

Joint Submission
Universal Periodic Review of Brazil
Human Rights Council

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Executive Summary

1. This joint submission has been prepared by the Women's Networking and Support Programme and the Association for Progressive Communication in consultation with Instituto Nupef⁵ and is endorsed by Sexuality Policy Watch.⁶ The submission focuses on human rights and the internet in Brazil. It highlights areas where Brazil is doing well, specific areas of concern and makes five recommendations for follow-up and implementation.

The Internet and Human Rights

2. Human rights and the internet are referred to in the founding documents on the United Nations World Summit of the Information Society,⁷ the Geneva Declaration of Principles⁸ and the Internet Governance Forum.⁹ But only during 2011 did it become clear that the UPR must include the promotion and protection of human rights and fundamental freedoms on the internet, particularly freedom of expression and freedom of association.¹⁰ In 2011 the Human Rights Committee noted that freedom of expression (including the right to information and access to information) includes internet based expression.¹¹ Member States existing human rights obligations¹² therefore extend to taking steps to ensure access to the internet and that limitations or restrictions on freedom of expression comply with agreed international standards, including women's human rights.¹³ This submission focuses on human rights monitoring, data protection, civil rights and the internet, internet governance, and proposed cybercrime laws.

Follow up from the first UPR Review

3. The first UPR of Brazil did not include reference to internet related human rights issues. However, access of citizens to public information was raised¹⁴ and Brazil accepted the following recommendation:¹⁵

5 Instituto Nupef (Centre of Study and Learning) www.nupef.org.br. Nupef is a founding member of the Brazil Internet Governance Caucus.

6 Sexuality Policy Watch, www.sxpolitics.org, a global forum of researchers and activists, with two secretariats including one based in Brazil.

7 World Summit on the Information Society, United Nations, and International Telecommunication Union "WSIS Outcome Documents" (December 2005).

8 Article 19 of the UDHR is cited in paragraph 4 of the Geneva Declaration of Principles (2003).

9 <http://www.intgovforum.org>

10 Human Rights Committee, General Comment 34, Freedoms of Opinion and Expression, (21 July 2011, CCPR/C/GC/34).

11 Ibid, para 12.

12 The UPR monitors existing human rights obligations: Human Rights Council, Institution-building of the United Nations Human Rights Council (18 July 2007, A/HRC/RES/5/1, affirmed in Resolution A/HRC/RES/16/21).

13 Frank La Rue "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression" (26 April 2011, A/HRC/17/27).

14 Report of the Working Group on the Universal Periodic Review, Brazil A/HRC/8/27 (previously issued as A/HRC/WG.6/1/BRA/4) at pages 6 and 15.

15 Ibid, para 83 at page 15.

Recommendation 10: Do its utmost to ensure that Congress adopt the law on access of citizens to public information (Peru);

4. Implementation of this recommendation has included the development of a draft Bill on the protection of personal data, including data stored electronically. The Bill has been open for public consultation in 2011. While the Bill has many good features, concerns have been expressed that the draft law does not adequately protect online personal data from inappropriate collection and retention in accordance with international privacy and human rights standards.¹⁶ Brazil's laws on access to public information and protection of personal data must keep up to date with both technological developments and emerging human rights standards. We therefore recommend that the new law take into account General Comment 34 of the HRC.
5. In addition, during the first UPR review:¹⁷

Brazil reinforced its commitment to create new tools for the internal monitoring of human rights. This would include a national system of human rights indicators and the elaboration of annual reports on the situation of human rights, taking into account, among other aspects, a follow-up of the UPR exercise.
6. During the implementation period the development of human rights indicators has failed to adequately take into account the need to monitor internet related human rights and freedoms such as freedom of expression, freedom of thought, privacy, access to information and women's human rights. Gender and race aspects must be taken into account as cross-cutting issues. Gender identity, reproductive rights, sexual rights are themes that have received increasing attention in recent years in Brazil particularly in the light of hate speech on internet. Research on the internet, gender and sexuality in Brazil (the EROTICS Brazil report) has highlighted that discourse on freedom of expression and privacy largely fails to make explicit the issues of gender and sexuality, particularly for lesbian, gay, bisexual, transvestite and transexual people.¹⁸
7. We recommend Brazil take into account the 2011 annual report of the Special Rapporteur on Freedom of Expression, as well as gender and race as cross-cutting issues, when developing national human rights indicators.

New and Emerging Areas

Civil rights and the internet in Brazil

8. Multi-stakeholder processes, including civil society groups, scholars, the private sector and government, have led the development of a unique civil rights framework for internet governance in Brazil. In 2009 the Brazil Internet Steering Committee developed 10 principles for Internet Governance in Brazil.¹⁹ Strongly grounded in human rights and modelled on collaborative multi-stakeholder processes, the development of these principles underscored the central role of human rights in discussions in Brazil about the

16 Grupo de Pesquisa em Políticas Públicas para o Acesso à Informação “Contribuição para a consulta pública sobre o Anteprojeto de proteção de dados pessoais” 28 April 2011 <www.gopai.usp.br>

17 Ibid, para 85, at page 1 6.

18 Sexuality Policy Watch and Latin American Center on Sexuality and Human Rights. “Internet regulation and Sexual Politics in Brazil”. In EROTICS: Sex, Rights and the Internet, Association for Progressive Communications, 2010. <www.apc.org/en/system/files/EROTICS.pdf>

19 “Principles for the Governance and Use of the Internet in Brazil” <www.CGI.br>

internet, on-line content regulation and related telecommunications and infrastructure policy.

9. These principles and related processes also informed and heavily influenced the first draft of the Civil Rights Framework, known as the “Marco Civil da Internet”. The Marco Civil da Internet was developed following many consultations online and offline and more than 800 submissions. The Bill includes a set of civil rights and responsibilities for internet users, sets strong net neutrality principles, and sets reasonable limitations of liability for user generated content.²⁰ The Bill is currently sitting before the House of Representatives for passage into law but its progress has stalled and, in light of other proposals, civil society groups are concerned that the Bill, which has widespread general support, will not be passed.
10. We recommend that the Marco Civil da Internet be passed into law.

Internet Governance

11. Brazil unique national multi-stakeholder processes and principles for internet governance in Brazil have been commended in other global forums, such as the Internet Governance Forum. Brazil has also been an active participant in multi-lateral, bi-lateral and multi-stakeholder internet governance processes. When participating in internet governance related issues Brazil must promote and protect human rights.
12. Some civil society groups were therefore very concerned when the government of Brazil joined with the governments of India and South Africa to issue a joint statement on proposals in relation to internet governance and that statement included no reference to human rights.²¹ Leaving aside those particular proposals, the absence of explicit connection with the Brazil civil rights framework and the 10 principles remains a concern. We therefore recommend that Brazil affirm its commitment to promoting and protecting human rights and multi-stakeholder processes in relation to all internet related policy and regulatory activities as well as internet governance matters.

Proposed Cyber Crime Legislation

13. The development of cybercrime legislation has taken many years and has been very controversial.²² In 2011 a bill is still pending in the Brazil House of Representatives that would criminalise many lawful online activities and which does not comply with the Civil Rights Framework. Proposed law PL84/99 would allow courts to apply criminal penalties to activities such as file sharing, peer to peer communications and the fair and lawful use of copyright works. Internet intermediaries such as internet service providers and online platform providers such as YouTube and Flickr, email service providers and others, would be obliged to collect and retain users’ personal data for extended periods of time.

²⁰ Marco Civil da Internet, Brazil, PL 2126/2011.

²¹ “IBSA Multi-Stakeholder Meeting on Internet Governance – Recommendations” (Sept 1-2 2011, Rio de Janeiro, Brazil).

²² See, for example, the overview by Pablo Ortellado “From cybercrime to an internet civil rights framework” *Global Information Society Watch: Internet rights and democratisation - freedom of expression and freedom of association* (Association for Progressive Communications and Hivos, 2011) www.giswatch.org

14. There has been widespread opposition to these proposals on the grounds that the law would interfere with citizens' rights to free expression and privacy and would restrict the openness of the internet in Brazil. There is also concern that it does not comply with the Marco Civil da Internet Bill. In 2011 the Special Rapporteur on Freedom of Expression recommended (in relation to restriction of content on the internet and arbitrary filtering and blocking of online content) that such limitations on freedom of expression must comply with international human rights standards.²³
15. We recommend the proposed cybercrime laws take into account the recommendations of the Special Rapporteur on Freedom of Expression on limitations on freedom of expression in relation to the internet and comply with these agreed minimum standards.

The Internet and Sexual and Reproductive Rights

16. Civil society groups have expressed serious concerns that some conservative groups are attempting to block access to information on abortion, in particular information that can help to reduce negative effects of incorrect use of medicines used in abortion procedures (such as misoprostol known by its trade mark Cytotec). The difficulty is that information provided by civil society groups and others can be regarded as being in breach of criminal law as Brazil has one of the most restrictive abortion laws in the world.²⁴
17. Brazil must comply with the World Health Organisation standards on access to health information (which must be qualified information based on science, non-discriminatory and open to access for all) and also promote and protect the privacy rights of individuals. Privacy rights in relation to access to health information must also encompass the right to confidentiality, particularly where reproductive rights are the basis for seeking such information.
18. With the advent of telemedicine and e-health programs there are growing numbers of digital data bases and retention of patient data. These pose serious risks unless strong measures are in place to protect the privacy and confidentiality between the patient and doctor (the communication between patient and doctor and personal data held by health agents and health sector personnel). The transfer and storage of a patient's personal data by third parties represent risks to secrecy and maintenance of patient confidentiality. The data collected in all stages of health system, including telemedicine and e-health services, must be kept confidential, given that it is only the patient which has the right to decide who is allowed to access his/her data according to the fundamental right to privacy set out in the Brazilian constitution, Art. 5th, para X.

Recommendations

19. Take into account the 2011 annual report of the Special Rapporteur on Freedom of Expression on freedom of expression and the internet as well as gender and race as cross-cutting issues when developing national human rights indicators.

²³ Frank La Rue "Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression" (26 April 2011, A/HRC/17/27) in paras 68-71 at pages 18-19.

²⁴ Magaly Pazello. 2010 "Internet, restrição de informações e acesso ao misoprostol". *Aborto Medicamentoso no Brasil*. São Paulo, Oficina Editorial, p. 81-119

20. New data protection laws take into account General Comment 34 of the Human Rights Committee.
21. The Marco Civil da Internet be passed into law.
22. Affirm its commitment to promoting and protecting human rights and multi-stakeholder processes in all internet related policy and regulatory activities as well as internet governance matters.
23. Proposed cybercrime laws take into account and comply with the recommendations of the Special Rapporteur on Freedom of Expression on limitations on freedom of expression in relation to the internet and comply with these agreed minimum standards.