

THE
CARTER CENTER



BRAZIL

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Reporting Organization

The Carter Center is a not-for-profit, nongovernmental organization that has helped to improve life for people in more than 80 countries by resolving conflicts; advancing democracy, human rights, and economic opportunity; preventing diseases; and improving mental health care. The Carter Center was founded in 1982 by former U.S. President Jimmy Carter and his wife, Rosalynn, in partnership with Emory University to advance peace and health worldwide.

The Carter Center's Democracy Program works globally to promote democratic elections and governance consistent with human rights. The Center has monitored more than 100 elections in 38 countries since 1989, forging many of the techniques now common to the field. Recognizing that democratic transitions involve much more than elections, the Center also conducts long-term monitoring of political transitions and works to strengthen civil society organizations to support democratic governance. The Democratic Election Standards (DES) initiative aims to build consensus on standards for democratic elections, based on state obligations under public international law.

The Carter Center in Brazil

The Carter Center has been active in the South American region for many years, conducting a range of expert, targeted, and comprehensive election observation missions, as well as democracy and governance projects. In 2022, the Center deployed an expert mission to Brazil to assess the presidential elections of October 2 and the runoff that took place on October 30, 2022, with a particular focus on the legal framework, voting technology, and the disinformation environment on social media. The Center's mission collected data through meetings and interviews with political stakeholders, electoral authorities, representatives of civil society organizations, social media monitoring, and legal and technical experts. This submission is based on this first-hand data collected during the assessment. The submission offers questions that the Human Rights Committee may consider asking the State Party and provides some key recommendations to ensure that various stages of the electoral process are implemented in accordance with Brazil's obligations under the ICCPR in the future.

Issues and Suggested Questions for the Human Rights Committee

Article 3: Equality Between Men and Women

Article 5(i) of the Brazilian Constitution guarantees that men and women enjoy equal rights under the law. Brazil has ratified several international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). As mentioned in the most recent State report, the State Party has implemented targeted measures to improve gender equality in political participation, notably Law 12034/2009, which requires a minimum of 30% of women candidates for proportional electoral offices per political party, and the amendment to Constitution N° 18/2021, which stipulates that financial resources from the Electoral Fund (public financing of political parties and campaigns) allocated to women candidates should be proportionate to the percentage of women within each party.

It is also worth noting that in 2019, the country's Electoral Management Body, the Tribunal Superior Eleitoral (TSE), launched the Gender Policy Management Committee, affiliated with the TSE Presidency, with the aim of increasing women's political participation and enhancing women's institutional involvement with the electoral justice. The Committee maintains a dedicated website (*TSE Mulheres* – <https://www.justicaeleitoral.jus.br/tse-mulheres>) that provides statistics, historical information, and initiatives undertaken by the TSE pertaining to women's political participation. The Carter Center commends the TSE for establishing the committee and looks forward to its future achievements.

However, Brazil struggles to ensure gender equality. In the 2022 elections, 91 women were elected as federal deputies out of the 513 seats, marking a modest increase from the 2018 elections when 77 women were elected. This represents only 18% of the lower legislative house, while women make up 53% of Brazil's population. Consequently, the measures adopted by TSE thus far have not demonstrated significant improvements in the political representation of women.

The expert team from The Carter Center found that political parties often circumvent the legally required quota for women candidates by using 'fake candidatures.' These are women candidates who are officially registered, with the primary aim of fulfilling the gender quota requirement but receive no support from the party and do not engage in campaign activities. Since 2020, the Regional Electoral Tribunals in the states of Rio de Janeiro, São Paulo, and Minas Gerais have revoked the mandates of over 17 city councilors due to fake candidatures. Electoral justice investigations revealed that several women were unaware of their registration and even campaigned for other candidates in some cases. Preliminary analysis for the 2022 election also demonstrated that parties were not allocating funds proportionally to the share of women candidates. While women candidates represented 34%, the funds allocated to their campaigns was only 30% by September 2022.

While on the ground, the Carter Center Expert Mission observed pervasive gender imbalance. This imbalance is also evident in the composition of the TSE. The TSE consists of seven members – six men and one woman. This gender imbalance reflected in public engagements such as public ceremonies and events, where panels and speakers were predominantly male. Women are mostly represented in middle and lower positions.

Questions for Consideration:

What specific steps will the Federative Republic of Brazil take to increase women's representation in politics so they can enjoy equal political rights?

How will the Federative Republic of Brazil ensure that the already existing measures of quota for women's candidature and campaign funds are enforced such that they serve to improve the chances of women being elected for political offices?

What specific steps will the Federative Republic of Brazil take to ensure that men and women have the same opportunities to compete for office on a level playing field, as established by Article 3 of ICCPR and the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), Recommendation No. 25, paragraph 35?

Articles 19 and 20: Freedom of expression, respect of the rights or reputations of others, and advocacy of hatred

Brazil guarantees freedom of expression primarily through Articles 5 (iv) and 220 of the Federal Constitution. These articles establish that every citizen has equal right to freedom of thought and expression, and any censorship of a political, ideological, or artistic nature is prohibited. The Civil Framework of the Internet (Law N° 12.965/2014) also states in Article 2 that the use of the internet in Brazil is based on the respect for freedom of expression. In addition, Brazil is a signatory of the American Convention on Human Rights, which explicitly recognizes the right to freedom of expression and prohibits any restrictions on this right, censorship, and hate campaigns, as outlined in Articles 1 to 5.

Brazil is the most connected country in Latin America and one of the most connected countries globally, with over 165 million internet users (73% of the total population). Leading digital platforms have gained significant popularity among citizens, who primarily use messaging services such as WhatsApp and Telegram (used by over 80% of internet users).

Since 2018, elections have taken place amidst a prevalent influence of disinformation favoring the then-candidate and subsequent president, Jair Bolsonaro. In recent years, the TSE has implemented several measures to strengthen its regulation of disinformation. The TSE has trained its staff to identify and address electoral disinformation, including investigating the networks involved in producing, distributing, and propagating disinformation content, as well as their financing. Additionally, the electoral regulator has entered into agreements with several digital platforms to expedite the removal of harmful content. However, faced with an overwhelming influx of misinformation and alleged lack of cooperation from certain social media platforms, the TSE decided during the final stages of the 2022 campaign to enhance its autonomy in determining which content should be removed and to enforce shorter removal deadlines. Companies that failed to comply with content removal orders within two hours (one hour during election day) could face fines of R\$150,000 (around US\$30,000) for each hour of non-compliance, along with a potential service suspension for 24-hours. This new strategy adopted by the TSE has been perceived by some as a power grab, and concerns have been raised by those who view these measures as encroachments on freedom of expression and a potential precursor to censorship.

During the expert mission deployed in 2022, The Carter Center analyzed over 395 debunked messages to identify the targets and assess whether they were detrimental or beneficial to the candidates or the TSE. Key disinformation narratives were examined and categorized to understand their intentions and objectives.

While disinformation targeted all actors involved in the campaign, two primary victims emerged: candidate Lula da Silva from the Worker's Party (PT) and the TSE. Approximately half of the disinformation messages aimed at damaging the reputation of the PT candidate (50.68%). Following Lula, the TSE became the primary target, with one-third of the disinformation messages (34.15%) aimed at discrediting the electoral process and the TSE's president, who faced accusations of partisanship and censoring Bolsonaro's campaign to favor Lula. Disinformation intended to favor a specific candidate was predominantly directed towards Bolsonaro, with approximately 90% of the messages seeking to place him in an advantageous position. These

messages either presented favorable poll results or depicted him as a victim of powerful entities within the country.

Regarding the messages targeting the TSE, disinformation aimed to undermine the electoral process by fostering distrust in the process (24.39% of all disinformation messages). They also alleged the partisan bias of the electoral authority, accusing it of censoring Bolsonaro's campaign and openly supporting his opponent (23.58%). Other tactics included sharing photos of voting records to support claims of a stolen victory from Bolsonaro or to denounce voter fraud by exceeding the allowed number of voters at polling stations (17.07%), among other strategies. These messages had significant effects on society, as public opinion polls indicated historically high levels of mistrust in voting machines and the overall electoral process.

It should be noted that the Brazilian electronic voting system, chosen by the TSE, relies solely on voting machines without a secondary medium, such as a Voter Verified Paper Audit Trail (VVPAT), to store votes. This design inherently requires public trust in its functioning and technical aspects, which most of the population may not fully be aware of.

In this context, the measures implemented by the TSE to reduce judicial requirements, increase obligations for digital platforms, and shorten content removal deadlines are understandable, particularly when applied to content targeting the electoral process or the TSE. However, it is crucial for these measures to be adopted after extensive deliberation rather than in the heat of an election battle.

Questions for Consideration:

What measures will the Federative Republic of Brazil take to enhance public trust in the electoral process, especially in the voting machines, to counter the damaging effects of misinformation?

What specific steps will Brazil take to control the production, spread, and effects of misinformation in future electoral cycles?

Article 26: Right and opportunity to vote

Per Law N 8624/1993, voting is mandatory in Brazil for everyone who is 18 years old or older, while it is optional for illiterate individuals, the elderly (70 or older), and those between the ages of 16 and 17. The electoral code stipulates several penalties should a voter fail to vote in an election and does not provide a valid justification, such as small fines and disqualification from holding public positions. If a voter fails to vote in three consecutive elections without justification, their name will be removed from the voters' registry, and they will need to register again.

However, the practice of removing a voter from the voters' roll appears to contradict the principle of universal right to vote. It can be argued that such removal can be excessively punitive and may infringe upon the universal right to vote. In a country where certain groups face challenges in accessing public services, such as remote areas and marginalized communities, this policy may further disadvantage vulnerable groups.

Ensuring universal access to the right to vote remains a significant challenge in Brazil, particularly for economically vulnerable individuals. An example of this is the ongoing debate regarding whether public transportation should be free on election day. This discussion alone highlights the persisting difficulties in accessing polling stations, which can deter individuals from exercising their right to vote, especially those who are most vulnerable. The exercise of the right to vote should be universal and not dependent on the economic capacity of voters.

In this regard, a day before the 2nd round of the 2022 election, the commander of the Federal Road Police (Polícia Rodoviária Federal – PRF) announced that the police force would be deployed in large numbers (500,000) on election day to implement roadblocks and address transit irregularities in election day movements. However, the President of the TSE issued an order restricting the police from interfering with the election, emphasizing that their role was not that of an oversight entity.

On election day, there were reports that Federal Road Police roadblocks inhibited buses conveying voters to the polls. As a subsequent PRF report revealed, these operations were disproportionately concentrated in the Northeast of Brazil, a region known for its greater support for candidate Lula da Silva, who had performed well in the first round. The director of PRF was summoned to the TSE, and the President of the TSE ordered the immediate cessation of the roadblocks, warning that the director would personally face fines and imprisonment if non-compliant. Nonetheless, this decision was issued around 3:30 pm, with the polls scheduled to close at 5 pm. Despite calls from various stakeholders for an extension of voting hours, the TSE did not accept this request.

The ongoing investigation by the Federal Police suggests that the PRF operation was planned in cooperation with the Ministry of Justice and specifically targeted cities where Lula had a lead in the first round. Furthermore, the PRF director was found to have campaigned for the incumbent candidate on the day before the second round of voting. These findings paint a larger picture of an attempt to undermine universal access to voting, which was especially significant in an election where the difference in margins between the candidates was narrow.

Questions for Consideration:

What measures will the Federative Republic of Brazil take to ensure that all citizens have equal and universal access to vote, particularly those that are most marginalized?

What measures will the State take to prevent the abuse of state resources in the context of the electoral process?

Article 26: All persons are equal before the law

The Federal Constitution of Brazil (Articles 3, 4, 5, and 7) recognizes that everyone is equal under the law, enjoying the same rights and obligations. As a diverse and multi-ethnic country, Brazil faces several challenges in ensuring compliance with this constitutionally guaranteed equality and fulfilling Article 26 of the ICCPR.

In terms of electoral administration, the TSE is actively developing new areas and implementing actions to address these challenges. In 2022, the TSE presidency established the Inclusion and

Diversity Advisory, which aims to incorporate considerations for indigenous peoples, people of African descent, Quilombolas population, women, LGBTQI+ individuals, people with disabilities and accessibility needs, and others into the court's daily operations. The TSE is also leveraging new technologies to promote inclusion through innovative practices. For instance, since 2018 transgender candidates were allowed to use their social names on the electronic voting ballot (as their *nome de urna* - ballot name). Before that, transgender candidates had to use their birth certificate names, causing discomfort to them.

More strikingly, indigenous, and black communities are significantly underrepresented in elected positions. According to the most recent census data, approximately 1.4 million people in the country identify themselves as indigenous, and 56% of Brazilian society identifies as black. However, only two indigenous representatives were elected to the lower house of the legislature, while self-identified black individuals constitute 34% of the house's composition. Despite recent measures implemented to promote these candidacies, such as political party quotas for candidatures and allocation of proportional funds for campaigns to these groups, the impact of these measures falls far short of achieving an acceptable level of representation for these communities.

Several key issues regarding the political rights of indigenous communities and people of African descent that require attention. Currently, there is no comprehensive mapping of indigenous peoples and their locations for electoral purposes. This lack of information hinders the development of comprehensive action plans, such as civic education campaigns or campaign materials in native languages. Moreover, the voter registration process does not include specific fields for identifying people's ethnicity or language. Regional tribunals are encouraged to share their best practices in working with indigenous communities, but there are no established provisions in this regard. The impact of mandatory voter registration with biometrics on indigenous peoples is also yet to be determined.

Recommendation: The Carter Center recommends that Brazil and the TSE consider establishing norms for the Regional Electoral Tribunals to actively seek and support the political rights of indigenous, black, and other underrepresented communities.

Questions for Consideration:

What measures will the Federative Republic of Brazil take to ensure that indigenous groups are properly covered by biometric voter registration?

What specific steps will Brazil take to increase the political participation of the indigenous, the black, the LGBTQI+, and other minority communities?