

## **Status of Human Rights in Brazil for the 41<sup>st</sup> Session of the Universal Periodic Review**

### **Introduction**

1. The European Centre for Law and Justice (ECLJ) is an international, non-governmental organisation dedicated to promoting human rights around the world. The ECLJ holds Special Consultative status before the United Nations Economic and Social Council. This report discusses the status of human rights in the Federative Republic of Brazil (Brazil) for the 41<sup>st</sup> session of the Universal Periodic Review (UPR).

### **Background**

2. Brazil is a country located in South America with an estimated population of 213 million people<sup>1</sup>. The population is predominately Christian, with approximately 64% of the population identifying as Catholic, 22% as Protestant, 8% as none, and 2% as Spiritist<sup>2</sup>.

3. Brazil's previous review was held on 5 May 2017<sup>3</sup>. As a result of the review, Brazil received 246 recommendations, 242 of which Brazil supported<sup>4</sup>. Two of the recommendations that were supported by Brazil were that the government “[c]ontinue its efforts to combat contemporary forms of slavery, including trafficking and exploitation of persons, and provide support and protection to victims, paying particular attention to more vulnerable groups”, and “[e]ffectively implement the anti-trafficking law and provide resources and training for government officials”<sup>5</sup>.

4. It was further recommended, and supported by Brazil, that the government “[c]ontinue expanding access to voluntary termination of pregnancy in order to ensure the full recognition of sexual and reproductive rights”<sup>6</sup>. It should be noted that abortion is not a sexual or reproductive right but is in fact the taking of another life. There were no recommendations made regarding freedom of religion.

### **Legal Framework**

5. Under Article 5 of the Constitution of Brazil:

Everyone is equal before the law, with no distinction whatsoever, guaranteeing to Brazilians and foreigners residing in the Country the inviolability of the rights to life, liberty, equality, security and property, on the following terms:

...

III. no one shall be submitted to torture or to inhuman or degrading treatment;

...

XIII. exercise of any job, trade or profession is free, observing the professional qualifications that the law establishes;<sup>7</sup>

6. Additionally, under Article 227 of the Constitution:

It is the duty of the family, the society and the Government to assure children, adolescents, and youths, with absolute priority, the rights to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, liberty and family and community harmony, in addition to safeguarding them against all forms of negligence, discrimination, exploitation, violence, cruelty and oppression.

§1°. The Government shall promote full health assistance programs for children, adolescents, and youths, permitting participation by non-governmental entities and obeying the following precepts:

I. allocation of a percentage of public health funds to assist mothers and infants<sup>8</sup>;

7. Furthermore, under Article 149 of the Criminal Code of Brazil:

Reducing someone to a condition analogous to that of a slave, namely: subjecting a person to forced labour or to arduous working days, or subjecting such a person to degrading working conditions or restricting, in any manner whatsoever, his mobility by reason of a debt contracted in respect of the employer or a representative of that employer.

Penalty – two (2) to eight (8) years of imprisonment, together with a fine, on top of any sentence handed down for violence.

§1° Any persons committing the following offences shall receive the same penalties:

I – retaining workers at the workplace by preventing them from using any means of transportation

II – retaining workers at the workplace by confiscating their personal papers or personal property, or by maintaining manifest surveillance

§2° The prison sentence is increased by half if the crime has been committed:

I – against children or adolescents

II – on the basis of race, colour, ethnicity, religion or origin<sup>9</sup>.

8. Brazil is also a party to the International Covenant on Civil and Political Rights (ICCPR), which states in Article 8:

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
  2. No one shall be held in servitude.
  3. (a) No one shall be required to perform forced or compulsory labour<sup>10</sup>;
9. Articles 124-128 of the Criminal Code establish the punishment for abortion as well as state that abortion is only permissible in cases of rape or if it is necessary in order to save the life of the mother.

Abortion provoked by a pregnant woman or with her consent

**Article 124:** Provoking abortion oneself or consenting to another person provoking it:

Penalty – imprisonment of one to three years<sup>11</sup>.

Abortion provoked by a third party

**Article 125:** Provoking an abortion without the consent of the pregnant woman:

Penalty – imprisonment of three to ten years<sup>12</sup>.

**Article 126:** Provoking an abortion with the consent of the pregnant woman:

Penalty – imprisonment of one to four years.

Sole Paragraph. The penalty in the previous article is applicable if the pregnant woman is not older than 14 years, or is insane or mentally weak, or if the consent is obtained through fraud, serious threat, or violence<sup>13</sup>.

Conditioned form

**Article 127:** The penalties prescribed in the two previous articles shall be increased by one third if, as a consequence of the abortion or the means employed to provoke it, the pregnant woman suffers bodily injury of a serious nature, and shall be doubled if, for any of these reasons, her death follows<sup>14</sup>.

**Article 128:** An abortion practiced by a doctor is not punishable:

Necessary abortion.

I. if there is no other means of saving the life of the pregnant woman,

Abortion in the case of pregnancy resulting from rape

II. if the pregnancy results from rape and the abortion is preceded by the consent of the pregnant woman, or, when incompetent, of her legal representative<sup>15</sup>.

10. Additionally, under Article 6 of the ICCPR “[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”<sup>16</sup>.

11. Brazil is also a party to the Convention on the Rights of the Child (CRC)<sup>17</sup>. Under Article 6 of the CRC:

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child<sup>18</sup>.

### **Slave Labour**

12. In Brazil, slave labour is largely centred in rural areas where they exploit poor and mostly uneducated individuals for labour-intensive work in textile companies and in the agriculture sectors such as cattle ranching, coffee production and tobacco<sup>19</sup>. Poor girls and women are also targeted and exploited for use in domestic slavery<sup>20</sup>. In 2020 the government found 942 people working in forced labour, down from 1,054 people in 2019<sup>21</sup>. However, the head of Brazil’s Labor Prosecutors Office warns that “[t]his doesn’t mean that there has been a reduction (in slave labor) . . . There’s still much work to be done”<sup>22</sup>.

13. One of the biggest problems prohibiting Brazil from effectively combatting and investigating slave labour is a lack of adequate funding and a reduction in personnel<sup>23</sup>. According to one of Brazil’s leading anti-slavery labour prosecutors “The Division of Inspection for the Eradication of Slave Labor has serious budget restrictions with a very drastic reduction in personnel . . . There is an enormous deficit with the number of labor inspectors”<sup>24</sup>. This has prevented Brazil from adapting to the changing landscape of slave labour within the country<sup>25</sup>. For example, businesses are becoming more fragmented and spread out across the country which inhibits the ability for labour inspectors to investigate potential cases<sup>26</sup>.

14. Additionally, businesses and individuals are becoming better at hiding slave labour. According to the interim head of the Division of Inspection for the Eradication of Slave Labour, these individuals and businesses “know how to hide, and they are increasingly difficult to find”<sup>27</sup>.

15. In March of 2021, Brazil charged a large tobacco company for using slave labor<sup>28</sup>. Authorities were able to rescue nine individuals, five of which were children, from a farm in the southern state of Rio Grande do Sul<sup>29</sup>. According to a labour inspector “(The workers) had acute intoxication, they had nausea, they vomited . . . The children were also suffering from symptoms of acute intoxication”<sup>30</sup>. This case marks a huge milestone for the fight against slave labour, as it is the first time the government has taken action against a tobacco company for conditions on a farm<sup>31</sup>.

16. That same month, authorities rescued 66 charcoal workers who were working as slave labour<sup>32</sup>. Most of those rescued were recruited through false promises of good pay only to then be stripped of their personal documents and forced to live in poor conditions that lacked necessities such as toilets<sup>33</sup>. The two companies involved were then forced to pay for return tickets for the victims as well as 970,00 reias (\$171,000) in indemnities<sup>34</sup>.

17. In January of 2021, Brazil launched “Operation Rescue” which resulted in the successful rescue of 140 individuals who were working as slave labour in mostly rural areas<sup>35</sup>. “Operation Rescue” was a massive undertaking that involved the cooperation of more than 500 government officials who took part in 64 raids<sup>36</sup>.

18. Domestic slave labour presents a difficult challenge for investigators because they are hidden in people’s homes<sup>37</sup>. As a result, there have been cases of people serving as domestic slaves for decades before finally being set free. In one case in particular, a little girl was enslaved as a maid at the age of 8 and remained in domestic slavery until she was rescued nearly four decades later<sup>38</sup>. As a domestic slave she was forced to live in a small room and worked without pay or time off<sup>39</sup>. According to the inspector who oversaw the rescue, “They gave her food when she was hungry, but all other rights were taken from her”<sup>40</sup>.

19. In July of 2020, a 61-year-old woman was rescued by authorities after 22 years of working as a domestic slave<sup>41</sup>. According to reports she was found living in a storage shed outside of a mansion where she was forced to work<sup>42</sup>. According to court documents she was forced to sleep on a couch and use a bucket for a toilet<sup>43</sup>.

## **Abortion**

20. The law governing abortion has mostly remained unchanged since 1940<sup>44</sup>. Under the current law, abortion is only permitted in the cases of rape or when it poses a danger to the health of the woman<sup>45</sup>. Brazil’s long history of upholding protections for the life of the unborn is commendable because abortion is one of the gravest of all offenses against human life as it entails the deliberate killing of an innocent human being. The value of a human life is not dependent upon the nature in which it begins, and even the life of an unborn baby conceived by rape is no less valuable than any other. A procedure that deliberately takes the life of a living human being is plainly a procedure that fosters insensitivity to, and disdain for life in the womb.

21. In December of 2020 Brazil further exhibited their commitment to protecting the life of the unborn by cosponsoring the Geneva Consensus Declaration on Promoting Women’s Health and Strengthening the Family. As stated in the Declaration:

3. *Reaffirm* the inherent “dignity and worth of the human person,” that “every human being has the inherent right to life,” and the commitment “to enable women to go safely through pregnancy and childbirth and provide couples with the best chance of having a healthy infant”;

4. *Emphasize* that “in no case should abortion be promoted as a method of family planning” and that “any measures or changes related to abortion within the health system can only be determined at the national or local level according to the national legislative process;

...

*Improve and secure* access to health and development gains for women, including sexual and reproductive health, which must always promote optimal health, the highest attainable standard of health, without including abortion;

*Reaffirm* that there is no international right to abortion, nor any international obligation on the part of the States to finance or facilitate abortion, consistent with the long-standing international consensus that each nation has the sovereign right to implement programs and activities with their laws and policies;<sup>46</sup>

## Conclusion

22. In order for Brazil to more effectively combat slave labour, the government must allocate adequate resources and funding so that investigators can properly investigate cases of slave labour. Since slave labour has become more widespread and is growing in more rural regions, increased funding for personnel is needed so that cases in these remote areas can be properly investigated and prosecuted. Additionally, resources must be allocated to provide aid and rehabilitation for these victims.

23. Furthermore, we commend Brazil on its strong stance protecting all life and would like to encourage Brazil in its efforts. However, we also request that Brazil further these steps by reforming its laws to protect the life of the unborn baby with no exception based on how the baby's life began. A baby whose life began because of a rape is no less deserving of life, and no less valuable as an innocent human being.

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<sup>1</sup> *Brazil*, THE WORLD FACTBOOK (7 Jul. 2021), <https://www.cia.gov/the-world-factbook/countries/brazil/>.

<sup>2</sup> *Id.*

<sup>3</sup> Universal Periodic Review – Brazil, UNHRC, <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BRIndex.aspx>.

<sup>4</sup> UPR of Brazil Thematic List of Recommendations, UNHRC, <https://lib.ohchr.org/HRBodies/UPR/Documents/Session27/BR/MatriceRecommendationsBrazil.docx>.

<sup>5</sup> *Id.* at A/HRC/36/11/Add. 1.

<sup>6</sup> *Id.* at A/HRC/36/11/Add, 1.

<sup>7</sup> Constitution of Brazil art. 5, [https://www.constituteproject.org/constitution/Brazil\\_2017.pdf?lang=en](https://www.constituteproject.org/constitution/Brazil_2017.pdf?lang=en)

<sup>8</sup> *Id.* at art. 227.

<sup>9</sup> Criminal Code of Brazil art. 149, <https://accountabilityhub.org/provision/brazilian-criminal-code-article-149/> (unofficial translation).

<sup>10</sup> International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. 95-20, 6 I.L.M. 368 (1976), 999 U.N.T.S. 171, art. 8.

<sup>11</sup> Penal Code (1940), Decree-Law Number 2.848, Special Part, Title I, Chapter I, Art. 124, <https://reproductiverights.org/maps/provision/brazils-abortion-provisions/> (unofficial translation).

<sup>12</sup> *Id.* at art. 125.

<sup>13</sup> *Id.* at art. 126.

<sup>14</sup> *Id.* at art. 127.

<sup>15</sup> *Id.* at art. 128.

<sup>16</sup> ICCPR, *supra* note 10, at art. 6.

<sup>17</sup> *Ratification Status for Brazil*, OHCHR, [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=24&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=24&Lang=EN).

<sup>18</sup> Convention on the Rights of the Child art. 6, <https://www.ohchr.org/documents/professionalinterest/crc.pdf>.

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<sup>19</sup> *Brazil*, GLOBAL SLAVERY INDEX (2018), <https://www.globalslaveryindex.org/2018/findings/country-studies/brazil/>.

<sup>20</sup> *Id.*

<sup>21</sup> Fabio Teixeira, *Brazil Rescues More Than 100 Slavery Victims in Nationwide Swoops*, REUTERS (28 Jan. 2021), <https://www.reuters.com/article/us-brazil-trafficking-rescue-trfn/brazil-rescues-more-than-100-slavery-victims-in-nationwide-swoops-idUSKBN29X2K0>.

<sup>22</sup> *Id.*

<sup>23</sup> *Brazil Finds Fewer Workers in Slave-Like Jobs Despite more Complaints*, REUTERS (28 Jan. 2020), <https://www.reuters.com/article/us-brazil-slavery-trfn/brazil-finds-fewer-workers-in-slave-like-jobs-despite-more-complaints-idUSKBN1ZR2R2>.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> Fabio Teixeira, *Tobacco Exporter Faces Slavery Charges in Landmark Brazil Case*, REUTERS (1 Mar. 2021), <https://www.reuters.com/article/us-brazil-slavery-tobacco/tobacco-exporter-faces-slavery-charges-in-landmark-brazil-case-idUSKCN2AT3Q1>.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Luana Souza, *Brazil Rescues 66 Charcoal Workers from Slave-Like Conditions*, BLOOMBERG (5 Mar. 2021), <https://www.bloomberg.com/news/articles/2021-03-05/brazil-rescues-66-charcoal-workers-from-slave-like-conditions>.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Fabio Teixeira, *Brazil Rescues more than 100 Slavery Victims in Nationwide Swoops*, REUTERS (28 Jan. 2021), <https://www.reuters.com/article/us-brazil-trafficking-rescue-trfn/brazil-rescues-more-than-100-slavery-victims-in-nationwide-swoops-idUSKBN29X2K0>

<sup>36</sup> *Id.*

<sup>37</sup> Maurício Fagundes

<sup>38</sup> *Brazilian Woman, Forced into Domestic Slavery and Marriage Freed After 40 Years*, THE GUARDIAN (21 Dec. 2020), <https://www.theguardian.com/world/2020/dec/21/brazilian-woman-forced-into-domestic-slavery-and-marriage-freed-after-40-years>.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Fabio Teixeira, *Couple in Brazil Charged After Woman Allegedly Held as Slave for Years at Family Mansion*, GLOBAL NEWS (6 Jul. 2020), <https://globalnews.ca/news/7144740/woman-held-slave-conditions-brazil/>.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Brazilian Women Head to Argentina to Avoid Abortion Ban*, AP (7 Jan 2021), <https://apnews.com/article/brazil-abortion-ban-884b4f8e96d773d15d503cefc4930c32>

<sup>45</sup> *Id.*

<sup>46</sup> Geneva Consensus Declaration on Promoting Women's Health and Strengthening the Family, A/75/626, <https://undocs.org/Home/Mobile?FinalSymbol=A%2F75%2F626&Language=E&DeviceType=Desktop>.