

**Human Rights Watch Submission to the Committee on the Elimination of Discrimination Against Women (CEDAW) on Brazil’s periodic report for the 79th CEDAW Pre-Session**

***November 2020***

Human Rights Watch writes in advance of the 79th pre-session of the Committee on the Elimination of Discrimination against Women relating to Brazil’s compliance with the Convention on the Elimination of All Forms of Discrimination against Women (“the Convention”). This submission addresses issues related to articles 1, 2, 3, 5, 10, 12, 14, and 16 of the Convention.

#### **Violence Against Women and Girls (Articles 1, 2, 3 and 16)**

Brazil made important progress in fighting domestic violence with adoption of the 2006 “Maria da Penha” law, but implementation is lagging. As of 2018, only 8 percent of municipalities had established police stations specializing in violence against women and only about 2 percent operated women’s shelters, both requirements of the law. More than one million cases of gender-based violence and 5,100 femicides, defined under Brazilian law as the killings “on account of being persons of the female sex,” were pending before the courts in 2019.[[1]](#footnote-2)

The government of President Jair Bolsonaro sharply reduced funding for programs protecting women in 2019. The budget of the Secretariat of Policies for Women, within the Ministry of Women, Health and Human Rights, was cut by 27 percent in 2019, according to data Human Rights Watch obtained through a Freedom of Information Request.[[2]](#footnote-3) The Secretariat also failed to use funds it received; of 51 million reais (US$12 million) allocated by Congress in 2019, the Secretariat used only about 40 percent (20 million reais) by November that year.

More than 90 percent of funds the Secretariat spent supported a phone line created in 2005 where women can report violence or get information about services.[[3]](#footnote-4) But federal investment in the services described on the hotline was minimal and services are inadequate. Comprehensive support services are urgently needed to assist thousands of women--the federal government should design and fund them in cooperation with state and local authorities.

Human Rights Watch met a 27-year-old mother of two, in Boa Vista, Roraima, the state with the highest rate of killings of women in the country. She told us she had suffered domestic violence for nine years and reported it to police five times, but police “did nothing.”[[4]](#footnote-5)

On October 16, her partner beat her brutally in front of her children. “I thought I was going to die,” she said.[[5]](#footnote-6) This time, she went to the “House of Brazilian Women” in Boa Vista, a facility opened in December 2018 that houses specialized police, a shelter, and services. For the first time, she saw the police take action against her abuser. She was able to obtain a protection order, and stay at the shelter, where Human Rights Watch met her. “This house is very important,” she said, “It’s a place of hope. I can leave the violence behind.”[[6]](#footnote-7)

There are six other similar houses in the country, including one that opened in 2019.[[7]](#footnote-8) But with Bolsonaro’s election, the development of new houses ended; his administration spent zero reais of almost 13 million (US$3 million) allocated by Congress for additional houses in 2019, according to data obtained by Human Rights Watch.

Police reports of violence against women dropped during the Covid-19 pandemic,[[8]](#footnote-9) while calls by women to a hotline to report violence increased by 27 percent in March and April 2020 compared to the previous year,[[9]](#footnote-10) suggesting women may have a difficulty accessing police.

Human Rights Watch is concerned about reports of high levels of violence against transgender women. According to one civil society group, between January and August 2020, there were at least 129 killings of transgender people in Brazil, all either travestis[[10]](#footnote-11) or trans women.[[11]](#footnote-12) According to the group, this represents an increase in violence against trans people; they recorded 124 murders in all of 2019.

*Human Rights Watch recommends that the Committee ask the government of Brazil*:

* Why did the government reduce funding for services for people experiencing gender-based-violence? What are the government’s plans for funding these services in the coming years?
* Does the government plan to establish additional shelters, specialized police stations, or other new services for survivors of gender-based violence?
* What guidelines, trainings, or procedures ensure that police, prosecutors, judges, health professionals and social workers competently address gender-based violence?
* What steps is the government taking to address violence against transgender women?

*Human Rights Watch recommends that the Committee call on the government of Brazil to:*

* Adequately fund services for survivors of gender-based violence, including shelters, support centers, specialized police stations, public defenders and others as provided for in the 2006 “Maria da Penha” law.
* Reduce barriers for women and girls to access justice, including by improving police training about gender-based violence and developing detailed protocols for police in responding to these cases.

#### **Sexual and Reproductive Rights (Articles 5, 12, 14, 16)**

*Legal Framework*

Abortion is legal in Brazil in cases of rape, when necessary to save a woman’s life, or when the fetus has anencephaly. To access legal abortion, a pregnant person needs approval from a doctor and at least three members of a multi-disciplinary team–made up of an obstetrician, anaesthetist, nurse, social worker and/or psychologist.

People who have abortions through other means not only risk injury and death but face up to three years in prison. People convicted of performing illegal abortions face up to four years.[[12]](#footnote-13)

*Access to Sexual and Reproductive Health Services During the Covid-19 Pandemic*

Brazil has failed to ensure that sexual and reproductive health services, including access to abortion, are treated as essential services and continued without interruptions during the pandemic.

News reports suggested that some local authorities suspended sexual and reproductive services they consider “not urgent,” including providing contraceptive prescriptions and supplies, during the Covid-19 pandemic.[[13]](#footnote-14) Only 42 hospitals, in a country of about 211 million people,[[14]](#footnote-15) are currently performing legal abortions; in 2019, it was 76 hospitals.[[15]](#footnote-16)

In a widely-reported 2020 case, a 10-year-old-girl in Espírito Santo State became pregnant after four years of repeated rape by her uncle.[[16]](#footnote-17) The girl, who lives with her extended family, wanted to end a pregnancy that could have endangered her life at such a young age. Under Brazilian law, she had the right to do so. However, the hospital where she was admitted refused to perform the abortion, claiming that it did not have the authority to conduct the procedure. Meanwhile, the Ministry of Women, Family, and Human Rights reportedly sent a delegation to prevent the girl from having an abortion.[[17]](#footnote-18)

Following a judge’s intervention and a 900-mile journey seeking care, the girl was finally able to access an abortion.[[18]](#footnote-19) But her ordeal was not over. Anti-abortion protesters blocked access to the hospital and harassed its personnel. When the girl arrived, she had to enter the facility hidden in the trunk of a minivan.[[19]](#footnote-20)

Sadly, this case is far from uncommon. Studies estimate that every hour, four girls age 13 or younger are raped in Brazil.[[20]](#footnote-21) In most cases, the perpetrator is a relative.[[21]](#footnote-22) Even though pregnant survivors of rape are entitled to legal abortion, it can be nearly impossible to access. Brazil should ensure that all health care providers comply with the law and that anyone entitled under the law to access abortion is able to do so safely.

On August 27, 2020, the Health Ministry made it even harder to access legal abortion, issuing a regulation (Ordinance n° 2.282/2020),[[22]](#footnote-23) requiring medical personnel to report to police anyone seeking abortion after rape, without the survivor’s consent and even if the survivor does not wish to report the assault. The regulation also compels health professionals to collect evidence of the alleged rape for the police.[[23]](#footnote-24)

The regulation also originally required doctors to offer to show rape survivors the fetus through an ultrasound exam, a requirement seemingly designed to discourage them from having an abortion. The Ministry removed that provision, after criticism, in September 2020, but the rest of the regulation remains (Ordinance n° 2.561/2020).[[24]](#footnote-25) It maintains a previous requirement that medical personnel question women and girls to obtain a detailed account of the violence they suffered and, when possible, identify witnesses and collect a description of the rapist. The regulation says the information should be treated as “confidential,” but also requires medical personnel to hand this information to the police. Rape survivors seeking abortion are compelled to sign a statement of responsibility with an “express warning” that if it “does not correspond to the truth” they could be prosecuted for fraud and illegal abortion, punishable with up to five and three years in prison, respectively.

Brazil’s harsh abortion restrictions are incompatible with its obligations under international human rights law.[[25]](#footnote-26) The new regulation further threatens the rights to life, health, privacy and confidentiality of medical information, non-discrimination, and to be free from cruel, inhuman or degrading treatment.

Lack of access to hospitals performing legal abortions, denial of access to legal abortion at hospitals, stigma, and fear of prosecution can push pregnant people to have potentially life-threatening abortions through other means.[[26]](#footnote-27) Those factors can also keep them from seeking care when they experience complications from unsafe procedures or miscarriages.[[27]](#footnote-28)

An estimated one in five women in Brazil has had an abortion by age 40 – the overwhelming majority outside the health system.[[28]](#footnote-29) Every year, an estimated 200 women die from complications from unsafe abortions, according to the Health Ministry.[[29]](#footnote-30)

In July 2020, Women, Family, and Human Rights Minister Damares Alves announced a new hotline for medical personnel to report “violations of human rights.”[[30]](#footnote-31) A director at the ministry told Human Rights Watch that while the hotline, which is not yet operational, is intended for reporting violence against children and other human rights violations, medical personnel could also report suspected illegal abortions.

The ministry should ensure that the hotline does not further jeopardize the health of women and girls by encouraging medical personnel to report people they suspect of abortion.[[31]](#footnote-32) In Rio de Janeiro, health personnel reports to police already led to almost a third of all prosecutions of women for illegal abortion between 2005 and 2017.[[32]](#footnote-33)

*Human Rights Watch recommends the Committee ask the government of Brazil*:

* How is the government ensuring that everyone legally entitled to access abortion can access a safe and legal abortion?
* How is the government ensuring full access to sexual and reproductive health services, including abortion, across the country during the Covid-19 pandemic?
* How will the government ensure that the new Health Ministry Regulation (Ordinance n° 2.561/2020) does not discourage survivors of sexual violence from accessing health care?
* How will the government ensure that the new hotline for medical staff will not be misused to report women suspected of illegal abortions?
* What steps is the government taking to reduce morbidity and mortality due to unsafe abortion?
* What steps is the government taking to combat stigma around abortion?

*Human Rights Watch recommends that the Committee call on the government of Brazil to:*

* Ensure full access to safe and legal abortion care for everyone eligible under the law.
* Reform the law to remove all restrictions on access to abortion.
* Ensure that anyone can access post-abortion care following self-managed abortion without discrimination, mistreatment, or fear of prosecutions.
* Train all health actors to ensure that criteria for legal abortion are based on international human rights standards and applied uniformly throughout the country
* Provide comprehensive sexuality education in all schools, including a focus on destigmatizing abortion.

#### **Access to Adequate Health Care (Articles 2, 5, 10, 12, 14)**

The Zika virus continues to pose a grave risk in Brazil, particularly to women and children, and the country has not done enough to combat the disease or help the families impacted by it. Brazil’s Ministry of Health identified 579 new suspected cases of Zika between December 2019 and February 2020.[[33]](#footnote-34) A Zika infection during pregnancy can cause microcephaly and other congenital conditions in infants.

The 2015-2016 Zika virus outbreak in Brazil disproportionately affected women and girls and amplified longstanding human rights problems, including inadequate access to water and sanitation, unequal access to health care for the poorest families, and restrictions on sexual and reproductive rights.[[34]](#footnote-35) Government responses to the outbreak largely failed to address these problems, leaving women and girls at the disease’s mercy again when it returned.

Thousands of infants in northeastern Brazil were born with disabilities linked to the virus and their families have fought for their rights ever since.[[35]](#footnote-36) Covid-19 has made matters worse, as states focused on responding to the coronavirus and, in some locations, cancelled in-person therapy for children affected by Zika.[[36]](#footnote-37)

Since 2016, the government has established some benefits, such as a pension for families impacted by Zika, but pregnant people need access to information and diagnostic tests for whether a pregnancy could be impacted by Zika, and access to abortion if they decide to end a pregnancy.

More than one-third of Brazil’s population do not have access to a continuous water supply.[[37]](#footnote-38) This can be lethal, when frequent handwashing is a cornerstone of preventing Covid-19 and other infectious diseases, and inadequately stored water in households without running water can breed mosquitoes that spread Zika and other diseases.[[38]](#footnote-39)

*Human Rights Watch recommends the Committee ask the government of Brazil:*

* How is the government ensuring that families affected by Zika can access services such as healthcare and inclusive education and transport, so children can live in their communities and not residential care facilities?
* How is the government ensuring that children affected by Zika who don’t have family support have the same opportunities as other children to access foster care or adoption?
* What preventive measures and information is the government providing to populations at risk of Zika, including about the risks of infection for pregnant people?

*Human Rights Watch recommends the Committee call on the government of Brazil to:*

* Ensure families affected by Zika have access to state benefits, including pension payments, healthcare, and, where appropriate, Bolsa Família, Brazil’s welfare program for people living in poverty.
* Ensure that children affected by Zika who do not have family support can access adoption or foster care.
* Provide preventive measures for at-risk populations, and contraceptives, information, and diagnostic tests that show whether a pregnancy could be impacted by Zika.
* Respect the right for people infected during pregnancy to choose whether to continue their pregnancy.
* Ensure children with Zika syndrome and their caregivers and family members have access to ongoing psychological support.

#### **Women and girls in detention (Articles 1, 2, 12)**

In 2018, Supreme Court rulings and a new law mandated house arrest instead of pretrial detention for pregnant women, mothers of people with disabilities, and mothers of children under 12, except those accused of violent crimes or of crimes against dependents.[[39]](#footnote-40)

Official data showed that in 2019 judges granted house arrest to more than 3,380 women, but 5,111 women who should have benefited from the new rules remained behind bars.[[40]](#footnote-41) From January through July 2020, judges granted house arrest to at least an additional 938 women, but the Ministry did not provide data on how many were awaiting a decision.

In an October 2020 resolution, the National Council of Justice (Conselho Nacional de Justiça, CNJ) decided prisoners who self-identify as lesbian, gay, bisexual, or transgender (LGBT) could stay in separate units of jails and prisons, and trans people could be housed in detention facilities in accordance with their gender identity without the need for a medical report.[[41]](#footnote-42) The CNJ noted that the measure, which comes into force in February 2021, will greatly benefit trans women, who suffer high levels of violence and discrimination within facilities for men.[[42]](#footnote-43) In Brazil, only 3 percent of prisons (36 prisons) have wings for LGBT people.[[43]](#footnote-44)

*Human Rights Watch recommends the Committee ask the government of Brazil:*

* Why are women entitled to house arrest still behind bars?
* How is the government planning to implement the CNJ decision protecting incarcerated LGBT populations, including expansion of separate units?

*Human Rights Watch recommends the Committee call on the government of Brazil to:*

* Take urgent steps to release from pretrial detention all women entitled to be held under house arrest under Brazil’s Supreme Court decision (HC n° 143.641).
* Implement the CNJ’s October 2020 resolution on incarcerated LGBT people by the January 2021 deadline

**Protection of Education from Attack (Article 10)**

As recognized by this Committee in its *General Recommendation No. 30,* attacks on students and schools, and use of schools for military purposes, disproportionately affect girls, who are sometimes the focus of targeted attacks and are more likely to be kept out of school due to security concerns.[[44]](#footnote-45) The Safe Schools Declaration is an inter-governmental political commitment that provides countries the opportunity to express political support for the protection of students, teachers, and schools during times of armed conflict;[[45]](#footnote-46) the importance of the continuation of education during armed conflict; and the implementation of the *Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict.[[46]](#footnote-47)* Brazil endorsed the Safe Schools Declaration in May 2015.

As of August 2020, Brazil was contributing 219 troops to UN peacekeeping operations in Lebanon. Such troops are required to comply with the UN Department of Peacekeeping Operations “UN Infantry Battalion Manual” (2012), which includes the provision that “schools shall not be used by the military in their operations.”[[47]](#footnote-48)

*Human Rights Watch recommends the Committee ask the government of Brazil:*

* Are protections for schools from military use included in the pre-deployment training provided to Brazil’s troops participating in peacekeeping missions?
* Will the government of Brazil encourage other countries in Latin America and other regions to endorse the Safe Schools Declaration?

**Comprehensive Sexuality Education (Article 10)**

All girls and adolescents have a right to information about sexual and reproductive health, as guaranteed under international law. The right to information is set forth in numerous human rights treaties,[[48]](#footnote-49) and includes both a negative obligation for states to refrain from interfering with provision of information by private parties and a positive responsibility to provide complete and accurate information necessary for the protection and promotion of rights, including the right to health.[[49]](#footnote-50) The Committee on the Rights of the Child and the Committee on Economic, Social and Cultural Rights have clarified that the right to education includes the right to comprehensive sexuality education.[[50]](#footnote-51)

In March 2019, President Bolsonaro ordered the removal from circulation of a booklet for adolescents about pregnancy and sexually-transmitted infections (STIs) because he objected to its images.[[51]](#footnote-52) In February 2020, the Minister of Women, Family and Human Rights and the Minister of Health launched a campaign against early pregnancy promoting abstinence that does not address contraceptive methods.[[52]](#footnote-53)

In September 2020, the Education Minister said gender should not be discussed in schools and that people “choose to be gay” as they often come from “misfit families.” He said curricula for primary and secondary education need to be reformed to excise elements of sexuality education that “eroticize children.”[[53]](#footnote-54) In the interview, the Minister railed against teaching students how to use condoms.[[54]](#footnote-55) Increasing barriers to accessing science-based health information puts at risk Brazil’s decreasing teenage pregnancy rates and young people’s right to access sexual and reproductive health services.

*Human Rights Watch recommends the Committee ask the government of Brazil:*

* What steps is the government taking to incorporate in national curriculums comprehensive sexuality education, i.e. age-appropriate material fostering the prevention of gender-based violence, gender inequity, STIs, and unintended pregnancies?

*Human Rights Watch recommends the Committee ask the government of Brazil:*

* Adopt clear policies on, and offer, comprehensive sexual health education to all students that is age-appropriate, medically and scientifically accurate, and inclusive of all students; these policies should be informed by the needs of young people and created in collaboration with community members.

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