

# The Impact of the United Nations Human Rights Treaties on the Domestic Level in Brazil

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## 1 Introduction to Human Rights in Brazil

Brazil is a federal democratic republic. It has been independent of Portugal since 1822, although it became a republic only in 1889. The nineteenth century was marked by a constant power struggle and the search for a Brazilian identity. During this period, the 1824 Constitution protected some political and civil rights, although power was concentrated in the hands of the Emperor. In the 1891 Constitution, non-universal suffrage was granted, along with the inclusion of the principles of liberty, equality and justice.

The 1934 Constitution continued to protect some individual rights, but when the Getúlio Vargas government took over, many obstacles to the advancement of human rights appeared, along with the 1937 Constitution, influenced by fascist ideals. On the one hand, populism offered workers many advantages and, on the other, the Special Police and the Image and Advertising Department were part of a structure designed to remove fundamental guarantees. This context was changed in 1946, when the *Estado Novo* period came to an end and the new Constitution restored and expanded individual rights. This scenario of improvement ended soon thereafter, in 1964, when the military dictatorship began, marked by a 21-year period of torture, kidnapping, murders and forced disappearances.

In 1988 the Brazilian Federal Constitution ('citizen Constitution') (FC) entered into force, guaranteeing a wide range of civil, political, economic, social and cultural rights. In 2005 Constitutional Amendment 45 was passed, giving international human rights treaties that have been approved in two rounds by three-fifths of the members of each House of Congress the status of constitutional amendments. In its election for the UN Human Rights Council (HRC) in 2016, the Permanent Representative of Brazil to the United Nations (UN) presented a series of pledges for improving human rights.<sup>1</sup>

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1 Letter dated 22 March 2016 from the Permanent Representative of Brazil to the United Nations addressed to the President of the General Assembly <<https://digitallibrary.un.org/record/826631>> accessed 8 September 2023.

Despite the comprehensive legal framework for the protection of human rights in the country, serious political instability and, more recently, serious setbacks in human rights are being faced. Brazil has a long history of rights violations in a wide range of areas, such as socio-economic inequalities; prison conditions and police violence; discrimination against women; migrants; violations of the rights of persons with disabilities and lesbian, gay, bisexual and transgender (LGBT) persons; a lack of protection of human rights defenders and journalists; and growing concerns over environmental issues and the rights of indigenous peoples.<sup>2</sup>

According to the Brazilian Public Security Forum in 2022, 6,429 people died due to police interventions;<sup>3</sup> 3.2 out of 100 violent deaths are caused by the police, totalling a number of 17 deaths per day.<sup>4</sup> The majority of victims are young black men. The latest statistics also revealed a large amount of sexual abuse: 5.5 girls (aged 13 years or younger) are raped every hour. In 2022, Brazil recorded the highest number of cases of sexual violence in history. There are 109 rape cases per day and incidents of domestic violence are registered every hour. The aggressors are mostly family members and the majority of sexual violence incidents occur in the victim's house.<sup>5</sup> On account of these statistics, Global Witness reports as follows: 'We recorded 24 murders of land and environment defenders in Brazil in 2019, the third-highest number in the world. Almost 90% of these deaths were in the Amazon.'<sup>6</sup> This shows how dangerous it is to live in Brazil if you are not a white man.

Brazil is a federation composed of 26 federal states and the Federal District, which is the seat of the federal government. Each state has its own

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2 United Nations, Letter dated 22 March 2016 from the Permanent Representative of Brazil to the United Nations addressed to the President of the General Assembly <<https://digitallibrary.un.org/record/826631>> accessed 8 September 2023.

3 FBSP – FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. Anuário Brasileiro de Segurança Pública 2023, São Paulo: FBSP, 2023. <<https://forumseguranca.org.br/wp-content/uploads/2023/07/anuario-2023.pdf>> accessed 8 September 2023.

4 FBSP – FÓRUM BRASILEIRO DE SEGURANÇA PÚBLICA. Anuário Brasileiro de Segurança Pública 2023. São Paulo: FBSP, 2023. <<https://forumseguranca.org.br/wp-content/uploads/2023/07/anuario-2023.pdf>> accessed 8 September 2023.

5 FBSP - FORUM BRASILEIRO DE SEGURANÇA PÚBLICA. Anuário Brasileiro de Segurança Pública, 2023. São Paulo: FBSP, 2023. <<https://forumseguranca.org.br/wp-content/uploads/2023/07/anuario-2023.pdf>> accessed 8 September 2023.

6 Global witness Annual Report 2018: Delivering Global Change <<https://www.globalwitness.org/en/about-us/annual-report-2018-delivering-global-change/#chapter-0/section-0>> accessed 18 April 2022.

constitution, congress, judiciary and executive powers. The Brazilian administration operates on three levels: federal, state and municipal. The municipality is a third-level state entity in the federative order, included by the 1988 Constitution, with its own powers and autonomous government, linked to the member state by indestructible constitutional ties.<sup>7</sup> There is no hierarchy between the levels. The FC clearly stipulates the boundaries of the federal, state and municipal levels. The three levels can legislate and tax what is within their competence established by the FC. With regard to human rights, the federal government is responsible for the national plan for social development (article 21 of FC). All levels are responsible for providing access to culture, education, science, technology, innovation and research, and have the responsibility to protect the environment and to fight against poverty (article 23 of FC).

The budgets for managing social programmes are determined by executive and legislative powers and approved by the judiciary, but this is now linked to the *Teto de Gastos* (spending margin). This notion establishes that by 2036 the budget for each year will be equivalent to the previous year's expenditure with corrections for inflation. The consequence is a battle between the judiciary, legislative and executive powers for budget distribution.

In Brazil the decentralisation of institutionalisation is the key for the maintenance of a minimum standard of human rights. In that way, municipal health agents are essential for the maintenance of Brazilian National Health System (*Sistema Único de Saúde* – SUS) health programmes, such as the dengue prevention policy. Municipal social workers are responsible for the guarantee and protection of children, adolescents and vulnerable groups in the state and the city; the Specialised Reference Centres of Social Assistance are public units of municipal or regional scope whose role it is to constitute a locus of reference, in the territories, of the offer of specialised social work to families and individuals in situations of personal or social risk, for violations of rights.

The actions of civil society are also examples of the strengths of articulation for human rights in Brazil, as they are present in the national territory, also in a decentralised manner and dealing with multiple themes. According to a survey by the Institute of Applied Economic Research (IPEA), there are 820 186 civil society organisations in Brazil, and the south-east region is home to 40 per cent of those organisations, followed by the north-east (25 per cent), the south

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7 Municipalities have (a) power of self-organisation; (b) power of self-government (election of the mayor, vice-mayor and councillors); (c) own normative power or self-legislation; (d) power of self-administration (providing services of local interest, as well as legislating on taxes and their income).

(19 per cent), the mid-west (8 per cent) and the north (8 per cent).<sup>8</sup> In 2016 there were four organisations per 1 000 inhabitants in Brazil. Another interesting fact revealed by IPEA is that the per capita presence of human rights organisations aimed at defending rights is higher in regions with a lower human development index. The presence of religious civil society organisations is also high in the south-east (Rio de Janeiro being the state where they are mostly concentrated.)

## 2 Relationship of Brazil with the International Human Rights System in General

Brazil is party to the major UN and regional human rights treaties. However, the country only started to become party to important human rights treaties after the end of the military regime in 1985, despite the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) in 1968 and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984. According to Vilhena,<sup>9</sup> ‘the whole movement to pressure the Brazilian government to adhere to these treaties and the contact with international human rights organisations that started to be active in the country at the end of the military period, inspired new organisations with a clearer human rights vision’, such as *Comissão Teotônio Vilela* and *Justiça Global*.

Brazil is also a full member of the Inter-American system of human rights, having been found in violation of human rights by the Inter-American Court of Human Rights in twelve cases. Furthermore, Brazil has maintained a working relationship with the UN and the Inter-American systems. Since 2012 the UN maintains a ‘UN House’ in Brasília, gathering in one place official representations from several UN programmes. Additionally, since 2001 Brazil has offered a standing invitation to all UN thematic special procedures. Yet, key setbacks have been evident. In 2011 former President Dilma Rousseff criticised the Inter-American Commission on Human Rights after an unfavourable resolution protecting indigenous peoples against the construction of the Belo Monte Dam, threatening to cut Brazil’s funds for the regional system. In August 2018 the then candidate and now former Brazilian President, Jair Bolsonaro, stated that he intended to withdraw Brazil from the HRC, of which Brazil was a member

8 Felix Garcia Lopes, ‘Perfil das organizações da sociedade civil no Brasil’ Brasília: IPEA, 2018 <<https://repositorio.ipea.gov.br/bitstream/11058/8396/1/Perfil%20das%20organizações%20da%20sociedade%20civil%20no%20Brasil.pdf>> accessed 13 November 2023.

9 Oscar Vilhena Vieira, ‘Public Interest Law: A Brazilian Perspective’ (2008) *UCLA Journal of International Law and Foreign Affairs* 219.

three times, from 2006 to 2011, 2012 to 2015, and 2015 to 2019, on the grounds that the institution is 'of no use'. However, Brazil secured its seat at the HRC in 2019, for a fourth term, with 153 votes.<sup>10</sup>

The FC contains 14 articles concerning international relations and human rights.<sup>11</sup> The articles relating to international human right treaties bodies are the following: Brazil in its international relations follows human rights principles (article 4); the treaties and international conventions approved in each congress house, in two turns, by three-fifths of the members, have constitutional status equal in status to amendments to the Constitution (article 5, third paragraph); Brazil will advocate the formation of an international human rights court (article 7 of Transition Acts). Apart from the Rome Statute of the International Criminal Court (ICC) and the Convention on the Rights of Persons with Disabilities (CRPD), all other major human rights treaties were ratified before 2005 by ordinary procedure, which means that they have legal status below constitutional norms, but above ordinary legislation. It is what Brazil's Federal Supreme Court calls 'supra-legal status': 'International human rights treaties and conventions, once ratified and internalised, while directly establishing individual rights, hinders the legal effects of other infra-constitutional state acts which prevents their full implementation.'<sup>12</sup>

In the federal government, the main institutions in charge of maintaining a dialogue with the international human rights system are the Ministry of Foreign Affairs and the Ministry of Women, Family and Human Rights (before 2019, and again in 2023, this Ministry was named simply the Ministry of Human Rights).<sup>13</sup> In addition, Brazil has a National Council of Human Rights, with the participation of civil society organisations and state institutions. The National Council of Human Rights is the closest there is in Brazil to a national human rights institution. Yet, it lacks administrative and budgetary independence to be fully considered as such in light of the Paris Principles. In 2019 the National Council issued an open letter criticising the Ministry of Women, Family and Human Rights for firing the coordinator of the Council.<sup>14</sup>

10 Conectas, 'Brazil Wins Seat on UN Human Rights Council: Brazil's Election Does Not Give the Government Carte Blanche to Act However It Wishes on the Council' <<https://www.conectas.org/en/noticias/brazil-wins-seat-on-un-human-rights-council/>> accessed 18 April 2022.

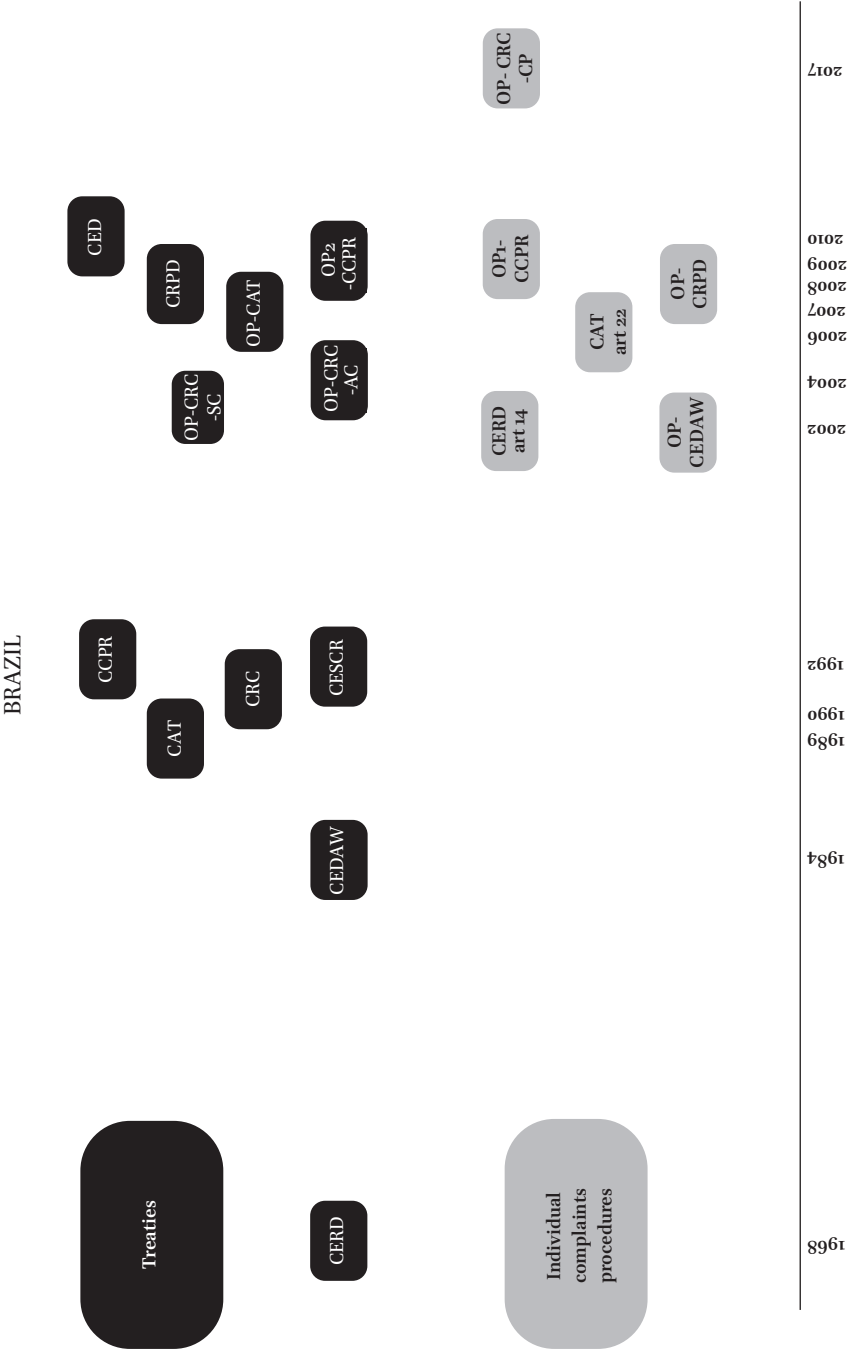
11 See arts 4, 5, 21, 49, 59, 84, 102, 105, 109, 215, 226, 227, 230, 7 of Transition Acts of Brazilian Constitution. Version in English: <<https://www2.senado.leg.br/bdsf/item/id/243334>> accessed 18 April 2022.

12 Brazil's Federal Supreme Court Case ADI 5.240, 2016.

13 Brazil, Law 13.844/2019, arts 43, 44 and 57-III <[http://www.planalto.gov.br/ccivil\\_03/\\_ato2019-2022/2019/lei/L13844compilado.htm](http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2019/lei/L13844compilado.htm)> accessed 18 April 2022.

14 Conselho Nacional Dos Direitos Humanos, Nota pública em repúdio ao desrespeito à autonomia e independência do cndh, 2019 <<https://www.gov.br/mdh/pt-br/aceso-a-informacao/participacao-social/conselho-nacional-de-direitos-humanos-cndh/2019.08.16NotaPblicaemRepdioaoDecreton9.9262019.pdf>> accessed 18 April 2022.

3 At a Glance: Formal Engagement of Brazil with UN Human Rights Treaty System



## 4 Role and Overall Impact of the UN Human Rights Treaties in Brazil

### 4.1 *Role of UN Human Rights Treaties*

#### 4.1.1 Formal Acceptance

Brazil is party to all core UN human rights treaties, except the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW). All ratifications were made after the military dictatorship (1964–1985), except CERD, ratified in 1968, and CEDAW, ratified in 1984.

Brazil is the only MERCOSUR country that has not ratified CMW. In 1996, Brazil acknowledged in its National Human Rights Plan the need for ratification, but this has not yet materialised.<sup>15</sup> Brazilian scholarship on the topic points to the difficulty of ratification because the treaty has not been harmonised with the outdated 1980 Foreigner's Law.<sup>16</sup> Yet, this Law was replaced in 2017 by the Immigrant Law, thus improving the prospect for ratification, despite resistance by former President Bolsonaro with regard to the rights of migrants. After years of processing, ILO Convention 143 and CMW have not yet been ratified as their provisions do not comply with the 1980 Foreigner's Law. It is expected that with the approval of the Migration Law this reality will be changed. The Migration Law was developed based on a more humanistic view of non-nationals, containing a principled framework that is consistent with the human rights treaties already ratified by Brazil and which expressly contemplates the guarantee of individual rights and freedoms to migrants, not only to regulars, but also to those in an irregular situation in the country, which, as has been seen, may contribute decisively to the ratification of the two analysed conventions.<sup>17</sup>

15 Brazil, Programa Nacional de Direitos Humanos – PNDH, 1996 <<http://www.bibliotecapresidentia.gov.br/publicacoes-oficiais/catalogo/fhc/programa-nacional-de-direitos-humanos-1996.pdf>> accessed 18 April 2022.

16 This Law was replaced in 2017 by the Immigrant Law (Law No. 13,445, of May 24, 2017 <[http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2017/lei/l13445.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/l13445.htm)> accessed 18 April 2022).

17 Own translation from original text in Portuguese. Alverne; Oliveira; Matos, 'Trabalhador Migrante E A Dificuldade De Incorporação Da Convenção Da OIT E Da Convenção Da ONU Pelo Brasil: Possíveis Contribuições Da Lei De Migrações' (Migrant Worker and the Difficulty of Incorporation of the ILO Convention and the UN Convention for Brazil: Possible Contributions of the Migration Law) (2018) 4 *Revista Jurídica Unicritiba*, n. 53, Curitiba, 2018 611-632 DOI: 10.6084/m9.figshare.7701596. <[http://www.mpsp.mp.br/portal/page/portal/documentacao\\_e\\_divulgacao/doc\\_biblioteca/bibli\\_servicos\\_produtos/bibli\\_informativo/bibli\\_inf\\_2006/Rev-Juridica-UNICRITIBA\\_n.53.25.pdf](http://www.mpsp.mp.br/portal/page/portal/documentacao_e_divulgacao/doc_biblioteca/bibli_servicos_produtos/bibli_informativo/bibli_inf_2006/Rev-Juridica-UNICRITIBA_n.53.25.pdf)> accessed 20 June 2020.

With the 1988 Constitution, human rights language was incorporated into the Brazilian legal system. Most of the treaties were ratified after the promulgation of the Constitution that re-established democracy in the country. Under Amendment 45, treaties adopted since 2005 potentially have constitutional status. Apart from the CRPD, Brazil ratified the other human rights treaties before 2005 by ordinary procedure, which means that they have, in the language of Brazil's Federal Supreme Court, a supra-legal status, that is, a status below the Constitution but above ordinary legislation.

Brazil entered reservations to articles 15(4), and articles 16(1)(a), (c), (g) and (h), and article 29 of CEDAW. The reservations to articles 15 and 16, withdrawn in 1994, were made due to the incompatibility between Brazilian legislation, which was then ruled by the asymmetry between the rights of men and women. The reservation to article 29, which does not refer to substantive rights, is related to disputes between state parties regarding the interpretation of the treaty and remains in force.<sup>18</sup>

#### 4.1.2 Level of Awareness and Impact

The level of support for and commitment to human rights treaties by Brazilian civil society is high. An example of this is CMW, which since 2005 has been a recurring object of campaigns for ratification. A document entitled Charter of Immigrants on World Day Immigrant: Universal Citizenship and Human Rights was sent to the then and current President Luiz Inácio (Lula), and launched in 16 Brazilian cities on 17 December 2005.<sup>19</sup> Such engagement by civil society in 2017 culminated in the approval and enactment of the new immigration law that aims to protect immigrants in the Brazilian territory. Civil society engaged in international campaigns to account for crimes committed by the military regime, to advocate for the investigation into the disappearance of people, to defend the rights of persons with disabilities, and against practices of torture and police violence. There are countless civil associations and movements for the protection of human rights. Such associations also led to mobilisations for adherence to treaties at municipal and state levels, exemplified by the regional

18 Brazil, Observatory of Gender Impact. CEDAW, 2013 <<https://www.gov.br/mdh/pt-br/navegue-por-temas/politicas-para-mulheres/arquivo/assuntos/acoes-internacionais/Articulacao/articulacao-internacional/onu-1/0%20que%20e%20CEDAW.pdf>> accessed 8 September 2023.

19 Reporter Brasil, 'Brasil é único do Mercosul a não assinar convenção da ONU' Repórter Brasil, 2006 <<https://reporterbrasil.org.br/2006/12/brasil-e-unico-do-mercosul-a-nao-assinar-convencao-da-onu/>> accessed 13 July 2020.



committees created to promote adherence to CEDAW in municipalities and states.

Currently, civil society has articulated mobilisations against austerity policies and dismantling of socio-economic rights, such as the national campaigns against austerity measure 95 adopted in 2016, which froze social spending for 20 years (*Teto de gastos*).<sup>20</sup> Additionally, there are campaigns against declarations of former President Bolsonaro's intention no longer to accept the recommendations by the HRCtee after it ruled in favour of President Lula's petition, requesting Brazil to 'take all necessary measures to ensure that Lula can enjoy and exercise his political rights while in prison, as candidate in the 2018 presidential elections'.<sup>21</sup> Those mobilisations have so far been unsuccessful.

The impacts on judicial decisions are meaningful. Various treaties have different impacts on the Brazilian judiciary. While some have greater adherence (as in the case of CRPD), others are virtually forgotten (such as CAT, in relation to which society often resorts to the Inter-American Commission on Human Rights for protection). However, in 2019, when the federal judiciary reversed the government's decision to dismiss experts of the national mechanism against torture, the direct impact of CAT and OP-CAT was at full display.<sup>22</sup> Although the Brazilian judiciary often uses human rights language, it does not often directly cite human rights treaties.

Legislative power, in turn, in view of public pressure, is responsible for the creation of federal and state regulations that promote the implementation of UN human rights treaties in Brazil. Since 2005, Brazil has seen an increase in laws dealing with human rights. However, after 2016, some austerity measures have been preventing the realisation of socio-economic rights, due to the spending ceiling imposed by the Proposed Amendment to Constitution 95.

At the federal level, Brazil has adopted Law 7437 of 1985 which included as penal contraventions the practice of race, colour, sex and civil state discrimination; Law 7716 of 1989 which defined racial and discriminations crimes, which was amended by Law 12.288 of 2010<sup>23</sup> which established the Racial Equality

20 'Brazil's Austerity Package Decried by UN as Attack on Poor People' The Guardian, 2016 <<https://www.theguardian.com/world/2016/dec/09/brazil-austerity-cuts-un-official>> accessed 15 April 2020.

21 UN, Information Note on Human Rights Committee <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23464>> accessed 1 August 2020.

22 Agencia brasil, 'Justiça mantém peritos no combate à tortura' Agencia Brasil, 2019 <<https://agenciabrasil.ebc.com.br/justica/noticia/2019-08/justica-mantem-peritos-no-combate-tortura>> accessed 20 April 2020.

23 Brazil Law 12.288 of June 2010 <[https://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2013/lei/l12830.htm](https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/l12830.htm)> accessed 13 March 2020.

Statute; Law 9140 of 1995<sup>24</sup> which recognised the death of the people forcibly disappeared for political reasons during the dictatorship; Law 9474 of 1997<sup>25</sup> which defined mechanisms for the implementation of the refugee law; Law 9455 of 1997<sup>26</sup> which defined torture crimes; Law 12.847 of 2013<sup>27</sup> which instituted the National System for Preventing and Combating Torture and created the National Committee for the Prevention and Combating of Torture and the National Mechanism for the Prevention and Combat of Torture in line with the UN treaties. Additionally, several federal decrees deal with human rights standards, such as Decree 6044 of 2007 which approves the National Plan for the Protection of Human Rights Defenders; Decree 7037 of 2009,<sup>28</sup> which approves the National Plan for Human Rights; Decree 6872 of 2009,<sup>29</sup> which approved the National Plan for Racial Equality and created a Committee for monitoring the implementation of the Plan. This Committee was replaced in 2019 by Decree 10087<sup>30</sup> under President Bolsonaro's administration.

Another important point to note is that the Brazilian state has been creating special bodies to deal with human rights issues, such as national secretariats for the protection of women and the national secretariat for the protection of human rights of the Presidency of the Republic, and the creation of National Plans on Human Rights from 1996 to 2010. Three national human rights plans were carried out to incorporate UN resolutions for the protection of human rights in Brazil. The last plan assigned the Secretariat of State for Human Rights the responsibility for coordinating the implementation, monitoring and updating of the National Human Rights Programme.<sup>31</sup>

24 Brazil Law 9.140 of 1995 <<https://www2.camara.leg.br/legin/fed/lei/1995/lei-9140-4-dezembro-1995-348760-norma-actualizada-pl.html>> accessed 13 March 2020.

25 Brazil Law 9.474 of 1997 <[http://www.planalto.gov.br/ccivil\\_03/leis/L9474.htm](http://www.planalto.gov.br/ccivil_03/leis/L9474.htm)> accessed 13 March 2020.

26 Brazil Law 9.455 of 1997 <[http://www.planalto.gov.br/ccivil\\_03/leis/L9455.htm](http://www.planalto.gov.br/ccivil_03/leis/L9455.htm)> accessed 13 March 2020.

27 Brazil Law 12.847 of 2013 <[http://www.planalto.gov.br/ccivil\\_03/\\_Ato2011-2014/2013/Lei/L12847.htm](http://www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Lei/L12847.htm)> accessed 13 March 2020.

28 Brazil Decree 7.037 of 2009 <[http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2009/Decreto/d7037.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2009/Decreto/d7037.htm)> accessed 13 March 2020.

29 Brazil Decree 6.872 of 2010 <[http://www.planalto.gov.br/ccivil\\_03/\\_Ato2007-2010/2009/Decreto/D6872.htm](http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Decreto/D6872.htm)> accessed 13 March 2020.

30 Brazil Decree 10.087 of 2019 <[http://www.planalto.gov.br/ccivil\\_03/\\_Ato2019-2022/2019/Decreto/D10087.htm#art1](http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Decreto/D10087.htm#art1)> accessed 13 March 2020.

31 Brasil, Secretaria de Direitos Humanos da Presidência da República. B823 Programa Nacional de Direitos Humanos (PNDH-3) / Secretaria de Direitos Humanos da Presidência da República – rev. e atual. – Brasília: SDH/PR, 2010 <<https://www.ohchr.org/Documents/Issues/NHRA/ProgrammaNacionalDireitosHumanos2010.pdf>> accessed 20 June 2020.

However, during Jair Bolsonaro's government, some changes have been made in Brazilian government ministries. Law 13. 844/2019 transformed the Ministry of Human Rights into the Ministry of Women, Family and Human Rights (MMFDH), and attributed the administrative duties of the Amnesty Law to it.<sup>32</sup> The MMFDH is structured in eight final units: the National Secretariat for Global Protection (SNPG); the National Secretariat for the Rights of Persons with Disabilities (SNDPD); the National Secretariat for Policies for the Promotion of Racial Equality (SEPPIR); the National Secretariat for the Promotion and Defence of the Rights of the Elderly (SNDPI); the Secretariat National Child and Adolescent Rights (SNDCA); the National Secretariat for Policies for Women (SNPM); the National Youth Secretariat (SNJ); and the National Family Secretariat (SNF). One of the main changes is the withdrawal of the LGBT community from the Charter of Human Rights guidelines and the extinction of the secretariat for the community. As for the indigenous population, the Ministry of Agriculture is now responsible for the demarcation of land and no longer by the National Foundation of India (FUNAI). It is also important to highlight the extinction of the Ministry of Culture.

The budget of R \$ 398 267 203 approved in the Annual Budget Law for 2019 – about R \$ 21 million less than that committed in 2018 – is not sufficient for the protection of human rights in the territory, in view of the budgetary decrease.

As far as the level of awareness among civil society organisations is concerned, Brazil counts with strong non-governmental organisations (NGOs) constantly monitoring what is happening in Geneva at the UN, including Conectas Human Rights, Justiça Global, Plataforma DhESCA Brasil, and Sexuality Policy Watch. Yet, Conectas Human Rights, in an interview for this research, highlighted some challenges in working with the UN treaty bodies, such as a lack of predictability in the calendar of state reporting, unclear procedures regarding the submission of shadow reports (with the UN Special Procedures the communication is more fluid considering urgent appeals, for instance), language barriers for most of Brazilian NGOs, and the existence of the Inter-American system which is perceived as closer to NGOs in Brazil. Yet, Brazilian NGOs have been actively involved in the strengthening process of the UN treaty body mechanisms as well as voiced against budget cuts for those bodies. A handful of Brazilian journalists cover the UN treaty bodies constantly, in particular Jamil Chade, who lives in Geneva and reports to the main news portal in Brazil.<sup>33</sup>

32 Brazil, Law 13.844, 18 June 2019 <[http://www.planalto.gov.br/ccivil\\_03/\\_Ato2019-2022/2019/Lei/L13844.htm](http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2019/Lei/L13844.htm)> accessed 20 June 2020.

33 See for more <<https://noticias.uol.com.br/colunas/jamil-chade/>> accessed 20 June 2020.

#### 4.1.3 State Reporting

Brazil lags behind in almost all state reporting. The longest delay was about 12 years, in respect of OP-CRC-SC. In an email interview with the Ministry of Foreign Affairs, Brazilian diplomats highlighted that on 25 February 2019, on the occasion of the High-Level Segment of the 40th session of the HRC, the Minister of Women, Family and Human Rights ‘expressed her public commitment in submitting all Brazil’s reports pending in treaty bodies during her administration’. In fact, a series of reports were subsequently submitted. Researchers have asked the Ministry how the reports due to the UN treaty bodies are prepared. According to the Ministry of Foreign Affairs, ‘the preparation of reports submitted by the Brazilian state to treaty bodies of the international human rights system would be the responsibility of the Ministry of Women, Family and Human Rights’, while it is up to the Division of Human Rights (DDH) of the Ministry of Foreign Affairs ‘to accompany, coordinate and guide the preparation of Brazil’s reports on compliance with the human rights treaties to which it is a party, as well as its respective oral defence’, in accordance with the Ministry’s Internal Regulations of the Secretariat of State for Foreign Relations (RISE).<sup>34</sup> As far as publication is concerned, Brazil publishes on the website of the Ministry of Human Rights and Citizenship the reports it has submitted to the UN treaty bodies in Portuguese.<sup>35</sup> The website of the Ministry often publishes drafts of human rights reports for consultation, in particular in relation to the Universal Periodic Review (UPR) mechanism. Finally, some NGOs have produced alternative reports for treaty bodies, such as the alternative report regarding social, economic and cultural rights prepared by a group of NGOs in 2007.<sup>36</sup>

34 See for more <<https://www.in.gov.br/en/web/dou/-/portaria-n-430-de-22-de-dezembro-de-2022-454144985>> accessed 13 November 2023.

35 Brasil, Ministério dos Direitos Humanos e da Cidadania. Relatórios Internacionais <<https://www.gov.br/mdh/pt-br/navegue-por-temas/cooperacao-internacional/relatorios-internacionais-1>> accessed 8 September 2023.

36 Brasil, *Contra informe da sociedade civil brasileira sobre o cumprimento do pacto internacional dos direitos econômicos, sociais e culturais pelo Estado brasileiro*. / Projeto coordenado pela Articulação dos Parceiros de Misereor no Brasil, Movimento Nacional de Direitos Humanos, Plataforma Brasileira de Direitos Humanos Econômicos, Sociais, Culturais e Ambientais, Processo de Articulação e Diálogo entre Agências Ecumênicas Europeias e suas Contrapartes Brasileiras. Brasília / Passo Fundo: MISEREOR; MNDH; DhESC BRASIL; PAD; IFIBE, 2007 <[http://www.mpsp.mp.br/portal/page/portal/cao\\_civel/dh\\_relevancia\\_publica/relevancia\\_diversos/Contra%20Informe%202007%20-%20PIDESC.pdf](http://www.mpsp.mp.br/portal/page/portal/cao_civel/dh_relevancia_publica/relevancia_diversos/Contra%20Informe%202007%20-%20PIDESC.pdf)> accessed 13 November 2023.

#### 4.1.4 Domestic Implementation Mechanisms

In 2014 Brazil developed an online platform called Observatory of International Recommendations on Human Rights,<sup>37</sup> aimed at compiling recommendations ‘issued by the UN and OAS with a view to progressively integrating them into national rights action plans, policies and work programmes’, as reported by Brazilian diplomats in an interview for this research. Yet, this platform was discontinued by the Brazilian government and is no longer available. At the Inter-American level, there is a similar initiative within the Institute of Public Policies on Human Rights (IPPDH), regarding the Recommendation Monitoring System (SIMORE).<sup>38</sup> SIMORE is still functioning to monitor recommendations from the Inter-American system. In contrast with the lack of uniform procedure for monitoring of UN treaty bodies recommendations, Brazil has been more transparent regarding the UPR procedure.

#### 4.1.5 Treaty Body Membership

A national process for nomination of treaty body members is currently an issue in Brazil. In 2014 a group of NGOs called the Brazilian Committee on Human Rights and Foreign Policy presented a document outlining criteria and procedures for the nomination of treaty body members that is transparent and open to different stakeholders. Although Brazil has not formally endorsed the document, it is a clear impact of the UN treaty bodies in fostering advocacy around issues of their members’ nominations.

The criteria outlined in the document include (i) qualification and knowledge of international instruments, standards and principles of human rights or humanitarian law, and fluency in at least one of the official languages of the UN or OAS; (ii) knowledge and experience in the mandate field; (iii) independence and impartiality (anyone occupying a government position, in instances closely linked to state functions or in organisations and private companies that may produce potential conflicts of interest in relation to the inherent responsibilities to the mandate, should be excluded from the selection process); (iv) personal integrity and moral integrity (the nominee cannot have contributed to authoritarian or governments, and have expressed public positions contrary

37 Ministério Da Família, Da Mulher E Dos Direitos Humanos. Sociedade Civil pode contribuir com Observatório de Recomendações Internacionais sobre Direitos Humanos até o fim do mês. MFMDH, 2015 <<https://www.gov.br/mdh/pt-br/sdh/noticias/2015/janeiro/sociedade-civil-pode-contribuir-com-observatorio-de-recomendacoes-internacionais-sobre-direitos-humanos-ate-o-fim-do-mes>> accessed 16 August 2020.

38 OEA, Simore Interamericano <<https://www.oas.org/ext/pt/direitos-humanos/simore>> accessed 20 July 2020.

to human rights or have had any involvement with public or private organisations known to have violated human rights); (v) availability and flexibility; (vi) gender, race, ethnicity and other expressions of plurality (it is essential that clear parameters for the promotion of equality and equity between genders and with respect to race and ethnicity and other variables are established as criteria for selecting and nominating candidates for vacancies in human rights systems). The process of selection and nomination must also consider other dimensions of socio-cultural plurality, especially in the case of historically discriminated groups. Efforts must also be made to ensure regional diversity.

#### 4.1.6 Overview of Impact

Human rights treaties were incorporated as civil society claims became more prominent. The first decade of 2000 saw the highest volume of public policies in accordance with international recommendations. It was during this period that the National Human Rights Plans were made.

The Brazilian judiciary has to a large extent applied human rights treaties in its decisions. Most treaties are used as a source of interpretation and resource, especially when the parties to the lawsuit invoke the text for the protection of the law in dispute.

The most extensive impacts of human rights treaties were found in decentralised public policies that do not focus on a specific organ or power and are supported by social movements and civil society. An example are the Special Secretariats, such as the Special Secretariat for Women, which was responsible for the implementation of public policies that meet the commitments of CEDAW. Also, the role of civil society in the impact of the treaties is remarkable: civil society organizations and NGOs mobilize to demand the implementation and enforcement of the treaties. In some cases – as in CEDAW and the CRPD – this role is even more outstanding. While there is a large social movement (in particular, anti-carceral movements) supporting it, the implementation of the Convention Against Torture (CAT) has been less pronounced, especially in companies.

Brazil had an individual communication decided by the CEDAW Committee regarding the *Maria de Lourdes Pimentel* case, in which Brazil was accused of violating the right to health and maternity protection. Brazil, through the Special Secretariat for Women, publicly acknowledged its accountability and paid compensation to the victim, showing the relevance of the decentralised action indicated in the previous paragraphs.

The Subcommittee on Prevention of Torture (SPT) conducted visits to Brazil in 2009 and 2015. The SPT's reports pointed out the precarious position of Brazilian prisoners. In its report published in 2016, based on its 2015

visit, the SPT issued warnings that could have prevented prison riots. Brazil has recurrently omitted to pay attention to the needs of public security and to reduce the number of prisoners in the country, being the country with the third major highest number in arrests in the world, with 64 per cent of 727 000 prisoners black. The prison system is an urgent problem that is not yet the object of institutional attention, even though there is a great deal of work by NGOs to do so.

The Universal Declaration of Human Rights, the American Convention on Human Rights and UN human rights treaties had a direct impact on the drafting of the FC. Article 4 of the Brazilian FC states that Brazil governs its international relations with reference to human rights. Article 5 refers to gender equality and the inviolability of the right to life, liberty, equality to security and property. There is also an express mention of the prohibition of torture and cruel punishment; the prohibition of arbitrary imprisonment and the presumption of innocence.

Another important point is that the FC in article 6 declares that education, health, food, work, housing, transportation, leisure, security, social security, maternity and child protection, assistance to the helpless are social rights and also has a chapter on Social Security. The Constitution also expressly provides for workers' rights, including vacation and rest (in article 7). Other impacts can be mentioned, as Piovesan (2012) pointed out, namely, (a) the right of every person to an adequate standard of living; (b) the prohibition of any propaganda in favour of war and prohibition of any apology for national, racial or religious hatred; (c) the right of ethnic, religious or linguistic minorities to have their own cultural lives, to profess and practise their own religion and to use their own language; (d) prohibition on the re-establishment of the death penalty in states that have abolished it, in accordance with article 4(3) of the American Convention; (e) the possibility for states to adopt measures in the social, economic and cultural spheres that ensure the protection of certain racial groups; (f) the possibility for states to adopt temporary and special measures aimed at accelerating *de facto* equality between men and women; (g) prohibition on the use of means to hinder communication and the circulation of ideas and opinions; (h) the right to a double degree of jurisdiction as a minimum judicial guarantee; (i) the right of the accused to be heard; (j) the right of every detained person to be tried within a reasonable time or to be released, without prejudice to the continuation of the process; and (k) the prohibition on extradition or expulsion of a person to another state when there are well-founded reasons that can be subjected to torture or other cruel, inhuman or degrading treatment. 'It should be noted that this list is

not exhaustive, but aimed to exemplify rights that are enshrined in the international agreements ratified by Brazil and incorporated into the Brazilian domestic legal order.<sup>39</sup>

In case of conflict between international law and domestic law, the STF has held that the human dignity principle had primacy. Since 2004, human rights norms with constitutional status, as provided for in article 5 of FC and mentioned above, have a prevalence of human rights over domestic law as a constitutional norm. If the human rights treaty did not meet that threshold, it still has prevalence over domestic law but not from constitution norms.

## 5 Impact of the Different UN Human Rights Treaties on the Domestic Level in Brazil

### 5.1 *International Convention on the Elimination of All Forms of Racial Discrimination*

#### 5.1.1 Incorporation and Reliance by Legislature and Executive

Brazil ratified CERD on 27 March 1968 and it was incorporated into domestic law by Decree 65,810 of 8 December 1969, which in its headnote explicitly refers to the promulgation of CERD. In 2002 Brazil accepted CERD's individual complaints procedure under article 14 of CERD.

There has been significant growth in national legal rules involving the fight against racial discrimination. The first law that sought to combat racial discrimination was Law 1.390 of 1951 known as the Afonso Arinos Act, which typified as racism discrimination by public or private entities against people on grounds of colour or race. However, such behaviour was classified only as a 'minor offensive potential offence'. Subsequently, in 1989, Law 7716 was promulgated, characterising as a criminal offence the kind of conduct that blocks access to services, positions and jobs on grounds of race or colour prejudice. In 1997 Law 7716/89 was partially modified by Law 9459/97, which includes new categories of criminal offences. The most expressive rule against any kind of discrimination and, consequently, against racial discrimination, in Brazil is the 1988 FC. In article 5, items XLI and XLII, the FC establishes that 'the law shall punish any discriminatory discrimination against the rights and fundamental freedoms', and that 'the practice of racism constitutes an unreliable and imprescriptible crime, subject to the penalty of imprisonment under the law'.

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39 Flávia Piovesan, *Temas de Direitos Humanos* (São Paulo: Saraiva, 2012), p. 40.



Thus, racism had its status as a mere 'criminal misdemeanour' turned into a serious crime.

The Brazilian legislature has directly relied on CERD in numerous legislative proposals. A search of the database of Brazil's House of Representatives shows at least 50 explicit mentions of CERD in legislative proposals.<sup>40</sup> The vast majority of these mentions are from the 2000s onwards despite the fact that Brazil ratified CERD during the military dictatorship in 1969, showing that the impact of UN human rights treaties has occurred primarily after the democratisation from the mid-1980s in Brazil. In order to illustrate this impact, it is possible to cite two concrete examples: (i) in 2003 CERD was cited in a parliamentary inquiry proposing to the executive to establish race-based affirmative action programmes for public service;<sup>41</sup> (ii) in 2004, citing Brazil's obligations under CERD, the executive branch presented a legislative Bill for racial quotas in federal universities.<sup>42</sup>

Brazil has several public policies seeking to tackle racial discrimination, such as (i) the enactment of Law 12.711/2012, known as the Quota Law, in an attempt to repair history and to respond to the provisions of article 2(2) of CERD, which established affirmative action programmes at federal universities based on race and ethnicity;<sup>43</sup> (ii) the enactment of the Statute of Racial Equality (Law 12.288/2010) which details the rights of black people in Brazil and explicitly mentions CERD in its article 38, as follows: 'The implementation of policies aimed at the inclusion of the black population in the labour market will be the responsibility of the public power, observing ... the commitments assumed by Brazil when ratifying the 1965 International Convention on the Elimination of All Forms of Racial Discrimination.' At the executive level, Brazil counted with a Special Secretariat for Policies Promoting Racial Equality between 2003 and 2015 at the President's Office.<sup>44</sup>

40 A search was conducted on the website of the Brazil's House of Representatives (Câmara dos Deputados) <<https://www.camara.leg.br/busca-portal?contextoBusca=BuscaProposicoes&pagina=1&order=relevancia&abaEspecificas=true&q=%22Convenção%20Internacional%20sobre%20a%20Eliminação%20de%20todas%20as%20Formas%20de%20Discriminação%20Racial%22>> accessed 20 June 2020.

41 Brazil's House of Representatives, INC 721/2003 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=124916>> accessed 20 June 2020.

42 Brazil's House of Representatives, PL 3627/2004 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=254614>> accessed 20 June 2020.

43 Brazil, Law 12.711, 29 August 2012 <[http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2012/lei/l12711.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2012/lei/l12711.htm)> accessed 20 June 2020.

44 Brazil, Law 10.678, 23 May 2003 <[http://www.planalto.gov.br/ccivil\\_03/LEIS/2003/L10.678.htm](http://www.planalto.gov.br/ccivil_03/LEIS/2003/L10.678.htm)> accessed 20 June 2020.

### 5.1.2 Reliance by Judiciary

The most relevant impact of CERD in the Brazilian legal system has been in the paradigmatic case from 2012,<sup>45</sup> in which Brazil's Federal Supreme Court (STF) confirmed that affirmative actions involving racial quotas in universities are constitutional. The reference to CERD by the STF was replayed later in another case,<sup>46</sup> which confirmed the validity of the public university quota system mentioned above. The concept of discrimination outlined in CERD was key to the findings of the Court in favour of affirmative action programmes, and it was cited extensively.

CERD has been very present in Brazilian jurisprudence, especially in the judgments of the Superior Court of Justice (STJ), another higher court in Brazil responsible for the interpretation of federal law (including international treaties). Looking at the jurisprudence of the STJ, the Convention was mentioned in 115 individual decisions,<sup>47</sup> and in eight judgments as a legislative reference.<sup>48</sup> In these, treaties are always mentioned along with the existing Brazilian legislation on the subject, to emphasise how the domestic norms are in conformity with the international treaties. The substantive issues in respect of which the treaties are mentioned are diverse, ranging from cases of racial injury committed on the internet to cases that question whether the federal court is competent to prosecute racist crimes provided for under CERD.<sup>49</sup>

### 5.1.3 Impact on and through Independent State Institutions

Regarding the impact of CERD on independent state institutions, the promotion of accessibility policies can be mentioned, such as that carried out by the Secretariat of Higher Education, in 2005, which deals with

45 STF, ADPF 186 – Presiding Judge: Ricardo Lewandowski – 04/28/2012 <<https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=6984693>> accessed 13 November 2023.

46 STF – RE 597285 – Presiding Judge: Edson Fachin: 05/09/2012 <<http://portal.stf.jus.br/processos/downloadPeca.asp?id=207767406&ext=.pdf>> accessed 20 June 2020.

47 An individual decision consists of a decision rendered by a single magistrate, from any instance or court.

48 Research conducted in July 2020.

49 STJ – 3ª seção – CC 146983/RJ – Rel. Min. Feliz Fischer – Publicação: 29/06/2017. [Superior Court of Justice. Conflict of Competence 14683/ Rio de Janeiro. Presiding Judge: Feliz Fischer. Published: 29/06/2017].

opening up possibilities for quota holders in the Afro-Attitude Programme.<sup>50</sup> The programme aims to offer opportunities for black students to participate in research, community initiatives and monitoring projects developed by professors and students from participating universities. In 2014 the Public Defenders' Office of the State of São Paulo created quotas for black people in the public selection for Defender of the State (public lawyer).<sup>51</sup> In this context, in 2015, quotas for the magistracy vacancies had been created, based on a dossier on the racial inequality in the judiciary power made by the National Council of Justice (CNJ).<sup>52</sup>

#### 5.1.4 Impact on and through Non-state Actors

The impact through non-state actors is focused on projects to fight against racial inequalities. The Black Women Health Project launched a manual about the Convention,<sup>53</sup> which underscores the importance of CERD in the action against racism, as well as the rights contained in the text and the duties of the state parties. Specifically, the manual, which was drafted in partnership between Conectas Human Rights and the Geledes Black Women Institute, looks closely at the issue of black women's health rights in light of the Convention. NGOs also conducted campaigns to publicise the Convention.<sup>54</sup> These campaigns were essential for the promotion of public policies by state institutions.<sup>55</sup> One of the greatest responses to the adherence by Brazil to CERD has taken the form of dissemination and the promotion of meetings allowing for debates on the themes.

50 Brasil, Ministério da Educação Programa Afro-atitude abre oportunidades para cotistas, 2005 <<http://portal.mec.gov.br/ultimas-noticias/213-1762821894/2383-sp-392224435>> accessed 9 September 2023.

51 Geledes, 'Ações afirmativas deixarão Defensoria Pública mais democrática' Geledes, 2014 <<https://www.geledes.org.br/acoes-afirmativas-deixarao-defensoria-publica-mais-democratica/>> accessed 20 July 2020.

52 Conectas. Dossiê: Desigualdade no sistema de justiça. Conectas, 2015 <<https://www.conectas.org/noticias/dossie-desigualdade-no-sistema-de-justica>> accessed 20 July 2020.

53 Geledes, Projeto Saúde da Mulher Negra Lança Manual sobre Projeto de Convenção Contra o Racismo. Geledes, 2009 <<https://www.geledes.org.br/projeto-saude-da-mulher-negra-lanca-manual-sobre-projeto-de-convencao-contra-o-racismo/>> accessed 20 June 2020.

54 UNIC Rio De Janeiro, Políticas públicas afirmativas são fundamentais para a redução da desigualdade racial, diz Sistema ONU. UNIC, 2012 <<https://unicrio.org.br/politicas-publicas-afirmativas-sao-fundamentais-para-a-reducao-da-desigualdade-racial-diz-sistema-onu/>> accessed 17 June 2020.

55 Geledés, Geledés no Monitoramento e Incidência em Políticas Públicas Geledes, 2009 <<https://www.geledes.org.br/geledes-no-monitoramento-de-politicas-publicas/>> accessed 20 June 2020.

### 5.1.5 Impact of State Reporting

Brazil has also reacted, directly and indirectly, to COs of the CERD Cttee as shown by a handful of concrete examples. In 2004 the CERD Cttee considered Brazil's 14th to 17th report. It welcomed the adoption, in 2002, of the National Affirmative Action Programme as an important mechanism to implement the Durban Declaration and Programme of Action, as well as the second National Human Rights Programme and New Civil Code.<sup>56</sup> It also identified as a positive aspect Brazil's ratification of ILO Convention 169 and reaffirmed its concern about the persistence of deep structural inequalities affecting black and mestizo communities, as well as indigenous peoples.<sup>57</sup> Besides that, the Committee demonstrated uneasiness about the increase in the number of racist organisations, such as neo-Nazi groups, and the spread of racist propaganda on the internet. In its COs in 2004 the Committee also recommended that Brazil 'clarify further the content and application of the relevant provisions of domestic law that address the existence and activity of racist organisations, as well as those that prohibit racist propaganda on the Internet'.<sup>58</sup> Citing CERD directly, a parliamentary hearing was held in 2018 to tackle the issue,<sup>59</sup> and ongoing discussions are underway in Brazil's National Congress regarding hate speech and racism. Also, in 2004 the CERD Cttee requested Brazil to 'provide statistical information on prosecutions launched, and penalties imposed, in cases of offences which relate to racist crimes, and where the relevant provisions of the existing domestic legislation have been applied'. Brazil provided at least part of the required data to the Committee (as stated in its latest report received by the Committee on 14 July 2020). The Brazilian Congress has amended anti-racism criminal legislation citing CERD as a reference. The last change in 2009 has empowered the prosecutor's office to initiate criminal proceedings on the crime of racial slur, provided the victim allows it.<sup>60</sup>

### 5.1.6 Impact of Individual Communications

No cases have been submitted to the CERD Cttee against Brazil.

56 CERD/C/64/CO/2.2.

57 *ibid.*

58 CERD/C/64/CO/2, 28 April 2004, para 19.

59 Brazil's House of Representatives, REQ 20/2018 <<https://www.camara.leg.br/proposicoes/Web/fichadetratamitacao?idProposicao=2172136V>> accessed 20 June 2020.

60 Brazil, Law 12.033, 29 September 2009 <[http://www.planalto.gov.br/ccivil\\_03/\\_Ato2007-2010/2009/Lei/L12033.htm](http://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2009/Lei/L12033.htm)> accessed 20 June 2020.

### 5.1.7 Impact of CERD Urgent Procedures

An important impact of the Committee is in the situation of the indigenous peoples of Raposa Serra do Sul in the state of Roraima, which was the object of all but one early warning communications concerning Brazil and the CERD Cttee between 2006 and 2011. During this time, civil society activists managed to obtain responses from the Brazilian government, through its Permanent Mission in Geneva, regarding the demarcation of this specific indigenous land. In parallel, Brazil's Federal Supreme Court finally decided a case in 2009 formally guaranteeing the right to land to indigenous peoples, mentioning several times in particular the UN Declaration on the Rights of Indigenous Peoples. Although the final court decision did not expressly mention the Committee, the repeated access to the early warning mechanism while the case was pending has shown coordinated tactics by civil society organisations and indigenous defenders.

This case involved the demarcation of a territory that lasted 30 years. It started in 1993, when the National Indian Foundation (FUNAI) proposed to the Ministry of Justice the recognition of the extension of 1,67 million hectares of the Raposa Serra do Sol Indigenous Territory. The violence was present throughout the process of demarcation. The year 2006 was destined for the departure of non-indigenous people from the territory, as part of the integration process. April 2006 was the deadline for non-Indians leaving from the Raposa Serra do Sol Reserve. On 25 April 2006 the Federal Police began to enter rice farmers' farms located in the so-called 'rice belt'.

Thus, in the same year, 2006, the Indigenous People Council, Indigenous Peoples Law and Policy Programme of the University of Arizona, the Rainforest Foundation and the Forest People Programme asking urgent actions from the Committee regarding the violence against peoples of Raposa do Sol (Ingarió, Macuxi, Patamona, Taurenge and Wapichana). The Committee requested more information from Brazil about the allegations.<sup>61</sup> In June, Judge Helder Girão Barreto ordered the suspension of any actions promoted by Funai and others aimed at removing rice producers from the areas they occupy in Raposa. It is in this conflicting and institutionally nebulous scenario that the Committee issued an 'early warning' to Brazil asking for clarification on the racial attacks and violence experienced by the communities in this process.

In 2009 the Federal Supreme Court finally decreed the demarcation of the land.<sup>62</sup> In the meantime, CERD issued six early

61 United nations, Early Warning Brazil Letter, 18 August 2006 <[https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Brazil\\_letter.pdf](https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Brazil_letter.pdf)> accessed 20 June 2020.

62 Federal Supreme Court (STF), Petition 3388 <<https://portal.stf.jus.br/processos/detalhe.asp?incidente=2288693>> accessed 9 September 2023.

warnings.<sup>63</sup> An early warning was issued in 2010,<sup>64</sup> alerting to the concern with the land of Raposa Serra do Sol, even after the demarcation, requesting up-to-date information and urging action to stop and prevent violence against indigenous people in the territory. Thus, only in 2011<sup>65</sup> did the Committee issue its last early warning on the Raposa Serra do Sol case, warning Brazil of its withdrawal from the urgent procedures in the Committee.

The only early warning communication that does not deal with Raposa do Sol is the latest one, from May 2019, which is related to the 'building of highways and railroads in the State of Mato Grosso, in Brazil, and its impact on Xavante and other indigenous peoples' rights'.<sup>66</sup> In particular, the Committee requested the suspension of the building of highway BR-080. Although the early warning communication is mentioned in Parliament through a request by opposition politicians to the government,<sup>67</sup> the building of the highway is underway.<sup>68</sup>

### 5.1.8 Brief Conclusion

The influence of CERD in Brazil can be traced along the axes of the country's political history. Ratified in 1969, during the military dictatorship, its effect on

63 Brazil Early Warning, 18 August 2006 <[https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Brazil\\_letter.pdf](https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Brazil_letter.pdf)> accessed 20 June 2020; Brazil Early Warning, 14 March 2007. <[https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/70\\_Letter\\_Brazil.pdf](https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/70_Letter_Brazil.pdf)> accessed 20 June 2020; Brazil Early Warning, 18 August 2006 <<https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/letterbrazil24aug07.pdf>> accessed 20 June 2020; Brazil Early Warning, 7 March 2008 <<https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Brazil070308.pdf>> accessed 20 June 2020; Brazil Early Warning, 15 August 2008 <<https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Brazil070308.pdf>> accessed 20 June 2020; Brazil Early Warning, 28 September 2009 <<https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Brazil28092009.pdf>> accessed 20 June 2020.

64 Brazil Early Warning, 30 May 2010 <<https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Brazil31052010.pdf>> accessed 20 June 2020.

65 Brazil Early Warning, 11 March 2011 <[https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Brazil\\_11March2011.pdf](https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Brazil_11March2011.pdf)> accessed 20 June 2020.

66 CERD/EWUAP/ 98th session/Brazil/JP/ks, 10 May 2019 <[https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/BRA/INT\\_CERD\\_ALE\\_BRA\\_8925\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/BRA/INT_CERD_ALE_BRA_8925_E.pdf)> accessed 20 June 2020.

67 Brazil's Congress House, RIC 686/2019 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2206526>> accessed 14 September 2020.

68 Agência Brasil, Ministério-da-infraestrutura-e-df-avancam-na-reforma-da-rodovia-br-080. Agência Brasil, 2020 <<https://agenciabrasil.ebc.com.br/geral/noticia/2020-06/ministerio-da-infraestrutura-e-df-avancam-na-reforma-da-rodovia-br-080>> accessed 20 August 2020.

Brazilian legislation became noticeable only after the promulgation of the 1988 Constitution and the return to democracy. Nevertheless, it is important to point out that the legislation on the subject is punitive and also focused on public policies. Public policies regarding the guarantee of rights have become more common since the 2000s, in particular for affirmative action. The role of civil society and organisations in the dissemination of CERD remains of paramount importance in the Brazilian context. Adherence in civil society was and is very important, acting in protection against racial violence in cases such as that of Raposa Serra do Sol land.

## 5.2 *International Covenant on Civil and Political Rights*

### 5.2.1 Incorporation and Reliance by Legislature and Executive

The Brazilian Congress approved CCPR by Legislative Decree 226 of 12 December 1991, in which it also approved the CDESCR. On 6 July 1992, by Decree 592, it published an annex to the decree promulgating CCPR in the country, establishing its execution and fulfillment entirely as contained therein. In 2009, through Decree 311,<sup>69</sup> Brazil approved OP1-CCPR and OP2-CCPR, while expressing a reservation to article 2 of the latter. Even though it was approved it has not yet been promulgated.<sup>70</sup> In 1996 the National Human Rights Programme was launched by Decree 1904. Decree 4229/2012 brought into being National Human Rights Programme 11. These initiatives enabled Brazilian regional governments to develop human rights plans. Many other public policies were created in Brazil, indirectly mentioning CCPR.

The Brazilian legislature has directly relied extensively on CCPR in legislative proposals. A search conducted in September of 2023 in the database of Brazil's House of Representatives showed at least 169 explicit references<sup>71</sup> to CCPR in legislative proposals, the vast majority of them from the 2000s onwards. Brazil ratified CCPR in 1992, shortly after the promulgation of the FC in 1988, illustrating that the impact of UN human rights treaties has occurred

69 Brazil's House of Representatives, Decreto Legislativo 311 <<https://www2.camara.leg.br/legin/fed/declleg/2009/decretolegislativo-311-16-junho-2009-588912-publicacaooriginal-13605-pl.html>> accessed 20 June 2020.

70 In Brazilian law, for a treaty to be "legal" it must be promulgated in addition to ratification. Enactment is an act done by the president of the republic and stands for the approval of its incorporation into the internal regulations, in this way, the treaty can only be "enforceable" if it is promulgated and published.

71 Search was conducted on the website of the Brazil's House of Representatives (Câmara dos Deputados) <<https://www.camara.leg.br/busca-portal?contextoBusca=BuscaProposicoes&pagina=1&order=data&abaEspecificas=true&q=%22Pacto%20Internacional%20sobre%20Direitos%20Civis%20e%20Pol%C3%ADticos%22>> accessed 9 September 2023.

primarily after the democratisation from the mid-1980s onwards. In order to illustrate this impact, two examples are cited: (i) In 2015, CCPR was cited in a legislative Bill to guarantee fundamental rights in the context of sexual health and reproductive rights;<sup>72</sup> and (ii) in 2015, citing directly Brazil's obligations under CCPR, the legislative branch presented a Bill to establish the duty to a custody hearing within 24 hours after arrest,<sup>73</sup> which was in line with recommendations by the UN Special Rapporteur against Torture.<sup>74</sup>

There were often setbacks or negative impacts, at least indirectly, from the UN Human Rights Committee (HRCtee) COs. In 2015 the HRCtee<sup>75</sup> concluded that the 'state party should ensure that the military police are subject to the institutions and procedures of judicial and civilian accountability. The ordinary courts should have criminal jurisdiction over all serious human rights violations committed by the military police, including excessive use of force and manslaughter, as well as intentional murder.' Previously, in 1996, Law 9299/96 transferred judicial authority over intentional crimes against human life committed by military police officers from military justice to common justice, thereby eliminating the privileged forum that previously shielded military police officers responsible for civilian deaths. In 1997, Law 9455, which defines the crimes of torture, in accordance with CCPR in article 7, was adopted. Yet, in 2017 Brazil enacted Law 13.491/2017 stipulating as follows: 'The crimes, when committed with intention against life and by military personnel in the Armed Forces against civilians, will be the responsibility of the Military Justice.'<sup>76</sup> The problem is that in Brazil part of the police belongs to the armed forces, thus there are cases of police misconduct tried by military courts.

### 5.2.2 Reliance by Judiciary

The STF on 9 September 2015<sup>77</sup> granted a precautionary measure to determine that judges and courts allow, within 90 days, the holding of custody hearings throughout the country, allowing prisoners to be presented to the judicial

72 Brazil's House of Representatives, PL 882/2015 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=1050889>> accessed 20 June 2020.

73 Brazil's House of Representatives, PL 470/2015 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=949101>> accessed 20 June 2020.

74 For more, see <<https://www.cnj.jus.br/onu-audiencias-de-custodia-sao-importantes-contraprisao-arbitraria/>> accessed 20 June 2020.

75 Formore, see <<https://www.cnj.jus.br/onu-audiencias-de-custodia-sao-importantes-contraprisao-arbitraria/>> accessed 9 September 2023.

76 For more, see <[http://www.planalto.gov.br/ccivil\\_03/\\_Ato2015-2018/2017/Lei/L13491.htm](http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2017/Lei/L13491.htm)> accessed 20 June 2020.

77 In the records of ADPF # (Arrangement for Breach of Non-Compliance) No 347.



authority within 24 hours: 'Judges and courts, subject to articles 9(3) of CCPR and 7(5) of the American Convention on Human Rights, are required to hold custody hearings within ninety days, enabling the prisoner to appear before the judicial authority within maximum of 24 hours from the time of arrest.' When it decided that the accused has the right to attend, to assist and to witness, under penalty of absolute nullity, the procedural acts, notably those that take place during the investigation phase of the criminal procedure, in 2012, the STF mentioned article 14(3)(d) of CCPR.<sup>78</sup>

In 2014 the STF awarded compensations for moral damage as a result of torture during the military regime and highlighted that Brazil is a state party to CCPR, 'incorporated into the legal system by Legislative Decree 226/1991, promulgated by Decree 592/1992, which guarantees that no one will be subjected to torture or cruel, inhuman or degrading treatment or punishment, and provides for judicial protection in cases of human rights violations'. A decision then was issued in accordance with the Covenant.<sup>79</sup> As a last example, the Federal Supreme Court decided, in 2005, that an accused has the right to be present in criminal hearings concerning his case, based on article 14(3)(d) of CCPR.<sup>80</sup>

### 5.2.3 Impact on and through Independent State Institutions

A key impact of CCPR in Brazil is the establishment of a Police Ombudsman's Office in several states in Brazil to act independently and receive complaints involving crimes and misconduct of police officers. In its COs in 2005, the HRCttee recognised the efforts of Brazil in this regard.<sup>81</sup> For instance, the state of Rio de Janeiro, the Police Ombudsman's Office was established in 1999,<sup>82</sup> and in Bahia state, the Civil Police Ombudsman's Office was created in 2018.<sup>83</sup>

78 Federal Supreme Court Habeas Corpus 98.676 judgment 7 February 2012 art 14(3)(d).

79 Federal Supreme Court Resource: RE-Agr-715.268. For more access <<https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=5930743>> accessed 9 September 2023.

80 Federal Supreme Court Habeas Corpus 73.510. To know more, <<https://portal.stf.jus.br/processos/detalhe.asp?incidente=1631838>> accessed 9 September 2023.

81 UN Human Rights Committee, COs of the Human Rights Committee, CCPR/C/BRA/CO/2 1 December 2005, para. 4.

82 Brazil Law 3.168/1999 <<http://alerjln1.alerj.rj.gov.br/contlei.nsf/c8aa0900025feef6032564ec006odfff/4504b22c29a5778e032566f900790c88?OpenDocument>> accessed 9 September 2023.

83 Governo Do Estado Da Bahia. Polícia Civil. Ouvidoria da Polícia civil <<http://www.policiacivil.ba.gov.br/modules/conteudo/conteudo.php?conteudo=41>> accessed 9 September 2023.

#### 5.2.4 Impact on and through Non-state Actors

As for the adherence by organisations and non-state actors, there is mainly the complaint of non-compliance with the rules stipulated in the Convention: for example, Human Rights Watch in the article 'Brazil: Mothers arrested despite legal ban' about the imprisonment of mothers.<sup>84</sup> In the same way, specialists from the UN and the Inter-American Commission on Human Rights demanded that the São Paulo government review its newly-created legislation that hardens the rules for protests in the state.<sup>85</sup> Other mentions can be found in legal articles that aim, for the most part, to highlight the context of CCPR and its implications for lawyers' day-to-day functioning. An interesting analysis is the one presented by Criminal Justice Network,<sup>86</sup> which launched a note and criticised the processing of a Bill that defines terrorism. There are also guides to practical actions towards the Convention: Guide to Training in Special Testimony of Children and Adolescents;<sup>87</sup> Guide to Evaluation Impact on Human Rights what Companies should do to Respect the Rights of Children and Adolescents. It is also possible to observe an adherence of the Convention in academic studies.<sup>88</sup> A search at CAPES Periodic (Coordination for the

84 Human's Right Watch, 'Brasil: Mães presas apesar de proibição legal' (Brazil: Mothers Arrested Despite Legal Ban) <<https://www.hrw.org/pt/news/2019/05/10/brazil-mothers-risk-illegal-detention>> accessed 9 September 2023. Abstract: The law now requires house arrest rather than pre-trial detention for pregnant women, mothers of people with disabilities and mothers of children under 12, except when charged with crimes committed by violence or serious threat, or crimes against their dependents. However, data from 2018 shows that thousands of women who apparently were entitled to these protections remained behind bars under remand. Express mention – art 9(3) of CCPR.

85 Conectas, 'ONU E OEA PEDEM QUE DÓRIA REVEJA LEI QUE LIMITA PROTESTOS EM SP – Manifestação ocorre após organizações da sociedade civil denunciarem decreto promulgado em janeiro' ('UN and OAS Ask for Dória to Review Law That Limits Protests in SP – Demonstration occurs after civil society organisations denounce decree promulgated in January') <<https://www.conectas.org/noticias/onu-e-oea-pedem-que-doria-reveja-lei-que-limita-protestos-em-sp>> accessed 20 June 2020.

86 To know more <<http://www.global.org.br/blog/rede-justica-criminal-lanca-nota-e-critica-a-tramitacao-de-projeto-de-lei-que-tipifica-terrorismo/>> accessed 20 June 2020.

87 Childhood Brasil Guia para Capacitação em Depoimento Especial de Crianças e Adolescentes 23/10/2015 – See for more <<http://www.crianca.mppr.mp.br/2015/10/12202,37/>> accessed 20 June 2020. Abstract: Guidebook for the Training of the Various Professionals Involved in Listening to Children and Teenagers Victims of Sexual Violence – *Pact Reference*: 'They are also universally protected by their civil, political, economic, social and cultural rights in international covenants on civil and political rights – the right to protective measures on the grounds that they are minors, registered at birth, of having a name, and a nationality'.

88 Search was conducted at the CAPES Periodic website: <[http://www.periodicos.capes.gov.br/index.php?option=com\\_pmetabusca&mn=88&smn=88&type=m&metalib=aHRocHM6LygybnAtcHJpbW8uaG9zdGVkLmV4bGlicmlzZ3JvdXAuY29tL3ByaW1vX2x-pYnJhcnkvbGlid2ViLzFjdGlvb9zZWYyY2guZG8/dmlkPUNBUEVTeX1Yx&Itemid=124](http://www.periodicos.capes.gov.br/index.php?option=com_pmetabusca&mn=88&smn=88&type=m&metalib=aHRocHM6LygybnAtcHJpbW8uaG9zdGVkLmV4bGlicmlzZ3JvdXAuY29tL3ByaW1vX2x-pYnJhcnkvbGlid2ViLzFjdGlvb9zZWYyY2guZG8/dmlkPUNBUEVTeX1Yx&Itemid=124)> accessed 9 September 2023.

Improvement of Higher Education Personnel) in September 2023 by subject search 'Pacto Internacional de Direitos Civis e Políticos' (CCPR) found 326 papers. CCPR also had relevance in the complaint<sup>89</sup> against the prohibition of the candidacy to the presidency of former President Lula, with, for example, reference to article 25 of the Convention. Although the HRCtee has requested Brazil to 'take all necessary measures to ensure that Lula can enjoy and exercise his political rights while in prison, as candidate in the 2018 presidential elections',<sup>90</sup> this did not materialise until after the election of former President Jair Bolsonaro.

#### 5.2.5 Impact of State Reporting

In 2005 the HRCtee examined the second report submitted by Brazil.<sup>91</sup> The Committee noted as positive aspects the campaign for civil registration of births, needed to facilitate and ensure full access to social services. It recommended that Brazil take stringent measures to eradicate extra-judicial killing, torture, and other forms of ill-treatment and abuse committed by law enforcement officials and conduct impartial investigation of human rights violations.

In its COs in 2005 the HRCtee requested the state party to 'ensure that the constitutional safeguard of federalisation of human rights crimes becomes an efficient and practical mechanism in order to ensure prompt, thorough, independent and impartial investigations and prosecution of serious human rights violations'.<sup>92</sup> The legal instrument of federalisation of severe cases of human rights violations was established in 2004 through Constitutional Amendment 45. Three cases were federalised so far by decisions of the Superior Court of Justice. The first of these, granted in 2010, refers to the killing of the human rights defender Manoel Mattos in 2009, who fought against death squads in the North-East.<sup>93</sup>

89 PARTIDO DOS TRABALHADORES, Defesa alerta ONU sobre restrições à campanha de Lula, 2018 <<https://pt.org.br/defesa-alerta-onu-sobre-restricoes-a-campanha-de-lula/>> accessed 20 June 2020.

90 Reuters. Brazil's Lula should have political rights: UN Human Rights Committee <<https://www.reuters.com/article/us-brazil-election-lula-idUSKBN1L2L11>> accessed 13 November 2023.

91 CCPR/C/BRA/CO/2.

92 UN HRCtee, COs of the Human Rights Committee, CCPR/C/BRA/CO/2 1 December 2005, para. 13.

93 CONSULTOR JURÍDICO. Caso Manoel Mattos será julgado pela Justiça Federal. Conjur, 28 de outubro de 2010 <<https://www.conjur.com.br/2010-out-28/manuel-mattos-feder-alizado-grave-violacao-direitos-humanos>> accessed 20 June 2020.

Brazil has participated in the Follow-Up Procedure of the UN Human Rights Committee. On 18 April 2008 Brazil presented a follow-up report on the 2005 COs of the HRCtee.<sup>94</sup> Brazil listed developments on demarcation of indigenous lands, on police violence, on the rights of people deprived of liberty and, finally, on the accountability for the crimes committed under the military dictatorship. One example of impact cited by Brazil in the follow-up report mentions increasing the number of vacancies in the prison system and improving state penal establishment facilities as a way to meet the Concluding Observation related to the improvement of prison conditions. Yet, this might be highly problematic to be counted as a human rights development considering the country's mass incarceration levels. The Committee requested the state party to provide information on the other recommendations made and on the Covenant as a whole in its next report, which was due by 31 October 2009. However, Brazil only submitted its report on 3 June 2020.

#### 5.2.6 Impact of Individual Communications

No complaints under OP1-CCPR have been submitted against Brazil.

#### 5.2.7 Brief Conclusion

CCPR is perhaps one of the treaties with the most diffuse implications in the country. It has an important role in promoting various civil rights and on various topics, in particular taking into consideration the massive challenges in Brazil regarding issues such as the demarcation of indigenous lands, access to justice, mass incarceration and police violence. The impact of CCPR in the country is considerable, in particular in terms of legislative and judicial impact. Also, the executive engages with the HRCtee, despite the delays in state reporting.

### 5.3 *International Covenant on Economic, Social and Cultural Rights*

#### 5.3.1 Incorporation and Reliance by Legislature and Executive

Brazil ratified CESCR on 24 January 1992 by means of an accession letter. Its text was approved by the National Congress through Legislative Decree 226 of 12 December 1991. The Covenant entered into force on 24 April 1992. On 6 July 1992 the President, through Decree 591,<sup>95</sup> published an annex to the Decree promulgating the Covenant in the country. Regarding OP-CESCR, which came

94 CCPR/C/BRA/CO/2/Add.1.

95 Decree 591/1992. To know more <[http://www.planalto.gov.br/ccivil\\_03/decreto/1990-1994/d0591.htm](http://www.planalto.gov.br/ccivil_03/decreto/1990-1994/d0591.htm)> accessed 20 June 2020.

into effect on 5 May 2013, internal procedures are ongoing, the reason why it has neither been signed nor ratified.

In assessing the legislative impact of CDESCR in Brazil, the Brazilian legislature has directly relied on CDESCR in various legislative proposals. A search conducted in September of 2023 on the database of Brazil's House of Representatives reveals at least 110 instances in which CDESCR is explicitly mentioned in legislative proposals,<sup>96</sup> the vast majority of these from the 2010s onwards. The following two concrete examples are provided: (i) in 2019 CDESCR was cited in a constitutional amendment proposal suggesting that access to drinking water should be included as a social right;<sup>97</sup> (ii) in 2014, citing directly Brazil's obligations under CDESCR, the executive branch presented a legislative Bill for free transport to students.<sup>98</sup>

CDESCR establishes, in articles 6 and 7, the right for just and favourable work. In this sense, regarding the issue of employment, it is important to point out that since 1943 Brazil has had specific legislation in place to protect workers, the CLT (Consolidation of Labour Laws). However, in recent years the Brazilian Congress House increased flexibility of labour laws through pension reform and labour law reform.<sup>99</sup> Shortly after the promulgation of CDESCR in Brazil, Law 8.900/94 was adopted to ensure the guarantee for unemployment benefits. However, this Law was revoked in 2015 by Law 13.134. The rights of domestic employees were regulated by Law 5.859/1972. In 2001, after CDESCR, Law 10.208 provided access to the Employee's Severance Guarantee (FGTS) and unemployment insurance. It took until 2015 with Complementary Law 150,<sup>100</sup> known as Domestic Employees Law, to ensure new rights for workers in this category, such as mandatory FGTS, night allowance, unemployment insurance and family allowance.

The first decade of 2000 was a decade in which the idea was to foster demand for consumption for the large portions of the population, which until then were excluded from the consumption of goods and services due to insufficient income. A series of legislative and executive initiatives were enacted over

96 Search was conducted on the website of the Brazil's House of Representatives (Câmara dos Deputados) <<https://www.camara.leg.br/busca-portal?contextoBusca=BuscaProposicoes&pagina=1&order=data&abaEspecificas=true&q=%22Pacto%20Internacional%20sobre%20Direitos%20Econ%C3%B4micos,%20Sociais%20e%20Culturais%22>> accessed 9 September 2023.

97 Brazil's House of Representatives, PEC 232/2019 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2234674>> accessed 20 June 2020.

98 Brazil's House of Representatives, PL 7952/2014 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=622275>> accessed 20 June 2020.

99 Law 13467 of 2017 and Law 13.954 of 2019.

100 Brazil, Law No 150, 1 July 2015 <[https://www.planalto.gov.br/ccivil\\_03/leis/lcp/lcp150.htm](https://www.planalto.gov.br/ccivil_03/leis/lcp/lcp150.htm)> accessed 20 June 2020.

the last 20 years in Brazil to foster economic and social rights, such as the Fome Zero (Zero Hunger) Programme, created in 2003, to fight against famine; the Luz para Todos (Light for Everyone) Programme created in November 2003, to bring electricity to 10 million Brazilians living in rural areas by 2008; and Law 10,836, of 2004, which created the famous Bolsa Família (Family Allowance) programme, a cash transfer programme for poor families.<sup>101</sup>

For education (article 13 of the Convention), it is possible to mention the Brasil Alfabetizado (Literate Brazil) Programme, created in 2003, aimed at the literacy of young people, adults and older persons. The Universidade Para Todos (University for Everyone Programme), created in 2004, aimed at providing low-income youth with access to higher education, through the granting of full or partial scholarships. Finally, Decree 6,096, 2007 institutes the programme to Support Federal University Restructuring and Expansion Plans for Expansion of Federal Universities in the country and the Student Financing Fund Programme, which is a programme of the Ministry of Education aimed at financing undergraduate education for students enrolled in non-free higher education courses at the form of Law 10.260/2001.

Soon after that, from 2015, a series of discussions on the social crisis began, which led to the impeachment of former President Dilma Rousseff. In this scenario labour rights were affected, with an austerity measure for spending ceiling in 2016, by Constitutional Amendment 95.<sup>102</sup> This ceiling limits spending by the federal government on social issues for 20 years, impacting on socio-economic rights. In 2018 a group of UN experts warned that Brazil's austerity policies are harming social rights as child mortality increased.<sup>103</sup> Such policies remain in place, although, with the new government, they are linked to the country's revenue growth - that is, it have been made more flexible through Complementary Law 200/2023.<sup>104</sup>

101 CAMPOS, André Gambier. BREVE HISTÓRICO DAS MUDANÇAS NA REGULAÇÃO DO TRABALHO NO BRASIL. Texto para discussão / Instituto de Pesquisa Econômica Aplicada.- Brasília: Rio de Janeiro: Ipea, 2015 <[http://repositorio.ipea.gov.br/bitstream/11058/3513/1/td\\_2024.pdf](http://repositorio.ipea.gov.br/bitstream/11058/3513/1/td_2024.pdf)> accessed 20 June 2020.

102 'Brazil Passes the Mother of All Austerity Plans' *The Washington Post* (2016) <<https://www.washingtonpost.com/news/worldviews/wp/2016/12/16/brazil-passes-the-mother-of-all-austerity-plans/>> accessed 20 June 2020.

103 United Nations, Human Rights Office of the High Commission, 'Brazil Must Put Human Rights Before Austerity, Warn UN Experts as Child Mortality Rises' <<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23426&LangID=E>> accessed 20 June 2020.

104 National Congress. "Novo Arcabouço Fiscal entra em vigência no Brasil". <<https://www12.senado.leg.br/noticias/materias/2023/08/31/novo-arcabouco-fiscal-entra-em-vigencia-no-brasil>> accessed 9 September 2023.

### 5.3.2 Reliance by Judiciary

The Brazilian Superior Court of Justice referenced CDESCR in four judgments.<sup>105</sup> To cite an example of positive impact: in a class action,<sup>106</sup> the Public Defender mentioned article 13 of CDESCR to guarantee the right of a student to university transfer. At the Public Civil Action 1.573.573<sup>107</sup> the plaintiff aimed to oblige the educational institution to allow candidates who did not fulfill the requirements of the quota system to still be part of the selection for general vacancies. The Court maintained the sentence that admitted the claim in order to recognise the right to education by expressly mentioning article 13 of the Covenant.

The STF directly mentioned CDESCR in Injunction 20-4/1994,<sup>108</sup> guaranteeing the right of public servants to strike. Here, the STF referred to articles 8(c) and (d) of CDESCR – concerning the right of trade unions and the right to strike – in order to rule that, although striking is a right, exemptions can apply when it comes to public servants such as limitations ‘prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others’ (CDESCR, article 8(c), cited in the case).

### 5.3.3 Impact on and through Independent State Institutions

The creation of the Special Secretariat for Policies for the Promotion of Racial Equality, in March 2003, was decisive to speed up the regularisation of *quilom-bola* lands, as the issue received specific appropriations in the 2004-2007 Multiannual Plan and became the subject of wide debate with civil society. Also, the three Special Secretariats under the President’s Office, endowed with ministerial status, were created in 2003: the Special Secretariat for Human Rights (SEDH); the Special Secretariat of Policies for Women (SPM); and the Special Secretariat for Policies for the Promotion of Racial Equality (SEPPIR). The institutionalisation of such official bodies came to the attention of the CDESCR Cttee several times, in particular in the state reporting process, during which Brazil argued that the institutionalisation of such bodies, which no longer enjoy ministerial status, counted as implementation of the right to equality.<sup>109</sup> These secretariats have the responsibility to coordinate executive

105 Superior Court of Justice – STJ: AgRg-REsp-1.243.163, 8 October 2011; AgInt no REsp-1.573.481, 16 April 2016; STJ APn-369, 15 August 2007; AgRg-AR-5.194, 16 September 2011.

106 Superior Court of Justice – STJ: REsp-1.264.116 – 18 October 2011.

107 Superior Court of Justice – STJ: AgInt no REsp-1.573.481-PE.

108 Federal Supreme Court – STF: Injunction No 20-4/1994. To know more <<http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=81733>> accessed 20 June 2020.

109 Economic and Social Council, Third Periodic Report Submitted by Brazil Under Articles 16 And 17 of the Covenant, due in 2014, submitted on 4 June 2020, E/C.12/BRA/3.

and legislative branches in federal, state and municipal levels in matters of gender, race and human rights.

#### 5.3.4 Impact on and through Non-state Actors

The major impact of CESCER on and through non-state actors was its use as a pressure mechanism on Brazilian politics. In 2017 civil society organisations pressured the Minister of Human Rights, Luislinda Valois, in order for Brazil to sign and ratify OP-CESCER.<sup>110</sup> Brazil has so far not ratified the individual complaints procedures of OP-CESCER.

In 2016 United Nations Special Rapporteur on extreme poverty and human rights stated that, if approved, Constitutional Amendment Bill 55, an austerity law that freezes social and economic resources, ‘clearly violates Brazil’s obligations under CESCER, which it ratified in 1992, not to take “deliberately retrogressive measures” unless there are no alternative options and full consideration has been given to ensure that the measures are necessary and proportionate.’<sup>111</sup> Unfortunately, while the impact of CESCER as a pressure mechanism can be observed in the legislative discussion of the Constitutional Amendment Bill 55, given the UN Special Rapporteur’s statement, Brazil’s National Congress nevertheless adopted the measure.

One of the main NGOs dealing with social rights, the Institute of Socio-Economic Studies (INESC), continues to use CESCER as the basis for its advocacy for the reversal of the austerity measure. In 2017 INESC released a report stating:

The signatory states of the International Covenant on Economic, Social and Cultural Rights undertake to adopt measures, mainly at the economic and technical levels, using the maximum of their available resources, which aim to ensure, progressively, by all appropriate means, the full exercise of the rights recognised in the Pact, including, in particular, the adoption of legislative measures. Brazil also fails this test, because Constitutional Amendment 95 adopts an opposite principle: the ‘minimum use of available resources’, since it puts a ceiling on social spending, but leaves financial expenses completely free. The consequence of

110 Conectas, Slow Procedure Conectas, 07/21/ 2017 <<https://www.conectas.org/en/noticias/slow-procedure/>> accessed 9 September 2023.

111 United Nations, Human Rights Office of the High Commissioner, ‘Brazil 20-year Public Expenditure Cap Will Breach Human Rights, UN Expert Warns’ OHCHR, 9 December 2016 <<https://www.ohchr.org/en/press-releases/2016/12/brazil-20-year-public-expenditure-cap-will-breach-human-rights-un-expert>> accessed 9 September 2023.



this is that the country has experienced an expressive transfer of public resources from relevant social programmes to public debt services – which means an inverse and unprecedented redistribution of public resources destined for vulnerable populations to the wealthiest.<sup>112</sup>

As mentioned above, it was only in August of 2023 that the austerity measure was made more flexible, although is still in place.

### 5.3.5 Impact of State Reporting

The reporting process to the CESCR Cttee is important for civil society organisations in Brazil. In 2000 civil society organisations prepared a comprehensive report on the compliance by Brazil of its obligations under CESCR.<sup>113</sup> The document received inputs from over 2 000 entities all over Brazil and was coordinated by the National Human Rights Movement, and the Human Rights Commission of the House of Representatives, among others. The main reason for the shadow report by civil society organisations was the fact that in 2000 Brazil had not submitted an official report to the CESCR Cttee, although it was due by 1994. The government submitted its report in August 2001. The last report submitted by Brazil to the CESCR Cttee was due in 2014, but was only submitted in June 2020.<sup>114</sup>

In its COs in respect of Brazil in 2009, the CESCR Cttee focused on challenges related to inequalities in the territory, such as imbalances in the distribution of resources and income and access to basic services in Brazil.<sup>115</sup> Specifically, in its COs in 2009, the Committee requested Brazil to ‘take all necessary measures to combat the culture of violence and impunity prevalent in the state party and to ensure the protection of human rights defenders against any violence, threats, retaliation, pressure or any arbitrary action as a consequence of their activities’.<sup>116</sup> As an example of impact, in 2016 former President Dilma Rousseff enacted Decree 8.724 establishing a national programme for the protection of

112 David Grazielle, ‘Por que revogar a Emenda Constitucional 95’ in *Outras Palavras*, 13 de dezembro de 2018 <<https://outraspalavras.net/crise-brasileira/por-que-revogar-a-emenda-constitucional-95/>> accessed 20 June 2020.

113 BRASIL. RELATÓRIO – O BRASIL E O PACTO INTERNACIONAL DE DIREITOS ECONÔMICOS, SOCIAIS E CULTURAIS <<https://www.camara.leg.br/Internet/comissao/index/perm/cdh/Pidesc%20-%20Relatório%20Final.html>> accessed 20 June 2020.

114 E/C.12/BRA/3.

115 E/C.12/1/Add.87 3.

116 E/C.12/BRA/CO/2 12 June 2009, para 8.

human rights defenders,<sup>117</sup> a programme that continues until today despite concerns about its efficacy and independence.

Also, in its COs from 2009, the CESCR Cttee recommended that Brazil take effective measures to end all forms of exploitative labour.<sup>118</sup> Two important developments happened after these COs: (i) In 2014, Constitutional Amendment 81 was adopted establishing the expropriation of properties with a situation of slave labour, including in the Constitution the following provision: 'Art 243. Rural and urban properties in any region of the country where illegal crops of psychotropic plants are located or the exploitation of slave labour in accordance with the law will be expropriated and destined to agrarian reform and popular housing programs, without any compensation to the owner and without prejudice to other sanctions provided for by law',<sup>119</sup> (ii) Brazil created a National Pact for the Eradication of Slavery in 2017, coordinating judiciary, state level governments and the federal government.<sup>120</sup> However, Brazil still faces several challenges regarding slave labour.

The CESCR Cttee urged Brazil to take all effective measures to prohibit discrimination on the basis of race, colour, ethnic origin or sex in all fields of economic, social and cultural life. In its second set of COs,<sup>121</sup> the Committee recommended that Brazil amend article 215 of the Penal Code, dealing with the concept of 'honest woman', previously applied in certain cases of sexual violence against women. The Committee stated, in line with what civil society movements were already saying, that the concept was discriminatory and asked Brazil to create coordinated public employment policies for disadvantaged groups, including indigenous peoples, Afro-Brazilians and women. All those suggestions were implemented. In addition, the CESCR Cttee requested Brazil to adopt the necessary legislative or other measures to enable the Council on the Defence of the Rights of the Human Person to fully conform to the Paris Principles.<sup>122</sup> The CESCR Cttee recommended that Brazil intensifies its efforts to reduce the persisting inequalities and social injustice between different regions, communities and individuals, and its efforts to advance the

117 BRAZIL. Decree 8724 of 2016 <[http://www.planalto.gov.br/ccivil\\_03/\\_Ato2015-2018/2016/Decreto/D8724.htm](http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2016/Decreto/D8724.htm)> accessed 20 June 2020.

118 E/C.12/BRA/CO/2 12 June 2009, para 15.

119 BRAZIL. EC 81/2014 <<https://legis.senado.leg.br/norma/540684/publicacao/15642540>> accessed 20 June 2020.

120 MINISTÉRIO DA JUSTIÇA E SEGURANÇA PÚBLICA, '*Pacto pelo fim do trabalho escravo é assinado em solenidade no CNJ*' <<https://www.justica.gov.br/news/pacto-pelo-fim-do-trabalho-escravo-e-assinado-em-solenidade-no-cnj>> accessed 20 June 2020.

121 E/C.12/BRA/CO/2 12 June 2009.

122 E/C.12/BRA/CO/2 3.

rights of children (combat children labour, and ensure that street children have access to education, shelter and health care).

### 5.3.6 Impact of Individual Communications

Brazil has not accepted OP-CESCR. Civil society organisations, including Conectas, Articulation for Monitoring Human Rights in Brazil, National Human Rights Movement (MNDH), Brazilian Human Rights and Foreign Policy Committee (CBDHPE), Institute for Development and Human Rights (IDDH) and FIAN Brasil, on 18 July 2017 sent a letter sent to the Minister of Human Rights, Luislinda Valois, calling on Brazil to sign and ratify OP-CESCR.<sup>123</sup>

### 5.3.7 Brief Conclusion

The impact of CESCR in Brazil has been substantial. This impact has been circumscribed in legal and institutional reforms. Brazil, by COs Committee, promoted some politics to extinguish inequalities in territory on the last years, namely, the Brazil Free of Homophobia Programme; the National Qualification Plan to coordinate public policies on employment for disadvantaged groups, including indigenous peoples, Afro-Brazilians and women; the National School Food Programme; compulsory licensing of HIV/AIDS anti-retroviral drugs in order to make these affordable and enable the extension of treatment to all patients; and the National Housing of Social Interest System (SNHIS).

## 5.4 *Convention on the Elimination of All Forms of Discrimination against Women*

### 5.4.1 Incorporation and Reliance by Legislature and Executive

Brazil ratified CEDAW on 1 February 1984, with reservations to article 15(4), articles 16(1)(a), (c), (g), and (h), and article 29. It was incorporated into domestic law by Decree 89,460 of 20 March 1984, which explicitly refers to the promulgation of CEDAW. This Decree was subsequently repealed and replaced by Decree 4,377 of 13 September 2002.

The FC, which was promulgated in 1988, some four year after the ratification of CEDAW, represents a national historical landmark regarding the protection of women's human rights and the recognition of their citizenship in Brazil. The FC emerged after a long process of deliberations in plenary. Demands of social movements made it possible to include the notion of equal rights from an ethnic, racial and gender perspective. Women's rights in the Constitution was the

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123 Conectas, 'Slow Procedure' Conectas (21 July 2017) <<https://www.conectas.org/en/noticias/slow-procedure/>> accessed 9 September 2023.

result of a mobilisation created by the National Women Council campaign, with the Council asking Brazilian women to send articles for the Constitution Assembly. With these proposals, the Letter of Women for the Constitution<sup>124</sup> was created, and suggestions for the text of the Constitution were collected. Suggestions included equality between men and women (article 5), maternity leave (articles 7(18) and (19)); encouraging the work of women, through protective rules (article 7(20)).

In recent years, Brazilian legislation has undergone some important changes, notably in the new content of the Civil Code of 2002, the changes in the Penal Code of 2005, as well as the advent of Law 11,340 in 2006 (Maria da Penha Law), which deals with domestic and family violence against women.

Brazil ratified two treaties that specifically address the eradication of gender inequalities: CEDAW and the Inter-American Convention to Prevent, Punish and Eradicate Violence against Women (Belém de Pará Convention).<sup>125</sup> Brazil ratified OP-CEDAW on 28 June 2002, through Decree 4,316, and without reservation.

In assessing the legislative impact of CEDAW in Brazil, the Brazilian legislature has directly relied extensively on CEDAW in legislative proposals. A search conducted in September 2023 in the database of Brazil's House of Representatives shows at least 286 explicit mentions of the CEDAW in legislative proposals,<sup>126</sup> the vast majority of them from the 2010s onwards. In order to illustrate this impact, two concrete examples are provided: (i) in 2015 CEDAW was cited in a proposed Bill suggesting the ineligibility to any political position of those convicted civilly or criminally in situations of domestic and family violence against women;<sup>127</sup> (ii) in 2018, citing Brazil's obligations under CEDAW, the legislative branch presented a Bill to make political violence against women an electoral crime.<sup>128</sup>

124 CONSTITUINTE 1987. CARTA DAS MULHERES AOS CONSTITUINTES <[https://www2.camara.leg.br/atividade-legislativa/legislacao/Constituicoes\\_Brasileiras/constituicao-cidada/a-constituente-e-as-mulheres/arquivos/Constituinte%201987-1988-Carta%20das%20Mulheres%20aos%20Constituintes.pdf](https://www2.camara.leg.br/atividade-legislativa/legislacao/Constituicoes_Brasileiras/constituicao-cidada/a-constituente-e-as-mulheres/arquivos/Constituinte%201987-1988-Carta%20das%20Mulheres%20aos%20Constituintes.pdf)> accessed 20 June 2020.

125 Belém do Pará Convention.

126 Search was conducted on the website of the Brazil's House of Representatives (Câmara dos Deputados) <<https://www.camara.leg.br/busca-portal?contextoBusca=BuscaProposicoes&pagina=1&order=data&abaEspecificas=true&q=%22Conven%C3%A7%C3%A3o%20sobre%20a%20Elimina%C3%A7%C3%A3o%20de%20Todas%20as%20Formas%20de%20Discrimina%C3%A7%C3%A3o%20contra%20a%20Mulher%22>> accessed 20 June 2020.

127 Brazil's House of Representatives, PLP 195/2015 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2055597>> accessed 20 June 2020.

128 Brazil's House of Representatives, PL 9699/2018 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2168798>> accessed 20 June 2020.

#### 5.4.2 Reliance by Judiciary

The STF made two direct references to CEDAW. The first is found in an inquiry against former President Bolsonaro, who was accused of the crimes of incitement to rape and injury.<sup>129</sup> The case against Bolsonaro was subsequently opened formally. The second is found in the collective *habeas corpus* that stipulated the replacement of pre-trial detention by domicile of female prisoners who are pregnant or mothers of children up to 12 years of age, and persons with disabilities.<sup>130</sup> CEDAW was mentioned along with other mechanisms of the legislative network for the protection of women in order to build the argument about the situation of female vulnerability in certain situations. Moreover, in analysing the jurisprudence of the STF, four other references to the Convention were found in judgments, all as a legislative reference.<sup>131</sup>

#### 5.4.3 Impact on and through Independent State Institutions

Stimulated by CEDAW and as an answer for civil society's claim, the State of São Paulo created a secretariat for the women of São Paulo. This secretariat stimulated the creation in 1985 of the National Centre for Women. After the redemocratisation, Lula's government in 2003 created the National Secretariat for Women Politics. The Secretariat is the most relevant space to observe the impact of CEDAW in independent state institutions. Between 2003 and 2015, the Secretariat had ministry status, and for this period produced recommendations to promote politics for eradicating discrimination against women and National Plans for Women whose goals was the development policies to revert racism and women discrimination in observance with international conventions and CEDAW recommendations.<sup>132</sup> CEDAW was mentioned among all objectives. In 2015 the Secretariat lost ministry status and was engulfed by the Human Rights, Racial Equality and Women Ministry.<sup>133</sup> In 2016, then President Michel Temer extinguished this ministry and the National

129 STF, INQUÉRITO 3.932 21/06/2016 <<https://portal.stf.jus.br/processos/detalhe.asp?incidente=4689051>> accessed 13 November 2023.

130 STF, HABEAS CORPUS 143.641 SÃO PAULO <<https://portal.stf.jus.br/processos/detalhe.asp?incidente=5183497>> accessed 13 November 2023.

131 By direct references we mean that CEDAW was used as the main legal basis. In the other decisions, this Conference does not occupy the place of the main legal basis, but is cited, throughout the arguments of the decision, by the Federal Supreme Court.

132 See II PLANO NACIONAL PARA MULHERES [Second National Plan to Women – Portuguese version] <[http://portal.mec.gov.br/dmdocuments/planonacional\\_politicamulheres.pdf](http://portal.mec.gov.br/dmdocuments/planonacional_politicamulheres.pdf)> accessed 9 September 2023.

133 The justification was the need for administrative reform to overcome the economic crisis. See <<https://g1.globo.com/politica/noticia/2015/10/dilma-anuncia-reducao-de-39-pa-ra-31-pastas-na-reforma-ministerial.html>> accessed 9 September 2023.

Secretary for Women went to the Justice Ministry. After Bolsonaro's election, the Secretariat went to the Human Rights, Family and Women Ministry and CEDAW was not directly mentioned. In 2023, the Ministry of Women returned was revived as an independent body, with Decree No. 11,351/2023 providing for its organizational structure, which has a National Secretariat for Institutional Articulation, Thematic Actions and Political Participation.<sup>134</sup>

#### 5.4.4 Impact on and through Non-state Actors

The impact of CEDAW on and through non-state bodies in Brazil is significant, especially in the case of feminist NGOs and non-state actors. The work of NGOs related to the implementation of CEDAW has been to elaborate alternative reports on the status of effective implementation of the Convention in Brazil, which are also sent to the CEDAW Cttee. As many as 51 non-state feminist actors participated in the ten alternative reports on the CEDAW website, indicating the extent of social mobilisation around CEDAW in Brazil.

Regarding the impact of CEDAW on the academy, when analysing publications in mechanisms such as SciELO and Google Scholar, several mentions to CEDAW were found and in formats mainly of academic articles or coursework. The analysis, for the most part, is limited to the impact of CEDAW in Brazil from observing the various scopes of women's lives that should be impacted by the Convention (such as the labour market and access to education).

#### 5.4.5 Impact of State Reporting

Brazil's first report submission was only in 2002. The CEDAW Cttee COs, covering reporting cycle I-V, recommended an upgrade in the database of women violence. As a response, Brazil presented the description and data of race, age and ethnicity data programmes.<sup>135</sup> The second report was in 2007,<sup>136</sup> covering reporting cycle VI.<sup>137</sup> In addition to the fight against gender violence, this report showed its enforcement in legislative procedure 'a landmark achievement since publication of Brazil's sixth report had been the passage of the 'Maria da Penha Law on domestic and family violence, which had created special courts to hear domestic violence cases, stiffened the penalties for perpetrators and established protective measures for victims'. The report also

134 Ministry of Women website <<https://www.gov.br/mulheres/pt-br>> accessed 9 September 2023.

135 CEDAW/C/BRA/1-5.

136 Committee on the Elimination of Discrimination against Women 39th session Summary Record of the 795th meeting (Chamber B) held at Headquarters, New York, on 25 July 2007, 2.

137 *ibid.*

highlighted programmes against gender discrimination and the realisation of the first National Conference for Women Policies. In response to the CEDAW Cttee's preoccupation with the divergence between judicial procedures and treaties, the Brazilian delegation highlighted the importance of Constitutional Amendment 45, which grants functional and administrative autonomy to the State Public Defenders' Offices.

Brazil took numerous institutional and policy measures regarding the issues raised by the CEDAW Cttee, in particular by establishing a National Plan for Women and Secretariat for Women Policy, which has been the most significant influence of CEDAW in Brazil. In the last report, covering reporting cycle VII, the main goal of the country was the consolidation of the national policy for women. This policy included

[o]n one hand, the construction of the Multi-Annual Plan 2012–2015, a government planning tool that sets guidelines, goals and objectives in order to facilitate the implementation and management of public policies, guide the setting of priorities and assist in promoting sustainable development. On the other, the organization of the 3rd National Conference for Women Policies, which evaluated and redefined the priorities of the second National Plan for Women for the next period.<sup>138</sup>

Also, the Multi-Annual Plan 2012–2015 has had directive guidelines for 'human rights guarantee with the reduction of gender, ethno-racial, regional and social inequalities'. It is important to highlight that the second National Plan for Women Policies was used as a basis document by the Ministry of Planning, which led to the process of drafting the Multi Annual Plan.<sup>139</sup>

Following this, an alternative report to the Brazilian report 2006–2009 was produced, 'a contribution of the feminist and women's movement to support the CEDAW Cttee in its analysis and comments on the official report sent by the Brazilian State in 2010, and ensure appropriate and effective accomplishment of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)'.<sup>140</sup> This alternative report focuses on articles 1 and

138 51st session of the Committee on the Elimination of Discrimination against Women Geneva, 13 February to 2 March 2012. VII PRESENTATION OF BRAZILIAN NATIONAL REPORT TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN 4.

139 *ibid.*

140 Alternative Report Seventh Periodic Report of Brazil (CEDAW/C/BRA/7), Committee on the Elimination of All Forms of Discrimination Against Women, CEDAW, 51st session 2.

2 (discrimination); 5 (violence, trafficking and sexual exploitation)' 7 and 10 (education); and 12 (sexual and reproductive health, abortion and HIV/AIDS).

Additionally, Brazil participated in the follow-up procedure of the CEDAW Cttee in February 2014,<sup>141</sup> presenting a lengthy report on the impact of COs. It is important to highlight that NGOs also presented alternative reports for the follow-up procedure, namely, CEDAW Watch Brazil and the Centre for Reproductive Rights, which shows the importance of the procedure for Brazilian civil society. In its reply to Brazil, the Rapporteur for Follow-up on COs of the CEDAW Cttee, the Committee concluded that Brazil had implemented most of the recommendations, either partially or fully. Two examples of full implementation is the establishment in 2013 of a national mechanism against human trafficking and the regional monitoring of data on collection and analysis of data on trafficking and on the exploitation of women in prostitution.

#### 5.4.6 Impact of Individual Communications

In 2008 Maria de Lourdes da Silva Pimentel submitted a communication concerning Alyne da Silva Pimentel, her daughter, who was alleged to have been a victim of a violation by Brazil of her right to life and health under articles 2 and 12 of CEDAW.<sup>142</sup> The CEDAW Cttee found a violation of article 12 (in relation to access to health), article 2(c) (in relation to access to justice) and article 2(e) (in relation Brazil's due diligence obligation to regulate the activities of private health service providers).<sup>143</sup> The CEDAW Cttee issued one recommendation specifically to Ms Da Silva Pimentel Teixeira and six general recommendations.

For the author and the family of Ms Da Silva Pimentel Teixeira, the Cttee recommended that Brazil 'provide appropriate reparation, including adequate financial compensation, to the author and to the daughter of Ms da Silva Pimentel Teixeira commensurate with the gravity of the violations against her'. Brazil paid financial reparation to Ms Da Silva Pimentel Teixeira in March 2014,<sup>144</sup> and symbolically recognised the Brazilian government's responsibilities for Alyne's death. The government, represented by its Women Secretariat, paid compensation of US \$55 000 and also, in the solemn ceremony, handed

141 CEDAW/C/BRA/CO/7/Add.1.

142 The Convention and the Optional Protocol entered into force for the state party on 2 March 1984 and 28 September 2002, respectively.

143 CEDAW/C/49/D/17/2008 21.

144 SDH, Mãe de Alyne Pimentel recebe reparação do Estado brasileiro pela morte da filha. SDH, 23 de março de 2014 <<https://www.gov.br/mdh/pt-br/sdh/noticias/2014/marco/mae-de-alyne-pimentel-recebe-reparacao-do-estado-brasileiro-pela-morte-da-filha>> accessed 20 June 2020.



a certificate to Alyne's mother acknowledging responsibility for the death and committed to undertake public policies for women's health and maternity.<sup>145</sup>

As far as general recommendations are concerned, the CEDAW Cttee issued six recommendations,<sup>146</sup> specifically focused on policies for training health professionals and ensuring adequate sanctions for health professionals who violate women's reproductive health rights. Hereafter, some federal states in Brazil incorporated legislative laws (in state and municipal levels) to protect maternity and reproductive rights, such as São Paulo through Municipal Law 15894/2013 and State Law 15759/2015. The decision also spurred an institutional response: Brazil has 'established an inter-ministerial group to oversee the implementation of the Committee's recommendations.'<sup>147</sup> Yet, the causal link between the CEDAW recommendations and those measures is not clear.

#### 5.4.7 Brief Conclusion

CEDAW and the CEDAW Cttee are very well known at the domestic level. In recent years, CEDAW was an important instrument to guide Brazilian politics for women's protection. This impact is mostly at the institutional level. The Women Secretariat, for example, was the body that represented the Brazilian government on the reparations to the *Alyne Pimentel* case. The decentralised

145 AGÊNCIA BRASIL, Governo indeniza família de grávida morta após atendimento na rede pública. Agência Brasil, 24 de março de 2014 <<https://agenciabrasil.ebc.com.br/direitos-humanos/noticia/2014-03/governo-brasileiro-indeniza-familia-de-jovem-morta-em-2002>> accessed 20 June 2020.

146 CEDAW Cttee, Communication No 17/2008. The six recommendations were the following: '(a) ensure women's right to safe motherhood and affordable access for all women to adequate emergency obstetric care, in line with General Recommendation No 24 (1999) on women and health; (b) provide adequate professional training for health workers, especially on women's reproductive health rights, including quality medical treatment during pregnancy and delivery, as well as timely emergency obstetric care; (c) ensure access to effective remedies in cases where women's reproductive health rights have been violated and provide training for the judiciary and for law enforcement personnel; (d) ensure that private healthcare facilities comply with relevant national and international standards on reproductive health care; (e) ensure that adequate sanctions are imposed on health professionals who violate women's reproductive health rights; (f) reduce preventable maternal deaths through the implementation of the National Pact for the Reduction of Maternal Mortality at state and municipal levels, including by establishing maternal mortality committees where they still do not exist, in line with the recommendations in its COs for Brazil, adopted on 15 August 2007 (CEDAW/C/BRA/CO/6)'.

147 Plataforma Brasileira de Direitos Humanos Econômicos, Sociais, Culturais e Ambientais, 'A Victory in Alyne's Case' (Media Release, 5 September 2012) as cited in Simone Cusack and Lisa Pusey, 'CEDAW and the Rights to Equality and Non-discrimination' (2013) 14 *Melbourne Journal of International Law* 54, 112.

bodies created for monitoring and guiding the gender questions in Brazil have had the most relevant impact, but this impact is largely limited to the municipal and state level.

## 5.5 *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

### 5.5.1 Incorporation and Reliance by Legislature and Executive

CAT was incorporated into domestic law by Decree 40 of 15 February 1991. One of the main efforts by the executive branch in Brazil to investigate torture was the establishment of the National Truth Commission (CNV). The CNV was established by the Brazilian government to investigate the serious human rights violations that occurred between 18 September 1946 and 5 October 1988, the period of the military dictatorship. These violations took place in Brazil and abroad, committed by Brazilian public agents, persons in their service, with the support or in the interest of the state. The Committee was made up of seven members appointed by former President Dilma Rousseff, who were assisted by advisors, consultants and researchers. Law 12,528/2011, which instituted it, was passed in 2011, and the Commission was officially installed in 2012. The CNV concentrated its efforts on examining and clarifying human rights violations committed during the latter dictatorship, especially as regards torture.

In 2006 the National Congress approved the ratification of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OP-CAT). On 26 June 2006 – International Day against the Torture – President Luiz Inácio Lula Da Silva established the National Committee for the Prevention and Control of the Torture in Brazil.<sup>148</sup> Among its duties, the Committee is takes to propose actions and programmes to combat torture. It consists of 23 members, 11 of

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<sup>148</sup> The National Committee for the Prevention and Combat of Torture (SNPCT) is one of the bodies that make up the National System for the Prevention and Combat of Torture (SNPCT). The collegiate is composed of 23 members, 11 of which are representatives of federal agencies and 12 of civil society. The initiative aims to contribute to the fight against this violation in institutions of deprivation of liberty, such as police stations, penitentiaries, places of permanence for the elderly and psychiatric hospitals. This committee was approved before the creation of the National System for the Prevention of Torture, since the National System for the Prevention and Combat of Torture (SNPCT) was established by Law No. United Nations (UN), through the ratification, in 2007, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. After creating the National System for the Prevention of Torture, it is linked to the National Committee on Prevention.

whom are representatives of federal executive branch bodies and 12 of professional class councils and civil society organisations.

In 2006,<sup>149</sup> the Commission on Human Rights and Minorities produced a report on the prison situation throughout the country, in which torture is one of the main problems identified. This Commission established an Integrated Action Plan for the Prevention and Combat of Torture that influenced state legislation such as State Management Committee for Monitoring the Implementation of the Plan of Integrated Actions for the Prevention and Combating Torture. Another important point to highlight is the omission of the Brazilian state regarding the applicability of public policies to combat torture. One of the most emblematic actions involving the National Mechanism for Prevention and Combating Torture took place in 2015, when experts delivered to the government a report denouncing the precarious conditions and the climate of tension in Compaj (Anísio Jobim Penitentiary Complex), in Manaus. In this document the experts found that the complex housed 697 prisoners more than the capacity and highlighted the fact that Compaj had agents from a private company, Umanizzare, to make the site safe. In the analysis of the agency, this resulted in deficient training, precarious work, high turnover and insufficient number of security employees – only 153 worked on the day of the visit, compared to 250 under contract. The document was ignored and in 2019 one of the worst massacres in Brazilian prisons, the rebellion of the Penitentiary Anísio Jobim in Manaus, took place.<sup>150</sup>

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149 COMISSÃO DE DIREITOS HUMANOS E MINORIAS. SITUAÇÃO DO SISTEMA PRISIONAL BRASILEIRO. Brasília 2016 <<https://www2.camara.leg.br/atividade-legislativa/comissoes/comissoes-permanentes/cdhm/documentos/relatorios/SitSisPrisBras.pdf>> accessed 20 June 2020.

150 According to the report, the torture has continued in democratic periods, because of (i) institutional resistance within the organs of the Executive Branch both in admitting torture common practice as well as investigating or reporting colleagues in the police career or penitentiary; (ii) lack of material and human resources for distinct independent research that made by the police force, the result of resistance to the establishment of full power of investigation outside the police force. This defence of the police investigative monopoly (even in cases of torture) was evident in the episode of the rejection of the Proposed Amendment Constitutional Law No 37, which expressly granted the monopoly of investigative power to the political, but was overthrown after having been widely criticised in the street demonstrations of June 2013; (iii) impunity for public officials involved in torture cases (police, prison officers), due to the lack of a successful investigation (see item 'i' and 'ii' above), generating the vicious circle of stimulating the practice; (iv) underreporting of cases, generated by the fear of victims or family members of reporting torture, which is reinforced by the confidence in the quick punishment or removal of those involved; (v) persistent speech in certain political sectors and the electorate in which the practice of torture is an effective police investigation (to obtain a 'confession')

In assessing the legislative impact of CAT in Brazil, it is key to observe that the Brazilian legislature has quite often placed direct reliance on CAT in legislative proposals. A search conducted in September 2023 in the database of Brazil's House of Representatives has shown at least 49 explicit mentions<sup>151</sup> to CAT in legislative proposals, the vast majority of them from 2005 onwards. Considering the fact that Brazil ratified CAT in 1989, shortly after the promulgation of the Federal Constitution in 1988, it shows that in Brazil the impact of UN human rights treaties has occurred primarily after democratisation. In order to illustrate this impact, two concrete examples are cited: (i) in 2007 CAT was cited in a proposed Bill suggesting that torture should also be an act of administrative 'improbability';<sup>152</sup> and (ii) in 2005, the legislative branch requested an international seminar about OP-CAT.<sup>153</sup>

### 5.5.2 Reliance by Judiciary

CAT is directly mentioned in several cases on the STF.<sup>154</sup> Reference to CAT is often related to the unconstitutionality of the violations of rights in the prison system, and shows the necessity of the minimum guarantee of personal, and the physical and mental security of detainees as a state duty. One of the key cases in this regard concerns the unconstitutional state of affairs in the prison system in Brazil, in which the STF determined a series of measures to be taken by lower judges, in particular to avoid whenever legally possible ordering prison sentences.<sup>155</sup> In a report, NGOs and the public defender's office analysed

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or proportional response to practices criminal prisoners (punishment); (vi) lack of break with the dictatorial past, in the face of the absence of the removal of torture agents from the military regime, keeping the tradition of violence against the detainee'. See <<https://www.defensoria.sp.def.br/dpesp/repositorio/31/Comenta%CC%8rio%20Geral%20tote%20final%2026.06.pdf>> accessed 20 June 2020.

- 151 Search was conducted on the website of the Brazil's House of Representatives (Câmara dos Deputados) <<https://www.camara.leg.br/busca-portal?contextoBusca=BuscaProposicoes&pagina=1&order=data&abaEspecificas=true&q=%22Conven%C3%A7%C3%A3o%20Contra%20a%20Tortura%20e%20Outros%20Tratamentos%20ou%20Penas%20Cru%C3%A7as,%20Desumanos%20ou%20Degradantes%22>> accessed 9 September 2023.
- 152 Brazil's House of Representatives, PL 417/2007 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=344662>> accessed 20 June 2020.
- 153 Brazil's House of Representatives, REQ 75/2005 CDHM <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=294543>> accessed 20 June 2020.
- 154 Resource: RE 580252; Resource: RE 715268 *AgR*; Arrangement for Breach of Non-Compliance *ADPF 153, Ext 112*; Habeas Corpus, *HC 70389*; Arrangement for Breach of Non-Compliance *ADPF 54*.
- 155 See <<https://www.stf.jus.br/arquivo/informativo/documento/informativo798.htm>> accessed 9 September 2023.

the prohibition of torture in the Brazil's judiciary between 2005 and 2010.<sup>156</sup> (1) it has been common to find cases in which the Public Ministry absolves the accused; (2) the production of evidence in cases where the authors are public officials is more deficient than when private agents are involved or if, in fact, there is a different view from the operators of the right in relation to cases, depending on who the perpetrator of the crime is; (3) finally, most of the judgments dealt with the criminal 'torture-punishment' or 'proof-torture', none of them dealt with the crime of 'torture-discrimination', very few dealt with torture in its omissive modality and psychological torture. The understanding of torture is often restricted to physical torture. There is a definite need for Brazil to improve its performance in terms of torture.

### 5.5.3 Impact on and through Independent State Institutions

There are two important forms of impact of CAT in independent state institutions. First, there is the proliferation of anti-torture mechanisms at the state level, which follows the guidelines of article 17 of OP-CAT. At the state level in Brazil,

[a]ccording to data from the federal government, until July 2019, Brazil had 22 state committees created, with the exception of the states of Roraima, Mato Grosso, Tocantins, São Paulo and the Federal District. In relation to state mechanisms, the progress was more timid, being verified in only 10 states, namely, Amapá, Maranhão, Espírito Santo, Alagoas, Sergipe, Mato Grosso do Sul, Paraíba, Pernambuco, Rio de Janeiro and Rondônia. It happens that only the mechanisms of the last 4 are in effective operation.<sup>157</sup>

In São Paulo, the state with the largest number of people arrested in the country, a law was passed in December 2018 by São Paulo's Legislative Assembly (ALESP) providing for the creation of an anti-torture mechanism, but it was vetoed in its entirety by Governor João Dória Jr (PSDB). The National System for the Prevention and Combat of Torture is an advisory board also

156 Maria Gorete Marques de Jesus, CALDERONI, Vivian (Coordenadoras). Julgando a tortura: ANÁLISE DE JURISPRUDÊNCIA NOS TRIBUNAIS DE JUSTIÇA DO BRASIL (2005-2010) <[https://carceraria.org.br/wp-content/uploads/2018/01/documento\\_julgando-a-tortura.pdf](https://carceraria.org.br/wp-content/uploads/2018/01/documento_julgando-a-tortura.pdf)> accessed 20 June 2020.

157 Hugo Matias, O compromisso da Defensoria com os mecanismos de combate à tortura no Brasil *Conjur* 14 January 2020 <[https://www.conjur.com.br/2020-jan-14/tribuna-defensoria-compromisso-defensoria-combate-tortura-brasil#\\_ftn5](https://www.conjur.com.br/2020-jan-14/tribuna-defensoria-compromisso-defensoria-combate-tortura-brasil#_ftn5)> accessed 20 June 2020.

composed by other entities rather than itself, such as the DEPEN (National Penitentiary Department), organisations of the justice system and community committees.<sup>158</sup>

Second, in 2013, after international pressure, Law 12,847/13 was promulgated, to institute the National Mechanism for the Prevention and Combat of Torture (MNPCT). Yet, in June 2019, former President Bolsonaro signed Presidential Decree 9,831. According to a report by the SPT, this Decree introduced ‘a new model’, the main differentiating feature of which is that the members/experts of the MNPCT would cease to be remunerated and would exercise their functions on a voluntary basis (article 4 of Decree 9,831 that modifies article 10 of Decree 8,154). The June 2019 Decree also removes the requirement for its membership to be diverse in terms of gender, race and regional representation and, in ways that remain somewhat unclear, dismantles the NPM’s administrative support structure.<sup>159</sup> Brazil’s President has not revoked the Decree, despite the request by the SPT to do so, but in August 2019 the judiciary maintained the remuneration for the 11 experts of the National Mechanism,<sup>160</sup> citing OP-CAT in support.<sup>161</sup>

#### 5.5.4 Impact on and through Non-state Actors

CAT is usually mentioned in campaigns for the protection of human rights. National human rights NGOs make intensive use of CAT and the CAT Ctee’s COs. In 2019 NGOs (*Justiça Global, Terra de Direitos e Instituto de Defensores de Direitos Humanos*) denounced former President Bolsonaro to the UN after he had issued Decree 9,831/2019,<sup>162</sup> which discharged experts from the national

158 CONECTAS. THE IMPORTANCE OF THE MECHANISM FOR THE COMBAT OF TORTURE. CONECTAS, 14 August 2019 <<https://www.conectas.org/en/noticias/the-importance-of-the-mechanism-for-the-combat-of-torture/>> accessed 9 September 2023.

159 See Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Views of the Subcommittee on Prevention of Torture on the compatibility, with the Optional Protocol to the Convention against Torture, of Presidential Decree No 9.831/2019, relating to the national preventive mechanism of Brazil <[https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/Views\\_NPM\\_Brazil.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/OPCAT/NPM/Views_NPM_Brazil.pdf)> accessed 9 September 2023.

160 AGÊNCIA BRASI, Justiça mantém peritos no combate à tortura. Agência Brasil, agosto de 2019 <<https://agenciabrasil.ebc.com.br/justica/noticia/2019-08/justica-mantem-peritos-no-combate-tortura>> accessed 20 June 2020.

161 JUSTIÇA FEDERAL, AÇÃO CIVIL PÚBLICA Nº 5039174-92.2019.4.02.5101/RJ <<https://www.conjur.com.br/dl/justica-rio-revoga-exoneracao.pdf>> accessed 20 June 2020.

162 A PÚBLICA, Jair Bolsonaro exonera todos os peritos do Mecanismo de Combate à Tortura. A PÚBLICA, 11 junho de 2019 <<https://apublica.org/2019/06/jair-bolsonaro-exonera-todos-os-peritos-do-mecanismo-de-combate-a-tortura/>> accessed 20 June 2020.

mechanism to combat torture. The CAT Cttee called Bolsonaro to explain the situation. As mentioned above, after this, the controversy went to judiciary power and Federal Justice, which determined the suspension of the exoneration. One of the key NGOs working with the fight against torture in Brazil is *Pastoral Carceraria*, which has developed a series of manuals containing guidelines for monitoring prisons and other places of detention.<sup>163</sup> Those practical guidelines are based on CAT and its Optional Protocol, demonstrating a direct impact of the treaty.

#### 5.5.5 Impact of State Reporting

Brazil has extensively engaged with the CAT Cttee's reporting procedure, with substantial delays in submitting the periodic reports (10 years in the first reporting cycle and 18 years' delay in the second reporting cycle). In 2001 the CAT Cttee requested the state 'to guarantee to any person deprived of his or her liberty the right of defence and, consequently, the right to be assisted by a lawyer, if necessary at the state's expense'.<sup>164</sup> Since then, the number of free legal aid has increased in Brazil with the spread of public defenders' offices across the country, although there is still a need for more public defenders in most of the states.<sup>165</sup> In its 2009 COs,<sup>166</sup> the CAT Cttee recommended that the state party should protect human rights in judicial procedures; carry out awareness-raising campaigns in order to sensitise all sectors of society about the issue of torture and ill-treatment and on the existing conditions of detention centres; and ensure optimal conditions of detention in adult and juvenile detention centres. In this regard, the federal government manages the National School of Criminal Services (ESPEN) which deals with education for public officials, including prison personnel and police, on human rights. One of the key influences of CAT in Brazil is the establishment of custody hearings in 2015, which seek to check, within 24 hours after arrest, the legality

163 BRAZIL, *Monitoramento de locais de detenção: um guia prático (2ª edição)* / Associação para Prevenção da Tortura; Tradução: Fabiana Gorenstein e Liana Rodrigues; Revisão e correção da versão: Mary Murphy; Releitura: Karolina Alves de Castro, Naum Pereira de Sousa e Antonia Portoalegre. – Brasília: Secretaria de Direitos Humanos, 2015.

164 COs of the Committee against Torture on Brazil, A/56/44, A/56/44, para 120.

165 IV Diagnóstico da Defensoria Pública no Brasil (Forth Diagnosis of the Public Defender's Office in Brazil) <https://www.anadep.org.br/wtksite/downloads/iv-diagnostico-da-defensoria-publica-no-brasil.pdf> accessed 9 September 2023.

166 CAT/C/39/2.

of the arrest, including whether the detainee was subjected to torture or ill-treatment in custody.<sup>167</sup>

#### 5.5.6 Impact of Individual Communications

No communication has been submitted to the CAT Cttee against Brazil.

#### 5.5.7 Impact of Other Measures: SPT Visits and Article 20 Inquiry Procedure

In line with articles 1 and 11 of OP-CAT, the SPT conducted visits to Brazil in 2009 and 2015.<sup>168</sup> The SPT in its first visit highlighted that it had received allegations of beatings and ill-treatment as a form of punishment. In its 2017 report, following its 2015 visit, the SPT recommended that the ‘Federal Government, through the federal Human Rights Secretariat, take a more proactive approach as part of an established national public programme, in coordination with state-level authorities, to foster the creation of local mechanisms’.<sup>169</sup> This may include meetings with high-level state authorities, regular advocacy visits to the states, technical support for the drafting of legislation and economic incentives through allocation of funds. This recommendation was implemented. According to Brazil’s 2020 report, the Federal Pact for Preventing and Combating Torture was published in the Federal Official Gazette through MMFDH Ordinance 346 of 19 September 2017. In July 2018, MMFDH organised the Third National Meeting of National Committees and Mechanisms for Preventing and Combating Torture. The Third Meeting resulted in the publication of the Brasilia Letter, which gathers a set of proposals resulting from the analysis of the needs in order to strengthen SNPCT. The letter specifically suggests the adoption of a set of actions aiming at encouraging and implementing State Committees and Mechanisms.<sup>170</sup> Yet, there were recent setbacks in the national mechanism against torture in 2019, as mentioned above.

In its report published in 2016,<sup>171</sup> the SPT alerted the Brazilian authorities to the problems of the prisons that ended up leading to the Manaus massacre

167 CNJ, Audiencia de custódia <<https://www.cnj.jus.br/sistema-carcerario/audiencia-de-custodia/>> accessed 9 September 2023.

168 CAT/OP/BRA/1, CAT/OP/BRA/R.2, CAT/OP/BRA/3.

169 CAT/OP/BRA/3, para 97 <https://undocs.org/en/CAT/OP/BRA/3> accessed 20 June 2020.

170 CAT/C/BRA/2, para 219.

171 ‘In accordance with article 16(1) of the Optional Protocol, the present report was transmitted confidentially to the state party on 24 November 2016. On 10 January 2017 the state party made public the present report at <https://www.gov.br/mdh/pt-br/sdh/noticias/2017/janeiro/sedh-publica-relatorio-de-subcomite-da-onu-sobre-prevencao-e-combate-a-tortura-e-maus-tratos-no-sistema-carcerario>; consequently, in accordance with article



soon thereafter – in 2017.<sup>172</sup> Here, it is important to highlight the failure of the Brazilian authorities to take action on the issue of prisons, with the country being tainted by rebellions in prisons. Yet, some measures taken by the government regarding this issue can still be mentioned. For example, every four years the National Council for Criminal and Penitentiary Policy develops the National Criminal Policy Plan, which sets the guidelines for this policy, in compliance with what is contained in article 64, items I and II of Law 7,210 of 11 July 1994 (Penal Execution Law). The last of these Plans was developed in 2019.

Finally, Brazil has engaged extensively with the inquiry procedure under article 20 of CAT. In 2006 the CAT Cttee presented conclusions regarding an investigation into the Brazilian situation.<sup>173</sup> Later on, the Brazilian government replied to the Committee's concerns. One of the recommendations from the CAT Cttee was that 'the problem of overcrowding in detention centres must be solved by adopting measures urgently, such as awareness-raising of the judiciary of the possibility of applying alternative sentences'.<sup>174</sup> Several measures for inducing the application of alternative sentences have been implemented by the Brazilian judiciary, although the level of mass incarceration in Brazil places the country in the third position in the world. In its comments replying to the inquiry procedure, Brazil recalled the creation of the General Coordination of Alternative Sentencing, and the creation of Special Federal Criminal Courts applying a wider range of crimes to alternative sentences.<sup>175</sup>

#### 5.5.8 Brief Conclusion

CAT has had an important impact in Brazil to protect citizens from torture, mainly after the country's democratisation process, through legislative reforms and judicial decisions. However, despite having guided legal changes at various levels, these changes were not accompanied by consistent public policy projects. There has been a constant neglect in dealing with the subject and increasingly the dismantling of oversight mechanisms, both at the state and

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16(2) of the Optional Protocol, the present report is published by the Subcommittee'. See <<https://digitallibrary.un.org/record/831519>> accessed 9 September 2023.

172 The rapporteurs cited frequent occurrences of torture and ill-treatment in prisons, overcrowding and control of penitentiary units by criminal factions with the tacit permission of the state.

173 CAT/C/36/R.1/Add.1.

174 CAT/C/39/2, para 196, See <<https://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/cat.c.39.2.doc>> accessed 20 June 2020.

175 CAT/C/39/2, paras 270–275 <<https://www2.ohchr.org/english/bodies/cat/docs/AdvanceVersions/cat.c.39.2.doc>> accessed 20 June 2020.

federal levels, indicating that the Brazilian state neglects its international obligations. The need for change remains urgent.

## 5.6 *Convention on the Rights of the Child*

### 5.6.1 Incorporation and Reliance by Legislature and Executive

Brazil ratified the CRC on 24 September 1990, not long after the promulgation of the Federal Constitution in 1988. It was incorporated into domestic law by Decree 99,710 of 21 November 1990. The most important Brazilian law on the subject is the Statute of the Child and Adolescent, which provides for integral child and adolescent protection (Law 8.069 of 13 July 1990). It changed the legal framework for children's rights in Brazil. The Federal Constitution in article 227 also guarantees the fundamental rights of children and adolescents, and safeguards them from all forms of neglect, discrimination, exploitation, violence, cruelty and oppression.

In addition, on 27 January 2004 Brazil ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (OP-CRC-SC), and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-CRC-AC). In 2009, with Constitutional Amendment 59,<sup>176</sup> Brazil made schooling obligatory for students from 4 to 17 years old. In 2016 the legal marker for the start of childhood was institutionalised by Law 13.257.<sup>177</sup> Brazil ratified the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OP-CRC-CP) on 29 September 2017.

The Brazilian legislature has directly relied on CRC extensively in legislative proposals. Two examples are provided: (i) In 2017 CRC was cited in a proposed Bill suggesting that imprisoned women with underaged children should serve their sentences in the form of house arrest;<sup>178</sup> and (ii) in 2019 another proposed Bill aimed at typifying paedophilia as a heinous crime cited CRC.<sup>179</sup> A search conducted in September 2023 on the database of Brazil's House of

176 Brazil EC 59/2009 <[http://www.planalto.gov.br/ccivil\\_03/constituicao/emendas/emc/emc59.htm](http://www.planalto.gov.br/ccivil_03/constituicao/emendas/emc/emc59.htm)> accessed 20 June 2020.

177 Brazil L Law 13.257/2016 <[http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2016/lei/l13257.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/lei/l13257.htm)> accessed 20 June 2020.

178 Brazil's House of Representatives, PL 7338/2017 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2128785>> accessed 20 June 2020.

179 Brazil's House of Representatives, PL 2007/2019 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2196711>> accessed 20 June 2020.

Representatives revealed at least 237 explicit mentions of CRC in legislative proposals,<sup>180</sup> the vast majority of them from the 2000s onwards.

### 5.6.2 Reliance by Judiciary

The STJ mentioned CRC directly five times as a mechanism of child protection. Those mentions were announced by three of its *Informativos de Jurisprudência*,<sup>181</sup> documents periodically released with notes on relevant theses defended in STJ judgments, chosen for their legal repercussion and novelty. A *habeas corpus* of 2009 citing CRC was found in ‘decisions of the presidency’ of the STF. In case law reports, two documents were found that directly cite the Convention. One extraordinary appeal was found, in which CRC is cited. However, the appeal was denied.<sup>182</sup>

### 5.6.3 Impact on and through Independent State Institutions

CSOs produced alternative reporting to describe the situation of children and CRC.<sup>183</sup> In 2006 all but 8 per cent of Brazilian municipalities had in place Municipal Councils for the Rights of the Child (CMDCAS). Nevertheless, when analysing regional data, striking differences are noted, and ‘there is still a precarious balance between forces of government and civil society, what create problems of independence, since 60% of counsellors reported being public servants, coming from the executive, legislative and judicial powers.’<sup>184</sup> State Councils for the Rights of the Child (CEDCAS) were created in all states, but half of them did not structure procedures for monitoring and evaluating policies for children. Brazil has a database for children’s rights, *Sistema de Informações para a Infância e Adolescência* (SIPIA), which serves as an important tool to generate data on childhood.<sup>185</sup>

180 Search was conducted on the website of the Brazil’s House of Representatives (Câmara dos Deputados) <<https://www.camara.leg.br/busca-portal?contextoBusca=BuscaProposicoes&pagina=1&order=data&abaEspecificas=true&q=%22Conven%C3%A7%C3%A3o%20sobre%20os%20Direitos%20da%20Crian%C3%A7a%22>> accessed 20 June 2020.

181 Informativo No 0661 <<https://processo.stj.jus.br/jurisprudencia/externo/informativo/>>, Informativo No 0565 <<https://processo.stj.jus.br/jurisprudencia/externo/informativo/>>, Informativo No 507 <<https://processo.stj.jus.br/jurisprudencia/externo/informativo/>> accessed 20 June 2020.

182 HC 101985, Rapporteur: MARCO AURÉLIO, judged on 7 February 2013, ELECTRONIC JUDGMENT DJE-036 DISCLOSED 2014-02-20 PUBLIC 2014-02-21.

183 II Alternative Report on the Situation of the Rights of the Child in Brazil to the International Convention on the Rights of the Child (CRC), 2014.

184 *ibid* 7.

185 *ibid* 8.

#### 5.6.4 Impact on and through Non-state Actors

The United Nations Children's Fund (UNICEF) joined its voice with Brazilian NGOs for the drafting and approval of article 227 of the Federal Constitution and the Statute of the Child and Adolescent. In addition, UNICEF was in solidarity with the Brazilian Parliament, the government and society in approving Law 9,534/97, which made civil birth registration free for all Brazilians. UNICEF has also taken action for the approval of Constitutional Amendment 59, which made teaching from 4 to 17 years compulsory and also secured more resources for education. These were important victories for education in the country, which UNICEF supported from the outset. Since 1966 in Brazil, Child Fund Brazil is a social development organisation that through solid experience in designing and monitoring social programmes and projects mobilises people for life transformation. Children, adolescents, young people, families and communities at risk are supported so that they can fully exercise the right to citizenship.

In order to promote lasting results, social projects are developed with the involvement of families, communities and society in the creation of protective and caring environments for children, adolescents and young people. Through social projects, Child Fund Brazil benefits more than 140 000 people, of which over 42 000 are children, adolescents and young people. For this, Child Fund Brazil has the partnership of 45 social organisations, which operate in more than 40 municipalities.

The SciELO website revealed direct mention of the Convention in two papers,<sup>186</sup> and the Google Scholar platform showed one direct mention of the Convention.<sup>187</sup>

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186 A CONVENÇÃO INTERNACIONAL SOBRE OS DIREITOS DA CRIANÇA: DEBATES E TENSÕES: Identifies and revisits the literature on the socio-political context and the text of the International Convention on the Rights of the Child, as well as some of its repercussions in Brazil; FÚLVIA ROSEMBERG and CARMEM LÚCIA SUSSEL MARIANO <<http://www.SciELO.br/pdf/cp/v40n141/v40n141a03.pdf>> published in 2010. Direitos da criança e do adolescente: um debate necessário; 'a Convenção deve ser problematizada, levando-se em conta os dez anos em que o pré-texto foi debatido, a complexidade de suas afirmações e as dificuldades existentes para sua efetivação.' Esther Maria de Magalhães Arantes published in 2012.

187 Anderson Pereira de Andrade, A CONVENÇÃO SOBRE OS DIREITOS DA CRIANÇA EM SEU DÉCIMO ANIVERSÁRIO: AVANÇOS, EFETIVIDADE E DESAFIOS Promotor de Justiça Ministério Público do Distrito Federal e Territórios <[http://www.escolamp.org.br/ARQUIVOS/15\\_01.pdf](http://www.escolamp.org.br/ARQUIVOS/15_01.pdf)> accessed 20 June 2020.

### 5.6.5 Impact of State Reporting

In its COs to Brazil, issued in 2004, the CRC Cttee welcomed the Constitution and other law reforms, but noted with extreme concern ‘the dramatic inequalities based on race, social class, gender and geographic location which significantly hamper progress towards the full realisation of the children’s rights enshrined in the Convention’.<sup>188</sup> In 2015 the CRC Cttee focused its recommendations on violence against children and the end of inequalities. As mentioned in a Master’s thesis about the impact of the CRC Cttee in Brazil from 2018,<sup>189</sup> one such inequality is the issue of healthy nutrition and obesity. In this regard, Brazil adopted Resolution 163/2014 of the National Council on the Rights of Children specifically about advertisement for children, including the concern about promotion of healthy nutrition. Additionally, the CRC Cttee also requested Brazil to take all necessary measures to address the issue of children incarcerated with their mothers (paragraph 50). In this regard, Brazil’s Federal Supreme Court in 2018 issued a collective *habeas corpus* in favour of mothers incarcerated with their children or pregnant women, ordering their release from prison.<sup>190</sup> However, lower courts remain reluctant to do so.

### 5.6.6 Impact of Individual Communications

No communications have been submitted to the CRC Cttee against Brazil.

### 5.6.7 Brief Conclusion

CRC was important for adherence at the municipal, state and national levels of child protection. Here, we can include initiatives taken to create councils and secretariats. Legislative changes were also relevant to the incorporation of the Convention. Still in this context, the need for the country to adopt policies that manage to encompass its different contexts is expressed. There still is a need for an effort to protect children and adolescents more and more.

<sup>188</sup> CRC/C/15/Add.241 2.

<sup>189</sup> Renata Sefarim, *As Recomendações Do Comitê Para Os Direitos Da Criança, Da Convenção Das Nações Unidas Sobre Os Direitos Da Criança (1989): Uma Análise Da Sua Aplicação Nas Políticas Públicas Brasileiras*. UNIVERSIDADE DO EXTREMO SUL CATARINENSE – UNESC PROGRAMA DE PÓS-GRADUAÇÃO EM DIREITO: Dissertação de mestrado. Orientador Prof Dr Ismael Francisco de Souza. Criciúma, 2019 <<http://repositorio.unesc.net/bitstream/1/6760/1/Renata%20Nápoli%20Vieira%20Serafim.pdf>> accessed 20 June 2020.

<sup>190</sup> STF Notícias STF: Ministro Lewandowski concede HC para presas com filhos que ainda não foram colocadas em prisão domiciliar. STF, 25 de outubro de 2018 <<https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=393814>> accessed 10 September 2023.

## 5.7 *International Convention for the Protection of All Persons from Enforced Disappearance*

5.7.1 Incorporation and Reliance by Legislature and Executive  
CED, which Brazil ratified on 29 November 2010, was incorporated into domestic law by Decree 8,767 of 11 May 2016.<sup>191</sup> The Decree explicitly refers to the promulgation of CED. Even before the Convention's incorporation into domestic law, there was a legal reform proposal (PLS 236/2012) that rendered the forced disappearance of people into crimes against humanity and provided for the imposition of a penalty of up to six years on perpetrators.<sup>192</sup> There was also an attempt to insert the crime of enforced disappearance into the current Penal Code (article 149-A), through PL 6.240/2013, with a penalty of up to 12 years' imprisonment. This project is still ongoing in the House of Congress. In assessing the legislative impact of CED in Brazil, it is key to observe that the Brazilian legislature has directly relied extensively on CED in legislative proposals. A search conducted in September 2023 on the database of Brazil's House of Representatives has shown at least 11 explicit mentions to CED in legislative proposals,<sup>193</sup> the vast majority of them dating from 2009 and 2013.

### 5.7.2 Reliance by Judiciary

The SPT has made no direct or indirect references to CED, although six judgments refer to the Inter-American Convention on Forced Disappearance of Persons.<sup>194</sup> However, it should be noted that the use of the 'forced disappearance' search engine resulted in a total of six judgments, which in turn refer to the Inter-American Convention on Disappearance. In the STJ, as well as the Courts of Justice and other lower courts of the country, no rulings are found that directly mention CED but, again, some reliance was placed on the Inter-American Convention on Forced Disappearance.

191 BRAZIL Decree 8767/2016 <[http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2016/deceto/D8767.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2016/deceto/D8767.htm)> accessed 20 June 2020.

192 Art 466 of the mentioned project.

193 Search was conducted on the website of the Brazil's House of Representatives (Câmara dos Deputados) <<https://www.camara.leg.br/busca-portal?contextoBusca=BuscaProposicoes&pagina=1&order=data&abaEspecificas=true&q=%22Conven%C3%A7%C3%A3o%20Internacional%20para%20a%20Prote%C3%A7%C3%A3o%20de%20Das%20as%20Pessoas%20contra%20o%20Desaparecimento%20For%C3%A7ado%22>> accessed 20 June 2020.

194 The majority of the cases concerned the extradition process and the CPED was not the main object. We mention here to highlight that this was remembered by the Brazilian courts. Only one case was after the promulgation of the Convention.

### 5.7.3 Impact on and through Non-state Actors

In March 2012 Human Rights Watch Brazil praised federal prosecutors for offering criminal charges in relation to abuses during the military regime,<sup>195</sup> which was soon thereafter rejected by the judiciary on the basis of the amnesty law.<sup>196</sup> The denunciation dealt with the charge against Colonel Curió Rodrigues de Moura for forced disappearances in 1974, in Pará. That was the first criminal case in respect of crimes committed during the military regime. CED was mentioned as an obligation of the country to provide reparation to the victims. In April of the same year, the organisation once again denounced Brazil for crimes committed during the dictatorship. In 2011 CED appeared in a request of Conectas and Corporación Humanas to investigate the circumstances surrounding the death of Muammar al-Gaddafi.<sup>197</sup>

While no mention has been made of CED in Brazilian academic articles or research, some references to the Inter-American Convention against Forced Disappearance have been noted.<sup>198</sup>

### 5.7.4 Impact of State Reporting

Brazil submitted its first report in 2019. The country highlighted that ‘there is no law on enforced disappearances in Brazil; however, the country may face forced disappearances perpetrated by persons or groups of persons acting without authorisation, notably related to land conflicts in remote rural areas, drug trafficking/anti-drug actions, and internationally’.<sup>199</sup> The report mentioned the creation in 2017 of the National System for Locating and Identifying Missing Persons of the Prosecutor’s Office.

195 See <<https://www.hrw.org/news/2012/03/13/brazil-human-rights-prosecution-landmark-step>> accessed 10 September 2023.

196 See <<http://g1.globo.com/politica/noticia/2012/03/justica-rejeita-denuncia-contramilitar-que-combateu-guerrilha-do-araguaia.html>> accessed 20 June 2020.

197 <<https://www.conectas.org/en/noticias/public-statement-4-2011-prevalence-of-human-rights-in-libya-2/>> accessed 11 April 2022.

198 Being (i) by José Carlos Portella Jr; (ii) by Carina Gouvêa, Professor and Lawyer Specialist in Military Law; (iii) Luiz Flávio Gomes; and (iv) Hórrance Barros. Articles have been attached to folder ‘(c)’. The search was done broadly on the ‘SciELO’ and ‘Google Scholar’ platforms. It is important to note that the same phenomenon encountered in jurisprudential research is reiterated here: several references to the Inter-American Convention against Forced Disappearance, few or – as in this case – none in relation to the present research object. In a search in ‘jusbrasil’, from the ‘Articles’ filter, four direct mentions were found to the Convention for the Protection of All Persons against Forced Disappearance.

199 CED/C/BRA/15.

### 5.7.5 Brief Conclusion

The ratification of CED was motivated by the country's efforts to overcome a legacy of human rights atrocities, including enforced disappearances, and to progress towards greater democratisation. Brazil's implementation of CED has not been satisfactory. Its first report was submitted only in 2019. While the ratification dates from 2010, the Legal Decree to promulgate it was signed by the President only in 2016.

## 5.8 *Convention on the Rights of Persons with Disabilities*

### 5.8.1 Incorporation and Reliance by Legislature and Executive

Brazil ratified CRPD on 30 March 2007, together with its Optional Protocol, with the result that CRPD and OP-CRPD entered into force in Brazil on 1 September 2008.<sup>200</sup> The National Congress through Legislative Decree 186 of 9 July 2000 approved CRPD and incorporated it into domestic law, with constitutional amendment status, by Decree 6949 of 25 August 2009. Its headnote explicitly refers to the promulgation of CRPD and OP-CRPD.

Other incorporations can be cited, first its 2022 Brazil Plan which establishes goals that the Social Administration and Brazilian society must have achieved in 2022, in the bicentenary of independence. Its Goal 6 states as follows: 'Ensure accessibility for all persons with disabilities; oversee and promote the application of art 9 CRPD'. The 2011 National Plan for Persons with Disabilities provides as follows:

Art 1 The National Plan of the Rights of Persons with Disabilities – Living Without Limit Plan is hereby established, with the purpose of promoting, through the integration and articulation of policies, programs and actions, the full and equitable exercise of the rights of persons with disabilities according to the International Convention on the Rights of Persons with Disabilities and its Optional Protocol, adopted by Legislative Decree No 186 of 9 July 2008, with constitutional amendment status, and promulgated by Decree No 6,949 of 25 August of 2009.<sup>201</sup>

Other measures include Law 12319/2010 (regulating the profession of translator and interpreter of Brazilian Sign Language (LIBRAS)); *Cidade acessível é Direitos Humanos* (encouraging society to make a commitment to full participation of people with disabilities and demonstrate the importance of

<sup>200</sup> CRPD/C/12/D/10/2013.

<sup>201</sup> BRAZIL Decree 7612/2011 <[http://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2011/decreto/d7612.htm](http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/decreto/d7612.htm)> accessed 20 June 2020.



providing equal opportunities in cities); Law 12033/2009 (modifying article 145 of the Criminal Code to make possible public prosecution of defamation cases including those referring to persons with disabilities).

The Brazilian legislature has directly relied extensively on CRPD in legislative proposals. A search conducted in September 2023 on the database of Brazil's House of Representatives has shown at least 306 explicit mentions of CRPD in legislative proposals,<sup>202</sup> the vast majority of them from 2015 onwards – when the Brazilian Law for Inclusion was passed.<sup>203</sup> In order to illustrate this impact, it is possible to cite two concrete examples: (i) In 2019 CRPD was cited in a constitutional amendment proposal suggesting the use of 'persons with disabilities' in the Constitution rather than 'disabled people';<sup>204</sup> and (ii) in 2019 another proposed Bill, aimed at eliminating additional fees to students with disabilities in private educational institutions, cited CRPD.<sup>205</sup>

### 5.8.2 Reliance by Judiciary

CRPD appears in 16 judgments of the STF, of which nine cites CRPD directly. The *Habeas Corpus* case is prominent among those.<sup>206</sup> In this matter, the STF had to determine alternatives to preventive custody of imprisoned women who are guardians or mothers of children of up to 12 years, or persons with deficiencies, while taking into account the alternative measures in article 319 of the Code of Penal Process (CPP). The STF's decision in favour of those suffering consequences of severe burns is another illustration of the strong inclusion of CRPD in Brazil. Other citations include the direct relationship between the Convention and the Constitution of the Republic. In the Superior Court of Justice, there are 29 mentions of CRPD, 20 of them in relation to the Federal Supreme Court's *Habeas Corpus* 143641 judgment.

<sup>202</sup> Search was conducted on the website of the Brazil's House of Representatives (Câmara dos Deputados) <<https://www.camara.leg.br/busca-portal?contextoBusca=BuscaProposicoes&pagina=1&order=relevancia&abaEspecific=true&q=%22Conven%C3%A7%C3%A3o%20Internacional%20sobre%20os%20Direitos%20das%20Pessoas%20com%20Defici%C3%AAncia%22>> accessed 20 June 2020.

<sup>203</sup> 'Lei Brasileira de Inclusão da Pessoa com Deficiência (Estatuto da Pessoa com Deficiência)' (Brazilian Law of Persons with Disabilities) <[http://www.planalto.gov.br/ccivil\\_03/\\_ato2015-2018/2015/lei/l13146.htm](http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13146.htm)> accessed 20 June 2020.

<sup>204</sup> Brazil's House of Representatives, PEC 57/2019 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2198865>> accessed 20 June 2020.

<sup>205</sup> Brazil's House of Representatives, PL 3092/2019 <<https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2204477>> accessed 20 June 2020.

<sup>206</sup> STF, *Habeas Corpus* 143641.

### 5.8.3 Impact on and through Non-state Actors

NGOs such as Human Rights Watch have highlighted non-compliance with the Convention, for example in its report *‘THEY STAY UNTIL DYING: A life of isolation and neglect in institutions for people with disabilities’*.<sup>207</sup> NGOs have organised various seminars on the Convention.<sup>208</sup> A search on the Abraça portal for the term ‘Convention on the Rights of Persons with Disabilities’<sup>209</sup> resulted in 51 mentions, among them six manifestos from NGOs.<sup>210</sup> A search in FBASD,<sup>211</sup> for the term ‘Convention on the Rights of Person with Disabilities’, revealed 33 mentions, among them the organisational statutes of a number of NGOs. At Inclusive portal,<sup>212</sup> a search for the term ‘Convention on the Rights of Person with Disabilities’ led to 2 700 results. On the Baresi Institute portal, a search for the term ‘Convention on the Rights of Person with Disabilities’ showed 5 news items that mentioned CRPD. A search of the Down Movement portal for the term ‘Convention on the Rights of Person with Disabilities’ showed ten news items mentioning CRPD. Using the search term ‘Convention on the Rights of Persons with Disabilities’ on Google Scholar showed two results. When the same search engine was used on the SciELO portal, specifically selecting Brazilian articles, as it is an international portal and some general results related to Portuguese works, two results were found.<sup>213</sup> All the searches mentioned above were conducted in June 2020.

207 Human Rights Watch, ‘Eles ficam até morrer’ HRW Rio de Janeiro, 2016 <<https://www.hrw.org/pt/report/2018/05/23/318010>> accessed 10 September 2023.

208 See eg Conectas Direitos Humanos – ESPIONAGEM É 1 ENTRE 11 TEMAS ESPINHOSOS PARA BRASIL E EUA EM DIREITOS HUMANOS; CONECTAS DISCUTE EM SP DIREITO DAS PESSOAS COM DEFICIÊNCIA; SEMINÁRIO: CONVENÇÃO DA ONU – DIREITOS DAS PESSOAS COM DEFICIÊNCIA: AVANÇOS, DESAFIOS E PARTICIPAÇÃO DA SOCIEDADE.

209 See ABRAÇA’s website <<https://abraca.net.br>> accessed 10 September 2023.

210 Manifesto Abraça A Favor Da Aprovação Do Pl 1712/2019 Sem Emendas No Senado; (2) Manifesto: Autistar É Resistir! Identidade, Cidadania E Participação Política; (3) Manifesto – Sou Autista E Viver Em Comunidade É Direito Meu!; (4) Manifesto Da Abraça Sobre A Lei Nº 12.438/2017; (5) Manifesto Público Da Abraça Sobre As Medidas Do Governo Interino Michel Temer Com Relação Aos Direitos Humanos Das Pessoas Com Deficiência; (6) Manifesto Público Decreto De Regulamentação Da Lei Dos Autistas.

211 See Federação Down’s website <<http://federacaodown.org.br/>> accessed 20 June 2020.

212 See Inclusive’s website <<http://www.inclusive.org.br/>> accessed 20 June 2020.

213 The Inclusion Pact is an example of the use by business: ‘Considering the principles, laws, and norms of respect for the rights of persons with disabilities, in particular the Universal Declaration of Human Rights, the UN Convention on the Rights of Persons with Disabilities, the Brazilian Inclusion Law and the Letter of Commitment from the ILO Global Business and Disability Network (ILO Global Business and Disability Network)’. The Companies that joined the Pact: Grupo Pão de Açúcar, IBM, Accenture, TozziniFreire Advogados, Serasa Experian, JLL, Natura, EY, Dow, Trench Rossi Watanabe, Abril, Ernst

#### 5.8.4 Impact of State Reporting

In 2012 Brazil submitted its first report.<sup>214</sup> In 2015 the Committee sent a list of questions for the country to answer.<sup>215</sup> In 2015, CSOs also submitted information to the Committee.<sup>216</sup> In September of the same year, the Committee issued its COs.<sup>217</sup> These COs acknowledged CRPD as a constitutional landmark. The COs recommended the adoption of policies to address discrimination against disability in all areas, including incarceration policies. In 2015 a permanent commission on the rights of persons with disabilities in the Chamber of Deputies of the National Congress was created, and a national plan for the rights of persons with disabilities entitled 'Living without limits' was approved. In 2016 the Statute for Persons with Disabilities, a national anti-discrimination law on people with disabilities, entered into force. One of the advances brought about by this statute was the prohibition on charging additional fees for enrolments and fees for private educational institutions; legislation requires that 10 per cent of hotel and hostel dormitories be accessible and that at least one accessible unit be guaranteed; and that workers with disabilities must have recourse to the Guarantee Fund for Length of Service when receiving a prescription for orthosis or prosthesis to promote its accessibility.

#### 5.8.5 Impact of Individual Communications

Two communications were submitted against Brazil, and declared inadmissible by the CRPD Cttee.<sup>218</sup>

#### 5.8.6 Brief Conclusion

CRPD is one of the treaties that has had the greatest impact in Brazil. It has influenced a significant number of legislative changes and has inspired important court judgments. Civil society and NGOs showed a strong commitment. Two communications were submitted to the CRPD Cttee, but were declared inadmissible.

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& Young Terco, Gtcon, Magazine Luiza, Oi, Raia Drogasil, Via Varejo, UnitedHealth Group, etc.

214 CRPD/C/BRA/1.

215 CRPD/C/BRA/Q/1.

216 1st Joint Submission to the Committee on the Convention on the Rights of Persons with Disabilities: An overview from the Brazilian Civil Society, July 2015.

217 CRPD/C/BRA/CO/1.

218 Communication 10/2013, CRPD/C/12/D/10/2013 (2 October 2014). The second communication, submitted in 2016, was declared admissible in 2020.

## 6 Conclusion

Much has changed in Brazil since June 1999 as far as the impact of UN treaty bodies is concerned. By that time, the major impact had been the ratifications of such treaties, as an important initial step towards a more democratic country after the end of the military dictatorship in 1985. As this chapter shows, while the UN treaties still lack extensive implementation in Brazil, civil society organisations and the judiciary have started using UN treaty bodies more often than they did in 1999, either participating in their reporting or complaint proceedings or making use of their recommendations. While preference is still given to the Inter-American system, as was identified in the 1999 study, this chapter shows that UN treaty bodies system influenced policy making in Brazil, in particular in areas such as the prevention of torture and access to justice, women's rights, racial equality and the rights of persons with disabilities.

Brazil currently is party to the major international human rights treaties, whether in the UN or OAS spheres. Brazil started to become a party to important human rights treaties only after the end of the military regime in 1985, illustrating that the history of human rights in the country is the product of its own democratisation movement. The presidency of Bolsonaro underlines that the country's commitment to human rights is as fragile as the process of democratisation itself. Brazil has since 2016 been undergoing a period of political instability, which has influenced the international human rights mechanisms in the country. The sentiment expressed by former President Bolsonaro that Brazil's membership of the HRC is 'of no use' underlines the fragility of the role of human rights and the re-democratisation process more broadly, and the ongoing need to implement UN human rights treaties at the domestic level.

Adherence to international human rights mechanisms has a twofold role in the country. On the one hand, it shows the commitment that different groups and organisations have to the re-democratisation process. On the other hand, taking into account the fragility of the re-democratisation process itself, adherence to international human rights mechanisms (which has been constantly threatened, especially since 2016 when political conflicts intensified in the country) is the means by which different groups under conditions of social vulnerability are granted domestic protection.

There have been advances, but much remains to be accomplished to advance the human rights agenda in Brazil. One of the major advances has been the Constitutional Amendment 45 of 2004, which gives constitutional status to human rights treaties ratified in the country. Numerous treaty body recommendations underline that the Brazilian government needs to do more

to make the protection of a minimum of rights viable, based on the institutional mechanisms inherent to a democratic state.

Taking into account the historical-political context of the country and of the region in which it is located, domestic reform cannot detach itself from a reform at the UN level. It is necessary that UN human rights policies are capable of dealing with different regional realities, including authoritarian domestic conditions.

Brazil has entered reservations only in respect of OP2-CCPR and CEDAW (in terms of articles 2 and 29(1), respectively). Three communications were submitted against Brazil, one under CEDAW and two under CRPD. The CRPD Cttee declared the case inadmissible. CEDAW has had significant influence in Brazil. The CEDAW and CRPD Cttees are very well known domestically, mostly on an institutional level. As in the case of CEDAW, CRPD has influenced a significant number of legislative changes and adherence to it by the judiciary is of particular note, since in several cases and respects judicial decisions have gone beyond the main objects of the treaty.

Brazilian commitment to CERD and CED has been unsatisfactory, due mainly to the dictatorial period and of the ongoing instability in democratisation processes. In both cases, there is a need for discussion about promoting these treaties not only in Brazil but in the entire Latin America region. Adherence to CERD in 1969 took place in a particular historical context, dating back to the period of military dictatorship. Its effective implementation only started after the promulgation of the 1985 Constitution and the return to the democratic state. Nevertheless, legislation on the subject is more punitive in nature than focused on public policies. The Brazilian Penal Code is still the same law as the one adopted in the 1940s. Public policies regarding the guarantee of rights have become more common since the 2000s. The role of civil society and organisations in the dissemination of CERD remains of paramount importance in the Brazilian context. The influence of CED is constrained by its relatively recent ratification, the pervasive influence of dictatorship represented by some congressmen and national institutions. Its value is largely symbolic, serving as a signal to enforce the re-democratisation of the country. However, it remains imperative that mechanisms for promoting CED are established at the domestic level.

In terms of municipal, state and national levels of adherence, CRC is the most relevant, as reflected in initiatives taken to create institutions such as councils and secretariats and legislative changes. CAT also inspired legislative reforms. Although CAT has an important treaty body to protect citizens from torture, Brazil had not complied with all recommendations by the SPT. Urgent domestic reform is necessary particularly to address the government's neglect

of the prison system. The impact of CDESCR has been circumscribed in legal and institutional reforms, although Brazil, by implementing some COs of the CDESCR Cttee, promoted some policies to extinguish inequalities in territory in the last years.

Finally, in terms of more diffuse implications in the country, CCPR perhaps is one of the treaties with the most impact. It plays an important role in promoting various civil and political rights.