes hate speech inciting violence or discrimination.
- Refrain from making public statements, including via social media, that could promote attacks, violence or other abuses by state and non-state actors against individuals exercising their human rights, including human rights defenders, and take all measures necessary to guarantee that they can do their legitimate work freely in a safe and conducive environment.

- Refrain from using language that stigmatises, abuses, disparages or discriminates against human rights defenders, including characterising them as criminal, undesirable, or a threat to development or traditional values.

- Ensure that Brazil's public institutions take firm and decisive measures to protect human rights and all those who defend them and campaign for them in Brazil, acknowledging that these people have a fundamental role to play in protecting the rule of law, and stop the proposals announced from becoming reality.

Amnesty International considers that your government should adopt the above recommendations in order to guarantee full enjoyment of human rights in Brazil. Though doing so might not solve all the problems that exist, it is an important step in order to create the space for substantive changes to occur. Complex problems call for complex solutions. For that reason, Amnesty International would urge you to adopt firm and decisive measures to protect human rights and all those who defend them and campaign for them in your country.

Yours sincerely,

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