

Joint submission of Brazilian, Latin American and Global Organizations of Persons with Disabilities to the CEDAW Committee on the seventh state report on the implementation of the CEDAW in Brazil



Joint submission by: Brazilian Association for Action on Rights of Persons with Autism (ABRAÇA), National Federation of Education and Integration of Deaf People (FENEIS), Conselho Nacional dos Centros de Vida Independente (CVI-BRASIL), Fraternidade Cristã de Pessoas com Deficiência – FCD/BR, Instituto Baresi, 3IN - Inclusion, Integrity and Independence, Red Latinoamericana de Organizaciones no Gubernamentales de Personas con Discapacidad y sus familias (RIADIS), and the International Disability Alliance (IDA).

INTRODUCTION

This is a joint submission made by a group of Brazilian organizations of persons with disabilities (DPOs), the Latin American Network of Organizations of People with Disabilities and their Families (RIADIS- Red Latinoamericana de Organizaciones No Gubernamentales de Personas con Discapacidad y sus Familias) and the International Disability Alliance (IDA). These organizations are described in Annex II (p 15) to the report and preceded by extracts of treaty body conclusions with respect to Brazil referring to adults and children with disabilities in Annex I (p 14).

The information used to elaborate this submission comes from Brazilian DPOs, individual contributions of activists and scholars working on gender and disability issues, as well as research based on official data from the Brazilian government. Information gathered in this report was in part collected through a survey sent to DPOs across Brazil. The questionnaire was also translated into Brazilian sign language by the National Federation of the Deaf Education and Integration (FENEIS). As a result, 233 people,¹ mostly deaf women, were consulted on their views of the status of the rights of women with disabilities in Brazil. After compiling and sharing the first draft among the contributors and partners, comments and suggestions for changes were made leading to this final report.

¹ http://www.feneis.com.br/page/noticias_detalle.asp?cod=1555

Women with disabilities in Brazil

According to preliminary data from the 2010 Census, there are 45.6 million persons with disabilities in Brazil, i.e. 23.9% of the population. To date, the Brazilian Institute of Geography and Statistics (IBGE) has not presented updated information disaggregated by gender and disability. However, according to data from the 2000 Census, it is known that women make up the majority of persons with disabilities in the country, representing 53.3% of the total.

Almost all official data on violence against women does not contain disaggregated data on violence against women with disabilities. The organs or bodies in charge of women's rights and protection, in large part do not take into account the various forms of access which women with disabilities particularly require to complain, to access victim support services, to seek justice, thereby creating a vicious cycle of violence, impunity and invisibility of women and girls with disabilities.

In 2008, Brazil ratified, with Constitutional status, the UN Convention on the Rights of Persons with Disabilities (CRPD), recognizing that women and girls with disabilities are doubly subject to discrimination impacting their basic rights and are put at greater risk regarding violence, injury or abuse, neglect or negligent treatment, ill-treatment and exploitation. The internalization of this international treaty also represents a promise on the part of the Brazilian government to take effective measures to ensure the full development, advancement, empowerment and enjoyment by women and girls with disabilities, of all human rights and fundamental freedoms on an equal basis with others.

However, there are only few measures adopted in order to harmonize the Brazilian legislative framework to CRPD. In this sense, as an example, it is needed to promote discussions and proposals in order to update the definition of persons with disabilities in other national legislation, prohibit discrimination based on disability, including the denial of provision of reasonable accommodation and ensure the recognition of all people with disabilities as citizens before the law.

Furthermore, the Government is failing in its obligation to actively consult with and involve women and girls with disabilities, and their representative organizations in the development of legislation, policies and other decision making processes concerning them (see Article 4(3) of CRPD)².

For example, at the end of 2011, the Federal Government launched the "Living Without Limits - National Plan on the Rights of Persons with Disabilities," announcing an investment of 7.5 billion of Reais between 2011 and 2014 in the areas of access to education, social inclusion, health and accessibility. However, during the preparation of the Plan, the government did not sufficiently consult with nor seek the participation of organizations of persons with disabilities (DPOs), and as a result the Plan did not effectively incorporate the gender perspective as a guideline for projected actions.

Research conducted by the Brazilian Institute of Geography and Statistics (IBGE) in 2009 reveals that only 14.5% of municipalities across Brazil are equipped with a body in charge of managing policies for women and that in less than 10% of all municipalities, policies are specifically carried out with respect to women with disabilities.³

In sum, women and girls with disabilities in Brazil remain at a lower social position and are less likely to experience social and political participation, access to education, justice, health, regular work, culture, leisure and have access to other social goods that promote gender equality, dignity and human

² Article 4(3) reads: "In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations."

³ Diretoria de Pesquisas, Coordenação de População e Indicadores Sociais, Pesquisa de Informações Básicas Municipais 2009; <http://www.observatoriodegenero.gov.br/menu/publicacoes/perfil-dos-municipios-brasileiros-munic-2009/>

development.

The focus of this submission will be on the rights of women and girls with disabilities in Brazil, in particular their right to education, right to work, equality before the law, right to marriage and family life, right to health, and protection against violence. Recommendations for the Brazilian government with respect to these rights can be found following the main body of the report (p 12).

RIGHT TO EDUCATION, Article 10

According to the report *Gender and Education*, “[t]he rate of Brazilian schooling for children between 7 to 14 years – which refers to the former fundamental primary education – changed from 96.7% in 2000 to 97.5% in 2008 (PNAD / IBGE). Even with the increase in schooling for children aged 7 to 14 years, about 680,000 children remain out of school: the majority of them are black, indigenous, quilombolas, with disabilities, poor, at risk of violence and exploitation (UNICEF/2009). Of this total, 312,000 are girls and 368,000 are boys”.⁴

One specific issue which is widely raised by DPOs in Brazil concerns Decree no 7611/2011 which came into force as an implementation instrument of the national plan “Living Without Limits”. Prior to this plan, an inclusive education policy guaranteed that persons with disabilities of school age were enrolled in mainstream education, however with this new decree, the role of special schools has been augmented and there is a possibility for refusal of enrolment into regular schools on account of disability, and for children to be directed to special schools. It is a step back from the former policy for the promotion of inclusive education for children with disabilities with their peers in mainstream schools.

RIGHT TO WORK, Article 11

The National Policy for the Integration of the Person with Disability⁵ refers to the insertion of persons with disability in the labour market, according to the labour and pension system rules in force, and recognizes the use of special procedures, that is, all means used for the contracting of persons that, due to the level of the disability, transitory or permanent, require special conditions such as variable journey, flexible hours, proportionality of wages, a work environment duly adapted to the individuals’ needs and others. Despite this policy, women with disabilities continue to be discriminated against in the labour market resulting in unemployment, disproportionate salaries and unequal opportunities.

Brazil has a policy on affirmative action prescribing quotas⁶ applicable in both the public and private sector, where businesses with 100 or more **employees are required to hire people with disabilities to make up between 2% to 5% of their staff, a measure which is far from being carried out in the private sector.** According to data from the 2000 Census, women are a majority among people with disabilities, however, statistics show that women with disabilities are at a disadvantage in terms of the jobs they hold in the workplace and the wages they earn.

⁴ EDUCATIONAL ACTION; Brazil Report - Gender and Education / Educational Action (coord); Denise Carreira (coord), Ecos; Reference Center for Victims of Violence of Sedes Sapientiae Institute; National Rapporteur on the Right to Education. São Paulo: Educational Action, 2011, p. 45. Available at http://ccipfdc.files.wordpress.com/2011/12/507_informegeneroeducacaoout20111.pdf Accessed on 29 January 2012.

⁵ Decree nº 3,298 of 20 December 1999, that rules Law nº 7,853 of 24 October 1989 (article 35): http://www.planalto.gov.br/ccivil_03/decreto/d3298.htm

⁶ Law Nº 8.213, of 24 July 1991, art. 93 http://www.planalto.gov.br/ccivil_03/leis/L8213cons.htm.

The number of formally employed workers with disabilities in Brazil fell 12% between 2007 and 2010. Data from the 2010 Annual Report of Social Information – RAIS⁷ reveal that from a total of 44.1 million active employment relationships registered on 31 December 2010, 306,000 were declared by people with disabilities, which corresponds to 0.7% of the total – this shows an increase of people with disabilities employed in relation to those registered in 2009 (288,600 employment relationships), although it has not yet recovered to the 2007 level. Although the country created 6.5 million official jobs in the period between 2007 and 2010, around 42,800 jobs for persons with disabilities were closed.

According to data from the 2000 Census⁸ presented to the Social Agenda for Persons with Disabilities, there are more women among people with disabilities between 20 and 59 years of age, however, in the total number of employees with disabilities, men outnumber women with disabilities in all types of disability⁹.

The double vulnerability of women with disabilities is reflected in the number of jobs they occupy. While among workers without disabilities women hold about 42% of employed positions, **when it comes to workers with disabilities, only 34% are female**, showing that gender discrimination is even greater when a woman has a disability.

Women with disabilities earn an average of R\$1,258.81, i.e. 19% less than women without disabilities (R\$ 1,553.72), **27.6% less than men with disabilities** (R\$ 1,738.22), and 32.8% less than male workers without disabilities (R\$ 1,874.55).

According to RAIS, **women workers with a hearing disability receive** an average salary of R\$ 1,282.27 as opposed to R\$ 2,255.51 paid to men workers, meaning that they receive around 56.85%, **a little more than half of the salary that is paid to their male counterparts with the same disability**. This disparity decreases for other categories of people with disabilities, but it is still significant. Women with physical disabilities earn 71.48% of salaries paid to men workers with physical disabilities, and women with intellectual disabilities receive approximately 86.75% of what is paid to their male counterparts.

RAIS data corroborate the reports of many workers with disabilities who have encountered more difficulties in moving up professionally due to prejudice and lack of accessibility in the work environment. It also points to greater vulnerability of female workers with intellectual/mental disabilities with less participation in the market and very low average income (R\$ 695,78).

According to the experience of Brazilian DPOs in assisting persons with disabilities in seeking employment, it has been observed that frequently job openings for persons with disabilities offer low salaries and the selection process is carried out based on the disability that will require the lowest level of adaptation for the company, such that people with more severe impairments end up having less possibilities of entering the job market. Data from the latest Census of 2010 have not yet been finalized, but information relative to the 2000 Census indicate that **among people with disabilities, the number of women living without any income at all was much higher than that of men¹⁰**, which shows the need for implementing affirmative action that will enable women and girls with disabilities to achieve equality in the workplace.

⁷ Annual Report of Social Information – RAIS - one of the most relevant sources of information on the formal job market in the country - of the Ministry of Labor and Jobs in Brazil. RAIS information encompasses comparisons on all types of formal labour relationships, sectoral and geographic profiles as well as looks at questions of gender and disabilities, educational level and ethnic origin of workers. <http://portal.mte.gov.br/>

⁸ Federal Government Social Agenda for People with Disabilities – TABLE 4: http://conade.l2.com.br/Downloads/Docs/AGENDA_SOCIAL.PDF

⁹ Representation of men with disabilities in the workplace compared to women, categorized by disability : physical disabilities - 64.34%; auditory disabilities - 65.99%; visual disabilities - 64.45%; intellectual/mental disabilities - 71.97%; and multiple disabilities - 66.68%. – RAIS/2010: http://portal.mte.gov.br/data/files/8A7C812D2E7318C8012FE039D8AA15D9/resultado_2010.pdf

¹⁰ Federal Government Social Agenda for People with Disabilities – TABLE 6: http://conade.l2.com.br/Downloads/Docs/AGENDA_SOCIAL.PDF

Article 2 of the UN Convention on the Rights of Persons with Disabilities (CRPD), "*Reasonable accommodation*" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. Moreover, the CRPD recognizes the denial of reasonable accommodation as "discrimination on the basis of disability".¹¹ The provision of reasonable accommodation presents as an individualized solution to ensure the participation of persons with disabilities in the workplace, in the community, and in the exercise of their specific rights. Whilst Brazil has ratified the CRPD, **national legislation, policy and practice does not recognize the obligation to provide reasonable accommodation; nor is it recognized that the denial of reasonable accommodation amounts to discrimination.** Such steps are necessary to ensuring that persons with disabilities have an equal opportunity for employment and advancement in the labour market.

EQUALITY BEFORE THE LAW, Article 15

In Brazil, women and girls with disabilities still face limits in fully exercising their basic rights, due to gaps in the legislation, discriminatory practices, lack of efficient policies and absence of proper devices to guarantee and defend their rights.

Brazilian civil legislation¹² foresees the possibility of partial and total limitation of the exercise of legal capacity through a process called interdiction, based on the medical model of disability, where individuals may be completely deprived of their civil and political rights. Most commonly applied to individuals with intellectual and psychosocial disabilities, having their legal capacity removed and being placed under the guardianship of a third party, they are prevented from performing activities of civil life on their own and according to their will and preferences. Thus, the exercise of public and political rights, including the right to live in the community, is fully affected.

Regimes of substituted decision-making, which remove the legal capacity and autonomy of persons with disabilities, such as guardianship/curatorship/interdiction, have been deemed to be contrary to the principles of the Convention on the Rights of Persons with Disabilities, in particular regarding the provisions of article 12 (equality before the law),¹³ which reaffirms that all persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

According to article 12, State Parties should take appropriate measures to provide access to persons with disabilities to all the support they may require to exercising their legal capacity, including the so called mechanisms of supported decision making.

The CRPD Committee has made strong recommendations to States to "take action to develop laws and policies to replace regimes of substituted decision-making by supported decision-making which respects the person's autonomy, will and preferences".¹⁴

There are few statistics available in Brazil on the processes of interdiction and the way in which the courts have positioned themselves with respect to the exercise of legal capacity by persons with disabilities. However, processes of interdiction are common and affect the capacity of many women with disabilities to exercise their rights, such as the right to marry, right to sexual and reproductive health, the right to give and refuse informed consent before medical procedures take place.

¹¹ According to article 2 of the CRPD, "Discrimination on the basis of disability" means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, *including denial of reasonable accommodation.*

¹² Civil Code Art. 3º and 4º: http://www.planalto.gov.br/ccivil_03/leis/2002/L10406.htm

¹³ CRPD Article 12: <http://www2.ohchr.org/english/law/disabilities-convention.htm>

¹⁴ CRPD Committee Concluding Observations on Spain, September 2011, CRPD/C/ESP/CO/1, para 34; see also Concluding Observations on Tunisia, April 2011, CRPD/C/TUN/CO/1, para 23.

For example, **individuals who are placed under interdiction or guardianship are prohibited from voting.** The Brazilian Constitution (Article 15) states that **voting is compulsory** upon reaching 18 years and it is prohibited to deny political rights **except, among others, for persons who are fully deprived of their legal capacity.** Further, the Electoral Code, Law no 4737 of 15 July 1965 (Article 6) states that **registration and voting are compulsory for Brazilians of both sexes with the exception of persons with disabilities.**

In sum, through the regime of legal incapacitation, women with disabilities are being deprived of their basic rights, autonomy and independence.

MARRIAGE AND FAMILY LIFE – Article 16

Despite action taken by government to advance the right to sexual and reproductive health including for persons with disabilities,¹⁵ the results of these efforts have hardly impacted the reality for women with disabilities in Brazil. Social stigma, allied with the invisibility of women with disabilities in policies, the absence of comprehensive and effective awareness raising actions and the legal barriers imposed by the Civil Code, perpetuate the situation of exclusion and vulnerability of women and girls with disabilities in Brazil.

In general, **information on sexual and reproductive health, when it exists, is not widely made available in age-appropriate and accessible formats to women and girls with disabilities. There are almost no activities where women with disabilities are depicted as a target population and where information is presented in an accessible way, such as through Brazilian sign language, plain language, captioning, or Braille, among others.** Women and girls with disabilities are thereby denied access to general health and reproductive health services on an equal basis with others.

Brazilian legislation permits the permanent sterilization without free and informed consent of persons who are considered legally incapable through a judicial order,¹⁶ i.e. individuals whose legal capacity has been removed or restricted through interdiction or guardianship. Further, the free manifestation of will of people with intellectual or psychosocial disabilities is not considered in family planning policies.¹⁷ This practice, which violates article 16 and 15 of the CEDAW and articles 23, 25, and 12 of the CRPD, as well as amounting to ill-treatment, mainly affects women with intellectual and psychosocial disabilities who have been placed under guardianship.¹⁸

¹⁵ The National Policy for Sexual and Reproductive Rights, which can be found in the document “Sexual and Reproductive Rights: a government priority,” was launched on 22 March 2005, a joint initiative from the Ministry of Health, Education, Justice, Agrarian Development, Social Development and Combat against Hunger, together with the Special Secretary for Women's Policies, for Policies for the Promotion of Racial Equality and the Special Secretary for Human Rights. There are three main focuses of action related to family planning: a) increase in the availability of reversible anti-conception methods (non-surgical); b) improved access to voluntary surgical sterilization; and c) introduction to assisted human reproduction at the National Health System (SUS). In December 2007, through an initiative from the Ministry of Health, the United Nations Population Fund (UNFPA) and the National Federation of APAES (Association of Parents and Friend of the Exceptional), Brazil hosted the National Consultation on Sexual and Reproductive Health and People with Disabilities, aimed at discussing ways to confront and eliminate discrimination against people with disabilities in subjects related to marriage, family and reproduction. In 2009, the first National Health Seminar on Sexual and Reproductive Rights and Persons with Disabilities was held, organized by the Ministry of Health and the United Nations Population Fund (UNFPA), resulting in a publication with a summary of the discussions to orient managers and professionals of the National Health System (SUS). See Sexual and Reproductive Rights in the Comprehensive Health Care of People with Disabilities http://bvsm.sau.gov.br/bvs/publicacoes/direitos_sexuais_integralidade_pessoas_deficiencia.pdf

¹⁶ Law Nº 9.263 of 12 January 1996 – Regulates family planning policy, Art. 10.ii, 6º: “The surgical sterilization of people who are absolutely incapable can only occur with judicial authorization, regulated under law” http://www.planalto.gov.br/ccivil_03/Leis/L9263.htm

¹⁷ Law Nº 9.263 of 12 January 1996 – Regulation of family planning policy, Art. 10.ii,3 º: “The manifestation of will in the form of § 1º, expressed during the occurrence of alterations in the capacity of discernment due to influence of alcohol, drugs, altered emotional states or temporary or permanent mental incapacitation, will not be considered” http://www.planalto.gov.br/ccivil_03/Leis/L9263.htm

¹⁸ For more information on this widespread practice, see the 2011 Briefing Paper on Forced sterilisation of Women and Girls with Disabilities by the International Disability Alliance, Women With Disabilities Australia (WWDA), Human Rights Watch (HRW) and the

The National Federation of Education and Integration of Deaf People (FENEIS) is **aware of cases of deaf women who have been sterilized upon their family's request, without having expressed the will to be sterilized, and without any judicial control. Some of them only discover what has happened to them years later. This situation results, in part, from the absence of professional sign language interpreters in the health services.**

FENEIS also calls attention to the situation of deaf girls who live in isolation within their own family and with little or no interaction with the community. Due to social stigma, many families admit they feel shame of having a child with a disability, and prefer to keep their child hidden from the community. In some cases, they are prohibited from meeting and interacting with others thereby obstructing their right to personal development and right to establish and maintain relations with other human beings and the outside world. Although there are no statistics or documents reporting these cases, there are unwritten reports/accounts from deaf people, family members and professionals who say that these situations mainly occur in the countryside, and are also common for other disability groups. In order to combat these practices, the government must increase efforts to carry out awareness raising campaigns to combat the negative stereotypes of persons with disabilities, and in particular women and girls with disabilities, and promote a positive image which acknowledges their place in, and positive contribution to society.

Widely perceived as incapable of raising children, women with disabilities face challenges to exercising their parental authority and keeping custody of their children. FENEIS has observed that deaf women face lose custody of their children in around 40% of the cases to family members who allege that the deaf mother does not have the “capacity or structure” to take care of the child. Judges frequently defer to the “voice” of the family.

Patriarchal culture, still prevalent in Brazil, overburdens mothers of persons with disabilities who often take on the full task of raising the child with disability and aggravates the situation of exclusion, rejection and violence against persons with disabilities.¹⁹ Besides not offering efficient information about rights, as already mentioned, the **Government does not provide adequate supportive services that are accessible, inclusive and available in the community to assist families that have children with disabilities, thus, mothers of children with disabilities end up having to leave their workplace or give up their personal lives due to the lack of state support. Cases of children with disabilities being abandoned and institutionalized** due to the insufficiency of information or support services, as well as the barriers to access general services are also not rare.

Steps need to be taken to strengthen families, so that they can be conscious of and be trained to defend the rights of their children with disabilities as well as be prepared to support women with disabilities in the construction of a life with the maximum amount of autonomy and independence.

Open Society Foundations as part of the Global Campaign to Stop Torture in Health Care. The paper gives a background to the issue of forced sterilisation of women and girls with disabilities, outlines various international human rights standards that prohibit forced sterilisation, and offers several recommendations for improving laws, policies, and professional guidelines governing sterilisation practices. In particular, it highlights the aggravating factor of legal incapacitation and the widespread practice of legal guardians consenting to sterilisation on behalf of women with disabilities whose legal capacity has been removed or restricted. http://www.wwda.org.au/Sterilization_Disability_Briefing_Paper_October2011.doc

¹⁹ In 2002, a report coordinated by Professor Windyz B. Ferreira (PhD in Education) in the city of João Pessoa-PB, pointed out the multiple forms of violence and violations of the rights of children with disabilities. In the study, there are reports of over burdened mothers of persons with disabilities, violence, rejection of daughters and sons with disabilities, evidence of how the culture of machismo aggravates the situation of exclusion of persons with disabilities and vice-versa.

RIGHT TO HEALTH, Article 12

The Brazilian Federal Constitution recognizes the right to health as a fundamental right. There are legal milestones that guarantee the quality and access to free services and care provided through the National Health System (SUS), which include basic care to specialized ambulatory and hospital services of medium and high complexity. Persons with disabilities have the right to receive all necessary support and care according to their general and specific health conditions, to their disabilities, as well as be provided with orthoses, prostheses and auxiliary means of locomotion, rehabilitation services and therapy, carried out through public services or those contracted through SUS.

Yet it is still necessary to construct a culture and practice whereby women with disabilities can receive care at regular health services not limited to rehabilitation services, but care for common ailments throughout all the cycles of their lives (infancy, adolescence, reproductive life, old age).

The concretization of these rights has advanced in different ways in each region of the country, considering the significant socio-economic and cultural differences that exist. **Not all basic health service networks are available in terms of accessibility and capacity of professionals to receive and support persons with disabilities.** Research carried out in 240 Basic Health Units in 41 municipalities with more than 100 000 inhabitants in seven states in the south and northeast of Brazil, sought to detect the presence of architectural barriers in these services and concluded that **an alarming 60% of Basic Health Units were classified as inadequate in terms of access for the elderly and persons with disabilities. "The presence of stairs, lack of handrails, ramps, bathrooms adapted for the entrance of wheelchairs and inadequate waiting rooms were a constant."**²⁰ Many public spaces do not provide physical access for persons with disabilities. The legislation guarantees communicational and physical accessibility in private establishments and public organs,²¹ but inspections are inefficient and infringement of laws do not carry penalties.

Government investment²² is still not visible in the daily affairs of health services and it is estimated that coverage for **rehabilitation in Brazil is still low and practically non-existent in rural areas and places far from large urban centers.**

Starting in 2008, **Nuclei for Support to Health and Family (NASF)** began to be implanted to qualify basic care and offer a larger contribution to teams of reference in family health (doctor, nursing and community agents) with the incorporation of other professional categories (psychologists, physical therapists, occupational therapists and others) in order to share health practices in territories covered by those teams. **The NASF, however, does not specify actions related to women with disabilities, demonstrating that the issue of gender has not entered in policies destined towards persons with disabilities.**

Qualitative research has been carried out in which professionals who offer services of basic care to women in reproductive age with a variety of disabilities, were interviewed and invited to speak about the referred services.²³ Some findings stand out:

²⁰ Siqueira FCV, Facchini LA, Silveira DS, Piccini, RX, Thumé E, Tomasi E. Architectural Barriers to the Elderly and People with Physical disabilities: an epidemiological study of the physical structure of basic health units in seven states in Brazil. *Cien Saúde Colet* 2009, 14(1): 39-44.

²¹ Decree 5296 : Regulates Laws no 10.048 of 8 November 2000, which gives priority to caring for people it specifies, and 10.098, of 19 December 2000 that establishes general norms and basic criteria for the promotion of accessibility of persons with disabilities or reduced mobility - http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5296.htm

²² The Technical Area of Health for People with Disabilities of the Department of Strategic Program Actions of the Secretary of Health Care of the Ministry of Health is articulated transversally with the other policies of that Ministry, such as women's health, youth, adolescent and children's health, mental health, men's health and elderly people's health; with other departments, such as STDs/AIDS and viral hepatitis, with other Secretaries, such as the Secretary of Health Vigilance and with other Ministries, such as Education, Social Development and Combating Hunger and the Secretary of Human Rights.

²³ Nicolau SM. Disabilities, Gender and Health Practices: a study on the comprehensiveness of primary care. USP Medical School, 2012.

- **professionals recognize gaps in their training in dealing with questions related to disabilities and conclude that specialized services and professionals are still not the most adequate actors in dealing with this population and their specificities.**
- women with disabilities do not seek basic health services on an equal basis as women without disabilities; women with disabilities are recognized as being more passive, non-caregivers and asexual, which shows **the stereotypical and prejudiced viewpoint of healthcare professionals, who still view the sexuality and maternity of women with disabilities as a taboo.**
- Some situations **of lack of physical and communicational accessibility and attitudes towards women with disabilities in services were cited**, as well as situations in which patients' individual needs were not respected and priority was not given to people with difficulties when waiting for their consultation;
- **Professionals are still applying the medical model** and charitable model instead of an approach based on human rights.

VIOLENCE, ABUSE AND EXPLOITATION, Article 5

Article 44(11) of the *Maria da Penha* Law²⁴ determines that when violence is exercised against women with disabilities, the judicial sentence shall be increased by one third. However, many women with disabilities have difficulties in turning to the state and seeking access to justice due to the barriers faced in accessing protective services and in obtaining support for the defense of their rights.

Women with disabilities have difficulty in denouncing crimes when they are the victims, in being a witness in court and in obtaining legal aid. Phone hotlines are not accessible to deaf women and girls. While there are police stations specially designated to engage with women and children, they do not cater to women and children with disabilities: there are no professionals who are fluent in Brazilian sign language, nor in the Public Ministry and the Public Defender's Office. Information on how to complain is rarely provided in sign language or accessible formats, such as Braille or plain language. Public awareness raising campaigns against violence and abuse are not carried out in accessible manners and there are also no specific awareness raising actions targeting women and girls with disabilities.

Brazil has around 5565 municipalities and there is still a lack of available infrastructure to receive women and girls who are victims of violence in the country.²⁵ There is **no information that points to the existence of victim support services accessible to women and girls with disabilities.**

As mentioned above, women and girls with intellectual and/or mental disabilities under guardianship are more vulnerable to exploitation, violence and abuse. Prevented from exercising their legal capacity, women and girls with disabilities are discredited both socially and judicially from making complaints, denouncing perpetrators and pursuing their own defense of their rights. **Considered to be of unsound mind before the law and society, they are considered legally incapable of speaking for themselves and their testimony commonly does not reach the police or it is simply dismissed by police, allowing perpetrators to go unpunished. Brazilian DPOs do not know of any cases brought by a guardian on behalf of a woman or girl with disabilities alleging abuse, violence or exploitation.**

In general, research and studies in the governmental sphere on violence against women do not envisage disaggregated data on women and girls with disabilities.²⁶ Yet is widely known that women and girls with

²⁴ The *Maria da Penha* Law, Art. 44 item 11: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11340.htm

²⁵ The site of the National Secretary of Women makes reference to 190 Centers of Referral (social and psychological care, and legal orientation), 72 Shelters, 466 Police Stations Specialized in Assisting Women, 93 Special courts and adapted courtrooms, 57 Specialized Defenders, 21 Specialized Prosecutors, 12 Services of Educating and making aggressors more Responsible, 21 Prosecutors/Gender Nuclei in the Public Ministry: https://sistema3.planalto.gov.br/spmu/atendimento/atendimento_mulher.php?uf=TD

²⁶ Recently DataSenado carried out "Research on national public opinion - Domestic and Family Violence Against Women," with data collected from 8 to 28 February 2011, which totaled 1,352 interviews. Among the comparative data used was religion (Catholic, Evangelical and others), as well as ethnic origin (white, brown, black, yellow or indigenous). However the research did not present data relative to the

disabilities are routinely subjected to violence, abuse and exploitation, which remain unaddressed in statistics, by diagnostic tools and government policies. **The Government has been failing to identify and collect data about the issue and thus neglecting to formulate policies which effectively provide protection to women and girls with disabilities. Further, it is observed that there is no dialogue or combined efforts from the various ministries in order to seek and coordinate data about violence against women and girls with disabilities.**

There is a fear among many families of people with intellectual disabilities, common to mothers of people with autism, that their **children will be abused or be subject to sexual violence in institutional settings, since many do not use verbal communication, and can be more susceptible to this type of violence.**

It is a frequent occurrence among women and girls with intellectual and psychosocial disabilities, including women with autism, victims of violence and abandonment, that the **justice system places them in long-term institutions where they end up being deprived of their liberty**, sometimes perpetually, when in fact they were the victims.

The National Policy of Social Care establishes that the Services of Institutional Shelters should offer shelter in different forms, destined to families and/or individuals with broken or fragile family ties. The treatment offered should be personalized and provided in small groups as well as favour family and community living.²⁷ Brazil also has a strategy to deinstitutionalize persons with mental health conditions. Therapeutic residential services are houses for persons with mental disabilities that remain in long stay psychiatric institutions being unable to return to their families.²⁸ **Despite this strategy and the National Policy of Social Care, it has been observed that only very few shelters have these characteristics and are able to offer personalized support. Unfortunately, in practice, the policy of institutionalization and segregation still persists subjecting children and adults with disabilities to violations of their right to liberty, right to live in the community²⁹ and several other human rights violations.**

violent situation experienced by women and girls with disabilities (http://www.senado.gov.br/noticias/agencia/pdfs/tabelas_divulgacao01.pdf) ; The Report of Dial for Human Rights - Children's and Adolescents' Module, published in 2011 within the National Program to Confront Sexual Violence Against Children and Adolescents by the National Secretary for the Promotion of Rights of Children and Adolescents, together with the Secretary of Human Rights and the President of the Republic revealed that from May 2003, when the service began, to August 2011, 2,937,394 people were treated and 195,932 denunciations were received and processed, coming from all corners of the country. In item 4.1, the report addresses within the registers of sexual violence the distribution of victims in percentages, by sex and type of violence that occurred (Sexual Exploitation, Trafficking of Children and Adolescents, Sexual Abuse and Pornography). In all the types of sexual violence presented, female victims are much more common, reaching 80% in situations of sexual exploitation. Although this is a tool that reveals interesting data on violations of human rights, we need to point out that the report does not contain any information that allows us to infer anything about the situation of violence and sexual abuse confronted by women and girls with disabilities (<http://portal.mj.gov.br/sedh/spdca/T/RELATORIO%202011%20agosto.pdf>).

²⁷National Policy of Social Care, High Complex Services: www.mds.gov.br/assistenciasocial/protECAoespecial/altacomplexidade

²⁸Therapeutic residences were instituted by Ordinance /GM n° 106 of February 2000 and are related to the Mental Health Policy from the Ministry of Health.

²⁹Article 19 of the CRPD states that: States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that: a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement; b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community; c) Community services and facilities for the general population are available on an equal basis to persons with disabilities and are responsive to their needs.

Case study

Gabriela has an intellectual disability and was institutionalized in Desembargador Olívio Câmara Shelter – ADOC, a shelter for persons with disabilities in the State of Ceará and is now 18 years old. She is under guardianship and her guardian is the Director of the institution in which she is living. According to information gathered from the staff at the shelter, in her adolescence, Gabriela was sexually exploited when she was living with her family. She fell pregnant and had a daughter inside the shelter. Gabriela's daughter, Mariana, is now three years old. When the girl turned six months she was separated from her mother and taken to Tia Júlia Shelter. Gabriela visits her daughter once or twice a week, whenever there is a car available for transport. Recently, the State of Ceará filed against Gabriela a legal procedure to dismiss her parental authority in order for Mariana to be adopted. The judge in charge of the case should nominate someone from the State, possibly the Director of the shelter, who is the official guardian of Gabriela, to represent her in court. Gabriela says that her dream is to leave the shelter and take care of her daughter and that she would not like to see her daughter growing up locked up inside ADOC.

ADOC has already been the subject of a report by the Ceará State Council on the Rights of Persons with Disabilities which pointed out violations of human rights practices against more than one hundred children, youth and adults who live or lived there, such as ill-treatment and deprivation of liberty. The report issued recommendations advocating for judicial support to people living in the shelter and the implementation of a policy of inclusion in the community.³⁰

Despite these recommendations, the case of Gabriela exposes the consequences of the multiple forms of discrimination that women and girls with disabilities are subject to throughout life due to the direct actions and omissions of the Brazilian State.

³⁰See <http://www.inclusaoediversidade.com/2010/06/pessoas-com-deficiencia-em-situacao-de.html>

RECOMMENDATIONS

On the basis of the information above, we make the following recommendations to the Government to ensure implementation of the rights inscribed in CEDAW for women and girls with disabilities in Brazil:

Articles 2, 3, 4, 5

1. Take steps to actively consult with and involve women and girls with disabilities and their representative organisations in the development of legislation and policies concerning education, employment, social protection, health, protection against violence, political participation in accordance with Article 4(3) of the CRPD.
2. Collect adequate data on women and girls with disabilities and use disaggregated data and results of studies to develop policies and programmes to promote equal opportunities for them in society.
3. Adopt measures to ensure that women with disabilities are consulted and participate in leadership roles in policy development.
4. Raise awareness and provide more information about women and girls with disabilities, who are often subjected to multiple forms of discrimination, especially with regard to access to education, employment, access to health care and protection from violence, including training for professionals working with women and girls with disabilities.
5. Update the legal framework including the definition of persons with disabilities and ensure that the prohibition of disability-based discrimination is transversally applied across national legislation, including the explicit recognition that the denial of reasonable accommodation constitutes discrimination as stated by the CRPD.
6. Address the heightened risk for girls and women with disabilities of becoming victims of domestic violence and abuse, and adopt urgent measures to ensure that both services and information for victims are made accessible to women and girls with disabilities. In particular, ensure accessibility to dial up services in order to allow deaf women and girls to denounce abuses and violence; physical accessibility in specialized police stations created to provide support and protection to women and children, as well as make available professional interpreters of Brazilian Sign Language, interpreter-guides and other support persons to allow women and girls with disabilities full exercise of their right to access to justice.

Article 7

7. Repeal provisions in the Constitution and Electoral Code which restrict or exclude persons with disabilities from the right to vote on an equal basis with others³¹ in accordance with Article 29 of the Convention on the Rights of Persons with Disabilities (CRPD), which comprises the latest international standards with respect to participation in political and public life.³²

Article 10

8. Adopt measures in the law to ensure the implementation of inclusive education of children with disabilities, such as the obligatory training of all teachers (beyond special education teachers), to require individual education plans for all students, ensure the availability of assistive devices and support in classrooms, educational materials and curricula, ensure the accessibility of physical school

³¹ The Brazilian Constitution (Article 15) states that voting is compulsory upon reaching 18 years and it is prohibited to deny political rights *except*, among others, for persons who are fully deprived of their legal capacity. Further, the Electoral Code, Law no 4737 of 15 July 1965 (Article 6) states that registration and voting are compulsory for Brazilians of both sexes with the exception of persons with disabilities.

³² This is confirmed in OHCHR thematic study on participation in political and public life by persons with disabilities which explicitly states that there is no reasonable restriction nor exclusion permitted regarding the right to political participation of persons with disabilities, A/HRC/19/36, 21 December 2011

environments, encourage the teaching of sign language and disability culture, allocate budget for all of the above. Include inclusive education as an integral part of core teacher training curricula in universities to ensure that the values and principles of inclusive education are infused at the outset of teacher training and teaching careers.

Article 11

9. Take immediate steps to address the gender gap in the employment and salary of women with disabilities by following up on compliance to affirmative action policies and quotas and enforcing their requisite sanctions in both the public and private sector.
10. Develop vocational and employment programmes and training targeting women and girls with disabilities to boost their opportunities for entry and advancement in the workforce.
11. Ensure the provision of reasonable accommodation in employment and vocational training for women with disabilities, including accommodations for different types of disabilities.
12. Ensure the provision of support services, including psychosocial support services, to assist families, including both mothers with disabilities, and mothers or women in the family who are the lead caregivers in their care for children with disabilities. In particular, ensure that services and assistance are rendered to permit women in families with children with disabilities, as well as mothers with disabilities, to continue their careers with an appropriate work/life balance.

Articles 12 & 16

13. Take immediate steps to ensure that all non-consensual treatment, including that for which consent is given by a third party, is not permitted by law. In particular, ensure that non-consensual practices of *inter alia* forced abortions, forced contraception, and forced sterilisation are sanctioned in the law and that perpetrators are prosecuted.
14. Adopt measures to ensure that all information, healthcare and services relating to sexual and reproductive health, both including physical treatment and psychological counselling, are made accessible to women and girls with disabilities, and that they are respectful of the dignity and integrity of women and girls with disabilities based on the free and informed consent of the individual concerned.
15. Adopt measures to ensure that all education, information, healthcare and services relating to sexual and reproductive health, HIV and STIs, are made accessible to women and girls with disabilities in age-appropriate formats.
16. Ensure physical accessibility in healthcare facilities, as well as the availability of professional interpreters of Brazilian Sign Language to ensure quality care to women and girls with disabilities.
17. Develop and deliver programmes of community based support services, including personal assistant services. Establish viable medium-term goals to close all long-term shelters and provide a comprehensive policy of support and inclusion in the community for children and adults with disabilities in situations of abandonment.

Article 15

18. Reform the law in accordance with Article 15, CEDAW and Article 12 of the Convention on the Rights of Persons with Disabilities (CRPD) to guarantee the equal recognition before the law of persons with disabilities, including the adoption of measures to ensure that having a disability does not directly or indirectly disqualify a person from exercising her legal capacity autonomously, and to ensure that persons with disabilities have access to support that they may need to exercise legal capacity on an equal basis with others, respecting the will and preferences of the person concerned.³³

³³ See also report of Special Rapporteur on Torture, 28 July 2008, A/63/175, paras 73 and 44.

ANNEX I - Disability references in treaty body Concluding Observations with respect to Brazil

CESCR Committee Concluding Observations, 2009, [E/C.12/BRA/CO/2](#)

13. The Committee is concerned that persons with disabilities still suffer discrimination in access to employment despite the quotas for the employment of persons with disabilities in both the public and private sectors. (art. 2, para. 2)

The Committee encourages the State party to effectively implement its measures to overcome the obstacles faced by persons with disabilities in accessing the labour market.

CRC Committee Concluding Observations, 2004, [CRC/C/15/Add.241](#)

Children with disabilities

50. The Committee notes that the 1988 federal Constitution establishes protection for the rights of persons with special needs, and welcomes the establishment of the National Council for the Rights of Persons with Special Needs (CONADE) and the National Coordination for the Integration of Persons with Special Needs (CORDE). Nevertheless, it remains concerned at the very poor living conditions of children with disabilities, their lack of integration in schools and society and at prevailing societal discriminatory attitudes towards them.

51. The Committee recommends that the State party:

- (a) Establish an appropriate definition of disability and, on the basis of the definition, make a reassessment of the number of persons with disability, in order to formulate a comprehensive policy for children with disabilities;
- (b) Take measures to eliminate physical and architectural barriers to the access and use of persons with disability to public buildings, transport, etc.;
- (c) Take effective measures to collect adequate and disaggregated statistical data on children with disabilities and use such data in developing policies and programmes to prevent disabilities and to assist children with disabilities;
- (d) Reinforce its efforts to develop early-detection programmes to prevent and remedy disabilities;
- (e) Establish special education programmes for disabled children and include them in the regular school system to the extent possible;
- (f) Undertake awareness-raising campaigns to sensitize the public, and parents in particular, about the rights and special needs of children with disabilities, including those with mental health concerns;
- (g) Increase resources, both financial and human for special education, including vocational training, and the support given to families or children with disabilities;
- (h) Take into account the Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly resolution 48/96) and the Committee's recommendation adopted at its day of general discussion on the rights of children with disabilities (CRC/C/69, paras. 310-339);
- (i) Seek technical cooperation for the training of professional staff, including teachers, working with and for children with disabilities from, among others, UNICEF and WHO.

ANNEX II – Contributors to the joint submission

Submitting Organizations:

ABRAÇA

The Brazilian Association for Action on Rights of Persons with Autism – ABRAÇA is a network of autistic persons, family members, professionals and activists of the movement of persons with disabilities and human rights that was established on April 30, 2008 and aims to defend the best interests and rights of people with autism based on following principles: the rights to full citizenship of people with autism, encouraging the deinstitutionalization and harmony of family ties; respect for plurality of methodologies to support people with autism provided in a compliance with human rights; repudiation and denunciation of abuses, authoritarian practices and mistreatment against people with autism, which includes planned presentation of aversive stimuli. ABRAÇA is a member of RIADIS.

Contact: Alexandre Mapurunga, mapurunga@gmail.com; www.autismonobrasil.com.br

FENEIS

The **National Federation of Education and Integration of Deaf People** is a philanthropic, nonprofit socio-cultural and educational purpose that aims to defend and fight for the rights of Brazilian deaf community. The organization activities are recognized as Public Utility by Federal Union.

FENEIS is affiliated with the World Federation of the Deaf and is a member of RIADIS.

Contact: Maria Auxiliadora, diretorianacional@feneis.org.br; www.feneis.org.br

CVI-BRASIL

National Council on Independent Living Centers has the mission to represent, support and articulate the CVI's from all over the country in a National Network aiming to disseminate the philosophy and independent living services, and the development of monitoring actions and proposals of general public policy for persons with disabilities in Brazil, and the defense and promotion of Human Rights, in line with the Convention on the Rights of Persons with Disabilities. CVI-BRASIL is a member of RIADIS.

Contact: Ronaldo André, cvi-amazonas@uol.com.br; www.cvi.org.br

FCD/BR

Fraternidade Cristã de Pessoas com Deficiência do Brasil is a social movement of human promotion, that appeared in France, inspired by Father Henri Francois, and from there spread to 45 countries on 4 continents. Operating in Brazil since 1972, it is present in 14 states of the federation reaching 25,000 “fraternistas”(Persons with disabilities, family and volunteers). FCD/BR is in frank expansion, mainly in the states of Parana, Rio Grande do Sul, Rio Grande do Norte and Espírito Santo. Persons with disabilities have their history marked by exclusion, discrimination and lack of opportunity. Fortunately, this is changing, due to their own struggle. Persons with disabilities are tired of waiting for society initiatives and the State, and are now writing a new history of fight in the search for citizenship and denied rights. FCD/BR is a member of RIADIS.

Contact: Rosane Gil Valente, gil.valente@uol.com.br; www.fraterbrasil.org.br

Instituto Baresi

The Baresi Institute is dedicated to improving quality of life and social inclusion for people with rare diseases, disabilities or other minority groups. “We believe that this will help create a better world for all. We act based on the principles of ethics, inclusion, accessibility and social participation.”

Contact: Adriana Dias, dias.adriana@gmail.com; www.institutobaresi.com

3IN

3IN – Inclusion, Integrity and Independency is a not-for-profit organization created to promote social change and inclusion of persons with disabilities in society. Guided by the UN Convention on the Rights of Persons with Disabilities and human rights principles, 3IN aims at promoting social inclusion of persons with disabilities, ensuring equality of opportunities for all. Among its objectives are the articulation of inclusive public policies and legislation, coordination and support of awareness raising campaigns and social mobilization, and promotion of accessibility as an essential tool to enable people with disabilities to fully enjoy all human rights and fundamental freedoms.

Contact: Stella Camlot Reicher – stella@flgadv.com.br; www.3in.org.br

RIADIS

The Latin American Network of Non-Governmental Organizations of Persons with Disabilities and their Families (Red Latinoamericana de Organizaciones no Gubernamentales de Personas con Discapacidad y sus familias -RIADIS) is a regional international organization, composed of 60 national organizations from 18 countries in Latin America. Its main purpose is to act in defense of human rights of persons with disabilities. RIADIS is a member of IDA.

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IDA

The International Disability Alliance (IDA) is the network of international and regional organisations of persons with disabilities currently comprising eight global and four regional DPOs, including RIADIS, with two other regional DPOs having observer status. With member organisations around the world, IDA represents the over 1 billion people worldwide living with a disability, the world’s largest – and most frequently overlooked – minority group. IDA’s mission is to advance the human rights of persons with disabilities as a united voice of organisations of persons with disabilities utilising the Convention on the Rights of Persons with Disabilities and other human rights instruments.

The members of IDA are: Disabled Peoples' International, Down Syndrome International, Inclusion International, International Federation of Hard of Hearing People, World Blind Union, World Federation of the Deaf, World Federation of the DeafBlind, World Network of Users and Survivors of Psychiatry, Arab Organization of Disabled People, European Disability Forum, Red Latinoamericana de Organizaciones no Gubernamentales de Personas con Discapacidad y sus familias (RIADIS), and the Pacific Disability Forum.

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