



URGENT APPEAL

Measures for the criminalization of the non-governmental organization “Projeto Saúde e Alegria” and Alter do Chão Fire Brigade, including the arrests of its members (Daniel Gutierrez Govino, João Victor Pereira Romano, Gustavo de Almeida Fernandes and Marcelo Aron Cwerner)

To the UN High Commissioner for Human Rights

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I. SUMMARY

The subscribing organizations send this Urgent Appeal to the various special procedures of the United Nations and to the rapporteurships of the Inter-American Commission on Human Rights so that immediate action can be taken on the measures of criminalization and demoralization of the non-governmental organization “Projeto Saúde e Alegria (PSA)”, as well as the arrests of Daniel Gutierrez Govino, João Victor Pereira Romano, Gustavo de Almeida Fernandes and Marcelo Aron Cwerner, members of the Alter do Chão Fire Brigade.

Since the 2018 presidential elections, Brazilian civil society organizations have been enduring systematic attacks, in a process of demoralization and criminalization that endangers the fundamental rights of association, freedom of expression and the presumption of innocence. In his speech celebrating his victory in the first round of the presidential election, the current president promised to “put an end to all activism in Brazil”. Once elected, the president issued a rule that established an unprecedented official system for monitoring and controlling the actions of civil society organizations - later rejected by the National Congress when the Provisional Measure 870/2019 was converted into law, while extinguishing collegiate bodies and reducing official spaces for civil society participation in the formulation and evaluation of public policies. The President of the Republic and high-level authorities have repeatedly stated that Non-Governmental Organizations are enemies of the country and its government, imputing to them, more than once, without any proof, the authorship of criminal facts, such as the deliberate oil spill in the Brazilian territorial sea and the igniting of forest fires in the Amazon in order to, supposedly, damage the country's image abroad.

In this context of increasing intimidation and destruction of the public image of the independent and organized civil society, an investigation was launched by the Pará State Civil Police to investigate the perpetration of an arson that swept through large areas of the Amazon forest near the municipality of Santarém. To everyone's surprise and based on no concrete evidence, on November 26, 2019, the preventive detention of activists who had voluntarily been working with

local public authorities to stop the fires was ordered. These activists, members of the Alter do Chão Fire Brigade, were arrested on the absurd accusation that they were setting off the fires themselves as a way of raising funds donated by citizens around the world to protect the Amazon. According to the accusation, they committed the crimes established in art. 40 of Law 9.605/1998 (Causing direct or indirect damage to Conservation Units) and art. 288 of the Penal Code (Criminal Association).

A custody hearing was held on November 27, 2019, by the State Judge of the 1st Criminal Court of Santarém, Alexandre Rizzi, in which the preventive detention was maintained on grounds of guaranteeing public order and convenience of the criminal instruction, as well as to avoid the reiteration of the criminal practice. However, on November 28, 2019, the same Judge issued a decision revoking the preventive detention, as he considered that (i) the police authority reported that the search and seizure resulted in an enormous amount of documents, and that a thorough examination of these documents will require a considerable amount of time; (ii) the accused could not be held in jail depending on the analysis of the documents seized and on the findings of the police authority, under penalty of unlawful embarrassment; (iii) the investigated individuals had already been heard at the administrative headquarters and the police authority did not present any information or new facts that made it essential to maintain custody; (iv) the personal condition of the defendants is favorable to them, as they have fixed residence and lawful occupation. In total, the brigade members were held for two days.

In addition to the arrest, search and seizure measures were also decreed against the Alter do Chão Fire Brigade, as well as the Projeto Saúde e Alegria.

As widely reported by the Brazilian press, which had access to the police request that substantiated the preventive detention and the collection of all PSA's computers, the court decision is not backed by any concrete element, as it is based solely on conjecture disconnected from evidence actually produced, which included monitored telephone conversations of the accused. According to an article at the Folha de São Paulo newspaper, the “inquiry against arrested brigade members gathers monitored telephone conversations without evidence of crimes”¹.

Given the absence of proof or even evidence linking these entities to the fires, it is evident that the investigation constitutes an attempt to criminalize people and organizations that notably act preserving the environment in the Brazilian Amazon.

The present organizations ask the above referenced specialists:

1

<https://ambiencia.blogfolha.uol.com.br/2019/11/27/inquerito-contra-brigadistas-presos-reune-grampos-sem-evidencia-de-crime/>



1. That state judicial authorities be recommended to respect the rights and freedom of association and defense of the non-governmental organization “Projeto Saúde e Alegria” and members of the Alter do Chão Fire Brigade: Daniel Gutierrez Govino, João Victor Pereira Romano, Gustavo de Almeida Fernandes, and Marcelo Aron Cwerner;
2. That state judicial authorities be recommended to comply with procedural nullities present in the criminal case against the Projeto Saúde e Alegria and the members of the Alter do Chão Fire Brigade, as well as to comply with the due process of law and respect for fundamental rights and guarantees of the accused individuals, including the investigation of abuses committed during the Civil Police Operation and other proceedings involving the case;
3. That the special mandates make public statements about the violation of rights in such cases, request information from the Brazilian State, and keep informed about the unfolding of investigations and criminal proceedings, ensuring the transparency of procedures and articulation between the results of investigations conducted at federal and state levels, in order to effectively determine, with respect to fundamental rights and guarantees, the responsibility for the fires that have occurred since August 2019 in the region;
4. That the Brazilian State be recommended to refrain from making stigmatizing and criminalizing statements that violate the right of accused persons to the presumption of innocence and dignity, until the conclusion of investigations and the completion of criminal proceedings;

II. INTRODUCTION

Currently, a scenario of reduction of democratic spaces and the participation of civil society organizations that act in the formulation and monitoring of public policies is being consolidated in Brazil. The federal government attacks on human rights defenders are diverse, and a direct attack on human rights organizations working in defense of the territory can be observed.

Still during his campaign for the position of President of the Republic, the then candidate Jair Bolsonaro, shortly after winning the first round of elections, announced in a statement transmitted on his Facebook page that he would “put an end to all activism in Brazil”².

In fulfillment of this promise, and after taking office, concrete actions to weaken participatory spaces and civil society organizations were carried out, such as: (i) Provisional Measure No. 870/2019, which was the first normative act produced by Bolsonaro's Government and which established in its initial text the “supervision, coordination, monitoring and follow-up of the

² <https://www1.folha.uol.com.br/poder/2018/10/organizacoes-repudiam-fala-de-bolsonaro-contr-ativismos.shtml>

activities and actions of non-governmental organizations” (art. 5, II)³; (ii.) Federal Decree No. 9,759/2019, which weakened and extinguished dozens of Federal Public Administration collegiates, drastically limiting the participation of organized civil society in the official spaces for the formulation, implementation and evaluation of public policies; and (iii.) Federal Decree No. 9,806/2019, which in addition to reducing the representation of non-governmental organizations on the National Environment Council, instituted an obscure system of draw for participation in the collegiate, ending the mechanism of peer election. UN High Commissioner for Human Rights Michelle Bachelet herself has warned about the reduction of the democratic space in Brazil, especially with attacks on nature and human rights defenders in September this year⁴.

This setting of criminalization and intimidation is corroborated by the episode of the dismissal of Ricardo Galvão, the director of the National Institute for Space Research - INPE (an agency linked to the Ministry of Science and Technology). His dismissal was motivated by the disclosure of data showing a rise in the Brazilian Amazon deforestation. On the occasion, the President of the Republic stated that the data disclosed by INPE was not true, claimed that the publication of the information would harm national interests and accused the Director of the Institute of acting “in the service of some NGO”⁵. The President's allegation led to Galvão's dismissal, which caused outrage in the national and international scientific community.

Such setting is also supported by the practices and discourse of the federal government regarding the Amazon Fund, a mechanism that enables international financial resources to combat deforestation in the Amazon. In 2019's first semester, the Ministry of the Environment began a thorough process of revising the Fund's rules of operation, arguing that the mechanism was solely used to transfer money to NGOs that did not fulfill the task of contributing to the preservation of the biome. The minister even summoned a press conference to present alleged misuse of funds by non-governmental organizations, which, however, were never proven⁶. This revision process, which was criticized by the funding countries, resulted in a diplomatic impasse that led to the suspension of the Fund⁷. The President of the Republic later acknowledged that the

³ This rule was effective from 01/01/2019 to 06/18/2019, when it was repealed by the National Congress.

⁴ <https://www.correiopovo.com.br/not%C3%ADcias/mundo/onu-alerta-para-redu%C3%A7%C3%A3o-do-esp%C3%A7o-democr%C3%A1tico-no-brasil-1.363376>

⁵ <https://g1.globo.com/politica/noticia/2019/07/21/bolsonaro-diz-que-divulgacao-de-dados-sobre-desmatamento-prejudica-o-brasil.ghtml>

⁶ <https://www1.folha.uol.com.br/ambiente/2019/05/ministro-diz-que-encontrou-problemas-em-contratos-de-ongs-com-fundo-amazonia.shtml>

⁷ <https://sustentabilidade.estadao.com.br/noticias/geral,ministro-diz-que-ha-indicios-de-irregularidades-no-fundo-amazonia,70002833721><https://www1.folha.uol.com.br/ambiente/2019/08/noruega-ira-bloquear-verba-para-o-fundo-amazonia-diz-jornal.shtml>

<https://sustentabilidade.estadao.com.br/noticias/geral,em-carta-noruega-e-alemanha-defendem-objetivos-e-governanca-do-fundo-amazonia,70002865693>

suspension in the Amazon Fund activities was intended to paralyze the receiving of funds by NGOs⁸, demonstrating a clear misuse of function and use of the public administrative structure to retaliate against organized, independent civil society.

When, in August 2019, data showing a rise on deforestation and fires in the Amazon were released to society, the President of the Republic, without any evidence or reasoning, accused Brazilian non-governmental organizations of being responsible for the fires. For Jair Bolsonaro, the reduction in budget transfers would have motivated NGOs to commit criminal acts to undermine his government and the country. In his words: “Crime does exist, and we have to do everything possible for it not to increase, but we blocked the money to NGOs, transfers from abroad, of which 40% went to NGOs, there is no such thing more. So these people are missing the money. There may be, I am not stating, a criminal action by these “NGO people” to draw attention against myself and the Brazilian government”⁹.

The unfounded accusations that non-governmental organizations are responsible for environmental crimes led President Jair Bolsonaro to be questioned by the Federal Supreme Court, due to a request for clarification presented by the Associação Civil Alternativa Terra Azul (Petition 8.344).

In the same context of intimidation of the work of NGOs in the country, Environment Minister Ricardo Salles, at the height of the crisis caused by the extensive contamination of the Brazilian coast by an oil spill of unknown origin, publicly accused Greenpeace, without any evidence, of being responsible for the criminal act¹⁰.

III. VIOLATIONS

On November 26, 2019, within the scope of a Civil Police operation in the state of Pará called Fogo do Sairé, which aims to investigate the origin of the fires that swept the Alter do Chão region in September this year, the State Judge of the 1st Criminal Court of Santarém, Alexandre Rizzi, ordered the preventive detention of four members of the Alter do Chão Fire Brigade, an organization that works to combat the fires that burned through the region in September. At the

8 <https://g1.globo.com/politica/noticia/2019/08/21/bolsonaro-diz-que-ongs-podem-estar-por-tras-de-queimadas-na-amazonia-para-chamar-atencao-contr-o-governo.ghtml>

9

<https://www.oeco.org.br/blogs/salada-verde/bolsonaro-afirma-ao-stf-que-acusar-ongs-por-queimadas-foi-mera-opinio/>

10 <https://www.dw.com/pt-br/sem-provas-salles-insinua-que-greenpeace-%C3%A9-culpado-por-manchas-de-%C3%B3leo/a-50978173>

time, police seized documents and computers from the Projeto Saúde e Alegria (Health and Joy Project - PSA)¹¹, as well as equipment and documents from the Alter do Chão Fire Brigade.

Regarding these fires, in September 2019 the first outbreak began in an area of forest known as Capadócia, located between Ponta de Pedras and the village of Alter do Chão, which is a federal environmental protection area (APA). The federal government is responsible for the supervision and adoption of conservation measures for this area. The fire reached the Everaldo Martins Highway, but was controlled the next day¹². The recent fires, however, brought the attention of the community and authorities to a possible new offensive on the environmental protection areas of this Amazonian paradise. It is important to emphasize that this is a popular tourist destination, and it is suffering from the devastation in its environmental protection areas due to land speculation.

Fires are not uncommon in the Amazonian cerrado regions, as the cerrado has a drier undergrowth than the forest. Experts, however, attest that fire outbreaks are necessarily the result of human action, be it deliberate or accidental.

In the presence of these fires, two investigations were initiated: one at the state level, conducted by the Civil Police of Pará, and another at the federal level, conducted by the Federal Police; the latter began in 2015.

In the federal investigation “no element indicated the participation of brigade members or civil society organizations,” as stated by the Federal Public Prosecutor's Office on November 27, 2019¹³.

The Civil Police, in turn, requested the detention of the four members of the Alter do Chão Fire Brigade, as well as the search and seizure of documents and computers at the headquarters of Projeto Saúde e Alegria and documents and computers of the brigade members themselves. It should be noted that the search warrant did not contain the list of assets to be seized, which is why police officers arbitrarily took all documentation from PSA, including computers, contracts and accounting documents, so the project is facing difficulties to continue performing their activities. The same happened during the search and seizure of the Alter do Chão Fire Brigade, in which equipment such as drones and personal hard drives of the members of the brigade were

11 <https://www.bbc.com/news/world-latin-america-50580152>

<https://www.theguardian.com/world/2019/nov/29/brazils-president-claims-dicaprio-paid-for-amazon-fires>
<https://www.nytimes.com/2019/11/30/world/americas/Jair-bolsonaro-amazon-fires-Leonardo-DiCaprio.html>

12 <https://sustentabilidade.estadao.com.br/noticias/geral,entenda-a-investigacao-que-levou-a-prisao-de-brigadistas-em-alter-do-chao-no-para,70003105579>

13

<http://www.mpf.mp.br/pa/sala-de-imprensa/noticias-pa/mpf-requisita-inquerito-que-acusa-brigadistas-por-incendio-em-alter-do-chao-pa>

seized. Regarding the detention of the brigade members, the custody hearing which maintained the preventive detention took place the day after the execution of the arrest warrant. However, the next day, the State Judge of the 1st Criminal Court of Santarém, Alexandre Rizzi, revoked the custody and the brigade members were released on November 28, 2019. The documents and computers seized from the Projeto Saúde e Alegria and the Alter do Chão Fire Brigade, however, remain in the possession of the Civil Police.

The lack of evidence to justify the decision of preventive detention and search and seizure of goods and documents was harshly criticized by the national press, which had access to the case file:

“The Pará police inquiry that led four environmentalists to prison – for holding them responsible for forest fires in the Alter do Chão region – is brimming with staggering conclusions that have no evidence at all and, on several points, brings correlations that the investigation itself contradicts”¹⁴.

“The only criminal offense cited in the request for detention, still on a provisional basis, is that they allegedly caused fires in the Alter do Chão Environmental Preservation Area (APA) region, which would violate Article 40 of Law 9,605/98 – 'to cause direct or indirect damage to Conservation Units'.

“However, the only intercepted dialogue that fuels the suspicion is commonly heard in conversations and interviews with local residents due to the seasonality of the fires - which occur annually, peaking about two months after the fire peak in other Amazonian states like Acre, Amazonas and Rondônia. The rainy season, therefore, also happens in the region about two months after other Amazonian states.

(...)

"For the police, the dialogue makes "noticeable the reference to orchestrated fires, as it is not possible to predict, even at this time of year, the date and place where fires will occur". The police conclusion does not cite the following excerpt from the conversation, in which the same suspect makes similar predictions about the arrival of the rains”¹⁵.

Following the news of the arrest of brigade members, the Brazilian President made a statement on a social network, affirming that “In October I declared that many fire outbreaks could be linked to NGOs. Now the Pará police arrests some suspects of the crime”¹⁶. Both the Ministers of

14 <https://theintercept.com/2019/11/28/inquerito-para-ong-amazonia-incendios-soltos/>

15 <https://ambiencia.blogfolha.uol.com.br/2019/11/27/inquerito-contra-brigadistas-presos-reune-grampos-sem-evidencia-de-crime/>

16 <https://twitter.com/jairbolsonaro/status/1199697700796665857>

Education and Environment also made similar statements; the latter even reproduced one of the audio files obtained in the investigation, concluding with the phrase "draw your own conclusions".¹⁷ On the day of the release of the brigade members, the President accused again non-governmental organizations for the fires at the Amazon and advised the population not to make financial donations to the third sector¹⁸.

This demonstrates that the discourse of criminalization of human rights defenders is being widely legitimized by public authorities, exposing a broader context that aims to prevent the activities of non-governmental organizations and human rights activists in Brazil.

Thus, this is an obvious attempt to reinforce a narrative that strengthens the criminalization of NGOs, social movements and environmental activists who historically engage in the struggle to preserve the forest and its peoples. Just a week before the beginning of the UN Convention on Climate, an international summit to combat deforestation and fires, the criminalization of the brigade members works as a factoid to take away the responsibility of the Brazilian government for the increase of fire outbreaks this year", declares a public note signed by over 60 organizations¹⁹.

The Civil Police action makes evident that the use of the penal system, along with the armed wing of the State, serves to criminalize human rights organizations and defenders, as well as their social causes, by transforming them into criminals in a clear reversal of responsibilities.

This action brings with it, at once, a series of violations:

- a) **Violation of the principle of the presumption of innocence:** the evidence, mostly obtained through telephone interceptions, results in a series of audio files that in no way indicate a possible illegality in the actions of the brigade members or the NGOs involved. On the contrary, it only shows their commitment to prevent the continuation of fires in the territory. The fragility of the evidence, therefore, is a serious violation of the principle of the presumption of innocence, since even in the absence of minimally reasonable evidence about the alleged illegal conduct of the brigade members, their preventive detention was decreed.

In addition, specifically regarding the preventive detention, it should be noted that it does not comply with the requirements imposed by the Brazilian Criminal Procedure Code. The justification for maintaining custody was to avoid the reiteration of the criminal practice, that is, that the accused refrain from setting fire to the territory, but there was no evidence that the brigade had done so in the past, let alone that the members of the

17 <https://twitter.com/rsallesmma/status/1199654244560916480>

<https://twitter.com/AbrahamWeint/status/1199631357389000705>

18 <https://congressoemfoco.uol.com.br/meio-ambiente/bolsonaro-pede-fim-de-doacoes-financeiras-para-ongs-da-amazonia/>

19 <https://terradedireitos.org.br/uploads/arquivos/Nota-de-Repudio-Brigadistas.pdf>

brigade could continue to act like this in the future. Even the judge himself, in determining the preventive detention, granted 10 days to the Public Prosecutor's Office and the Police to collect evidence to justify the arrest of the accused, in absolute violation of the Brazilian due process of law.

- b) Violation of the right to defense:** the actions against the Projeto Saúde e Alegria and the arrest of the accused also violated their rights of defense, as audio and video files obtained during the course of the investigation conducted under strict confidentiality were made available to the press. The Brazilian State has responsibility for the information held by its agents and, therefore, must respond when confidentiality is not safeguarded.

In this sense, it is worth mentioning the media spectacle built around the case and all the violations arising from it: the accused had their names and images widely disclosed, despite this information being confidential. Besides, the chief of police gave an interview on the day of the arrest, disclosing information that should be kept confidential due to its sensitive content, as well as due to the ongoing investigation that was being conducted under secrecy. Therefore, there was unnecessary and disproportionate exposure of those investigated.

In addition, there was a violation of the rights to defense also because those investigated were not even aware of the accusations being made against them, much less of the evidence, revealing a total lack of transparency in the investigations.

- c) Abusive inspectional action:** several violations were also registered during the inspectional action, such as the use of firearms (pistols and submachine guns) in the execution of the search and seizure warrant at the headquarters of Projeto Saúde e Alegria. In addition, this measure proves to be extremely fragile and arbitrary, since the assets were not previously listed, being a generic warrant that authorized the seizure of all assets and documents of both the organization and brigade members. Such action violates the principles of exceptionality and specificity of the warrants, as well as interferes with the continuity of the provision of services by organized civil society organizations.
- d) Violation of freedom of association:** this action directly clashes with Article 5, Item XVII, of the Federal Constitution, as well as Article XX of the Universal Declaration of Human Rights, and Article 16 of the American Convention on Human Rights, since violence or serious threat cannot be used to constrain, as it was done with the brigade members and the PSA organization²⁰.

20 <https://www.theguardian.com/world/2019/nov/26/brazil-police-raid-ngo-office-amazon-wildfires>



Despite the release of those investigated, there remains in the country an environment of intimidation that encourages self-censorship and restraint, as civil society feels threatened by the ongoing criminalization that inhibits the right to free association and expression. For this reason, it is a matter of the utmost importance that the present dialogue with the international organizations take place, so that the organized civil society can continue to act in the defense of human rights in Brazilian territory.

Finally, the Federal Public Prosecutor's Office released a statement on November 27, 2019, affirming that “in the federal investigation, which has been ongoing since September, no element indicated the participation of brigade members or civil society organizations”. The note released by the agency also states that “On the contrary, the line of federal investigations, which has been followed since 2015, points to the harassment by land grabbers, disorderly occupation and real estate speculation as causes of environmental degradation in Alter”²¹.

IV. REQUESTS

In view of the evident occurrence of human rights violations in the above-mentioned facts, and the imminence of serious damage to the rights of freedom of expression, association and defense, the organizations that sign this document hereby request that the Brazilian State take immediate action to prevent further violations, and commit to addressing effectively the structural causes of risk situations and attacks on human rights defenders in Brazil and civil society organizations that play an important role in the Brazilian society.

Thus, the UN and IACHR special procedures are requested to recommend to the Brazilian authorities:

1. That state judicial authorities be recommended to respect the rights and freedom of association and defense of the non-governmental organization “Projeto Saúde e Alegria” and members of the Alter do Chão Fire Brigade: Daniel Gutierrez Govino, João Victor Pereira Romano, Gustavo de Almeida Fernandes, and Marcelo Aron Cwerner;
2. That state judicial authorities be recommended to comply with procedural nullities present in the criminal case against the Projeto Saúde e Alegria and the members of the Alter do Chão Fire Brigade, as well as to comply with the due process of law and respect for fundamental rights and guarantees of the accused individuals, including the investigation of abuses committed during the Civil Police Operation and other proceedings involving the case;

21 <http://agenciabrasil.ebc.com.br/geral/noticia/2019-11/mpf-nao-ve-indicios-de-acao-de-brigadistas-em-incendios-florestais>
<http://www.mpf.mp.br/pa/sala-de-imprensa/noticias-pa/mpf-requisita-inquerito-que-acusa-brigadistas-por-incendio-em-alter-do-chao-pa>



3. That the special mandates make public statements about the violation of rights in such cases, request information from the Brazilian State, and keep informed about the unfolding of investigations and criminal proceedings, ensuring the transparency of procedures and articulation between the results of investigations conducted at federal and state levels, in order to effectively determine, with respect to fundamental rights and guarantees, the responsibility for the fires that have occurred since August 2019 in the region;

4. That the Brazilian State be recommended to refrain from making stigmatizing and criminalizing statements that violate the right of accused persons to the presumption of innocence and dignity, until the conclusion of investigations and the completion of criminal proceedings;

We also request that this document be made public through a press release, and that the special procedures commit to monitor the compliance of these recommendations by the State. Finally, after due inquiry, we require that the findings be included in the annual report submitted to the Human Rights Council by these rapporteurs.

We are at your disposal for any additional questions regarding the facts, via the email addresses provided on the cover page of this document.

Sincerely,

ARTIGO 19

Justiça Global

Terra de Direitos

Conectas Direitos Humanos

Centro pela Justiça e o Direito Internacional (CEJIL)