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LETTER TO THE READERS

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on Human Rights*

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SUR DOSSIER

The Covid-19 pandemic caused a global health crisis but fundamentally, it brought to light an economic, political and moral crisis: it exposed the inequality in access to healthcare and the rich countries' monopoly over technology and supplies needed for the production of medical supplies and to offer quality healthcare. This inequality is marked by racism, necropolitics, the international pharmaceutical industry's profit-driven agenda and an unwavering defence of individual freedoms over collective rights.

At the end of 2021, the ratio of the number of deaths due to Covid-19[6] *versus* the quantity of people vaccinated against the virus (per continent) confirms the severe inequality between the North and the Global South. While 60.2% of the world population had received at least one dose of the vaccine,[7] only 9.4% of people in low-income countries had had at least one dose. Latin America, thanks to a strong culture of vaccination created in the last century, has been able to start, belatedly, a successful campaign of vaccine application, mobilizing the social right to health.[8]

In addition to the lack of access to vaccines and the delays in the vaccination process, poor countries have felt the impacts of the Covid-19 pandemic, especially the people whose access to rights

is more restricted: women and girls, migrants and the black and indigenous population, among others. This, together with a sharp drop in economic production and a different (also unequal) capacity to respond to the crisis, the rates of unemployment, poverty, violence and hunger have tripled in these countries.

The content of this edition of the *Sur Journal* reflects our interest in discussing the impacts of the pandemic on the Global South, while acknowledging that they affect indigenous peoples, black/Afro-descendant communities and the environment differently. We also draw attention to the way contexts of political and health uncertainty like the current one increase the use and abuse of surveillance technologies that threaten freedom, privacy and other human rights.

The contributions to this edition of *Sur* also reflect the resilience, creativity and the constant collective efforts of civil society, especially of the most affected populations, to confront not only the crisis caused by Covid-19, but an unequal global system.

As part of its efforts to expand and diversify the voices in the journal and strengthen its internal affirmative action policy, in August 2021, Conectas announced its second call for applications for writing grants for articles and essays to be published in *Sur* 31, which was aimed specifically at black and indigenous people living in Brazil. During the grant period, each recipient received financial support[9] and the mentorship of Dr. Vera Rodrigues (UNILAB/ABPN).[10]

During the selection process, 1,203 applications were received from black people and 216 from indigenous peoples, for a total of 1,419 applications – an increase of approximately 40% in comparison to the offering of grants for the 28th edition of *Sur* in 2018. Candidates from the five regions of the country were

WRITING GRANTS

behind this impressive number. They touched on a variety of experiences and lines of research under the themes of human rights, vigilantism and environmental issues in the context of the Covid-19 pandemic.

We hope that the four articles published in this edition of *Sur* as a result of this process represent the wealth of geographic, racial and gender perspectives observed in the selected proposals. Having said that, the four grants offered mark an enriching and challenging process for Conectas and the *Sur* team in a special way. The internal collaboration and commitment of Conectas' Working Group on the Fight against Racism were of utmost importance, and we would like to give special thanks to all members of the group.

To complement this brief analysis. Dr. Vera Rodrigues highlights that besides the practical aspects of offering writing mentorships, the process was about building ties of affection and theoretical and political networks, which led her to reflect on her own trajectory: "As a black woman and professor at a public university, I had the opportunity to accompany the development of the reflections and writing of black and indigenous women. I often wished that I had experienced something like this - something that was not offered to me during my academic training, for example, but that now has been concretized in other meeting spaces. The publication of these women's work is a political act, as Conceição Evaristo would say".

COVID-19 AND HUMAN RIGHTS

IMPACTS

In the first article, **Felipe González Morales (Chile)** and **Renato Zerbini Ribeiro Leão (Brazil)** draw attention to the risks that the pandemic has posed to migrants, as well as the challenges that the exacerbation of the vulnerability in which this population

already lives have raised for international protection mechanisms. The authors highlight the creation of a Working Group on Covid-19 and the efforts of the special procedures of the UN Human Rights Council to urge governments to urgently follow the recommendations and take concrete measures to mitigate the pandemic's impacts on the migrant population.

Vivek Divan, Gargi Mishra, Disha Verma, Siddharth Peter de Souza, Varsha Aithala, Naomi Jose, Conor McGlynn, Teresa Sebastian and Vaibhav Bhawsar (India/Ireland) present the "Covid-19 and the Constitution timeline" project, which documents India's legal and political responses to the pandemic through an online tool and in relation to the fundamental rights guaranteed by the constitution. This project organizes the main actions that the Indian government has taken to deal with the health emergency caused by the pandemic on a timeline. One unique feature is the way the timeline juxtaposes these actions with people's stories, the majority of which are illustrated as posters to illustrate the impacts of Covid-19 in a more human, accessible and dynamic way.

Yara Pinho de Lima, an indigenous woman from the Macuxi people (Brazil) and one of the four authors who received grants for this edition, reports on the experience of the indigenous peoples of the Boca da Mata village (state of Roraima) during the pandemic. In the article, in addition to showing how the measures of isolation and social distancing have deeply affected the values and practices that are fundamental to daily life in the communities, the author describes the challenges that the vaccination programme faced in the villages.

LOCAL RESPONSES

In general, and in spite of the unprecedented global health crisis, over the past two years, we have witnessed the resilience of social movements and the emergence of various forms of

collective organizing aimed at both mitigating the negative impacts on impoverished communities in the peripheries and pursuing structural change at the regional and international level. In this section, we present three experiences where the response to the pandemic was based on efforts to strengthen local capacity and an active dialogue with the territory.

First, **Lizeth Sinisterra (Colombia)** describes the *Pacifico Task Force* project, an alliance of civil society actors who worked together to address the inequalities and injustices affecting the black population in the Colombian Pacific region that the pandemic exacerbated. By incorporating a differential approach that takes race into account and a methodology that speaks directly to the specificities of the territory, the project was able to bring improvements to the communities' material well-being and consolidate their existing capacity by generating processes that enable them to adapt and respond to similar situations in the future.

Then, we have the experience of Redes da Maré in confronting the pandemic in Rio de Janeiro. In a format that mixes institutional profile and reflection, the article elaborated in collaboration with **Eliana Sousa Silva (Brazil)** describes the main lines of action of a campaign against Covid-19 that was highly successful in terms of scope and effectiveness in the biggest *favela* complex in Rio. In addition to the positive results obtained through hard work and years of fighting for access to rights in the periphery, the article highlights the institutional impacts and challenges that the organization faced during the pandemic. The third article introduces another perspective, again in the territory of the *favelas* of the Maré. Another grant recipient of this edition, **Angélica Ferrarez (Brazil)**, proposes a different point of view by sharing reports that reflect the voices and experiences of women who shape everyday life in the *favela*, especially in relation to both the impacts of the pandemic and the responses that are imagined and experienced from the inside out.

Artistic expressions are also part of the responses or strategies for dealing with these new times. Photography can be a privileged means for portraying daily life during the pandemic, but also for elaborating and redefining aspects such as suffering, death, memory and hope. Based on this understanding, we are pleased to include a work by the visual artist **zarra (Brazil)**, which consists of an enigmatic collage of photographs entitled "The yellow cross". The polysemy of the signs captured through the camera's lens – an "X" on the sidewalk, which was originally used to mark social distancing in public spaces – is juxtaposed with the artist's interpretation, which pays homage to Covid-19 victims in Brazil from a critical, racialized and empathetic point of view.

THE GEOPOLITICS OF THE VACCINES

In December 2020, the United Kingdom became the first country in the West to begin vaccinating people against the new coronavirus. A year later, it had vaccinated almost 70% of its population. In the meantime, in December 2021, around 7% of the population on the African continent had been vaccinated. Inequality in the production, distribution and access to the vaccines is a problem that health authorities and the scientific community have been trying to explain since the beginning of the pandemic: low vaccination rates are a threat and a challenge to global immunization, as they increase the possibility of new variants appearing anywhere in the world.

Two articles in this edition critically analyse the problem of the vaccines at the international level. **Alan Rossi Silva, Clara Alves Silva, Felipe de Carvalho Borges da Fonseca, Pedro Villardi** and **Susana Rodrigues Cavalcanti van der Ploeg (Brazil)** show how the intellectual property system has been a major barrier to controlling Covid-19 in the world and therefore, it is a threat to public health. They reaffirm the importance of defending initiatives such as the TRIPS Waiver to guarantee human rights in this context. Along the same lines, in an interview with *Sur*,

Fatima Hassan (South Africa) criticizes what she calls the vaccine apartheid, which arises from a situation of inequality whose systemic reasons place her continent in a situation of neglect. She draws attention to the serious consequences for human rights (and the high cost of human life) of the refusal of big pharmaceutical corporations and rich countries such as the United States, the United Kingdom and members of the European Union to temporarily suspend the intellectual property rights on the vaccines. In the interview, it is clear that since the beginning, the fight for access to Covid-19 vaccines has been a struggle against the rules of the global trade system and its inequality and it is therefore a matter of justice and human rights.

STRUCTURAL AGENDAS IN THE MIDST OF A PANDEMIC

Human rights issues such as climate and environmental issues, indigenous rights and the global migration crisis continue to be urgent and have been particularly challenged over the past two years by the escalation of violations due to the pandemic. **Kamutaja Silva Ãwa (Brazil)**, also a grant recipient for this edition of *Sur*, gives us a first-hand account of the struggle of the Ãwa people for the right to exist in a country that has always denied them this right. Covid-19 only added to the genocidal policy of the current Brazilian federal government and the historic difficulties they face in accessing their ancestral land, which combined to aggravate the situation of vulnerability of her people who, in the absence of territory, were denied autonomy in dealing with the health crisis. Despite the reality of suffering and pain that the indigenous struggle implies, the article shows the power of a people who refuses to give up the good life, or memory and territory as fundamental rights.

The United Nations Climate Change Conference (COP 26) of 2021 was held in the midst of urgent planetary challenges. The struggle for climate justice has the potential to bring together the concern for nature and the recognition of multiple forms of

oppression, including issues of gender and race. For **Luis Gilberto Murillo** and **Marcela Angel Lalinde (Colombia)**, racial justice is intimately linked to environmental justice, as they are indivisible categories. In an analysis of their participation in Glasgow, the authors question the failure to recognize the importance of Afro-descendant communities and the fundamental role they play in the planetary socio-ecological transition needed to overcome the climate and biodiversity crises. They also highlight the creation of an Afro-Interamerican Forum on Climate Change.

As already mentioned in the first article presented in this letter, the issue of migration is a rights agenda strongly affected by the current global Covid-19 crisis. The essay by **Margarida Lunetta (Brazil)** and **Ilan Vuddamalay (Switzerland)**, from the **Laudes Foundation**, contributes with a discussion on the role of philanthropics in achieving significant changes together with civil society. Recognizing advocacy as one of the most effective means for changing dominant structural systems, attitudes and behaviours, the authors highlight the new Law on Migration of 2017 as a historical victory for Brazil and the fight for the rights of migrants and an example of the potential of collaborative action between funders and civil society.

SECURITY AND VIGILANTISM

The accelerated development of technologies and software specialized in tracking and surveillance has increasingly facilitated unlimited access to data and the centralization of information by governments and the private sector without effective oversight mechanisms. In an interview with the *Sur Journal*, **Usha Ramanathan (India)** describes in detail the hard work – before the Supreme Court – against the Unique Identification (UID) system in India. According to Usha, the UID served to monitor and control citizens while excluding and making the poorest population invisible at the same time. In the conversation, Usha Ramanathan further explained her criticism of technology and its

capacity to overstep all limits and shared her strong suspicions on the effectiveness of the data protection laws in preventing violations of the right to privacy.

As part of the reflections in this area, we have included analyses of laws that generate exceptional data collection regimes and of particularly invasive forms of surveillance and investigation adopted under the pretext of the war on terrorism – and more recently, Covid-19. Also in dialogue with *Sur*, **Jamila Venturi** and **Michel Souza (Brazil)**, from **Derechos Digitales (Chile)**, explain the risks of the use of facial recognition technologies in Latin America, which has a history of social inequality, rights violations and the criminalization of social movements. The interview highlights the lack of transparency in the acquisition of surveillance technology, problems related to data usage and storage policies and the economic and political implications of the relationship between developers/sellers (most of which are from the Global North) and the buyers of these technologies in the South. As members of an organization that defends human rights in the digital environment, Venturi and Souza express their concern with the indiscriminate use of these technologies and the risks of vigilantism, repression, tracking of citizens and, especially, the racial prejudice in the algorithms used for facial recognition.

Even though the use of control and monitoring software and technologies is not new, the pandemic sparked a debate on technological resources that have become more widely used in this context. This is the case of eProctoring, a software that mixes facial recognition, biometrics and artificial intelligence to conduct student evaluations online in the distance learning mode. In his article, **Carlos Guerrero (Peru)** analyses the impact of the use of eProctoring and the dangers it poses to students' right to privacy and the protection of their data, especially in Latin America where only a few regulations apply to these programmes.

The article by **Mariah Rafaela Silva (Brazil)**, another grant recipient in this edition of Sur, concludes this section. In her article, Mariah explores the intersection between the discussion on technology, facial recognition, citizen control and monitoring systems and the gendered and racialized experience of historically subordinated people. In her view, algorithm-based technologies not only threaten democracies around the world, but they also subject bodies and subjectivities to constant examination and control and reinforce discriminatory patterns based on racial and gender identity biases. By overcoming conventional analyses, the author introduces new concepts for a critique of technologies of social control and control of bodies.

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It should be noted that this 31st edition of *Sur* was planned and produced during the second year of the Covid-19 pandemic, which we had hoped would be better than the previous one, as we would be better adapted to the conditions that this "reality" imposed on us. Unfortunately, the hallmarks of 2021 were unstable social isolation formats; an exacerbated exposure to information (generating a kind of "infodemic"); the need to reinvent ways of living, working and experiencing death and bereavement; the attempts to normalize global chaos in the midst of physical and mental exhaustion, and constantly frustrated hopes. This edition of the journal inevitably bears these marks.

Therefore, we would like to acknowledge and thank all the people who, in the midst of the planetary crisis underway, contributed with their knowledge, background, work, voice, time and contacts to make this publication possible.

No edition of *Sur* would be possible without the support of some funders. We especially thank the Open Society Foundation, the

NOTES

1 • Eliana Sousa Silva is the founder and director of the Redes da Maré NGO and the curator and organizer of the Women of the World Festival – WOW Rio. She received an Honorary Doctorate from Queen Mary University of London and holds a PhD in Social Services from the Pontifical Catholic University of Rio de Janeiro (PUC/Rio). She has worked at the Federal University of Rio de Janeiro (UFRJ) for over 30 years. In 2007, together with other local leaders, Silva founded Redes da Maré, an NGO that runs 19 projects in different areas ranging from education, culture, professional training and women's empowerment to human rights and public security, territorial development and collective memory. Throughout her career, Silva has received several awards, such as Itaú Cultural 30 years award (2018), Women of the Year – social area from the Rio de Janeiro Rotary Club (2005), the Mulher Claudia award in the area of social work from Editora Abril (2004) and the Ashoka Social Entrepreneur Award (2000).

2 • Usha Ramanathan is an Indian human right activist and an internationally recognized expert on law and poverty. She studied law at Madras University, the University of Nagpur and Delhi University. She is a research fellow at the Centre for the Study of Developing Societies, in India. Dr Ramanathan teaches environmental law, labour law and consumer law at the Indian Law Institute. She is a regular guest professor at many universities around the world, a member of Amnesty International's Advisory Panel on Economic, Social and Cultural Rights, and also the South Asia Editor of the Law, Environment and Development Journal (LEAD Journal), a peer-reviewed academic journal jointly published by the School of Law of the School of Oriental and African Studies (SOAS), University of London, and the International Environmental Law Research Centre (IELRC).

3 • Luis Gilberto Murillo-Urrutia has more than 30 years of experience in public policy design, implementation and advocacy; particularly, in the areas of sustainable regional development, natural resources, environmental protection, social inclusion and peace building. Murillo-Urrutia is a Mining Engineer with a Master of Science in Engineering. He is currently a Martin Luther King, Jr. Visiting Scholar and Fellow at MIT Environmental Solutions Initiative. In this capacity, Murillo-Urrutia advices

and leads applied policy research on the intersection of community and nature-based solutions to climate change and environmental justice. He is also affiliated to the Center for Latino and Latin American Studies (CLALS) at American University in Washington, DC as Research Fellow. He was a central figure in leading the formulation and implementation of the national climate change policy framework under the Paris Agreement, the national climate change management law, the national carbon tax, and the community-oriented voluntary carbon market during his tenure as Colombian Minister of Environment and Sustainable Development. Through his various roles in government and civil society, Murillo-Urrutia has been on the front lines of conceiving of and realizing a new and better future for the people of Colombia.

4 · Director of the Data Privacy Brazil Research Association. He holds a master's degree from the University of São Paulo (USP) Law School and is a doctoral candidate at the USP Energy and Environment Institute. He holds a master's degree in Law and Economics from the University of Turin. Alumni of the Privacy Law and Policy Course at the University of Amsterdam. Research Fellow at The New School (USA). Member of the Latin American Network of Surveillance, Technology and Society (Lavits) and of the Brazilian Institute of Tort Law (IBERC).

5 · Director of the Data Privacy Brazil Research Association. PhD in Commercial Law and holds a master's degree in Civil Law from the USP Law School. Trainee of the European Data Protection Board and the Council of Europe's Data Protection Department. Member of the Latin American Network of Surveillance, Technology and Society (Lavits).

6 · Number as of January 2022: 5,554,786 deaths.

7 · "Coronavirus (COVID-19) Vaccinations", Our World in Data, 2022, accessed January 26, 2022, https://ourworldindata.org/covid-vaccinations?country=OWID_WRL.

8 · Chase Harrison, Luisa Horwitz e Carin Zissis, "Timeline: Tracking Latin America's Road to Vaccination". AS/COA, January 18, 2022, accessed January 27, 2022, https://www.as-coa.org/articles/timeline-tracking-latin-americas-road-vaccination.

Human rights in the context of the pandemic:
Impacts and responses

IMPACTS

THE HUMAN RIGHTS OF MIGRANTS AND COVID-19[1]

Felipe González Morales and Renato Zerbini Ribeiro Leão

• *The response of UN special procedures and committees* •

ABSTRACT

The impacts of the Covid-19 pandemic on human rights have been particularly severe for migrants around the world. This is due to the level of vulnerability migrants usually face, which increases in a context like this one. This unexpected event demanded an urgent and dynamic response from the special procedures of the United Nations Human Rights Council and UN committees, which they delivered through a series of general declarations and guidelines, as well as communications and observations addressed to specific states. This article describes these responses and analyses the main issues that they address.

1 • Introduction

The sudden appearance and dissemination of Covid-19, which rapidly reached pandemic proportions, demanded an urgent response adapted to the circumstances on the part of the special procedures of the United Nations Human Rights Council and the international bodies created by virtue of the adoption of human rights treaties, the committees. This response covered a wide range of areas in which Covid-19 has caused serious negative impacts. The precarious situation of many migrants has clearly deteriorated due to the pandemic and resulted in grave human rights violations, making migration an issue of utmost importance.

2 • The special procedures of the Human Rights Council and the UN committees

The special procedures (SPs) are bodies of the United Nations Human Rights Council responsible for the protection and promotion of the said rights in all UN States, regardless of whether they have ratified specific human rights treaties or not. The SPs include special rapporteurs, independent experts and working groups. At the beginning of the pandemic, they met online to plan joint responses to the human rights challenges emerging in the new health situation.[2]

UN committees are monitoring bodies established by international human rights treaties. Each committee is made up of independent experts who examine the reports of Member States on their compliance with and their implementation of these treaties' provisions. Most committees are mandated by an optional protocol to receive individual complaints. There are currently ten committees and each one has a chair, who all come together annually at the Meeting of Chairpersons.[3]

To ensure a more coordinated and comprehensive response to the pandemic, the chairs of the committees agreed to create the Working Group on Covid-19 (Covid-19 WG). Composed of 19 experts from the ten committees, the working group has the mandate to advise the chairs and committees on the challenges that the pandemic raises for the functioning of the United Nations human rights treaty bodies system. The chairpersons also entrusted the Covid-19 WG with the task of analyzing the substantive aspects of Covid-19 and human rights.[4]

The ten chairpersons of the United Nations human rights treaty bodies called on countries to adopt measures to protect the right to life and to health, which includes access to medical care for all those who need it, without discrimination. They also urged governments to provide special care to people who are particularly vulnerable to the effects of Covid-19, as is the case of migrants, among other measures. Furthermore, the experts highlighted that women, especially migrant women, are disproportionately at risk, as in many societies, they are the primary caregivers for sick family members.[5]

One very important, cross-cutting initiative that will be examined in this article is the Joint Guidance Note on the Impacts of the Covid-19 Pandemic on the Human Rights of Migrants" (Joint Guidance Note). It was produced as a joint effort of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) and the Special Rapporteur on the human rights of migrants.[6]

3 • International cooperation and development aid

In its statement on the coronavirus disease (Covid-19) pandemic and ESCR, the Committee on Economic, Social and Cultural Rights (CESCR) affirmed that the States parties of the International Covenant on Economic, Social and Cultural Rights (ICESCR) should cooperate with other countries to complement and guarantee national programmes aimed at promoting the ESCR to mitigate the pandemic's impact on people at greatest risk, including migrants. In this case, international cooperation could be in the form of financial or technical assistance.[7]

It also highlighted specific measures that are necessary to protect the ESCR during the pandemic, such as the provision of water, soap and sanitizer to communities who lack access to them; specific protections for workers' jobs, wages and benefits and to shield them from the risk of contagion; mitigation of the economic impacts of Covid-19 through subsidized wages and tax relief; a moratorium on evictions and mortgage foreclosures; bans on profiteering on essential goods, and the promotion of income-support and other aid programmes to guarantee food security, among others.[8]

4 • Discrimination and xenophobia

The endemic discrimination of migrants, which is particularly strong towards those in an irregular situation, has increased during the pandemic. This has had a major impact on access to public services. In some countries, it has led to the exclusion of migrants from state food distribution schemes.

The CERD recommended that all levels of government develop and implement specific strategies to mitigate the socioeconomic impacts of the Covid-19 pandemic on the Roma and nomads and to guarantee the participation of these groups in the development, execution and monitoring of these strategies.[9] The inclusion of migrants in public policies and in the processes of developing, implementing and monitoring strategic actions is fundamental to fight discrimination effectively.

In its Guidance Note on the Convention and Covid-19, the CEDAW called on countries to redress the long-standing inequalities between women and men by putting women and girls in the centre of recovery strategies that are aligned with the 2030

Agenda for Sustainable Development and by giving special attention to migrant and refugee women and women seeking asylum.[10]

During the pandemic, there has been an increase in xenophobic speech and practices, without prejudice to practices and discourses of solidarity that also exist. The rise of xenophobic discourse is a disturbing trend that has spread in recent years and become more pronounced during the health crisis, as migrants are blamed for spreading the virus. The Joint Guidance Note calls for measures to prevent "the use of migrant persons or groups as scapegoats."[11]

It is also worth mentioning the CERD's recent recommendation on the adoption of the necessary measures to actively prevent and combat racially motivated hate crimes and hate speech and to protect groups that are the most vulnerable to racial discrimination, including in the context of the Covid-19 pandemic. This affects people of Asian origin in particular.[12] The Special Rapporteur on the human rights of migrants sent various communications on these issues to states such as, for example, the United States[13] and Malaysia.[14]

5 • Emergency regulations

In the context of the Covid-19 pandemic, states have adopted numerous emergency regulations that restrict human rights, including migrant rights. Many have declared states of emergency (under different names, depending on the country, such as 'state of alarm' or 'state of catastrophe', among others) or imposed regulations that have the force of law, namely health provisions.

Although the use of emergency regulations may be justified in general and depending on the situation in every state, region or city, it does not mean that authorities can use them in an arbitrary or discriminatory manner. This aspect is particularly important when it comes to migrants, as they are more exposed to practices that violate human rights because of the vulnerability they usually face. The Joint Guidance Note refers to this issue as the first element to be addressed, affirming that "it is of paramount importance that State emergency responses to the Covid-19 pandemic be necessary to achieve legitimate public health goals; proportionately apply the least intrusive means; and be non-discriminatory so as not to be used to target particularly vulnerable groups including minorities or individuals."[15]

6 • Health and medical care

The CESCR recommended that countries ensure that healthcare resources in both the public and private sectors are mobilized and channeled to provide a comprehensive and coordinated health response to the Covid-19 pandemic for the benefit of the entire population. Furthermore, it recommended the adoption of measures to guarantee

that constraints on healthcare resources generated by the Covid-19 pandemic do not significantly inhibit the provision of other health services and treatment, including ones related to pre-existing conditions, mental healthcare and sexual and reproductive health services.[16] This recommendation should be read in conjunction with General Comment nº 14. In this document, the Committee reminded the States parties of the ICESCR that they are under the obligation to respect the right to health by refraining from denying or limiting equal access to all persons, including migrants, to preventive, curative and palliative health services.[17]

The Special Rapporteur on the human rights of migrants and the Special Rapporteur on the right to health issued a statement at the beginning of the vaccination process in several countries, emphasizing that states should guarantee both migrants (regardless of their migration status) and nationals equal access to vaccines in the said processes and to all public health responses to Covid-19.[18]

Moreover, the Special Rapporteur on the human rights of migrants has sent communications on health measures adopted in the context of the pandemic to specific states, such as the United Arab Emirates and the United States.[20]

6.1 - Vaccines

States must guarantee access to vaccines for all people to the maximum of their available resources in accordance with the measures necessary for universal vaccination without discrimination, which means that migrants are fully covered. The duty to immunize people against major infectious diseases and prevent and control epidemics is a primary obligation stemming from the right to health (art. 12 of the ICESCR). It is mandatory for states to give top priority to ensuring the availability of vaccines that effectively contribute to the fight against Covid-19. Countries have the obligation to provide reliable and transparent information based on the best scientific knowledge available so that citizens can decide whether or not to get vaccinated. Thus, all administrative and bureaucratic obstacles must be overcome to ensure the timely and effective implementation of public policies that guarantee universal and equitable access to vaccines.[21]

The right to health requires healthcare facilities, services and goods, including vaccines, that are accessible, acceptable and of good quality. Vaccines should not only be produced and available, but also accessible to all in accordance with the principle of equality and non-discrimination, free from barriers such as nationality or migration status. Therefore, physical access to vaccines should be guaranteed, especially for marginalized or disadvantaged groups, including migrants, through public or private channels by strengthening their capacity for delivery and distribution. Furthermore, vaccines should be offered for free, especially to people who live in poverty and have low incomes. Moreover, in this digital age of fake news, access to relevant, scientifically proven evidence on the safety and effectiveness of the different vaccines should be

firmly secured and reinforced by public campaigns to protect the population from false information or pseudoscience. No one who chooses to get vaccinated should be left behind.[22] The States parties to the ICESCR have an obligation to provide access to the vaccine and include migrants in their beneficiaries.[23]

7 • Immigration detention

According to the extensive case law of several UN bodies,[24] the detention of adult migrants is only to be used as a measure of last resort and the detention of migrant children should be prohibited.[25] Adopted by over three quarters of the United Nations Member States in 2018, the Global Compact for Orderly, Safe and Regular Migration explicitly establishes the former and includes a commitment to work to end the detention of migrant children. The asymmetry between states' practices and international standards on immigration detention has grown.

The pandemic has made the situation of migrants who have been deprived of their liberty particularly critical because of the serious risks to their health and lives and the impact on public health in general (since Covid-19 is highly contagious). The Joint Guidance Note addresses this issue by reaffirming the standards on the detention of adults and children and drawing attention to the problem of overcrowding in many detention centres and the failure to provide adequate health services.[26]

Furthermore, the Special Rapporteur has made appeals on this matter to specific countries such as the United States – one of the countries that engages in immigration detention on a large scale. The Special Rapporteur called for the release of migrants from Covid-19 high-risk detention facilities[27] and the adoption of measures to prevent major outbreaks in detention centres, including ones where migrants are held.[28] He also sent a communication to the state in relation to one detention centre where the health conditions were particularly problematic.[29]

Other countries to which communications on immigration detention in the context of a pandemic were sent include Saudi Arabia,[30] Malaysia[31] and Mexico.[32]

There have also been exceptional cases where states that had almost completely eliminated immigration detention years ago reinstated it during the pandemic. This is the case of Panama, which opened the "La Peñita" detention centre for migrants, including migrant children. The Special Rapporteur on the human rights of migrants sent a communication to the state on this matter.[33]

Paradoxically, the pandemic has had the beneficial effect of leading to a significant reduction in the use of immigration detention in many states and to the release of all detained migrants in others.[34]

The Human Rights Committee recommended that countries continue and intensify their efforts during the pandemic to improve conditions and reduce overcrowding in places of deprivation of liberty, namely by increasing the use of alternatives to detention and ensuring that the conditions in places of detention are fully in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).[35]

The CED recommended the adoption of all necessary measures to guarantee that when visits are limited by circumstances such as the Covid-19 pandemic, individuals deprived of liberty are provided the means to communicate with the people of their choice without delay. It also encouraged States parties to observe the guidelines on Covid-19 and enforced disappearances adopted by the Committee and the Working Group on Enforced or Involuntary Disappearances. Furthermore, it urged them to adopt measures in response to the Covid-19 pandemic to reduce prison populations and facilitate detainees' contact with the outside world.[36]

7.1 - Deportations and other returns

The Joint Guidance Note called on countries to consider suspending the deportation of migrants during the pandemic.[37] They also referred to the obligation to guarantee the rights of migrants to return voluntarily to their countries of origin.[38] The former is justified by the need to protect migrants' lives and health, which can be seriously endangered if they are deported during a pandemic. It is also a matter of public health policy due to the need to safeguard public health in general. One example of this was the massive deportation of Guatemalan migrants by the United States at the beginning of the pandemic, where more than 100 of them were infected with Covid-19.[39]

A particularly grave form of deportation is the so-called "pushbacks". This issue was addressed in a recent thematic report by the Special Rapporteur on the human rights of migrants. The report presents a description and analysis of this practice which is especially problematic in the context of the pandemic due to the additional risks to the lives and health of the victims.[40] The report indicates that "while global public health crises may require travel restrictions, screening, testing, medical quarantine or isolation measures, these measures may not result in denying effective access to asylum and protection under international law."[41] The report adds that "[s]earch and rescue and disembarkation were delayed or compromised by quarantine requirements, in addition to routine health screenings."[42]

The Special Rapporteur on the human rights of migrants has also raised the issue of "pushbacks" in the context of the pandemic bilaterally with several countries, such as, for example, Greece,[43] Croatia,[44] India,[45] Peru,[46] Malaysia,[47] Spain,[48] Malta,[49] Italy[50] and Trinidad and Tobago.[51]

The number of voluntary returns has grown in several regions during the pandemic. Both the country of origin and the country of destination have obligations in relation to these returns.

According to international standards, the country of origin has an obligation to allow the returns and to accept and reintegrate returning migrants. The country of destination, for its part, must allow these people to leave their territory, but they also have several more general obligations. Failure to fulfill these obligations – the obligation to guarantee adequate access to public services, including access to healthcare and the economic and social rights we referred to in another section – is what has contributed to the increase in returns.

8 • Access to information and monitoring

The context of the pandemic has raised questions on the extent to which authorities in many countries are guaranteeing free access to public health information. It is true that due to their very nature, authorities may experience difficulties in collecting information or with certain forms of access for citizens (such as, for example, when they require physical presence). Nonetheless, there have been numerous reports of authorities taking advantage of the situation to deliberately obstruct citizens' access to public information. This is particularly problematic for the migrant population whose access to information tends to be limited, even in times of normalcy.

Independent monitoring of the conditions of the human rights of migrants, especially by civil society organizations – including human rights organizations and migrant associations[52] – is a fundamental tool for the protection of migrants' rights and has been subject to serious restrictions during the pandemic in many countries. The context of the health crisis inherently imposes certain limits on this. Even so, as in the case of access to information, additional unjustified limits have been placed on monitoring activities. This has occurred especially – but by no means exclusively – in relation to monitoring visits to migration detention centres. It is worth adding that civil society has elaborated and published reports entirely online.[53]

9 • Asylum and other forms of international protection

Serious limitations on the right to seek asylum existed even before the pandemic began and the health crisis has made them worse. There have also been important setbacks in the exercise of this right in recent years either because of rules and procedural requirements that are incompatible with due process and the right to access to justice, or due to substantive decisions based on narrow interpretations of the right to seek asylum. If international standards of protection were observed, the refugee status of many people would have been recognized or they would have received another form of international protection by now. However, the current context leaves many of them without any real possibility of obtaining protection and thus, to remain in an irregular situation.

In the context of the pandemic, it has become even more difficult to exercise the right to seek asylum. The restrictions that the health crisis imposes by its very nature are compounded by

the obstacles that several states have deliberately created. The emergency situation reaffirms the importance of this right and the obligation of states to make it effective, especially for unaccompanied children, victims of human trafficking and people in movement from other vulnerable groups.[54] The Special Rapporteur on human rights has addressed the right to seek asylum in communications to several states, such as Mexico, for example.[55]

9.1 - Regularization

During the pandemic, many countries have extended temporary resident visas until the health crisis is over[56] and a few have granted temporary resident permits to migrants in an irregular situation.[57] International human rights organizations have welcomed these initiatives both for their impact on the enjoyment of the right to health of migrants and for providing them with a certain degree of security and stability during the pandemic.

The call launched by the Special Rapporteur on the human rights of migrants and the Committee on Migrant Workers went further on this matter to urge states to proceed with the regularization of the status of migrants (since the initiatives described above are not regularization processes per se).[58] Although there is no rule of international law that explicitly establishes the obligation of states to undertake mass regularization, the human rights bodies of the UN and the Inter-American System have repeatedly affirmed that in their interpretation of existing international standards, in circumstances where the human rights of migrants cannot be properly guaranteed without the regularization of their migration status, states should undertake regularization processes. This has been mentioned, for example, in situations where the lack of regularization acts as a major barrier to access to public services. In the context of a pandemic, this is particularly critical in relation to access to health services.

10 • Inclusion of migrants in economic and social recovery plans

Migrants should be included in economic and social recovery plans during and after the pandemic. Given the magnitude of the pandemic's impact on the economy and society, it is evident that its effects will extend over a considerable period of time.

The Joint Guidance Note raises the issue of the inclusion of "migrants and their families, regardless of their migration status, in economic recovery policies, taking into account the need for the recovery of remittance flows."[59]

On International Migrants Day in 2020, UN bodies in conjunction with regional human rights organizations from Africa, America and Europe issued a press release in which the inclusion of migrants in economic recovery plans was a central issue.[60]

As for the CESCR, though it recognized that asylum seekers, refugees and migrants are traditionally affected by unemployment, the Committee expressed concern with the

persistent high unemployment rates among members of these groups in Bolivia. Therefore, it recommended that in view of the decrease in job opportunities due to the crisis brought on by the Covid-19 pandemic, this State party of the ICESCR should adopt urgent economic recovery measures and increase efforts to provide support to people seeking employment. The CESCR also recommended that the state monitor the introduction of temporary changes to labour laws adopted in response to the Covid-19 pandemic to prevent abuses.[61]

The CESCR is also concerned about barriers to access to social security benefits for asylum seekers, refugees and migrants with precarious jobs in the informal sector, whose numbers have increased during the pandemic. To address this situation, the CESCR recommended that states scale up actions to guarantee access to social security benefits without discrimination, improve coverage and the services provided to people engaged exclusively in unpaid domestic work and promote a positive image of migrant workers' contribution to the social security system. It also recommended that governments ensure that pension benefits are high enough to guarantee an adequate standard of living to beneficiaries while bearing the impacts of the Covid-19 pandemic in mind.[62]

11 • Conclusion

The special procedures of the Human Rights Council and the international monitoring bodies created by virtue of the signing of UN human rights treaties have generated a genuine regime for the protection of the human rights of migrants in relation to the Covid-19 pandemic. A variety of obstacles to the rights of migrants that existed prior to the pandemic have become worse in the new context, such as, for instance, ones related to their access to healthcare; discrimination and xenophobia; immigration detention; deportation, and the other issues analysed in this article. This has generated a need for new responses.

The near future is full of challenges for the UN bodies mentioned above. These include issues such as monitoring vaccination processes from a human rights perspective and the economic and social conditions of migrants during and after the pandemic, ensuring that emergency measures are only used when necessary and within legitimate limits, and other matters related to the migration policies of the states and the international community.

NOTES

1 • In October 2021, when this article was being edited, the Special Rapporteur on the human rights of migrants submitted the following report to the UN General Assembly: "One and a half years after: the impact of Covid-19 on the human rights of migrants", A/76/257, UN, July 30, 2021, accessed November 18, 2021, https://undocs. org/en/A/76/257.

2 • A webinar was held on April 22, 2020.

3 • The ten bodies are: the Committee on the Elimination of Racial Discrimination (CERD); the Committee on Economic, Social and Cultural Rights (CESCR); the Covenant on Civil and Political Rights (CCPR); the Committee on the Elimination of Discrimination against Women (CEDAW); the Committee Against Torture (CAT); the Subcommittee on Prevention of Torture (SPT); the Committee on the Rights of the Child (CRC); the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW); the Committee on the Rights of Persons with Disabilities (CRPD), and the Committee on Enforced Disappearances (CED).

4 • The Working Group on Covid-19 (Covid-19 WG) was created during the 32nd Meeting of Chairpersons of UN Human Rights Treaty Bodies, held online from July 27 to 30, 2020. Its mandate was ratified and extended at the 33rd meeting held from June 7 to 11, 2021. As of June 2021, the Covid-19 WG had held ten online meetings.

5 • Press release: "Chairs of treaty bodies - UN Human Rights Treaty Bodies call for human rights approach in fighting Covid-19", OHCHR, March 24, 2020, accessed November 18, 2021, https://www. ohchr.org/Documents/HRBodies/TB/Covid19/ External_TB_statements_Covid19.docx.

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8 • *Ibid.*, section III, paras. 10-25.

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11 • *Ibid.*, number 15.

12 • CERD/C/BEL/CO/20-22, paras. 18-19.

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23 • E/C.12/2020/2, para. 4.

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37 · "Joint Guidance Note …", number 14.

38 · *Ibid.*, number 13.

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42 · *Ibid.*, para. 83.

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60 • "Migrants must be included in all Covid-19 Recovery Plans – UN and regional experts", OHCHR, December 18, 2020, accessed November 18, 2021, https://www.ohchr.org/SP/NewsEvents/Pages/DisplayNews.aspx?NewsID=26618&LangID=E.

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62 • *Ibid*., para. 36-37.

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COVID-19 AND THE CONSTITUTION

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• *A timeline of stories,* •
legal and policy responses and analyses

ABSTRACT

The 'Covid-19 and the Constitution' timeline is a web-based resource conceptualized and developed by Center for Health Equity, Law and Policy in collaboration with Justice Adda and Vaibhav Bhawsar. It documents Indian legal and policy responses to the pandemic and contextualizes them with fundamental rights guaranteed in the Indian Constitution. The timeline also offers illustrated personal narratives and experiences of citizens' varied struggles, along with critical commentary on emerging issues that implicate fundamental rights. Through this paper, the authors elucidate on the motivations, aims and methodologies which undergird the project. The authors hope that the project will serve to shape rights-based responses to future health challenges, in India and elsewhere.

KEYWORDS

Covid-19 | Human rights | Data | Policy

1 • Background and motivations of the timeline

The sudden onslaught of the Covid-19 pandemic brought with it a slew of law and policy directives that wrought profound, incalculable and enduring change in people's lives. The Covid-19 and the Constitution timeline[1] was created as a response to this avalanche of instructions to document them and to inquire as to whether policy and legal responses were aligned with the obligations enshrined in Part III – Fundamental Rights of India's constitution – the litmus test for justifiable legislation. While the nature of the emergency and the imminent dangers of Covid-19 required reasonable restrictions on some of these rights, for instance the freedom of movement, it became important to reflect on whether a balance had been struck between enhanced powers of the state during health emergencies such as the pandemic and the fundamental rights of people.

Experience has shown that strategic deployment of law and policy can play a critical role in meeting health challenges if done in a manner that is evidence-informed, rational, rights-based, transparent and accountable. What has clearly come to light while dealing with HIV/AIDS in India and elsewhere is that rights-based advocacy, rooted in Part III of the Constitution and various principles of the universal right to health, results in robust legal responses put in place by the state but kept in check by its citizenry. With these goals in mind, the Centre for Health Equity, Law & Policy[2] in collaboration with Justice Adda[3] and Vaibhav Bhawsar[4] launched the Covid-19 and the Constitution timeline on June 7, 2021. It is a contemporary, visual, interactive repository of law, policy, experiences and analyses.

2 • Design and functionality

This portal aims to respond to several questions that have been posed since early 2020 and that prompt several more: *What legal and policy mechanisms have been adopted to control the pandemic? What is the role of the government in discharging its positive obligation to the people to control the pandemic? Are the actions taken legitimate, proportionate, evidence-based and thereby justified in limiting fundamental rights? What lessons can be learnt from this experience to better cope with future challenges while preserving inviolable aspects of the constitution?* The timeline seeks to examine and reflect on the last year through the most indispensable lens of fundamental rights, prodding the user to contemplate how to balance the freedoms that are essential to democracy with roles and responsibilities that are expected of a range of actors. This is done through three key components.

First, the landing interface of the timeline presents a chronology of legal or policy responses that have emerged from the central government and (three) state governments, and their intersection with fundamental rights. Second, the section 'Stories of Covid-19' catalogues a selection of personal experiences of people from diverse social and geographical locations that reveal journeys of extreme pain and fortitude. It

humanizes the wide-ranging impact of what has been endured and inflicted, while coaxing the reader to consider how fundamental rights (or lack thereof) play a crucial role in serving citizens and public health interests. Third, the 'Analyses' component of the timeline contains critical commentary by experts on various themes that involve fundamental rights and the Constitution.

To enable such layered reading, the timeline allows users to easily consult a wide, constantly updated database of legal and policy responses, complete with comprehensive navigation and filtered search options. Each response is categorized using criteria such as the fundamental right(s) affected, origin of response (state judiciaries, government ministries and departments, etc.), type of response (circulars, regulations, etc.), areas of impact (education, health, etc.) and the impacted jurisdiction (geography). The timeline provides interactive control options to further search and filter these categorizations to identify patterns and relationships in the responses.

In addition, the timeline juxtaposes the two other types of content to help contextualize and humanize this slew of data. Stories of impact take the form of articles with images and other rich media to evocatively express the impact. Expert analyses and commentaries lend academic insight and further depth to these stories. Together, the sections constitute a holistic, dynamic resource that is meant for use and exploration by not only lawyers and law students, but anyone wishing to track India's response to Covid-19.

3 • The significance of visualization

The timeline's home page offers a visualization of the plethora of legal and policy decisions taken every day since Covid-19 was first identified, represented as grey dots, and uses colour-coded bands to indicate the fundamental rights that they impact. The timeline is visually appealing and immediately draws the user's attention to this tacit relationship between rights and policy. As users move toward other sections, they find illustrative representations of legal issues in various modalities.

All the analyses on the timeline are attached to an illustration that encapsulates the tone of the article. Stories are almost entirely visual. Having observed the grave toll the first and second wave of Covid-19 took on India and the effect of reducing deaths to a daily statistic, we were concerned with finding ways to humanize the challenges people faced during the course of the pandemic. The overwhelming influx of data, statistics and death tolls had made our perception of illness and loss of life numerical and mechanical. Behind these statistics, there was deep trauma, grief, anger, rage, helplessness and frustration, which were not adequately addressed or assuaged by policy directives. Illustrated stories, and the timeline as a whole, thereby became an opportunity to connect with human experiences beyond mere numbers and truly put into perspective the gravity of loss and devastation that the pandemic has wrought across the country.

4 • Methodology of 'Stories of Covid-19'

At the outset, it was clear that it would be impossible to gather enough stories to get a comprehensive picture of the vast suffering caused by the pandemic all across India. Instead, we used a selective case study approach, picking out a range of stories in which each one illustrates a different issue and perspective on Covid-19. This allowed us to concentrate on individuals' experiences of the pandemic, rather than us trying to tell a general "story of the pandemic" through a universal narrative.

We drew on news reporting throughout the pandemic to identify compelling stories that each told a truth about individual suffering and institutional failings. From this pool of stories, we selected certain ones to ensure geographic reach, a diversity of voices and a range of experiences. For some stories, such as one on intimate partner violence and another on the plight of grassroots social health workers, we employed primary research methods, including hosting an informative consultation with first responders and legal NGOs (for the former) and conducting a few telephone interviews with key informants in the regional language (for the latter).

While this methodology allowed us to tell individuals' stories in a more personal way, this approach also meant that our own biases and preferences entered the selection process. Thus, we may have unintentionally excluded certain voices or placed more emphasis on parts of the narrative that particularly resonated with us. While this subjectivity is arguably unavoidable in a project like this, it should certainly be kept in mind by anyone reading the narratives. The timeline presents important perspectives on the Covid-19 pandemic but it is by no means the complete picture.

5 • The visualization process

The stories chosen for the timeline were ones capable of representing a diverse array of individual rights that were eroded during this time. The pandemic and state response thereto posed a unique set of challenges to the fundamental rights to life, livelihood, liberty and dignity. Stakeholders from different social and economic groups and across income levels bore the brunt of the pandemic and the effects of the state's management of the pandemic did not spare the rich or the poor. However, it was the marginalized and already vulnerable populations that especially struggled for access to information, money and basic medical facilities. That led us to focus on the plight of migrants, women and the underprivileged whose issues were "pushed to the margins" of discourse and policy attention. Their struggles were complicated by an orchestrated campaign of false and often contradictory information about the spread of the virus and remedies for its cure that spurred fear and widespread panic and ensured the complete disruption of normal life. By covering the situation of the most affected stakeholders throughout the entire pandemic – from the starting phases of the first wave through the consequent

economic lockdowns – we hope to convey the huge costs to the Indian economy and society caused by the pandemic and the state's response.

Statements by individuals were interwoven with a description of how these issues manifested themselves during the pandemic. In general, the narratives were broken up into slides accompanied by graphics. The exception to this was the story on domestic violence, which was presented in its original form as a set of videos.

We chose to format the narratives as slides so they could be easily shared on social media, particularly on Instagram and WhatsApp, to make them more accessible. Breaking up the narrative in this fashion also allowed us to highlight direct quotations taken from the individuals involved. The use of graphics instead of photos signalled that these voices were representative of a much wider problem and that the experience of the individual was a shared one and not particular to them. The timeline carries these intentionally vague but powerful graphics at various points to serve as a necessary reminder that the rights violations being addressed and presented belong to real people, are drawn from real experiences and have impacted real lives in immeasurable and irreversible ways.

6 • Who is it meant for and how can people use it?

The resource is built to facilitate research and present information and experiences from all facets of the pandemic, legal or otherwise. The repository of legal and policy responses can aid in the academic and statistical analyses of Covid-19 in India. It makes a plethora of original official documents accessible in one place through original source links and archived formats in case the original is taken down, making cumbersome legal search easy and comprehensive. A user can sort by date, location and impact areas to get to a policy document they need. There is a comprehensive visual guide, accessible as a separate tab on the website menu, which outlines all its features and simplifies navigation. Broadly, the timeline has an advanced search function, the possibility of filtering and sorting through all available entries across the three sections, and separate index pages for these sections.

The advanced search and filter functionality may be toggled by clicking on the magnifying glass icon to the left of the home page. This feature allows users to filter through the legal and policy responses, stories and analyses featured on the timeline using an advanced word search, a date range, recency, affected fundamental rights and areas of impact, source of the response, jurisdiction and much more. One may also run a simple keyword search which quickly sifts through over a thousand item titles. The index for analyses and stories makes it easier to access all of them in one place.

The ease of access makes the timeline a resource for not only legal researchers but also journalists and reporters, students, teachers, analysts and civil society in general. The analyses section offers more extensive reading on legal issues. 'Stories of Covid-19'

contains more visual, first person accounts of loss, grief and hindrances that can both act as anecdotal supplements to academic research and exist in isolation as a reminder of the suffering people endured during the pandemic.

Through the resources already generated, we hope that the timeline can provide an impetus to civil society action, whether in the form of strategic litigation or policy reform to address the rights infringements that have been identified in the analyses. The timeline also offers materials for campaigning, namely those that give visibility to the pain and suffering that has been caused in people's lives by both the pandemic and on account of the responses of the state. We also envisage the timeline to be a living resource that will continue to record and engage with the ways the pandemic is bringing about new challenges to the exercise of fundamental freedoms.

7 • Limitations of the project

Some of the barriers to the project include the need for a stable internet connection and a laptop/desktop to access the timeline and use it meaningfully. These are challenges where internet connections are still limited and most people use mobile devices to access the web. By distilling the content to disseminate it through social media, we hope to make it more accessible. Additionally, the resource is currently only in English, an aspect that we are seeking to address by introducing regional translations. We also aim to ensure that content such as stories and analysis pieces can be shared through other mediums where they can be accessed offline, for example, as PDFs. Currently, the legal and policy responses are mainly from only a few states, chosen for their unique methods of responding to the pandemic, which limits the timeline's capacity to provide a comprehensive pan-India picture. Lastly and in general, low data literacy levels amongst the public pose a hindrance to understanding how to leverage data-supported advocacy tools such as this timeline to affect social change. Hence, we hope that part of the next steps of the project can include building outreach and community events, to strengthen the reach and utility of the platform.

8 • Reflections and way forward

Although titled Covid-19 and the Constitution, the resource is not intended to be only focussed on the law and designed for lawyers. It is meant to present the loss and suffering during the pandemic in a visual and jurisprudential light instead of reducing them to mere statistics. So far, the response to the timeline has been optimistic and positive, with constructive feedback. As people from an array of professions and age groups keep using it, they make new discoveries in navigation, face new roadblocks and send new suggestions on how to strengthen it. Based on this feedback, we intend to keep optimizing the resource until it is comfortable and efficient for all kinds of users, young or old.

In the following pages, the narratives and experiences illustrated in the "Covid-19 and the Constitution" project come to life in the selection of stories made for *Sur*. The full original contents associated with each of them can be accessed through the links provided in the footnotes.

NOTES

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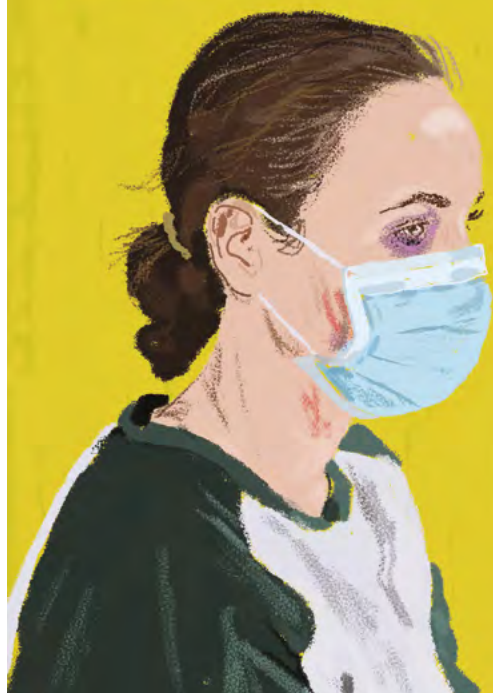
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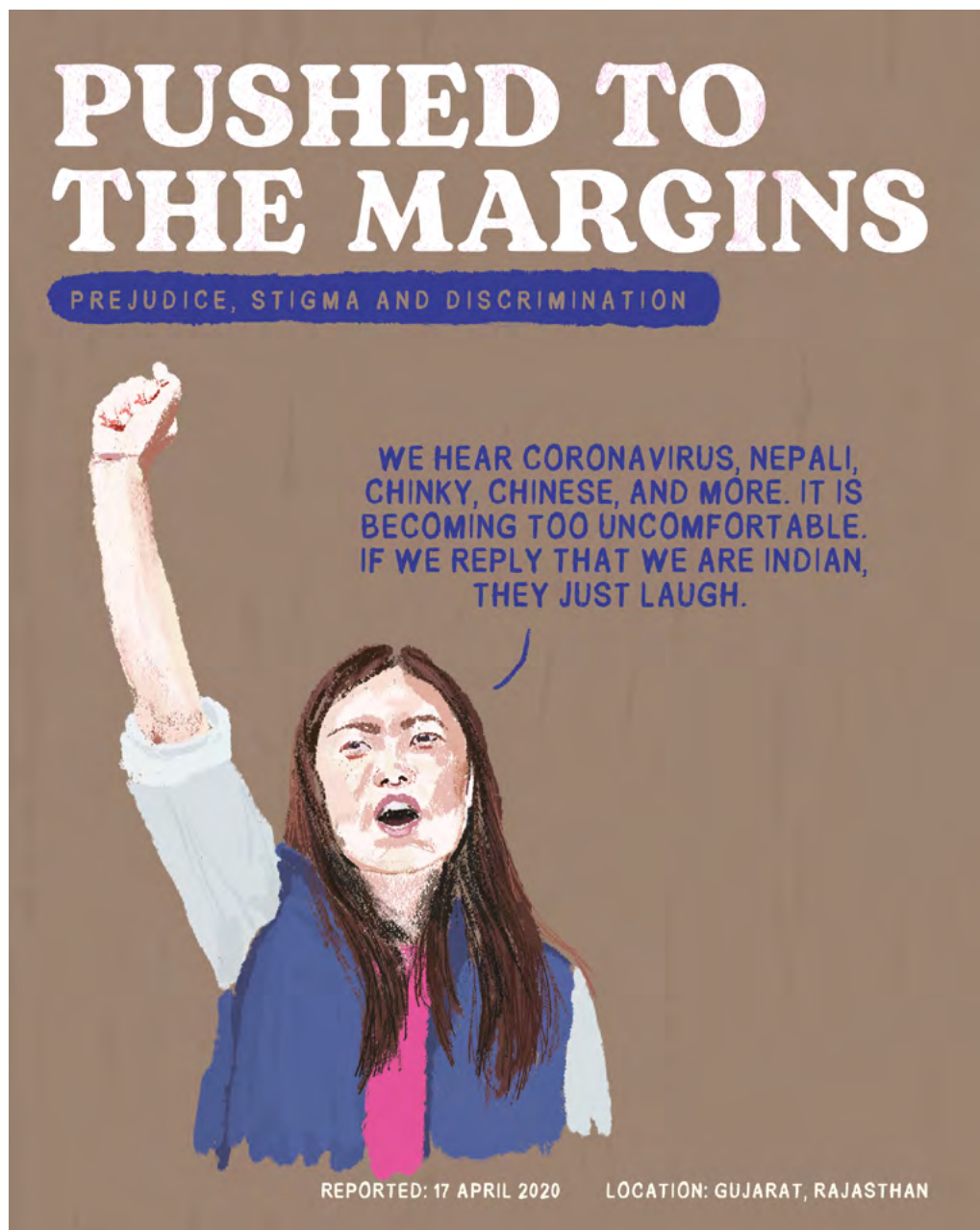
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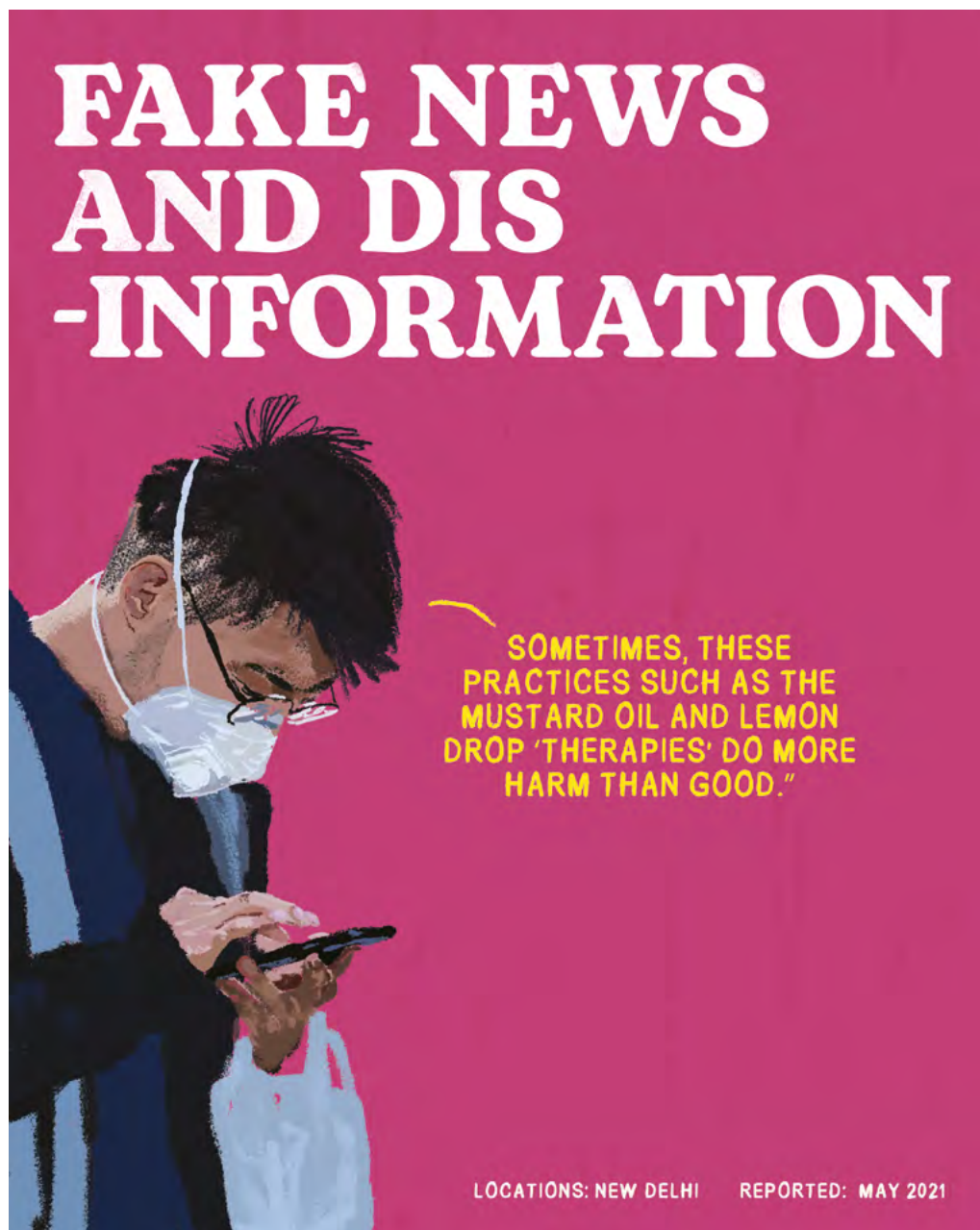
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IMPACT OF COVID-19 ON
THE INDIGENOUS PEOPLES OF THE BOCA
DA MATA VILLAGE IN RORAIMA[1]

Yara Pinho de Lima

ABSTRACT

This article aims to explore how the Covid-19 pandemic affected – and still affects – the social organization of the Boca da Mata village in Roraima. Indigenous practices rely on collective action for everything from daily life, while sharing backyards, to exchanging food, holding meetings and sharing information both orally and in person. Collectiveness is an essential characteristic of indigenous peoples' social and cultural structure. A dialogue with two health professionals who work with indigenous peoples shone light on the challenges that the pandemic has created for these peoples in practical matters ranging from access to vaccines to strategies that had to be created to address the pandemic.

KEYWORDS

Health | Vaccine | Indigenous peoples | Covid-19

1 • Introduction

On January 22, 2020, the emergency committee of the World Health Organization (WHO) held its first meeting to discuss the outbreak of a new virus detected for the first time in Wuhan, China that causes a severe acute respiratory syndrome. The goal of the meeting was to analyse whether this outbreak would lead to an international public health emergency.

On January 28, the Brazilian Ministry of Health declared the coronavirus an imminent threat to the population. The same year, after the pandemic had spread around the world and consequently, Covid-19 had reached indigenous territories, the challenges in accessing quality health care indigenous peoples already faced became even more evident.

On March 23, the *Jornal de Roraima*[2] reported that the government had declared a state of public emergency because of Covid-19. The municipality of Boa Vista also placed restrictions on businesses and declared a public health emergency in the capital city. There were already two confirmed cases of Covid-19 in the state at the time. Municipal decree nº 28.635/2020 prohibited cinemas, theatres, shopping centres, bars and gyms from opening, and only essential services and sectors such as hospitals, supermarkets and public safety could continue operating. Due to the pandemic, Brazil's borders with Venezuela and Guyana were partially closed.

In view of this scenario, the goal of this study and this paper is to explore how the Covid-19 pandemic influenced the indigenous way of life in the Boca da Mata community in Roraima. The community's inhabitants are from three ethnic groups: Macuxi, Wapichana and Taurepang. What moves this community is basically the philosophy of collective work, known as *ajuri*.[3] Meetings, assemblies and events are organized collectively. When Covid-19 reached the community, these relations had to be suspended, thus modifying social relations for an indefinite period of time.

The methodology for this study was the interviews I conducted in the Boca da Mata indigenous village and the Sorocaima II village, both of which are located in the São Marcos Indigenous Territory in the Alto São Marcos region, in the municipality of Pacaraima in the state of Roraima. The interviews were held with two health professionals – an Indigenous Health Agent (AIS for the acronym in Portuguese) and a nursing technician of the Secretariat of Indigenous Health (SESAI) who administers vaccines – in July 2021. At that time, 419,967 people in Brazil had lost their lives due to Covid-19.[4]

2 • The Brazilian state and its neglect of indigenous peoples during the pandemic

Since the beginning of the Covid-19 pandemic, the federal government has taken no measures to protect the indigenous peoples of Brazil, nor Brazilian society in general.

The current president has treated the pandemic as a "minor flu" and showed no respect for social distancing. He declared that Brazil could not come to a stop, encouraged gatherings and discouraged the use of protective masks.

The Parliamentary Commission of Inquiry (CPI) on the pandemic[5] proved the existence of an anti-vaccine political plan sustained by fake news. The dissemination of false news about the pandemic, early treatment and the Covid-19 vaccine influenced the population's decisions on what the right measures of protection against the disease were. This had direct negative consequences, including the increase in the number of infected people and bed occupancy rate, which resulted in a high number of deaths in the country. The CPI's investigation collected data that demonstrate the omission of the Brazilian federal government in raising public awareness about the pandemic.

According to Instituto Socioambiental (ISA),[6] in relation to the situation of indigenous peoples during the Covid-19 pandemic in Brazil, not only was the Brazilian state negligent, but it even contributed to the spread of the virus. The study highlights the three most common forms of infection: via health professionals who brought the virus to the villages; miners and land grabbers, as invasions of indigenous territories have increased during the pandemic, with the encouragement of the federal government, and cases of indigenous peoples who became infected while seeking emergency assistance in urban centres.

3 • Changes to indigenous daily life during the Covid-19 pandemic

In this first section, I present the experience of an Indigenous Health Agent (AIS) who lives and works as a health professional in the Boca da Mata indigenous village. A member of the Taurepang ethnic group, Mrs. Marina has worked more than 15 years in the field of indigenous health.

When asked if Covid-19 has had an impact on the community, she affirmed that it has. With the arrival of the coronavirus, she noted a change in the community's daily social routine. Activities that are normally done in person were suspended, affecting everything from the children's school education to even the work of health professionals at the basic health clinic in Boca da Mata. The village's residents put up a barrier of protection at the entrance of the community to limit the circulation of people and prevent the virus from penetrating further. Not all the residents of the community supported the idea of the barrier, as some did not believe that the virus could make its way into their homes.

In this context, Covid-19 created challenges for indigenous peoples, especially in relation to their communal way of life. Assemblies and festivals that were part of the communities' social organization had to be interrupted due to social isolation. The community had to adapt, even if only for a short period of time, and use masks and hand sanitizer – practices that were not common before then.

In Boca da Mata, people live a communal family life based on the exchange of cassava flour, vegetables, game meat, fish and other supplies. But from one minute to the next, exchanging food posed serious risks because the food could be contaminated with Covid-19.

Therefore, these relations have been suspended since the beginning of the pandemic. A new social model was introduced, in which it became necessary to stay at home, which led to changes in the way people interacted. It is important to remember that in the Boca da Mata village, the concept of a yard – that is, of properties delimited by fences – does not exist. All areas of the village are of common use to all community members. Family groups, which basically live close to one another, do exist but constant interaction with the broader group is deeply rooted in the community. Coping with isolation due to the pandemic was a major challenge for a society whose social structure is based on sharing with the whole group.

Another determining factor was the very process of circulating information that is important to daily life, which is normally spread "by word of mouth". The recommendation of social isolation made this practice – so essential in indigenous ways of life – impossible because of the major risk of contagion.

According to Mrs. Marina's account, many people had to leave the community to receive their financial benefits,[7] and soon after, emergency aid benefits also became available.[8] As a result, people had to travel to the city hall in Pacaraima or to Boa Vista, the capital of Roraima, which made it difficult to maintain social isolation. This is one of the ways many people from the community became infected with the virus.

Mrs. Marina caught Covid-19 and remained in isolation for 20 days. The treatment she and her family used while she was ill was lime tea with garlic. When asked if home remedies were efficient, she said they were. For her, 2021 was scary and worse than 2020 because she thought that the wave of the pandemic would pass, but every day, she would see the high number of deaths and cases on television and hear about the death of people she knew.

When Mrs. Marina began talking about the pandemic in her community, the sensation she conveyed was that of feeling trapped. As for the changes she had to make in her life when she caught Covid-19, she responded that she had never imagined that one day it would affect her, nor that the disease would alter anything in her life, home, family, or in relation to her children. She said that this new way of life was suffocating. She is aware, however, that these measures are important to protect not only herself and her family, but the entire village. As a health professional, she recognizes that social distancing is necessary to take care of not only herself, but others as well.

Covid-19 also affected her family's sources of income. She lives with her husband, her youngest son, her daughter, four granddaughters and her son-in-law. She has her job as an AIS with the Special Secretariat of Indigenous Health (SESAI). Her husband is a farmer. He works in the field helping to sustain the family by making cassava flour and planting

bananas and cassava. But she mentions that her salary alone is not enough to buy flour, which is a staple food for the Macuxi, Taurepang and Wapichana indigenous peoples and so, they produce it themselves to survive. Her daughter, who is a teacher, became unemployed and her son-in-law helped out by doing odd jobs. He was a school bus driver but when classes were suspended, there were no children to drive around and so, he was left jobless.

4 • The challenges of vaccinating for Covid-19 in indigenous communities

On January 19, 2021, G1's webpage with news on Roraima published the following article: "Macuxi indigenous woman is the first to be vaccinated against Covid-19 in Roraima: 'I want to be an example'".[9] Iolanda Pereira da Silva, a 45-year-old resident of the municipality of Uiramutã, is a pajé and a midwife in her community. The first indigenous women to be vaccinated, Iolanda produces indigenous traditional medicines. She stated that she wanted to set an example for her other relatives[10] so they would not resist vaccination. It should be noted that indigenous peoples are one of the groups to be given priority for the Covid-19 vaccine in Brazil.[11]

SESAI has been vaccinating indigenous peoples living in the villages via the 34 Special Indigenous Health Districts (DSEI). Approximately 305,672 indigenous peoples in Brazil have received the first dose of the vaccine[12] and 231,609 have recently received the second dose. It is estimated that there are currently 1,300,000 indigenous peoples in Brazil. In Roraima, approximately 32,748 indigenous people have received the first dose of the vaccine[13] and 27,804, the second dose. It is estimated that there are close to 56,000 indigenous people in the state.

Regarding immunization, Mrs. Marina explained:

> *[…] I think that with the vaccine, I can protect myself and protect my people who are at home, my children, family, grandchildren. Since they can't be vaccinated, if I'm protected, I can no longer transmit the most serious forms to them because before the vaccine, the nurse gave a presentation there, at the clinic. She explained the reason for the vaccine. She gave a presentation. She explained that the vaccine is there to immunize you. This doesn't mean you won't catch it. You will catch the disease, but it will be mild. You won't end up in the hospital. You won't need a respirator to breathe when you have shortness of breath. So, all this was explained. I was aware that I was going to get it. She explained that it could cause discomfort, fever, but this was the reaction to the vaccine, right? And so, whoever has these symptoms shouldn't get it, she advised people – anyone who is asymptomatic or who has shortness of breath, really sick with the flu, I don't recommend that they get vaccinated. This was a talk she gave to raise awareness.*

She views the vaccine as a guarantee of freedom. When I asked what she thought about that moment of the pandemic, she replied that she prayed for everyone to get vaccinated because the vaccine gets results. At the same time, she indicated that she is aware that the pandemic is not going to end, but it will be less severe, and that post-pandemic freedom will be different than what we had before.

In relation to the future, she expressed her desire for everyone to be vaccinated and return to normal life. I asked if she had some other concern about Covid-19 that she would like to share, and she replied that:

> *My concern is only with the people who still have not been vaccinated, who still aren't immune to the virus. Because we hear all the time that there is such and such variant, that it's worse than this Covid virus. So, I think that people need to be aware and get immunized so that there are no more serious cases that take the lives of more people we know, because the whole community suffers.*

4.1 - Health professionals and resistance to the vaccine in the indigenous context

My second interviewee is Helena, an indigenous nursing technician (who administers vaccines) from the Pankará ethnic group from Pernambuco, a state in north-eastern Brazil. She lives in Roraima and has worked in indigenous health for over 12 years. I met Helena when I went to get vaccinated at the health team's base unit in the Sorocaima II community, which provides care for all indigenous communities from the Alto São Marcos region. What caught my attention was when she informed me that she could not give me the vaccine because she had to follow the protocol from Brasília,[14] which stipulates that only indigenous people living in indigenous territories can be vaccinated. As I am temporarily living outside of my village to pursue a master's degree in the city of Boa Vista, I do not meet the protocol's requirements. She said that if it were up to her, she would vaccinate all indigenous people, regardless of whether we were living in the village or not.

The fact that indigenous people living in urban areas are not treated as part of a priority group is an important issue for us: we demand that the state respect our identity and effectively guarantee our rights. When we go from our villages to urban centres, we do not stop being indigenous.

As for her experience with the Covid-19 vaccine, Helena mentions that it is different from other vaccines, which makes it a challenge for the community to understand because they are dealing with a pandemic. For her, it is something new for everyone: "A lot harder to understand… Because it is a pandemic. It's a very new disease that frightens people a lot, eh? And everyone has been waiting for a vaccine or a solution for this disease since last year".

In some communities, indigenous people have shown resistance to vaccines. As a health professional, she is clearly concerned about this. In her opinion, it is interesting to note

that while many people want a solution for the new virus right away, when the vaccine was finally developed, they are surprised with how fast it was developed, and they are wary of its efficacy. As a professional, she understands and recognizes the efforts of researchers who are anxious to eradicate the disease as soon as possible by developing vaccines.

An important element to be analysed is that indigenous people are resistant to not only the Covid-19 vaccine, but also other vaccines offered before the pandemic, such as the influenza vaccine.

> *So, a long time ago, whenever I would come to give people vaccines here, they would accept some vaccines, but not others, such as the one for influenza. The majority of them never wanted it because of the beginning of the history of influenza, which was to kill, etc. etc., but now, some families want the vaccine and other services.*

4.2 - Elements that fuelled fears on the vaccine

Based on her experience with vaccination in other communities, Helena highlighted two elements that, in her view, influence people's receptivity to vaccines: religious and cultural issues. Some indigenous people say they fear all vaccines, not just the one for Covid-19, because they say they are meant to "kill indigenous people".

Helena emphasizes that even after attending her information sessions on the vaccine, some indigenous peoples still voiced their fears. Some people were dying from a very severe flu, which was often associated to the vaccine. Helena tried to explain to them that a person's immunity influences how effective all vaccines are and that adverse effects always exist, but death is not one of them. The cause of death in these cases is not necessarily Covid-19. A person can receive both doses of the vaccine, have other diseases and die.

Another point worth mentioning is the fear of falling ill and having to go to the hospital in the city. For some indigenous people, this trip was the same as "going there to die" because these places were overcrowded, with many people dying in the hallways. As a result, indigenous people prefer to stay in their own village, be treated with traditional indigenous medicine and often not get vaccinated.

Several times during the interview, Helena expressed concern with indigenous people's understanding of immunization. She is aware that there is a need to use a language that is accessible to them to facilitate their understanding. As for the importance of indigenous people taking a second dose of the vaccine, Helena commented that:

> *Whenever I come here, I say to them, 'hey, you have to get a second dose because it's part of the vaccination scheme. If you take the first one and not the second, it won't do any good, eh? Your immune*

system will' – let's say, so they understand faster – 'it only protects half. It won't protect you from the other half of the disease'. So they understand, right? Because it's really hard to explain immunization. So, we have to use language that is a lot easier to understand.

Another important factor that affected the vaccination process, besides fear, was the dissemination of fake news. Fake news about the vaccine hindered the vaccination process for society in general. On July 19, 2021, an article entitled "Beware of 'fake news' about Covid-19 vaccines" was published on the Ministry of Health's website.[15] It warned people not to risk their own lives because of fake news and urged them to put their health first.

The goal of this fake news was precisely to fuel fear about the vaccines by manipulating information and using distorted data, leading to widespread misinformation. Information on the Ministry of Health's website affirmed that the information about people who died after the use of Covid-19 vaccines was false and had no scientific basis. It also highlighted that the vaccine continues to be a means to control the pandemic and its efficacy in combatting the pandemic is related to the large number of immunized people.

According to Helena, the media give people access to factual and false information, which confuses them so they do not know what to believe. In addition to the "religious issue",[16] which my interviewee considers to be very strong, she explained the influence of the so-called "cultural issue".[17] For instance, some indigenous people do not want to get vaccinated because they know how to make home remedies and believe that this will make them well once they discover, for example, a plant that alleviates the symptoms of Covid-19. She quoted one indigenous person, who said, "Oh, I'm not going to get vaccinated because I'm taking medicine, because I'm taking home remedies and I'm fine. I've spent my whole life taking home remedies and I've never been sick, never died".

When dealing with this type of situation, health professionals try to explain the efficacy of the vaccine and that involves caring for one's family and community: by getting vaccinated, people are taking care of the community. This information begins to arouse interest when people see that others did not die after they got the vaccine.

For Helena, fighting denialism is clearly a challenge. She is aware of this and states that the virus will not end, and that people will have to deal with the appearance of other variants. She predicts that the Covid-19 vaccine will be part of the vaccine calendar.

In relation to the religious issue and the vaccine, I would like to draw attention to one specific case that Helena commented on: the case of the Sorocaima I indigenous community,[18] located next to the Sorocaima II village in the Alto São Marcos region. Most of the residents of Sorocaima I are Christian and members of the Seventh-day Adventist Church. Only indigenous people from the Taurepang ethnic group live in this community. The entire community decided in an assembly that none of them would get the Covid-19 vaccine,

and they drafted a document on this. The reasons for their refusal were not fully explained. However, according to Helena, the document exists[19] and it certifies that no one from the community will get the vaccine. The Special Indigenous Health District (DSEI-Leste) held awareness-raising activities in the community, but they continue to refuse to take the Covid-19 vaccine. Only one indigenous health professional from the community has been vaccinated. My interviewee made the connection between religion and the refusal to take the vaccine.

In the capital city of Roraima, Boa Vista, besides being in an urban context, religion is highly present in the daily life of the indigenous communities. This results in what Ciello calls the "pentecostalization" of traditional practices:

> *[...] as can be noted in daily life in Boa Vista, there is a strong presence of Pentecostal and evangelist religions of different denominations, which are increasingly becoming part of the urban landscape and indigenous communities in the region. This has been registered mainly in the Amazon region as the "pentecostalization" of "traditional practices" and is allied with intense migration.*[20]

In this context, the pentecostalization of traditional practices is related to traditional forms of healing that certain communities are apparently no longer "producing", which has to do with the lack of interest among younger generations in everything that is seen as traditional. Since few people speak indigenous languages, the healers are no longer the same as in the past and as a result, the art of healing is on the decline and could possibly reach the point where it disappears. Society is seeking relief and treatment for certain diseases, which involves traditional, biomedical and religious knowledge.

As the Sorocaima I community is next to my community, I know that the religious bias there is indeed very strong. While they have kept the customs of eating *damurida*,[21] planting crops and making flour, *beiju*[22] and craftwork alive, they also adopt religious dogmas, such as not eating certain kinds of fish and resting on Saturdays.

Even though there are indigenous peoples who still have not been vaccinated, according to Helena, the communities that are more open to the vaccine are Santa Rosa, Boca da Mata, Aleluia, Novo Destino, Cachoeirinha and Sorocaima II. All of them are in the Alto São Marcos region.

5 • Final considerations and the challenges that remain

The challenges that the indigenous population face in accessing the basic rights of health, education and to land, among others, are not new. The arrival of the pandemic merely brought the government's plans for indigenous peoples to the surface. If the Brazilian government does not create strategies and measures to protect against Covid-19, the indigenous peoples

will do it themselves. In response to the pandemic, indigenous communities in Roraima began creating prevention strategies, such as health barriers to monitor and control the entrance and exit of members of the communities.

The control barriers in the territories served to both slow the spread of the virus within the communities and contain the invasion of miners who are taking advantage of the pandemic to exploit land, as in the case of the Raposa Serra do Sol Indigenous Land in the Serras region, where agents of the Grupos de Proteção e Vigilância dos Territórios Indígenas (GPVITI, or Groups for the Protection and Surveillance of Indigenous Territories) and indigenous leaders remove invaders from their land. According to Aleixo et al.,[23] during the pandemic, invasions of indigenous land in Roraima have been on the rise, leading to an escalation of social conflict, but also an increase in the mobilizations of indigenous peoples and consequently, the strengthening of political organizations in defence of their territory and their rights. To halt the onslaught of invasions in Roraima, some communities mobilized to create the GPVITI, composed of members of the indigenous communities themselves, to monitor and protect their territories, thereby guaranteeing their autonomy. These groups are made up of men and women who receive training on indigenous and environmental rights and territorial surveillance to prepare them to operate in the villages.

In conclusion, the Covid-19 pandemic affected indigenous peoples' social organization, health services, education, mental and physical health, family incomes, means of production and consumption and family life. It influenced the Boca da Mata community's way of life, especially cultural and religious aspects, as the suspension of group work and the assemblies created major challenges for the indigenous peoples. As stated in the beginning, collectiveness is a very important aspect of indigenous life, and their conception of health is also collective. Therefore, in exceptional cases, such as the Covid-19 pandemic, they had to momentarily forego the community for the sake of the community. Finally, we cannot stress enough the importance of the indigenous movement in Brazil in the struggle for their rights, including their right to health.[24]

NOTES

1 · This article is part of my thesis for my Master of Social Anthropology degree from the Universidade Federal de Roraima, which I will defend in 2022.

2 · "Governo de Roraima decreta estado de calamidade pública devido ao coronavírus", G1 RR, March 23, 2020, accessed December 21, 2021, https://g1.globo.com/rr/roraima/noticia/2020/03/23/governo-de-roraima-decreta-estado-de-calamidade-publica-devido-ao-coronavirus.ghtml.

3 · This is when the community - including women, men and adolescents - is mobilized to work together. Ajuri happens when a working bee is held to clean up the community, or to "open up" an area to plant food – in other words, to carry out an activity that involves the whole community.

4 · As of November 2021, the total number of deaths caused by the pandemic in Brazil was 615,179.

5 · "Relatório Final", Federal Senate, Parliamentary Commission of Inquiry on the Pandemic, October 2021, accessed on December 21, 2021, https://static.poder360.com.br/2021/10/relatorio-final-renan-calheiros-cpi.pdf.

6 · Davi Kopenawa Yanomami, "COVID-19 e os Povos Indígenas". Covid-19 e os Povos Indígenas, 2021, accessed December 21, 2021, https://covid19.socioambiental.org/?gclid=CjwKCAiAtdGNBhAmEiwAWxGcUlvehmMutBgSHSozt1H5cT9LB5SECbl.

7 · Benefits such as the salaries of indigenous professionals working as civil servants or indigenous schoolteachers.

8 · This emergency aid is a programme of the Brazilian federal government that provided income to the most economically vulnerable people during the Covid-19 pandemic.

9 · Vanessa Fernandes, Fabrício Araújo and Valéria Oliveira, "Indígena Macuxi é a primeira vacinada contra Covid-19 em Roraima: 'quero ser exemplo'". G1 RR, January 19, 2021, accessed December 21, 2021, https://g1.globo.com/rr/roraima/noticia/2021/01/19/indigena-macuxi-e-a-primeira-vacinada-contra-covid-19-em-roraima.ghtml.

10 · Term commonly used among indigenous peoples belonging to Brazilian ethnic groups.

11 · "Plano Nacional de Operacionalização da Vacinação Contra a Covid-19", Ministry of Health, April 28, 2021, accessed December 21, 2021, https://static.poder360.com.br/2021/05/Plano-Nacional-de-Operacionalizacao-da-Vacinacao-contra-a-covid-atualizado-28abr2021.pdf.

12 · "Vacina parente", Articulação dos Povos Indígenas do Brasil - APIB, 2021, accessed December 21, 2021, https://emergenciaindigena.apiboficial.org/vacinaparente/.

13 · "Imunização Indígena - COVID-19", Ministério da Saúde, 2021, accessed December 21, 2021, https://infoms.saude.gov.br/extensions/imunizacao_indigena/imunizacao_indigena.html.

14 · "Plano Nacional de Operacionalização da Vacinação Contra a Covid-19", April 28, 2021.

15 · "Cuidado com as 'fake news' sobre vacinas contra Covid-19", Agência Nacional de Vigilância Sanitária - Anvisa, July 17, 2021, accessed December 21, 2021, https://www.gov.br/anvisa/pt-br/assuntos/noticias-anvisa/2021/cuidado-com-as-2018fake-news2019-sobre-vacinas-contra-covid-19.

16 · Here, she is referring to many religious expressions, mainly within Christianity, that exist in some indigenous communities. And this has to do with political struggles over several aspects of community life. In the current context, it is related to the uptake of the Covid-19 vaccine.

17 · The cultural issue raised in this article has to do with the use of "traditional" remedies not only for Covid-19, but also for other illnesses. These remedies are made from natural products

extracted from nature itself, such as syrups, potions, products for bathing and ointments.

18 · I cite the Sorocaima I community because it is next to my community, Boca da Mata. In addition to my interviewee mentioning it, I know some residents from the community. However, this community is not the focus of my research.

19 · At the time of writing, I have not had access to this document.

20 · Fernando J. Ciello, "Artes de cura e o problema do caleidoscópio: Pistas para uma antropologia da Saúde a partir do extremo-norte", in *Processos identitários diferenciados: etnografias contemporâneas a partir do extremo norte brasileiro*, orgs. Carlos Alberto M. Cirino and Lilian Leite Chaves (Boa Vista: Editora da UFRR, 2020): 292-293.

21 · Traditional indigenous food in Roraima. *Damurida* is a spicy broth made from game meat or fish, which can be combined with cassava leaves.

22 · "Beiju" is a pancake made of cassava flour and water.

23 · Eriki Aleixo, Ariene dos Santos Lima and Ivo Cípio Aureliano, "Mortes, Invasões e Garimpo em Terras Indígenas no Estados de Roraima: Entre Mobilizações Étnicas e Conflitos Sociais. Pandemia da Covid-19 na vida dos Povos Indígenas", *Vukápanavo: Revista Terena* no. 3 (Oct./Nov. 2020): 1-400.

24 · Since 2010, following several demands, the Secretaria Especial de Saúde Indígena (SESAI, or the Special Secretariat of Indigenous Health) was created and is linked to the Ministry of Health.

YARA PINHO DE LIMA – *Brazil*

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Human rights in the context of the pandemic:
Impacts and responses

LOCAL RESPONSES

"IN THE PACIFIC, WE TAKE CARE OF OURSELVES"

Interview with Lizeth Sinisterra Ossa

• *Pacífico Task Force Alliance and a differential approach* •
to combatting the pandemic in the Colombian Pacific

By Maryuri Mora Grisales

The Afrodescendent population in the Colombian Pacific is one of the most vulnerable in the country. The Covid-19 pandemic not only exacerbated inequality in the region, but also exposed structural racism and the negligence of the state in guaranteeing the rights of these communities. The lack of medical and health personnel and the absence of infrastructure with enough capacity to handle health issues increased the risks and the negative outcomes of the pandemic.

In an interview with Conectas Human Rights, Lizeth Sinisterra Ossa, researcher at the Centro de Estudios Afrodiaspóricos (CEAF) of the Icesi University in Cali and manager of the Pacífico Task Force,[1] talked about the founding of the Alliance and all the community coordination work carried out in the past year along the Pacific Coast. She explained how a critical analysis of the situation in the Colombian Pacific and a more nuanced understanding of the different impacts of the crisis triggered by the Covid-19 pandemic on the people of African descent served as a basis for the design of the project. Lizeth Sinisterra also describes the challenges of working in the territory, the importance of maintaining dialogue in the community and the effort to produce long-term effects.

The interview describes the strategic lines of work that guided the project's actions and helped strengthen the community's capacities in detail. It also discusses the impacts of the well-coordinated collective efforts involving different actors at the local and national level to effectively combat the pandemic by and for the region.

Sur Journal • What is the Pacífico Task Force Alliance and how was it started?

Lizeth Sinisterra Ossa • This alliance emerged last year [2020] because of an underlying concern of Afrodescendent organizations and movements about the negative impacts that the pandemic would bring to the region.

There is a historical pattern of structural racism in the country, which allows people to go on affirming that some lives matter and others don't. The pandemic came and exposed the fragility and the incompetence of the Colombian socioeconomic and political system to protect the lives of Afrodescendent communities. The vulnerabilities of these communities existed before the crisis and so, what the pandemic did was exacerbate these injustices. For example, indicators always show a higher poverty rate for this population than for the rest of the country: the multidimensional poverty rate for the black, Afro-Colombian, Palenquera and Raizal (NARP) population stood at 30.6%, 11.0 pp above the national poverty rate, which was 19.6%, according to the Departamento Administrativo Nacional de Estadística (DANE), in 2018.

If we look at the indicators for the Afrodescendent population in Colombia versus the ones for the population that does not belong to an ethnic group, we see that 81% of people of African descent work in the informal sector. We also find a high rate of barriers to access to health, water and sanitation services, which means they do not have access to water as a fundamental right, nor to be able to cope with the pandemic. How are people supposed to wash their hands regularly to prevent infection in places where there is no water?

In the analysis we carried out using the Epidemiological Intelligence System, we came up with some important findings: people of African descent are 21% more likely to be hospitalized, 88% more likely to end up in intensive care units and 24% more likely to die in comparison to the population that does not belong to an ethnic group in our country. Therefore, we need to understand the pandemic's impact on these bodies and, above all, create policies that guarantee life, policies for care and self-care in the community.

Based on this initial concern, we came up with a strategy capable of rapidly responding to the impacts that were being identified and were going to get worse. That is how this alliance was born – as an exercise of discussion, reflection and rigorous and critical analysis of the [Pacific] region, which was meant to serve as the basis for a collective work plan. What we do here is coordinate multiple academic, research, community and territorial – and even institutional – efforts to combat the pandemic using a differential approach.

This is how important organizations in the Afrodescendent movement in Colombia such as Centro de Estudios Afrodiaspóricos (CEAF) of the Icesi University, Consejo Nacional de Paz Afrocolombiano (CONPA), Proceso de Comunidades Negras (PCN) and Comité del Paro Cívico de Buenaventura began to coordinate their efforts. These organizations have had not only a territorial but also a political impact on this country. By bringing all

these forces together, we were able to continue responding to the current context that the pandemic generates.

Sur • What does this differential approach consist of?

LSO • This differential approach is central and cross-cutting to our entire process - especially the principle of the African Ubuntu philosophy. Pacífico Task Force is, "I am because we are". Precisely because it is collaborative, collective and participative work, whose main goal is to resolve the impacts imposed on racialized and impoverished bodies, lives and territories located mainly in the Colombian Pacific region.

This differential approach has guided our processes to support the communities we have prioritized. We created methodologies and courses of action that take into account the particularities of the territories and their inhabitants. This gives us a more contextual and grounded view to provide more appropriate support that is better adapted to their reality. Based on this, we vindicated and recognized the knowledge and ancestral traditions of our peoples.

It is no secret that when states respond to this type of emergency situation, they adopt homogenous policies and guidelines that do not take the specificities of the territories into consideration, and this is precisely our concern.

For example, when the pandemic hit, the instructions from the Ministry of National Education were, "girls and boys, go home and we will all work online". In Timbiquí, a municipality on the Pacific Coast near Cauca, only 0.9% of the population has access to the internet. Not only do the students lack access to the internet and technological resources, but their professors too, as they do not have computers or the possibility of connecting to the web. In these territories, one must buy a "pin" [prepared wireless internet services], but you either connect to the internet or you buy rice. A pin can cost 2000 pesos and last half an hour max.

In this case, our differential approach and intersectional perspective consist of putting things in context and responding according to this context, not from the outside but from within. This is why it is important.

Sur • The Alliance has five strategic lines of work. We'd like you to tell us about them. Which ones were you more successful or faced more challenges in?

LSO • Each line had interrelated goals and objectives. What is the first thing to explode in a pandemic? Hunger. These are people who work on the street and so, we first had to focus on *food security*. In this line of work, we wanted to support families who didn't have enough resources to guarantee their daily food intake. The Departamento Administrativo Nacional de Estadísticas (DANE) has shown how food insecurity has gotten worse. Families who before ate twice a day were no longer eating anything or were eating only once a day during

the pandemic. This is shocking and it is the result of this situation. This line of work was successful, but we also had to face challenges and vicissitudes.

We knew we had to support the communities by guaranteeing a minimum amount of food but at the same time, we noticed that the local economy was being affected - especially Afrodescendent women from the market squares who constantly had to throw away their products or give them away. They themselves told us that they would leave very early in the morning and go home late at night with only $10,000 or $20,000 pesos [3 to 6 dollars] after a long, hard day to sustain not only their children, but also their grandchildren.

We began observing this because we had established closer ties with the people from the territories. We realized that a lot of goods coming into these areas were being bought from big supermarket chains located outside the territories. In response to this, we launched a call to reinforce the idea that it's not necessary to go elsewhere to buy things when the people from the territory have products and produce things. We also decided to draft some nutritional guidelines based on what people eat in their territories. For example, we didn't take beans to Tumaco because they're not part of their regular diet.

What we did with social leaders was design nutritional recommendations tailored to the territories and their eating habits. So, we initiated a process of drafting the profiles of the families we should prioritize. We carried out participatory exercises with the people from the territories to strengthen the strategy's impact. We both donated food and gave economic security to the women in the market squares, who ranged from 30 to 60 or 70 years of age, approximately. We thus made markets with an ethnic-territorial focus viable.

Secondly, we managed to start another process in the area of *health and hygiene*. This issue was very problematic because most institutions and other sectors were generating a very Western view of the pandemic, which used very technical language and information that was hard for people in the territories to understand. There was a fight to give priority to Western medicine and not recognize traditional medicine. But if you ask people from the Pacific region how they survived in this context, there is no doubt that they will say that traditional medicine kept them alive. Traditional medicine has played a leading role in keeping these people alive, even more so in the context of a pandemic. For the communities of the Pacific, if the virus attacks the respiratory system, they use ginger or *'Mata ratón'* (the 'rat killer' plant)[2] to reinforce the immune system. And some products really did work and gradually allowed people to be cared for.

In this line on health and hygiene, we decided not to separate the West on one side and traditional medicine on the other. On the contrary, we thought of ways to strengthen community health agents so they could take a differential approach to caring for people with Covid-19. So, we initiated a dialogue between health authorities and ethnic-territorial and organizational authorities, especially the ones who are members of the community councils, to make an impact based on dialogue.

We designed Covid-19 care and prevention protocols based on a differential approach, which took the communities' traditional medicine and knowledge into account. We generated information and educational campaigns to promote self-care, including hygiene kits, but not only with masks, alcohol and soap. People would say to us, "and where are the traditional herbs?" We designed some kits using traditional medicine, including herbs, *mata ratón*, ginger and others, in order to strengthen this dialogue.

In this line of work, we also realized how important it is to help the territories connect to the rest of the world. In general, the territories are isolated because they lack technological resources or communication channels that enable them to find out what is going on with the pandemic. Access to information in the country is also a privilege. We installed what we call a sound broadcasting system (an antenna with a signal) to connect the territories in Timbiquí. This pilot experiment allowed the community to have regular access to information on what was happening during the pandemic. This was also very successful.

We were also concerned with the way the state was producing information on the pandemic. We noticed that the ethnic-racial and territorial aspect was not central in the understanding of the different impacts in each territory. Based on this gap, we designed an *epidemiological intelligence* system – the third line of action – conceived to improve the institutions and organizations' capacity to respond based on useful, timely, accurate, contextual, factual and pertinent information that would enable them to make decisions in line with reality.

This was a very interesting line of work because here, the health departments coordinated efforts with Yoseth Ariza-Araujo, epidemiologist and professor of the Public Health and Community Medicine Department of the Icesi University, who led the strategy. Meetings were organized to produce knowledge on this ethnic-racial variable for the territories and we produced a control panel to monitor the impacts of Covid-19 in the region.

We created spaces to strengthen the dialogue of knowledge and promoted meetings with specialists in this field. We drafted georeferencing maps together with the health departments and a team we hired to support and monitor the collection of information. The pandemic is, in a way, sectoral and localized. In Quibdó, for example, there are places where the rate of infection and even deaths is more alarming than in other sectors. This is key for responding more effectively.

In this line, we also designed a training school for boat operators, traffic police, for river, land and maritime transport. We created training programmes where we worked with the departments of transport and tourism so that boat operators and other workers from the transportation sector had the bases they needed to continue contributing to the local economy while taking care and self-care into consideration.

Finally, there is the line on *education*. In education, we started by engaging in an initial dialogue with education departments and local organizations to understand how to design

an educational strategy in which working online was not an option. We developed two processes. One was called "Weaving Lessons Learned": with the support of volunteers from various parts of Colombia and other Latin American countries, we offered distance learning via telephone calls. Volunteers would call a boy, a girl, a teenager or youth on the phone to help them with their lessons. We offered tutoring in mathematics, social sciences, languages. We also offered psychosocial assistance because the number of cases of suicide and violence was on the rise and so, we felt that psychosocial support should be a cross-cutting element in the process. We created an entire strategy, with protocols, that allowed us to reach 130 boys, girls, adolescents and youth in 7 territories in the Pacific.

We also worked with the Centro Eduteka of the Icesi University to design a course called "Designing learning experiences for distance education". The goal was to strengthen teachers' abilities and skills to make the transition and give them tools that are useful for assisting students from a distance. During the first phase, teachers reviewed their current teaching practices and learned how to redesign teaching activities so they could be offered remotely, which channels they could use and how to guide interaction with their students. During the second phase, the teachers initiated a process of multiplying and transferring knowledge to other colleagues so that they too could continue supporting their students' learning process from a distance. In other words, they were trained to convert knowledge into a network of learning capable of reaching many places in the Colombia Pacific. Ninety-one teachers from 7 territories in the Pacific graduated from this course. Successful cases have emerged from this.[3]

In addition to education, we thought of the importance of social leaders, as in the end, they are the ones who sustain life in the midst of death. In such a devastating and distressing context, there was a need to strengthen social leadership, leaders, ethnic-territorial authorities so they could adapt and offer support to the rest of the communities. *Community Adaptability* was thus the way forward. In this line of action, we recognized that Covid-19 was not going to disappear and so, we had to adapt and build capacity in the territory and strengthen the communities so that they could pursue their process and continue building their strength on their own. Thus, this line of work designed a training and capacity-building strategy for ethnic-territorial leaders and authorities so they can learn to adapt their organizational skills to circumstances that generate emergencies like the one caused by Covid-19. The exercise on adaptability was designed to ensure that leaders had the capacity to propose and develop leadership strategies that give assertive and timely answers to emergency and crisis situations that appear in the region. Therefore, the "Innovation for Problem Solving" course was held and 36 leaders from four territories of the Pacific region graduated from it.

All in all, we can say that everything we did was successful. It was a chain reaction: one line complemented another. As for the challenges and difficulties, there were many of them, especially in terms of intervening in a new context. To intervene, we had to interact, move, and approach people. But in the context of the pandemic, going out or holding a meeting could mean death itself. We had to develop a method to overcome

these challenges. What we did was generate processes to connect and coordinate with social and community leaders who accompanied us in the territories from the beginning – from the planning to the implementation of the process.

Sur • What shaped the Alliance's capacity to respond to Covid-19 in the Colombian Pacific and what impact did this work have in the territories?

LSO • What determined our response capacity was our analysis of the region and discussions with different actors. We met with municipal authorities, with social leaders and we also held meetings with other sectors which enabled us to carry out an in-depth analysis and based on it, generate the proposal that I have been presenting here.

We managed to do all this in a year. We started in May 2020, and we completed the first phase in May 2021. In relation to the impacts, I would summarize them like this: Pacifico Task Force generated and consolidated a coordinated, collaborative and participatory effort between local government, social leaders, ethnic-territorial leaders and other key actors. We generated a regional ecosystem of work by and for the region:

• We maintained dialogues with the 4 municipal governments of the territories we prioritized: Timbiquí, Buenaventura, Quibdó and Tumaco. We involved 15 departments from these 4 municipal governments: departments of health, education, transportation, social development, agriculture. We led conversations and we coordinated efforts with 20 grassroots organizations and community councils, 15 educational institutions and 2 community libraries, 1 public and 2 private universities. In one year, we managed to create this ecosystem.

• We promoted a culture of care and self-care in the territories in the communities' own language. We used different formats such as "*perifoneo*"[4] and we joined forces with community radios. In this strategy, we involved influencers from the region such as Kathe Ortíz,[5] Leymar Brown[6] because the idea was to reach young people as well. We wrote a salsa song on self-care, which was a hit, and we created a campaign called "In the Pacific, We Take Care of Ourselves".

• We consolidated a comprehensive care programme to respond to the Covid-19 emergency on the Pacific coast, based on these 5 lines of work that we managed to implement to deal with the various challenges that these people faced.

Sur • After all the work that has been done, what do you think should be the focus of attention to strengthen the most vulnerable communities of the Colombian Pacific? And what are the challenges ahead?

LSO • Everything is cross-cutting. Therefore, the focus of attention should be comprehensive, covering all fundamental rights that human beings must be able to

enjoy to guarantee their existence. If one analyses the region and thinks from a rights perspective, I ask myself, "what rights do Afrodescendent communities in Colombia really have when they have to fight for the right to live?"[7]

The question should be on how we strengthen the communities not only in relation to infrastructure, but also in their capacity to deal with emergencies. We need to think of strengthening them materially but also of reinforcing the installed capacity in the communities, leaving processes that enable them to adapt and respond to this situation.

How do we strengthen different forms of autonomy? How do we strengthen territorial and food sovereignty? How do we continue strengthening the analysis of the territory, the production of data and information that enable us to understand how the communities are doing? How do we generate processes of natural resource management, self-management? How do we break away from this predatory and developmentalist model?

Covid-19 is showing us that the world needs to change, but especially for those who have been denied access to a just and equitable world for over 500 years. If Colombia does not find some way to solve this situation, I don't know where the Afrodescendent population in this country will be a few years from now, to be quite honest.

Lizeth Sinisterra Ossa, CEAF researcher and director of the Pacific Task Force

About the future and the challenges, we are currently thinking about a second phase of Pacífico Task Force, thinking about how to give continuity to the work. One of the challenges we face, which is sometimes invisible, is climate change. We feel it is important to link climate change to racial justice; this connection has to be made. We are thinking of two processes for the project's next phase: recovery from Covid-19 and natural resource protection and climate change mitigation.

The impact that climate change is leaving in Haiti or San Andrés, for example, is not without cost, and what is historically building up in the Pacific will have consequences. Therefore, the

communities also have to adapt to that. It is important to affirm that the fight against climate change must also have a differential approach; climate impacts affect people and places differently. It is about building a process of accompaniment and managing change. Change is more gradual and so, it will be necessary to think about how to start the second phase based on the lessons learned to continue on the path together.

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Interview conducted by Maryuri Mora Grisales in November 2021.
Original in Spanish. Translated by Karen Lang.

NOTES

1 • For more information on this project, go to: Pacífico Task Force, home page, 2021, accessed December 16, 2021, https://pacificotaskforce.com/.

2 • Its scientific name is Gliricidia sepium and this species has multiple uses in Central America and South America. Popularly known as "Mata Ratón", the leaves of this tree are commonly used in the Colombian Pacific. It has a wide range of uses for medicinal purposes, such as the treatment of skin problems, to lower fever, relieve headaches and sore throats, and cool the body down.

3 • The national press featured the story of Jenner Ruíz, a teacher from Timbiquí. This teacher prepared his classes as podcasts, put a loudspeaker on the back of a motorcycle and began going around, playing the podcasts as a way of getting the information to his students in not only urban, but also rural areas. See: "Jenner Ruiz, historia de vida", YouTube video, 11:31, published by Redes Pacífico Task Force, December 26, 2020, accessed

December 16, 2021, https://www.youtube.com/watch?v=X2WWJsdKJgo&t=3s.

4 • "Perifoneo" is a form of communication that uses a loudspeaker to broadcast information. It is very common in these territories.

5 • "Kathe Ortíz se une a #EnElPacíficoNosCuidamos", YouTube video, 1:55, published by Redes Pacífico Task Force, October 19, 2020, accessed December 16, 2021, https://www.youtube.com/watch?v=-6QsgZKai6M&t=34s.

6 • "#EnElPacíficoNosCuidamos: Leymar Brown y el ki de la responsabilidad", YouTube video, 0:57, published by Redes Pacífico Task Force, October 24, 2020, accessed December 16, 2021, https://www.youtube.com/watch?v=ik5h1sE9wVQ.

7 • A recent World Bank report affirms that Colombia is the second most unequal country in Latin America and the black population will continue to be affected. See: "Colombia, el segundo país más desigual en América Latina", Portafolio, October 27,

2021, accessed December 16, 2021, https://www.portafolio.co/economia/gobierno/colombia-es-el-segundo-pais-mas-desigual-de-america-latina-segun-el-banco-mundial-557830.

8 • Images of the project from the photo gallery are available at: "Nuestro territorio", Pacífico Task Force, 2021, accessed December 16, 2021, https://pacificotaskforce.com/galeria/.

"Our territory"[8]

Health worker. Quibdó-Chocó. Credits: El Murcy- Jeison Riascos

Seller at her fruit and vegetable stand in the Buenaventura Gallery – Cauca Valley, 2020. Credits: Pacífico Task Force

Territorial coordinator of Pacífico Task Force conducting an interview with a worker at the Quibdó-Chocó gallery, 2020.
Credits: Pacífico Task Force

Delivery of products and hygiene and self-care kits to Jóvenes Creadores del Chocó, 2020.
Credits: Pacífico Task Force

Boat people transporting people and a load of bananas in Chocó
Credits: El Murcy- Jeison Riascos

A TIDE OF HOPE

Eliana Souza Silva

• *Redes da Maré's response to the pandemic in Rio de Janeiro* •

By Sara Batista

In years like 2020 and 2021, when the problems brought on by the Covid-19 pandemic were particularly severe in Brazil, Redes da Maré managed to minimize the impacts on the 16 *favelas* of the Maré Complex in the northern zone of Rio de Janeiro. Through its "Maré says NO to the Coronavirus" campaign, the institution guaranteed that 69,542 people had the minimum they needed for survival.

The loss of more than 600,000 lives in Brazil is the most tragic result of the combination between a virtually unknown disease and an inefficient and omissive government administration. Specialists believe however that in addition to the mourning of the dead, the country will feel the economic and social impacts of this crisis for many years. And the main reason for this is the deep inequality plaguing the country.

In Brazil, economic, gender, racial and territorial issues had major impacts on society. In this context, it became crucial to mobilize the necessary networks to protect the rights of the residents of the Maré. Faced with the inertia of the state, civil society and a few companies took the lead in the attempt to help the most vulnerable groups.

As early as March 2020, Redes da Maré began to seek inspiration in what was being done in Brazil and especially in other countries to help people who were unable to work to sustain themselves during the period of social isolation. Based on these references and with the necessary support, the organization created a campaign with six lines of action.

All the work done in the region was later recognized through the Social Entrepreneur Award from the Folha de S. Paulo and the Carolina Maria de Jesus Human Rights Award from the Human Rights Commission of the Legislative Assembly of the State of Rio de Janeiro (Alerj).

Eliana Sousa Silva, the director of Redes da Maré, attributes the campaign's success to the process of organization that already existed in the region: "It is my understanding that the success of the campaign's different fronts of action has to do with the way we were already working or taking action here at Redes da Maré. Our organization uses an approach where we really think of strategies that produce responses that structure the reality we live in".

1 • A group of *favelas* that is bigger than 96% of municipalities in Brazil

Organizing a social campaign in the 16 *favelas* of Maré is not an easy task, as more than 140,000 people live in the region. If Maré was a city, it would be larger than 96.4% of the 5,570 municipalities in Brazil.

To properly assist residents, Redes da Maré relied on information from the Maré census,[1] which the organization has been conducting since 2010 to produce knowledge on the population's way of life. Based on this data, the organization initially identified 6,000 households in situations of greater vulnerability which were to be given priority in the campaign. However, already in the first month, in April 2020, the demand for assistance exceeded this number. Over the course of the campaign, support was provided to 18,000 families.

Redes da Maré described the experience of taking action in a place with such unique dimensions in a report on the campaign it published in 2020:[2] "We have mixed feelings about having managed to mobilize a range of possibilities and partnerships at such a difficult time. On one hand, we recognize the importance of attending to the urgent needs of many families, but on the other, we observed something sad: the almost complete abandonment and the lack of social protection policies for a significant part of the Brazilian population".

2 • Six fronts against the virus

Only a week after the pandemic was declared, in March 2020, Redes da Maré met with the Oswaldo Cruz Foundation (Fiocruz) to understand the scenario at hand. "This was very decisive for the responses we gave. We wanted to respond in a way that was coherent with our history and with everything we had built until then", Silva explained in relation to the partnership with Fiocruz. This partnership involved things ranging from practical measures such as mass testing and vaccination[3] to studies in the field of health and on the effects of the vaccine produced by the Foundation. Within a six-day period, 37,000 people

over the age of 18 received the first dose of the vaccine and close to 20,000 vaccines were administered in the second dose vaccination round.

The organization's director summarizes this by saying, "The state's response [to the pandemic in the Maré] was delivered by Fiocruz. They began to give and create protocols for us so we could work on the streets as health agents".

However, when preparing the campaign, the organization realized that the problems affecting the families in the Maré went well beyond health issues. This is why the organization defined six lines of action: food and nutritional security; assistance to the population on the street; work and income generation; access to rights, health care and prevention; production and dissemination of information and safe content, and support for local artists, producers and cultural groups.

The response on the first front – food and nutritional security – consisted of delivering baskets filled with basic food, personal hygiene and cleaning items. Later, a new method was used: voucher cards containing credit that was the equivalent of the cost of each basket were distributed to give the families greater autonomy and to support local businesses. Between 2020 and 2021, baskets were distributed to 22,433 families.

Meals were distributed to the population on the street. Over 75,000 meals were handed out over the duration of the campaign by a team specialized in harm reduction, which provides support for persons with drug dependence, makes referrals and coordinates with other organizations and public institutions.[4] It is important to highlight that since these people are in even more vulnerable situations, they were tested weekly. None of them died.

In addition to receiving meals, the street population also engaged with the campaign by working on other fronts. For some of these people, this was a turning point in their lives because their involvement in the campaign made it possible for them to not only survive, but to organize themselves financially in order to get off the street.

On the work and income generation front, Redes da Maré mobilized 20 women with ties to Casa das Mulheres da Maré (Maré Women's House), another one of the organization's projects, who prepared the daily meals distributed to the population on the street. It also got 53 seamstresses involved in the production of around 300,000 masks, which were delivered to people's homes. Furthermore, 20 drivers worked to deliver food baskets and hygiene kits to families experiencing food insecurity.

In the absence of the state, the organization guaranteed that residents had access to online assistance every day to answer questions related to health, violations and doubts about how to enforce their rights.

The campaign collected personal protection equipment (PPE), such as masks and gloves, for the public health clinics in the region. "The Maré has seven family clinics, and they were

completely out of PPE", Silva reported. Masks and hand sanitizer were also distributed to the population. The organization also disinfected close to 900,000 streets, alleys and lanes in the 16 *favelas* of the Maré by applying specific products that make it difficult for the coronavirus to stick to things.

Also, in this fourth line of action, projects on testing, online medical assistance and safe home isolation were implemented. When someone tested positive for the virus, Redes da Maré took them an oximeter so that they could monitor their blood oxygen saturation levels and delivered two meals a day to them so that they could remain in isolation. This was done through the project called "Safe Isolation".[5]

In times of fake news and what became known as "infodemic" (the pandemic of misinformation), there was also a need to work on the production and dissemination of accurate information and content. Thus, the campaign disseminated content to inform residents of the situation in the *favelas* and peripheral areas in relation to the pandemic and to instruct them on how to protect themselves. The "Guia de Isolamento Domiciliar" (Guide to Home Isolation) and the "De Olho no Corona!" (Keeping an eye on Corona!) are worth highlighting here.

Finally, Redes da Maré worked to support the production of journalistic content on the pandemic and develop projects that aimed to give recognition to and strengthen local artists who were strongly affected, as the pandemic made it impossible for them to engage in their artistic activities.[6]

It was obvious from the start that there was a broad acceptance of the campaign due to the high level of participation of the residents. "Many people from the Maré got involved in the campaign. People who had never participated in any group and community activity began to come every day to be with us", Silva said.

3 • Beyond the campaign

As the difficulties caused by the Covid-19 pandemic continued, the campaign was extended to 2021. It also gave rise to two other projects: "Impact on Life" and "Health Connection".[7]

"Impact on Life" currently provides support to 300 families. The goal is to take various forms of action regularly to help families gain access to their rights. It provides basic food baskets, tablets and internet plans to school-aged youth, as well as psychosocial support.

The project also offers support to people who test positive for Covid-19 and are in home isolation, as well as legal and psychosocial assistance. The Impact on Life project aims to reach 2,000 families in 2022.

Another outcome of the "Maré says NO to the Coronavirus" is the "Health Connection" campaign. This partnership with six organizations, including Fiocruz, seeks to offer support for mass testing, telehealth services, home isolation and communications activities.

In addition to these projects, Redes da Maré used the knowledge it had acquired on the communities to work intensively to support mass vaccination in July in the group of *favelas.* The action was developed through a partnership between the Municipal Health Department with Fiocruz and Redes da Maré.

Obviously, in the context of a public calamity, the efforts of civil society institutions and their partners alone were not enough to completely shield the Maré from the horrors of the pandemic. To pay tribute to the lives lost, Redes da Maré put up a memorial. "This work is carried out with the families to redefine the significance of this pain, this suffering," Silva explains.

The 20 m^2 panel made of tiles bears the names of 72 victims and it is on display in the Bittencourt Sampaio Street in the Nova Holanda *favela*. At the time of the writing of this article, 388 residents of the Maré *favelas* have died from Covid-19. They will all be honoured on a larger panel that will be installed in the Fiocruz offices.

4 • A new Redes da Maré

As for Redes da Maré itself, the organization expanded its viewpoint and, as a result, the way it operates. Up until then, the NGO's work had been focused mainly on the most obvious violations in the *favelas* – the ones resulting from police operations. During this experience, Redes da Maré created new channels – including via WhatsApp – for receiving complaints, reports and questions about other problems the population in the region was experiencing.

However, the impacts of the campaign went well beyond this and, as Silva herself argues, the deepest changes may not be noticeable yet. The fact is that the residents were not the only ones affected. The organization as a whole, and its members individually, have been transformed by this experience. "There is the immediate impact of being able to truly make a difference, but I think that from an institutional point of view, we are still trying to understand just how much the pandemic has changed us, just how much it has forced us out of the place we were in – which was even a comfortable one at times – institutionally. We won't be the same after this experience", explained the director of Redes da Maré.

In the end, it is clear that all the work carried out over the course of the "Maré says NO to the Coronavirus" campaign was the direct result of knowledge accumulated over time and a long history, and the impacts it generated were much bigger than expected.

When asked about the personal impact of this work, Silva summarized it by saying, "I know we did a lot, but this was only possible thanks to this sensitivity, this care. It is as though I prepared my whole life to experience this".

• • •

This text was elaborated based on an interview granted by Eliana Sousa Silva (Director of Redes da Maré) to the Sur Journal team in November 2021, the report on the "Maré says NO to the Coronavirus" campaign and other materials produced by the Redes da Maré on its actions before and during the pandemic, which are available on the organization's webpage.[8] Original in Portuguese. Translated by Karen Lang.

NOTES

1 • "Censo Populacional da Maré", Redes da Maré, 2019, accessed December 14, 2021, https://www.redesdamare.org.br/media/downloads/arquivos/CensoMare_WEB_04MAI.pdf.

2 • "Campanha Maré Diz NÃO ao Coronavírus: Relatório de Atividades da Campanha 2020", Redes da Maré, 2020, accessed December 14, 2021, https://www.redesdamare.org.br/media/downloads/arquivos/RdM_Relatorio_campanha.pdf, p. 6.

3 • Vacina Maré, Homepage, 2021, accessed December 14, 2021, https://www.vacinamare.org.br.

4 • Redes da Maré, Maré diz não ao coronavírus : a jornada da Redes da *Maré por saúde e direitos em meio à pandemia*, Eliana Sousa Silva and Luna Arouca (eds.). 1st. ed. (Rio de Janeiro: Mórula, 2021), accessed December 14, 2021, https://www.redesdamare.org.br/media/downloads/arquivos/MareCoronavirus_livro-min.pdf.

5 • "Guia do Isolamento Domiciliar para Pessoas com Covid-19", Conexão Saúde, 2020, accessed December 14, 2021, https://www.redesdamare.org.br/media/downloads/arquivos/RdM_guia-isolamento-domiciliar.pdf.

6 • "Chamada pública: Novas formas de fazer arte, cultura e comunicação nas favelas", Redes da Maré, 2020, accessed December 14, 2021, https://www.redesdamare.org.br/br/info/56/novas-formas-de-fazer-arte-cultura-e-comunicacao-nas-favelas.

7 • "Guia do Isolamento Domiciliar para Pessoas com Covid-19", 2020.

8 • Redes da Maré, Homepage, 2021, accessed December 14, 2021, https://www.redesdamare.org.br.

Eliana Sousa Silva.
Photo by Douglas Lopes

VOICES OF WOMEN FROM THE *FAVELAS*

Angélica Ferrarez

• *Stories from everyday life during the Covid-19 pandemic in Rio de Janeiro* •

ABSTRACT

This essay intends to make readers listen to the voices of women from the Maré favela *complex located in Rio de Janeiro. We cross-referenced data from "Mapa social do corona", a bulletin produced by Observatório de Favelas with reports on the everyday life of the local population. Using the "quotation mark method", this study records testimonials in which the polyphony of voices reflects the challenges people in the* favelas *face due to the global crisis generated by Covid-19. Such reports derive from observations of women watching from their windows, women who went out to work every day, female shopkeepers in their small businesses and women who engaged in the fight against hunger by leading campaigns to distribute food baskets, among other actions and events that are considered marginal, but that speak volumes about the dynamics of resistance and existence of the* favelas.

"Pontes de tábuas" (Wooden plank bridges) – Museu da Maré archives

1 • Introduction

In a region of mangrove forests, swamps and memories of stilt houses (wooden houses raised on stilts over a body of water), the Maré *favela* emerged in 1940 in Rio de Janeiro and developed over the waters of Guanabara Bay. Nowadays, it is a group of 16 *favelas* in a completely urban and cosmopolitan area. The main arteries of the city – Linhas Amarela, Vermelha and Avenida Brasil – run through it. Although it appeared on the official map of Rio in 1947, its occupation began earlier, in 1940, in Morro do Timbau, followed by Baixa do Sapateiro (1947), Conjunto Marcílio Dias (1948), Parque Maré (1953), Parque Roquete Pinto (1955), Parque Rubens

Vaz (1951), Parque União (1961), Nova Holanda (1962), Praia de Ramos (1962), Conjunto Esperança (1982), Vila do João (1982), Vila do Pinheiro (1989), Conjunto Pinheiro (1989), Conjunto Bento Ribeiro Dantas or "Fogo Cruzado" (1992), Nova Maré (1996), and Salsa e Merengue (2000).

Gathering experiences from the Northeast of Brazil and Angola, rappers, samba, faith healers, the elderly, from pig raising to fishing, youth who are into funk and those who are into gospel, the fashion of funk dances in *favelas*, social movements that started even before public lighting existed, the presence of civil society institutions, art and education warehouses next door to drug-dealing spots, national and international interests, song lyrics and memories of photography and museums, the Maré *favela* still communicates with the bodies of water that converge until they flow into the sea. "The population there seems to have really learned from the tides,[1] observing their constant movement, their constant mutation. And the residents of Maré still preserve the wisdom of the unstable balance of the old sailors of the stilt houses".[2]

However, even with "the wisdom of the unstable balance", as mentioned by Drauzio Varella, the dribbling, the swing and the peculiar corporality that was born on the margins, driven by creativity, resistance and existence, how did the residents of the Maré respond to the global imbalance that the Covid-19 pandemic has caused and is still causing?

Here, we can highlight the fact that most black people from the *favelas* are exposed to a greater risk of infection due to the dynamics of their daily lives and work, as they are the workers of the so-called essential services (in areas such as public transportation, street cleaning, hospital services, and in positions such as housekeepers, doorkeepers, delivery people, car hailing app drivers etc.). To this one must add the conditions of the mass transportation system that connects Maré to their places of work and the inequalities in access to health. Medical equipment is not evenly distributed throughout the city and is especially lacking in low-income neighbourhoods. This creates barriers to both the residents' first visit to a basic health clinic and possibility of receiving intensive care in equipped beds.

As the question guiding this essay is complex and encompasses multiple factors, the purpose of this study is to work with the "quotation mark method" – that is, to portray a social field through stories told in the first person. In this method, individual narratives are understood as being interconnected in an extensive network that contemplates a collective body.

Therefore, women's voices – primarily those of black women – will be the source of our analysis, as these women appeared at the bottom of social inequality maps and indicators in Brazil before and during the pandemic.[3] Nonetheless, even when faced with the genocidal policy implemented by the State at its different levels of government, they are the ones who organize acts of resistance capable of transforming chaotic scenarios into breaths of creativity and foster collective actions of community-based solidarity.

2 • Black women's resistance in the *favelas*

The biweekly "Mapa social do corona" bulletins indicate that women from low-income classes and *favelas* are among the main groups directly and indirectly affected by the Covid-19 pandemic. This was "not only due to the infection and lethality of the disease itself, but also to the worsening of gender oppression in households, expressed by the increase in the number of aggressions women have suffered at home."[4]

The aggravation of inequalities that affect women in this context has impacted public defenders' work to provide legal assistance to the female population during the pandemic, the organization of actions/events and collectives focused on women's safety, the pressure for public policies to protect women and a series of actions specifically aimed at this issue.

In spite of all the attention from civil society, during a visit to a police station for research purposes, a police officer told me: "This Maria da Penha Act is very popular now". This phrase exposes the violent mismatch between sectors that should be engaged in the safety and well-being of women.

This essay walks along the streets and alleys and opens itself up to the dimension of everyday life during the pandemic, which is expressed in the daily practices of the women from the *favela*, the new ways of socializing, the relationship with the streets and the sense of community. Chronicler and intellectual João do Rio believes that there is an "enchanting soul of the streets".[5] Our goal is thus to reflect, through the stories told by the voices of women from *favelas*, ways of re-enchanting these streets in such difficult times. And before this (re)enchantment is interpreted as something ludic and ephemeral, it should be noted that its roots maintain a concrete, poetic relationship with elements of survival in different spheres of existence, from work to resistance.

> Dona Nalva: *The pandemic was a problem for a lot of people who weren't used to living in a state of crisis. Sure, a lot of new things and challenges appeared, but people from the* favelas *already have experience in living with difficulties and having to get by.*
>
> Q: *And how did you get by?*
>
> Dona Nalva: *How did I get by? (laughs) I did what I always do. Doing my odd jobs, with help from neighbours, my retirement pension. The neighbour's daughter has just helped me use these things on the internet so I could register. There are a lot of difficult things they make old people do [...].*
>
> Q: *Online.*

> Dona Nalva: *That's right. And who isn't online? See how good the knowledge of young people is? I value their knowledge. They're the ones who sometimes don't value ours.*

Dona Nalva's account brings to mind an interesting image of the usual resistance of people from the *favela*, as well as their capacity to create internal forms of solidarity to deal with the challenges of the so-called "new normal", especially those related to the digital world. As bell hooks points out,[6] we can see from the images, which are complex spaces of both repression and resistance, that civil society's forms of struggle and organizing have been more effective than the inefficient and vexatious actions of the government in the context of a global health crisis.

3 • Strategies and pathways to community survival

It is very interesting to note how despite structural inequalities and limited access to public affairs, people who live in *favelas*, especially the women, build alternatives for survival that culminate in actions that contribute to women's emancipation, leadership and autonomy:

> Alessandra: *We did all sorts of things. Because this thing about social distancing didn't work for us. My boss said I didn't have to go to work, but I needed to pay the bills and a lot of people started ordering my packed lunches, which I used to make on weekends. Then my niece came here, and we strongly invested in it.*

While on the one hand, we can observe processes of subordination and the consolidation of stigmatizing representations of the lower social classes, which are mainly composed of black women living in *favelas*, on the other hand, we see power being produced. This power is visible because it organizes everyday actions that affect the entire black community of the *favelas*.

The fact that Alessandra and her family work in the food industry confirms what data obtained by "Mapa" indicate: 80.7% of the actions are centred on food security. The high percentage of actions on food security reveals that it is vital for the maintenance of fundamental rights. Actions targeting cleaning and personal hygiene come in second place. They include the donation and distribution of items such as soap and hand sanitizers and, in some cases, access to safe water for cleaning and disinfecting public spaces. Solidarity actions that focus on cleaning and personal hygiene items, exclusively or combined with other actions, amount to 62.9% of the total.[7]

Graph 1 – Types of solidarity actions in the city of Rio de Janeiro
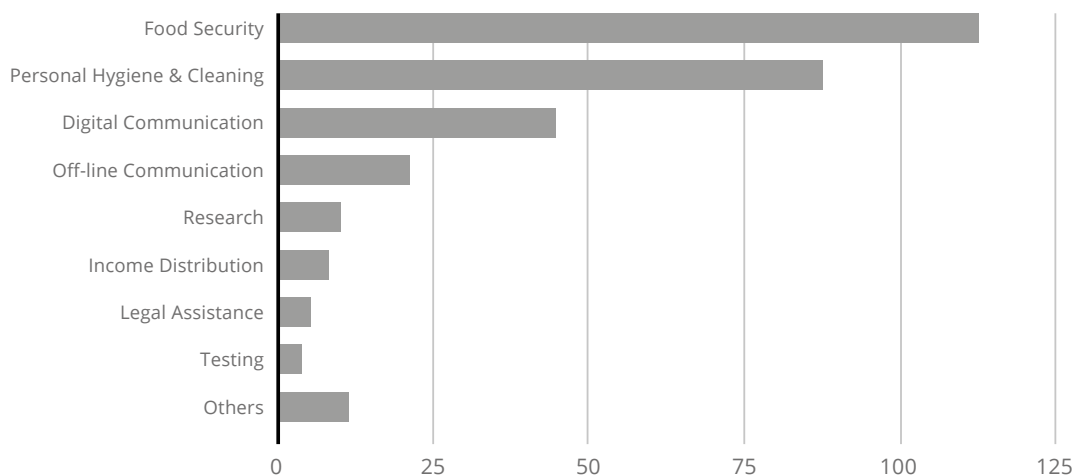
Graph extracted from "Mapa social do corona" - Bulletin No. 11

> Denise: *Favela streets were even busier. Many people on the streets helping other people, distributing food baskets. Many people sitting in front of their homes talking more and chatting more on social media. Even those who lived close to one another and were already in touch seem to have gotten closer.*

It is interesting to reflect on the communication networks in *favelas*, such as community radio and loudspeaker services. Leci Brandão[8] sings about them in one of her songs while portraying the character of Zé do Caroço, a community leader from a *favela* that used local means of communication as a tool for political emancipation. All this work on communications that was already being done in Maré by the local initiatives of either NGOs or residents associations intensified during the pandemic. This communication movement now has greater visibility, mainly due to the commitment of the youth, their inventiveness and their ability to transcend the so-called official media.

Talking about official communication channels during the pandemic is a challenge that involves the spheres of government due to a perverse strategy of omission, discontinuity of data and fake news on the pandemic observed in Brazil. The backdrop of this strategy was the dissemination of misinformation linked to a wave of scientific denialism. Therefore, solidarity actions aimed at communication were more committed to raising awareness and delivering consistent information to the population to counter the misinformation spread mainly by the government itself. The major confusion and inconsistencies in the information provided by the mass media led the residents of the Maré to produce their own

communication channels. While in the field, we observed an increase in the dissemination of local newsletters prepared by civil society organizations, such as the bulletin that serves as the basis for this essay, as well as online newsletters such as "Maré de Notícias". Residents also mentioned the community radio station and affirmed they paid more attention to it during the pandemic. We also noticed, especially among the youth, a desire to participate in the production of content for mass media. The number of communication collectives in the *favelas* of the city of Rio de Janeiro has grown. One interesting fact was the increase in the production of podcasts and the number of people listening to them.

The analysis of age groups and ethnic-racial composition indicates that more young and black people are playing a leading role in the diverse strategies for combating Covid-19 deployed by civil society. Most people involved in the universe researched in "Mapa social do corona" were in the age group of 30 to 39 years, followed by the group of 20 to 29 years. These two groups correspond to 44% and 24%, respectively. A crucial fact that caught our eye is the ethnic composition of the actors and agents involved. Most are black people, who make up 62% of the people surveyed. Such proportions reveal the central characteristic of grassroot actions and initiatives in the periphery and unequivocally reveal the ethnic profile of low-income territories in the city of Rio de Janeiro.

In contrast, white people participate in 37% of the actions, and indigenous people in only 1% of the total. It is essential to take into consideration that the black population suffers the most from limitations on access to health services and other rights in the urban context and therefore, they are also the most affected by the lethality of Covid-19 in Brazil, as data recently collected by the Oswaldo Cruz Foundation (Fiocruz) and other research institutions demonstrate.

Graph 2 – Ethnic-racial profile of the people that developed actions to combat the pandemic
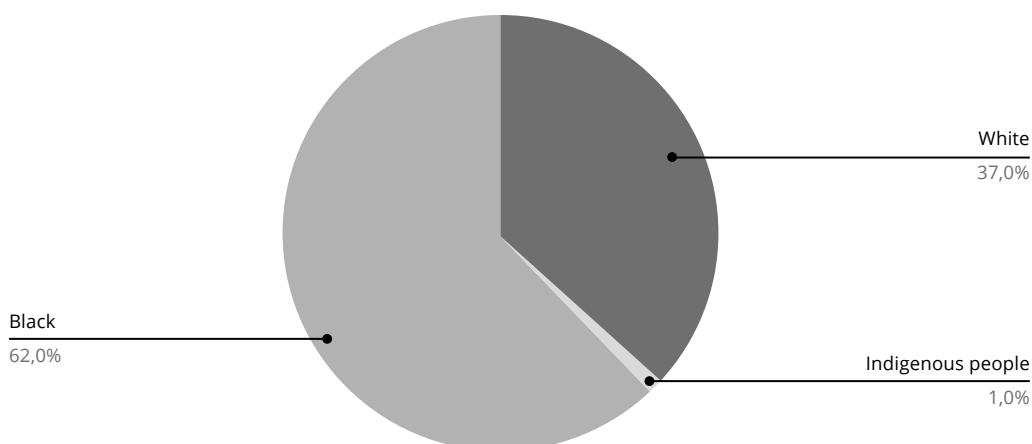
Graph extracted from "Mapa social do corona" - Bulletin No. 10

Another important fact that intersects with our sample is the gender of the interviewees. According to "Mapa", women represent 57% and men, 43%. The strength of women's initiatives is also proving to be an important local feature in Maré. The community vision that female leaders have forged throughout the historical process is also currently being felt in the *favela* territory. One only has to note that in the field work we carried out in the Maré, all our informants were women.

As we have already mentioned, women from low-income spaces and *favelas* are the main groups directly and indirectly affected by the surge of coronavirus due to not only the infectiousness and the deadliness of Covid-19, but also the worsening of gender oppression in households, as seen in the increase in physical and symbolic abuse that women face at home. With regards to this, the number of cases of public defenders providing legal assistance to women is growing significantly, as is the number of collectives working specifically in this area.

Also, according to "Mapa" bulletins, there are a few actions focused on LGBTQI+ people (2.9%), which are powerful initiatives developed by the leaders themselves and that have impacted public policies in the Maré. Other examples of actions and events aimed at the transgender population are Casa Nem, a facility located in the Lapa district, and actions led by Conexão G group, whose primary focus is to assist the LGBTQI+ population living in *favelas* and on the outskirts of the city. There are also a few actions geared toward indigenous peoples living in the territory of Rio de Janeiro (1.4%) or school communities (1.4%).

> Márcia: *We know the colour of the people who have died the most because of this pandemic. The mainstream media doesn't show the numbers, but people who are here observing know about the difficulty in using health services, they know who has money to isolate themselves and if they need health services or medicines, they'll be able to [buy them]. Here, we worry about surviving and having food to eat. Imagine a family with no money for bread having to buy medicine. People from the* favela *help each other, and share not only the little they have, but also the anguish, which is what they have the most of.*

It should be emphasized that the people interviewed for this essay are local residents, and not necessarily leaders or people involved in organizations in the Maré. We also interviewed a few people involved in the political debate, such as the activist who preferred to identify herself as Márcia (a pseudonym). Acting on the causes of the homeless population, she brings to the debate images and keywords such as medicines, health care, deaths and racial debate.

Barbara, a granddaughter of Dona Idalina, who is now deceased, told us about the famous *garrafadas*[9] that her grandmother used to make to strengthen the immune system:

> *Many people used to knock on our door. Everybody wanted to boost their immunity, wanted a cure. My grandmother would say, 'It doesn't cure you. It helps you stay strong'. But people had a lot of faith because my grandmother made it.*

The belief in healing is profoundly related to another fact in Dona Idalina's life and to many other wise old women in that territory: she was a griot[10] from Maré, a lady who maintained a know-how based on a respectful and horizontal relationship with nature and who updated her knowledge through her commitment to transmit an immaterial heritage. Hence, the use of herbs, the wisdom of the prayers and the production of a world of enchantment.

The presence of the wise old women is a hallmark of Maré. The appropriation of the term that designates the vocation of the old storytellers from part of West Africa is not by chance. There is a desire to provoke the "ideas to postpone the end of the world", which Ailton Krenak talks so much about,[11] through the way of life of the wise old women of the *terreiros*,[12] *quilombola*[12] women and the women from villages and *favelas* and the way they relate to the world. These women constantly remind us of what we must not forget; women who inspire healing.

4 • Conclusion

The way small acts of daily resistance are woven within *favelas* shows the fundamental role of women in everyday life in contexts marked by inequalities and a history of state negligence, as is the case of many *favelas* in Rio de Janeiro. Through the voices of a few women who live in Maré, this text drew a small portrait of the survival experiences that were created and invented in the community in the context of the pandemic.

In a world decelerated by the Covid-19 pandemic and faced with a global crisis, there is a need to seek breathing spaces and places for (re)enchantment. I suspect that one of the keys to create such (re)enchantment lies in the hands of women, mainly the wise old women. For this reason and for the great legacy they have bequeathed us, I dedicate this article to the griots I have never met again in the field in Maré: Durvalina and Vitória. They are entangled in the affection of Tereza, Thais, Eliana and Angelica, women who have turned their existence into an eternal quest to write the names of these griots in history.

NOTES

1 · Translation note: *Maré* means "tide" in Portuguese.

2 · Drauzio Varella, *Maré: vida na favela* (Rio de Janeiro: Casa da Palavra, 2002).

3 · See "Mapa social do corona", Observatório de Favelas da Maré (OF), Fundação Heinrich Böll Brasil, 2020, accessed December 15, 2021, https://br.boell.org/pt-br/2020/10/27/mapa-social-do-corona. Produced by the urban policies department of Observatório de Favelas da Maré (OF), with the support of Heinrich Böll Foundation in Brazil, "Mapa" is a biweekly publication that seeks to measure the unequal impacts of the pandemic in the city of Rio de Janeiro and identify an agenda of emergencies and significant practices for dealing with the current health crisis in order to influence the public debate and public policies in the city.

4 · "Mapa Social…", no. 11, p. 18.

5 · João do Rio, *A alma encantadora das ruas* (Rio de Janeiro: Cidade Viva, 2010).

6 · bell hooks, *Yearning. Race, Gender and Cultural Politics* (Boston: South End Press, 1990).

7 · "Mapa social…", no. 11, p. 10.

8 · Singer and composer of samba music, activist strongly focussed on the conditions of black women and the *favela* population in Brazil and currently in her third term as state deputy for the state of São Paulo.

9 · Translation note: *garrafadas* are bottles of medicine made from herbal infusions.

10 · Term coined by a French colonizer to designate old storytellers, memorialists and genealogists who work to preserve the memory of their people in most of West Africa. Djibril Tamsir Niane, *Sundjata ou a Epopéia Mandinga*, translator: Oswaldo Boato (São Paulo: Ática, 1982); Isaac Bernat, Encontros com o griot Sotigui Kouyaté, 1st ed. (Rio de Janeiro: Pallas, 2013).

11 · Ailton Krenak, *Ideias para adiar o fim do mundo* (Rio de Janeiro: Companhia das Letras, 2019).

12 · Translation note: *terreiros* are places of worship of Afro-Brazilian religions.

13 · Translation note: Afro-Brazilian residents of a *quilombo*, a type of settlement first established by escaped slaves in Brazil.

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Human rights in the context of the pandemic:
Impacts and responses

ART

- photography -
CROSS IN YELLOW:
BRIEF REFLECTION ON ITS SYMBOLISM DURING THE PANDEMIC
zarra

CROSS IN YELLOW

Brief reflection on its symbolism during the pandemic

In Brazil, and the numerous variations of this country, the colonialist plan entrenched in slavery continues on its systemic course, as revealed in the relations between racialized peoples – mainly black and indigenous people – and white people. One of the tragic symbols marking the beginning of the pandemic triggered by the SARS-CoV-2 virus was the death of a domestic worker who lived in the periphery of Rio de Janeiro and who caught the virus in the apartment where she worked in the Alto Leblon neighbourhood from her boss who had recently travelled to Italy.[1] This emblematic case exposes the vulnerability of the population of the periphery who have been expelled from the centre of the city and neglected by public authorities in this process of historical abandonment and intensification of the notion of subject/subject, subject/object.[2]

About the photo exhibit

The "X" on the sidewalk determined the distance between people in the lineups outside a primary healthcare unit in Porto Alegre, Rio Grande do Sul. However, this mark brings to mind the image of a string of yellow crosses as a reminder of the brutal number of deaths of racialized black and indigenous people caused by the pandemic. This pattern is repeated endlessly, and this repetition is grueling. This series of five photo collages seeks to stimulate reflection on this while tying the symbol of the cross to the successive images of burials and memorial ceremonies held by the thousands of families of COVID-19 victims in the country.

NOTES

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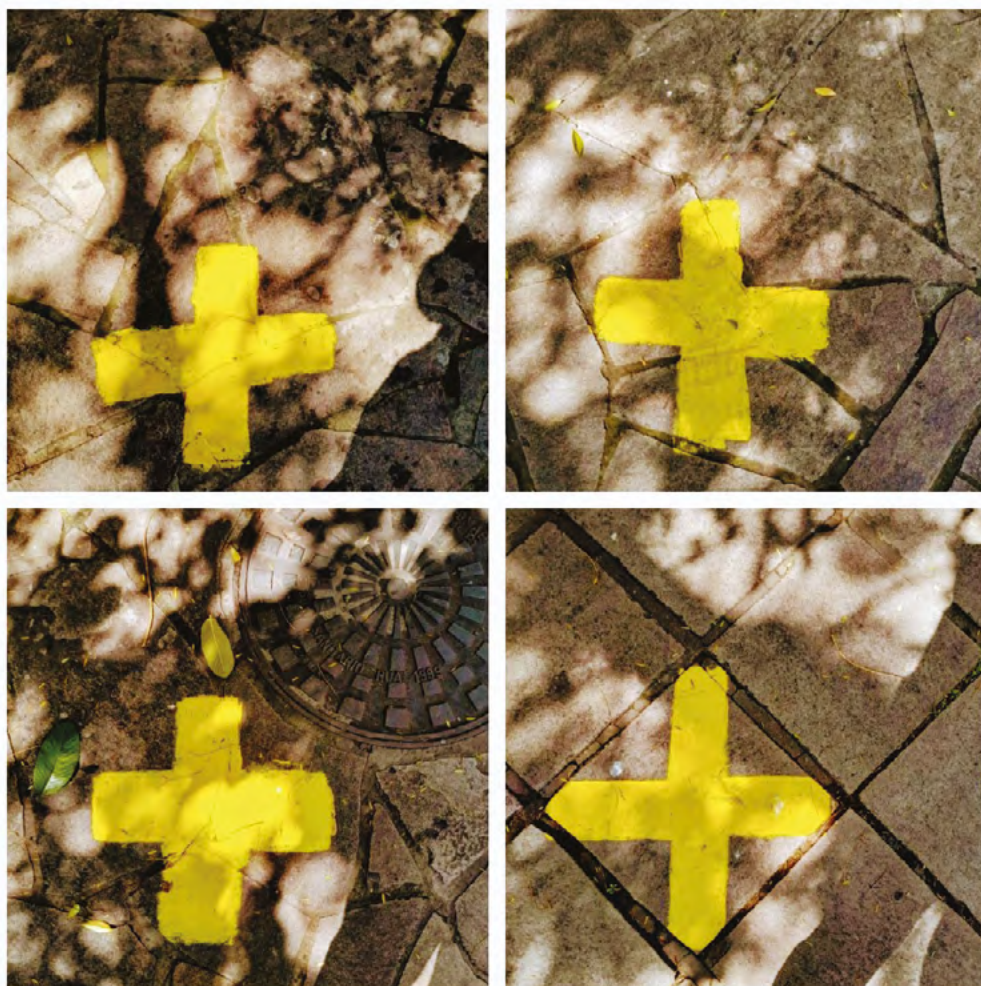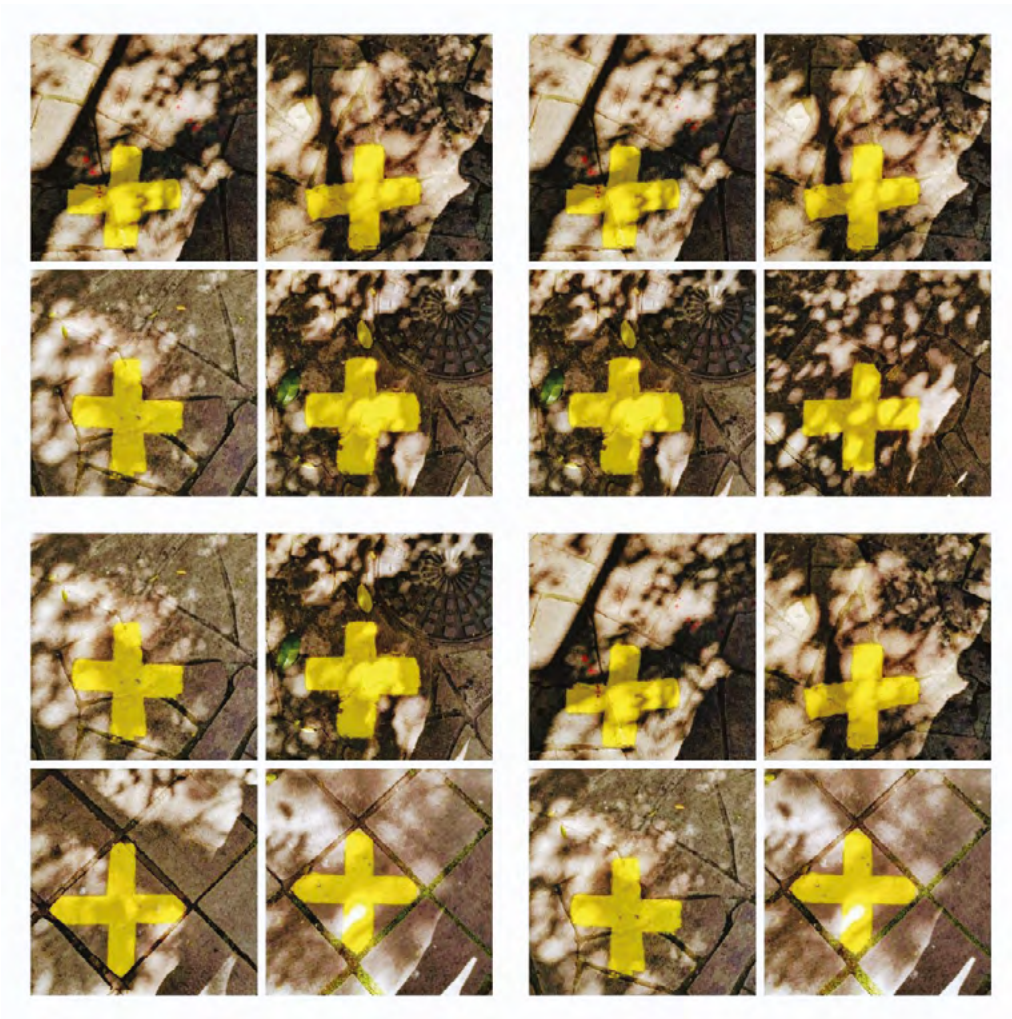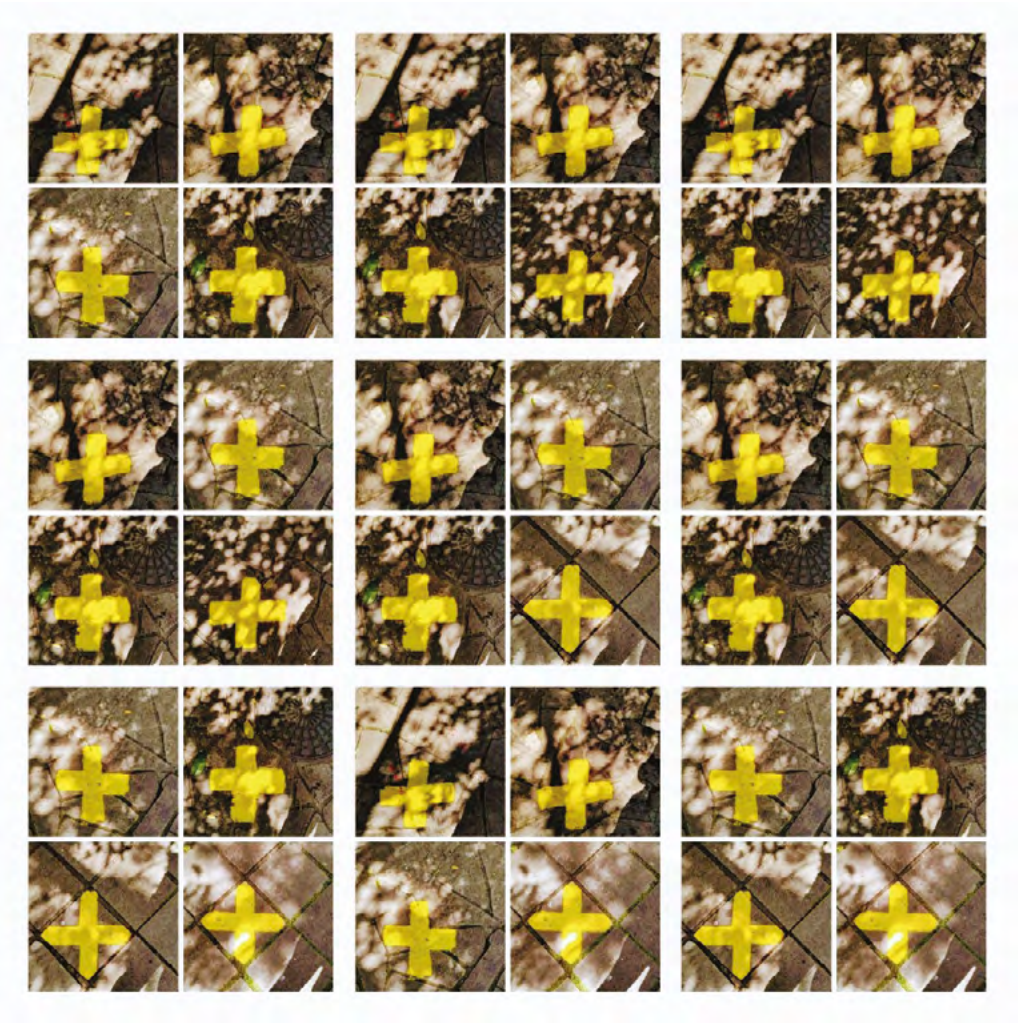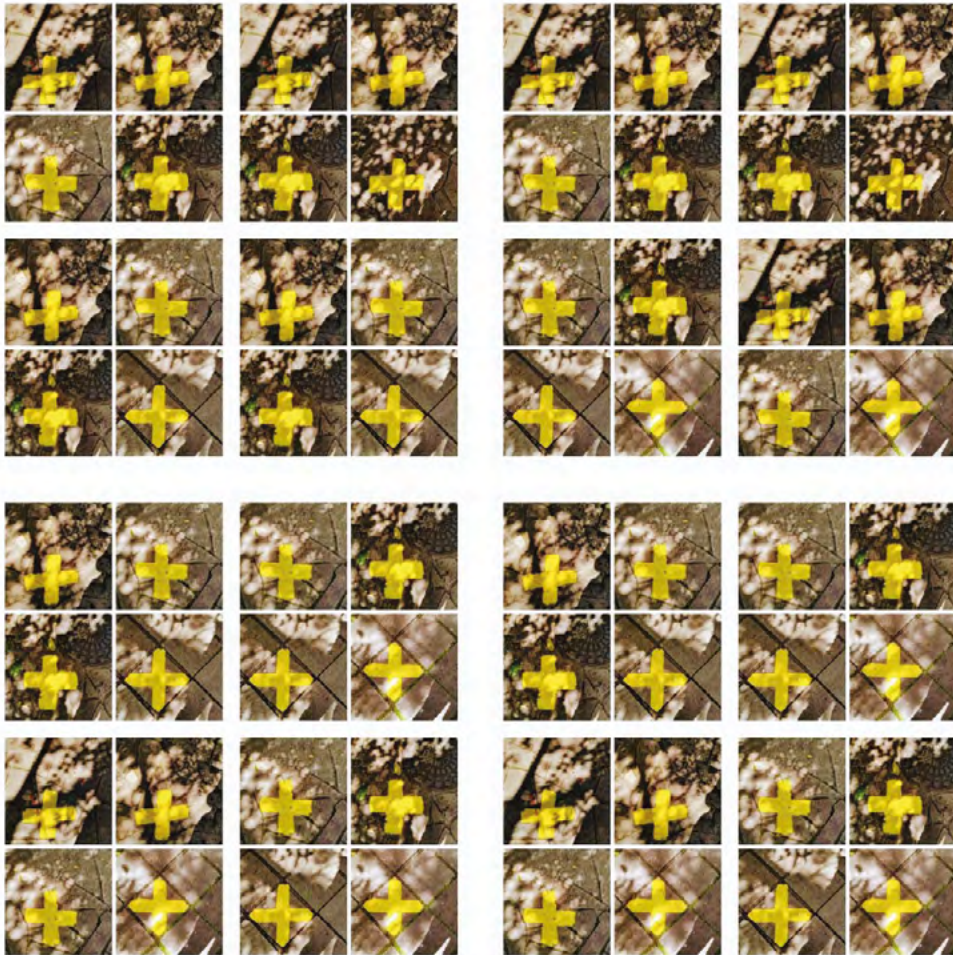
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Human rights in the context of the pandemic:
Impacts and responses

THE GEOPOLITICS
OF THE VACCINES

INTELLECTUAL PROPERTY AND GLOBAL INEQUALITY IN THE COVID-19 PANDEMIC

**Alan Rossi Silva, Clara Alves Silva,
Felipe de Carvalho Borges da Fonseca, Pedro Villardi
and Susana Rodrigues Cavalcanti van der Ploeg**

• *The struggle for the right to health in times of emergency* •

ABSTRACT

The Covid-19 pandemic has increased the inequality of rights around the world. The intellectual property system contributes to this asymmetry by limiting access to vaccines and other health technologies to only a few producers. This article addresses the impacts of this system, presents and analyses alternatives for broadening the supply of these health goods – such as compulsory licensing – and demonstrates the importance of defending the TRIPS Waiver mechanism in the fight against the coronavirus.

1 • Introduction

The Covid-19 pandemic has had unprecedented impacts on the world and generated a crisis situation with political, economic and social implications.[1] While the current health emergency is global, it affects each region and population of the planet differently, as it exacerbates pre-existing inequalities. Therefore, for those who already faced substantial social contradictions, the pandemic posed an even greater threat to basic human rights, namely the right to life, as nearly 4 million lives have been lost to the coronavirus.

To make the health and social crisis worse, the response to the pandemic has come up against obstacles that contribute to and accentuate this asymmetry. As anticipated, the intellectual property system acts as a major hindrance to efforts to control Covid-19, as it grants monopolies to transnational pharmaceutical corporations and restricts the distribution of affordable generic products. Once again, trade rules have condemned millions of people to death.[2] While the deleterious effects of intellectual property can be felt in all countries, its most perverse expression has been experienced in countries of the Global South, thus reflecting their situation of vulnerability.

The rights to life, health and access to the tools necessary to respond to the health crisis are constantly being violated. Many countries, especially those on the African continent, are still having major difficulties in accessing the health technologies used to fight the coronavirus. The hope of immunizing the entire world population is but a distant dream, which is expected to be achieved in 2024 at the earliest.[3]

To reverse this situation, numerous initiatives have emerged all around the world. Internationally, mobilizations at the World Trade Organization (WTO) for the temporary suspension of certain intellectual property rights related to the fight against Covid-19 – known as the TRIPS Waiver[4] – have been gaining ground. In this article, we present the impacts of the intellectual property system on impoverished countries, which generates global disparities in access to immunization and other health technologies used to combat Covid-19 and the importance of defending initiatives such as the TRIPS Waiver to guarantee rights during the pandemic.[5]

2 • The intellectual property system and inequality of access to health technologies to fight Covid-19

In 1994, the WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) standardized the rules on intellectual property rights at the international level. Since then, all WTO member states have committed to adopt the same minimum standards on intellectual property rights. The new provisions establish, for instance, that countries must recognize patents in all technological fields, including ones for essential live-saving goods.

In the area of health, the pharmaceutical industry has a history of charging exorbitant prices, thanks to the monopoly that the intellectual property system grants them, under the pretence of the need to guarantee an economic return on their investment. In the context of the current Covid-19 pandemic, when there is unprecedented demand for health technologies, exclusive rights limit the maximization of supply, which generates inequalities in access to these goods all over the world.[6] In other words, the monopoly established by intellectual property makes it impossible to achieve mass treatment or immunization goals because it creates a shortage of vaccines and medicines and price barriers. As a result, these goods become a luxury that only the richest countries can afford.

As if the policy incoherence between intellectual property and public health goals was not enough, the intellectual property regime looms as a general threat to human rights. Data from the *Our World in Data*[7] project of the University of Oxford indicates that 31.4% of the world population received at least one vaccine dose and 23.6% has been completely vaccinated. However, in the case of poor countries, a mere 1.3% of the population has received at least one dose of the vaccine. Such a large gap favours the emergence of new variants and makes a faster and fairer recovery from the socioeconomic impacts of the pandemic impossible.

The *Launch and Scale Speedometer* research project of the Global Health Innovation Center at Duke University has been monitoring the distribution of vaccines around the world on a weekly basis since November 2020. Systematized data show that high income countries, such as the United States or the United Kingdom, purchased their vaccines in May 2020 even before the vaccines had been developed and far in excess of their population.[8]

Low-income countries made their first purchases in January 2021 through a joint effort led by the African Union. However, countries from Latin America, Africa and Asia still have not been able to buy vaccines for their entire population. Although demand for Covid-19 vaccines far outstrips supply, 17.6 billion doses are currently being held for countries of the Global North.[9] To satisfy the global demand for vaccines, production must increase on a scale never seen before. The monopoly granted to some laboratories, however, constitutes a major barrier to the production and distribution of these products.

In intellectual property regulations, the definition of priorities is subjected to the logic of the market and the privatization of knowledge, which systematically excludes millions of people from access to essential health goods. The Covid-19 pandemic adds to a wealth of evidence from past experiences which illustrates that the very functioning of the intellectual property system is contrary to global public health interest because it restricts universal access to immunization and treatment and prolongs the duration of the crisis and its inherent risks.

In this context, alternatives must be developed to overcome the obstacles that intellectual property rights have created in order to guarantee the right to health in all countries. With this goal in mind, civil society groups, persons affected by various illnesses, and health and human

rights activists are working in networks to advocate for the use of compulsory licences. Since the beginning of the pandemic, this mobilization – which is the result of a long history of political struggle known as "the global movement for access to medicines" – has gone further and defended the adoption of the TRIPS Waiver as a solution for reversing this situation.

3 • Public health safeguards: compulsory licencing, its limits and its potential

Compulsory licencing (CL) of patents, which is provided for by law, refers to the use of the object of the patent by a government or a third party authorized by the government without the consent of the patent holder. In practice, this allows governments to purchase generic or biosimilar versions of health technologies for which its only option prior to the CL was to buy brand name versions. The measure aims to reduce the negative impacts of intellectual property rules, especially in the area of health, because of the high prices of these goods.[10] The monopoly granted to the patent holder must not override the right to health and life and compulsory licensing can ensure the sustainability of important public policies.

Article 31 of the TRIPS agreement sets out the procedural conditions for the use of compulsory licences. It stipulates that such use should be considered on its individual merit and authorized predominantly for the supply of the domestic market of the government that authorized them. The agreement also establishes that this mechanism is temporary, and the licence will be terminated when the circumstances that justified it cease to exist. It highlights that the patent holder shall be remunerated and that any decision regarding this remuneration may be reviewed. Similarly, the TRIPS agreement states that the legal validity of the licence shall be subject to judicial review or appeal at the WTO.[11]

Even though the compulsory licensing of patents is an important public health safeguard and a fundamental element for guaranteeing access to health technologies around the world, it is rarely used.[12] The limited use of compulsory licensing is primarily due to the pharmaceutical industry's lobbying against them – a practice that is totally reprehensible given that the mechanism is entirely legitimate and fully regulated.

Moreover, the Covid-19 pandemic brought to light the limits of this mechanism for dealing with needs that arise in times of emergency. In the end, when facing a major health crisis, the last thing the world needs is obstacles that make it even more difficult to access technologies capable of mitigating the problem or even overcoming it definitively.

The emblematic case involving the Government of Bolivia, Biolyse (a small pharmaceutical company from Canada) and the Johnson & Johnson (J&J) transnational corporation, which produces its own vaccine against Covid-19, illustrates the problems of using compulsory licences in the context of a pandemic. In view of the shortage of vaccines, the World Health Organisation (WHO) asked the corporations to sign agreements with companies willing to

use their own facilities to produce vaccines to increase manufacturing capacity and close the immunization gap between rich and poor countries.[13]

Biolyse, which manufactures sterile injectable drugs, contacted several vaccine producers, including J&J, to offer its help in meeting global demand, saying that it wanted to be part of the solution to the vaccine shortage in poor countries. However, the transnational corporation declined its offer. It stated that the production of vaccines involves highly complex manufacturing processes, and it was working to expand production.[14]

After all attempts to negotiate had failed, Biolyse asked the Canadian government to issue a compulsory licence for the export of a generic version of the J&J vaccine. The Canadian pharmaceutical company also signed an agreement with the Bolivian government, which included the option of purchasing up to 15 million doses of the generic vaccine to be produced in the future if the Canadian government were to grant the compulsory licences it had requested.[15]

The procedure for compulsory licensing is, however, slow and bureaucratic. Furthermore, it is restricted to patents and does not include the transfer of the technology needed to produce the vaccine. Thus, even if the licence were granted, Biolyse would have difficulty in starting production, which would be faster with the collaboration of J&J.

This case illustrates how the monopoly on vaccines granted by intellectual property rights acts as a barrier to access to technologies to fight Covid-19. It also reveals the limits of compulsory licensing in ensuring the increase in the production and distribution of the vaccines.

4 • The defence of the TRIPS Waiver as a solution to inequality of access to health technologies

In the international sphere, various proposals on how to deal with the global health crisis have emerged. Among them is the TRIPS Waiver which was originally proposed by India and South Africa in October 2020. This tool seeks to overcome the limits of compulsory licensing and it recognizes intellectual property rights more broadly as an obstacle to the right to life and the right to health for billions of people.[16]

The TRIPS Waiver proposal gives WTO member states the option of choosing not to apply, implement or enforce compliance with protections for patents, trade secrets, industrial design, copyrights and the other intellectual property rights related to medicines, vaccines, diagnostics and other health technologies used to combat Covid-19 temporarily.[17] Countries that adopt the TRIPS Waiver would be exempted from being sued or receiving sanctions for not fully implementing the TRIPS agreement in a pandemic. With this measure in place, intellectual property would cease to be a barrier and countries would be allowed to export, import or produce certain technologies without having to go through the cumbersome,

time-consuming procedures related to compulsory licensing.[18] These include negotiations with patent holders prior to the issuance of compulsory licences, restrictions on the transfer of health technologies, undue restrictions on transnational trade and the obligation to pay royalties to the holder of the suspended intellectual property right.

The TRIPS Waiver is an additional measure designed to allow countries to suspend the enforcement of certain intellectual property rights during the Covid-19 pandemic, making it possible to produce and supply essential products uninterruptedly until global immunity was reached. If the proposal were adopted as it stands now, the TRIPS Waiver would allow vaccines, diagnostic kits and therapeutic technologies to be manufactured and distributed freely, without the fatal constraints created by intellectual property rights.[19]

India and South Africa's first communication to the TRIPS Council in October 2020 called on WTO members to work together to ensure that intellectual property rights do not create barriers to the timely access to health and essential measures to combat Covid-19.[20] The document also stressed that the pandemic affects developing countries disproportionately in comparison to developed countries. It highlights that an effective response to the pandemic requires global and multilateral action to guarantee rapid access to affordable medical products. Furthermore, it urges countries to act in solidarity to ensure that technologies are shared without impediments and that enough affordable vaccines are available to meet global demand.[21]

The document also drew attention to the fact that product shortages and inequalities in distribution have led to deaths that could have been avoided and they are threatening to prolong the pandemic indefinitely. In fact, in relation to the economic aspect in particular, it also pointed out that the longer the global health crisis lasts, the greater the socioeconomic fallout will be.[22]

In May 2021, the text was revised and once again submitted to the TRIPS Council. This time, India and South Africa were joined by another 60 WTO members from the Global South, such as Kenya, Mozambique, Pakistan, Bolivia, Venezuela, Zimbabwe, Egypt, Maldives, Fiji and Namibia. The new text stressed the urgent need for global access and the diversification of the production and supply of vaccines due to the constant mutation and new variants of SARS-CoV-2.[23]

The current proposal is unprecedented in scope and strengthens the recognition of the fact that intellectual property restricts access to health goods, and solutions based on the voluntary actions of corporations are not enough. Up until last year, the recognition of intellectual property as part of the problem was only present in the discourse of developing countries, whereas developed countries strongly opposed the proposal with the support of a few developing countries such as Brazil, Chile, Colombia and Ecuador.

However, in April 2020, the US government began to show signs of a change in its stance. This culminated in an announcement by President Joe Biden on May 5, 2021,

that the country was going to support the TRIPS Waiver negotiations, as "extraordinary circumstances call for extraordinary measures".[24]

Following this announcement, other countries also declared their support for the negotiations, including Brazil, which was under pressure from national civil society to change the Ministry of Foreign Affairs' position.[25] The proposal is currently backed by more than 100 countries and negotiations on its text are underway; the European bloc is its main opponent. The fact that this debate has been taken up at the WTO, with a broad support base, and that the proposal has gone from the debate to the negotiating phase means that this is a historic moment for the social movements who have been mobilizing for decades to ensure that public health interests are put before commercial interests.

The risk of the negotiations foundering, the outcome being below expectations or countries taking too long to come to an agreement is still very real. However, it is important to note that the political importance given to the TRIPS Waiver comes from the fact that it originated in a global grassroots mobilization process that involves social movements from not only the health sector, but several other fields, as well as intellectual property experts, former heads of state, celebrities, religious authorities, scientific authorities, health professionals and the general population, who have expressed their support through petitions, letters and protests.[26]

5 • Conclusion

Throughout history, in the context of geopolitical relations, rich countries have imposed their will in relation to trade and neglected the realization of human rights all over the world. By doing so, they have contributed to the vulnerability of entire populations, especially in the Global South. The struggle for access to health technologies has occupied a central place in tensions between countries from the South and the Global North.

It is becoming increasingly clear that the intensification of the social contradictions exposed by the health crisis originates in the current model of capitalist accumulation, which concentrates income, power and technology in the hands of a few and exploits bodies and labour in the periphery. The intellectual property system is part of this dynamic, as it enables large pharmaceutical corporations to generate profit at the expense of lives thanks to the monopolies it creates. It is by no means a coincidence that we are witnessing the rise of nine new vaccine billionaires.[27]

The Covid-19 pandemic exposes how the current system puts profit before lives and demonstrates that the solutions adopted by countries of the Global North – concentrating vaccines in their territories and defending the intellectual property of transnational pharmaceutical corporations – increase inequality and stop the world from putting an end to a virus that does not respect borders.

The TRIPS Waiver and the push for compulsory licences can correct distortions and promote rights in the short term. Both these processes should be on the political agenda of all social movements committed to social justice and a human rights-based approach to the fight against the pandemic. This level of awareness has much to contribute to achieving deeper systemic change, regardless of whether this proposal is approved at the WTO.

It is perhaps safe to say that the political process triggered by the TRIPS Waiver proposal is the biggest challenge to the current intellectual property regime since its creation in the 1990s. However, to envisage promising paths that will decisively contest the current economic model and its most perverse outcomes, we will have to be much bolder and capable of imagining a world without pharmaceutical monopolies.

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"CAPITALISM AND THE SYSTEM OF PATENT MONOPOLIES WERE THE BIGGEST CHALLENGE TO THE TRIPS WAIVER"

• Interview with Fatima Hassan •

By *Sur Journal*

Fatima Hassan is a South-African human rights lawyer, founder of the Health Justice Initiative (HJI), and a persistent activist for social justice.[1] Hassan has an extensive track record of defending and promoting human rights in her country, especially in the area of access to HIV/AIDS treatment, on which she has written and published widely.

During the COVID-19 pandemic, her work was highlighted in the debate on the global response to the crisis, the lack of access to vaccines and the arduous struggle to break patents. In this interview for Sur, *Fatima Hassan emphasises the need to highlight the systemic problem of inequality that the pandemic and the protectionism surrounding vaccines have exposed. Focusing on the TRIPS waiver discussion, she criticises the monopoly of vaccines by the richest countries, reflected in the unethical and scandalous vaccine coverage of only 7% of the African continent by the end of 2021, for example. In particular, Hassan questions the role of some governments, the pharmaceutical industry and the WTO in the current global health crisis and in maintaining a colonial health system. Finally, she draws attention to the challenges that this agenda presents for civil society, both in creating strategies such as global vaccine alliances and in raising awareness that the patent issue is a human rights issue, and that justice and equity are about fair and timely access to life-saving technologies.*

Sur Journal • Tell us about how the African continent has positioned itself in the fight for access to vaccines, considering a context of global inequality highlighted by the COVID-19 pandemic.

Fatima Hassan • That's a hard question because I think that the role of African governments, and particularly the African Union, has been deliberately muted by mechanisms that were created and offered as a sort of solution to vaccine access or equity for the continent. It's hard to talk about the continent's role when there are so many different parts to it - the only mechanism that could actually bring them together was the AU. And the AU, in my view, took a lot of its cues from the South African government. It took a while for it to come out in support of the TRIPS waiver, which was first brought to the table by South Africa and India, now supported by 100 member states at the WTO.

Unfortunately, even though African leaders said that it would do whatever it would take within its power to try and access sufficient supplies of vaccines, it hasn't because it has relied on COVAX and also a mechanism called the African Vaccine Acquisition Trust. This delivery mechanism was also an initiative started by the South African president, who was the AU chair at the time, with a number of businesspeople. So, that's the context.

If we look at the role of African governments versus the role of African businesses versus the role of African civil society, they've each played a very different role to try and get access to vaccines. But whatever role we all may have played in trying to highlight the issues of vaccine nationalism or vaccine apartheid or to get timely supplies, the net result is that at the end of 2021, only about 7% of people in Africa had actually received the first dose of a vaccine.

The reality is that we were operating in a global context where the systemic reasons for Africa not being prioritized for access to even a first shot of vaccines is something that we have to look at. Aside from the 7%, only one in four healthcare workers in Africa were vaccinated as of the end of 2021 per the WHO. Remember that we had started the pandemic off with the WHO saying that all healthcare workers should be first in line, and then you start with people who are at highest risk, and so on.

Having said that, what Africa did negotiate was an attempt at coordination, with the support of the African CDC and the WHO, to do two things: one was to sign contracts and get deals. Even though we weren't prioritized for supplies by the pharmaceutical companies, they did that when they realised COVAX would not be sufficient.

The controversy has been that the money was paid, the contracts were signed, but we were just not prioritized for timely supplies and delivery for most of 2021.

Obviously, there were some companies that refused to sell to any country in Africa up until The New York Times and a lot of us started making a noise – for example, Moderna.

And then, the second thing that Africa did was – which I think is actually quite interesting – to invest significantly in information sharing. Botswana, South Africa and other countries shared in terms of identifying variants and surveillance information with the global scientific community. Also, quite early on, because of the TRIPS waiver discussions, there was also an initiative to set up the first WHO mRNA hub in South Africa - the WHO had decided to ensure domestic capacity, hoping that companies would share technology.

The first hub was set up in South Africa and that wouldn't have happened without the support of other African governments, the African CDC and the WHO.

Sur • What were the main challenges to the proposal led by South Africa and India for a temporary patent waiver for COVID technologies such as vaccines and drugs to address health emergencies such as the current COVID-19 pandemic?

FH • I think that the main challenge has been this long-standing challenge to any attempt to try and deal with intellectual property (IP) rights in a pandemic, in a global health emergency. We saw the same response from the industry and wealthier governments to HIV/AIDS, when Brazil, South Africa and Thailand were trying to do the same with HIV/AIDS [medicines].

Nobody thought that the rich governments and the pharmaceutical industry would actually block the waiver proposal. Nobody thought this would happen because it's a simple, narrow, time-bound, elegant solution to dealing with the issues of IP and access in the middle of a pandemic, which crisis has been unprecedented.

Nobody even thought that a simple proposal like this would garner so much opposition and would create an existential crisis for the pharmaceutical industry.

So, I think the first challenge was that you had a set of very wealthy countries, particularly the US, the EU, Norway, Switzerland and the UK, saying from day one, "absolutely not. We're not going to support a waiver on any IP rights on any of the technologies" also because the industry had lobbied them to say so, in my view.

When the proposal was made, the first vaccine hadn't even been approved or authorized for use. We didn't know if we would have a vaccine. We didn't know what therapeutics we would get or what was potentially on the horizon.

But there was an explicit understanding that given our past and what happened with HIV-AIDS, if you don't address the IP issue, then it will become a barrier. I think everybody understood that unless something changed fundamentally in this pandemic, Latin America, Africa and Asia would be the last in line again for access. I can speak to the Africa situation - and that is exactly what happened.

Even prior to tabling the proposal in October 2020, the South African government submitted a document around July 2020 saying, "please, WTO, we are worried about the IP barriers. If you don't address them, this is how it's going to play out. It's so restricted". So, there was already a warning and detailed documentation of what was likely to happen. When the proposal was formally made in October 2020, the first vaccine had been authorized for non-clinical trial purposes, [and then,] in December 2020, they started administering it in the UK. The proposal had already been sitting there for two months and the key challenge was that these rich countries had said "absolutely no way" because of their investment, particularly the German government, the US and the British government. Because at one point, AstraZeneca was going to be the "people's vaccine." Obviously, that got derailed, but the British government had a vested interest in the AstraZeneca vaccine, like the US government did with Moderna, Pfizer/BioNTech and Johnson and Johnson, and the German government had the same with the Pfizer Bio-NTech vaccine.

A lot of those countries were saying "absolutely no way and not just with the vaccine. We don't want to do this with therapeutics, diagnostics and ventilators, etc." And so too the pharmaceutical industry.

I think the second challenge was the industry itself, its mode of operation (lobbying), power and its prioritization of profit over sharing the technology. The real fear on their behalf was that if you share the technology in this pandemic, then you open the door for other health conditions and the next pandemic. This is why even though they started off saying, "you don't need a waiver. The waiver won't make a difference", they've put so much effort and resources *into opposing it and in fact blocking it – even though they are not elected representatives of anyone, nor constitute member states for the WTO.*

The third challenge has been the WTO itself. It's become irrelevant. It is, in my view, a totally pointless institution because if it can't help us in the middle of a pandemic, then what is the point. It's been trying to get a resolution to the waive proposal but it has not been playing a very constructive role in this.

You had the US government coming out in May 2021 saying, "okay, we'll support a partial waiver - on the patents only." But nothing has moved. The EU came up with its third way proposal insisting that Compulsory Licences are the answer. France is now saying something different. Norway is saying something different… So, it's a combination of these rich countries with the WTO machinery and the way it operates, and this whole idea of consensus, that you must have consensus on everything. A trade body deciding a health crisis in a pandemic – it is insane. And the very wealthy companies: Pfizer went to the US Congress to give evidence and they said, "we don't support the TRIPS waiver". So, this was not a proposal that they would just lightly regard. They were very consciously lobbying to make sure that different governments around the world did not support it – but 100 countries do now.

I think that if you ask what the biggest challenge to the TRIPS waiver proposal was, I would say "capitalism and the system of patent monopolies."

Sur • Are there specific strategies that were more important or effective in pushing some countries to commit to this agenda?

FH • The strategy that worked for getting countries to do a U-turn – to get a country like, for example, Ireland recently, or Australia to do a bit of a backflip – is you've got to have strong civil society and strong media to counter the pharmaceutical industry's lobbying narrative. From a civil society point of view, the strategy of forming a global people's vaccine alliance, the naming and shaming, the embarrassment that goes with blocking it, showing the deaths, the suffering – because you'll remember [that] for us, in waves 1, 2, and 3, there were no vaccines. It was only in wave four that we started getting vaccines and we were able to mitigate the deaths. The situation early on in Brazil, for example, was horrendous when there were no vaccines. I think yours was wave 2.

So, there were many countries going into multiple waves, with no access to anything – not even enough testing kits, or even vaccines. I think that the strategy of telling the world what was happening in real time [helped], which is much easier to do now with social media than it was during HIV-AIDS. You're not just reliant on email and so, information could be shared much more easily. Having a global movement that was naming and shaming and an alliance – of not just medicine experts and activists, but trade unions, the Vatican, faith organizations, Nobel laureates, 170 former heads of state (that's quite unprecedented) – to say quite early on, "relax the IP. You've got to relax the IP or you're going to have a bigger crisis."

I think the strategy of bringing in other actors quite early on was really useful. In HIV-AIDS, it took us a while to convince people that you need to deal with the pharmaceutical companies and their patent monopolies.

The strategy, also, of keeping the issue alive, of showing the public how much money these companies were making and how much money they got from public funds to research – in the case of vaccines, for example, Moderna, Pfizer, Johnson and Johnson – whose leadership made billions in profit - and giving information to show that at the heart of opposition to the waiver and not sharing the technology, it clearly had to be greed and profit over humanity. And again, it comes down to a system of capitalism and a system of accumulating profit or gouging in a pandemic.

There were petitions and protests – to the extent that COVID allowed. Obviously, our organizing strategies around the world were different than in the HIV-AIDS crisis because you couldn't meet in groups and you couldn't have a big stadium full of people to call on Pfizer to share a patent, obviously, because there were lockdowns and social distancing.

So, the social media strategies have really, really worked. I think we've underestimated what young people can do with Tiktok, Instagram and, to some extent, Twitter. Facebook's really old but there are other information sharing tools available too.

And then, what was really interesting, I think, just the final thing that really worked was that once the African governments finally came on board with the South Africa/India proposal, they did a lot of work in meeting with different Latin American and Asian governments, that also eventually came on board to support the waiver proposal.

There was a lot of pressure put individually on different country delegations to say, "if you don't support the waiver, don't block it; you're standing on the wrong side of history".

There was a lot of bilateral work being done so that in the end, you've got seven or eight countries standing in isolation: the UK, the EU, especially Germany, France, Norway, and Switzerland. We got Brazil to do a U-turn because Bolsonaro started out not supporting the TRIPS waiver, right?

It seems like a long time, but basically all this happened within a year. I think when they started out, there were only a few co-sponsors, and you now have 67 co-sponsors and 100 countries supporting the waiver. If you look from January to December 2021, there has been a significant change in which countries and governments are supporting the waiver.

Sur • In your opinion, what is the biggest challenge for civil society in the struggle for justice and human rights in the context of the pandemic, and what would you point out as important lessons for the fight against new pandemics in the future?

FH • The biggest challenge for civil society right now is this notion that it's acceptable that there are people in the world that can wait, that it's acceptable in the minds of global leaders – despite what they say – that you can have a 7% (less than 10%) vaccination coverage in Africa when tools exist in the world! That is not equity and equitable access to life saving technologies. I don't know what the percentage coverage was in Latin America at the end of 2021. The rich nations are prioritized and have already started their booster programmes, and we haven't even done first and second shots in many low income countries.

Of course, another challenge has been the right-wing antivax movement that fuels vaccine hesitancy, that is linked to the anti-abortion movement and to this notion of choice, which is very Trumpian, and with it, disinformation. That's been one of the challenges.

I think the challenge for us is how do we show and make the case that it is totally unjust and immoral to have a global programme that prioritizes six or seven countries only. It is just simply unbelievable [that we're in a] situation where 85% of people in Africa haven't even received one dose of a vaccine. So, if you look at that map of Our World in Data, of where we started in January 2021 and where we are now, you still see many

parts of Africa that are just empty, where the blocks are just empty. People haven't been able to access vaccines.

The issue is how do you get a movement of people to believe that vaccine patents are wrong, that vaccine nationalism is not the solution, but also that we are deserving of access at the very same time as everybody else. It goes back to the issue of timely access. So, they'll say, "oh, but we're giving you your supplies now. You're getting it." But that's nine months too late. And the only reason why they can say "it's okay for you to be nine months too late" is because we are not in the rich North. We are in the Global South. We're black and brown.

Remember that we took part in the clinical trials. We contributed to scientific knowledge and to the data. It's not like we've all just been sitting around and saying, "Okay, give us your technology. Now, we want to use it."

There's an assumption that people in the Global South matter less and don't have equal value. It is really important for our movement to show that this is a human rights issue too.

Why is this a human rights violation? It's not just about, "oh, you've got to be nice to everybody." It is a human rights violation to deny the tools of innovation and scientific knowledge to as many people as possible, as fast as possible, at the same time.

We've argued in the British Medical Journal that it's a crime. It's a moral crime against humanity. It's vaccine apartheid.

So, that's the first challenge [for civil society]. The second one is: how is it that we have not secured the waiver yet or proceeded with compulsory tech transfer? How have we not won this battle of tech transfer and sharing? A year and a half or two years into this pandemic, we are still beholden to the industry who is calling all the shots, with little transparency.

As a movement, despite all the work we've done in the last 25 years and particularly in the last two years in this pandemic, how can we have a situation where the CEOs of Pfizer, Moderna and J&J are billionaires now?

They are still making a lot of money and calling all the shots. How did we create systems in all parts of the world where IP is sacrosanct and the WTO is the most important institution, when it shouldn't be in a pandemic, and where everything depends on when they have a ministerial conference, have a meeting, adopt a resolution. It's absurd. It feels like we're living in some Kafka novel or something. If you tell somebody in 50 years what went down, they won't believe it.

That's why we must record the story because nobody will believe that when this COVID pandemic hit, these were the countries that blocked it, these are the

companies that became rich and produced technology with public funding but did not share it. They are still controlling the supplies and decisions, and they're doing it in a way where there's no transparency in this pandemic. Your government, my government and everybody else are using all our money to buy these vaccines. And now, we have to buy a second shot and a third shot, and we don't even know if there's going to be a fourth shot. We don't know the terms of the contracts and if you want to know them, you'll have to spend two years in a court of law.

[It's like we are] operating in a rule of law order system where we must follow the rules, but only the rules that apply to the industry insofar as IP is concerned. They don't want to follow the rule of law on transparency in procurement or open contracts, for example.

The courts in Colombia have said that their government must open the contracts [to the public] and I think in Brazil, they are trying to get certain laws passed on this. But these companies are saying to us, "we won't even tell you who signed the contracts".

So, the challenge going forward for us as a movement is how do we deal with corporate power, especially corporate power that's involved in the provision of life-saving treatment and technologies and services. We cannot carry on like this for another 10 years. There could be a treatment that could be a miracle, that could really be useful for COVID and we may all need to access that, but this is how the industry will behave. They haven't shared technology or information on the contracts even. They're blocking the waiver. They're still in control and they've made billions. They're in a really "good" position for them, not for us. And our governments have allowed this to happen.

Our work going forward has to be that the WTO has to reform. It needs to be fundamentally reformed or it must get out of the way. It is not an appropriate vehicle to resolve life and death issues around access to life-saving treatment. TRIPS and the Doha declaration have not helped us with COVID. It has hindered us.

The mere fact that medicines, diagnostics and vaccines are included in the definition of the TRIPS Agreement is a problem for us. We have to take that out, at least, from the definition of what should be patentable, or what should be protected by an exclusive monopoly. So, we've got a lot of work ahead of us.

But if we don't deal with this properly, climate technology for the climate crisis will be held close by these companies. They'll assert their IP rights. The German government in particular will not want to share the green technologies that they are busy developing, also through public funding with public scientists.

There's a reason why the waiver was so vehemently opposed: it has to do with COVID, but also with what's next, and they don't want to share the IP on that because it will mean that they lose control, and they lose profits.

Finally, governments in the Global South need to rethink how much power and control they want to hand over to pharmaceutical corporations. Because this pandemic has taught us that you're going to have to take very forceful action.

There is no voluntary action on the part of these companies that will actually help you save lives, because they won't do it fast enough or at all.

And volunteerism, benevolence, handouts and donations – they don't work. Often, we use the word "decolonize", but we have a colonial global health system in place, which is the reason why we had 7% coverage for Africa at the end of last year, why supplies are prioritized for the richer North, why seven nations can basically block a proposal that is supported by a hundred nations at the WTO. So yes, we have a crisis.

Fatima Hassan, human rights lawyer and founder of the Health Justice Initiative (HJI).

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Interview conducted by Renato Barreto in January 2022.
Original in English.

NOTE

1 • For more information on Fatima Hassan's work, visit: Health Justice Initiative, Homepage, 2022, accessed January 27, 2022, https://healthjusticeinitiative.org.za/.

Human rights in the context of the pandemic:
Impacts and responses

STRUCTURAL AGENDAS
IN THE MIDST OF A PANDEMIC

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IN MEMORY OF TUTAWA

Kamutaja Silva Ãwa

• *The struggle of the Ãwa people* •

ABSTRACT

This essay is the product of the experiences of the Ãwa people, to which I belong, following contact with non-indigenous people in the 1970s. As the teller of the stories of my people, I would like to emphasize that during my childhood I had painful, sad and stressful experiences, due to the continuous intense conflicts of the struggle, efforts to demarcate our territory and our longing for well-being. The methodology is underpinned by bibliographic sources, the identification report of the Taego Ãwa Indigenous Land and in the memories and oral tradition of my people. In recognition of the importance of this story, this essay is a compilation of records of the Ãwa people´s fight for rights, including the impact of the pandemic. It brings the indigenous point of view to the issue of human rights.

KEYWORDS

Avá-Canoeiro | Land demarcation | Oral tradition | Indigenous people

1 · Introduction

I am Kamutaja Silva Áwa, daughter of Kawkamy Áwa and granddaughter of the chief and shaman Tutawa Áwa. I belong to a people whose first contact with non-indigenous people was during the military dictatorship, 1973 to be precise. The stories I am going to share arose from intense struggle and resistance interspersed with considerable pain, loss and sadness. Because I believe, like Walter Benjamin,[1] that "when collective experience is lost and when common traditions no longer provide a safe base, other forms of narrative become predominant", and as a student of Pedagogy at the Federal University of Tocantins (UFT), I envision other mechanisms to lead us to other ways of interacting and behaving, by means of the written word. This is why I feel obliged to speak out to revive and update the social memory of my people.

From this perspective, as a teller of my people's stories of struggle and resistance, I am certain of the importance of raising awareness and of the relevance of the social and cultural impact that the reverberation of my narrative can have as a strategy of struggle and resistance.

My people call themselves Áwa, but the non-indigenous people gave us the name of *Avá-Canoeiro* (Canoers) due to the skill and speed with which they retreated, using canoes to defend their territory. The Áwa are also known in the literature, according to Pedroso,[2] as people who put up the greatest resistance to the colonizers in the XVIII century. In the north of Tocantins, they are known as "*cara-preta*" (black-faces), because of the characteristic black face-painting, using the genipap fruit, representing the night monkey, to scare off enemies.

For years, the Áwa people have resisted in order to continue existing as a free independent people. The denial of my people's rights by the Brazilian state, in its failure to guarantee our well-being and peace on our traditional land, has caused social, cultural and spiritual damage, and has left the Áwa people at risk of extermination.

On the backdrop of the historical conditions of a people who resisted contact with non-indigenous people more than any, this essay discusses three moments: a) the forced contact in 1973; b) the process of reclaiming the Taego Áwa indigenous land and c) the Covid-19 pandemic and the anthropological analysis of the Áwa people. The question/issue underpinning this work is how the Áwa people can escape invisibility given the historical atrocities and the denial of their rights which have prevailed for over 40 years.

In conversation with indigenous authors and indigenists of ethnological literature, who aim to reclaim the rights of the indigenous people, won by the indigenous movement, through history and the written word, this essay looks at the social, cultural and political issues involved in the experiences of the Áwa people, following contact in 1973. Through this memory, I will investigate the struggle for indigenous land and the study and defence of human rights related to this period in the country.

2 • Forced contact in 1973

Reliving the sadness and the tragic memories that have scarred my people for years is not just about telling the story of a people. It is about exploring deep wounds that will never heal, in an attempt to find ways to retrieve that which was stolen in such a cowardly and cold-hearted way. These people, who for years have survived constant persecutions, killings and ambushes[3] by non-indigenous people, are my family. A small number of survivors who reached Mata Azul, in the municipality of Formoso do Araguaia, tried to live as free people, without integration into other groups, particularly not into the non-indigenous ones which had almost exterminated the Āwa people in the XVIII century.

The tragic forced and violent contact happened in December 1973 and was led by the *sertanista*[4] Apoena Mirelles, during the rainy season. According to the memories of my grandfather, Tutawa and the survivors, Caganego was gathering firewood when Apoena caught his attention by whistling and waving. Caganego ran away from him and told the others that the non-indigenous people were nearby. The sertanista´s team followed him and entered the camp letting off fireworks and shooting.

Caganego´s alarm was the consequence of the persecution and violence our people had experienced for many years, as well as incursions by Apoena and his team onto our people´s land in an attempt to make contact.

When they entered the camp, one of the four Xavantes who were with the sertanista was hit on the nose and Typyire was shot by the invaders who did their worst and captured the people (who had avoided contact for decades, preferring to die rather than give themselves up to the enemies) for private interests.

When Watumy and her baby Juaga, the most vulnerable people in the group, were captured, Chief Tutawa showed solidarity with his wife and child and gave himself up, asking for them not to be killed. When Tutawa handed himself over, his brother, Tuxi and his daughter Kawkamy followed suit. They were all taken to the Canuanã Farm, tied up and placed under the threat of the Xavantes, who vowed to kill the Āwa if the injured Xavante should die.

The other members of the family managed to escape, but the situation left them in a state of shock and vulnerable to food insecurity as they were fearful about what had happened. Typyire Āwa, who had been shot, soon died as she had been badly hurt.

On arrival at the Canuanã Farm, the Āwa were placed in a house surrounded by barbed wire. With the news of the capture of my people, the locals headed for the farm to take a look at the dreaded "black-faces", because for years the indigenous people had been the target of prejudiced racist stories as a strategy to justify violent actions to wipe them out.

Several times Watumy Áwa suggested they should return to the home they had been taken from against the will of our people, but this was not possible because of the constant presence of the non-indigenous people who guarded them.

In 1974, with the capture of some of our people, the National Indian Foundation (Funai) strategically used our leader, Tutawa to make contact with the others who were still free, leading them to believe they would keep their territory. Following this contact, my people set up temporary camps, first in Mata Azul, then in Capão de Areia, under the watch of indigenous soldiers of the Rural Indigenous Guard (GRIN) from the Inỹ/Javaé peoples.

In 1976, after the Brazilian state had left my people without their territory, the only solution was to transfer the Ãwa people to the Javaé village, Canoanã of the Jê people. Following contact, some died from diseases as they did not have immunity. We still do not know what happened to Kapoluaga. Questions are still asked to this day because we believe he was murdered after contact was made. His photo appeared in the first official Funai bulletin, but there is no mention of him in the second one issued months after Kapoluaga had disappeared. Tuxi died of pneumonia in Goiania and his body was never returned to the family which led to great distrust and fear among my people who believed any decisions they took would surely lead to their being killed.

Ever since, we have lived on the land of people who have historically been our enemies. Although it has to be said that despite great humiliation and being ostracised on their land and in their villages, they have never evicted us.

We were forgotten by the state as were our rights and all the physical, moral and psychological violence suffered. The crime they committed against my Áwa people was dismissed. Of the survivors of the forced contact that changed the lives of the Ãwa people forever, only Kawkmay Áwa is still alive.

3 • The process of reclaiming the Taego Ãwa Indigenous Land

I draw comfort and hope from the awareness that we, indigenous people, have won the right to land through years of struggle within the indigenous movement. As guaranteed in the Federal Constitution of Brazil, in article 231: "The social organisation, customs, languages, beliefs and traditions of the indigenous people are recognised, as well as their original rights to the lands they traditionally occupy, with the state being responsible for the demarcation, protection and respect of their property".

Thirty-six years after the forced contact carried out by officers of the Brazilian state, of the survivors of that violent atrocity that put the health and lives of some Ãwa at risk, only Kawkamy Áwa carried her people on. She had six children on the Jê people´s territory.

Tutawa, who was the chief and shaman of the Ãwa people, ensured that his grandchildren, born after contact, had, under his care, love and dedication, the characteristics of the Tupi people, and the guarantee of returning to their traditional land, known as Taego Ãwa, with which we have the same physical connection we feel for someone we love.

Although my Ãwa people have always been aware of the place they traditionally belong to, since the time of the contact in 1973, we had not previously had help from professionals such as photographers, journalists or anthropologists in reclaiming our traditional land.

The injustice committed against my people, including both physical, emotional and moral violence and being abandoned by the Brazilian state which led to the invisibility of the Ãwa in the state of Tocantins, only started to be redressed with the start of the demarcation of the Taego Ãwa Indigenous Land.

During a study to identify the Javaé/Avá-Canoeiro[5] indigenous land, in 2009, two researchers, Patrícia de Mendonça, an anthropologist and Luciana Ferraz, an environmentalist perceived how fragile our people are, living on foreign land and our need and longing to return to our mother land and to tell our story to people other than those living in the region.

The greatest paradox of all in this lack of humanity was when we had to convince Funai of our existence and of the need for us to return to the Taego Ãwa land. This was necessary for a Working Group specific to my people to be approved.

During the Working Group we experienced moments of considerable pain, suffering, hatred, sadness and hope, as we listened to the memories of the experiences of the three survivors of the time of the forced contact – our grandfather, Tutawa, my mother Kawkamy and my uncle Agaéky, as they told us their painful memories about what they remembered of the persecutions and their inquiries into the different killings of our people when we were still free. Our connection to the land during the interviews intensified this pain. We started to believe that there could be a way we could legally and fairly return home, because we were following the protocols set out in the 1988 Constitution.

Something that particularly caught my attention during the Working Group was the connection between the Canuanã Farm and the history of my people, my family. At the time, I was a pupil at the Bradesco Foundation school in Canuanã. My admiration for the school I had been attending since I was seven years old abruptly ended when I discovered that Funai had issued a document denying our presence on the land where we had lived. This document referred to the private interests of the Farm in negotiations with Bradesco Bank.

The Working Group report was finally delivered to Funai in 2012 and appeared in the official government publication. After publication, we came up against a number of obstacles, such as Bradesco's contestation. As a form of strategic fortification and with a view to creating visibility for our struggle to reclaim the Taego Ãwa Indigenous Land,

we accepted an invitation to make a full-length film with the Borela siblings (Henrique and Marcela), film directors,[6] telling the story of the Taego Áwa struggle. We also started to participate in the indigenous movement with the help of the Indigenous Missionary Council (CIMI) and in meetings with the Federal Public Prosecutor's Office (MPF) about the Taego land proceedings.

Our tragic story was published in important places, for example: The Truth Commission, being highlighted as one of the most emblematic cases; the Senate´s Human Rights Committee; at the 6th Chamber of the Public Prosecutor's Office; the Amnesty Commission and in academic settings. The report was also sent to the Tocantins Federal Public Prosecutor's Office, sparking the beginning of judicial actions for reparation and the demarcation of the indigenous land.

Delivery of the identification report for the Taego Áwa indigenous land was a great victory. On 11 May 2016, one day before the coup d´état suffered by former president Dilma Rousseff, , the justice minister, Eugênio Aragão, declared the Taego Áwa Indigenous Land permanent possession of the Áwa people, by means of ordonnance no. 566.[7] Sadly, on this day our Chief, also our grandfather and an important reference in resistance and humanity, was not physically with our people, but our ancestor wept through us in joy and gratitude.

4 • The challenges of the absence of territory in facing the pandemic

The onset of the Covid-19 pandemic saw the lives of the indigenous peoples being attacked on a number of fronts: by the genocide caused by the novel coronavirus; by the anti-indigenous policies of the current government and by the paralysation of non-essential services, like Funai, the main body responsible for the process of demarcating indigenous land and protecting territories.

Nowadays, due to the historical context in which we completely lost our territory to landowners in the 1970s, the Áwa people are spread out across the Iny people´s territory in Tocantins, more precisely on the Ilha do Bananal. Not having our own land has had a huge impact on us in facing the pandemic and the effects of the anti-indigenous threats during this period. As we do not have demarcated land we cannot act independently in taking special precautions against Covid-19 nor do we have special access to public health services unlike other indigenous people who live on their ancestral territory.

In our case, we live according to the political rules of the Javaé and Karajá, and in the emergency years of the pandemic, we followed the preventative measures established by the leaders of these peoples. One serious problem we faced during this period was the arrival of *retireiros*[8] who lease land on the Ilha do Bananal, possible carriers of the virus and other diseases. As Funai´s activities have been inactive throughout this time, we believe it is possible

that there have been land invasions and illegal practices, like fishing, hunting, logging and other unnotified activities that constitute a contamination risk. If we were on our own land, we would be able to create our own strategies of self-protection against these threats.

In the context of the pandemic, we feel our independence and leadership concerning the right to health have been violated, as our ancestral understanding of medicine would be an important ally in preventing the disease and other risks and damage.

This has all led to increased suffering among our people since the beginning of the pandemic, making it unbearable for us to continue to be separated, fragmented and away from our ancestral home, distanced from ourselves. In spite of this we have never stopped fighting, participating in events to raise awareness about our cause, articulating and getting political support, as well as attending meetings with indigenous organisations like CIMI, indigenous movements like COIAB and the Public Prosecutor's Office, about our territory.

In this work we count on the *Comissão Memória de Tutawa*,[9] created in mid-2020 to strengthen us as a movement and which has the support of professional people from different areas (psychology, biology, environment, anthropology, linguistics and cinema) who contribute to our actions.

5 • Anthropological analysis of the Ãwa people

Another important role of the Committee in this period was the support given to carry out an anthropological analysis, the product of articulations and many meetings. The analysis is the phase of the demarcation of land in which the judge who is in charge of the case requests an investigation to answer the questions of parties interested in the land and, on the basis of this, makes the final ruling on whether or not the demarcation will take place, depending on his/her decision. The team, made up of an expert and auxiliaries nominated by the judge, carried out this work with our people in July 2020 in a Javaé village. It took almost one month and involved a range of activities from interviews to ancestry. Photographs and videos were recorded. We had been anxiously awaiting this moment as it gave us a sense that our struggle was making progress.

However, one of the challenges we had to face in making the analysis happen was when Funai came out in opposition, using the pandemic as an argument for not going ahead with it. They had also stopped the land ownership investigation that should have been concluded in 2019.

Another issue was the difficulty in raising money to pay transportation for everyone to get to the location of the analysis as well as food and hygiene materials needed for protection against Covid-19, like hand sanitiser and masks. Through the Committee and CIMI we were able to raise funds to cover these expenses, remotely. The Brazilian justice system did not contribute to the six thousand reals raised nor did Funai. So,

without the Committee and our own indigenous organisation we would not have been able to participate in the analysis. Someone from the Committee was also with us taking photographs and making videos, helping to record this memory of our struggle, while we concentrated on answering the expert´s questions.

Finally, on the chaotic backdrop of the pandemic and with the Áwa population doubly vaccinated, the anthropological analysis started on 15 July. This stage of the demarcation process was challenging, because for the first time we had to relive the past of the people without our grandfather, Tutawa. With our mother Kawkamy we had to relive sadness, pain, loss and the sense of injustice that scars our lives to this day, going back to the XVIII century and culminating in our resistance to white people in 1973.

Even in the face of all this suffering and the resistance of our Áwa people we have never stopped using the word *Namagaw*, which means "good", "to be well" or "well", because we are hopeful that we will return to our ancestral land.

Finally, carrying out the analysis was of enormous importance for us, Áwa, because we felt cared for, hopeful and strong. Since our capture, the pandemic has been one of the worst moments of our captivity and for a moment, at the analysis, we felt closer to a sense of freedom, health and life. The best way for us to protect ourselves from Covid-19 until now has been fighting for Taego. We cannot think about prevention, treatment and promoting health in a situation where indigenous people are separated from their territories.

It should be said that with suspension of Funai´s activities, the demarcation process has ceased. It is also at risk with draft bill of law 490[10] and the timeline thesis. This is a draft bill that makes demarcation processes impossible, removes Funai´s autonomy to carry out new demarcations and allows for the review of indigenous land that has already been demarcated.

The interest of the rural benches are behind this bill,[11] and they have received support from the current government. It is worth noting that during his electoral campaign, President Jair Messias Bolsonaro publicly announced that he was against demarcation.

The timeline thesis is part of draft bill 490, which encompasses the interests of those who have wanted to occupy indigenous land since the violent arrival of Pedro Álvares Cabral in 1500. The timeline thesis holds that indigenous people who were not on their land on 5 October 1988 when the Brazilian Constitution was enacted, will not have the right to claim their ancestral land.

Clearly, our story did not start on 5 October 1988. We, indigenous people, occupied the whole of the Brazilian territory and the right to demarcation was won by means of the indigenous movement. We have a constitutional right to reclaim what was taken from us, in the Brazilian justice system. In order to confront these bills of law that are a direct attack on our well-being, the indigenous peoples of Brazil have been meeting in the city of Brasília,

asking the Supreme Federal Court (STF) to take a humane stance concerning our rights and asking them to vote against the timeline thesis.

This situation has caused our Ãwa people intense suffering which shows, in the defence of human rights, the central place of territory in guaranteeing the health of the indigenous peoples. The Committee in Memory of Tutawa, along with supporters of the cause, have been working hard to conclude the demarcation process, creating new ways of publicising the violence suffered by our people. One example of this is the blog *"Nossa terra, nosso chão! Povo indígena Avá-Canoeiro"*[12] that aims to raise awareness of the Ãwa cause. Another important function of the blog is as a means of ongoing contact with people and organisations interested in our cause who want to help us.

Information is provided on this page about how it is possible to help financially. Fundraising is fundamental for the association to continue organising, participating in meetings, creating physical structures and producing material for publicity and denouncements. We have definitely managed to increase visibility in this way.[13]

During the pandemic, it became clearer to us, through our contact with the Committee, that when our rights are violated or we are violated we cannot keep quiet. Visibility is central to the indigenous path towards territory, justice, demarcation and even for our very survival. It is not natural or normal that we are treated badly and neglected, and it is the memory of the teachings and warm-heartedness of Tutawa that underpin every action of the Association of the Ãwa People (APÃWA) today. Our greatest memory is our struggle and our ever-deepening awareness of the need to continue resisting and existing.

This history of our people raises many questions about land and territory as a right, not only constitutionally but also at an essential level. Without our territory we indigenous people cannot live well and we are not healthy. To a non-indigenous person, land is just a piece of ground and has no symbolic or spiritual value which is why articles 231 and 232 of the Federal Constitution are so often undermined, come under threat and are regularly overridden. So, our history is painful for us, but it can also serve as a lesson for non-indigenous people on the value of memory and ancestry, on the human right that land is and that the forest is, where different types of humanity can exist, with nature intact and memories alive.

6 • Final considerations

This essay is the tale of a storyteller of the Ãwa people, daughter of Kawmaky and granddaughter of Tutawa, articulator of the struggle for the demarcation of the Taego Ãwa Indigenous Land, together with other leaders, for example, Chief Wapoxire. I bring memories that are not just mine. They belong to my people and are memories of our resistance to the colonizers.

We were captured in 1973 during the military dictatorship and are still suffering from serious social, vital and spiritual harm until this day. The only way for the Brazilian state to make it up to our people and repair the damage caused by this trauma is by guaranteeing the demarcation of land and the possibility for us to live according to our customs and traditional ways of socio-cultural organisation as set out in articles 231 and 232 of the Constitution.

During the coronavirus pandemic, the demand for demarcation has intensified and the absence of our territory is generating increased suffering which should be a red flag to the authorities and people working on indigenous causes regarding the well-being of the Áwa. The difficulties we are facing are putting our existence under duress, but we have a strong characteristic of finding joy in the toughest resistance.

The demarcation of land and the well-being of the indigenous people are at the centre of all ethno-cultural life, but the closure of Funai during the pandemic is indicative of the lack of awareness regarding the indigenous condition. Even within the context of the defence of human rights it is possible to identify the concept of who is and who is not human in the eyes of non-indigenous, elitist and Eurocentric society, which continues to marginalise my people.

Little by little, at the Committee, however, we are strengthening our desire to continue our struggle, along with those who support the cause, who contribute to awareness raising projects, fundraising and political articulation, helping our people to feel they are part of society, i.e. to feel like people with a legitimate cause.

The anthropological analysis in July 2021 was a decisive step in the process of land demarcation and it was possible thanks to this network of the Committee in Memory of Tutawa. The defence of our territory is the defence of nature, the environment and Mother Earth and this is why the struggle belongs to all of us, Áwa and non-indigenous people.

In this sense, it is necessary that the Supreme Court ministers come out in favour of the right to life of the indigenous peoples by voting "No" to the timeline thesis and ensuring the survival of the few indigenous people that are left in Brazil. And ensuring that this country is fair to those whose land was stolen from them and whose culture was changed by the colonialist thinking that devastated the existence of a number of peoples who used to live here.

Given the history that directly affected my people during their time in the camps at Mata Azul and Capão de Areia and still affects us today, I believe that the memory I am recording in this text is very important because it brings an indigenous viewpoint to human rights, touching on a human need that has been invisible in the pandemic and has not been recognised as a legitimate human demand. By fighting for our visibility and for our territory we are actually fighting to be recognised as human beings by the Brazilian state.

Without our territory we are not even able to look after ourselves or protect ourselves from threats to our existence because Áwa and Taego are one and the same and while Taego is unprotected, the Áwa people also are. The indigenous view of our people regarding human rights salvages the humanity not only of human beings, but of all that makes us who we are: the memory of Tutawa.

NOTES

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2 • Dulce Madalena Rios Pedroso, *O povo invisível* (Goiânia: UCG, 1994).

3 • The act of hiding to attack someone or to hunt.

4 • A person in the sertão looking for riches: a bounty hunter.

5 • Patricia Mendonça Rodrigues, *Relatório Circunstanciado de Identificação e Delimitação: Terra Indígena Taego Ãwa* (Brasília: FUNAI, 2012).

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do1-2016-05-12-portaria-n-566-de-11-de-maio-de-2016-22805458.

8 • People who lease land on the Ilha do Bananal for cattle rearing.

9 • The Committee in Memory of Tutawa has a partnership with the Student Centre for Indigenous Matters (NEAI) at UFT; *Amazoniza-te: Construindo Redes de Afeto*; the directors Henrique Borela and Marcela Borela; the linguist Dr. Mônica Veloso; lecturer and psychologist Carmem Hannud (CRP 23/1373); the anthropologists Patricia Rodriguês de Mendonça and Paulo Santilli; the environmentalist Luciana Ferraz and CIMI.

10 • "Draft Bill No. 490 of 2007", Committee for the Constitution and Justice and Citizenship (CCJC), 2007, accessed December 21, 2021, https://static.poder360.com.br/2021/06/Parecer-PL-490-2007-CCJC.pdf.

11 • A parliamentary group made up of 200 members of congress from different parties who defend the interests of agribusiness, large producers and land owners.

12 • "Identidade", Blog Povo Indígena Avá-Canoeiro, December 2, 2020, accessed December 21, 2021, https://avacanoeiro.blogspot.com/?m=1.

13 • In one month, we had over one thousand views on the blog.

KAMUTAJA SILVA ÃWA – *Brazil*

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ENVIRONMENTAL EQUITY
AND RACIAL JUSTICE

Luis Gilberto Murillo and Marcela Angel Lalinde

•   *Natural climate solutions in the Amazon*   •
and the Black/Afro-descendant Natural Belt of the Americas

ABSTRACT

Afro-descendant peoples of the Americas are disproportionately affected by overlapping crises such as climate change, the loss of biodiversity, ecological degradation, the Covid-19 pandemic, the public health crisis, extreme socioeconomic inequality, structural racism and the increase in violence against social leaders. Although the communities in what we have named the Black/Afro-descendant Natural Belt of the Americas (ANBA) have a crucial role to play in an integrated response to these crisis, and in spite of the wealth of experiences and good practices at the local and national level, not enough importance has been attributed to the central role they play in the planetary socio-ecological transition needed to overcome the climate and biodiversity crises. This article, among other topics, debates the importance of Afro-descendant communities in the implementation of a range of natural climate solutions, in the region and at a global level, in the territories that are conceptually part of this belt.

KEYWORDS

Natural climate solutions | Environmental equity | Racial justice | Black/Afro-descendant communities

Humanity is facing major interconnected challenges such as climate change, the loss of biodiversity, ecological degradation, the Covid-19 pandemic, the public health crisis, extreme socioeconomic inequality, structural racism and the increase in violence against social leaders,[1] among others. Afro-descendant peoples of the Americas are disproportionately affected by these overlapping crises and are, at the same time, at the centre of their solution.

The Latin America and Caribbean region has unique conditions for responding to these challenges, as they favour the adoption of community-led natural climate solutions[2] for climate change mitigation and adaptation within a framework of sustainable transformation and development, environmental conservation, risk management and resilience. On one hand, 42% of emissions in Latin America and the Caribbean come from agriculture, forestry and other land use (AFOLU).[3] On the other hand, the region has an extensive natural heritage: though it covers only 16% of the planet's surface area, it contains 50% of the world's biodiversity, 23% of its forests and 30% of its water. The intersection between these phenomena represents one of the greatest opportunities to promote low carbon transformation and sustainable development in the region.

However, the natural riches of Latin America and the Caribbean are under severe pressure. It is estimated that there are 200 million hectares of degraded land in the region and that the forest cover has shrunk from 51% of the territory in 1990 to 46.4% in 2015. This has serious consequences for the conservation of biodiversity and strategic ecosystems, the efforts to mitigate climate change and for environmental and racial justice, since much of the natural wealth of the region is found in the territories of Afro-descendant communities. Ethnic, indigenous and Afro-descendant communities have over 400 million hectares of land, which are home to around 40% of the natural forests in the region.[4] In Colombia, this percentage is as high as 50%.[5] These forests contain 30% of the carbon stored in the forests of Latin America and the Caribbean (34,000 MtC) and 14% of the carbon stored in tropical forests worldwide.

Currently, 135 million hectares are not legally covered by collective property or usufruct rights granted to these communities, and progress in land titling is slow and insufficient. In the last 30 years, land titles have been issued to Afro-descendant peoples for only 8 million hectares of land, out of the estimated 30 to 40 million hectares that could potentially be demarcated in Colombia, Brazil, Ecuador, Nicaragua and Honduras. Furthermore, the effects of climate change pose a severe threat to the Afro-descendant population of the Americas and are exacerbating the conditions of vulnerability and increasing their risk and exposure to natural disasters, thus perpetuating extreme poverty and socio-environmental inequality.

Extreme climate events have had substantial impacts on these communities in the last decade. This has been illustrated by the impacts of Hurricanes Katrina, Harvey, Sandy, Irma, Maria and, recently, Laura, which disproportionately affected the Afro-descendant population in the Caribbean and the United States. Also, in Latin America and the Caribbean, Hurricanes Iota and Eta affected the coastal marine communities of the Caribbean, including the ones in

Colombia, Honduras and Nicaragua, with devastating effects on Afro-descendant peoples. To that, one can add the incremental changes in rainfall and temperature, which will have lasting negative consequences on the territories of these communities and whose effects have not yet been sufficiently studied from an environmental and racial justice perspective.

The disproportionate impacts on these communities are no coincidence.[6] The first enslaved Africans arrived in America at the end of the 15th century as a consequence of the infamous slave trade. According to the settlement pattern associated with *marronage* and *palenques*,[7] these communities established themselves in areas rich in natural resources, as they sought to isolate themselves from the colonial world and use natural ecosystems as a protection mechanism, while remaining highly connected to one another. Later, the racialized hierarchical structure excluded them from decision-making processes, leaving them in a situation of invisibility that still exists, given the prevalence of structural racism that continues to afflict the region. However, it was this isolation that led these communities to develop unique models to adapt to their natural surroundings, which contributed to the conservation of the natural heritage in these areas.

This historical exclusion can be currently seen in the disproportionate exposure to risk and environmental threats and the unequal access to processes and spheres where decisions on the protection and conservation of natural resources are made. These factors have done great environmental and racial injustice to the Black/Afro-descendant population in the Western Hemisphere. Although there have been notable advances in acknowledging the role of local communities in the conservation of strategic ecosystems,[8] it is important to note that the contribution of Afro-descendant communities continues to be systematically ignored. For instance, in discussions on the Amazon, there is little to no mention of Brazilian *quilombola* communities, and few people know that around 80% of the population of the Brazilian Amazon is Afro-descendant. Similarly, little is known about the Maroon population in Surinam and Guyana and the Colombian Afro-descendant groups that inhabit this important biome. A similar phenomenon occurs when addressing issues related to marine and coastal ecosystems, particularly in the Caribbean, the Bahamas and the south of the United States.

The communities in what we have named the Black/Afro-descendant Natural Belt of the Americas (ANBA) have a crucial role to play in an integrated response to the crisis of climate change and the loss of biodiversity, inequality and socioeconomic exclusion, drug trafficking, migration and structural violence, among others. In spite of this and the wealth of experiences and good practices at the local and national level, not enough importance has been attributed to Afro-descendant communities and the central role they play in the planetary socio-ecological transition needed to overcome the climate and biodiversity crises. Therefore, we must start documenting geographical, ecological and strategic environmental conditions, as well as their cultural values, governance models and historical contributions to environmental management. We must also emphasize the importance of Afro-descendant[9] communities in the implementation of a range of natural climate solutions, in the region and at a global level, in the territories that are conceptually part of this belt.

This geographic concept is based on socio-ecological, linguistic and cultural characteristics at a hemispheric level. Given its scale, there can be no effective climate solution without contributions from the natural heritage of the Afro-descendant communities of Latin America and the Caribbean. However, what happens to these communities is paradoxical. On one hand, they have an enormous natural wealth that performs valuable environmental services for humanity, and on the other, they live in precarious conditions where most of their basic needs are unmet. To overcome this, new paradigms are required – ones based on a vision from the Global South that reflects the challenges befalling communities experiencing similar difficulties. Since the environmental and conservationist movement[10] was founded on power relations that exclude and render indigenous and Afro-descendant populations throughout Latin America, the Caribbean and the United States invisible, the themes of racial and social inclusion, multiculturalism and pluriversal justice must be at the new paradigm's core.[11]

To correct these historical imbalances and their contemporary consequences, we must identify key players, create linkages between them at the regional level, facilitate exchanges, generate spaces for listening in regional and global centres of power, and create platforms that raise the voices of Afro-descendant climate and environmental leaders. To do so, we will need to reinforce existing networks and create new networks and hubs for exchanging experiences and engaging in joint advocacy work to strengthen these communities' voices, influence and participation in international, regional and local scenarios where the climate and environmental decisions that affect them directly are made. Furthermore, technologies co-created with local Afro-descendant communities for the collection and generation of data and scientific evidence should be developed to support these actions. In addition, a differential, racial and environmental justice-driven approach to data generation and the analysis of environmental impacts on these communities and their contributions based on a subregional, regional and hemispheric perspective must be implemented.[12] At the same time, state-of-the-art technologies should be developed to increase the effectiveness of the communities' environmental management and their autonomy in managing their territories.

In this context, racial justice is closely linked to environmental justice. They are indivisible categories. However, there are still conceptual, instrumental, and empirical questions for which more theoretical and practical content is needed on the racial and environmental justice dimensions. This content must be developed from the perspective of the communities who experience in their daily lives the major socio-spatial inequalities that characterize the Western hemisphere. This crucial, though insufficiently studied nexus is exacerbated by the lack of a systematic agenda for critical analysis and research on the relations between the well-being of Black/Afro-descendant communities at a hemispheric level and urban and environmental planning, climate actions and nature conservation.

At COP-26 of the United Nations Framework Convention on Climate Change held in Glasgow, an influential group of community leaders and innovators from the region launched the Afro-Interamerican Forum on Climate Change in a collaboration with the Environmental Solutions Initiative of the Massachusetts Institute of Technology (MIT).

This forum aims to promote effective answers to gaps in participatory research and the implementation of collaborative high-impact in-field actions and advocacy work from a Global South perspective. Furthermore, the forum seeks to empower Afro-descendant communities through the creation and strengthening of a regional network of Afro-descendant leaders, the systematization of lessons learned and good practices, and the analysis and production of information focused on environmental and racial justice.

In the coming years, with the support of the MIT Environmental Solutions Initiative and universities and research centres from the Global South, the forum will focus on developing a collaborative research agenda to promote the co-creation of information, community-level innovation and high impact advocacy work to support the implementation of community-led natural climate solutions as strategies for transforming and building equality, peace and well-being in the Afro-descendant Natural Belt of the Americas (ANBA) and the Amazon.

NOTES

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BUILDING PRESSURE FOR CHANGE

Margarida Lunetta and Ilan Vuddamalay

• *Advocacy and the role of philanthropic funders* •

ABSTRACT

The New Migration Law of 2017 was a historic win for Brazil. This moment of victory was the result of years of advocacy from various stakeholders of Brazilian civil society. The road was not an easy one, but the destination was worth it. As philanthropies routinely aim to build a better future, policy advocacy emerges as a clear cornerstone for achieving long lasting change. This article shares the lessons learnt from supporting Missão Paz and Conectas in their partnership to get the law passed. It outlines the role of philanthropic funders in going beyond investments to truly unleash the potential of collaborative action.

KEYWORDS

Policy advocacy | Philanthropy | Brazilian migration law

Throughout modern history, civil society organizations (CSOs) have demonstrated that policy advocacy[1] is one of the most effective means for transforming prevailing structural systems, attitudes and behaviours. That is because advocacy goes straight to the heart of where meaningful change happens: in the policies and laws that govern how we live, how we work and how we do business.

Never has this work been more important or urgent. In a world where ideological polarization, fiscal restrictions and social dysfunction prevail, the role of CSOs in fighting for justice and equality may prove more critical than ever. Philanthropic funders will need to play their part, too – providing vital funding and capacity strengthening support at a time when governments are fighting fires on several fronts in the wake of the Covid-19 pandemic.

As competing interests fight to be heard, CSOs can seize this moment to strengthen democracies. In addition to promoting greater transparency in public policy and legislative decision-making, CSOs spearhead the expression of social demands for justice and permeate state action in the defence and expansion of our rights. And much more than just driving changes in public policy, advocacy changes the system of democracy itself by expanding the participation and representation of groups that are often excluded from the political decision-making process.

Over the last decade, many CSOs have felt the need to refine their theories of change and the way they operate, finding in policy advocacy a more effective strategy for achieving systems change – getting to the root cause of issues instead of treating just the symptoms. Philanthropic funding organizations are increasingly realizing the value of supporting advocacy and the opportunity to turn this into action and strengthen the voices of the constituencies who most desperately need to see changes in political, economic and social policies.

1 • Hard-fought advocacy victories are a collaborative effort

Philanthropies and the CSOs they fund provide a critical counterpoint to corporate lobbyists. Across the world, corporate lobbyists heavily outnumber and outspend NGOs to get their issues onto political agendas. Despite this significant imbalance of resources, advocacy efforts are bearing fruit around the world. The European Commission recently committed to introducing mandatory human rights and environmental due diligence (mHRDD) legislation after years of pressure from CSOs. In the US, we are seeing once-radical ideas move into the political mainstream with the introduction of the proposed Green New Deal.[2]

In Brazil, the new Migration Law (Law 13,445/2017) passed in 2017 provides a compelling example of collective advocacy. Strong alliances between different social sectors, alongside

the mobilizing power of civil society, led to a historical victory that finally gives marginalized migrant communities a chance to achieve documented status in the country.

The lengthy process to construct and get the new Brazilian migration law passed is described in a publication promoted by Conectas[3] and Missão Paz,[4] both NGOs based in São Paulo, called *Foreigner, never again! Migrants as a subject of law and the importance of advocacy under the new Brazilian migration law.*[5] Supported by Laudes Foundation, the paper provides a comprehensive review of the advocacy strategies developed by Brazilian CSOs and aims to serve as a source of inspiration and learning for other advocacy organizations working on migration policies and human rights issues in general.

The findings shared in the above-mentioned publication show above all that active and structured advocacy efforts do indeed have the capacity to influence the development of laws based on human rights – and can ultimately succeed in securing the approval of laws that ensure these rights. Of course, such victories are hard won. As advocacy involves being tied up with complex legislative processes, it is a time- and resource-intensive endeavour. Building strong relationships and alliances, developing strategies and specific approaches for different stakeholders, anticipating problems and designing a good communication plan all increase the chances of eventual success. Equally important is understanding the 'rules of the game': how state bureaucracy and parliaments function, how bills are processed and the dynamics of offices and leaders in government agencies.

CSOs are well-positioned to inform key decision-makers and advocate for stakeholders who may not have access to the policymaking process. In many cases, CSOs actively involve and are steered by the communities directly affected by the laws they seek to change. And, unlike bureaucrats or politicians, they closely monitor, critically analyse and work on the same issues for many years. In fact, policymakers often rely on the technical capacity and academic expertise of civil society to draft amendments, improve legal texts and develop plausible and feasible arguments to defend their points of view.

Such deep practical and historical knowledge of the migration issue lent legitimacy and credibility to negotiations with decision-makers in Brazil. The participation of community-based organizations such as Missão Paz, with its extensive experience in providing direct assistance to migrants since 1939, meant they could sway opinion by sharing compelling, real-life examples of the hardships migrant communities face. They combined this with Conectas' vast experience influencing the Brazilian congress and its capacity for mobilization. Together, the organizations formed a formidable coalition with others in this space.

The development of a new legal framework for migrants is proof that the best public policies are built in a participatory manner that involves legislators and civil society representatives. If this social engagement is not valued, we end up having to live with inefficient public policies or even tragic situations, says Marcel Gomes, Director of Reporter Brasil.[6]

The migration law victory offers several lessons for successful advocacy:

I - Harness the power of communications

Powerful storytelling and accurate evidence enable CSOs to generate popular pressure around issues, especially through the effective use of the media. However, the publicity machine needs to be used intelligently and carefully so that public pressure does not render negotiations with key stakeholders unfeasible. A good communication strategy is fundamental to maintaining this delicate balance.

II - Negotiate with flexibility

Mapping parliamentarian allies (and opponents) is another critical step if CSOs are to influence peers at key moments and develop counter arguments to defend their positions. While polar opposite views garner the most attention, in reality, due to the complexity of the legislative process, advocacy is always channelled in the direction of consensus and requires one to negotiate with clear goals but also with flexibility.

III - Build trusted, collaborative networks

In the fight for a fairer migration law in Brazil, CSOs optimized all opportunities to advocate in spaces of public dialogue. They used existing fora such as councils, committees, meetings and hearings, while also building their own through seminars, events, debates and conferences.

With so many potential points of engagement across state and society, advocacy needs to be a collaborative effort. The call for change has to be loud, convincing and come from all corners. The Brazilian migration law victory was fought for by a group of organizations that established a bond of trust and a network of support based on complementary expertise and areas of activity. Such alliances are key in sustaining energy over the long term.

What we learned from the Brazilian case study is that advocacy is a multifaceted process that is 'done by doing' – that is, in practice, by testing, learning and adapting. It is important to have clear principles and objectives, know where you want to go, negotiate tirelessly and work on several fronts at the same time. It is also necessary to be prepared for elements that emerge in surprising ways – such as the appropriation of issues by opposing interest groups[7] – and understand how to interpret and 'play' political chess using institutional and personal elements. And all of this needs to be done in partnership with other organizations and committed stakeholders.

2 • Improving the role of funding philanthropies

Civil society has accumulated a lot of learning, which makes CSOs, social movements, worker organizations and academics, among others, powerful allies in the formulation of

laws and public policies. Philanthropic organizations, such as Humanity United, the Laudes Foundation, the Ford Foundation and the Rockefeller Foundation, are a critical part of this picture and are learning all the time. Supporting advocacy efforts in different parts of the world and across sectors such as fashion, finance and the built environment offers valuable opportunities for the Laudes Foundation and its partners to observe, measure and reflect on the role of philanthropies in the advocacy process.

What do these experiences tell us about how philanthropies can best fulfil their supporting role?

First, it is essential to accept that advocacy is not a smooth and easy journey for bringing about change. Understanding the policy landscape and how and why advocacy can help a philanthropic organization accomplish its mission should be a foundational aspect of any funding strategy. Choosing an approach to advocacy is also important. A key question to ask is: is the strategy grounded in convening key stakeholders, facilitating others, producing research, conducting direct advocacy or a combination of tactics? Aligning the organization behind the goals and the strategy is key to navigating complex systems change and advocacy processes.

But even with a clear and pragmatic strategy to achieve a desired goal, milestones and measurements of success need to be flexible. Advocacy goals are usually long-term, but progress is incremental, gradual and uneven. Setbacks are an expected part of the journey given that the political, social and economic context is impossible to control. Policymaking processes themselves are also complex, with varying points of potential impact along the way. All funding strategies should be adaptable. Philanthropies need to demonstrate trust in partner organizations, as tactics and even objectives may change depending on the opportunities and challenges that arise.

While it is easy to count the value that philanthropies bring to the advocacy process in dollar signs alone, there is so much more than direct financial support that they can do to build capacity. Offering advocacy-related training and technical assistance and featuring advocacy grantees through communications are all genuine value-adds. Philanthropies also have access to expertise and resources that can support specific services, such as policy analysis, evidence building, legal services and helping to build supporting public narratives that favour partners' positions in policy discussions.[8]

Philanthropies can play a role in building networks, cultivating alliances and convening key stakeholders too. Such exposure can help grantees build coalitions and credibility with leaders in the public and private sectors, which, in turn, increases their influence, the effectiveness of their advocacy efforts and their fundraising opportunities. When multiple organizations from different movements aim for a common goal together, it can be far more effective than divergent or opposing objectives pulling in different directions. It also brings healthy debate and different tactics to the advocacy strategy. Philanthropic funders can encourage constructive dialogue and collaboration among advocacy organizations and support groups or joint activities to minimize competition for

resources. Such efforts tend to be most effective when encouraged through relationship building and networking, rather than mandated through grant-making.

Finally, it is critical to expand the capacity of advocacy organizations and trust that they are best placed to know where resources need to be allocated to increase their effectiveness. Multi-year, unrestricted funding models allow CSOs to expand their expertise and build their advocacy capacity in incremental steps while adapting to changes along the way. Of course, in certain situations, it may be preferable to support advocacy through grants for a specific activity, such as the production of a report on a specific policy issue. In such instances, both partners and funders need to be crystal clear on the commitment – and have an exit plan in place.

When all is said and done, supporting advocacy may involve many elements depending on the time horizon, geography or social and political context. And the complexity of changing policy means that victories cannot always be easily tied back to a specific alliance, strategic move or moment in time.

So, how do you measure success? Does it lie only in a change of policy or law or does it include a broader sphere of influence such as changes in discourse, use of research outputs by decision-makers and co-ownership of policy goals by different stakeholders? And what happens when a law or policy does change? We are learning more about this from our partners as we move forward. What is already clear is that funders need to stick with CSOs in the long term to support monitoring, implementation and the effective use of legislation to bring about changes in real-world scenarios.

3 · Conclusion

Advocacy, and the process of supporting it, is complex, and there is no manual on how it should be done. However, there are lessons and points of attention that can help CSOs and philanthropies advance their advocacy objectives together.

The experience of many philanthropies, including that of the Laudes Foundation, shows that maintaining ongoing, open and trust-based relationships with partners can help align expectations from the start and encourage partners to develop realistic ambitions in a way that reflects the environment in which they operate. At the Laudes Foundation, we continue to improve and develop our approach through regular conversations with partners individually and in groups throughout the grant lifecycle. We also engage and consult partners during key moments of the foundation's development, especially when developing strategies and refining grant-making processes which directly impact the partnership (such as monitoring, evaluation and learning guidelines). For example, at the Laudes Foundation, we developed a rubrics-based methodology to help us build collaboratively with our partners an understanding of our contribution to system

change in complex environments.[9] The rubric system has helped us balance the unequal power dynamics of monitoring and evaluation processes, bringing more authenticity, transparency and real learning between Laudes and partners.

Furthermore, for the grant-making experience to be a learning process, philanthropies need to create a safe environment where grantees feel comfortable communicating the challenges they face and where philanthropies can adapt and share lessons with peers. In other words, advocacy support needs to be much deeper than the pockets of funding philanthropies.

NOTES

1 • Advocacy can be defined as the act of speaking up on behalf of an individual, group or cause to bring about a change in policies or practices in their favour. Source: Reforma Laboral para Todos, Homepage, n.d., accessed September 1, 2021, https://reformalaboralparatodos.mx/.

2 • For information on the European Parliament vote in March 2021 that passed, by a large majority, new EU laws requiring companies to conduct environmental and human rights due diligence, see: "MEPs: Companies must no longer cause harm to people and planet with impunity," European Parliament, March 10, 2021, accessed September 1, 2021, https://www.europarl.europa. eu/news/en/press-room/20210304IPR99216/ meps-companies-must-no-longer-cause-harm-to-people-and-planet-with-impunity. The initial commitment to adopt legislation was made in 2020 by the European Commissioner for Justice. "European Commission promises mandatory due diligence legislation in 2021", Business & Human Rights Resource Centre, April 30, 2020, accessed September 1, 2021, https://www.business-humanrights.org/en/latest-news/european-

commission-promises-mandatory-due-diligence-legislation-in-2021/.

3 • Conectas Human Rights, Homepage, n.d., accessed September 1, 2021, https://www. conectas.org/en/.

4 • Missão Paz, Homepage, n.d., accessed September 1, 2021, http://www.missaonspaz.org/ home.

5 • Ebenézer Marcelo Marques de Oliveira and Cyntia Sampaio, "Estrangeiro, nunca mais! Migrantes como sujeito de direito e a importância do advocacy pela nova lei de migração brasileira." Conectas, 2020, accessed September 1, 2021, https://www.conectas.org/ wp-content/uploads/2021/03/Estrangeiro-Nunca-Mais_Livro-Lei-de-Migracao1.pdf.

6 • An interview by the Laudes Foundation conducted over email on May 5, 2021.

7 • One example related to the new Brazilian migration law is the simplistic appropriation of themes related to migration by xenophobic political groups opposed to the human rights community.

8 • William and Flora Hewlett Foundation and Ford Foundation are both examples that have

invested in network building to enable coordination between organisations through providing expert consultants and meeting spaces. Loren McArthur, "Four Promising Practices for Philanthropies to Advance Advocacy and Policy Change." The Center for Effective Philanthropy, May 30, 2019, accessed September 1, 2021, https://cep.org/four-promising-practices-for-philanthropies-to-advance-advocacy-and-policy-change/.

9 • "Measurement and Learning Approach," Laudes Foundation, n.d., accessed September 1, 2021, https://www.laudesfoundation.org/grants/rubrics.

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Human rights in the context of the pandemic:
Impacts and responses

SECURITY AND VIGILANTISM

THE POLITICAL MEANING OF PRIVACY AND IDENTITY

• *Interview with Usha Ramanathan* •

Conducted by Rafael Zanatta and Juana Kweitel
Edited by Helena Secaf and Rafael Zanatta

Usha Ramanathan is an Indian intellectual and activist working on the frontier between law, poverty and rights. Her research interests include human rights, displacement, torts and environment. She has published extensively in India and abroad.

Her texts are read in India through vehicles such as The Wire, The Hindu *and* The Indian Express. *In 2011, in the essay* A constitutional value for privacy,[1] *Ramanathan defended the distinction between a transparent state and a private citizen and criticized the "extraordinary momentum to get to know the people of India" and the "unique identification" (UID) project announced as the basis for a process of convergence of pre-existing and structural data for public policies to combat poverty.*

While the World Bank, bureaucrats and big investors celebrate the implementation of digital civil identity projects, Usha has constructed a theory of privacy connected with the freedoms and risks of surveillance and political monitoring of citizens. The battle against the UID and Aadhaar,[2] which culminated in a landmark ruling in India's Supreme Court that imposes limits on the state's use of biometrics, is an example of the kind of activism led by Usha. It is not without reason that in 2018 she was given a Human Rights Heroes award by Access Now for her advocacy work on Aadhaar.

In this interview,[3] Usha Ramanathan analyses the history of the struggle against a unified identity system in India, the lessons learned from the process of political and legal mobilization and the limits of the decision in the Supreme Court of India, which is generally not fully understood in Brazil and Latin America. Usha also challenges the narrative that claims that the protection of personal data offers adequate solutions to contemporary problems of the violation of rights in the use of new technologies by the state and the private sector.

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Sur Journal • What is the Unique Identification project in India and what are the main risks involved?

Usha Ramanathan • The UID project was said to be a game changer, but there was no explanation of what the project was meant to do. It was launched in 2009 and there was no law, no feasibility study – just an executive notification saying that they were setting up something called the Unique Identification Authority of India (UIDAI), that this would create a database and that the UIDAI would "own" that database which would have our information on it.

Briefly, the UID tries to do two things: assign a number to every person by which they shall be "uniquely" identified and entrench the UID as necessary to validate every person in other documents and databases. The UID is the one ID that has no purpose of its own other than populating different IDs and different databases. When they set out what was going to be done by the UIDAI, the project crept things in like a national population register, which was a political (mis)adventure that had not yet begun. Through the years, the ambitions of the project kept shifting.

There are three words that have been central to understanding this project's ambitions: "unique", "ubiquitous" and "universal". Unique because they wanted every person to be identifiable with a unique number. In the beginning, we thought uniqueness was about biometrics, but then reports began to emerge, from within the UIDAI, revealing that they did not know whether biometrics would even work in this country. They were just rolling it out, like an experiment on the whole population. Ubiquitous, which means "to be everywhere", since the unique number would be in every database, such as the ones in banks, mobile companies and assistance for disabled people. If I had to get cooking gas, I couldn't get it unless I put my UID number into that database. It was to be everywhere, a hurdle to cross to access even simple things. So, from being a promise of inclusivity, it very quickly shifted to becoming something that would exclude you if you refused, or were unable for any reason, to be a part of it.

For instance, the biometric issue I just mentioned: we found that they hadn't even tested biometrics before they decided to adopt it. A report published in December 2009 stated that for enrolling in the database, fingerprints alone might not be enough, since 2-5% of 25,000 people they had tried it with did not have fingerprints that "worked". Then, they had the idea of using the iris along with the fingerprint, again without testing it.

But, as their Mission Director said in an interview in 2011, people like manual workers may have difficulty with their biometrics because of the nature of their work. The probability of exclusion was known even then. In other words, they acknowledged it could be a problem but just told us they would figure it out in time! That still hasn't happened. The idea was to experiment with people, and I think that bothered all of us.

Until 2012, enrolment was projected as voluntary. But then, the government began to make the UID mandatory. The UIDAI Chairperson stated that before he finished his five-year term, half of the population would have to be on the database. And in India, that's a lot. That's like 650 million people. Unless an urgency could be conjured, why would people enrol? So, they started finding different ways by which people could be impelled to get on the database. For the poor, the easiest way was to deny rations unless they were enrolled for a UID and linked their number to the ration system. The message was hardly disguised: "if you don't enrol, you don't get food". I mean, how are we even viewing poverty?

That strategy for making the UID mandatory didn't work with the rest of the population who did not need to rely on state support for basic needs. In 2016, 2017, it was made mandatory to verify mobile phone numbers using the UID, which meant that everybody had to link their phones to the database to avoid their phones getting disconnected. This was extended to bank accounts and to tax payments. So, from a promise of inclusivity, very quickly it shifted to becoming something that would disable services, freeze accounts and make you a defaulter if you did not comply.

Even since 2010, they had said that food, clothing and shelter was now *passé*, and that the future was about three numbers: the UID, the bank account and the mobile phone. One number, then, could not prove identity; you needed three. The mobile phone has become the number on which the UID now depends. So, for instance, I don't have a mobile phone, time passes and I grow old. As you grow older, your biometrics fade, change and become uncertain. In the UID system, if I have to update my name, gender, age, email, mobile number or any other information on the database, they ask that I verify who I am with my biometrics. My biometrics don't work. They say, "OK, give me your mobile phone number that is registered on the database". I don't have a mobile phone. That is it. When my biometrics fail me, and there is no phone, I cease to exist. We call it "civil death". No mobile phone, biometrics that don't work, an error in the database that cannot be corrected or updated – you no longer exist. This system that says it will weed out fakes, ghosts and duplicates; this is how it creates ghosts.

Sur • What were the legal problems around the Unique Identification project? How was it legally challenged in court?

UR • The UID case (politically, I don't accept the term Aadhaar) was taken to court almost four years after the project had been launched in 2009. The case was first taken to the Supreme Court in late 2012, and in 2013, more people started approaching the court to challenge the project, focussing on different aspects. Since the beginning, from 2009 basically, many of us started being concerned because nobody answered the questions we were raising.

The project was launched without due care (we still believe that even the people running the project were not aware of its full import). It kind of rolled itself out and, even as it did, it seemed to provide the state with the potential to reduce its expenditure on subsidies. The possibilities of surveillance began to emerge, and business interests found they may be able to use personal information for profit.

In September 2013, the Supreme Court issued an order prohibiting the refusal of services due to the lack of an UID; that is, the government was ordered to refrain from making the UID mandatory while the case was still pending. This order was flouted, left, right and centre; still, we had something on the basis of which we could fight back.

In its final ruling, however, the majority opinion of the court basically said that it's alright to violate the right to privacy of the poor. They didn't say the project was not violating the right, but that it was okay to deny the poor the right. For the others, the court said, the government must demonstrate that it has a legitimate reason for whittling down the right, that it should conform to the doctrine of proportionality, and even then, the restriction of the right must be in a law. The judgement did endorse the linking of taxes to the UID but struck down the linking of the UID with bank accounts, or with mobile phones as infringing the right to privacy. It is very difficult to miss the class distinction in how the majority judgment has understood rights. It is an acting out of George Orwell's "Animal Farm": "all animals are equal, but some animals are more equal than others".

Our assessment of this case's ruling is that it was based on pragmatism. The majority felt that the state was saying that it needed this UID to govern, and so, they decided to let the state have what it wanted, willing themselves to believe that the state would take care that no other rights were violated. But, of course, that was a belief without basis for, most tragically, in September 2017, the first recorded death occurred due to a failure in the system. An eleven-year-old, whose family was enrolled in the UID database but who were unable to link the UID number to the ration database, died of starvation after eight days spent in hunger. Negotiating the technology was more than they could do.

It was horrifying and for many of us, I must say, we felt deep guilt, because we had known that something like this could happen – we just didn't know how to stop it.

When it happened, it hit us really hard. This was a child who we got to know about. We couldn't tell how many people were just falling through the cracks. When this happened, the case was still in court. We said, "we have to tell the court. The court needs to know this. Newspaper reports are not enough".

So, there were a series of affidavits filed by a range of people from around the country. For instance, when two deaths occurred and we got to know, an activist went to each of those places, collected information about what had happened, put it in an affidavit and placed it before the court. There were people, for example, who had leprosy whose fingers didn't work. They were losing their support from the state because their biometrics wouldn't work. Their hands were wounded, as were their eyes. What were they going to do?

There were a range of these "exclusion affidavits" that were filed to acquaint the court with what was happening to the most vulnerable because of the UID project. The court acknowledged these affidavits, but only to say that "the activists, academics and others have put together these affidavits and sent them to us, but the government contests this and we are in no position to decide this. So, we are leaving it to the government to make sure this doesn't happen". That's it.

The court could have done more; there are innumerable precedents. The court could have set up a committee and asked the committee to "go and check it out and come and tell us the truth about this". They didn't do that. Among other things, the court had to deliver its judgment quickly because the Chief Justice, who was also on the bench, was retiring, and the judgment had to be delivered before that happened. Yet, when you ask, "why did they ignore the evidence?", your guess is as good as mine.

Over the years, we have found for ourselves ways of understanding judgments of courts. Sometimes, the judgment reflects the court's perception of its power to do what it believes must be done. Sometimes, it is based on a discernible principle. Or, it may be based on pragmatism, where they may seem to be saying, "the state needs it. Times have changed. We must allow (for instance) land acquisition in these cases and so, we'll negotiate a little bit here and there, but we'll allow the state to continue doing what it needs to do".

Or, it may be prejudice, often based on what they think they know of the other. The majority judgment, in the UID case, waived the right to privacy on behalf of the poor. The court said that social and economic rights are more important for the dignity of the person than privacy. They made a choice for the people. They didn't ask what the privacy right meant to those needing state support. They said, "we are making this choice because we know". Maybe they do, maybe they don't.

There are certain phenomena related to poverty that I have recognized in the 30 to 40 years that I've been studying this field. One is the idea of *dispensability*. We have seen that in development projects such as dams, industries, mining. Some people, we often hear, have to

make sacrifices so that the country can progress. In the beginning, it seems that some people would be marginalized, but, over time, we have seen that the few have grown to masses and "mass displacement" and project affected people and communities are part of the lexicon of the development project. Traces of this phenomenon are seen in the UID project.

The other phenomenon is *invisibility*, actually *invisibilizing* – that is, being rendered invisible. It is striking how data can be used to make people and problems disappear as easily as it can make them visible. During Covid-19, for instance, Parliament has been informed that there is no data on how many migrants died on their way home, no data on how many people died due to lack of oxygen. No data on how many ways that the UID has been misused, nor in how many ways the UID has made it difficult for people to access what is their due. Not just invisible, but invisibilized.

In the meantime, workers are required, by law, to be visible, to enrol themselves onto a database for informal workers – which, in India, is over 90% of the working population – along with their UID, mobile phone and bank account numbers and keep the state updated about where they are and what they are doing. In return, the state may have an insurance scheme that it may extend to them; and if it is decided to provide any assistance in times of distress, then only those on the database will receive state support. Now that the workers have started enrolling in this database, we are told that the "formal economy" has grown. So, what is this formal economy? Informal workers on databases, people using digital transactions because of the difficulties in using cash, as happened in 2016 because of "demonetization", and more recently where it is "pandemic-induced", a "goods and services tax" regime where those who are unable to manoeuvre the digital world fall off the map.

And the third is *redundancy*. Even today, you'll find that they'll say, "artificial intelligence, once that comes, 80% of people will have no jobs. It can't be helped". This is not the first time in history that technology has made jobs disappear, but the scale now is something else. Systemic change must work to reduce the problems of poverty and powerlessness, not make them worse.

Anyway, if you read the judgments of the Supreme Court in the UID case, you will find a dissenting judgment, which acknowledges almost everything that had been raised as an issue by the petitioners. When the arguments in the case began, it seemed to be that the dissenting judge did not immediately see why there was such opposition to the project; but, I think it was when he found that the government actually had no answers to the questions that were being raised, which happened some time in April of 2018, that he began to see the project was very different from what they had been led to believe it was.

The majority judgment strained the language of the law and used the device of interpretation to give legality to a law that was widely recognized as unconstitutional. That's one aspect. The other aspect was about privacy.

We have a principle here, a constitutional principle, that nobody can waive their fundamental rights. I can't say, "I don't want my right to privacy, and I am relinquishing that right." You don't want it? That's okay. You may never exercise the right. But you have it anyway. It is inalienable. That's what the privacy judgment, given by the Supreme Court in August 2017, also said. It said privacy is a fundamental right that cannot be waived, nor can it be taken away by the state.

The majority judgment in the UID case goes against the privacy judgment.

Privacy reached centre stage when, in July 2015, the Attorney General told the court that was hearing the UID case that the people of this country have no right to privacy. Not just no fundamental right to privacy; they said they have no right to privacy. The state can, by law, give and take away the right to privacy. In support of this position, he brought up two cases, decided in 1954 and 1962, which referred to the right to privacy in the context of surveillance.

The thing is our reading of the Constitution changed between 1950, when it was promulgated, and 1969. Before 1969, the Supreme Court had read the fundamental rights rather conservatively. Anyone claiming a fundamental right would have to show where in the Constitution the right was set out. The rest was vested in the state. This changed in 1969, when the understanding of rights was expanded and the power of the state was limited by the rights of the people. Rights were no longer seen as islands, and ones that may not be named in the Constitution could still be found in the penumbra of rights. Such a right was privacy.

Returning to the recent past, by 2011, the state was not only beginning to create a database of the entire population; it was also looking to pass a law providing for a human DNA database. Not everyone in government was sanguine about these projects, and the minister in charge of science and technology was worried enough to set up a committee, headed by Justice AP Shah and of which I was a member, to report on the privacy implications of these projects. As we worked on the report, we found that privacy was then still a weak right, in the sense that it had meandered its way through the decades, case by case, and hadn't acquired a strong foundation in jurisprudence yet. And the words "right to privacy" are not found in our Constitution. It did seem a relatively weak right, but it was still an important right, one that had been evolving over four decades and that was not hard to establish. The report identified nine principles to be adopted if the privacy right is to be respected – which, in terms of data, had to do also with what you collect, how you keep it, how you transfer it, how accurate it needs to be and when you destroy it.

There had been a few previous attempts at making a law on privacy. In 2005, for instance, a privacy bill was sighted and then, a while later, it was nowhere to be seen. So, when in 2015, the Attorney General said to the court that there is no right to privacy, the battle for rights had to be fought hard, without the support of legislated

law. The longer it took to decide the question of the right to privacy, the longer the case challenging the UID project would remain unresolved. Because the 1954 judgment which the Attorney General cited as denying the right to privacy had been decided by a bench of 8 judges, for a fresh appraisal of the privacy question, at least 9 judges would need to hear and decide the case. Pendency of cases is endemic – just to give you an idea of the scale: the current figure of pendency in the Supreme Court is close to 70,000; and there was no saying how long it would be before 9 judges could be relieved from other cases for a spell to hear this matter.

In July 2017, a hearing on the UID case was going on in the Chief Justice's court, and it was being argued for the state, again, that the case would have to wait for the privacy question to be resolved before the challenge to the UID project could be taken up. One more attempt to leave the challenge up in the air. Quite unexpectedly, the Chief Justice said, "okay, then, I will constitute a 9-judge bench tomorrow and let the privacy case be heard".

So, the bench was constituted. That hearing happened over six days, and the lawyers dived into it without pause. That week, I was hopping from lawyer's office to lawyer's office for all the briefings, and it was amazing. The seniors, their juniors, all the others who were working with them in their offices day and night; I don't think they noticed when night fell or when the sun rose the next day. And they did all this work not just for free: they did it spending their resources. It cost a pretty packet to prepare for the case, and the lawyers billed it to themselves. There were no other resources. And the time. Lawyers turned down work that would have paid them handsomely to stay continuously engaged with the court. "Why", I asked one of them, "are you doing this?" "If we lose this case", he said, "there will be no Constitution".

Sur • How do you see the connection between privacy and data protection in Indian society?

UR • I engage in the discussion of data protection as a framework, but I do it cautiously because, for me, data protection is not going to protect people. Data protection is a battle we have to fight, but I don't see it as a bulwark against this invasion of privacy. This is a part where I am in a slightly different position from others.

In the context of technology, two axioms have been conjured up by those who want to push projects that are invasive. One, that "privacy is dead". Once you say privacy is dead, you don't have to worry about respecting or protecting it. Second, that "consent is broken". You know, they will say that Google asks you to sign on to permit their collecting and using the data you generate on their search engine; do you even know what you're signing on to? When the Guardian asks, "is it OK if we use cookies?", do you really make a considered choice? This is what consent has become, and we can do without this. There is a third tack, in which it is claimed that rules stifle innovation. So, let innovation happen and rules can follow – around the innovation. The aspiration is to have the freedom of a Facebook or an Amazon, and we now know what distortions that has caused!

Despite the report of the Justice AP Shah committee in 2012, the resistance to a data protection law kept it off the table till the privacy case made it difficult to ignore. In 2017, when the 9-judge bench of the Supreme Court began hearing the privacy case, it soon became evident that they would be upholding the privacy right. That is when the Attorney General told the court that the government was setting up a committee, headed by Justice Srikrishna, a retired judge of the Supreme Court who is widely respected, to work on a data protection law. So, they said to leave it to the expert determination of the Srikrishna committee, plainly asking that the court not pronounce itself on the privacy question. Fortunately, the court just recorded the setting up of the committee and went on to deliver its verdict!

As it happened, the committee was composed of those who had expressed their support for the UID project, including those who had gone to court and argued to defend the UIDAI and deny the right to privacy. The judgment on the right to privacy stood in their way, and they could not wish it away. So, they attempted an inversion of the idea of privacy. The importance of the right, they said, is not in what it means for the rights holder, but because that right is actually a public good which society as a whole enjoys.

It is not, then, to be wondered that the title of the report is "A free and fair digital economy"; "protecting privacy" appears later in the title after an invisible colon.

It has been a battle. Digitization was just the first step in this kind of tech ambition. Then, it was an ID which would uniquely identify each person across databases; then, the coercive power of the state was used to make it ubiquitous, pushing every person to enrol. The data about people this could produce made data the next resource on which the economy and profits and control could be built. Surprisingly, though, the UID has spawned a whole host of other IDs, all prefixed with "unique" – Unique Health ID, Farmer's ID, Land ID and on and on, including even unique IDs for cows!

Privacy is repeatedly being assassinated. A straw man is set up so that privacy is not an absolute right. That is then used to ignore the right, or deny it, in situation after situation.

A data protection law has been in the making for some years now. There is little doubt that there must be a law, except I am not sure at all that it will protect the rights of the individual. As it is, the draft law exempts the state from the law. Then, the UIDAI is also pushing to be given the same exception. There is a push to include what is called "non-personal data" – personal information that has been anonymized or which is in the public domain – and to make way for business using personal data. Technology companies are using the state to coerce people onto multiple databases. In return, the technology providers for projects such as the UID create tools for the state to surveil the people. The data protection law in no way stops any of this. What then is the point of this law-making exercise?

The other common motif when the state claims a state of exception is "national security" about which we'll talk in a little while.

Sur • What is the role of global institutions such as the World Bank in this process of implementing digital ID programmes?

UR • The World Bank, especially with Estonia and India as the two great experiments, set up the ID4D. Then, Microsoft, the Rockefeller Foundation, Accenture and Gavi, The Vaccine Alliance – and therein lies a message - set up ID2020 to build a global digital ID.

Nandan Nilekani is a technology tsar who was the first head of the UIDAI. In an interview in 2018, when asked about how he felt about the system he had set in place having caused the death of a 11-year-old (in September 2017), this is how the conversation went: Interviewer: "The odd dead child, the odd stolen data is okay?" Nilekani: "No, I think, finally, you know, in any system we have to minimize anything which is not the right thing to do and then see overall if it provides benefits. On that, the answer is an unequivocal yes." He is part of ID4D.

ID4D gathered its people but didn't begin functioning till Bill Gates gave them the money, and therein, too, hangs a tale.

There have been so many indications of the ambitions this project has fostered. So, in a meeting that was held in the World Bank in 2013, Nilekani talked about the UID project, when Jim Yong Kim was the head of World Bank. As Nilekani explained the project, Jim Yong Kim asked, in much excitement, and I paraphrase, "so you're telling me that if there is somebody in Nairobi who is at an ATM, I can be here in Washington, and I may not know what she is doing at that ATM – I don't know if she's withdrawing or depositing money or whatever – but I will know she is at that place at that time?" Nilekani: "yes".

In a meeting at the Center for Global Development, around the same time, someone from the audience asked Nilekani, "Do you think there is any potential for having a global system by the year 2030?" He answered, "There's nothing technologically limiting to having the whole population of the world" on the grid.

As for the World Bank, working on matters of law and poverty, it has been plain for some time now that the Bank's preoccupation is with reducing monies spent on subsidies. The images of those needing state support syphoning off more than is their due has propelled projects such as the UID, making exclusion a hallmark of the project. That the leaking of subsidy happens somewhere else is not their concern. The UID project has been sent out into the developing world, with ID projects being made a necessary condition before the World Bank will agree to loan money to countries.

Why is the World Bank so keen on databases with whole populations? What is the interest Bill Gates has when he gives ID4D funds? Why is a project that is so deeply flawed in our country being pushed everywhere? The creation of databases is becoming a product that

is up for sale. It is not just the UID; the CoWIN app, with vaccination data is another, and this time, it is aligned with vaccine passports, another push to database the entire population of the world. How is one not to see these as projects of surveillance and control? In India, a recent article explained that the World Bank has been funding, and "providing technical assistance" – what a euphemism! – to create systems that will provide a 360° view of every person in real time, so they know who you are, where you are, what you are doing, who you live with – everything.

There are now GPS-tagged houses, with data on how many people live there, their work, education, marital status, state support, … the only thing missing is the menu. And once you have the IoT-enabled refrigerator, they will know what you eat, how much milk and water you drink. There is a document, adopted by the UK and German defence establishment, where they are actually talking about "human augmentation". Human augmentation. This is an agenda that is beyond the state agenda. The global agenda is to augment human beings. Have you seen that report? It is stunning. They say, "we can't plan for augmentation unless we know more about people". For instance, not enough is known about how much and how well we sleep, how much and what we drink, what and how much and how often and where we eat. They need to get the physiology and biochemistry and psychology right. That's the kind of detail in which we must be known. Human augmentation is to enhance capability, and to be the "binding agent between people and machines". It is like history never happened.

Sur • How would you describe the risks of "the age of technology"?

UR • Maybe I will begin with saying this, that technology has ambitions. Technology believes that the age of industrial manufacturing is past, that the age of oil is over, and now, it is the age of technology. Technology should be allowed to develop without restraint – no rules, no laws. Rules, and rights, stifle innovation. A price has to be paid for convenience, and that price may be a basic right. Strangely, at the beginning of this century, technology was creating artefacts that generated a lot of excitement. There was the mobile phone, the computer, the laptop. There was Facebook, Twitter and a host of other platforms that seemed to connect us to the millions. Communication took on new meaning. The internet was incredible. Technology helped during the Arab Spring, and people came together, organized resistance...

I think the Arab Spring was the one time that technology did something which didn't carry regret. Since then, the mobile phone has become two things besides being a means of staying in touch: one, a tool of surveillance; and second, every police investigation starts with seizing the mobile phone and digging into thought and deed. As Mr Nilekani said when questioned about the UID, the mobile phone is even more pernicious!

Social media and existence in a bubble. Then the hate; such an escalation of hate. The freedom of speech and expression is so important. How complicated this freedom has become!

So, what has this done to us? With remarkable speed, quickly, these technological ambitions have driven excitement into the ground, making us anxious about technology. That is what I see around me now. The UID was, for us, one starting point in this decline.

This is a new phase that we've entered, and it is technology that's brought us here. Nothing else could've made this happen. Now, you can peer into everybody's lives. In a minute, your bank account could be frozen. Your quota of food could disappear. You could be denied health care because your biometrics do not match what is on the database. These are not hypothetical; they have all already happened.

I think a question that needs to be asked of the state and to the technologists is: "is this the imagination you want to foist on the world?"

The Pegasus episode raises so many questions. A private company comes up with ways of infiltrating the phone and sells it to governments around the world because it says that governments need tools to deal with terrorism. Since 2019, Citizen's Lab, later joined by Amnesty International, found that phones of persons across many countries had been infected by Pegasus spyware; some of them were from India. In 2021, a massive investigative effort found that over 50,000 people across continents had had their phones compromised, and this included journalists, activists, even judges. This is when some people took the case to the Supreme Court. The court was very frugal in what it asked of the government. It is being said that the government is not treating the matter seriously, the court said. Given that NSO claims that it sells its programmes only to vetted governments, some foreign governments could be using it to surveil people in India, or it could be being used in contravention of the law. All that the judges asked was for the government to explain its stand. Nothing that would affect national security; just address the apprehensions raised. Basically, the question was: is the government acknowledging what had happened, and were they doing anything about it? Not what; just whether. The government would not answer: "anything we say could compromise national security", they said. Fortunately, the court has not accepted this blanket refusal and these caverns of secrecy that the government was claiming for itself, and set up a committee to investigate the allegations. This could be significant, if the court develops the law of judicial review in matters of surveillance. These uses of technology and these debates are a sign of our times.

Over the decades, first the colonial state, and then independent states, have asserted dominion over all resources – land, water, minerals, forests. Now it seems that it is the turn of data, personal data including fingerprints, iris scans, facial information, DNA. The veneer of "public interest" and "public purpose" has been stripped off. And when the government says the resource has to be handed over, it simply must be done, no arguments, no autonomy.

Our main argument in the Supreme Court in the challenge to the UID project was about the nature of the relationship between a state and the people. The constitution, we argued, is not about the power of the state over the people. It is about the limits of the power of the

state over the people. State power must be understood in ways that recognize these limits. Technology has been breaching all norms and transgressing all boundaries.

Take, for instance, digital transactions. Every sinew is strained so it is "no cash, only digital transactions". That will generate digital footprints, which, like the wolf that growled in Little Red Riding Hood, is "the better to see you with". If you fight shy of revealing yourself, then you will become ineligible for credit. For why should anyone trust you if they don't know you and know that you will not be a defaulter, or that you are not a spendthrift, or, heaven forbid, you are not a terrorist? It is the politics of control through the politics of suspicion.

It's very interesting: the government demonetized 86% of the currency in 2016, and this was an utter disaster. People had to deposit all the cash they had in banks, and the government would say how much they could take back, bit by bit, because it was meant to surprise everyone – including even the ministers in the cabinet – and so they had not yet printed enough currency to replace what was being deposited. It was like they got excited smelling the opportunity. Everybody, including Nilekani, who were giving interviews said, "this is the time that cashless, paperless and presence-less will become the next big thing". They have been very interested in the idea of presence-less. Not the physical person; just their virtual presence and the data that that generates. Data without people, what a dream!

The thing is I am not asking corporates to be good guys. But when they partake of state power, then we're talking a very different story.

Sur • Which are the main movements resisting this process?

UR • In India, a lot of the awareness about what this kind of technology is doing to people's lives came with the government making the UID mandatory for various services. It started with cooking fuel, then rations, the rural employment guarantee scheme, scholarships for education, pensions... It kept expanding. It was the right to food movement and those working on the rural employment guarantee that first got a hang of the very real possibility of exclusion. The pushback from these groups has been persistent and vocal.

The movement for the right to information (RTI) has been unequivocally opposed to the UID project. There is little doubt that the demand for a transparent state has been inverted by this project: instead of the state being transparent to the people, the UID project works to make the people transparent to the state – and to corporate interest. There is a certain incongruity that people like me see when RTI activists ask for ration and employment guarantee databases to be uploaded so they can be monitored to make sure the system is delivering – it is too close to the majority judgment in the UID case which said that those who are welfare recipients can do without the right to privacy. This is a discussion that is currently going on.

Once the Attorney General said to the court, in 2015, that privacy is not a right of the people in India, there was a surge of privacy activism. That was a stunning moment.

Then, in 2017, the government tried to make it mandatory to link the UID number with bank accounts, mobile phones and tax records. And, with that, it reached the middle classes, who had so far felt it was about those needing state support for food and work and so, considered it had little for them. I think, with that, naivete vanished. It stopped being just some innocent ID; but the threat of losing their phone connection or having their bank accounts frozen, or being on the wrong side of the law in filing tax returns had people complying helplessly. That tactic worked. The idea of disobedience, which Gandhi taught us when we can see a public policy or law go horribly wrong, is not a lesson learnt. We are a very compliant population, which is why there has been no anarchy at all.

In recent years, two major movements have engaged in the art of civil disobedience: the protest against the citizenship amendment, where they were trying to segregate just Muslims as people who would not be entitled to citizenship, and the farmers' movement. The citizenship amendment raised the spectre of exclusion through identity and cast its shadow on the UID project. During the farmers' yearlong protest against three laws that had been rushed through parliament with no debate or consultation, the government released a document about how technology would be introduced in the agriculture sector, called AgriStack. According to this, farmers would be given a unique farmers' ID, every piece of land would have a unique ID and databases would be created using these, which provoked a reaction.

The thing is that what they have done with technology in this project spills over to other spaces and has given rise to a lot of insecurity. If you ask, "where is the pushback coming from?", it is coming from these movements, and it is also coming from a set of young people who have been in the battle for privacy and expended loads of time and energy in the court case. When Facebook attempted to introduce Free Basics in India, these youngsters fought for a free internet. When they flagged issues about the UID, they were trolled by the IndiaStack

people, a set of entrepreneurs mentored by Nilekani who saw their task as making the UID work for them and who are often found in the corridors of power. This was education that the IndiaStack crowd imparted to the youngsters, a lesson they have not forgotten!

In a conclave organized by the UIDAI between November 23 and 25, 2021 to set themselves an agenda for the next phase, two founding members of the UIDAI – the erstwhile Mission Director and his colleague – along with the head of a government think tank were heard complaining that the project was never intended (made) for the government. Question of "anything to boost the digital economy won't happen if it is a captive of the government". Their words.

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Interview conducted by Rafael Zanatta and Juana Kweitel in November 2021.
Original in English. Translated by Naiade Rufino.

NOTES

1 • Usha Ramanathan, "A constitutional value for privacy." The Hindu, July 30, 2011, accessed December 9, 2021, https://www.thehindu.com/opinion/op-ed/a-constitutional-value-for-privacy/article2306023.ece.

2 • As stated in the Unique Identification Authority of India's official website, the Aadhaar number "is a 12-digit random number issued by the UIDAI to the residents of India after satisfying the verification process laid down by the Authority. Any individual, irrespective of age and gender, who is a resident of India, may voluntarily enrol to obtain an Aadhaar number. Person willing to enrol has to provide minimal demographic and biometric information during the enrolment process which is totally free of cost. An individual needs to enrol for Aadhaar only once and after de-duplication only one

Aadhaar shall be generated, as the uniqueness is achieved through the process of demographic and biometric de-duplication." The biometric data collected consists of ten fingerprints, two iris scans and a facial photograph, while the demographic information includes Name, Date of Birth (verified) or Age (declared), Gender, Address, Mobile Number (optional) and Email ID (optional); in case of Introducer-based enrolment- Introducer name and Introducer's Aadhaar number; in case of Head of Family based enrolment - Name of Head of Family, Relationship and Head of Family's Aadhaar number; in case of enrolment of child-Enrolment ID or Aadhaar number of any one parent, Proof of Relationship (PoR) document. According to the website, it is "[...] a strategic policy tool for social and financial inclusion,

public sector delivery reforms, managing fiscal budgets, increasing convenience and promoting hassle-free people-centric governance", which facilitates the inclusion of the underprivileged and weaker sections of the society, being a tool of distributive justice and equality. It is one of the key pillars of 'Digital India' and it has "[...] already achieved several milestones and is by far the largest biometrics-based identification system in the world."

3 • The conversation lasted an hour and thirty minutes.

"WE NEED GREATER TRANSPARENCY AND DEBATE ON THE USE OF SURVEILLANCE TECHNOLOGY"

• *Interview with Jamila Venturini and Michel Roberto de Souza - Derechos Digitales* •

By *Sur Journal*

Derechos Digitales[1] is a Latin American organisation, committed to the defence and promotion of human rights in the digital environment. It works in three main areas: freedom of expression; privacy and copyright and access to knowledge.

For this issue, the Sur Journal *had the opportunity to talk to Jamila Venturini, co-executive director and Michel Roberto de Souza, director of public policy at the organisation. Our main interest, as well as finding out about the results of the recently published research by Derechos Digitales on cases of facial recognition in Latin America,[2] was to hear the reasons for the accelerated growth in the use of surveillance technology and facial recognition and the consequent risks for human rights, based on information from an organisation specialised in this matter and in this region.*

Issues covered in this conversation include, for example: local and international legislation; economic and political relationships between manufacturers, providers and buyers; details about the application of this technology in different contexts across the continent; the impact of the Covid-19 pandemic on the legitimisation of greater surveillance in the control of public and private space; increased racial and migratory discrimination as well as the principal challenges in the region in terms of guaranteeing the right to privacy, autonomy and access to citizens´ information.

Sur Journal • In recent years we have seen a panorama of advancing surveillance technology in countries of the Global South. What analysis do you make of this scenario?

Jamila Venturini • Our concerns with surveillance and privacy in the digital arena are closely linked to the observation that this technology is added to a history of human rights abuse and the criminalisation of groups that oppose established power structures in Latin America. It is possible that this technology will not only facilitate intrusions into private communication but also allow access to information that has not previously been available to the police and authoritarian governments. One example is metadata, in other words the ´tracks´ we leave with every interaction on digital devices. These include geolocation, internet connection time and duration and access to certain pages or platforms etc. In addition, metadata reveals individual intimate and sensitive habits about where and how we live, our contact networks, our interests and thoughts, when we sleep... Unfortunately, there have been a number of examples of abuse in relation to the use of this type of information, by both the public sector and businesses.

As well as a series of legislative developments that seek to ease government access to private information, harvested by companies offering a wide variety of types of technology, we have observed a growing interest in the region in purchasing surveillance systems. In addition to recording what happens in public and semi-public spaces, they seek to extract even more information on human behaviour and force access to devices, as is the case of biometric systems, like facial recognition, and malicious software, also known as malware.

This interest stems, to a great extent, from the perception that technology will help to solve social problems. In the arena of public security, this rhetoric is used to defend both the purchase of a wide-variety of technology and reforms to norms that allow its use. It is worth remembering that Latin America is a great consumer of foreign technology and is not known for its local production. In this sense there is considerable concern over Latin American countries becoming a privileged market for manufacturers and distributors of surveillance technology, especially when controls tighten in other regions of the world.

Sur • How has the debate of surveillance been panning out in Brazil?

JV • In Brazil we know how much this type of technology is gaining ground in small towns, in a number of public spaces, quickly and with very little transparency. The way in which citizens find out this is happening is when it gets into the press or when a public purchase of cameras is identified, for example through a bidding process. This is always too late and the purchase or adoption of this technology is already well underway. This is happening in a country that has a history of authoritarianism and abuses. Legislative progress and existing norms cannot necessarily provide the guarantees needed for this type of technology to be used in a way that is aligned with adherence to human rights as committed to by Brazil. This is not a simple debate and very specific criteria are needed about how and to what extent surveillance technology will be used.

Michel Roberto de Souza • It is also pertinent to mention the press and journalists who have a history of censorship and persecution in the region. We have seen many examples in which state patrols start at the digital level, what we call *ciberpatrullaje*,[3] collecting information from a variety of sources, including open ones, on the internet, the motive and purpose of which are usually questionable as they are used to stigmatise journalists, activists and human rights defenders who hold opinions that differ from those of the incumbent government. Social media searches are used, with telephone access and spyware, such as the recent case of Pegasus. It is clear that the violation of rights starts in the digital [environment], but then moves to the physical one. Technology is increasing the potential for persecution. This is why the matter of the tracks left on the internet and the need for end to end encryption are important, as are other human rights protection issues.

In the case of facial recognition in public places this is so much more important. With this technology it is possible to find out who a person is, what the nature of their movements are and who they are talking to. A variety of information, much of which, although collected in public spaces is extremely sensitive, is captured on cameras that are often hidden. Not to mention the serious problems related to discrimination and false identification, as well as the possibility of crossing-referencing data with a variety of other databases.

We are seeing a trend of states wanting to have more data about their citizens, across the whole of Latin America. Huge databases are being set up and facial recognition data is taken and cross-referenced with data from the streets, metros and daily life, generating an enormous quantity of information about everyone. Everyone being journalists, human rights activists, people who protest on the streets, women, transsexual people, children and teenagers, migrants... There are many risks involved. Peaceful assembly and the very right to protest could be under threat. It is possible to know who is protesting because it is very easy to find out and to cross-reference. There are also threats to freedom of movement and circulation, to the presumption of innocence, the right to be considered innocent until proven guilty, and not to be investigated without the correct legal procedures. This use of technology also raises very serious questions about privacy, intimacy and data protection.

Sur • How does this exposure of data and information occur and how is it related to discriminatory practices?

MRS • The data collected by a facial recognition system is sensitive biometric data which is then stored somewhere, but we need to ask how it is stored, who has access to it and which data is cross-referenced. Which databases can be used for this? Are there any security risks? We recently saw an organisation in Mexico, R3D, that reported a case of seriously vulnerable security cameras which could easily be hacked.[4] So we have a state with hyper-surveillance, but the surveillance itself has huge security flaws that expose citizens even more, not to mention questions over the legality of hyper-surveillance.

There are grave risks to freedom of expression and censorship, with a tangible reticence to debate publicly and people censoring themselves because they know they are being surveilled. This is evident among journalists and human rights defenders. For example, it is difficult to carry out investigations and maintain contact with sources because this will all take place in an environment of surveillance. In addition, there are issues involving discrimination which are very clearly happening around the world mainly due to flaws in this type of technology, particularly in processing people who are not white men. In other words, in processing women, people with dark skin, black people and also children. There have been a variety of problems related to discrimination, such as arbitrary imprisonments and other illegal acts. There are migration issues too as we know that immigrants are being increasingly surveilled in a number of ways and that states are using a wide range of technology for surveillance.

We have been talking a lot about how technology is being used to move migrants on, including some serious cases of hacking mobile phones and social media, among other abuses. These cases are not only occurring at the borders, but also involve facial recognition in towns to find out where migrants are, who they are talking to and whether they are in the country legally or not.

As such, there are high risks related to technology in a broad sense, but also to facial recognition in a stricter one. The use of tools with so-called artificial intelligence are being widely debated in terms of the use of technology and of technological solutionism, the idea that AI can be used and is good for everything, from the simplest to the most complicated tasks. Facial recognition employs artificial intelligence which is how things connect up.

Sur • With regards to Latin America, what are the identifiable contradictions in terms of valuing technological tools for surveillance and the curtailment of individual and collective freedom, for example?

JV • We see many contradictions in our region and widely varying applications of surveillance technology. The first point to stress is that surveillance still exists in its more archaic format, with agents pursuing members of the political opposition in some countries, reaching highly sophisticated levels like the installation of antennas to pick up communications, facial recognition cameras and the installation of malware. This type of strategy has been used against journalists, social movements and human rights defenders with the aim of silencing, criminalising and persecuting these groups of people.

The second point is related to the question, almost a cliché now, "who surveils the surveillant? We are seeing a growing trend in the harvesting of citizens´ data by states, as well as attempts to place burgeoning restrictions on access to public information as well as constraints on public transparency initiatives. This became evident during the pandemic. While governments announced their strategies on the basis of sensitive data harvested to inform on people's movements and health conditions, they also sought to curb public access to information on state activities. This was especially apparent in Brazil and

is totally unacceptable. Any state activity that could result in constraints on the exercise of fundamental rights must be accompanied by strict transparency measures, among others, as highlighted by a number of international human rights bodies and authorities.

Finally, it is important to acknowledge that surveillance is also taking place unequally across society and is directed differently towards different groups of people. When there is a proposal to install facial recognition cameras on the metro, for example, or on any form of public transport, this will affect the people who use public transport and not those who use other options. This is not a new discussion, but it is always important to emphasise it. Surveillance has affected, and continues to affect, populations that have been historically marginalised and, with the help of new technology, like artificial intelligence, it is reinforcing inequalities. In the region we are already seeing how certain types of technology are used to legitimise state intervention in highly vulnerable areas. In Argentina and Chile, for example, a system is being pursued that will 'foresee' situations like teenage pregnancy, truancy and others, based on the harvesting and cross-referencing of a series of personal data. In other countries, proposals for the use of predictive policing, which are the subject of hot debate at the international level, are being tested.

Sur • What is your perception regarding regulation and its capacity to curb the perverse use of surveillance software?

JV • Scenarios are varied and depend on the country and the type of technology in question. It is one thing to talk about telephone tapping and telematic tracking,[5] which have to follow a number of very strict criteria regarding procedures, so they are done in the least intrusive way possible and only in very specific limited cases. In this sense there is a broader consensus and established rules exist, both of which could be extrapolated to other practices, like cyber patrolling, breaking cryptography, etc. It is another thing to talk about video surveillance and facial recognition, which are forms of mass surveillance and there are many questions about the extent to which they are compatible with existing human rights benchmarks, fundamental to criteria of legality, necessity and proportionality.[6]

There is a wide international debate on the legitimacy of buying and selling surveillance technology and the need for a moratorium or prohibition of this type of business, given both the institutional fragility of the countries that are buying it and the failure of the companies producing it to guarantee that it does not generate risks to human rights. The responsibility for guaranteeing that the technology they produce is safe; does not generate excessive risks to human rights; and is not being provided to authoritarian governments lies with these companies.

However, given the indiscriminate advances made by this type of technology in the region and the lack of specific regulation, there is a need to think about the rules that are required to mitigate risks and about inspections and monitoring that will have to be guaranteed, with democratic participation.

MRS • How, where and with which regulatory tools? These questions have not yet been answered, however we do have some hints. In the last few months, Michelle Bachelet, the UN High Commissioner for Human Rights, published a very precise and important report, pinpointing the high risks to society of using technology and artificial intelligence and requested a moratorium on the use of this type of technology until states have managed to comply with a series of human rights requirements,[7] taking into account the design life of this technology from the beginning to the end. This monitoring is vital.

Sur • What main challenges, in terms of human rights, privacy and security does facial recognition as a strategy of surveillance and control, present to Latin American human rights organisations?

MRS • We often find it difficult to understand how this type of technology works and how it is being applied, as we are talking about extremely opaque conditions. We do not know who makes it or what the law that regulates it is. In addition, this type of technology has no specific purpose in contexts where there is no social participation. This seems like a purely administrative day-to-day issue and as such it would not be necessary to listen to the general public or the people who are affected. In fact, it may appear that there is no need for debate. But it is precisely the opposite: we need greater transparency and debate on the use of surveillance technology given the huge negative impact on peoples' lives. For example, because of the murky nature of the issue of facial recognition, Derechos Digitales has launched a site[8] and has recently carried out research in collaboration with the Al Sur consortium, a collection of 11 Latin American organisations. We pinpointed around 40 initiatives for the use of facial recognition in the region. In Brazil, we found 4 or 5 initiatives, but we know there are many more.[9] Therefore, the very existence of this type of surveillance technology is an enormous challenge.

More recent research by other organisations has shown that the challenges in adopting technology without due care to respecting human rights are enormous. In Brazil, organisations are looking into how facial recognition interferes with the rights of trans people, for example. Coding Rights carried out this research and these are extremely important studies because they provide a different perspective on the problems and negative impacts of using this type of technology.[10]

It is important to question and to provide more transparency. But when we pose these questions to public authorities, they simply do not have the answers. They just have an idea that they are going to find solutions and solve some or a number of problems in one go, that this will be good for public security and will reduce crime rates, but they do not know how this technology will actually solve the problem. On international forums, the UN itself has recently reviewed the resolution on privacy in the digital era, presenting the risks of the use of biometric technologies and artificial intelligence. Likewise, UNESCO has adopted an agreement on artificial intelligence in an attempt to raise some issues, as well as emphasising the need for an ethical impact assessment.[11]

Sur • How does raising awareness function among the people who are directly affected and how have strategies and dialogue been approached by organised civil society itself?

JV • As I mentioned earlier, civil society generally finds out about this type of technology when it is already too late, in other words once the purchase is already underway. So, an alternative route is judicial questioning with the aim of preventing implementation and obtaining information.

For example, we saw a number of cases, in our survey, of very precarious administrative management. So, the fact that we have this limitation in how the discussion is presented within the benchmark of human rights, slightly reflects the difficulties we have mentioned. And this is not necessarily exclusively surveillance technology or facial recognition systems, as we are in a period of many different setbacks to the human rights agenda in the region. Indeed, there is still a lot to be done in terms of how we understand the criteria of legality, necessity and proportionality when dealing with facial recognition systems and surveillance technology.

This is a challenge, but at the same time there is a need for a big effort to raise awareness, now, as this technology progresses so intensely, among people working on public management, handling contracting, making decisions and formulating public policy. This is also needed with judicial authorities, in order to bring about effective controls on how the technology is implemented. Because we are talking about something that is escaping legislative debate.

The debate is only happening once technology has already been processed at the administrative level, often after judicial questioning. But, civil society is also important in understanding these trends and trying to chart what is happening, where it is being implemented, which companies are trying to push it through, because then other strategies and other responses can be sought, in other regions too, for example, in the companies´ countries of origin and on other types of forum. There are still challenges and the urgent concern is how we can get involved in this debate as human rights organisations, how we respond to these initiatives and what types of arguments emerge... There is a lot of unawareness and sadly we have even observed attempts to use and support this type of technology by civil society organisations. We must continue to work together towards a common understanding and then the next step will be with those responsible for formulating public policies. Certainly, winning over public opinion is one objective, but the challenge is far greater than this in terms of how we mobilise socially to benefit human rights in the broader sense.

MRS • The debate has moved slightly out of the arena of those who work with technology. Concerns have been reaching civil society in a broad form as well as those who deal with these themes on a daily basis. For example, those who are dealing with themes concerning racism, the rights of children and adolescents, migration, freedom of press and other themes. Civil society has been showing considerable interest in the matter of facial recognition in particular, but also in the use of other surveillance technology. There is, however, a lack of perception

that this is in fact a human rights risk and problem. We are in the initial stages of identifying this as a problem in different areas of civil society activities in order to go on to influence and to try to carry out strategic litigation with the participation of a variety of players.

Social participation must be fostered in a wide range of different areas. As a lawyer working in the area of technology, human rights and litigation, I see the issue of technology in a particular way. But, when a journalist or an association of journalists are handling a technology issue, they will see it in a different way. There is an immense richness in this exchange of understanding. In some countries the perception of the use of this type of technology as a problem is evident, like in Mexico, with all the attacks that are happening there and the importance of verifying how technology is being employed to violate rights. This reveals and creates possibilities for civil society to come out in defence and to show much-needed resistance.

Sur • From the research you are developing, how do you see the relationship between the countries that are producing this type of technology and the countries of Latin America and how does lobbying occur, principally on the issue of public security which is perhaps one of the areas in which it is being employed most widely?

JV • What we have done is to chart it. We identified, for example, that there are international companies working in the region in different ways. For many years – according to our research, since the 1990s – a number of countries have had agreements with these companies. In addition, there are also usually local dealers working for these international systems. Another factor we observed, which had already been a hypothesis of ours, is the involvement of Chinese companies. They work differently. They provide services and at the same time, the Chinese state offers funding for hiring this type of service. It is almost as though the service is being donated. There are also cases in which there is either no economic cost or reduced costs.

So, when we think about facial recognition there are a number of providers involved: people involved in infrastructure; telecommunications etc, and there are national and international companies. It is interesting to note how international businesses are operating in the region, with support and contracts worth millions. In the most evident case, we identified Chinese companies, forbidden to operate in some countries under serious suspicions of involvement or use of their systems in the context of human rights violations. We particularly found these cases in Mexico. Moreover, the fact that it is such a complex supply chain makes it even more difficult to identify all the agents and each of their roles.

When we consider lobbying and how companies work here, one issue is that it seems there is a difference between how they operate in their countries of origin and how they operate in the region and not only in terms of facial recognition. Last year, a number of companies stated that they would not sell their facial recognition technology to police forces. But when we investigated this statement further we found it is sometimes applied only at the

national level. For example, in the United States, on the backdrop of the Black Lives Matter movement, a number of companies, like Amazon, IBM, Microsoft among others, stated they would not sell their systems, but it remained unclear whether they would be sold globally, whether they would only not sell locally and to whom they would not be sold and for how long... These are some of the limitations of this type of proactive measure. So, one big challenge is understanding how these companies see themselves on a global scale. Another challenge, when dealing with surveillance companies, touches on the extent to which there are mechanisms for demanding accountability for these companies and to what extent this has been effective. We are able to have some ideas but without much evidence regarding lobbying. We know that there are often direct relationships that happen at the administrative level between salespeople and buyers.

Derechos Digitales is a member of a global multi-stakeholder organisation called Global Network Initiative (GNI), which brings together companies, civil society organisations and academics who work on resisting obligations imposed by specific states that carry out abuses related to privacy and freedom of expression. These issues vary greatly depending on what is being analysed, which sector of the company and definitely which country. As there is not a particularly robust legislative discourse concerning facial recognition, lobbying comes from other quarters.

MRS • Some companies have said they will not use this type of technology and that they have self-imposed, shall we say, a moratorium regarding facial recognition, but, they also want regulations. The discourse is that regulations are necessary in some format in order to avoid greater human rights risks. The truth is that the public security market is big, global and worth billions, but there is also the market of facial recognition and surveillance in general. We know that there are many companies carrying out legislative lobbying, but it is difficult to find out who they actually are, what their interests are and the arguments they are levying. And it is even more difficult at the local level, for example, in schools and projects for smart cities. Finding out who is lobbying is difficult. We have some clues, some suppositions...

Sur • What are the future prospects for this debate?

JV • Some years ago, we imagined that by now we would have a positive constructive agenda regarding the use of technology. The agenda exists and persists. It is still at the centre of our concerns, but we are experiencing a period of many challenges and many setbacks that could be made worse by surveillance technology. This means we have to mobilise more and more to resist it and to try to raise awareness about the risks it presents. We sometimes feel rather technophobic, the complete opposite of technological solutionism, but most of the efforts that need to be made now, in that most of this technology has a great appeal in society, in different sectors and states etc, is to debunk some of the assumptions that underpin the use of this technology. I believe a critical vision is fundamental in establishing the bases for dialogue about what we want from the use of

the technology, the norms we want, that will sometimes be needed to regulate the use and that will need to be specific, also in the area of investigations. As I said in the beginning, there are times when we need to turn to certain technology and certain information, but this must be very limited. Sadly, we are seeing a trend that is the opposite to this, and an attempt to allow the maximum possible use and access.

We are experiencing a time of defending our most fundamental rights, knowing that when we speak of privacy we mean a right that is instrumental for a number of other rights. It is important to understand that this is not simply an individual right, my right to not be bothered in my communications, it is basically a question of my being able to interact and develop my autonomy and express myself freely. And as such also allow society as a whole to have access to a series of other information and visions of the future and of reality. All things are highly interconnected. We are talking about things that also affect the extent to which our democracy can flourish, or not. These are not just individual issues. It is essential to bring this back into the conversation.

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Interview conducted by the Sur Journal *team in November 2021.*
Original in Portuguese. Translated by Jane do Carmo.

MONITOR AND FAIL

Carlos Germán Guerrero Argote

*• The impact of the use of eProctoring software •
on the privacy of university students*

ABSTRACT

This article addresses the following question: what is the impact of the use of eProctoring programmes on the privacy of university students? A case that occurred in a Peruvian university in 2020 is used here to examine concepts related to eProctoring, namely privacy and personal data protection. The level of adoption of these technologies is also assessed, with a special focus on the Latin American region. The article ends with an analysis of the interaction between eProctoring and personal data protection rules, including the most recent case law on the matter.

KEYWORDS

eProctoring | Surveillance | Personal data | Education

1 • Introduction

Even though eProctoring, or remote proctoring, software has existed for years, it was not very well known before the Covid-19 pandemic. Unlike other educational tools, eProctoring has an enormous capacity to disrupt, mostly due to the intensive use of state-of-the-art technologies such as biometrics, facial recognition and artificial intelligence.

The advent of online classes in 2020 as a result of the pandemic marked the beginning of the widespread adoption of these computer programmes around the world. Their ability to control tests online and detect misconduct such as impersonation and plagiarism made these programmes a very attractive solution for universities.

However, the deployment of these technologies has sparked many negative reactions among student communities. Perhaps the most pertinent reactions revolve around whether it is appropriate to adopt technologies perceived as exceedingly invasive of privacy. Despite this and other concerns, universities have often imposed their use, even if the results are not always positive.

This article seeks to shed more light on the impact of the use of these technologies on the privacy of university students. Although it focuses on the Latin American region, and in Peru in particular, it addresses a problem that is also found with similar characteristics in other places where these programmes have been implemented.

2 • The case of the Universidad San Marcos

In August 2020, Universidad Nacional Mayor de San Marcos (UNMSM), the biggest public university in Peru, announced that its annual admission test would be held online.[1] After months of uncertainty due to the measures adopted to restrain the spread of Covid-19, the news came as a relief to many applicants, but it also brought a new set of concerns with it. In its announcement, Universidad San Marcos also indicated that it had established a few measures to avoid any dishonest conduct that could occur in a test held online, but it did not go into detail on the matter. However, a week later, the head of the UNMSM Central Admissions Office provided more details in an interview:

> *Now that we have decided that the admissions test will be held online, a series of questions arise, mostly regarding the possibility of some students cheating on the test by using the computer to look for answers on web pages, having someone help them answer the questions or getting someone else to take the test in the applicant's place. [...] An app that uses artificial intelligence will be used to identify whether the applicant in front of the computer on the day of the test is the same individual who completed the biometric*

registration. [...] This security application will record images once a minute and detect if someone is opening a web page other than that of the test. Furthermore, it will detect if the computer is connected to a peripheral device, such as a screen, a HDMI cable or remote software. The system can also register if someone takes a screenshot of the test or makes changes to a Windows window.[2]

Many applicants to the admissions test were initially sceptical and later stated their opposition to this new method for several reasons: some were related to the context of the pandemic, but others referred to structural deficiencies such as the digital divide and the fear generated by the use of previously unknown technologies which had become crucial for holding the test. In the months that followed, these people became organized and coordinated their resistance efforts to try to stop the online test.

However, UNMSM did not give in to the pressure and on the dates scheduled in October, it proceeded with the online test. Participation was low: only 8,000 out of an initial total of over 15,000 people took the exam. As many of its detractors expected, several incidents were reported during the test. For instance, there were complaints that many students were allowed to take the test without leaving their camera on even though this was a mandatory requirement. There were also reports that both questions and answers from the test were shared on social media. Even more astonishing were the complaints stating that the test had been broadcasted live on the Twitch streaming platform.[3]

In spite of these complaints, which led entities such as the Congress of the Republic,[4] the Superintendencia Nacional de Educación Universitaria (SUNEDU)[5] and even the Autoridad de Protección de Datos Personales (APDP) to make statements,[6] UNMSM ignored them and a few days later, it published the results of the admission test. In the following weeks, interest in the case dwindled and, with the exception of the APDP which initiated an administrative investigation, the other entities did not take any action.

During the aforementioned events, the press never disclosed which "technologies using artificial intelligence" to detect plagiarism and impersonations announced by the UNMSM authorities were, in fact, used. However, in an investigation that we conducted in early 2021, we found that the technology that the university used was called SMOWL, a software programme created and distributed by Smowltech, a Spanish company that specializes in providing remote supervision services for online tests, also known as eProctoring.[7]

3 • eProctoring in Latin America and personal data protection

As we mentioned earlier, the case of the Universidad San Marcos led us to launch an investigation into the implications of the use of these technologic tools. At the end of the first quarter of 2021, we published a report that included an initial mapping of the

adoption of eProctoring in Latin America, as well as a review of the applicable privacy and personal data protection legislation.[8] We comment on some of the results below.

3. 1 - The deployment of eProctoring in Latin America

For the aforementioned study, we chose three countries as case studies: Argentina, Chile and Peru. For each one, we consulted open source documents to determine the level of adoption of eProctoring solutions by public and private universities in 2020.

This initial survey produced the following results: in Argentina, we found 10 cases where one or more eProctoring software products had been adopted, of which 2 were in public universities and 8, in private ones. In Chile, 11 cases were detected: 1 in a public university and 10 in private universities. Finally, 25 cases were identified in Peru: 12 in public and 13 in private universities. The three most common eProctoring software products used were, in order of importance: SUMADI, SMOWL and METTL.[9]

Although the evidence gathered was insufficient to identify patterns in the universities' practices, one recurring factor was that most programmes were used almost exclusively to control online tests and, in general, were adopted as last minute solutions. This latter observation was perhaps why they were almost always adopted unannounced and often without any process in place to properly familiarize students and professors with the software.

Another interesting aspect of note was that most eProctoring programmes used highly advanced technologies. For instance, the three most common programmes used artificial intelligence algorithms fed with data obtained from tools such as facial recognition and biometrics. Furthermore, the programmes obtained data by taking control of the devices that the students used to take the tests, which required them to have peripheral devices (cameras, microphones) and an operating system that met the programme's requirements.

3. 2 - Personal data protections applicable to eProctoring

The fact that, in order to function, eProctoring programmes needed to consume a large amount of data produced by students while they took the tests was cause for alarm in the case of Universidad San Marcos, as mentioned earlier. One of the concerns we identified that is directly related to privacy was the fact that these technologies were seen as highly invasive because they constantly recorded students, their surroundings and all actions they performed on their devices. This data was the main source of information for disqualifying students while using parameters that were not always explained and were generally confusing.

Our study found that most eProctoring software processed personal data such as: IP address, browsing history, facial image, first and last names, facial features and voice. Some of these items were considered sensitive data in the three countries studied, which meant

that different rules that regulate their processing had to be enforced, particularly those related to personal data protection.[10]

Even though we found that the countries had nationwide personal data protection laws and mandatory provisions in this area, we also discovered that applying them to the use of eProctoring was not a matter without controversy. One issue, for instance, was jurisdiction: none of the three most commonly used programmes was supplied to the universities by companies domiciled in the country; their suppliers were registered abroad and operated through the Internet. An apparent anomie was also found due to the fact that earlier regulations did not cover the use of eProctoring and as a result, it was not clear how strict the obligations such as the registration of personal databases or the request for consent were, particularly in a crisis situation like the one experienced in 2020 because of the Covid-19 pandemic.

Nonetheless, the investigation was able to prove that, at least in Argentina and Peru, after overcoming the issue of the territorial scope of personal data protection rules, many general and specific provisions are fully applicable – if not to the companies supplying eProctoring, then at least to the universities that had hired their services. However, when faced with a compliance assessment, in most cases, save for a few exceptions, it seemed like the universities had believed that these provisions did not apply to them or they had simply chosen to disregard them.

There was an additional problem in determining more precisely to what extent the personal data protection rules in these countries had been breached, which would mean that infractions had been committed. With the exception of Peru, data protection authorities had not initiated investigations or inspection processes on the matter. As such, most of the conclusions in the study mentioned were speculative and official statements were required in order to make the findings more robust or to determine if they should be discarded.

4 • Impact on privacy: the cases of Spain and Peru on eProctoring

We stated in the introduction that even though the focus of our study was Latin America, there are conflicts caused by the deployment of eProctoring all over the world. Proof of this is that when Universidad San Marcos announced the use of SMOWL to control its online admissions test in Peru, similar situations surfaced in other countries. Such is the case of Spain, a country where as of date, the Autoridad Española de Protección de Datos (AEPD) has issued at least one statement on a case involving the use of eProctoring at Universidad de la Rioja (UNIR).

4.1. - The case of UNIR in Spain

As explained in a report by the Newtral webpage,[11] in March 2021, UNIR notified its students that due to the Covid-19 pandemic, it would hold its July tests online. After

this announcement, it indicated that it would implement a "biometric authentication" programme as a security measure. Similar to the case of Universidad San Marcos, a large group of Spanish students expressed criticism of the change, but they were not properly heard. Even the software used in this case was the same one used in Peru: SMOWL.

The affected persons took this case to court and before the AEPD. The latter issued a warning statement in July of this year.[12] Some conclusions in the document were:

• An analysis on the impacts on privacy should be carried out to determine whether the use of programmes such as eProctoring is truly the best option for achieving the goals of the educational assessments.

• While the processing of biometric data using facial recognition technologies may be convenient for universities, it does not mean that it is necessary or an indispensable condition when dealing with sensitive data.

Furthermore, the arguments above were also presented in a report published by the AEPD one year ago on the use of facial recognition techniques for online tests.[13] The report had already indicated that:

• The pandemic did not suspend the need to observe human rights, including the right to informational self-determination in the European Union.

• One cannot consider consent to be free in these cases if the person who gives their consent cannot withdraw it without suffering any harm. Therefore, there is a need to establish alternatives that do not involve the use of technologies such as facial recognition.

• There appears to be a need for a rule with the force of law that permits and sets limits on the use of technologies that collect sensitive data (such as facial recognition) in the case of online tests.

4. 2 - The case of UNMSM in Peru

Even though the case in Peru is still awaiting a final resolution from the data protection authority, many elements included in the complaint filed with the APDP are similar to the ones in the Spanish case.[14] For instance, regarding the principle of legality in Peruvian law, which presupposes that a legitimate basis for the processing of personal data exists, to date, the country does not have any specific regulation on the use of tools such as eProctoring. According to the investigation mentioned in the previous section, the Universidad San Marcos seems to have interpreted this gap as something that allows it to ignore formal obligations in our system, such as the prior registration of a personal database (a mandatory requirement).

Something similar occurs in the case of consent, which was denounced before the Authority as being absent or vitiated, since the university did not offer sufficient information to applicants regarding the nature of the processing of their data by SMOWL. Another argument along the same line was that even if there is proof that consent was requested, it could not be freely given, since refusing to give it (and therefore refraining from taking part in the online test) would result in serious harm to applicants, as it would deprive them of the possibility of being admitted to the university that year.

There is also the issue of proportionality. It is true that Peruvian legislation is not as advanced as that of Spain, as the former was inspired by a regulation that predates the General Data Protection Regulation of Spain.[15] Even so, it makes sense to consider the need to assess whether a tool such as SMOWL was indeed necessary in the context of the Covid-19 pandemic, and not just a convenient way to achieve the goal of holding tests and preventing misconduct.

There are other aspects that differ from what occurred in the UNIR case, which we feel we should mention because they could appear in Spain or in other countries where eProctoring technologies are used, especially when deployed on a large scale. This element (also included in the complaint) points to an apparent breach of the principle of security which is explicitly addressed in Peruvian law in a directive that establishes specific obligations depending on the type of data, the purpose of processing the data and whether the owner of the database is a public or private entity.[16] Violations of this principle can be seen in the multiple irregularities that occurred during the online test, which were mentioned in the second section, such as the absence of prior registration of the database and the lack of disclosure of privacy policies on the university's website, among others.

5 • Conclusion

We can draw the following conclusions from what we have discussed in this article:

• eProctoring programmes have been widely adopted around the world as a result of the Covid-19 pandemic. In Latin America alone, a total of 46 universities used them in 2020, mainly to control their online tests.

• At least in the case of the use of the SMOWL software at Universidad de San Marcos in 2020, the events there suggest that there is a need for a critical assessment of the impact of these technologies and the threat they pose to students, particularly regarding their privacy.

• A previous study on eProctoring identified regulations in Argentina, Chile and Peru that directly applied to these programmes due to their processing of multiple kinds of personal data, some of which are sensitive. However, it is not clear to what extent the said regulations are applicable. The lack of official statements on the subject contributes to this lack of clarity.

• In 2021, the Spanish Data Protection Authority issued a resolution warning UNIR against the use of SMOWL software after receiving a complaint from students at said university. The main argument for recommending that it avoid using it was the lack of necessity and proportionality.

• It is not yet clear if the Peruvian authority will take a stance similar to the one the Spanish authority adopted in the UNIR case. Even so, its decision could surely serve as a model for resolutions in Latin American countries with similar legislation.

Annexes 1: Tables on the rate of use of eProctoring in the countries studied [17]

A - Argentina

Name of the University	Type of Institution	eProctoring Technology
Universidad Empresarial Siglo 21	Private	KLARWAY
Universidad Argentina de la Empresa	Private	PROCTORIO
Universidad de la Congreso	Private	PROCTORIO
Instituto Tecnológico de Buenos Aires	Private	RESPONDUS
Universidad de Morón	Private	SUMADI
Universidad de Palermo	Private	SUMADI
Universidad Católica de Salta	Private	NOT SPECIFIED
Universidad de San Andrés	Private	RESPONDUS
Universidad Nacional de Córdoba	Public	RESPONDUS
Universidad Nacional do Chaco Austral	Public	SMOWL

B - Chile

Name of the University	Type of Institution	eProctoring Technology
Universidad Diego Portales	Private	RESPONDUS
Universidad de Las Américas	Private	SMOWL, SUMADI
Universidad de Concepción	Private	SUMADI
Universidad Católica de Temuco	Private	SUMADI
Universidad Católica del Maule	Private	SUMADI
Universidad Santo Tomás	Private	SUMADI
Universidad San Sebastián	Private	SUMADI
Universidad Mayor	Private	SUMADI

Universidad Gabriela Mistral	Private	SUMADI
Pontificia Universidad Católica de Chile	Private	NOT SPECIFIED
Universidad de Chiledo Chile	Private	SEVERAL

C - Peru

Name of the University	Type of Institution	eProctoring Technology
Universidad San Ignacio de Loyola	Private	EXAM
Universidad Nacional de San Agustín	Public	METTL
Universidad Nacional de Juliaca	Public	METTL
Universidad de Piura	Private	METTL
Universidad Privada Antenor Orrego	Private	METTL
Universidad Nacional Agraria La Molina	Public	METTL
Universidad Nacional de Jaén	Public	NOT SPECIFIED
Universidad Nacional del Santa	Public	NOT SPECIFIED
Universidad Nacional de Piura	Public	NOT SPECIFIED
Universidad Nacional José María Arguedas	Public	NOT SPECIFIED
Universidad Nacional Autónoma Altoandina de Tarma	Public	NOT SPECIFIED
Universidad Católica San Pablo	Private	NOT SPECIFIED
Universidad de Lima	Private	PROCTOR TRACK
Pontificia Universidad Católica del Perú	Private	PROCTOR TRACK
Universidad Nacional Autónoma de Alto Amazonas	Public	SAFE EXAM BROWSER
Universidad Católica de Santa María	Private	SAFE EXAM BROWSER
Universidad Nacional Mayor de San Marcos	Public	SMOWL
Universidad Nacional de Ingeniería	Public	SMOWL
Universidad Nacional Jorge Basadre Grohmann	Public	SMOWL

Universidad Peruana Cayetano Heredia	Private	SMOWL
Universidad Privada San Juan Bautista	Private	SMOWL
Universidad César Vallejo	Private	SMOWL
Universidad del Pacífico	Private	SUMADI
Universidad Privada del Norte	Private	SUMADI
Universidad Peruana de Ciencias Aplicadas	Private	SUMADI

Annex 2: Personal data processed by type of technology[18]

Tool	Personal data processed
Facial recognition to validate identity	Image, facial features, name, identity document
Real-time monitoring using a webcam	Image, voice, facial features, IP address
Image recording and/or capturing through webcam	Image
Audio recording and/or capturing through a microphone	Voice
Algorithm-based determination of suspicious behaviour	Image, voice, facial features, IP address, browsing history
Blocking actions (in devices)	IP address, browsing history

NOTES

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7 • SMOWL, home page, 2021, accessed October 15, 2021, https://smowl.net/es.

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9 • See Annex 1.

10 • See Annex 2.

11 • M. Gonzalo, "Proctoring: cuando la evaluación de exámenes es vigilancia". Newtral, May 12, 2021, accessed December 9, 2021, https://www.newtral.es/proctoring-que-es-evaluacion-examenes-vigilancia-unir/20210512/.

12 • "Resolución de Advertencia", Agencia Española de Protección de Datos, 2021, accessed October 15, 2021, https://www.newtral.es/wp-content/uploads/2021/08/documentoEnvio_624316-1.pdf?x60645.

13 • Note N/REF: 0036/2020 of the Agencia Española de Protección de Datos.

14 • Carlos Guerrero Argote, "Denunciamos a la Universidad Nacional Mayor de San Marcos por el uso de software biométrico en su Examen Virtual". Hiperderecho, September 22, 2020, accessed December 9, 2021, https://hiperderecho.org/2020/09/denunciamos-a-la-universidad-nacional-mayor-de-san-marcos-por-el-uso-de-software-biometrico-en-su-examen-virtual/.

14 • We would say that it is closer to Directive 95/46/EC and Spain's Organic Data Protection Law of 1999.

15 • Directive on the Security of Information Managed by Personal Databases of 2014, issued by the Data Protection Authority of the Ministry of Justice.

16 · The original database containing the consolidated mapping of the three countries can be found and downloaded here: "Mapeando el uso de software de e-proctoring en universidades de Latinoamérica", [n.d.], accessed October 15, 2021, https://bit.ly/30qcud3.

17 · The original database containing the personal data processed by type of tool, as well as the tools identified in each type of eProctoring software, can be found and downloaded from: "Datos tratados por cada tecnología", [n.d.], accessed October 15, 2021, https://bit.ly/2YQgqml.

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NAVIGATING SCREENS

Mariah Rafaela Silva

• *The technopolitics of security,* •
the smart paradigm and gender vigilantism in a data harvesting age

ABSTRACT

This essay aims to reflect on some of the ways in which security surveillance technology has become politicised through race and gender biases, the product of a historical process known as cis-coloniality. This analysis aims to demonstrate, with some urgency, that this type of technology is not neutral and in fact reinforces transgendered racism, under the auspices of "efficiency and security". Rather than providing alternatives for the democratisation of intelligent connected cities, it actually operates as a device for classifying risk, harvesting data and alienating black, poor and transsexual bodies, by widening and reframing the gap between bodies and territories. Technopolitics validate both proof of life and automate experience. They determine gender and circumscribe death movements in cities with hyper-surveillance, thus turning collective life into an image-based ritual, through which the militarisation of urban space and the dynamic of contemporary capitalism itself are amplified.

Old people have dreams, young people have vision.[1]

1 • Accessing a network of (im)perceptible strengths

I boarded an underground train during the rush hour on a Monday, sometime in March 2021, headed for the outskirts of Rio de Janeiro. Although we were still in the midst of the pandemic, it seemed that the Covid-19 virus had been 'cancelled' with few people wearing masks. They were probably on their way home from work, *surviving* in one of the most lethal months of the pandemic in the hyper-productivity of neoliberal politics. Although astonished and fearful, I did notice that most of those people, packed in like sardines in a tin, were holding smartphones as though the lack of space and the dangers of the virus were the least of their problems. For many of them, the most important task was to scroll randomly and distractedly through their social media feeds, while trying not to fall over and to hold on to something, without dropping their phones or taking their eyes off the screens. In this chaotic juggling act, they looked like wandering zombies being tossed about by the train, immersed in a profusion of hyper-connected micro-universes, heads bowed in a typical scene of modern life!

Two trains of thought battled for my attention – fear of contamination by a deadly virus and my ongoing inquiry into the repercussions of this type of 'anachronistic' commitment to smart devices. Maybe few of those people knew that all their digital interactions were being pooled into an immense machine, the methods of which are still unclear and biased and which follow criteria defined by an economic model that claims human experience as the raw material for commercial activities. Within *surveillance* capitalism,[2] a new economic model that has emerged this century, boundaries of security, observation, control management of life and emotions are being established, as are the political principles that regulate laws, national sovereignty and access to rights. For this very reason its principal focus is harvesting data on behaviour and on increasing integration between human nature and the nature of machines. This new ´tentacle´ of capitalism also produces and reinforces policies of gender management, at times curtailing the right to and the limits of self-affirmation, by means of biometric and subjective control mechanisms. Through the use of increasingly prevalent surveillance and security cameras and by offering ´gendered´ products and a whole range of wearables,[3] our performance is monitored and tracked according to a binary perspective of gender.

I left the underground train, thinking about how this new economic order has been reinforcing methods of social classification, particularly of groups of people who have been historically vulnerable, given that it operates on the principles of *cis-coloniality*. In other words, methods through which the tools and rationale of the colonial model are revived and gain new contours in the contemporary world, reproducing the disposability, predation and abjection that are common in colonial societies, as well as methods of exploitation, discipline, control and the subordination of black bodies, the poor, the periphery and all and any type of 'difference' in gender and sexuality.

These forces operate asymmetrically in the bodies and subjectivities that constitute the black-becoming in the world. Namely, in beings whose process of ontological constitution stems from dynamics of organised pillaging, which served the purposes of the trans-Atlantic trafficking of enslaved African people from the XV century to the XIX century and which are gradually being introduced into the field of racial invention in "human-object, human-merchandise and human-money".[5]

2 • The technopolitics of surveillance as automation of life/debt

So-called smart technology and policies for harvesting and managing data, under the guise of labels such as "difference" and "inclusion" (digital/social), have never been neutral. Any claim that they are neutral calls for recognition that they are imbued with aspects of the culture and environment in which they were developed and as such have always leveraged beliefs and values that foster certain means of survival/living while simultaneously inhibiting others. Furthermore, speaking of the neutrality of this technology begs recognition of its history and of the whole force field that establish its heritage as an instrument of power, as well as the means by which its production techniques (economic and subjective) circumscribe life in our times, principally at the intersection between gender and race.

Technology of this nature that is based on algorithms,[6] not only presents a risk to democracies around the planet but is also scrutinizing bodies and subjectivities that have historically occupied a position of social subordination. This is how the bases of surveillance technopolitics are constituted (under the neoliberal shroud of security). Biometric control and economic production round the clock not only "say" who you are but also automate the entire field of sensory experience and condition its place in this model of data harvesting, manipulation and human conditioning.

The scene on the underground described above is only one of many of which we are an integral part, in a metric of possibilities. "Predictive behavioural data comes from intervening in the state of play in order to nudge, coax, tune and herd behaviour toward profitable outcomes",[7] in a large-scale shaping of our behaviour. The aim is not only profit by managing behaviour but also the production of behavioural economics within which society can be managed (privacy, profit, electoral pledges, emotions, desires, rights, self-determination of gender and sexuality, racial dynamics, security strategies etc).

In this process peripheral bodies and peripheral territories are invented where the management of life/debt is carried out: a social economy that functions in the same way as the original sin[8] and is in perfect harmony with the working strategies of surveillance capitalism. The debt of life generates taxes, fees, liquidity and profit as well as "appropriate" ways of being, thinking, behaving and above all consuming while being consumed via data surveillance. This includes urban cameras, dating apps, online games, social media, biometrics and identification data, databases, online purchases and anything that can possibly be used in

the calculation of this form of economic management and of behavioural "understanding". Getting to know you is an act of market investment, whereby human relationships are inferred statistically and all that matters is computer validation, not people with bodies, history and flesh, but instead an "avatar" accompanied by credit and credibility scores.[9]

Through technological devices, technopolitics are tools that set up forms of collective administration, as well as methods of communication and information management that are reconfiguring the economic dynamics and the topography of power in contemporary society. Surveillance technopolitics literally operate on the basis of paradoxes that waiver between "empowerment" and "cancellation", "inclusion" and "exclusion", "intelligible" and "unintelligible", "worthy of killing" and "worthy of living", among others. Through a set of technical and social mechanisms they define the verification of people´s identities and their annihilation by deciding what suspicious visual appearance looks like. They also automate behaviour, the management of desires and large-scale consumer mechanisms. They establish 'proof of life' - for the use of public services – as well as the criteria that justify police operations in regions where very often 'proof of death' is praised. In other words, this software defines the baseline that classifies human experience from a solidly binary perspective, between poles of tension and opposition that are almost always incompatible with the idea of normality, idealness, acceptability and insurability.

3 • Cis-coloniality and technopolitical traces

To be concise, cis-colonialism is the ontological dimension where the colonialism of being and of power[10] produces an experience of living in the "cis-system",[11] the modern/colonial world, establishing criteria for normality, truth and the universality of cisgender bodies and experiences, to the detriment of regulation and dehumanisation of body diversities and gender identities.[12] By establishing cis-genderism as the paradigm of "normal" and "universal", a set of social and technological rules are formed, from which technopolitics emerge and develop.

Cis-coloniality arose out of colonialism, in other words, a process that has been unfolding since the foundation of modernity[13] in around the XVI century, and which has been undergoing transformation in terms of power dynamics. In my opinion, these transformations stem from seven important *movements*: economic; scientific/epistemic; technical; from visuality and attention regimes, theology and the "otherness" of race and gender. Based on the idea that these *movements* operate as ontological regimes and historical methods of subjectification, colonialism is the rationale that underpins the foundation and the developments of the West European civilisation that emerged following the advent of the European Renaissance and whose movements foster practices of economic and cultural domination until the present day. Cis-coloniality is the amplification of the management of body, gender and sexuality and is echoed in technopolitics in its methods of control and collective administration in modernity, with race and sexism as its paradigmatic points of support and continuity.[14]

Race is a fundamental dynamic of annihilation and of reducing human experience to exploitation, making it an instrument to brutalise black people, their territory and their culture and constitutes a mechanism that has fed into a collective vision of black people as a risk to society. So, their bodies have become medical, industrial, biomedical and social experiments and they have been left to either go mad or die. There is always a black person who is in a state of delirium,[15] poverty or violence. This movement sparked the transnationalisation of racism and sexism as epicentres of a "new world order". In this way, race has gained a damning future and black people have become dangerous and threatening, while their bodies have become a peripheral experience, all of which underpins the justifications of current technopolitics regarding security and incarceration.

In parallel, theological administration methods, created by Europeans erased and fought religious and cultural features, justifying the appropriation and exploitation of land, by demonising practices and creating social monsters, reinforcing the techniques of punishment and domestication of bodies and sexuality. From an economic point of view from the XV century market norms were invented. In addition, the economic market was literally set up through the regulation of the body-commodity of black men and women. Epistemic and scientific administration methods reframed the field of representations imposing a "biological truth" on bodies. This also led to a technical method for economic urban and cultural development, making the body a fundamental means of production inseparable from industrial machines. From the XIX century, visuality and attention regimes were generated, making image, above all the image and perception of "abnormal bodies", a kind of device within which power is focused on ways of seeing. The panoptic model[16] was implemented in factories, social institutions and on the streets and led to an increasing escalation in medical military and police hierarchies, in the XX century.

These movements define the dynamics of cis-coloniality, as they contribute to the invention of normality and pathology and the pathological, of the criminal and the "good citizen", by means of a specific set of discourses and judicial, medical, institutional, political and cultural practices.[17] In other words, by defining who is deviating in terms of gender, cis-coloniality causes cis-genderism to emerge as a desirable category within the scope of what has been defined as "ideal", "sacred" and "universal".

This is how the invention of gender and transsexuality came about in the first half of the XX century. It is the result of a set of social and bio-technological discourses and practices that emerged from the medical industries[18] and from methods of redirecting knowledge, classifying the body in terms of erogenous zones due to an asymmetric distribution of power between masculine and feminine genders based on their sexual anatomy.[19]

These principles were drawn into the administration model and data harvesting in modernity, making the neutrality of technology a fiction, principally with regards to biometric identification, defining risk categories and criteria that guide surveillance technopolitics of gender in the XXI century.

4 • The *smart* model as visibility management on the *periphery*

In contemporary life, with the advance and development of new technology, the term smart has become increasingly embedded in society to refer to "intelligent" equipment, connected to the internet with the objective of optimising time and easing day-to-day tasks. Toothbrushes, telephones, TV sets, fridges, light bulbs, locks, watches, rubbish bins, vacuum cleaners, surveillance cameras, drones, manholes, bus passes, airports and an endless list of equipment and services are now shaping "smart" homes and cities.

This "technological revolution" is backed by large corporations as a product of the neoliberal agenda that aims to decentralise the running of cities and the privatisation of public services through an endless flow of data.[20] Although the idea of facilitating services, like recyclable waste collection, is desirable, in practice the organisation of these services comes with an asymmetric history of power and income. Benefits and services are unequally distributed throughout the cities. Conversely, what is being developed is the refinement of surveillance capitalism and the ongoing submission of urban populations, job instability, an increase in the cost of living, unequal access to information and services and gentrification, underpinned by integrated platforms that operate 24/7.

While the grander regions of cities like Rio de Janeiro reap the benefits of technological development, with improved services and security, the historically underprivileged regions have seen an increase in the use of this type of technology in the form of security equipment and real-time discrimination, like for example the use of facial recognition technology for crime prevention.[21] Broadly speaking, the equation is as follows: smart cities attract smart citizens who in turn attract smart money.[22] To reframe this equation, the flow of smart money in smart cities is proportional to the growth and increase in smart-style security, which in turn is proportional to the sum of smart racism and transphobia squared. This can be seen in pilot projects for monitoring and security[23] that end up targeting subjects who have always been classified as a risk and threatening,[24] while they simultaneously manage and control the facilities on offer in upper class public areas.[25]

From this perspective, phobias and social differences take on new characteristics. Inequality is socially produced, politically reinforced and economically dynamic. When the state looks at *favelas* and peripheral regions – and at the people who live in these places – it is almost exclusively through the optic of the problem of security. All other services then turn on this axis and large corporations know how to take advantage of this. A huge quantity of public money[26] is invested in the "modernisation" of security, through tech companies that promise improved security. However, they have contributed to a significant increase in the militarisation of urban space, particularly at mega-events[27] like the World Cup (2014) and the Olympic Games (2016). The militarisation of public spaces in Brazil is not recent, it is ongoing. *Favelas* and peripheral regions have seen the implementation of Police Pacification Units (UPP),[28] police operations and military intervention as happened in 2018 in Rio de Janeiro.[29]

Police violence rose by 34% in the first half of 2021, compared with the previous year.[30] It had already increased by 27.9% by April 2020 compared with 2019. The number of police raids in *favela* territories is increasing, resulting in carnage of young black people and school closures. Data from the Public Security Institute[31] indicate that in 2021 there was an 88.2% increase in police lethality in Rio, compared to 2020. This tells us that the city is not only the capital of mega-events, it is also the ideal laboratory for testing smart surveillance technology and controlling black bodies and anyone who "deviates" from the norms of gender and civility. In conjunction with this war-like rationale, smart surveillance has been producing both a suicide state,[32] one which annihilates its own people, and has also been stimulating necropolitics, in other words, an asymmetric redistribution of the organisation of living and dying in the contemporary capitalist system. Brazil is not only one of the countries with the highest rates for incarcerating and killing black people in the world but is also known to be one of the countries with the highest rates for killing trans people, with around 80% of victims being black and racialised,[33] i.e. transgenderised racism. This concept is used as an analytical key[34] to understanding the process by which trans black people are encountering greater difficulty in receiving Emergency Aid from the federal government, in being issued with documents and securing food and income[35] in the Rio *favelas* during the pandemic. This is related to a particular unfolding of normative gender policy in coloniality which is pushing "socio-racial" black transgender people into the abyss.

In smart cities, transgenderised racism is smart necropolitics that emerge out of the management of biometric data, risk and threat management[36] and the automation of behaviour as market practice. So that, the very category "transgender" is produced, regulated and contested on the basis of a profusion of surveillance technologies[37] the objective of which is the maintenance and honing of the fictional narrative of the "social deviant", turning trans bodies into a sort of double periphery – that of gender and that of the social-urban setting. In these cities, machines, homes, public transport, airport x-ray scanners, surveillance cameras etc are composed of algorithms designed to identify "anomalies" of gender and race. In this scenario, biometrics are used not as a means of identification, but as the technopolitics of differentiation, based on methods of classification and risk management and they set the boundaries of social access for black trans people at airport control[38] and borders, through travel passes[39] and registration at schools and universities.[40]

4.1 - Biometric technopolitics and transgenderised racism in terms of "security"

The biometric of identification was developed on the basis of anthropometry and eugenics at the end of the XIX century which has resulted in a direct link between physical and corporeal characteristics and identity cards. It is based on the idea that physical characteristics are immutable and define concrete aspects about an individual and is not seen as 100% effective, by any means. This type of technology, particularly facial recognition, has a wide margin of error in identifying the faces of black cis women.[41] Women and trans men are also vulnerable to the use of this type of technology, conditioned as they are to normative racialised policies of gender which are embedded

in the equipment design. Under these policies their bodies and identities are called into question, violated and limited and are constantly under suspicion. It is difficult for facial recognition technology to associate trans identities with self-determined genders because it operates on the basis of binary perspectives. There is a 38% chance that a trans man´s identity will be incorrectly read, while non-binary, non-gendered or gender fluid people are incorrectly identified 100% of the time.[42] This percentage tends to increase when there is also a criterion of race. In addition, it is important to note further factors such as transition, hormone therapy, class and income (which affects access to surgery and continuity in the gender transition process).

Travel cards, the supply of public services via facial recognition machines, access to public toilets and photo apps are just some examples in which additional obstacles have been identified due to smart systems that determine who is a "man" or "woman" and as such deem an attempt to deceive the cis-system.[43] This "biometric surveillance programme" defines the risks of people on the periphery and also restricts access at international borders through migratory policies that target the ideas of illegality and marginality.[44] The transgenderised racism embedded in these databases produces and reinforces the boundaries of categories like race, gender, sexuality and citizenship which operate as a means of social classification, determining where individuals stand on the urban landscape and restricting their autonomy to say which gender they belong to. As such, facial recognition is not just facial identification and verification; it is principally, bundles of photographs, analyses of biometric data both subjective and emotional, real-time tracking and social classification, 24/7, on systems that are scattered through different public and private spaces and are even in the palm of our hands and on the accessories we use on a daily basis, all of which put particular black, transsexual, non-binary and intersex people at risk.[45]

Smart technopolitics activate transgenderised racism and are being adopted not only for security purposes, as we have seen here, but also in providing conditional access to public services. Either you provide your biometric data or you will be denied access to a particular public service, thus placing citizenship in check. Public authorities have been implementing facial recognition software and data management systems as essential in identity verification, proof of life and as a safety policy without divulging the real use of this data. This may be the big challenge of this new century for the affirmation of gender and for a broadening of the scope of citizenship.

5 • Escape routes

Although this technology is a reality and is being implemented in urban centres and in our daily lives, escape routes and means of resistance are being constructed at both the social and political levels. The General Act for Data Protection,[46] that came into force in 2020 may be a good example of how an ethical policy of sharing and using data could be beneficial to society.

In Brazil, civil society has been organising through projects and organisations like Coding Rights,[47] O Panóptico,[48] Grupo Conexão G,[49] among others, in order to problematize gender and race biases and also, above all, to present alternatives for protection and collective care, with a view to mitigating the technocratic uses of these devices that are controlling and repressing the masses. There is no easy route when fighting with technological capitalists for power. However, trans-activist collectives, university groups and feminist hackers have been putting up considerable resistance to the uses and abuses of these technologies by governments and enterprises that are conditioning our experiences and transforming them into profitable business, while classifying and reinforcing the debasement of groups that have been historically oppressed.

The implementation of biometric software is a human rights issue and as such affects fundamental rights to privacy, citizenship, equality, non-discrimination and self-determination. In addition, human rights organisations that are not working directly on this matter can contribute by reinforcing the universal principles that establish rights and human guarantees, above all with regards to diversity and differences.

This was exactly how I became involved in this matter. I understood that it is about the way that I, a trans woman, can be classified and denied my rights, by default and that as a Brazilian citizen, I would not only like my data to be treated with respect, but above all my gender and the way I present myself to the world. This is a human rights issue for the XXI century and as such it is about life.

NOTES

1 • Taken from the music video "Eu não vou morrer", Ventura Profana y podeserdesligado, YouTube video, 4:32, published by Ventura Profana y podeserdesligado, May 22, 2020, https://www.youtube.com/watch?v=MWZPd5EcJO8.

2 • Shoshana Zuboff, *A era do capitalismo de vigilância: a luta por um futuro humano na fronteira do poder* (Rio de Janeiro: Intrínseca, 2021).

3 • The term 'wearables' comes from the technological industry and among others refers to watches, bracelets, glasses and other devices with artificial intelligence and/or a huge processing capacity, connected to the internet which adapt to the body in order to physically monitor it, suggest activities, process payments and increase human abilities in general, under the guise of making daily life easier and of keeping you connected.

4 • Achille Mbembe, *Crítica da razão negra* (São Paulo: n-1 edições, 2018).

5 • *Ibid.*, 14.

6 • Generally, an algorithm refers to a set of rules or operating instructions for calculations that carry out a sequence of computational thinking to reach a determined pre-programmed objective.

7 • Zuboff, *The age of surveillance capitalism*.

8 • Maurizio Lazzarato, *O governo do homem*

endividado (São Paulo: n-1 edições, 2017).

9 · Zuboff, *A era do capitalismo de vigilância...*, p. 202.

10 · Anibal Quijano, *Colonialid y Modernidad-Racionalidad. Em B. Heraclito, Los Conquistados* (Bogotá: Tercer Mundo Ediciones, 1992): 437-449.

11 · The world "cis-system" derives from the combination of two terms "cisgender" and "system" to designate the ways in which social, technical and collective systems operate from the paradigm of cisgenderism. By cisgender, I mean people who are born with a specific sexual organ and who understand or perceive their identity as being in accordance with the gender symbols of that sexual organ. For example, a person who is born with a penis and identifies as a "man".

12 · Viviane Vergueiro, *Por inflexões decoloniais de corpos e identidades de gênero inconformes: uma análise autoetnográfica da cisgeneridade como normatividade* (Salvador: UFBA, 2016).

13 · Walter Mignolo, "COLONIALIDADE: O lado mais escuro da modernidade", *Revista Brasileira de Ciências Sociais* 32, no. 94 (June 2017).

14 · Ramón Grosfoguel, "Racismo/Sexismo Epistêmico, Universidades Ocidentalizadas e os quatro Genocídios/Epistemicídios ao longo do século XVI", *Tabula Rasa* [on-line], no.19 (2013): 31-58.

15 · Gilles Deleuze, *Dois regimes de loucos* (São Paulo: Editora 34, 2016).

16 · Michel Foucault, *Vigiar e punir: nascimento da prisão* (Petrópolis: Vozes, 1987).

17 · Michel Foucault, *História da sexualidade I: a vontade de saber* (São Paulo: Paz e Terra, 2014).

18 · Paul Preciado, *Testo Junkie: sexo, drogas e biopolíticas na era farmacopornográfica* (São Paulo: n-1 edições, 2018).

19 · Beatriz Preciado, *Manifesto contrassexual* (São Paulo: n-1 edições, 2015).

20 · E. Morozov and F. Bria, *A cidade inteligente - tecnologias urbanas e democracia* (São Paulo: Ubu editora, 2019).

21 · Pablo Nunes, "Prever crimes, a que custo?". Centro de Estudos de Segurança e Cidadania, September 28, 2021, accessed December 9, 2021, https://cesecseguranca.com.br/artigo/prever-crimes-a-que-custo/.

22 · Morozov and Bria, *A cidade inteligente...*, 2019.

23 · "PM vai implantar programa de reconhecimento facial e de placas de veículos", Governo Aberto RJ, February 27, 2019, accessed December 9, 2021, http://www.governoaberto.rj.gov.br/noticias/2019/02/pm-vai-implantar-programa-de-reconhecimento-facial-e-de-placas-de-veiculos.

24 · Sarah Alves, "Além do racismo, reconhecimento facial erra mais em pessoas trans". UOL, February 14, 2021, accessed December 9, 2021, https://www.uol.com.br/tilt/noticias/redacao/2021/02/14/nao-e-so-racismo-reconhecimento-facial-tambem-erra-mais-em-pessoas-trans.htm.

25 · Leticia Lopes and Marjoriê Cristine, "Praia de Copacabana será o 'projeto piloto' da marcação de lugar na areia por aplicativo no Rio". Extra, August 11, 2020, accessed December 9, 2021, https://extra.globo.com/noticias/rio/praia-de-copacabana-sera-projeto-piloto-da-marcacao-de-lugar-na-areia-por-aplicativo-no-rio-rv1-1-24579562.html.

26 · According to Bruno Cardoso, spending on security for the World Cup was around 1.85 billion real, the majority of which was invested in security and defence technology. The author also says that the total spending on security for the 2016 Olympic Games was around 2.8 billion real. See: Bruno Cardoso, "Estado, tecnologias de segurança e normatividade neoliberal", in *Tecnopolíticas de vigilância: perspectivas da margem*, eds. F. Bruni, M. K. Bruno Cardoso and L. Melgaço (São Paulo: Boitempo, 2018).

27 · Cardoso, "Estado, tecnologias de segurança e normatividade neoliberal", 2018, 91-16; and Morozov and Bria, *A cidade inteligente...*, 2019.

28 · The UPPs caused tension and fear among those living in the *favelas* rather than a sense of security. Felipe Betim, "UPPs, mais uma história de esperança e fracasso na segurança pública do Rio". El País, March 11, 2018, accessed 9 December 2021, https://brasil.elpais.com/brasil/2018/03/11/politica/1520769227_645322.html.

29 • This model of military intervention proved to be ineffective in terms of public security and represented stunning failures and unimaginable costs for the tax payer. Roberta Jansen, "Estudo: intervenção no RJ fracassou e não deve ser copiada". Terra, February 14, 2019, accessed December 9, 2021, https://www.terra.com.br/noticias/brasil/policia/intervencao-na-seguranca-do-rio-nao-teve-resultado-significativo-diz-relatorio,f7f760e0252757049469d4eca9899bdekmb32yq6.html.

30 • S. RAMOS et al., *A vida resiste além dos dados da violência* (Rio de Janeiro: CESeC, 2021); and Edmund Ruge, "Violência Policial Quebra Recorde Enquanto Rio se Torna Epicentro da Covid-19". RioOnWatch, May 26, 2020, accessed October 27, 2021, https://rioonwatch.org.br/?p=47760.

31 • Bárbara Carvalho and Fabiana Cimieri, "Policiais cometeram 38% dos homicídios no RJ nos últimos 7 meses". G1, September 3, 2021, accessed December 9, 2021, https://g1.globo.com/rj/rio-de-janeiro/noticia/2021/09/03/no-rj-38percent-dos-homicidios-foram-cometidos-por-policiais-em-7-meses-e-proporcao-bate-recorde.ghtml.

32 • V. Safatle, "Bem-vindo ao estado suicidário", in *Pandemia crítica outono 2020*, eds. P. P. Pelbart and R. M. Fernandez (São Paulo: n-1 edições, 2021): 45-49.

33 • B. G. Benevides and S. N. Nogueira, *Dossiê dos assassinatos e da violência contra travestis e transexuais brasileiras em 202*0 (São Paulo: Expressão Popular, ANTRA, IBTE, 2021).

34 • As I say in the text called *Éticas de vida, políticas de morte*, due to be launched at the end of 2021, in which I describe research I coordinated for Grupo Conexão G in 2020 in five *favelas* in Rio de Janeiro, to chart the conditions of the LGBTI community in the pandemic. We noted that trans people experienced greater exposure to the virus, as they were forced to continue to work in prostitution for their subsistence. Most of the interviews stated that public officers, particularly those of security, are the ones who most perpetrate violence against their bodies.

35 • Almost 40% of them live on an income of up to one hundred real a month. The combination of security, visibility and cis-coloniality produces and reinforces the poverty of these people (Mariah Rafaela Silva, "Código da ameaça: trans; Classe de risco: preta", in *Pandemia crítica inverno 2020*, eds. P. P. Pelbart and R. M. Fernandes [São Paulo: n-1 edições, 2021]: 300-306). Within capitalism, poverty generates wealth. Inequality is a reflection of this dynamic and impoverished communities are also sources for data harvesting and ultimately the targets of the data produced. In the paradigm of smart surveillance, the algorithm calculates the risks and based on that defines the levels of threat, credit ratings and policing. (S. Zuboff, "Big Other: capitalismo de vigilância e perspectivas para uma civilização da informação", in *Tecnopolíticas da vigilância: perspectivas da margem*, eds. F. Bruno, B. Cardoso, M. Kanashiro, L. Guilhon and L. Melgaço [São Paulo: Boitempo 2018, 17-68]).

36 • Silva, "Código da ameaça...", 2021.

37 • Toby Beauchamp, *Going Stealth: transgender politics and U.S. surveillance practices* (Durham and London: Duke University Press, 2019).

38 • "DPU recomenda que revista de pessoa trans seja feita por agente do mesmo sexo", Jusbrasil, August 29, 2018, accessed December 9, 2021, https://dpu.jusbrasil.com.br/noticias/619081927/dpu-recomenda-que-revista-de-pessoa-trans-seja-feita-por-agente-do-mesmo-sexo.

39 • "Transexual consegue colocar nome social no vale-transporte", O Globo, October 2, 2015, accessed December 9, 2021, https://oglobo.globo.com/brasil/transexual-consegue-colocar-nome-social-no-vale-transporte-17669811.

40 • "Mais da metade dos alunos trans da USP dizem sofrer preconceito", Agência Brasil, July 13, 2021, accessed December 9, 2021, https://www.correiobraziliense.com.br/euestudante/2021/07/4937378-mais-da-metade-dos-alunos-trans-da-usp-dizem-sofrer-preconceito.html.

41 • The percentage of error is about 93% making it much more likely for a black woman to be mistaken

for a man than a white woman. Diagnoses in the case of suspected criminals on public streets are even less reliable, with a significant margin of error, making black cis and trans people the favourite targets. (Mariah Rafaela Silva and Joana Varon, *Reconhecimento facial no setor público e identidades trans: tecnopolíticas de controle e ameaça à diversidade de gênero em suas interseccionalidades de raça, classe e território* [Rio de Janeiro: Coding Rights, 2021]).

42 • Using a study with photo apps, the researcher Morgan Klaus Scheuerman, at the University of Colorado, concluded that facial recognition software presents often insurmountable hurdles for transgender people, given the high error rate. Lisa Marshall, "Facial recognition software has a gender problem". CU Boulder, October 8, 2019, accessed December 9, 2021,https://www.colorado.edu/today/2019/10/08/facial-recognition-software-has-gender-problem.

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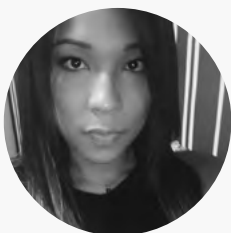
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