



LASMUN

La Salle Model United Nations

Universidade La Salle

Reitor: *Paulo Fossatti*

Vice-Reitor: *Cledes Antonio Casagrande*

Pró-Reitor de Graduação: *Cledes Antonio Casagrande*

Pró-Reitor de Administração: *Vitor Augusto Costa Benites*

Pró-Reitor de Pós-Graduação, Pesquisa e Extensão: *Cledes Antonio Casagrande*

Conselho da Editora Unilasalle

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Projeto gráfico e diagramação: *Editora Unilasalle*

Editor: *Ricardo Neujahr*

Revisão final: *Comite Editorial*

LASMUN STAFF (COLASMUN)

Secretary-General: *Ana Júlia Hanig Scholz and Betina Janner Schneider*

Editorial Committee:

*Ana Júlia Hanig Scholz
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Natália Souza Paz
Nicole Bolzan Streibel*

CIP

Editora Unilasalle

Av. Victor Barreto, 2288 | Canoas, RS | 92.010-000

<http://livrariavirtual.unilasalle.edu.br>

editora@unilasalle.edu.br

+55 51 3476.8603

Fabício Pontin

Betina Janner Schneider

Ana Júlia Hanig Scholz

Organizadores

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GENERAL INFORMATION ON LASMUN

Dress Code and National Symbols

As at every UN conference, to keep the integrity of the event, all delegates at LASMUN are required to observe a western business attire, or national equivalent. For example, men should wear full suit (blazer and dress pants), dress shirt, tie, and dress shoes. Similarly, women should wear a blouse and dress pants or skirt, blazer or sweater. If the representation of your delegation can be enhanced by wearing a formal national dress, you may do so if it is carried out with attention to detail and convention, and with maximum of respect. Delegates can bring and display objects that represent their nation, such as small flags, pictures and memorabilia. Such objects are allowed if they are respectful and do not disturb the conference. Alcoholic beverages and weapons of any kind are strictly forbidden and may be confiscated by the Chair and returned to the delegate only by the end of the conference. It is within the Chair's discretion to assess which objects are appropriate to be displayed and which are not.

Award Policy

LASMUN's Award Policy consists in one prize for the Best Delegate and two Honorable Mentions per committee. At the end of the Conference, all delegates shall vote for Best Delegate and for two other delegates whom they believe deserve an Honorable Mention. Members of the LASMUN Staff participating in the simulation cannot be voted. The reward for Best Delegate will be a prize and a certificate. The spirit of the prize is not to enhance competition among delegates, but to reward those that have indeed made their best, setting them as examples and encouraging further improved behavior.

Parliamentary Language

At all times, it is essential that delegates address each other with the maximum of respect. It is conventional and professional to refer to another delegate not as "she" or "he", but as "fellow delegate" or equivalent courteous terms. Similarly, when speaking of the views of their country, delegates should not refer to them as being their own, e.g. do not say "my position", and use instead "my country's position" or, for instance "France's position". The language used during the conferences shall reflect in every way the fact that delegates are representing their countries and that they are trying to politely cooperate with each other.

PARTE ONE LASMUN's Study Guide

GENERAL RULES OF PROCEDURE OF LASMUN

1. Scope

These rules shall apply to the two committees simulated at the 3rd edition of LASMUN. These General Rules of Procedure shall be considered adopted in advance of the session, and no other rules of procedure will be applicable. These rules were taken from the Handbook of UFRGSMUN 2016, and LASMUN'S 4nd edition Handbook.

2. Language

The official and working language of the conference is English. Delegates will not be permitted to address the Chair, the staff or the committee in another language. The use of foreign expressions will be permitted if followed immediately by a translation into English or if they are current in the English language.

3. Delegations

Each delegation will be represented by one delegate only.

4. Credentials

The name of the member of each delegation shall be submitted to the Secretariat prior to the opening of the Conference. All delegations will be assumed to have proper credentials to participate in the Conference. Delegates are all presumed to possess the diplomatic authority necessary to discuss and vote on the main issue being dealt with by the committee. The instructions and powers given to all delegates do not allow them to declare war, sign or denounce treaties, impose sanctions, or perform any action not strictly within the purview of the committee, unless so determined by the Chair.

5. General Duties of the Delegates

Delegates have the duties of respecting the decisions of the Chair, obtaining the floor before speaking, safeguarding and advocating their country's interests, acting according to their country's foreign policy, and acting with diplomatic decorum always. 6. General Duties of the Secretariat The Secretary-General is the highest-ranking member of the staff. She may designate a staff member to act in her place during any session of the Conference. Along with the UnderSecretary-Generals, she shall direct all the work of the Conference. The Secretary-General or a member of the staff designated by her as her representative may, at any time, address either oral or written statements concerning any matter to the committees.

7. General Duties of the Chair

The committee will be presided over by a Chair, composed of one or two Directors and Assistant-Directors. In addition to exercising the powers which are conferred upon it elsewhere in these rules, the Chair shall declare the opening and closing of each session of the committee, direct its discussions, ensure the observance of these rules, confer the right to speak, and make announcements. It shall rule on Points and Motions without appeal, stipulate the time limit for speakers, and have complete control over and responsibility for the proceedings of the Committee.

The Chair may also suggest motions that it deems beneficial for the flow of debate. The Chair representatives have the duty to provide any clarification on general matters concerning the debate, upon the request of delegates or when deemed necessary. Nonetheless, the Chair will not supply country's positions to delegates under any circumstance, since the research and preparation regarding such issues are under the delegates' responsibilities. The Chair will treat delegates with due courtesy at all times.

8. Rulings of the Chair

The rulings and decisions of the Committee's Chair are final and not subject to appeal. The members of the Chair are empowered to supersede and interpret the rules as they see fit to guarantee the fruitful progression of the committee's labor.

9. Plagiarism

Plagiarism is understood within the scope of these rules as the unacknowledged use of another individual's words or ideas. When writing position papers, working papers, draft resolutions and during all their participation in the conference, delegates are not allowed to make use of fragments of already existent documents without proper reference. A participant caught plagiarizing any written work will be dealt with accordingly. Punishment may entail disqualification for awards, denied voting and/or speaking rights and possible exclusion from the conference. Applicable legal measures will be taken at the discretion of the conference's organization alone.

RULES GOVERNING DEBATE

Throughout these rules, a "simple majority" will be understood to be one half of the possible votes plus one, rounded down, whereas a "two-third majority" shall consist of two thirds of the possible votes, rounded up. For example, the simple majority of five is three, and the two-third majority of ten is seven.

PROCEDURAL MATTERS

10. Quorum

The Chair may declare a session open and permit debate to proceed when at least one third (rounded up) of registered delegations are present. The presence of a simple majority of registered delegations shall be required for any substantive vote to be taken. The Chair shall proceed with a Roll Call at the beginning of each session to recognize the presence of the delegates. The Chair shall inform the delegates of the Quorum whenever required. Every committee shall start with a First Session composed by: Opening Speeches with Speakers List.

11. Opening Plenary Session

Every committee shall start with a First Session composed by two parts: (i) Interactive Dialogues

and Briefings; (ii) Opening Speeches with Speakers List. The beginning of this session, therefore, is composed by a Briefing of the topic(s) to be discussed in the Committee, made by a specialist in the area or by some member of the Bureau. This moment may allow the initial interaction of the delegates with the discussion theme. Soon after that, the Bureau will present to the delegates a proposal of agenda on the topics to be discussed. The delegates may later decide for its adoption or suggest changes to it - if so, the delegates should submit the new agenda to the Bureau, which will present the new document to the committee. Albeit strongly recommended, still, the agenda is not mandatory and the delegates may prefer to go straight to the debate. Following the agenda presentation, each delegation may perform an Opening Speech. This shall contain, essentially, the topics presented in the Country Report, previously sent to the Bureau. In this sense, the delegates must attain themselves to the foreign policy of the country they are representing, according to the topic(s). These Speeches shall be made in accordance with a Speakers List, opened exclusively for this reason. To be included in the list, delegates should raise their placards, provided that the delegation's name is not already on the List. The delegations' names will appear according to the order in which they indicate their desire to speak. The delegation can withdraw its name from the General Speakers List by indicating so to the Bureau. The speech time must be defined by the Bureau in informal voting with the delegations. Even though this Opening Speeches are not mandatory, we strongly encourage all the delegations to participate in it. After the finish of the Speakers List, the Bureau shall automatically change to the Formal-Informal type of debate. Then, to make a Speech, the delegations must raise their placards and wait for the Bureau's indication – it's their prerogative to choose the delegates.

12. Speeches

No delegates may address the Committee without previously obtaining the permission of the Chair. The Chair shall call upon speakers in the order they signify their desire to speak. The speaking time shall be stipulated by the Chair in advance, though it may consult the committee before deciding on the matter. When a delegate has ten seconds of speaking time left, the Chair will make a discreet signal. When the allotted time has expired, the Chair will call the delegate to order.

13. Right of Reply

There is no right of reply. Real or perceived offenses or untruths should be dealt with during normal debate.

14. Working Papers

Working Papers are informal documents that aid the Committee in its discussions on substantive matters. Delegates may propose Working Papers for consideration by the Committee at any time during the Conference. They need not to be written in a specific format, but must be approved by the Chair to be distributed for and to be mentioned in the Committee. There is no need for sponsors of Working Papers.

15. Points

There are three types of Points by which a delegate may address the Chair directly. Should delegates wish to consult the Chair on a matter not covered by any of these three points, they should do it so privately, with the understanding that the Chair will inform the whole committee of the matter if it is deemed to be a general interest.

15.1. Point of Personal Privilege

At any moment during the debate, delegates may raise a Point of Personal Privilege to indicate that they are experiencing extreme personal physical discomfort or being prevented from properly following the discussion. The Chair will attempt to rectify the situation. This point may interrupt a speech if necessary.

15.2. Point of Order

Delegates may raise a Point of Order if they feel that the Rules of Procedure are not being properly followed by the Chair. The Point must be directly related to the rules, and cannot interrupt a speech. The members of the Chair will rule the Point in or out of order as they see fit.

15.3. Point of Inquiry

Delegates may raise a Point of Inquiry when they have a doubt regarding the Rules of Procedure or the flow of debate. This Point cannot interrupt a speech.

16. Debate

16.1. Formal Debate

The Formal debate happens exclusively in the First Session of the committees and must be composed by the Speakers List for the Opening Speeches of the delegations. To be included in the list, delegates should raise their placards, provided that the delegation's name is not already on the List.

16.2 Formal-Informal Debate

This type of debate will happen during all the sessions in all committees after the First Formal Session. This debate is conducted directly by the Chairwoman/Chairman: delegates willing to speak during the Formal-Informal Debate may raise their placards, and will be recognized by the Chair at its discretion. Points of Order and Motions for Adjournment of the Session or Debate can be raised by delegates, according to the Chair indications.

16.3 Informal-Informal

Debate It suspends the Formal-Informal debate so that the delegates can discuss without interference of the Chair, being free to walk in the conference's room and gather in work groups. The objective is to facilitate substantive discussions, such as the draft resolution, by relaxing the structure of the debate imposed by the regular procedures. Therefore, the delegates are encouraged to use this time to work in political groups (i.e. with foreign policy alignment) to draft and negotiate a possible resolution or amendment. To start an Informal-Informal meeting it is necessary that a delegation asks the Bureau to do so. The Chair will then inquire if there are consensus on the matter. In the cases where no consensus is found, a simple majority is necessary for approval of this type of debate. There is not a specific amount of time for this form of debate, but its maximum extension in a row is of 45 minutes. 17. Motion for Adjournment of the Session During discussion of any matter, a delegate may move for the Adjournment of the Session. Such a motion shall not be debated, and shall be put to a vote if there are no other

Points that take precedence to it on the floor, requiring a two-third majority to for approval. After the session is adjourned, the Committee shall reconvene at its next regularly schedule session time. As with all motions, the Chair may rule a Motion for Adjournment of the Session out of order.

SPECIAL RULES OF PROCEDURE UNITED NATIONS SECUTIR COUNCIL

18. Credentials

Delegates must hand over their credentials at the beginning of the first session. These credentials are sent to the delegates by their respective country's Ministry of Foreign Affairs in advance. In the case of not having received the Credentials delegates must contact the Secretariat. Delegates are encouraged to write letters to their governments to obtain authorization to undertake actions beyond those listed in the credentials section of the General Rules of Procedure or request needed information.

19. Conduct during voting on a Draft Resolution

The Secretary-General shall immediately bring to the attention of all representatives on the Security Council all communications from States, organs of the United Nations, or concerns regarding any matter that requires consideration of the Security Council in accordance with the provisions of the Charter. The Secretary-General may designate members from Secretariat to attend any council's meetings. The selected members from the Secretariat must provide logistical and technical support to the Security Council's discussions, entertaining the Council with any formal or informal documents specifically sent to the Council or addressing any matters under its consideration. Draft-communiqués reporting on behalf of the Council may also be sent to its appreciation, whenever the Secretariat finds it.

SUBSTANTIVE MATTERS

20. Voting Majorities

Decisions of the Security Council on procedural matters shall be made by a simple majority of nine members. Decisions of the Security Council on substantive matters shall be made by an affirmative vote of nine members with no negative votes on the part of the permanent members; provided that, in decisions under Chapter VI on the UN Charter and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting. The matters hereby considered as substantive are the approval of Amendments to the Draft Resolution, the approval of Draft Resolutions and approval of clauses/parts in a division of the question.

21. Form of Debate

6.1 Unless otherwise stated by the committee, all sessions of the Security Council are presumed to be closed until the adjournment of the session, except for the First Session, when takes place the reading of the Briefing and/or the Interactive Dialogue, and when the delegates may deliver an Opening Speech, available to the Press. Closed sessions are secret and information on the proceedings is entrusted to the discretion of the participants. This is meant to facilitate discussion and negotiation between members of the Council as the conversations will be confidential and undocumented.

6.2 Closed Sessions follow the format of a Formal/Informal Debate at all times, except in the case of shifting to an Informal-Informal Debate. Besides the Point of Order described in the General Rules of Procedure, the following motions will be allowed during closed sessions (according to the order of precedence): (i) Motion for adjournment of the session; (ii) Motion for adjournment of the debate; (iii) Motion of no confidence; (iv) Motion for an open session; (v) Motion to issue a presidential statement.

6.2.1 A motion for an open session is functional when the action phase on a draft resolution is about to begin (i.e. after its introduction and during its voting). The Presidency must consult the Council about opening the session with a voting procedure. If a simple majority decide in favor of opening the session, all statements will be duly recorded and made available to the Press.

6.2.2 Any delegate may raise a motion to issue a UNSC Presidential Statement, which is a UN official document meant to inform the public on some of the deliberations of the UNSC. If the motion is ruled to be in order, the delegate will read the proposed text for the statement, and the president will ask if any Council member objects to it. It must be approved by consensus. There being no objection, the statement is considered to be issued and released to the public. There is no specific format.

6.3 During Open Sessions, the following motions will be allowed (according to the order of precedence): (i) Motion for adjournment of the session; (ii) Motion for adjournment of debate; (iii) Motion for a closed session.

6.3.1 A motion for a closed session is a procedural matter, which will immediately be put to a vote. If the motion passes, the session will be immediately closed to the public, statements will no longer be recorded and all individuals who do not belong to the Secretariat or to the delegations represented in the Council will be asked to leave the room.

22. Participation in Council Deliberations

Should any member of the Council wish to invite an individual or representative of an organization or government to participate (without entitlement to vote on substantive matters) in the deliberations of the Council, he or she should submit a written request to the President of the Council. The President will ask if any Council member objects to the invitation. There being no objection, the invitation will be issued.

23. Letter to the Secretary-General

Should any member of the Council wish to issue a letter addressed directly to the Secretary-General, or intended to be transmitted to an organization or government relevant to the deliberations of the Council, he or she should submit the proposed letter and a request in writing to the President of the Council. The President will ask if any Council member objects to the letter. There being no objection, the letter will be issued.

24. Presidency

The presidency of the Security Council shall be held in turn by the delegations that wish to do so. Each President shall hold office for the length of one session. Lots will be drawn in the first session among delegations willing to hold the presidency. Whenever the president of the session is seen to be fulfilling its responsibilities in a manner unsatisfactory to the members of the UNSC and the Secretariat, a change in the presidency is in order. It requires an informal written request signed by at least three members, one of which must be a permanent member of the Council. This change will be put to a vote if the Secretariat deems appropriate and requires a simple majority to

pass. If the vote passes, the presidency devolves for the rest of the session on the delegations scheduled to preside the next session. Should this occur, the plan would remain unchanged for the following sessions. Some delegations may be called upon to preside over multiple sessions. The President shall preside over the meetings of the Security Council and, under the authority of the Security Council, shall represent it in its capacity as an organ of the United Nations.

25. Presidential Statements

Any delegate may move to Issue a UNSC Presidential Statement, which is a UN official document meant to inform the public on some of the deliberations of the UNSC. If the Motion is ruled to be in order, the delegate will read the proposed text for the statement, and the president will ask if any Council member objects to it. There being no objection, the statement is considered to be issued and released to the public.

26. Draft Resolutions and Amendments

In Closed Sessions, more than one Draft Resolution and Amendments may be on the floor at the same time. All the Draft Resolutions and Amendments shall be discussed simultaneously, yet the Council may approve only one resolution per topic. Before being introduced for debate, all Draft Resolutions and Amendments require the approval of the Secretariat. Draft Resolutions require five signatures and Amendments require three signatures to be introduced. Once a Draft Resolution or an Amendment has been introduced, it can be withdrawn only if all signatories remove their signatures. Friendly Amendments are allowed. Before voting an Amendment, delegates can move for Roll Call Voting. Draft Resolutions are voted in open sessions; therefore, the Roll Call Voting is automatically in order.

SUBSTANTIVE MATTERS

27. Draft Resolutions

Before being introduced for debate, all Draft Resolutions require the approval of the Chair. All Draft Resolutions also require 5 signatures to be introduced and a simple majority to pass. Signing a Draft Resolution does not necessarily indicate that a delegation support its ideas, but only that it desires to have the Draft Resolution discussed. A signatory of a Draft Resolution is not required to vote in favor of it. The Draft Resolution needs its signatories' support to continue on the floor. In the event of all signatories withdrawing their signatures, debate on the Draft Resolution is ceased. Other delegations may add their signatures to the Draft Resolution in the course of the debate. In general debate on a topic, there may be more than one Draft Resolution on the floor at the same time. All the Draft Resolutions shall be discussed simultaneously on the General Speakers List. Only one Draft Resolution may be approved by the Committee. A Draft Resolution will remain on the floor until debate on that specific Draft Resolution is closed or another Draft Resolution on the topic passes. There will be no time limit to debate on one topic.

27.1 Motion for Introduction of Draft Resolution

Delegates may move for the Introduction of a Draft Revolution once it has been approved by the Chair

and distributed to the Committee. This motion does not require a vote to pass; once accepted by the Chair it is automatically approved. The Chair will then grant the floor to one of the signatories of the Draft Resolution for the time required for him/her to read its operative clauses. After the Draft Resolution is read, the Chair asks for questions, which shall be limited to grammar or technical matters on the document and may not pertain to the substance of the Draft Resolution.

27.2 Motion for Introduction of an Amendment

Delegates may amend any Draft Resolution that is on the floor. Amendments may add, subtract, or modify parts of the Draft Resolution. An Amendment requires the approval of the Chair and the signatures of three members of the Committee. Signing an Amendment does not constitute or require a vote in favor of it. After a Motion for the Introduction of an Amendment is approved by the Chair, debate on the General Speakers List shall be suspended and a Special Speakers List shall be established for and against the specific Amendment. A Motion for Closure of the Special Speakers List or a Motion to Close Debate on the Amendment will be in order after the Committee has heard at least two speakers in favor of the Amendment and two speakers against, when available. When debate is closed on the Amendment, the Committee shall proceed to an immediate vote, which may be a Roll Call Vote if so moved. Following the voting procedure, debate according to the General Speakers List shall resume. Once an Amendment is approved, it becomes part of the Draft Resolution, which means that it is no longer considered an Amendment.

27.3 Friendly Amendment

When all the current signatories of a Draft Resolution on the floor agree to modify any part of its operative clauses, they may do so through a Friendly Amendment, which has the same effects of a regular Amendment. A Friendly Amendment must be presented on a written format to the Chair for its approval. After approving it, the Chair will ask if all the signatories of the Draft Resolution support the Friendly Amendment and, if they do so, it will automatically become part of the Draft Resolution. In case any signatory is absent or does not agree on the Friendly Amendment, it will be discarded. Yet, it may be presented again as a regular Amendment.

27.4 Procedure of Approval by Consensus

The resolution will be read aloud by one of the signatories. Delegations can suggest, if necessary, grammatical or technical corrections to the document (content-related questions cannot be altered). After, the Bureau will ask if any delegation opposes the Draft Resolution - this is not to happen, in general. If none, the resolution is approved and the discussion addresses the next topic, if there is one.

27.5 Procedure of Approval by Voting

In case there is not a consensus, the Draft Resolution is introduced to the debate if approved by the Bureau: from this moment on, the Draft becomes the sole focus of discussion of the committee, which is obliged to approve the document or reject it. Just after its introduction, the Draft is read aloud by one of the signatories, and the delegations can suggest, if necessary, grammatical or technical corrections to the document. When this process is completed, the committee returns to the normal flow of the debate.

27.6 Motion for Division of the Question

After debate has been closed and the Chair has started the voting procedures on a Draft Resolution, a delegate may move for the Operative Clauses of the Draft Resolution to be voted on separately. Perambulatory and Sub-Operative Clauses may not be divided this way. If a delegate moves for a Division of the Question, the Chair shall recognize two speakers in favor and two speakers against the Motion if available. A simple majority is needed for the Motion to pass (this is a procedural vote, with no abstentions allowed). If it does pass, a five-minute Unmoderated Caucus will be automatically granted to the Committee so that delegates can discuss, prepare, and present to the Chair, in written format, their proposals to divide the question. The Committee will hear two speakers in favor and two speakers against every proposal of division before voting it until one is approved. No abstentions are allowed in these votes, as they are procedural matters. If no proposals are approved by simple majority, the Draft Resolution shall be voted as a whole. When one of the proposals is approved, a separate vote shall be taken on each divided part to determine whether it shall be included in the Draft Resolution to be voted later. For the Operative Clauses to remain in the Draft Resolution, a simple majority of the votes is required. The substantive nature of this vote means abstentions are permitted.

28. Motion for Roll Call Voting

After debate has been closed on a Draft Resolution or Amendment, a delegate may move for a Roll Call Vote. In a Roll Call Vote, the Chair will recognize, in alphabetical order each voting delegate, who must state his/her vote. Delegates may vote in favor, against or abstain. Once recognized by the Chair, the motion for a Roll Call Voting is automatically approved and does not require a vote to pass. During a Roll Call Vote, delegates may choose to pass their turn of voting and wait for another roll call round to state their actual vote. However, delegates who pass their vote are not allowed to abstain from voting. Moreover, delegates are allowed to pass only once.

GUIDE ON WRITING RESOLUTIONS

1 Draft Resolutions

The United Nations does not pass “laws”, it passes Resolutions. A Resolution is a way of bringing pressure upon Member States, of expressing an opinion on a pressing matter, or recommending some action to be taken by the UN or other agency. Draft Resolutions should not be introduced into formal session until they have circulated among other delegates to incorporate different perspectives and to build support. It is desirable for a Draft Resolution to be sponsored by several States or by an entire bloc. Delegates should not bring pre-written Resolutions to the Conference. Pre-written Resolutions are not only frowned upon by the Secretariat, but will inevitably alienate the other delegates in the committee. The process of writing Resolutions in committee with other delegates is designed to teach delegates the subtler forms of negotiations and concessions. Prefabricated Resolutions obviously pre-empt this process. When drafting and sponsoring a resolution, keep in mind that the wording will greatly influence its appeal. The Resolution should be clear, concise and specific. The substance should be well researched, and reflect the character and interests of the sponsorship nations. Being a signatory to a Resolution only means that delegates want to see it put on the floor; it does not indicate sponsorship or support and the signatory has no further obligations. For instance, you might be against a Draft Resolution but might want to see it debated to be able to convince other countries who have written the Draft Document.

2 Drafting a Resolution

UN Resolutions follow a common format. A resolution in one long sentence, with commas and semi-colons used to separate the ideas and a period at the very end of the document. They should be single-spaced, with each line numbered in the left-hand margin. Resolutions consist of three main parts:

2.1 The Heading

The heading of the Draft Resolution should read as follows:

COMMITTEE: the name of the organ where it was introduced;

SUBJECT: the topic of the resolution;

SPONSORED BY: list of sponsoring nations. A document number will be given to the resolution as part of the heading and it will be referred to by its number for the remainder of the simulation.

2.2 The Perambulatory

Causes Within the preamble of a Resolution, one will not find clauses proposing action or making substantive statements. The perambulatory causes explain the purpose of the resolution and state the main reasons for the suggestions to follow. This is where previous UM Resolutions are referred to and relevant precedents of international law are cited. The preamble may also include altruistic appeals to the common sense or humanitarian instincts of Members States regarding the Charter, the Universal Declaration of Human Rights, etc. Each clause begins with an italicized participle and is followed by a comma after the sentence.

Affirming	Emphasizing	Keeping in mind
Alarmed by	Expecting	Noting with regret
Approving	Fulfilling	Noting with
Aware of	Fully aware	satisfaction
Believing	Fully alarmed	Noting with deep
Bearing in mind	Fully believing	concern
Confident	Further deploring	Noting with
Convinced	Guided by	approval
Declaring	Having adopted	Observing
Deeply concerned	Having considered	Realizing
Deeply convinced	Having examined	Reaffirming
Deeply disturbed	Having studied	Recognizing
Deeply regretting	Having heard	Recalling
Desiring	Having received	Welcoming

2.3 The Operative Clauses

The operative clauses list the recommendations for action, or state a favorable or unfavorable opinion regarding the existing situation. These actions can be as vague as a denunciation of a certain situation or a call for negotiations, or specific as a call for a ceasefire or monetary commitment for a Project. Remember that only Security Council Resolutions are binding on Member States, the General Assembly and the Economic and Social Council can only make recommendations. Operative clauses begin with an active, present tense verb and are followed by a semicolon in the end of the sentence. The first word in each operative clause is italicized. Operative clauses are numbered, beginning with “1”.

The follow words are a partial list of appropriate terms for initiative operative clauses:

Accepts	Designates	Notes
Approves	Emphasizes	Proclaims
Authorizes	Encourages	Reaffirms
Calls	Endorses	Recommends
Calls upon	Expresses its	Reminds
Commands	appreciation	Regrets
Condemns	Expresses its hope	Requests
Congratulates	Further invites	Reiterates
Confirms	Further proclaims	Solemnly affirms
Considers	Further reminds	
Decides	Further	
Declares	recommends	
Accordingly	Further resolves	
Demands	Further requests	
Deplores	Further urges	
Draws the attention	Has resolved	

PART TWO LASMUN's Study Guide

SEXUAL VIOLENCE AS A WEAPON OF WAR IN THE DEMOCRATIC REPUBLIC OF CONGO

*Betina Janner Schneider*¹

*Laura Parahyba*²

*Natália Souza Paz*³

ABSTRACT

The Democratic Republic of Congo (R.D.C.), a country located in Central Africa, the fourth most populous country on the African continent, became independent from Belgium in 1960, and it's a country with large sources of natural resources. However, it is an extremely poor and vulnerable country, having its GDP and HDI indexes among the lowest in the world. Among the regrettable remnants of colonization, sexual violence in the R.D.C. is still a very common practice against women and children, being used as a weapon of war between groups living in conflict, as a way to “exercise power” against the enemy.

Sexual violence as a weapon of war has varied objectives, such as: “ethnic cleansing, manifestation of “power” against the enemy and against the enemy’s territory, development of a strong male identity by the aggressors, among others; but all goals come at some point in gaining some kind of “power” through sexual violence.

Surveys indicate an estimated more than 200.000 rape victims living in the Democratic Republic of Congo. Also, in May 2021, the United Nations (UN) news network published an article on its official website, drawing attention to what it declared to be a crisis of: “catastrophic magnitude” related to victims of sexual violence in the country.⁴

1 Introduction

Sexual violence is one of the most common types of violence,⁵ as in addition to being extremely brutal to the victim, its marks are often not so evident to external observers, thus the aggressor can cause serious damage to the victim and is often not punished for it, due to the lack of evidence of external impact. Thus, sexual violence as a weapon of war has been adopted since antiquity⁶ and used to create harm that goes far beyond the victim in question: the practice is used as a way to demoralize the enemy, seeking to attack in a way that he believes he is exercising his masculinity and demonstrating its strength.⁷

It could not be different in more recent conflicts, such as those involving the now recognized Democratic Republic of Congo that, since its colonization, it has absorbed practices of violence, such as sexual violence, as a way of

1 Undergraduate Student in International Relations at La Salle University Canoas

2 Undergraduate Student in International Relations at La Salle University Canoas

3 Undergraduate Student in International Relations at La Salle University Canoas

4 **UNITED NATIONS NEWS**. Sexual violence survivors in DR Congo caught in crisis of ‘catastrophic magnitude’. Available at: <<https://news.un.org/en/story/2021/05/1092292>> Accessed on: October, 07, 2021.

5 **COUNCIL OF EUROPE**. Types of Gender-based Violence. Available at: <<https://www.coe.int/en/web/gender-matters/types-of-gender-based-violence>>. Accessed on: october, 07, 2021.

6 DOS SANTOS, Filipa Gonçalves Marques Ferro. **A Utilização da Violência Sexual Enquanto Arma ou Método de Guerra**. Faculdade de Direito Universidade de Lisboa, 2019, p. 16.

7 PASSOS, Kenya Regyna Mesquita. Losurdo Federico. **Estupro de Guerra: O Sentido dos Corpos Para o Direito Penal Internacional**. Revista de Gênero, Sexualidade e Direito. 2017, p. 155.

weakening the population that was being colonized and later used among the different groups present in the country.

While the practice of sexual violence as a weapon of war can be recognized since the dawn of humanity,⁸ the study of this type of practice is not that old, so there are few options and works on the theme and related themes. However, the international community has been working with different proposals and campaigns to curb this movement and to provide assistance to victims around the world, such as in the Democratic Republic of Congo, which is currently one of the most marked countries for using this practice as a weapon of war.

2. Democratic Republic of the Congo:

2.1 Colonization

Before independence in 1960, the territory that now corresponds to the Democratic Republic of Congo was being commanded by Leopold II, king of the Kingdom of Belgium, who subjected the Congolese Democrats to one of the most violent colonial regimes in Africa. This territory was called the Free State of the Congo (1877-1908) and was a private property of Leopold II, which exploited both the population of the territory and its riches. In this territory the most exploited resources were ivory and rubber, which were sources of great wealth for the reign of the Kingdom of Belgium at that time.⁹

During this period, the Democratic-Congolese were subjected to forced labor, mutilations and physical aggression when the quotas of daily productions were not reached. The death records were high, as the population did not die in isolation from the aggressions, but also from diseases that were spread. The Democratic-Congolese population is estimated to have been reduced by up to 10 million people in this period.¹⁰

From 1884 on, a strong campaign began in the media that circulated at the time and criticized the administration of Leopold II in the Free State of Congo. The British journalist Edmund Dene was one of the main critics of this domination and was trying to draw the public's attention to the violence imposed on the Congolese democrats by the Belgians.¹¹

After the report of missionaries who were in the colony and the media that circulated, the British Crown has launched an investigation into events in the Congo Free State.¹² Genocide and violent practices were confirmed by investigators through the Casement Report and, in 1908, the territory was removed from the properties of Leopold II and was annexed by Belgium, which was then called the Belgian Congo.¹³

2.2 Independence and Dictatorship

The independence movement began in the 1940s led by Patrice Lumumba, born in a village in East Kasai

8 DOS SANTOS, Filipa Gonçalves Marques Ferro. **A Utilização da Violência Sexual Enquanto Arma ou Método de Guerra**. Faculdade de Direito Universidade de Lisboa, 2019, p. 16.

9 LUZ, Natalia da. República Democrática do Congo: a independência do país que viveu um dos mais cruéis regimes coloniais da África, **Por dentro da África**. Available at: <<http://www.pordentrodaafrica.com/cultura/republica-democratica-congo-54-anos-de-independencia-pais-que-viveu-um-dos-mais-cruéis-regimes-coloniais-da-africa>>. Accessed on: September 25, 2021.

10 **Abraço Cultural**, 30/06: Independência da República Democrática do Congo (RDC), [2021?]. Available at: <<https://www.abracocultural.com.br/independencia-rdc-congo/>>. Accessed on: September 25, 2021.

11 BOLFARINE, Mariana. ROGER CASEMENT E O CONGO BELGA: O TRAUMA DO IMPERIALISMO NA FICÇÃO. **Porto das Letras**, v. 6, n. 4, p. 15-32, 22 out. 2020. Accessed on: September 26, 2021

12 **Abraço Cultural**, 30/06: Independência da República Democrática do Congo (RDC), [2021?]. Available at: <<https://www.abracocultural.com.br/independencia-rdc-congo/>>. Accessed on: September 26, 2021.

13 BOLFARINE, Mariana. ROGER CASEMENT E O CONGO BELGA: O TRAUMA DO IMPERIALISMO NA FICÇÃO. **Porto das Letras**, v. 6, n. 4, p. 15-32, 22 out. 2020. Accessed on: September 26, 2021

at the time, stood out as anti-colonialist political leadership.¹⁴ In 1960, the future Congolese Democrats gained independence with the support of the UN and other organizations that made the Kingdom of Belgium recognize the country's independence.¹⁵ The regime adopted was parliamentarism and the first election took place that same year, in which Lumumba was elected as prime minister.

Patrice Lumumba was accused by many people in the country of having communist ideas, and so began to form groups to overthrow the prime minister of power. Thus, in 1960, Lumumba suffered a coup d'état led by Moïse Tshombe, who was a politician, with the support of the United States, and in 1961, former Prime Minister Patrice Lumumba, was kidnapped and murdered.¹⁶

After the coup, Tshombe assumed the presidency of the country, but, right after this, he suffered a coup d'état led by Joseph Désiré Mobutu, who was a military and supported by the United States, in 1965. In his government he ruled with anti-communist ideas because he was being financed by the United States and allowed capitalist exploitation of the ore mines in the Democratic Republic of Congo.¹⁷

Mobutu rises to power and establishes a dictatorship that lasts for 32 years in the Democratic Republic of Congo. In his administration, he initiated the Policy of Africanization that prohibited names and cultures of Western and Christian origins and, in 1971, changed the name of the country to Zaire.¹⁸

Like other African dictators, Mobutu amassed a large fortune during his rule, but in the meantime, people were going through humanitarian difficulties and lived increasingly below the poverty line, which means that the country was not developing. These data indicated corruption and embezzlement of public money by the government.¹⁹

2.3 Civil Wars

The dissatisfaction of the population led to the start of the First Civil War in the Democratic Republic of Congo in 1996, led by Laurent Kabila.²⁰ Opponents of the dictatorship were not only the Democratic-Congolese people, but also Rwandan refugees, who supported the civil war and the removal of Mobutu.²¹

After the bombing of cities in the Democratic Republic of Congo and due to the rebels' advance towards Kinshasa (the capital), Nelson Mandela, the president of South Africa at the time, organized a meeting on May 14, 1997, with Mobutu and Kabila in order to prevent the situation from evolving to more violent consequences in the country. At the meeting, Mobutu considered leaving the country and retiring

14 WACKERNAGEL, Tamara. Patrice Lumumba e o destino falhado da República Democrática do Congo, **DW**, 2018. Available at: <<https://www.dw.com/pt-002/patrice-lumumba-e-o-destino-falhado-da-rep%C3%BAblica-democr%C3%A1tica-do-congo/a-43704630>>. Access on: September 12, 2021.

15 CARVALHO, Leandro. "Independência do Congo", **Brasil Escola**. Available at: <<https://brasilescola.uol.com.br/historiag/independencia-congo.htm>>. Accessed on: September 26, 2021

16 CARVALHO, Leandro. "Independência do Congo"; **Brasil Escola**. Available at: <<https://brasilescola.uol.com.br/historiag/independencia-congo.htm>>. Accessed on: September 26, 2021

17 CARVALHO, Leandro. "Independência do Congo"; **Brasil Escola**. Available at: <<https://brasilescola.uol.com.br/historiag/independencia-congo.htm>>. Accessed on: September 26, 2021

18 RAMME, Oliver. 1965: Mobutu dá golpe e se torna presidente do Congo, **DW Brasil**, 2014. Disponível em: <<https://p.dw.com/p/1PIq>>. Acesso em: 12 de setembro de 2021.

19 PRADO, Ana Carolina. Os 5 chefes de estado que mais desviaram dinheiro no mundo, **Super Interessante**, 2010. Available at: <<https://super.abril.com.br/blog/superlistas/os-5-chefes-de-estado-que-mais-desviaram-dinheiro-no-mundo/>>. Accessed on: September 25, 2021.

20 BRITANNICA. Laurent Kabila, 2021. Available at: < <https://www.britannica.com/biography/Mobutu-Sese-Seko> > Accessed on: October 19, 2021.

21 **BBC Brasil**, Entenda a história e a guerra da República Democrática do Congo, 2003. Available at: <https://www.bbc.com/portuguese/noticias/story/2003/07/030717_congomt>. Accessed on: September 25, 2021.

from power. A few days later, Mobutu flees to Morocco and the city is taken peacefully on May 17, 1997, Kabila takes power on that date and resumes the country's name for the Democratic Republic of Congo.²²

In addition, after the Rwandan Genocide (1994), tensions began to emerge between African ethnic groups, the Tutsis and the Hutus, who also occupied the Democratic Republic of Congo and which directly influenced the conflicts that took place one year later in the country. With tensions growing more and more, not only in the Democratic Republic of Congo, but in neighboring countries as well, the Second Congo War begins in 1998, one of the bloodiest and most violent wars on the African continent.²³ In this war, also called the African World War or the Great African War, an estimated 6 million people died, this being the war that has killed the most people since the World War II.²⁴

During the war, Kabila was assassinated and his son Joseph Kabila took power, who started a peace process in the country in 2001. After several attempts to end the war, in 2003 an agreement was signed between the Democratic Republic of Congo and Rwanda.²⁵ In this agreement it was explicit that the Rwandan troops would withdraw from the country and the guerrilla groups would be disarmed, putting an end to the war.²⁶

In 2006, new elections were held in the country in which Joseph Kabila wins with the majority of votes. In 2006, the new Constitution of the Democratic Republic of Congo was made and approved.²⁷

2.4 Current situation in the Democratic Republic of Congo

Currently, the population of the Democratic Republic of Congo still lives in the midst of conflicts, and consequently, is a victim of physical and sexual violence.²⁸ In the Kivu and Kasai regions, the situation is more complicated because human rights violations persist. In the Kasai region, it is common to find dead people's bodies in houses, businesses and schools, and many are still victims of mutilation, murder and sexual violence.²⁹ However, in the North Kivu region, widespread violence and anarchy still persist, which are generated by sporadic waves of conflict, for this reason, thousands of civilians fight for survival every day. In addition, the Democratic Republic of Congo suffers, in general, from outbreaks of diseases such as Ebola, measles and COVID-19. As the country does not have access to basic sanitation and adequate hygiene conditions, such as hand washing, the spread of these diseases, mainly Covid-19, is increasing in the region.³⁰

22 Porto Editora, *Guerra Civil do Zaire (1996-1997)*, **Infopédia**. Available at: <[https://www.infopedia.pt/\\$guerra-civil-do-zaire-\(1996-1997\)](https://www.infopedia.pt/$guerra-civil-do-zaire-(1996-1997))>. Accessed on: September 25, 2021.

23 SOUSA, Rafaela. Conflitos na África, **Mundo Educação**. Available at: <<https://mundoeducacao.uol.com.br/geografia/os-conflitos-na-africa.htm>>. Accessed on: September 25, 2021.

24 **Toda Matéria**, Guerra do Congo, 2018. Available at: <<https://www.todamateria.com.br/guerra-do-congo/>>. Accessed on: September 25, 2021.

25 **DW**, Joseph Kabila, 2021. Available at: <<https://p.dw.com/p/2ZMCX>>. Accessed on: September 25, 2021.

26 **ESTADÃO**, Congo e Ruanda assinam acordo de paz na África do Sul, 2002. Available at: <<https://internacional.estadao.com.br/noticias/geral,congo-e-ruanda-assinam-acordo-de-paz-na-africa-do-sul,20020730p48151>>. Accessed on: September 25, 2021.

27 **Público**, Nova Constituição em vigor na República Democrática do Congo, 2006. Available at: <<https://www.publico.pt/2006/02/20/jornal/nova-constituicao-em-vigor-na-republica-democratica-do-congo-64604>>. Accessed on: September 25, 2021.

28 OLSSON Alina, Questões não resolvidas, **Relateypunto**. Available at: <<https://relacionateypunto.com/pt/violencia-sexual-en-la-republica-democratica-del-congo/>>. Accessed on: September 25, 2021.

29 **ACNUR Brasil**, República Democrática do Congo (RDC), 2020. Available at: <<https://www.acnur.org/portugues/republica-democratica-congo-rdc/>>. Accessed on: August 22, 2021.

30 **G1**, República Democrática do Congo, o país que enfrenta surtos de ebola, Covid-19 e sarampo ao mesmo tempo, 2020. Available at: <<https://g1.globo.com/mundo/noticia/2020/06/25/republica-democratica-do-congo-o-pais-que-enfrenta-surtos-de-ebola-covid-19-e-sarampo-ao-mesmo-tempo.ghtml>>. Accessed on: September 25, 2021.

Faced with this scenario, UNHCR sends doctors and people to help the Congolese population in the country. Thousands of displaced people, victims of sexual violence, women and children are helped by the organization, but they also face a lack of donations to continue with the support provided.³¹

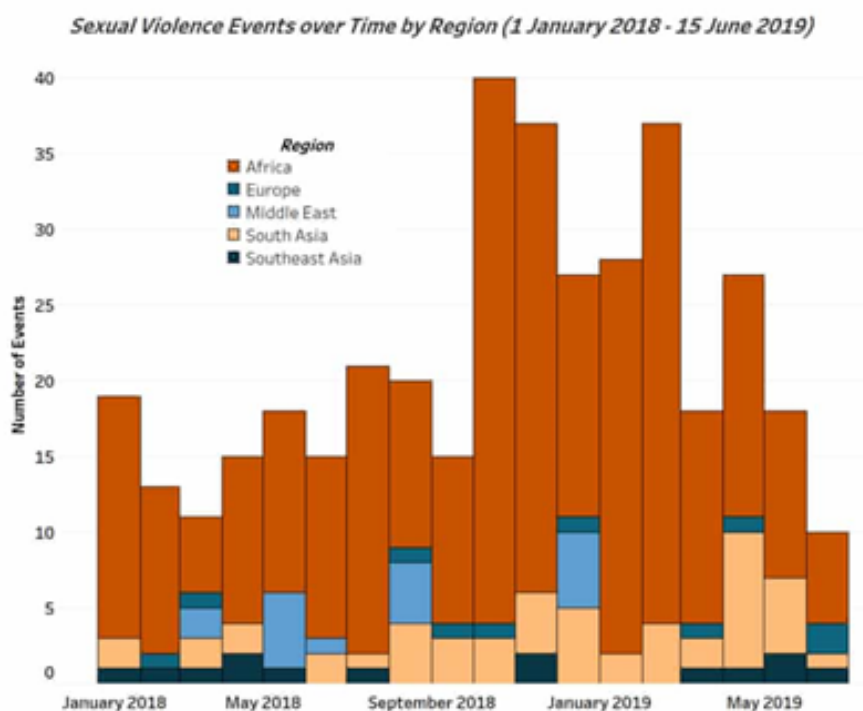
3 Sexual Violence as a Weapon of War

Despite being a subject not much discussed in international councils, cases of sexual violence as a weapon of war is one of the most common crimes in the world, as groups that participate in this type of crime use it to preserve the machismo and misogyny of ethnic cleansing.³² In the current period we live in, sexual violence is a criminal practice under the law, but unfortunately few cases actually end with a criminal resolution.

Sexual violence ranges from rape, genital mutilation, physical violence, humiliation, sexual slavery and other atrocities.³³ Some guerrillas maintain the same backward thinking that this would be the best way to gain power, because then the opposing group would be at a disadvantage, or even losing power – as a form of humiliation or in some cases, a reward.

Sexual violence is a crime widely perpetuated around the world, with different purposes. However, as in the graph below, it can be noted that regions such as the African continent, which registers a significant amount of internal conflicts, also registers the highest percentage of cases of sexual violence, which can be related to war purposes.

CHART 1 - Conflict drives global rise in sexual violence against women



SOURCE: THE GUARDIAN (2019)³⁴

31 CNUR Brasil, República Democrática do Congo (RDC), 2020. Available at: <<https://www.acnur.org/portugues/republica-democratica-congo-rdc/>>. Accessed on: August 22, 2021.

32 ICRC, Facing sexual violence, 2020. Available from: <<https://www.icrc.org/en/what-we-do/sexual-violence>>. Accessed: 12 September 2021.

33 ONU, Rape: Weapon of War, 2020. Available at: <<https://www.ohchr.org/en/newsevents/pages/rapeweaponwar.aspx>> Accessed: September 9, 2021.

34 THE GUARDIAN. Conflict drives global rise in sexual violence against women, 2019. Available at:<<https://www.theguardian.com/global-development/2019/jun/28/congo-abuses-drive-global-rise-in-sexual-violence-against-women>>. Accessed on: October, 19, 2021.

From the analysis of this graph, it is possible to raise questions about why the African continent presents such high data compared to other continents regarding sexual violence in conflict scenarios. Considering that the countries of the African continent are signatories of the UN and its respective conventions on the protection and freedom of the citizens, the elements of international law are constitutive of the norms and regulations of the States belonging to the African Union; however, although legal guarantees are established, the data in the graph above show a very significant contrast when dealing with the practical reality faced by these groups. In this sense, questions prevail in order to highlight possible negligence and promote effective actions by the responsible actors in these scenarios of violation of Human Rights.

3.1 Consequences of sexual violence for public health

Sexual violence in the Republic of Congo is currently the main weapon of war, with its large numbers of violence, there is a relatively high increase in the spread of sexually transmitted diseases, as the aggressors transmit them to their victims, who consequently transmit them to their children if not handled properly.

However, victims largely develop various psychological problems, believing in several cases that they were blamed for the atrocities committed - according to data from the non-profit organization Save the Children, 80% of victims do not report their cases for fear or shame of violence what happened to them.³⁵

According to data brought directly from the United Nations, taken from the Southern Health Center of the Republic of Congo, around 40 women are raped every day in the region alone.³⁶ The numbers increase when we observe it from other parts of the country, it currently has new NGOs and international support to contain the numbers and provide assistance to victims, because although the consequences of sexual violence cannot be reversed, they can be accompanied by doctors and psychologists so that they can live their lives without letting their events turn into traumas that affect their daily lives, bringing support, justice and reintegration into society.

Another point that must be emphasized is that sexual violence itself is not just an isolated problem, it is a reflection of other action; in this case, following the principle of armed warfare, corruption and a flawed system, whether in the laws for if there are adequate and effectively enforced punishments or by laws for the protection and protection of victims, it ends up no longer being a problem of an isolated State, but becoming an international problem. The fact that the ROC is one of the biggest poles of sexual violence as a weapon of war is something that worries many countries, as the humanitarian issue has crossed limits, being the Congo geographically one of the largest countries in the world, in addition to the fact that it is currently a of the four most populous countries in Africa, with irreversible consequences for the population.³⁷

4. The Security Council and important resolutions in defense of women

Inside the functioning structure of the United Nations (UN), one of the most important organs for the fulfillment of its objectives is the United Nations Security Council (UNSC). This organ has the responsibility to work for the maintenance of international peace and security.³⁸ It is composed of 15 members, five of them are

35 **SAVE THE CHILDREN**, Weapon of war: Sexual violence against children in conflict, 2021. Available at: <<https://www.savethechildren.net/blog/weapon-war-sexual-violence-against-children-conflict>> Accessed September 12, 2021

36 ONU, Rape: Weapon Of War, 2020. Available at: < <https://www.ohchr.org/en/newsevents/pages/rapeweaponwar.aspx>> Accessed: September 9, 2021

37 **The World Factbook**, 2021. Available at: < <https://www.cia.gov/the-world-factbook/countries/congo-democratic-republic-of-the/#transnational-issues>> Accessed on: September 9, 2021

38 **UNITED NATIONS**, United Nations Security Council, 2021. Available at : <https://www.un.org/securitycouncil/> >. Accessed on: October 03, 2021.

permanent members, The United States, The United Kingdom, France, China and Russian Federation, they are the ones who can veto a resolution, and they are known as the “P5”.³⁹ And ten non-permanent members, who are elected for two-year terms by the General Assembly.⁴⁰

Among the SC’s duties is to elaborate and suggest alternatives to solve situations that disturb international peace and security. These alternatives are registered through the Resolutions of the Council and should guide the action of Peace Missions and member countries in relation to problems discussed by the Council.⁴¹

Among these resolutions, on the protection of women, it can be highlighted the Resolution 1325 (2000), which reinforces the search for protection for women and girls, especially those living in conflict zones, asking that UN member countries, as well as the Secretary-General, support measures to protect this group.⁴²

The UNSC Resolution 1820 calls upon coordination of United Nations efforts to fight against Sexual Violence in Conflict, as a Weapon of War, to create awareness about this reality and look for alternatives to deal with it and end it. Demands that the parties involved in conflicts take measures to protect women and girls. Affirms that the Sexual Violence configures crime against humanity and requests the General-Secretary to work with Security Council, and the committee on Peacekeeping Operations to develop and implement training programs for the peacekeeping team to help, prevent, recognize and respond to sexual violence and other forms of violence in conflict, and also, to implement a policy of no tolerance of sexual exploitation in United Nations operations.⁴³

The UNSC Resolution 2245 (2015) has recently recognized the indispensable role of women in United Nations peacekeeping and welcoming efforts to incentivize greater numbers of women in military, police and civilian deployed in United Nations peacekeeping operations. Also, the resolution is relevant on noting the importance of increasing the number of women in leadership positions and of ensuring that the needs and participation of women are integrated in all stages of mission planning and implementation through the inclusion of appropriate gender technical expertise.⁴⁴

In this sense, there is also the Resolution 2538 (2020) from UNSC, that calls upon Member States, the United Nations Secretariat and regional organizations to strengthen efforts to promote the full, effective, and meaningful participation of militar and civilian women in peacekeeping operations in different positions.⁴⁵

5. Conclusion

One interesting point of this study is to analyze the vision of how groups involved in conflicts use a third group, which is not normally involved in the conflict (women), to attack their enemies and exert power. It also makes it possible, more specifically, to observe how this type of violence is used in one of the country’s best known for perpetrating this tactic of war against the enemy. In this sense, it is necessary that, coming from this

39 **COUNCIL ON FOREIGN RELATIONS**, 2021. Available at: <<https://www.cfr.org/background/un-security-council>>. Accessed on: October 03, 2021.

40 **UNITED NATIONS**, United Nations Security Council, 2021. Available at: <<https://www.un.org/securitycouncil/content/current-members>>. Accessed on: October 03, 2021.

41 **POLITIZE**, 2020. Available at: <<https://www.politize.com.br/conselho-de-seguranca-da-onu/>>. Accessed on: October 03, 2021.

42 **UNITED NATIONS SECURITY COUNCIL**. Resolution 1325. INDEX: S/RES/ 1325. Available at: <<https://www.un.org/securitycouncil/content/current-members>>. Accessed on: October 03, 2021.

43 **UNITED NATIONS SECURITY COUNCIL**. Resolution 1820. INDEX: S/RES/ 1820. Available at: <<https://www.un.org/securitycouncil/content/current-members>>. Accessed on: October 03, 2021.

44 **UNITED NATIONS SECURITY COUNCIL**. Resolution 2238. INDEX: S/RES/2238. Available at <[https://undocs.org/en/S/RES/2538\(2020\)](https://undocs.org/en/S/RES/2538(2020))>. Accessed on: October 03, 2021.

45 **UNITED NATIONS SECURITY COUNCIL**. Resolution 2538. INDEX: S/RES/2538. Available at: <[https://undocs.org/en/S/RES/2538\(2020\)](https://undocs.org/en/S/RES/2538(2020))>. Accessed on: October 03, 2021.

historical perspective, States and Organizations can gather themselves in order to fight against those types of violence and to guarantee that all populations, even the ones who live in scenarios of conflicts, can get effective access to justice and protection.

RACISM AND POLICE VIOLENCE IN THE USA: THE URGENCY TO DEBATE RACIAL DEMANDS

Ana Júlia Hanig Scholz

Beatriz de Souza Nascimento

Lauren Giordani Gröhs

Lilia Milanez Lima

ABSTRACT

Due to discriminatory racial policies, the discussion regarding the accessibility of black populations to the rights of freedom and equality has become increasingly necessary in the last ten years.⁴⁶ There is, in international conventions and regimes, a commitment on the part of the countries involved to implement public measures necessary for racial demand, responding to the principles established by the International Convention on the Elimination of All Forms of Racial Discrimination. However, in recent decades, a strong wave of legitimized discrimination has been noticed, where the rates of police violence and mass incarceration of black people brings questions about the effectiveness of these policies - as in the United States, for example. The history of slavery, segregation and discrimination suffered by black populations in the United States is inseparable of the current policies of incarceration and violence against minorities in the country. Such policies are in direct contrast with the established and expected principles related to human rights. In this context, the objective of this work is to investigate the effectiveness of the actions promoted by the UN Human Rights Council in combating systemic racism in the United States - such discussing strategies and possibilities necessary for the creation of a more equal environment. We are interested in addressing how the Organization's actions impact on the relations of race, violence and incarceration in the North American scenario, in order to understand the State's adherence to the principles established in the conventions to which it is a party.

1 INTRODUCTION

Slavery in the United States marked the beginning of a tragic era in human history. The hundreds of years that accompanied this process had severe consequences for a society that is still structured by racism and is still neglect - direct and indirectly - to communities of color. Not only it is necessary but also essential to comprehend the processes that led to the construction of systematic racial discrimination in the country - in order to understand the current processes that perpetuate domestic politics and democratic standards that reflect the United States as a global political actor.

In 1948, the United Nations issued the Universal Declaration of Human Rights, which defends that all human beings are born free and equal in dignity and rights - such inalienable rights - are indistinguishable in terms of color, race, language, religion and political opinion.⁴⁷ This Declaration established a model of principles that would shape the regulations and policies of States - however, while the Declaration is solid, its practical effectiveness in the domestic policies of each country is unique.

46 OHCHR. **International Convention on the Elimination of All Forms of Racial Discrimination**. Geneva: United Nations Display News, 1969. Available at: <<https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>>. Accessed on: 06 out. 2021.

47 OHCHR. **Universal Declaration of Human Rights**. Geneva: Unicef, 1948. Available at: <<https://www.unicef.org/brazil/declaracao-universal-dos-direitos-humanos>>. Accessed on: 01 out. 2021.

When we talk about racism in the United States, we can relate the idea of the fragility of the realization of these rights that, although inalienable, are sometimes intrinsically repressed within society - in issues such as prejudice, violence, inaccessibility to justice, mass incarceration, among others. In this aspect, addressing racism and police violence in the United States requires an in-depth study of the historical construction of this scenario and also the analysis of how the current parameters at the level of international law connect and impact current society. In this way, this paper will analyze the historical circuit played by the United States from the context of slavery to the present days and it will seek to understand the impacts of the United Nations in the search for equality and respect for inalienable rights with regard to the racial issue.

2 UNITED STATES OF AMERICA AND ITS RACIAL ROOTS

2.1 Slavery Era

In the middle of 1619, Portuguese ships crossed the Atlantic with human cargo - Africans, most likely coming from the kingdoms of Ndongo and Kongo - when they were attacked and robbed by English pirates.⁴⁸ The stolen human cargo was supposedly taken to the port of Point Comfort, Virginia - thus, beginning of the ⁴⁹slavery era in the territory that would later become the United States. From that moment on, Africans were sold as merchandise or bartered and forced to work in the prevailing economic system: the plantations.

The enslavement of African groups was endorsed by Europeans and expanded across the globe, producing the largest documented forced migration in human history.⁵⁰ The dehumanization, brutality and exploitation of Africans mark the dark period of slavery - and, although there was constant resistance from the black people, the colonies took increasingly restrictive measures of control, such as the codification of race by law.

The American Revolution, a milestone for the history of the United States of America, served as an instrument for the independence of the 13 Colonies. Thomas Jefferson, the main writer of the Declaration of Independence, stated that “all men are created equal, endowed by the Creator with certain inalienable rights”⁵¹ but did not include the black and slave population of the territory.⁵² In this scenario of independence, most delegates and landowners who held power in the US were slave owners would find it contradictory to defend the freedom and equality of all, considering that the American economy was mainly oriented towards the system of plantation that was built on top of slave labor.

In 1808 the US Congress declared a ban on the slave trade. However, this declaration was not abolitionist, and slavery continued to be perpetuated. Slavery issues were the subject of several controversial debates in the country - which led to the American Civil War in 1861, which promoted the division of the Northern and Southern states, as they diverged in their opinions regarding the abolition of slavery. The Northern (abolitionist) states, commanded by Abraham Lincoln, defended the end of slavery, unlike the Southern (slaver) states which had its

48 ELLIOTT, Mary.; HUGHES, Jazmine. **A brief history of slavery that you didn't learn in school**. The New York Times Magazine, 2019. Available at: <<https://www.nytimes.com/interactive/2019/08/19/magazine/history-slavery-smithsonian.html>>. Accessed on: August 12, 2021.

49 AMERICAN Battlefield Trust. **Slavery in the United States**, [n.d.]. Available at: <<https://www.battlefields.org/learn/articles/slavery-united-states>>. Accessed on: August 09, 2021.

50 ELLIOTT, Mary.; HUGHES, Jazmine. A brief history of slavery that you didn't learn in school. **The New York Times Magazine**, 2019. Available at: <<https://www.nytimes.com/interactive/2019/08/19/magazine/history-slavery-smithsonian.html>>. Accessed on: August 12, 2021.

51 JEFFERSON, Thomas. The Declaration of Independence, 1776. Available at: <<https://www.archives.gov/founding-docs/declaration-transcript>>. Accessed on: October 06, 2021.

52 ADOLPHE, Juweek.; SHAH, Khushbu. 400 years since slavery: a timeline of American history. **The Guardian**, 2019. Available at: <<https://www.theguardian.com/news/2019/aug/15/400-years-since-slavery-timeline>>. Accessed on: August 09, 2021.

agricultural economy based on slave labor. After the war, the Northern states, winners of the conflict, instituted the 13th Constitutional Amendment, ending slavery and starting the process of reform in the USA, known as Reconstruction.⁵³ However, despite having been thought of as a reform for the establishment of civil rights for the black community, it has not in fact been integrated into the national plan.

Despite gaining the right to vote, formalized in the 14th Amendment, blacks were prevented from participating in politics, mainly because they were intimidated, terrified and violated by the white community which considered them inferior - North-American discourse used since the beginning of the slavery era in the world for justifying the submission of the African people. Therefore, it is clear that even after the end of slavery, the rights that should be guaranteed to the Afro-descendant community were not assured. Throughout this process, there was no assistance to this community, much less social inclusion strategies. In fact, this period can be considered as the continuation of slavery, considering that, from the end of the Civil War, the black community would face a context of segregation conditioned and legitimized by the State itself.

2.2 Jim Crow Segregation and the Claim for Freedom

As noted above, regarding the abolitionist movement, the American Civil War and Reconstruction brought a false sense of freedom to the black community. Despite the ratification of the 13th Amendment, which represented the end of slavery in the country, the State was being placed into a lot of pressure from the white population and was also colluding with terrorist conspiracies - the emergence of the Ku Klux Klan (a supremacist and terrorist organization) is an example of this. As a supposed resolution, a series of state and local statutes were introduced, that legally promoted racial segregation - this period became known as the Jim Crow Era (1877-1964). After the end of the American Civil War, the South was desolate, mainly because its economic system was structured on slavery.⁵⁴ With the defeat in the war and the freedom of 4 million people⁵⁵ who were previously property and an integral part of the economy, the need for the white and landed political elite to find a loophole in the 13th Amendment to rise again became a priority: the solution found was the introduction of the Black Code.

In this respect, the Black Code represented the restriction of the work and activities of the black community. Mississippi and South Carolina, for example, were the first states to enact laws relating to the Black Code, which, if breached, would be punishable by imprisonment.⁵⁶ This penalty, in fact, was a way that white landowners, who lost their main instrument of production - the slave - found to continue using slave labor to rebuild the South after the event of the Civil War. Southern co-religionists, opposed to the end of slavery and present in state politics along with President ⁵⁷Andrew Johnson, used a loophole in the 13th Amendment to achieve their slavery goals. Andrew Johnson played a major role in this decision-making, for when he implemented the Reconstruction plan, originating from Abraham Lincoln, he provided full powers to the White South to regulate the transition of slaves to freedom. This initiative generated the restriction of blacks in state politics and, consecutively, in society life as a whole.

Consequently, after the Civil War, blacks again became slaves of a system supported by the mass imprisonment of that community for petty crimes such as vagrancy. This resolution was adopted by the white elite to use black

53 HISTORY. Slavery in America, 2009. Available at: <<https://www.history.com/topics/black-history/slavery>>. Accessed on: August 09, 2021.

54 HISTORY. Jim Crow Laws, 2018. Available at: <<https://www.history.com/topics/early-20th-century-us/jim-crow-laws>>. Accessed on: August 12, 2021.

55 HISTORY, Black Codes, 2010. Available at: <<https://www.history.com/topics/black-history/black-codes>>. Accessed on: August 12, 2021.

56 HISTORY. Jim Crow Laws, 2018. Available at: <<https://www.history.com/topics/early-20th-century-us/jim-crow-laws>>. Accessed on: August 12, 2021.

57 HISTORY, Black Codes, 2010. Available at: <<https://www.history.com/topics/black-history/black-codes>>. Accessed on: August 12, 2021.

forced labor to rebuild the South. The measures adopted by the Confederate states aim at the incarceration and servitude of African Americans at any cost. The states adopted employment contract laws that required them to be serfs, to work unpaid, in addition to “anti-grooming” laws that punished any employer who provided high salaries to blacks under contract.⁵⁸ Therefore, any breach of contract or non-compliance with any law would generate punishment for the black person through prison and forced labor. Pursuant to the 13th Amendment, section 1, “Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.”⁵⁹ Thus, anyone who was considered a criminal would have no rights to freedom. Therefore, the mass imprisonment of black people for petty crimes was a way of depriving them of the laws of freedom, in order to continue to perpetuate slavery, with the main purpose of manpower for the reconstruction of the white South after the Civil War.

With the presidential term of Rutherford B. Hayes, the Reconstruction process ended, and with that, the few rights that African Americans had were taken from them.⁶⁰ During the Reconstruction period, federal troops intervened in the South to ensure civil and political rights for African Americans. However, with the withdrawal of these troops from the South, as a result of a political move by the president and the parties, the South again became autonomous from its jurisdiction and did not fulfill its commitment to guarantee civil rights for African Americans. Consequently, Jim Crow segregation became effective in the south. The effective constitutionality of racial segregation was supported by the Plessy v. Ferguson case, which was tried by the Supreme Court in 1892, which had been originated by the occurrence of Homer Plessy, an African American who refused to sit in a railroad car for black people. He appeared before the Court, arguing that he was denied his constitutional rights, in which the Court decided to institute a law that made the distinction of race legal⁶¹ - from that moment on segregation was no longer unconstitutional, and the entire society was remodeled in these segregationist parameters.

In this sense, Jim Crow Laws operated from separate facilities and accommodations between white and black citizens to the very prohibited social and political interaction between these citizens.⁶² Lynchings, murders and exclusion became more frequent and contributed to a moment of fear and intimidation. The resurgence of the Ku Klux Klan and its acts of violence against the black community intensified, and were supported by whites who held social and political influence, and who would see in these acts a more assertive repression for the continued denial of independence to African Americans. The 14th and 15th Amendments of the Constitution, incorporated to the federal laws, introduced in the Reconstruction years theoretical guarantees to protect the civil rights of the black population - however, nothing happened as supposedly proposed, considering that domestic terrorist organizations such as the Ku Klux Klan mainly in the south, terrorized African American lives for years. The absence of punishment for this terrorist organization was revolting for the black community, especially considering that the Klan had the support of rulers, rich and influential people, as well as was sponsoring and supporting many other organizations and causes in society. Although the leaders of Klan were brought to justice, everyone was aware that their court connections were unlikely to find them guilty or give them a fair sentence.

As mentioned earlier, the South was prone to slavery, since the economy was, before abolition, promoted from slave labor. Also, with everything that was happening in the South, the increasing spread of racist ideology

58 HISTORY, Black Codes, 2010. Available at: <<https://www.history.com/topics/black-history/black-codes>>. Accessed on: August 12, 2021.

59 THE Constitution of the United States. 13th Amendment, Section 1. Available at: <https://www.senate.gov/civics/constitution_item/constitution.htm>. Accessed on: October 06, 2021.

60 KHAN Academy. The compromise of 1877, 2016. Available at: <<https://www.khanacademy.org/humanities/us-history/civil-war-era/reconstruction/a/compromise-of-1877>>. Accessed on: August 12, 2021.

61 HISTORY, Plessy v. Ferguson, 2009. Available at: <<https://www.history.com/topics/black-history/plessy-v-ferguson>>. Accessed on: August 12, 2021.

62 HISTORY. Jim Crow Laws, 2018. Available at: <<https://www.history.com/topics/early-20th-century-us/jim-crow-laws>>. Accessed on: August 12, 2021.

and white supremacy, segregation, persecution, widespread lynching (about 3,500 African Americans were lynched between 1882 and 1968), the lack of social opportunities and economic, led to a migration of black southerners to the North of the country. As a consequence, the Great Migration resulted in cities constituted, if not completely by blacks, with more than 90% of the population. All of this further fueled the growth of a new African-American urban culture and, moreover, engendered a thirst for political participation in the community as soon as its rights in the South were disrespected; there was, in this scenario, a growing era of African-American political activism.⁶³

However, the issue of racial intolerance in the United States was not limited to the Ku Klux Klan - there have been many other deplorable episodes in its history. The case of Red Summer,⁶⁴ which occurred after the First World War and all the injustices that, once again, the African American people suffered in the war, the racist attacks and lynchings resumed considerably. World War I had a bearing on this particular event, since, “because of military service, black veterans were seen as a special threat to Jim Crow and racial subordination,”⁶⁵ notes a report by the Equal Justice Initiative. Furthermore, many black fighters returned from the war not only stronger, but also armed and much more willing to fight against segregation and all the intolerance that the country experienced. All of these events have fomented hundreds of deaths across the United States, with the highest percentage of black victims killed in lynchings, terrorist attacks and other heinous forms provided by white supremacists.

Racial discrimination in the United States was often neglected in favor of “a greater good” for society (white, oligarchic and rich). In this scenario, it is possible to mention the case of Democrats and Republicans where it is noted that the norms that support the political system rested, to a considerable degree, on racial exclusion - and this exclusion directly contributed to the civility of party cooperation that came to characterize North-American politics in the 20th century. The Southern Democrats’ ideological proximity to conservative Republicans reduced polarization and facilitated bipartisan concertation, but at the great cost of keeping civil rights off the political agenda. In short, the democratic norms of the United States were born out of a context of exclusion, where agreement on segregation became a point of approximation of the two political poles.

In mid-1954, a landmark Supreme Court case took place that would initiate the first significant changes in segregation in the US.⁶⁶ The case “Brown vs. Board of Education” decided unanimously by the judges that the racial segregation of children in public schools was unconstitutional.⁶⁷ However, violence against the black community became more frequent over the years, claiming many innocent lives and increasing social repression. The murder of Emmett Till is an example of this violence, which was so brutal that had a national reach.⁶⁸ Emmett was a 14 years old boy who was cruelly murdered by two men who claimed the boy had harassed a woman. Emmett was kidnapped, beaten, murdered and thrown into the Tallahatchie River - his body was found days after the incident. His funeral caused a great commotion as his mother chose to leave the coffin open, showing the world the atrocities suffered by her son. The African-American magazine *Jet* published photos of Till’s corpse that shocked and caused much outrage across the country.⁶⁹

63 BRITANNICA, Ku Klux Klan hate organization, United States, 2021. Available at: <<https://www.britannica.com/topic/Ku-Klux-Klan/>>. Accessed on August 12, 2021.

64 HISTORY, Red Summer of 1919: How Black WWI Vets Fought Back Against Racist Mobs, 2019. Available at: <<https://www.history.com/news/red-summer-1919-riots-chicago-dc-great-migraton/>>. Accessed on August 12, 2021

65 NATIONAL Geographic, The Ku Klux Klan, 2020. Available at: <<https://www.nationalgeographic.org/article/ku-klux-klan/12th-grade/>>. Accessed on August 12, 2021.

66 UNITED States Courts, History - Brown v. Board of Education Re-enactment, 2020. Available at: <<https://www.uscourts.gov/educational-resources/educational-activities/historybrown-v-board-education-re-enactment>>. Accessed on August 13, 2021

67 NATIONAL Archives, Brown v. Board of Education, 2021. Available at: <<https://www.archives.gov/education/lessons/brown-v-board/>>. Accessed on 14, 2021.

68 NMAAHC, Emmett Till’s death inspired a movement, [n.d.]. Available at: <<https://nmaahc.si.edu/blog-post/emmett-tills-death-inspired-movement>>. Accessed on: August 13, 2021.

69 HISTORY. Emmett Till is murdered, 2010. Available at: <<https://www.history.com/this-day-in-history/the-death-of-emmett-till>>. Accessed on: August 13, 2021.

Months after the event, the country witnessed another shock, but in a different way. A black woman named Rosa Parks refused to leave a white-only seat on the bus. This decision revolutionized the US, as it was the trigger for the beginning of the civil rights movements. Shortly after the incident, the Montgomery Improvement Association (MIA), which was chaired by Martin Luther King, began a boycott of buses. The action generated revolt in the white population, who tried to intimidate the movement's leaders throughout the act. It turned out that, after 381 days of boycott, the Supreme Court ruled that segregation on the bus was unconstitutional. Martin Luther King then becomes the most important figure in the fight for racial equality and leader of the civil rights movement. After the successful boycott of Montgomery, Martin, along with other black activists, founded the Southern Christian Leadership Conference (SCLC), a group that aimed to achieve racial equality through peaceful protests. Through this group, Luther gave lectures and was a spokesman for the cause against segregation that during this period was gathering forces to organize in August 1963 the great milestone of American civil rights, the Washington March.⁷⁰

The peaceful protest held in front of the Lincoln Memorial in Washington brought together more than 200,000 people and featured in one of the most famous speeches of all time, "I have a dream".⁷¹ The event was a way to pay attention to segregation issues in the country and guarantee more rights and equality for black citizens. The protest culminated in the Civil Rights Act of 1964, which prohibited any racial and religious segregation in public places.⁷² This achievement gives impetus to the cause and supports the 1965 Voting Rights Act, a law that banned voter literacy tests that barred many African Americans from voting in their states.⁷³ The victories conquered by Martin Luther King and his allies in civil movements were very important milestones to continue the fight for equality, however, racism was too present in North American society for these rights to be realised. On April 4, 1968, Martin Luther K. was murdered on the porch of his home, not only causing outrage and commotion among his admirers, but also becoming a martyr to the history of African descendants in the US.

Just before King's assassination, another leader and civil rights activist was also assassinated: Malcolm X, former leader of the Nation of Islam, was killed during an African American Unity Organization rally while speaking. Malcolm distinguished himself from Martin Luther in his way of fighting for civil rights - while Martin was a peaceful activist, Malcolm advocated Afro-descent liberation "by all means necessary". For these and other reasons, Malcolm became admired by many members of the African American community, but he became much hated by members of religious communities and white supremacists.⁷⁴ Within a year, the black community saw the death of its great leaders and influencers at the hands of those who discriminated and oppressed its causes; however, the movements persisted and strengthened. The Black Panthers, Black Power and other black identity groups manifested themselves and continued the movement, mainly during a turbulent period in the US, which was the beginning of the 70s and the wave of protests, anti-war demonstrations and against racial and sexual prejudices.

2.3 War on drugs, "predators" and the new Segregation Era

The 70s established significant changes in the world scenario. While the world witnessed a political and ideological polarization between great powers and allies, internal changes were rising in some countries - with

70 HISTORY. Martin Luther King Jr., 2009. Available at: <<https://www.history.com/topics/black-history/martin-luther-king-jr>>. Accessed on: August 14, 2021.

71 HISTORY. Martin Luther King Jr., 2009. Available at: <<https://www.history.com/topics/black-history/martin-luther-king-jr>>. Accessed on: August 14, 2021.

72 HISTORY. Civil Rights Act of 1964, 2010. Available at: <<https://www.history.com/topics/black-history/civil-rights-act>>. Accessed on: August 14, 2021.

73 HISTORY. Civil Rights Act of 1964, 2010. Available at: <<https://www.history.com/topics/black-history/civil-rights-act>>. Accessed on: August 14, 2021.

74 CIRCLE of Life Foundation. Malcolm X | "By Any Means Necessary" Speech (1964). Youtube, november 18, 2017. Available at: <<https://www.youtube.com/watch?v=FFe58KX4MHA>>. Accessed on: October 06, 2021.

a revolutionary character in the social and structural scope of their respective societies. Movements such as Civil Rights - led by Martin Luther King - the feminist movement and the hippie movement have established a considerable role in the North American scene, for example. The counterculture became the cradle of the great appeals of social groups for a political, legislative and social transformation for the causes to which they claimed.

The United States, as an example of these interactions, significantly witnessed the struggle for civil rights of the black community - American activists were seeking civil equality in a country that bordered on Jim Crow ideas (recently abolished segregationist laws that were in force for almost a year. century in the United States). In this scenario, the rise of counterculture - as a historical moment of transformation from a segregated and exclusive scenario to a scenario that could lead to ideals of equality - contrasts with the reality of repression exerted by conservative and supremacist ideologies of the US State. The forces that tended to guarantee justice and equality to the African-American community were shaken when bills and public policies were created to promote the opposite of what was sought in the movements.

In a context of so many uncertainties and changes, the War on Drugs, designed by the government of Richard Nixon, came to consolidate a project of "new segregation" (a term used by activist Angela Davis), where the old methods alienate and enslave the black community they were replaced by methods now "justified by law" for incarcerating "predatory citizens" - as blacks and Latinos were called. The War on Drugs inaugurated a historic moment known as the beginning of the "era of incarceration" in the United States: a premise emerges that drugs would be the main enemy of the State - in this way, racism and xenophobia take shape, having their performance legitimized by laws that send, for the most part, black and Latino populations to incarceration. In this way, civil rights movements that sought equality and justice would be neutralized by a new sphere of segregation: mass incarceration.

Coincidentally with the manifestations of civil rights and the emergence of these identity groups, arrest rates have increased significantly - with the rise of drug trafficking routes, new drugs are introduced into the North American market. However, many politicians opposed to the civil rights movement attributed this increase in crime to the issue of the struggle for racial equality: these segregationist politicians argued that with the acquisition of more freedom for the black community, crime rates would rise sharply. As a result of these facts, in the early 1970s, the US started the Nixon government's project to fight crime (1969-1974), and all black movements and communities were again intimidated, as during the Law and Order period, arrests for petty crimes increased exponentially. Furthermore, a partisan political scheme supported the maintenance of racial conservatism through political realignment - this arrangement was the Southern Strategy, a strategy adopted by the Republican party to attract the white population of the South, predominantly Democrats, to the Republican bias.⁷⁵ This plan was devised by Nixon and served to preserve prejudice and racial inequality, even after the conquest of civil rights. As John Ehrlichman, Nixon's Ex-Assistant for Domestic Affairs, said: "The Nixon⁷⁶ campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people... You understand what I'm saying? We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin. And then criminalizing both heavily, we could disrupt those communities; we could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did".

After the start of the drug war, the number of people incarcerated gradually increased by a worrying percentage. The United States, founder of the anti-drug policies, established measures for the arrest and offense of drug carriers with immediate instruments and with laws that favored incarceration for small offenses. From this

75 WIKIPEDIA. **Southern Strategy**, 2021. Available at: <https://en.wikipedia.org/wiki/Southern_strategy>. Accessed on: August 14, 2021.

76 LOBIANCO, Tom. **Report: Aide says Nixon's war on drugs targeted blacks, hippies** Cnn, 2016. Available at: <<https://edition.cnn.com/2016/03/23/politics/john-ehrllichman-richard-nixon-drug-war-blacks-hippie/index.html>>. Accessed on: 30 sep. 2021.

context, it can be said that the war on drugs is a project of incarceration of the population that would come to be recognized as criminals - blacks and Latinos; but despite Nixon's title of the term "War on Drugs", Ronald Reagan made it a reality. He was the then US president who, between 1981 and 1986, promoted, through new legislation, the exacerbated incarceration of black people.⁷⁷ During his administration, the US faced economic problems that led to an increase in the level of poverty. Concomitantly with this situation, there was the emergence of crack, which was disseminated in poor neighborhoods, mostly black, as it is a cheaper and more accessible drug. In this sense, crack becomes associated with the African-American community, causing a series of apprehensions to black people, who suffered severe penalties. Despite crack being solidified cocaine, its possession yielded much stricter penalties compared to those who owned cocaine - being possible to relate it to a social issue, as the largest cocaine users had a higher social level than crack users (predominantly belonging to a lower social class).

In this context, the war on drugs became the main instrument of combat during the Reagan administration, together with his wife Nancy Reagan, who was the forerunner of the "Just Say No" anti-drug campaign that went viral in the US. In 1980, with the beginning of President Ronald Reagan's term, the number of incarcerations was 315,974, with almost half of the prison population being arrested for drug possession, in a federal perspective.⁷⁸ With the severe sentencing laws, for example the mandatory minimums, many citizens were jailed and placed under regimes of an average of 22 months for possessing the minimum kilograms/drug.

The Reagan administration, in a sense, promoted and increased economic and social inequalities, as well as reinforcing white supremacist ideals, by promoting the image of blacks as criminals. This vision starts to be echoed in the media - the means of communication that coined the term "*super predator*" - a term of primitive origins that expresses how ancient society saw the figure of the African-American man.⁷⁹ This expression has the desired effect and the white population once again associates the black community with a wild character, promoting an intensification of racial discrimination and the marginalization of these populations. In this sense, the black community itself starts to acquire questions about its own identity, while the propaganda of association with the criminalization and inferiority of the Afro-descendant population took place in such a drastic way.

Due to the sensationalization of the image of the black man, many innocent victims were arrested for crimes they did not commit, often just under pressure from the racist media. This was the case of Central Park Five, in which 5 black boys were charged and sentenced to prison for a crime they did not commit.⁸⁰ They were accused of raping, assaulting and attempting to murder a white woman one night in 1989 in Central Park. Although the boys' DNA tests had negative data on samples collected at the crime scene, they were tried and sentenced to years in prison. Although, years after the event, they were acquitted and rewarded by the State for the injuries suffered, nothing compensates for the suffering, humiliation and innocence lost because of a society structured on racism and the image of black people as a criminal.

Consequently, in 1988, a political dispute between Bush and Dukakis gained stage in the newspapers of the time and in the country's history.⁸¹ With a successful campaign, Bush conquered his space using the politics of

77 GRANDERSON, Lz. The 'war on drugs' was always about race. **Los Angeles Times**, 2021. Available at: <<https://www.latimes.com/opinion/story/2021-07-21/the-war-on-drugs-was-always-about-race>>. Accessed on: August 14, 2021.

78 THE SENTENCE Project, **Criminal Justice Facts**, 2020. Available at: <<http://www.sentencingproject.org/criminal-justice-facts/>>. Accessed on: August 16, 2021.

WORLD Prison Brief, United States of America, 2021, Available at: <<https://www.prisonstudies.org/country/united-states-america/>>. Accessed on: August 15, 2021

79 13TH. Directed by Ava Duvernay. United States: Kadoo Films, 2016. Son., colored. Subtitled.

80 HISTORY, The Central Park Five, 2019. Available at: <<https://www.history.com/topics/1980s/central-park-five>>. Accessed on: August 16, 2021.

81 G1, Como uma propaganda de 1988 mudou as campanhas nos EUA e ajudou George Bush a se tornar presidente, 2020. Available at: <<https://g1.globo.com/mundo/eleicoes-nos-eua/2020/noticia/2020/10/31/como-uma-propaganda-de-1988-mudou-as-campanhas-nos-eua-e-ajudou-george-bush-a-se-tornar-presidente.ghtml/>>. Accessed on August 15, 2021.

crime laden with racism, while on the other hand, Dukakis was losing political support in the states.⁸² The Willie Horton episode further fueled disputes between Republicans and Democrats over racial issues associated with crime and strongly influenced the election decision. Horton was a criminal sentenced to life in Massachusetts when he benefited from a weekend leave program funded by Dukakis. While on the loose, Horton committed crimes such as armed robbery and rape, and was captured after the incidents. This case harmed the Dukakis campaign and made it possible for Bush to be elected through his campaign to fight crime, inciting fear against the black community, considered criminal by him and his supporters. This event not only took into account the case of Willie Horton, but again wrongly associated the image of the black man as a criminal.

With the administration of George H. W. Bush in the 1990s, the still growing number of arrests, with 739,980, peaked in 1998, with 1,245,402 inmates - according to the Bureau of Justice Statistics survey.⁸³ Later, the administration of Bill Clinton had racial issues very present. With a new bill, Clinton introduced the Violent Crime Control and Law Enforcement Act - the largest crime control bill in US history.⁸⁴ Many critics say the move decimated communities of color, encouraged and accelerated mass incarceration, while advocates believe it contributed to the country's precipitous drop in violent crime. However, this bill brought about fiscal and federal incentives for greater forces in the prison system, which were often privatized and had annual prisoner targets.

In 1994, in California, the Habitual Offenders Act, popularly known as the "Three Strikes and You're Out",⁸⁵ was enacted. This law imposed life sentences on all defendants who had two previous convictions against which they were being tried, no matter how serious the crime. The main objective was to "keep murderers, rapists and child molesters behind bars where they belong", however, this law severely affected the black population. So much so that today more than half of the inmates who were convicted by this law are black and are serving life sentences for non-violent crimes and petty crimes. In the 2000s, with George W. Bush in charge of the US government, having the prison system at the beginning with 1,331,278 inmates, there was the highest rate of inmates since the first actions of the War on Drugs, in 2009 to 1,613,740 people residing in prisons across the United States, with more than half of that number being black and/or Latino people.⁸⁶ At the beginning of President Barack Obama's term, in 2010, the process of decreasing imprisonment cases began, about 233,000 fewer imprisonments than in 2009.⁸⁷ However, life imprisonment increased, with 157,966 sentences in 2012 while in 2020 (already in the Trump government), 203,865 sentences.

With the start of Donald Trump's term in 2016, racial violence has become a hotspot around the world. The main case that had everyone's attention and that intensified several demonstrations, along with anti-racist projects, was the death of George Floyd⁸⁸ in March 2020, who was suffocated in a police raid. One of the main projects where he had the greatest influence in the world was #BlackLivesMatter, which shows that black lives

82 BRITANNICA, Michael Dukakis, 2020. Available at: <<https://www.britannica.com/biography/Michael-Dukakis/>>. Accessed on August 14, 2021.

83 WORLD Prison Brief, United States of America, 2021, Available at: <<https://www.prisonstudies.org/country/united-states-america/>>. Accessed on: August 15, 2021. THE SENTENCE Project, **Criminal Justice Facts**, 2020. Available at: <<http://www.sentencingproject.org/criminal-justice-facts/>>. Accessed on: August 16, 2021.

84 WIKIPEDIA, Violent Crime Control and Law Enforcement Act, 2021. Available at: <https://en.wikipedia.org/wiki/Violent_Crime_Control_and_Law_Enforcement_Act>. Accessed on: August 15, 2021.

85 BBC, Bill Clinton regrets 'three strikes', 2015. Available at: <<https://www.bbc.com/news/world-us-canada-33545971/>>. Accessed on August 15, 2021.

86 WORLD Prison Brief, United States of America, 2021, Available at: <<https://www.prisonstudies.org/country/united-states-america/>>. Accessed on: August 15, 2021.

87 WORLD Prison Brief, United States of America, 2021, Available at: <<https://www.prisonstudies.org/country/united-states-america/>>. Accessed on: August 15, 2021.

THE SENTENCE Project, **Criminal Justice Facts**, 2020. Available at: <<http://www.sentencingproject.org/criminal-justice-facts/>>. Accessed on: August 16, 2021.

88 BBC, Black history in the United States: Key moments from slavery to George Floyd, 2019. Available at: <<https://www.bbc.co.uk/newsround/52963325>>. Accessed on: August 12, 2021.

matter and that racial violence should not be neglected. Bodies, such as the UN Human Rights Council, are in favor of rebuilding politics and the police system, in which everyone should be treated equally. According to the UN High Commissioner: "...this case has also helped reveal, perhaps more clearly than ever before, how much remains to be done to reverse the tide of systemic racism that permeates the lives of people of African descent. We need to move to whole-of-government and whole-of-society approaches that dismantle systemic racism.⁸⁹ Now is also the time to critically examine the context in which George Floyd's killing took place by revisiting the past, and examining its toxic traces in today's society. The redesign of our future can only be through the full and equal participation of people of African descent, and in ways which transform their interactions with law enforcement, and, more broadly, in all aspects of their lives... The entrenched legacy of discriminatory policies and systems, including the legacies of enslavement and transatlantic trade and the impact of colonialism, must be decisively uprooted in order to achieve racial justice and equality. If they are not, the verdict in this case will just be a passing moment when the stars aligned for justice, rather than a true turning point."

According to the Washington Post, about 23.8% African Americans are killed in police approaches, representing 14% of the American population in 2015, and the probability is that deaths by unmarried blacks are 3 times larger than whites.⁹⁰ Of the 28,139 deaths, 7,620 are black, with the three main characteristics: asphyxiated/immobilized, medical event or beaten with an instrument. Most of the time the culprits are never punished as they should, an example is the case of the death of Dijon Kizze, 29, who was approached for a traffic violation for riding his bicycle in an inappropriate place. According to police officers, Kizze abandoned his bicycle and fled on foot, but he left a bag of clothes on the ground with a gun inside and, after seeing the gun in the bag, Dijon was hit by 10 bullets in his back. The police handcuffed the body, which remained on the street for hours before being collected. The authors were not investigated or dismissed.

2.4 The broken promise of racial equality in the United States

There is a curious reality when it comes to racial equality in the United States. The history of US relations, since colonial times, with the Afro-descendant community has a deep segregating root - where, although legal instruments have been remodeled to contemporary standards of human rights, social, political and penal structures do not corroborate, in practice, with these precepts. Since the arrival of the first African slave ship to the United States, attempts have been made by the black community for recognition, dignity and equality - however, it is noticeable, in the historical linearity, that slavery ended but that it now unfolds into a legal model that legitimizes that black people continue to be neglected in American society.

During the rise of the War on Drugs and imprisonment policies for small crimes, as in the current penal system, there is the use of a legal instrument called "plea bargain", which takes place from an agreement in criminal proceedings, through of which the prosecutor provides a concession to the defendant in exchange for a guilty plea or nolo contendere, exempting the need for a trial.⁹¹ In most cases, there is external pressure from prosecutors for a confession of the crime - as there was in the Central Park Five case, where defendants were pressured to admit a crime they did not commit. For clarification purposes, the poor and peripheral population cannot afford the costs of a trial.

89 UNITED Nations Human Right, Statement by UN High Commissioner for Human Rights Michelle Bachelet on guilty verdict in George Floyd case, 2021. Available at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=27016&LangID=E>>. Accessed on: August 16, 2021.

90 WORLD Prison Brief, United States of America, 2021, Available at: <<https://www.prisonstudies.org/country/united-states-america/>>. Accessed on: August 15, 2021.
THE SENTENCE Project, **Criminal Justice Facts**, 2020. Available at: <<http://www.sentencingproject.org/criminal-justice-facts/>>. Accessed on: August 16, 2021.

91 THE NIGERIA LAWYER. The Concept Of Plea Bargain. 2020 Available at: <<https://thenigerialawyer.com/the-concept-of-plea-bargain/>>. Accessed on August 14, 2021.

According to Charlie Rangel (Congressman - New York 13 District), 97% of people incarcerated in the United States opted for plea bargain and this would be one of the worst human rights violations imaginable in the United States. Considering that access to justice is a universal right guaranteed by the Universal Declaration of Human Rights, when legal instruments are not effective to provide access to the fundamental right of the citizen, a breach of principles is established in this system, making room for injustices and infringements of the that, initially, it should be a natural access of the citizen to defend himself, to give evidence, to enjoy his freedom. According to David Keene, President of the American Conservative Union, the prosecutor says, "You can settle and we'll give you three years, or you can go to trial and we'll give you thirty years. If you want to take a risk, feel free". Another statement was given by Bryan Stevenson (Founder of Equal Justice Initiative), which says that "Our criminal justice system treats you better if you're rich and guilty than if you're poor and innocent."⁹² Wealth, not guilt, defines the outcome".

Pursuant to the 13th Amendment, section 1: "Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."⁹³ In this amendment to the Constitution, the exception to slave labor takes place in the context in which defendants have been convicted of crimes committed - thus, there is legitimacy for the use of forced labor and the like for these cases. It is possible, in this respect, to understand how the foundations of the North American prison system are structured and its relationship with race: there are profit initiatives that hide behind this reality of mass incarceration and that move by large companies that, through agreements, they are hired by the government as contractors to design, build and manage prisons. In this sense, the government finances the company an amount per individual incarcerated.

The growth of prison privatization began in the 1980s and peaked in the 1990s. In 2000, as the system became one of the top employers in the United States and as private security corporations traded profits with freedom human, the analogies between slavery and prison have increased. The entire American penitentiary industrial complex is thus geared towards profit. In addition to the gain from private prisons according to the number of inmates in their custody, many companies also earn profits from prison labor, but some inmates receive a few cents per hour of work.

As mentioned earlier, the exception present in the 13th amendment to the US Constitution legitimizes forced labor in cases of conviction for crimes, in this way, the prison labor system takes advantage of an extremely vulnerable workforce, which cannot defend itself, form a union, fight for their rights or seek legal protection to fight potential labor abuses. Prisoners are prohibited from unionizing or fighting for better wages and decent working conditions, making them the ideal group to serve as cheap labor. Furthermore, despite earning little or nothing for their work, detainees also have deductions and fees that come off their meager salaries. In them, detainees can have their sentences reduced for good behavior, but for any small offense, they get an added thirty days, which means more days in jail, more work days and more profits for the prison industry. According to Linda Evans and Eve Goldberg, "for private companies, prison labor is a pot of gold."⁹⁴ No strikes. No union organization. No health insurance, unemployment insurance or compensation in the event of an accident. No language barriers like in foreign countries. New leviathan prisons are being built in the sinister thousands of acres of factories inside the walls. Prisoners do data processing for Chevron, make phone reservations for TWA, raise pigs, remove manure, manufacture boards, circuit boards, limousines, waterbeds and lingerie for Victoria's Secret, all for a fraction of the cost of the "free work."

There is, in the historical-social context of the insertion of the black community in the United States, a

92 **13TH**. Directed by Ava Duvernay. United States: Kadoo Films, 2016. Son., colored. Subtitled.

93 CONSTITUTION, Interactive. **13TH AMENDMENT: Abolition of Slavery**. Philadelphia: National Constitution Center. Available at: <<https://constitutioncenter.org/interactive-constitution/amendment/amendment-xiii>>. Accessed on: 05 oct. 2021.

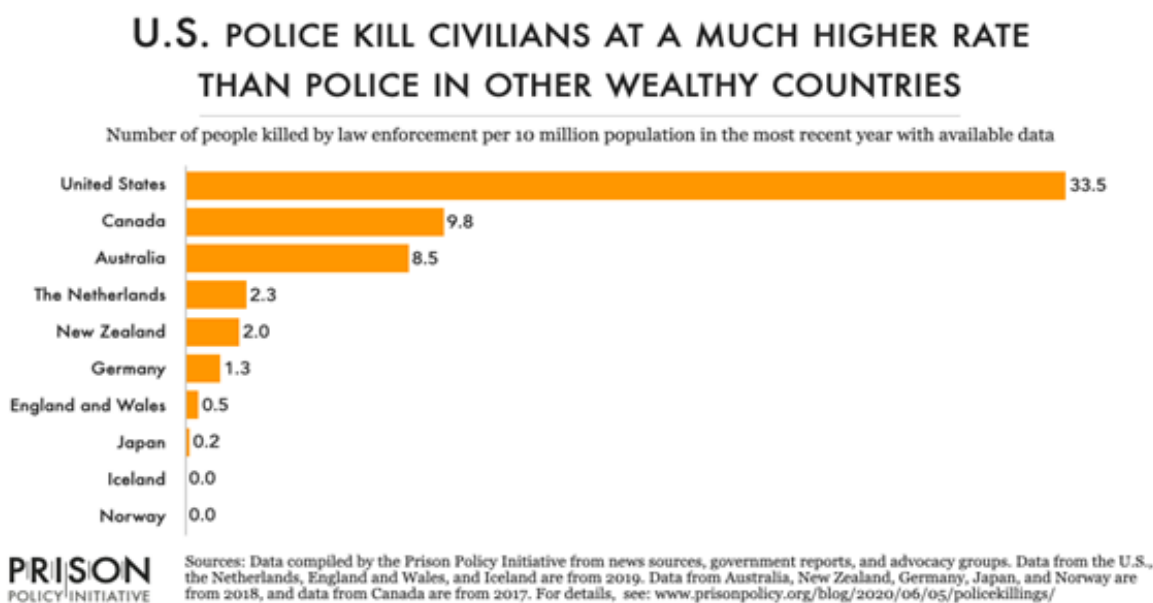
94 DAVIS, Angela Yvonne. **Are Prisons Obsolete?:** Seven Stories Press, 2003.

strong need to debate the past, present and future. The data provided by surveys on bills, social organizations, historical facts and all the elements that make up this scenario bring clarity despite the urgency of discussing new possibilities for combating racial discrimination in the United States - be it institutionally, legally or socially. According to Angela Davis, the prison industry feeds on race and class: the new form of segregation takes place, in this sense, from a potentialization of the prison sector that profits from individuals who, in most cases, did not have access to a trial and that they serve, to the State, as a capital production tool - in the molds of the new segregation, palpated by the 13th constitutional amendment.

In this sense, it is essential to reflect the impacts that the historical succession of slavery, the War on Drugs and mass incarceration bring to today's society. Racism, although condemned by law, is intrinsic in the penal structures and in the order of power that is established when dealing with the black community. The latest episodes of racism and police violence, like the murder of George Floyd in 2020, were an example of this - where the abuse of power motivated by racial discrimination led to the tragic death of a black American citizen. This sad reality enhances the need to discuss the domestic policies that have been perpetuated within the United States, as well as to debate the effectiveness of the performance of international principles and regulations regarding equality and freedom. Social movements in favor of racial equality and against police violence, such as the "Black Lives Matter" have gained strength in recent times and, associated with popular support from groups around the world and even from activists from the United Nations, have brought the urgency of establishing effective security measures for these populations.

The understanding of the principles of freedom and equality, however, established in the United Nations conventions - such as the International Convention against All Forms of Racial Discrimination - needs to be articulated more effectively within States. Although the United States is signatory to international conventions that promote equality, domestic policies that have guided the issue reveal alarming data on police violence and racial discrimination. According to a chart issued by the Prison Policy Initiative, among developed countries, the United States is the one that kills the most civilians through police action.

CHART 1 - "Not just "a few bad apples": U.S. police kill civilians at much higher rates than other countries"



SOURCE: PRISON POLICY INITIATIVE (2020)⁹⁵

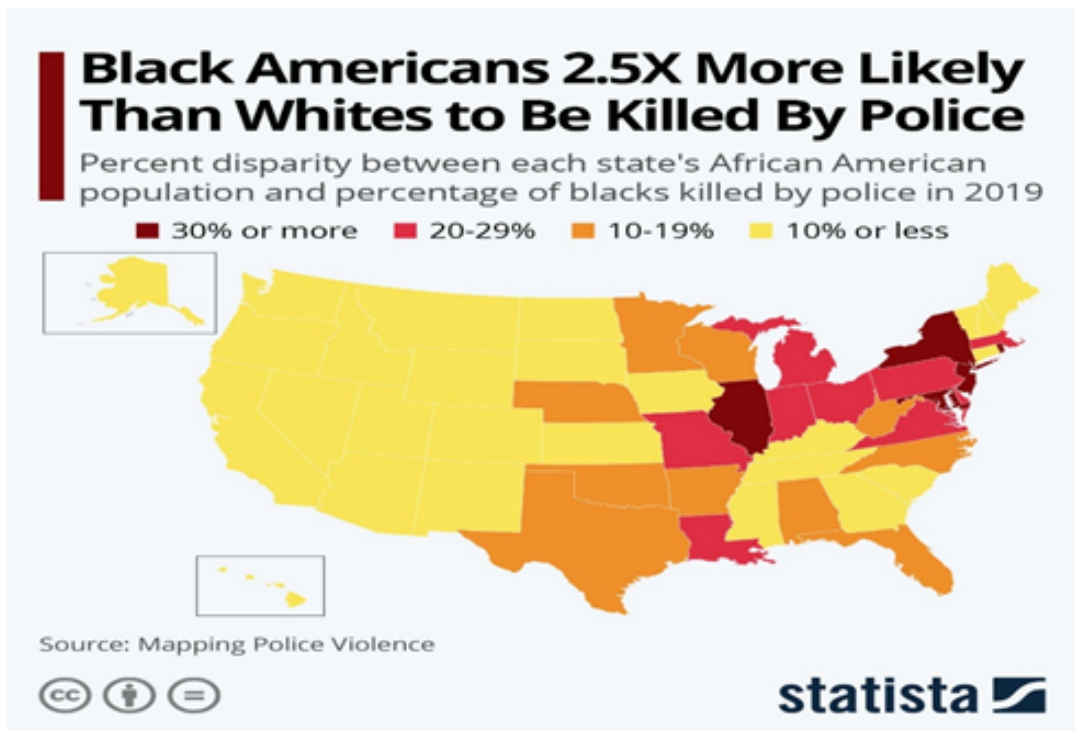
95 JONES, Alexi. **Not just "a few bad apples": U.S. police kill civilians at much higher rates than other countries.** Prison Policy Initiative, 2020. Available at: <https://www.prisonpolicy.org/graphs/policekillings_rates.html>. Accessed on: 30 set. 2021.

According to Statista, black Americans are more likely to be killed by the police than the white population, the map provides the percentage in state division.

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CHART 2⁹⁶ - "Black Americans 2.5X More Likely Than Whites to Be Killed By Police"

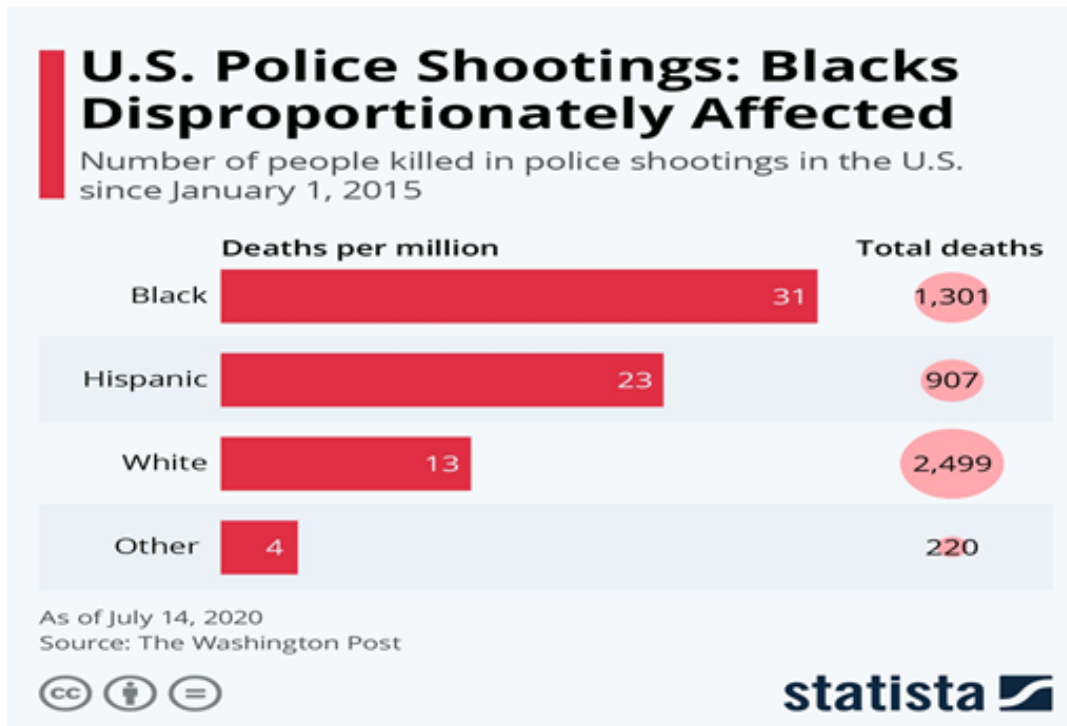


SOURCE: STATISTA (2020)

Data prepared by Statista, in July 2020, indicates that in US territory, the black population is disproportionately more affected by shootings since January 2015 than the Hispanic and Latino population - with more than double the percentage of blacks being executed than whites being executed:

96 STATISTA. **Black Americans 2.5X More Likely Than Whites to Be Killed By Police**. 2020. Available at: <<https://www.statista.com/chart/21857/people-killed-in-police-shootings-in-the-us/>>. Accessed on: October, 07, 2021.

CHART 3⁹⁷ - “U.S. Police Shootings: Blacks Disproportionately Affected”



SOURCE: STATISTA (2020)

3 UNITED NATIONS AND THE FIGHT AGAINST RACISM

After the consolidation of the Universal Declaration of Human Rights, issued by the United Nations in 1948, some measures were taken to combat racism on a global scale. Among them, a number of conferences have been held and Member States have become proactive in becoming signatories to agreements and conventions against racial discrimination. A report from the United Nations Department of Public Information published some relevant data information:

- Convention for the Prevention and Punishment of the Crime of Genocide;
- Declaration on the Elimination of All Forms of Racial Discrimination (1963);
- International Convention on the Elimination of All Forms of Racial Discrimination (1965);
- March 21 designated International Day for the Elimination of Racial Discrimination (1966);
- International Convention for the Suppression and Punishment of the Crime of Apartheid (1973);
- First decade of combating racism and racial discrimination (1973-1982);⁹⁸
- First World Conference to Combat Racism and Racial Discrimination in Geneva (1978);⁹⁹
- Second World Conference to Combat Racism and Racial Discrimination in Geneva (1983);¹⁰⁰

⁹⁷ STATISTA. **U.S. Police Shootings: Blacks Disproportionately Affected**. 2020. Available at: <<https://www.statista.com/chart/21857/people-killed-in-police-shootings-in-the-us/>>. Accessed on: October, 07, 2021.

⁹⁸ **A historical perspective: getting from here to there**. United Nations Department Of Public Information, 2001. Available at: <<https://www.un.org/WCAR/e-kit/fact2.htm>>. Accessed on: 07 out. 2021.

⁹⁹ **A historical perspective: getting from here to there**. United Nations Department Of Public Information, 2001. Available at: <<https://www.un.org/WCAR/e-kit/fact2.htm>>. Accessed on: 07 out. 2021.

¹⁰⁰ **A historical perspective: getting from here to there**. United Nations Department Of Public Information, 2001. Available at: <<https://www.un.org/WCAR/e-kit/fact2.htm>>. Accessed on: 07 out. 2021.

- Second decade of combating racism and racial discrimination (1983-1992);¹⁰¹
- Third decade of combating racism and racial discrimination (1993-2002);¹⁰²
- World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance (Durban, 2001);¹⁰³
- World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance (Durban, 2009);

Through these instruments promoted by the United Nations, many achievements were obtained at the international level with regard to racial equality. An example of this is the end of Apartheid in South Africa which, after international pressure and the concomitant economic embargo promoted by the countries of the System, succeeded as a success in international policies.

However, although the legislative achievements in terms of Human Rights have been materialized in the international environment, there is a fine line between the precedent of the law and its practical implementation. The case of the assassination of George Floyd in the United States, discussed above, is an example of how the existence of the law and the principles (which, however, are essential) does not characterize a real effectiveness of these standards - making it necessary, in this context, the existence of a public interest in order to consolidate the practical rights of populations. Considering that North American society was built on standards of governance that guaranteed privileges to whites, the legal and social structures need to experience a process of reconstruction to provide more democratic standards of law in order guarantee justice, freedom and equality to all citizens.

4. CONCLUSION

It is possible to see that throughout the history of the United States, political and ideological dynamics were established, as well as helped to consolidate the current reality of racial discrimination still present in the most diverse spaces of power in the country. The facts analyzed and the data collected through this research indicate that, over the years, although the United States has adapted its legal norms to more democratic standards in accordance with the Universal Declaration of Human Rights, the structures fostered from segregation and, including, the exception present in the 13th amendment, still legitimize some repugnant facts of its current society.

In this sense, there is an urgent need for a deeper discussion despite measures that need to be taken from international bodies such as the United Nations power layers in accordance with the domestic policies of the North American State regarding a reconstruction of the system to the level of racial equality. In this way, it is necessary that the actions taken not only come from the Organization, but that they perpetuate, in fact, a domestic character as an objective of the federation to implement the fundamental right. In this regard, it is necessary that at the national level, racial equality is included in the State agenda as an essential objective, covering structural aspects such as the reconstruction of the penal system, the reinsertion of black communities into the labor market and the support for projects and movements that fight for racial equality. Furthermore, it is essential that there is a realignment of the legal system in the confederation so that bills that legitimize the use of violence against protestants are not legitimized, while freedom of expression is one of the constitutive principles of inalienable rights.¹⁰⁴

101 **A historical perspective: getting from here to there.** United Nations Department Of Public Information, 2001. Available at: <<https://www.un.org/WCAR/e-kit/fact2.htm>>. Accessed on: 07 out. 2021.

102 **A historical perspective: getting from here to there.** United Nations Department Of Public Information, 2001. Available at: <<https://www.un.org/WCAR/e-kit/fact2.htm>>. Accessed on: 07 out. 2021.

103 **A historical perspective: getting from here to there.** United Nations Department Of Public Information, 2001. Available at: <<https://www.un.org/WCAR/e-kit/fact2.htm>>. Accessed on: 07 out. 2021.

104 UN NEWS, **USA: Rights expert decries wave of anti-protest laws ‘spreading through the country’.** 2021. Available at <<https://news.un.org/en/story/2021/05/1091322>>. Accessed on: 08 oct 2021.

Thus, as Dr. Martin Luther King used to say, a justice delayed is a justice denied; in this sense, the responsibility to transform public spaces into more democratic and human rights-friendly environments cannot be neglected and must be taken as a priority, while that the ineffectiveness of equality policies has cost the security, dignity and lives of many citizens. To conclude, it is necessary, above all, to believe in a fairer and more democratic society, so that the achievements gained through the persistence and the activism of such remarkable leaders become fuel to fight the ills of inequality and, thus, to conquer a more worthy world for all those who take part.

O ÔNUS DA CRISE MIGRATÓRIA NA VENEZUELA

Caroline Severo Mineiro

Miriã Vitória Viegas Rodrigues

Nicole Bolzan Streibel

1 Introdução

O presente artigo tem por objetivo abordar a crise migratória da Venezuela, seu contexto histórico, como essa afeta os países vizinhos, pertencentes a Organização dos Estados Americanos (OEA) e qual a visão da organização referente ao assunto. Assim como a situação Internacional e abordagem dos países para solução de tal situação.

O processo migratório é observado desde os primórdios da humanidade, além de natural, também é um direito humano. Esse movimento de migração gera um enriquecimento cultural e na construção da sociedade. O tema é tão amplo que pode ser analisado de diversas formas como da perspectiva econômica, política, social, cultural, entre outras e para o campo das Relações Internacionais entender os processos é muito importante, assim como a migração em si e todas as etapas da mesma. Entendendo esse movimento humanitário, é possível compreender o mundo de outro ponto de vista, que distancia a visão de Estado e aproxima a visão sobre os indivíduos e os movimentos sociais internacionais. Há evidências desses fluxos migratórios antes dos Homo Sapiens, ou seja, é um processo muito antigo, mas que ainda assim geram algumas divergências se não forem organizados e geralmente são motivados pela necessidade de melhoria, seja por oportunidades de emprego e renda, condições climáticas ou fuga de situações desfavoráveis como guerras, violências, conflitos, perseguições e outros.

No momento em que a necessidade é de fuga, muitas vezes gera um acúmulo de fluxos migratórios para um número específico de países em uma proporção descontrolada e não organizada, criando assim, crises migratórias. Onde os Estados que poderiam receber um número específico de pessoas e atender suas necessidades conforme o essencial e de acordo com os Direitos Humanos, acabam não amparando esses migrantes, pois estão sobrecarregados. Para auxiliar nesses processos existem diversas organizações internacionais, algumas políticas e outras técnicas, para tratar dos processos de crises migratórias, refúgios e garantir os direitos e bem-estar das pessoas que são forçadas a sair de sua pátria, a Organização Nações Unidas (ONU) criou em 1950 o Alto Comissariado das Nações Unidas para Refugiados (ACNUR). Além desta, existem organizações políticas que podem contribuir positivamente na resolução de conflitos, o presente artigo pretende utilizar como objeto de estudos a OEA e alguns dos países membros como amostragem de estudo, para verificar como a crise os afeta, direta ou indiretamente.

2 Contexto histórico

No contexto histórico será considerado a partir da década de 1920 até os dias atuais, apresentando todos os pontos importantes que culminaram na crise migratória hoje existente.

2.1 A primeira crise

Na década de 20, a Venezuela descobriu em seu território o que seria sua vitória e a sua derrota, o petróleo. O país começou a se desenvolver em torno da exportação desse “ouro negro” e se tornou um dos maiores e mais prósperos exportadores de petróleo do mundo. Entretanto, o Estado venezuelano não investiu na diversificação

da sua economia e se baseou, sobretudo, no comércio do mesmo. Logo, a variação internacional no preço desse recurso natural determinava a estabilidade econômica da Venezuela e em 1980, junto com a crise do petróleo, começou a crise venezuelana.

Carlos Andrés Pérez se reelegeu ao poder com a proposta de que o país voltasse ao esplendor vivido na época anterior. Mas em 1989, uma onda de revoltas sociais em repúdio à desigualdade e miséria geradas pelas medidas econômicas do governo de Pérez tomou conta da cidade de Caracas. A manifestação foi duramente reprimida pelo Estado, o que deu abertura para o surgimento de novas lideranças políticas. O movimento de oposição mais famoso tinha como principal figura Hugo Chávez, até então tenente-coronel.

Em 1992, Chávez comandou, sem sucesso, um golpe civil-militar contra o governo. Antes de ser preso, declarou que não havia desistido de tomar o poder – “Companheiros: infelizmente, neste momento, os objetivos que determinamos para nós mesmos não foram alcançados na capital. Isto é para dizer que nós em Caracas não fomos capazes de tomar o poder. Onde quer que vocês estejam, vocês desempenharam bem seus papéis, mas agora é tempo para repensar; novas possibilidades surgirão e o país será capaz de ter definitivamente um futuro melhor”.

Mesmo sem atingir os objetivos, o golpe de Hugo auxiliou a contestar e enfraquecer a imagem do presidente Carlos Andrés Pérez. Em 1993, sob a acusação de corrupção, Pérez foi deposto do poder. Em 1994, novas eleições ocorreram e elegeram o presidente Rafael Caldera, que concedeu anistia para o futuro comandante da Venezuela Hugo Chávez.

2.2 O período Chávez

No ano de 1998, Hugo se candidata de maneira legal e por ser um líder extremamente carismático e envolvido com as insatisfações do povo, ele alcança o poder. No seu primeiro mandato, ele convoca uma Assembleia Constituinte e um plebiscito implantando a nova Constituição Venezuelana. A nova Carta Magna concedeu maiores poderes ao presidente, proporcionou mudanças do sistema bipartidário para pluripartidário, tornou o parlamento unicameral e promoveu alterações no judiciário, incluindo eleições para o cargo de magistrado.

Em 2000, novamente com um discurso populista, Chávez alcança a liderança e se reelege junto com seus aliados ocupando a maioria dos cargos políticos. No mesmo ano, a Assembleia Nacional concede a Hugo a abertura para implantar reformas sociais, econômicas e de administração pública por meio da Lei Habilitante, ou seja, o presidente poderia criar leis sem precisar da Assembleia para aprová-las. Ato contínuo, em 2001, foi autorizado pelo Poder Legislativo um pacote de normas, dentre elas as leis que determinavam a participação do Estado no setor petrolífero, limitavam a pesca industrial e limitavam a produção e as propriedades rurais.

Todas essas decisões foram duramente criticadas pela oposição, setor privado afetado pelas leis e por alguns militares até então aliados ao presidente. Em 2002, esses grupos se aliaram, realizaram uma greve geral e várias passeatas contra o governo. Entretanto, em resposta aos grevistas, as ruas também foram alvo de simpatizantes do presidente. Chavistas e Antichavistas se confrontaram e ao menos 14 pessoas morreram. Chávez se pronunciou logo após o acontecido e imagens dos confrontos rodaram os lares venezuelanos, o que fez com que as tensões aumentassem.

2.2.1 Tentativa de golpe

Em 11 de Abril de 2002, Hugo Chávez é levado por um grupo de militares até uma base militar fora da capital e horas depois é anunciada uma suposta renúncia voluntária do presidente. Nomeou-se, o líder da Federação

de Câmaras de Comércio e Produção, Pedro Carmona, como chefe do novo governo provisório e permaneceu na liderança por 47 horas. A hipotética renúncia foi desmentida por um aliado do presidente Chávez que logo teve seu poder restituído.

Mesmo após a derrota, as greves gerais, as paralisações, os referendos e as juntas militares contra o presidente não pararam. Esses movimentos de suspensões fizeram com que a produção de petróleo e produtos essenciais caíssem e fizeram com que os gastos públicos aumentassem.

2.2.2 *Fim do período Chaves*

Em 2004, o preço do petróleo subiu expressivamente, o que fez com que a economia da Venezuela também subisse. Nesse mesmo ano, a oposição, ainda descontente com os rumos políticos da Venezuela, conseguiu agrupar milhões de assinaturas a favor de um plebiscito para decidir a permanência de Hugo Chávez na presidência. Poucas semanas antes da votação, o presidente venezuelano anunciou um programa para distribuição de comidas para moradores de rua e a criação de um projeto para beneficiar a população mais carente. Todos esses fatores sociais e econômicos, em conjunto com sua popularidade, sustentaram a posição de Hugo no governo.

No ano de 2005, os principais partidos de oposição, que já questionavam a legitimidade da nova Constituição, se recusaram a participar das próximas eleições legislativas e anunciaram sua retirada. No final do ano ocorreram as eleições, sem a oposição, e isso concedeu aos aliados de Chávez a totalidade de cadeiras na Assembleia Nacional. Em 2006, Chávez se reelege com cerca de 62% dos votos. Em seguida, o presidente anunciou a criação de um partido único que juntaria todos os membros da sua coalizão e ficou conhecido como Partido Socialista Unido da Venezuela com o objetivo de levar a Venezuela ao chamado “socialismo do século XXI”.

Em 2007, Chávez anuncia a nacionalização de grandes empresas dos setores de eletricidade, petróleo, gás natural e telecomunicações. No mesmo ano, não renovou a concessão de um dos maiores canais televisivos, o RCTV, por ser uma mídia contrária ao regime. Ainda em 2007, Hugo propôs uma nova mudança na Constituição, no entanto sofreu sua primeira derrota desde que assumiu a presidência em 1998. Frente a esse insucesso na mudança da Carta Magna, ele começou a, novamente, utilizar a Lei Habilitante.

No começo de 2009 é aprovado, com pouco mais de 50% dos votos, a realização de uma emenda à Constituição. Dentre os artigos, um para permitir a reeleição ilimitada de cargos de representação. Em 2011, nas eleições legislativas, as cadeiras tiveram uma ocupação significativa da oposição. Já em 2012, Hugo é reeleito pela terceira vez consecutiva com 55,8% dos votos, todavia Chávez não conseguiu assumir oficialmente a presidência, já que estava em Cuba para o tratamento contra o câncer. Hugo Chávez morreu em 5 de março de 2013 em decorrência da doença. Novas eleições são convocadas e dão início ao período Maduro.

2.2.3 *Nicolás Maduro*

Nicolás Maduro Moros é o atual presidente da Venezuela, mas sua história na política começou em 1990, nascido em 1962 na cidade de Caracas, com seus 28 anos, ingressou na carreira política. Motivado por seu pai, Nicolás Maduro Garcia, Moros teve seus primeiros contatos com movimentos trabalhistas, levando-o assim a iniciar sua trajetória como militante anos mais tarde. Teve seu início de carreira como motorista de Ônibus, onde foi líder do sindicato e se envolveu com a política para defender a classe.

Após 1990, Nicolás entrou no *Movimiento Bolivariano Revolucionario 200*, também chamado de MBR-200. Foi então que Maduro conheceu Hugo Chávez. Após o golpe malsucedido de Chávez, Maduro participou dos

movimentos que reivindicavam a libertação de Hugo e seus companheiros. Ele também foi um dos responsáveis pela criação do *Movimiento Quinta República* (MVR), partido que lançou Chávez de candidato à presidência no ano de 1998. Foi após a vitória Chavista que Maduro decidiu participar oficialmente e ativamente com a política venezuelana.

2.2.3.1 Trajetória política

Eleito em 88 para a Câmara dos Deputados, permaneceu por um ano, até ingressar na Assembleia Nacional Constituinte, onde ficou responsável por elaborar uma nova Constituição para a Venezuela. Com esta, algumas [mudanças](#) políticas aconteceram, e Maduro decidiu se candidatar à eleição para uma nova posição. No ano de 2000, ele foi eleito para a Assembleia Nacional pelo MRV. Em 2005, continuou no seu cargo, após reeleição, na Assembleia Nacional, chegando ao cargo de presidente da casa. Ele manteve-se nessa função até 2006, quando foi designado, por Chávez, para ser o chefe do Ministério das Relações Exteriores.

Em 2012, Hugo, após mais uma reeleição presidencial, escolheu Nicolás Maduro para o cargo de vice-presidente. Nesse período Hugo Chávez já estava em tratamento, o que fez Maduro assumir a presidência interina do país.

2.2.4 Juan Guaidó

Juan Gerardo Guaidó Márquez, nascido em 1983 é um engenheiro, com pós-graduação em gestão pública e político venezuelano. Também se auto proclamou Presidente da Venezuela, mas antes disso teve uma trajetória política iniciada com movimentos estudantis, até chegar ao cargo de Deputado Nacional, e então se tornar o mais novo a ocupar o cargo de presidente da Assembleia Nacional. Com seu currículo político e a atual crise venezuelana, Guaidó decidiu então lançar-se ao cargo de Presidente do país no ano de 2019. Os países vizinhos, prontamente o reconheceram como presidente interino, incluindo Brasil, Estados Unidos, União Européia e alguns países que também são conhecidos como “Grupo de Lima”.

No entanto, o Supremo Tribunal de Justiça da Venezuela, no mesmo ano, alguns meses após a autodeclaração, considerou que a junta parlamentar presidida por Guaidó era inválida e anulou os atos aprovados pela Casa desde 5 de janeiro. Evidentemente, Maduro também não aceitou essa declaração e afirma que ainda é o presidente.

3 A Crise Migratória

Segundo a ACNUR, os venezuelanos deixam seu país, para fugir de realidades inseguras, com ameaças e violências, assim como fome, falta de recursos e serviços essenciais. Os números chegam a mais de 5 milhões de venezuelanos vivendo em outros países, sendo a maioria deles da América Latina ou Caribe. O que fez com que essa se tornasse uma das maiores crises de deslocamento do mundo e tende a crescer até 2023, com a situação sendo agravada pela pandemia da COVID-19. Ainda segundo a organização, o aumento nos pedidos de reconhecimento de refúgio chega a 8 mil por cento desde 2014. O que leva alguns a optarem por outros meios de estadia que são mais fáceis e rápidos de conseguir, mas mesmo assim existe um número significativo de venezuelanos que se encontram sem documentação ou status regular nos países, não possuindo a garantia a serviços e direitos básicos.

Organizações como a ACNUR têm ajudado de diversas formas, mas principalmente em parceria com a Organização Internacional para as Migrações (OIM), para encontrar e aplicar uma abordagem mais efetiva e abrangente para esses refugiados. Coletando informações e apoiando os Estados para melhor entender as necessidades e aprimorar a recepção dos venezuelanos. Também trabalhando no compartilhamento de informações

e combatendo a xenofobia. Eles oferecem abrigos temporários nos locais que mais recebem migrantes, trazendo assim um espaço mais seguro para os refugiados, com espaço para crianças e para lactantes amamentarem seus filhos. Fazendo a mediação com os governos para que facilitem o acesso à educação e aos serviços básicos.

Os Estados que mais recebem parte desse ônus são os mais próximos e também participantes da OEA, são eles: Argentina, Brasil, Chile, Colômbia, Costa Rica, Equador, México, Panamá, Peru e Caribe. Todos eles têm mostrado generosidade e cooperação ao receber os imigrantes da Venezuela, mas acabam ficando sobrecarregados, pois com o número crescente em grande escala e nem sempre distribuído igualmente entre os estados, gera uma superlotação em determinadas partes dos países, como é o caso do estado de Roraima no Brasil.

3.1 Assembléia Geral da OEA e as relações da Organização com o ACNUR:

A Assembleia Geral é considerada o órgão supremo da Organização dos Estados Americanos, a reunião dos Estados membros ocorre de maneira anual e o local é definido conforme o princípio da rotatividade. De acordo com o Artigo 56, cada Estado tem direito a um voto e as decisões, conforme o artigo 59, serão adotadas pelo voto da maioria absoluta dos Estados, exceto nos casos em que é exigido o voto de dois terços.

No entanto, para debater os assuntos de natureza urgente e de interesse comum, pode ser convocada uma Reunião de Consulta - em um período extraordinário de sessão - onde se é discutida a aplicação do Tratado Interamericano de Assistência Recíproca, com o objetivo de “prevenir e reprimir ameaças e atos de agressão contra qualquer país das Américas”.

Em dezembro de 2007, na sede da OEA em Washington DC, foi assinado um acordo de cooperação entre a Organização dos Estados Americanos e o Escritório do Alto Comissário das Nações Unidas para os Refugiados (ACNUR).

O acordo denomina o Departamento de Direito Internacional como ponto focal do Acordo de Cooperação e tem como objetivos fortalecer os laços entre as duas instituições e maximizar as possibilidades de colaboração entre elas, realizar projetos focados nos problemas envolvendo os refugiados, repatriados, apátridas e pessoas que precisam de proteção.

Como resultado do Acordo em questão, ocorreu em janeiro de 2008 a primeira sessão especial e nela foram debatidos os temas atuais do Direito Internacional dos Refugiados no contexto do Sistema Interamericano. A sessão contou com a presença do ACNUR e especialistas da região, cumprindo assim com dois dos objetivos do contrato de cooperação, sendo eles: “empreender joint ventures e projetos no campo da promoção e divulgação do direito internacional dos refugiados” e a “realização de conferências e seminários”.

3.1.2 O Grupo de Lima e seu posicionamento

O Grupo de Lima é um fórum de articulação política para acompanhar a situação da Venezuela, que foi criado em 2017. Até 2021 o grupo era composto pelo Ministério de Relações Exteriores de 14 países, sendo eles: Argentina, Brasil, Canadá, Chile, Colômbia, Costa Rica, Equador, El Salvador, Guatemala, Haití, Honduras, Paraguai, Peru e Venezuela. Contudo, em março deste ano a Argentina anunciou sua retirada e posteriormente em agosto, Peru (País sede do grupo) optou pela mesma decisão.

O Fórum, que é apoiado por outros Estados e também pela OEA e a União Europeia, tem buscado soluções para a crise na Venezuela, desde ajuda humanitária a sanções econômicas e discriminando o governo de Nicolás Maduro. Até mesmo o governo anterior dos Estados Unidos - que oficialmente não faz parte do grupo, no entanto,

o grupo não tem deliberação jurídica e seu propósito é ser um fórum de articulação política - representado por Donald Trump declarou que é preciso considerar todas as opções para conter a crise venezuelana, incluindo as intervenções militares. Contudo, vale ressaltar que na declaração assinada em 2017 é mencionada a busca pela solução pacífica e o respeito ao princípio de não intervenção e manter essa postura vem sendo constantemente alvo de discussões no grupo.

Inclusive a Argentina, primeiro Estado a deixar o grupo, demonstrou seu descontentamento com as decisões tomadas e declarou que “Em um contexto em que a pandemia fez estragos na região, as sanções e bloqueios impostos à Venezuela e às suas autoridades, assim como as tentativas de desestabilização ocorridas em 2020, só agravaram a situação de sua população e, em particular, a de seus setores mais vulneráveis”.

O Grupo, declarou no início deste ano que não reconhece “a legitimidade ou a legalidade da Assembleia Nacional instalada em 5 de janeiro de 2021. Essa Assembleia Nacional ilegítima é produto das eleições fraudulentas de 6 de dezembro de 2020, organizadas pelo regime ilegítimo de Nicolás Maduro”, na declaração ainda houve um apelo à comunidade internacional para apoiar os esforços para a “recuperação da democracia” e repudiar a Assembleia Nacional.

4. O Ônus da Crise

Uma crise humanitária e econômica dessa magnitude não gera dificuldades somente para o território venezuelano, mas atinge todo o sistema internacional e principalmente os países mais próximos, pois são eles que recebem a maior parcela da população migrante. Como foram os casos do Brasil, principalmente no estado de Roraima e Colômbia. Esse êxodo venezuelano não causa conflitos apenas com suas fronteiras, cria uma preocupação geral em todos os países da América do Sul. O governo Venezuelano chegou a adotar medidas de fechamento de fronteiras com Brasil e Colômbia e declinou as ofertas de ajuda humanitária, tendo em vista que acredita ser um meio de intervenção política internacional. O que gerou tensões entre cidadãos favoráveis à ajuda humanitária, os apoiadores de Maduro e os militares. Mas o agravamento da crise não é exclusivamente em função dessa ajuda, a crise, como explicado no item 2 deste artigo, começou a anos atrás, contudo o aumento das contrariedades ficou mais acentuado após a autoproclamação de Guaidó e o apoio de alguns países. Todo governo depende de legitimidade, pois se o governo não for reconhecido como legítimo, caracteriza golpe de Estado. A partir disso, é possível pensar em formas de ser legitimado, uma delas é durante a posse do governante, que no caso Venezuelano, significa a posse presidencial. Na última posse de Maduro, os países do Grupo de Lima (com exceção do México), não compareceram ao evento, mas em 2019 a Venezuela teve uma segunda posse, dessa vez do autodeclarado presidente Juan Guaidó. O qual recebeu neste evento a legitimação de alguns países bem importantes para esse debate, são eles: Estados Unidos, O Grupo de Lima (exceto Guiana, Santa Lúcia e México), o Mercosul (exceto o Uruguai), Alemanha, Espanha, França, Holanda, Portugal, Reino Unido, dentre outros. Entretanto, nem todos o sistema internacional apoia autodeclarações de governos interinos e esse debate passa a ter dois lados, um que apoia a decisão de Guaidó e um segundo, que por sua vez, apoia o presidente Maduro, sendo estes: Rússia e China principalmente, eles defendem a soberania internacional da Venezuela e o princípio de não intervenção na política doméstica e México, Cuba, Irã, Turquia, África do Sul, Coreia do Norte, Nicarágua e Bolívia. E como em todo embate, tem os países que não pronunciaram tendência a nenhum dos lados, são eles: a União Européia (como um todo, não chegou a uma conclusão unânime), Itália, Grécia e Uruguai.

A via de resolução mais democrática seriam as novas eleições, mas por diversos motivos não há possibilidade imediata, se por um lado Guaió se baseia em um artigo constitucional para tal pedido, a reorganização necessária supera o prazo estipulado. No entanto Maduro concorda com a ideia de eleições, mas somente parlamentares e não uma presidencial. Sem resolução da questão eleitoral, ainda existe a divergência entre aceitação ou não de ajuda

humanitária. O que coloca Maduro em um dilema, pois a proibição de ajuda e fechamento das fronteiras pode levá-lo a perder o apoio popular e das forças armadas. Já a aceitação de ajuda humanitária pode abrir suas fronteiras para uma intervenção política internacional.

O caso é debatido em diversos grupos de países, buscando propostas de mediação, além do grupo de Lima, outro grupo foi criado com esse intuito, o chamado “Grupo Internacional de Contato da Venezuela” formado por França, Alemanha, Itália, Portugal, Suécia, Holanda, Reino Unido, Equador, Costa Rica, México, Uruguai e Bolívia. Este grupo tem a finalidade de trocar informações e entender o que está acontecendo visando debater soluções conjuntas. Outra iniciativa, em parceria com a comunidade do Caribe (Caricom), Uruguai e México apresentaram o [Mecanismo de Montevideú](#), para que fosse proposto um meio de promover diálogo e posteriormente negociações a fim de estabelecer novos compromissos e implementar os já assumidos.

Enquanto as tensões não são resolvidas internamente, o apoio internacional não respeitar a soberania Venezuelana e o fechamento de fronteiras (Maduro), trazendo o clima de inimizade com os países vizinhos a situação se agrava, fazendo com que as pressões Estadunidenses aumentem e a crise permaneça sem solução.

5. Considerações finais

A crise migratória da Venezuela, causada pelas diversas rupturas de ordem democrática dos últimos anos, é um dos grandes tópicos de debates internacionais onde há divergências em relação a sua resolução.

A realocação desses imigrantes em diversos Estados e a sua redistribuição interna, ou até mesmo o número de pessoas que cada Estado comporta dignamente, são algumas das razões que promovem tal debate, uma vez que prejudica o remanejamento das políticas públicas para esses imigrantes e muitas vezes impede que elas cheguem naqueles em situação de irregularidades, como por exemplo no já mencionado caso de Roraima no norte do Brasil, onde o há o acúmulo de imigrantes vivendo em situações precárias e as políticas públicas não alcançam tanto eles quanto os cidadãos brasileiros, ocasionando certos conflitos internos em consequência da xenofobia causada pela situação que compartilham.

O objetivo deste artigo é gerar o debate com base na resolução do realocamento dos imigrantes venezuelanos, com foco em uma melhor redistribuição dos mesmos proporcionalmente ao número de habitantes e PIB dos países que os receberão de forma a promover a dignidade de tratamento, realocação no mercado de trabalho e acesso a políticas públicas que garantam seus direitos básicos.

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