

**BRIEFING FOR THE HUMAN RIGHTS
COMMITTEE, COUNTRY REPORT TASK FORCE,
138TH SESSION (26 JUNE 2023 - 28 JULY 2023),
WITH RESPECT TO VIOLENCE AGAINST
WOMEN IN: BRAZIL**



Strategic Advocacy
Human Rights

*Submitted by Strategic Advocacy for Human Rights (SAHR),
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This thematic report¹ considers the de jure and de facto state of violence against women in Brazil, in particular in relation to sexual violence. In light of the obligation under international human rights treaties to prohibit all violence against women, the global commitment to ending violence against women and girls in the public and private spheres in the context of the 2030 Agenda for Sustainable Development, previous recommendations of the Committee to Brazil, and the recommendations of the UN Secretary General’s Study on Ending Violence Against Women, and those made to Brazil during the Universal Periodic Review in 2022, it is our hope that the Committee will:

- **raise the issue of violence against women in its List of Issues Prior to Reporting for Brazil, in particular asking what progress is being made on drafting and enacting legislation to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law; and**
- **in its concluding observations on Brazil’s State Party Report, recommend that legislation is drafted and enacted as a matter of priority to prohibit all violence against women in all settings, in particular by reference to the UN Model Rape Law.**

¹ This report was compiled based on information that was publicly available in the English language only. It may not be complete and does not constitute legal advice.

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1. INTRODUCTION

Strategic Advocacy for Human Rights (**SAHR**)² is a peer-led non-governmental organization by and for human right defenders, working to equip a movement of human rights defenders with the knowledge and tools to end gender-based violence through litigation, policy and law reform.

We submit this written contribution for State parties under review for consideration by the Committee, reporting before the 138th Session (26 June 2023 - 28 July 2023).

This report highlights key legal inequalities that women face in Brazil in relation to violence against women, along with suggested questions to be posed to the State party. Our analysis benchmarks the legislation and practices against the UN Model Law on Rape³, published by the former UN Special Rapporteur on Violence Against Women, Ms. Dubravka Šimonović, to harmonise national criminal justice responses with accepted international standards.

The aim of this report is to aid and encourage the UN Human Rights Committee, the State and stakeholders, to review national criminal laws and systems and practice with international standards on rape and sexual violence, particularly the UN Model Law on Rape that updates best practices based on the lived realities and recommendations of civil society and survivors.

We hope that the Committee will utilize this report as a key resource in the course of developing its list of issues for Brazil.

2. KEY ISSUES OF CONCERN

2.1 Illegal Employment Practices (2005 Concluding Observations, paragraph 11)

In its 2005 Concluding Observations, the Committee expressed concern “about the illegal practice of some employers in requiring sterilization certificates as a condition of women’s employment,” and urged the Government of Brazil to “adopt adequate measures, including sanctions, against the impermissible practice of requesting sterilization certificates for employment purposes.”⁴

Response by the State party

Brazil’s Third Periodic Report offers no response to this recommendation.

Analysis of State party legislation

- (a) **Federal Constitution:** Brazil’s Federal Constitution prohibits any “discrimination based on sex, origin, race, color, marital status, family status, disability, professional rehabilitation, age, among others, regarding the access to, or maintenance of, the employment relationship.”⁵

² Website: <https://www.sa-hr.org/>. Email: connect@sa-hr.org

³ United Nations General Assembly, *A framework for legislation on rape (model rape law)*, 15 June 2021, available at <https://digitallibrary.un.org/record/3929055?ln=en> [accessed 5 May 2023] [A/HRC/47/26/Add.1](#)

⁴ Human Rights Committee, *Concluding Observations of the Human Rights Committee*, 1 Dec 2005, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/453/44/PDF/G0545344.pdf?OpenElement> [accessed 9 May 2023]

⁵ Cornell Law School Center for Women and Justice, *Lei Federal n. 9.029/1995*, 1995, available at: https://www.law.cornell.edu/women-and-justice/resource/lei_federal_n._9.029/1995 [accessed 9 May 2023]

- (i) This includes “discriminatory practices such as (a) requiring a test, examination, skill, award, attestation, declaration, or any other procedure concerning sterilization or pregnancy, or (b) the adoption of any measures, at the initiative of the employer that constitute induction or promotion of birth control.”⁶ Such crimes carry sentences of one to two years of imprisonment with an imposition of a fine to the employer.⁷
- (ii) Brazil’s Federal Constitution thus directly addresses the concern expressed by the Committee and is aimed at ensuring the equal enjoyment of employment rights without any discrimination pursuant to Article 3 of the Covenant.
- (iii) However, the Government of Brazil must “not only adopt measures of protection, but also positive measures in all areas so as to achieve the effective and equal empowerment of women.”⁸ Further, the Government of Brazil must also “provide information regarding the actual role of women in society so that the Committee may ascertain what measures, in addition to legislative provisions, have been or should be taken to give effect to these obligations, what progress has been made, what difficulties are encountered and what steps are being taken to overcome them.”⁹

Issues regarding practical application of State party’s laws at community level

- (a) The Government of Brazil has not offered any information on the practical application of such legislation at the community level in its Third Periodic Report. Publicly accessible information (e.g., academic publications, state reports, NGO reports, etc.) on the practical application of such legislation is also limited.

Suggested List of Questions for the State Party

- *Please report on the number of offenders and recalcitrant offenders under the legislation over the course of such legislation being in force.*
- *Please report generally on the practical application of such legislation at the community level.*
- *Please report on the other steps the Government of Brazil is taking to eliminate the illegal practice of some employers requiring sterilization certificates as a condition of women’s employment.*
- *Please provide information on the coexistence of the statutory law alongside with the customary legal system and how it complies with the Covenant.*

⁶ Cornell Law School Center for Women and Justice, *Lei Federal n. 9.029/1995*, 1995, available at: https://www.law.cornell.edu/women-and-justice/resource/lei_federal_n._9.029/1995 [accessed 9 May 2023]

⁷ Cornell Law School Center for Women and Justice, *Lei Federal n. 9.029/1995*, 1995, available at: https://www.law.cornell.edu/women-and-justice/resource/lei_federal_n._9.029/1995 [accessed 9 May 2023]

⁸Human Rights Committee, *General Comment No. 36*, 3 September 2019, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F36&Lang=en [accessed 9 May 2023]

⁹Human Rights Committee, *General Comment No. 36*, 3 September 2019, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FGC%2F36&Lang=en [accessed 9 May 2023]

2.2 Domestic Violence (2005 Concluding Observations, paragraph 11)

In its 2005 Concluding Observations, the Committee expressed concern about “the lack of information regarding the incidence of domestic violence” and “the absence of specific legal provisions to prevent, combat and eliminate such violence”. The Committee recommended the Government of Brazil to “adopt, and implement, appropriate criminal and civil laws and policies to prevent and combat domestic violence and assist the victims” and to “initiate the necessary media campaigns and increase educational programmes” in order to raise public awareness of domestic violence.¹⁰

Response by the State party

In response, the Government of Brazil notes in the Third Periodic Report that as of 2003, fighting violence against women is a “priority action in the government’s agenda”¹¹ and notes the following legislation and efforts that have been implemented to combat violence against women.

Analysis of State party legislation

- (a) **Maria da Penha Law, Law No. 11,340/2006:** As mentioned in the Third Periodic Report, Law No. 11,340/2006, known as the Maria da Penha Law, was enacted by the Government of Brazil in 2006 which creates mechanisms to combat violence against women in the familiar and domestic environment.¹²
- (i) The Maria da Penha Law classifies and defines physical, psychological, sexual, patrimonial and moral violence against women as forms of domestic and family violence and provides both civil and criminal measures for victims of domestic violence.¹³ This is a wide-ranging definition and is in line with Articles 1 and 2 of the UN Declaration on the Elimination of Violence Against Women, which states that violence against women should encompass (but not be limited to) physical, sexual and psychological violence.
 - (ii) The law 11.340/2006 also extends and applies to cases of domestic or family violence against transgender women.
 - (iii) The Maria da Penha Law also establishes certain additional measures for victims of domestic violence such as the creation of the Small Claims Courts for Domestic Violence and sets out specific protective measures for victims of domestic violence to be implemented by the police authority, prosecutor’s

¹⁰ Human Rights Committee, *Concluding Observations of the Human Rights Committee*, 1 Dec 2005, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/453/44/PDF/G0545344.pdf?OpenElement> [accessed 9 May 2023]

¹¹ Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009, 25 August 2021*, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FBRA%2F3&Lang=en [accessed 9 May 2023]

¹² Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009, 25 August 2021*, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FBRA%2F3&Lang=en [accessed 9 May 2023]

¹³ Law No. 11,340 of August 7, 2006, Article 7.

office and judiciary, including for example, a 48 hour deadline for the concession of urgent protective measures.¹⁴ This is generally in line with Article 13 of the UN Model Rape Laws which states that any requests for assistance and protection by victims should be promptly responded to by police officers/investigators.

- (iv) In addition, Law No. 13,641/2018 classifies as a crime any failure to comply with the protective measures provided by the Maria da Penha Law which aims to protect women victims of domestic violence.¹⁵
- (b) **Law No. 13,104/15 (femicide law):** In March 2015, the Government of Brazil passed Law No. 13.104/15 which amends the Brazilian Penal Code and now provides for femicide as an aggravating circumstance for murder.¹⁶
 - (i) Under this legislation, femicide is redefined as any crime that involves domestic violence, discrimination, or contempt for women, which results in their death.¹⁷
 - (ii) Harder sentences of between 12 to 30 years' imprisonment was imposed, with longer jail terms for crimes committed against pregnant women, girls under 14, women over 60 and women and girls with disabilities.¹⁸
- (c) **Law No. 14,1541/2023 (implementation of dedicated law enforcement resources):** Law No. 14.1541/2023 was recently enacted by the Government of Brazil in April 2023 which provides for the creation and uninterrupted operation of specialised police stations for women that are intended to assist domestic violence victims.¹⁹
 - (i) Police officers responsible for the assistance at these stations must receive adequate training to allow for the effective and humanitarian reception of

¹⁴ Law No. 11,340 of August 7, 2006, Article 12.

¹⁵ Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR%2FC%2FBRA%2F3&Lang=en [accessed 9 May 2023]

¹⁶ Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR%2FC%2FBRA%2F3&Lang=en [accessed 9 May 2023]

¹⁷ UN Women, *In Brazil, new law on femicide to offer greater protection* (16 Mar. 2015). Retrieved from <https://www.unwomen.org/en/news/stories/2015/3/in-brazil-new-law-on-femicide-to-offer-greater-protection#:~:text=The%20new%20legislation%20amends%20Brazil's,which%20results%20in%20their%20death> [accessed 10 May 2023]

¹⁸ UN Women, *In Brazil, new law on femicide to offer greater protection* (16 Mar. 2015). Retrieved from <https://www.unwomen.org/en/news/stories/2015/3/in-brazil-new-law-on-femicide-to-offer-greater-protection#:~:text=The%20new%20legislation%20amends%20Brazil's,which%20results%20in%20their%20death> [accessed 10 May 2023]

¹⁹ Soares, E. (2023) Brazil: New Law Creates Specialized Police Stations for Women. [Web Page] Retrieved from the Library of Congress, <https://www.loc.gov/item/global-legal-monitor/2023-04-28/brazil-new-law-creates-specialized-police-stations-for-women/> [accessed 10 May 2023]

domestic violence victims.²⁰ This is in line with the guidelines to the UN Model Rape Laws which recommends that states mandate training for law enforcement officials in the context of protection of women rights, especially in the context of sexual violence.

- (d) **Law No. 13,642/2018 (violence against women online):** Law No. 13,642/2018 seeks to combat violence against women online by establishing that the Federal Police will investigate cybercrimes that spread misogynistic content, which is defined as content that propagates hatred or aversion to women.²¹
- (e) **Other National Strategies:** The Government of Brazil has also implemented several public policies and programmes to combat domestic violence:
 - (i) As noted in the Third Periodic Report, in 2007 the Government of Brazil launched the National Pact to Fight Violence Against Women, which provides for joint efforts between the three branches of government and non-governmental organisations to address the issues of violence against women.²²
 - (ii) In March 2023, the Government of Brazil announced the resumption and expansion of the Mulher Viver sem Violência (or Women Living Without Violence) policy, which is a programme that increases and integrates public services for women facing violence. Under this programme, 40 Casas da Mulher Brasileira (or Brazilian Women’s Houses), which are multidisciplinary humanitarian assistance centres for women, will be established and BRL 372 million will be invested in resources from Brazil’s National Public Security Fund (Fundo Nacional de Segurança Pública).²³
 - (iii) Since April 4, 2023, all women's police stations are required to be on duty 24 hours a day, and even on weekends, when most cases of violence occur. In the police stations, victims must be attended by a female officer.

Issues regarding practical application of State party’s laws at community level

- (a) **Practical challenges:** In its Third Periodic Report, the Government of Brazil noted that the Maria da Penha Law is “very well-known” nationwide, and that 100% of Brazilian

²⁰ Soares, E. (2023) Brazil: New Law Creates Specialized Police Stations for Women. [Web Page] Retrieved from the Library of Congress, <https://www.loc.gov/item/global-legal-monitor/2023-04-28/brazil-new-law-creates-specialized-police-stations-for-women/> [accessed 10 May 2023]

²¹ Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FBRA%2F3&Lang=en [accessed 9 May 2023]

²² Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FBRA%2F3&Lang=en [accessed 9 May 2023]

²³ Ministry of Communication for Brazil, *Find out more about Brazil’s new laws and decrees to combat violence against women* (5 Apr. 2023). Retrieved from: <https://www.gov.br/secom/en/latest-news/find-out-more-about-brazil2019s-new-laws-and-decrees-to-combat-violence-against-women> [accessed 10 May 2023]

women have heard of the law according to a recent survey.²⁴ However, there remains several practical challenges in the application of state laws which aim to protect victims of domestic violence (including the Maria da Penha Law) at the community level.

- (i) Human Rights Watch reports that out of the almost 600,000 requests for protective orders between January 2020 and May 2022, courts granted nine out of ten requests, with 30% taking longer than the 48-hour deadline established by law.²⁵
- (ii) A daily average of 50,962 women suffered some type of violence in 2022, according to the study "Visible and Invisible: the victimization of women in Brazil" by the Brazilian Forum for Public Safety (FBSP) in January 2023.
- (iii) In its Third Periodic Report, the Government of Brazil noted that it remains a challenge to expand the offer of shelter services and exclusive reference centres for domestic violence victims.²⁶ Human Rights Watch also notes that in 2022, only 77 shelters for domestic violence victims were operating out of a country of more than 215 million people.²⁷
- (iv) Domestic violence and femicide cases continue to remain high in Brazil. Human Rights Watch reports that more than one million cases of domestic violence and nearly 6,300 cases of femicide were pending before the Brazilian courts in 2021.²⁸
- (v) There remains uneven access to support services for victims of domestic violence in Brazil. Only 7% of Brazilian cities have dedicated women's police stations and trained officials to handle gender-based violence cases.²⁹

²⁴ Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR%2F3%2FBRA%2F3&Lang=en [accessed 9 May 2023]

²⁵ Human Rights Watch, *World Report 2023: Events of 2022 (Brazil)*, available at: https://www.hrw.org/sites/default/files/media_2023/01/World_Report_2023_WEBSPREADS_0.pdf [accessed 10 May 2023]

²⁶ Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=CCPR%2F3%2FBRA%2F3&Lang=en [accessed 9 May 2023]

²⁷ Human Rights Watch, *World Report 2023: Events of 2022 (Brazil)*, available at: https://www.hrw.org/sites/default/files/media_2023/01/World_Report_2023_WEBSPREADS_0.pdf [accessed 10 May 2023]

²⁸ Human Rights Watch, *World Report 2023: Events of 2022 (Brazil)*, available at: https://www.hrw.org/sites/default/files/media_2023/01/World_Report_2023_WEBSPREADS_0.pdf [accessed 10 May 2023]

²⁹ Wilson Center, Brazil Institute, *15th Anniversary of the Maria da Penha Law: Long Road Towards Protecting Brazilian Women*, available at: <https://www.wilsoncenter.org/article/15th-anniversary-maria-da-penha-law-long-road-towards-protecting-brazilian-women> [accessed 10 May 2023]

- (vi) The Government of Brazil has also reduced the federal budget dedicated to combatting violence against women by 90% in 2022 compared to 2020.³⁰ It is reported that there has been a reduction in budget from about \$19 million in 2020 to about \$1.7 million in 2022.³¹
- (b) **Conflict with other laws:** Law No. 12,318 of August 26, 2010 (as amended by Law No. 14,340 on May 18, 2022) defines the concept of ‘parental alienation’ as “the interference in the psychological development of the child or adolescent promoted or induced by one of the parents, by the grandparents or by those who have the child or adolescent under their authority, custody or supervision in order to refute a parent or harm the establishment or maintenance of links with the parent”.³²
- (i) UN experts have noted that this law has led to the proliferation of the application of the parental alienation theory by family courts and has enabled fathers accused of domestic violence and abuse to successfully levy false allegations against the mothers with whom they are in custody battles or disputes.³³
- (ii) The practical implication of this is that many mothers continue to remain silent regarding the abuse of their children by their partner or former partner, out of fear of being accused of parental alienation and losing custody rights.³⁴

Suggested List of Questions for the State Party

- *Please indicate what procedures are in place for the implementation of the Mulher Viver sem Violência (or Women Living Without Violence) policy and other measures taken to support the fight against domestic violence, including measures for the protection, care, and support of victims of domestic violence.*
- *Please report if there has been any impact on the effectiveness of policies dedicated combatting violence against women as a result of the federal budget cuts in 2022.*
- *Please report on the steps taken to improve investigations and judicial proceedings in relation to urgent protective measures in domestic violence cases so that they are*

³⁰ Human Rights Watch, *World Report 2023: Events of 2022 (Brazil)*, available at: https://www.hrw.org/sites/default/files/media_2023/01/World_Report_2023_WEBSPREADS_0.pdf [accessed 11 May 2023]

³¹ Latin America Advisor, *How Well is Brazil Addressing Violence Against Women?* Available at: <https://www.thedialogue.org/analysis/how-well-is-brazil-addressing-violence-against-women/> [accessed 11 May 2023]

³² Soares, E. (2022) Brazil: New Law Modifies Measures to Be Taken Against Parental Alienation. [Web Page] Retrieved from the Library of Congress, <https://www.loc.gov/item/global-legal-monitor/2022-07-04/brazil-new-law-modifies-measures-to-be-taken-against-parental-alienation/>. [accessed 10 May 2023]

³³ United Nations Human Rights Council, *Brazil: UN experts urge new government to target violence against women and girls, repeal parental alienation law* (4 Nov. 2022). Available at: <https://www.ohchr.org/en/statements/2022/11/brazil-un-experts-urge-new-government-target-violence-against-women-and-girls> [accessed 10 May 2023]

³⁴ United Nations Human Rights Council, *Brazil: UN experts urge new government to target violence against women and girls, repeal parental alienation law* (4 Nov. 2022). Available at: <https://www.ohchr.org/en/statements/2022/11/brazil-un-experts-urge-new-government-target-violence-against-women-and-girls> [accessed 10 May 2023]

carried out in a timely manner and within the 48-hour timeframe under the Maria da Penha Law.

- Please indicate on the steps taken to improve access to support services for victims of domestic violence across Brazil and what procedures are in place to dedicate more women's police stations and officials who are trained to handle gender-based violence cases.
- Please report if there is any action being taken to expand the number of dedicated women's shelter services for domestic violence victims.
- Please report if there are any steps taken towards repealing Law No. 12,318 as recommended by the UN Human Rights Council in light of its negative practical implications on victims of domestic violence.

2.3 Human Trafficking (2005 Concluding Observations, paragraph 15)

In its 2005 Concluding Observations, the Committee expressed concern about “persistent trafficking in women and children, the alleged involvement of some officials in acts of trafficking, and the lack of effective witness and victim protection mechanisms”³⁵, and urged the Government of Brazil to “reinforce international cooperation mechanisms to fight trafficking in persons, prosecute perpetrators, provide protection and redress to all victims, protect witnesses and root out trafficking -related official corruption”.³⁶

This is of particular concern because Brazil has acknowledged that there are disproportionately more female than male victims in the crime of human trafficking, especially for purposes of sexual exploitation.³⁷

Response by the State party

Brazil's Third Periodic Report has responded to these recommendations in a number of ways. It noted its ongoing efforts to make a clear and comprehensive diagnosis of the human trafficking situation in Brazil, as well as the preventive and remedial actions adopted to address the issue.³⁸

- (a) **Law No. 13,344/ 2016:** Brazil has enacted Law No. 13,344 in response to the Human Rights Committee's recommendations, amending Article 149-A of the Brazilian Penal Code to enhance the punishment for crimes of international trafficking and domestic

³⁵ Human Rights Committee, *Concluding Observations of the Human Rights Committee*, 1 Dec 2005, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/453/44/PDF/G0545344.pdf?OpenElement> [accessed 7 May 2023]

³⁶ Human Rights Committee, *Concluding Observations of the Human Rights Committee*, 1 Dec 2005, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/453/44/PDF/G0545344.pdf?OpenElement> [accessed 7 May 2023]

³⁷ Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FBRA%2F3&Lang=en [accessed 9 May 2023]

³⁸ Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FBRA%2F3&Lang=en [accessed 9 May 2023]

trafficking of persons for the purpose of sexual exploitation, organ removal, slave-like labour, servitude and adoption.³⁹ This law also mandated the government provide victims with temporary shelter; legal, social, and health assistance; and protection against re-victimisation.⁴⁰

(b) **Migration Law:** In 2017, Brazil approved the Migration Law, which grants immigrants who have been victims of human trafficking the legal right to extend their stay and remain resident in Brazil⁴¹. This piece of legislation was enacted with the aims of protecting and providing assistance to the victims of human trafficking.

(c) **Other National Strategies**

(i) Brazil has rolled out a National Policy for Combatting Human Trafficking which consists of three imperatives, namely (I) preventing and suppressing human trafficking; (II) holding the perpetrator accountable; and (III) caring for and providing full attention and support to victims. Six states of the Federation have also developed their own programmes against human trafficking.⁴²

(ii) Brazil's national counter-trafficking regime has further developed in tandem with the creation of its National Counter-trafficking Committee (2014) and the structuring of its National Counter-trafficking Network which comprises an array of public and private institutions committed to the cause of preventing and reducing the instances of human trafficking.⁴³

(iii) The Brazilian Government currently has its focus trained on implementing Part III of its National Plan to Combat Human Trafficking, which seeks to encourage greater public participation and promote the involvement of different actors from across society in the fight against human trafficking ("III PNETP")⁴⁴.

³⁹ Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F3%2FBRA%2F3&Lang=en [accessed 9 May 2023]

⁴⁰ United States of America Department of State, *2022 Trafficking in Persons Report July 2022*, available at <https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf> [accessed 10 May 2023]

⁴¹ Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F3%2FBRA%2F3&Lang=en [accessed 9 May 2023]

⁴² Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F3%2FBRA%2F3&Lang=en [accessed 9 May 2023]

⁴³ Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F3%2FBRA%2F3&Lang=en [accessed 9 May 2023]

⁴⁴ Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F3%2FBRA%2F3&Lang=en [accessed 9 May 2023]

- (iv) The Brazilian Government is also engaging different international organisations to bolster its international mechanisms for combatting human trafficking.

Analysis of State party legislation

- (a) Brazil's efforts represent a step in the right direction, as it nudges Brazil towards compliance with (i) Article 6 of the Covenant, which requires States parties to take special measures of protection towards persons in vulnerable situations whose lives have been placed at particular risk because of specific threats or pre-existing patterns of violence, including victims of human trafficking⁴⁵; and (ii) Article 8 of the Covenant, which prescribes the obligation of States parties to inform the Committee of measures taken to eliminate trafficking of women and children, within the country or across borders⁴⁶.
- (b) However, the Brazilian Penal Code amendments under Law No. 13,344 is still remiss in its refusal to rule out the relevance of the victim's consent in evaluating and enforcing such charges. The United Nations Office on Drugs and Crime has expressed unequivocally that "consent is always irrelevant to determining whether the crime of human trafficking has occurred"⁴⁷. However, despite imposing harsher punitive measures on the perpetrators of the crime, Law No. 13,344 stops short of ruling out the relevance of the victim's consent in the determination of whether the crime of human trafficking has occurred⁴⁸. Instead, the victims of human trafficking are still at times unfairly penalised by the diverging interpretations and elastic nature of the concept of "consent" under the laws of Brazil⁴⁹. Perpetrators of human trafficking crimes can opt to capitalise on this ambiguity to avoid conviction, by alleging that the victims had validly consented to perform the job or service initially required of them⁵⁰. Brazil should undertake further legislative reform to expressly rule out the relevance

⁴⁵ Human Rights Committee, *General Comment No. 36*, 3 September 2019, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F%2F%2F%2F36&Lang=en [accessed 9 May 2023].

⁴⁶ Human Rights Committee, *General Comment No. 36*, 3 September 2019, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2F%2F%2F%2F36&Lang=en [accessed 9 May 2023].

⁴⁷ United Nations Office on Drugs and Crime, *Issue Paper: The Role of 'Consent' in the Trafficking in Persons Protocol*, 2014, available at https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf [accessed 10 May 2023]

⁴⁸ Waldimeiry Correa de Silva, *The new Brazilian anti-trafficking law: challenges and opportunities to cover the normative lack*, 19 June 2021, available at <https://idus.us.es/bitstream/handle/11441/136577/the%20new%20brazilian.pdf?sequence=1&isAllowed=y> [accessed 10 May 2023]

⁴⁹ Waldimeiry Correa de Silva, *The new Brazilian anti-trafficking law: challenges and opportunities to cover the normative lack*, 19 June 2021, available at <https://idus.us.es/bitstream/handle/11441/136577/the%20new%20brazilian.pdf?sequence=1&isAllowed=y> [accessed 10 May 2023]

⁵⁰ Waldimeiry Correa de Silva, *The new Brazilian anti-trafficking law: challenges and opportunities to cover the normative lack*, 19 June 2021, available at <https://idus.us.es/bitstream/handle/11441/136577/the%20new%20brazilian.pdf?sequence=1&isAllowed=y> [accessed 10 May 2023]

of the victim's consent in determining whether the crime of human trafficking has taken place, and in so doing bring its laws in line with international convention.

Issues regarding practical application of State party's laws at community level

- (a) Brazil allows for successive appeals in criminal cases, including trafficking, before the issuance of a final conviction and sentence.⁵¹ Many convicted traffickers have thus leveraged this mechanism to appeal their convictions several times, in both lower and appeals courts. Adjudication of human trafficking cases in Brazil have been found to last between four to 10 years⁵². In the meantime, traffickers may opt to serve their sentence under house arrest or in prison work release programs, leaving to work during the day and returning to prison overnight.⁵³ These punishments are not commensurate with the serious nature of the trafficking crime and thus, do not serve as effective deterrents in practice.
- (b) In addition, other practical obstacles stand in the way of the effective application and enforcement of these legislative instruments. Brazil has reduced the budget allocation for its efforts at tackling its numerous human rights issues, with the implementation of the III PNETH framework among the notable initiatives affected by such cuts⁵⁴. The law enforcement units in Brazil not only suffer from insufficient funding, but often also lack the expertise and manpower required to investigate trafficking or enforce the legislative regimes in place.⁵⁵
- (c) Brazil's data collection efforts are also often inadequate. Data collection points are dispersed and spread across a variety of databases at the federal and state level, making it difficult to obtain and analyse a comprehensive set of data. Observers have reported that police have occasionally misclassified trafficking cases, suggesting that such cases are in fact under-reported⁵⁶. The lack of a centralized database and inconsistent reporting makes it difficult for Brazil to analyse data, perform year-to-year comparisons, or devise effective action plans.
- (d) Further, the implementation of the government's victim protection efforts under Law 13,344 have also proved to be inadequate, or inconsistent across the states. While the Brazilian government operates a network of 17 State Centers for the Fight Against

⁵¹ United States of America Department of State, 2022 *Trafficking in Persons Report July 2022*, available at <https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf> [accessed 10 May 2023]

⁵² United States of America Department of State, 2022 *Trafficking in Persons Report July 2022*, available at <https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf> [accessed 10 May 2023]

⁵³ United States of America Department of State, 2022 *Trafficking in Persons Report July 2022*, available at <https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf> [accessed 10 May 2023]

⁵⁴ Waldimeiry Correa de Silva, *The new Brazilian anti-trafficking law: challenges and opportunities to cover the normative lack*, 19 June 2021, available at <https://idus.us.es/bitstream/handle/11441/136577/the%20new%20brazilian.pdf?sequence=1&isAllowed=y> [accessed 10 May 2023]

⁵⁵ International Centre for Migration Policy Development, *Guide on Anti-Trafficking in Persons: Law Enforcement*, available at https://www.icmpd.org/file/download/54097/file/Guide%2520on%2520Anti-Trafficking%2520in%2520Persons%2520-%2520Law%2520Enforcement_EN%2520summary.pdf [accessed 10 May 2023]

⁵⁶ United States of America Department of State, 2022 *Trafficking in Persons Report July 2022*, available at <https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf> [accessed 10 May 2023]

Human Trafficking⁵⁷, intended to serve as the first point of contact for trafficking victims, most of such offices were found to not provide services to victims directly⁵⁸. Despite Brazil's border states being the sites where trafficking is most prevalent, many of such states are not part of this network⁵⁹.

- (e) Finally, Brazil has not addressed the Committee's concerns surrounding the alleged involvement of some of its officials in acts of trafficking. The government has not reported any investigations, prosecutions, or convictions of government employees complicit in human trafficking offenses, save for the addition of two former public employees, a retired public prosecutor, and a former mayor, to its public registry of individuals and companies guilty of such trafficking crimes, known as the "dirty list"⁶⁰. The government has also not reported any instances of anti-trafficking training being conducted for prosecutors, judges, or law enforcement officials.⁶¹ The corruption and complicity of officials in trafficking crimes inhibits effective law enforcement action against the crimes of human trafficking on a whole. More work has to be done to root out trafficking-related official corruption.

⁵⁷ Human Rights Committee, *Third Periodic Report submitted by Brazil under article 40 of the Covenant, due in 2009*, 25 August 2021, available at https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FBRA%2F3&Lang=en [accessed 9 May 2023]

⁵⁸ United States of America Department of State, *2022 Trafficking in Persons Report July 2022*, available at <https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf> [accessed 10 May 2023]

⁵⁹ United States of America Department of State, *2022 Trafficking in Persons Report July 2022*, available at <https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf> [accessed 10 May 2023]

⁶⁰ United States of America Department of State, *2022 Trafficking in Persons Report July 2022*, available at <https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf> [accessed 10 May 2023]

⁶¹ United States of America Department of State, *2022 Trafficking in Persons Report July 2022*, available at <https://www.state.gov/wp-content/uploads/2022/10/20221020-2022-TIP-Report.pdf> [accessed 10 May 2023]

In addition to the above observations, we annex a table comparing the State's law on rape and sexual violence with the UN Model Law on Rape. This table demonstrates the extent to which the State's law complies with internationally accepted standards and the articles of the ICCPR as above-mentioned.

UN Model Rape Law	Corresponding Legislative Provisions of State	Comments
A. Criminalization of rape		
<p>Article 1. Definition of rape</p> <p>16. A person (the perpetrator) commits rape when they:</p> <p>(a) engage in non-consensual vaginal, anal or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by any bodily part or object; or</p> <p>(b) cause non-consensual vaginal, anal or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by a third person; or</p> <p>(c) cause the victim to engage in the non-consensual vaginal, anal or oral penetration of a sexual nature, however slight, of the body of the perpetrator or another person.</p>	<p>Criminal Code, Article 213 (introduced by Law No. 12,015/2009)</p> <p>Any person who coerces someone through violence or serious threat, to have sexual intercourse or to perform or allow him to practice other lewd acts, commits rape.</p>	<p>Article 213 does not explicitly include all types of penetration of a sexual nature (vagina, anal or oral); however, the definition of rape is broadly defined to include practice of any other lewd acts.</p>
<p>Article 2. On consent</p> <p>17. Consent must be given voluntarily and must be genuine and result from the person's free will, assessed in the context of the surrounding circumstances, and can be withdrawn at any moment. While consent need not be explicit in all cases, it cannot be inferred from:</p> <p>(a) silence by the victim;</p> <p>(b) non-resistance, verbal or physical, by the victim;</p> <p>(c) the victim's past sexual behavior; or</p> <p>(d) the victim's status, occupation or relationship to the accused.</p>	<p><i>See above.</i></p>	<p>Article 213 does not mention the concept of consent.</p>
<p>Article 3. Age of consent</p> <p>(a) A person is considered incapable of giving genuine consent when they are a person below the age of 16.</p>	<p>Criminal Code, Article 217-A (introduced by Law No. 12,015/2009)</p> <p>Any person who has carnal knowledge or carries out other lewd acts with persons less than 14 years commits a</p>	<p>Under Articles 217-A and 218, lewd acts committed against a person who is below the age of 14 are criminalised. This is lower than the age of</p>

<p>(b) Consensual sexual relations between children younger than 16, or between a child younger than 18 years old and a child older than 14 and younger than 16 should not be criminalized.</p>	<p>crime with a penalty of imprisonment of 8 to 15 years.</p> <p>Criminal Code, Article 218 (introduced by Law No. 12,015/2009)</p> <p>Any person who induces any person less than 14 years to satisfy the lust of another commits a crime with a penalty of imprisonment of 2 to 5 years.</p>	<p>consent under the UN Model Rape Law (which is 16).</p>
<p>Article 4. On the incapability of giving genuine consent</p> <p>A person is considered incapable of giving genuine consent:</p> <p>(a) when they are unconscious, asleep, or seriously intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily or unknowingly;</p> <p>(b) when the perpetrator is an adult, 18 years old or older and the victim is a child related to the perpetrator by blood, marriage, adoption, fostering or other analogous familial affiliation.</p>	<p>Criminal Code, Article 217-A (introduced by Law No. 12,015/2009)</p> <p>Any person who due to illness or mental deficiency, is presumed not to have the necessary insight to the performance of lewd acts and presumed to be unable to resist such acts.</p> <p>Committing lewd acts with the persons above carries a higher imprisonment penalty of 8 to 15 years.</p>	<p>A presumed lack of consent in Article 217-A is limited only to illness or mental deficiency. This does not explicitly cover circumstances such as intoxication, or undue influence through familial relations.</p>
<p>Article 5. Use of force, threat or coercion</p> <p>Lack of consent is presumed where penetration was committed by force, or by threat of force or coercion. There is a broad range of coercive circumstances, including, but not limited to, circumstances in which:</p> <p>(a) the victim was subject to abuse, violence, duress, deceit, detention or psychological oppression or intimidation that contributed to the victim's subjugation or acquiescence; or</p> <p>(b) the victim was subject to a threat (expressed or implied) of present or future physical or non-physical harm to the victim or a third person.</p>	<p>Criminal Code, Article 213 (introduced by Law No. 12,015/2009)</p> <p>Any person who coerces someone through violence or serious threat, to have sexual intercourse or to perform or allow him to practice other lewd acts, commits rape.</p> <p>If the conduct results in bodily injury of a serious nature or if the victim is under 18, the penalty is increased to an imprisonment term of 8 to 14 years. If death results, the penalty of imprisonment is increased to 12 to 30 years.</p>	<p>Article 213 does not expressly state that a lack of consent is presumed where a threat (expressed or implied) of present or future physical or non-physical harm to a third person.</p>
<p>Article 6. On presumed lack of consent</p> <p>Lack of consent is presumed when:</p> <p>(a) The victim was intoxicated as a result of drugs or alcohol consumed voluntarily, involuntarily or unknowingly;</p> <p>(b) When an illness, bodily injury, or other particular vulnerability has an</p>	<p>Criminal Code, Article 217-A (introduced by Law No. 12,015/2009)</p> <p>Any person who due to illness or mental deficiency, is presumed not to have the necessary insight to the performance of lewd acts and presumed to be unable to resist such acts.</p>	<p>A presumed lack of consent in Article 217-A is limited only to illness or mental deficiency. This does not explicitly cover circumstances such as intoxication, or undue influence.</p> <p>Article 216-A only applies to sexual</p>

<p>impact of the victim’s ability to consent; or</p> <p>(c) When the perpetrator is in a position of power, trust, influence or dependency over the victim and may have taken advantage of that position to force participation.</p> <p>Lack of consent is also presumed when the perpetrator abuses a relationship or position of power or authority over the victim. The positions and relationships listed below include, but are not limited to, situations in which the perpetrator is in a position of power or authority, influence or dominance over the victim:</p> <p>(a) in a school, hospital, religious, correctional or care facility setting;</p> <p>(b) in a professional or occupational setting;</p> <p>(c) in a residential care facility, community home, voluntary home, children’s home or orphanage;</p> <p>(d) in the context of providing the victim medical, psychological or psycho-social support or treatment;</p> <p>(e) in a guardian-ward relationship;</p> <p>(f) by acting as a member of law enforcement, worker, probation officer, sports coach, instructor, minister of religion, babysitter, child-minder or in any other position of welfare in relation to the victim; or</p> <p>(g) by otherwise being generally involved and responsible for the care, training or supervision of the victim.</p>	<p>Committing lewd acts with the persons above carries a higher imprisonment penalty of 8 to 15 years.</p> <p>Criminal Code, Article 216-A (introduced by Law No. 10,223/2001)</p> <p>Any person who embarrasses someone with the intention of obtaining sexual advantage or favour, whichever is the agent of its superior condition or ascendancy inherent in the exercise of employment, position or function is a crime and carries a detention penalty of 1 to 2 years.</p>	<p>harassment instances and not to rape.</p>
<p>B. Sentencing, aggravating and mitigating circumstances</p>		
<p>Article 7. Sentencing</p> <p>States should ensure that sanctions for offences of rape are effective, proportionate, dissuasive and commensurate with the gravity of the crimes.</p> <p>(b) States should develop sentencing guidelines to ensure consistency in sentencing outcomes.</p>	<p>Criminal Code, Article 213 (introduced by Law No. 12,015/2009)</p> <p>The penalty for the crime of rape is an imprisonment term of 6 to 10 years.</p>	<p>Article 213 sets out the penalty for rape.</p>

<p>(c) States should not allow conditional sentences and/or community service or fines alone as sanctions.</p> <p>(d) The death penalty should never be imposed for rape.</p>		
<p>Article 8. Aggravating circumstances</p> <p>The presence of aggravating factors increase the gravity and severity of rape and States should ensure that aggravating circumstances are taken into account and factored into penalties.</p> <p>The following non-exhaustive list of circumstances should be taken into consideration as aggravating circumstances in the determination of the sentence in relation to the offence of rape:</p> <p>(a) the relationship between victim and perpetrator, when there is a power imbalance that makes the victim particularly vulnerable:</p> <ul style="list-style-type: none"> (i.) the offence was committed against a former or current spouse or partner; (ii.) the offence was committed by a member of the family or a person cohabiting with the victim; (iii.) the perpetrator took advantage of any kind of relationship of trust, kinship, authority, or other unequal power relationship with the victim; (iv.) the perpetrator is an agent or contractor of the State, or has authorization, support, or acquiescence from one or more agents or contractors of the State; <p>(b) conditions of the victim or context that make them particularly vulnerable to sexual violence:</p> <ul style="list-style-type: none"> (i.) the offence was committed against a victim who for any reason is imprisoned or detained; 	<p>Criminal Code, Article 213 (introduced by Law No. 12,015/2009)</p> <p>If the crime of rape results in bodily injury of a serious nature or if the victim is under 18 or over 14 years, the penalty is an imprisonment term of 8 to 12 years.</p> <p>If death results from rape, the penalty is an imprisonment term of 12 to 30 years.</p> <p>Criminal Code, Article 226</p> <p>The penalty for rape is increased if the perpetrator is in a position of authority over the victim.</p>	<p>Article 213 only includes aggravating circumstances such as bodily injury, death or rape against minors.</p> <p>Article 226 includes aggravating circumstances for perpetrators in positions of power.</p>

<p>(ii.) the offence was committed against a child or against an older person;</p> <p>(iii.) the offence was committed against or in the presence of relatives of the victim or any child;</p> <p>(iv.) the perpetrator took advantage of a person in a position of particular vulnerability, including but not limited to in times of armed conflict, political violence, or other social disturbance, during human trafficking or migration, labour exploitation, sexual exploitation or natural disasters;</p> <p>(v.) the offence was committed with an additional discriminatory motive against a victim because of their race, caste, ethnicity, sexual orientation, gender identity, disability, age, migrant or refugee or other status;</p> <p>(vi.) the offence was committed against a pregnant person;</p> <p>(c) the ways in which the offence is carried out:</p> <p>(i.) the offence was committed by two or more people acting together;</p> <p>(ii.) the offence, or related offences, were committed repeatedly;</p> <p>(iii.) the offence was preceded or accompanied by extreme levels of violence or threats of or attempts to cause extreme levels of violence;</p> <p>(iv.) the offence was committed with the use or threat of use of a weapon;</p> <p>(v.) the offence was committed including by causing the victim to take, use or be affected by drugs, alcohol or other intoxicating substances to</p>		
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<p>maintain control over the victim;</p> <p>(vi.) the perpetrator had previously been convicted of offences of a similar nature;</p> <p>(vii.) the offense was filmed or photographed by the perpetrator;</p> <p>(d) the consequences of rape to the victim:</p> <p>(i.) the offence resulted in severe physical or psychological harm or disability for the victim;</p> <p>(ii.) the offence resulted in death, pregnancy or the communication of a sexually transmitted infection or disease.</p>		
<p>Article 9. Mitigating circumstances</p> <p>States should not permit in rape cases the use of extenuating and mitigating circumstances that are based on culture, religion, customs, traditions or so-called honour that are contrary to international human rights law in cases of rape.</p> <p>(a) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment by reaching any form of settlement (financial or otherwise) with the victim or the victim’s family;</p> <p>(b) States should ensure that the perpetrator cannot be exempt from punishment or subjected to reduced punishment for subsequently marrying the victim and the law should not provide that the perpetrator is required to marry the victim.</p> <p>Mitigating circumstances that should be prohibited include, but are not limited to:</p> <p>(a) if the perpetrator marries or desires to or attempts to reconcile with the victim.</p> <p>(b) the wish of the perpetrator, or the perpetrator’s family or community, to compensate for the harm.</p>	<p>None specific to the crime of rape.</p>	<p>Based on research conducted for this report, legislation specifically addressing mitigating circumstances specific to the crime of rape was not identified.</p>

<p>© character or reputation of the perpetrator;</p> <p>(d) prior history of behaviour to insinuate blame on the part of the victim.</p>		
<p>Article 10. Withdrawal of parental rights</p> <p>States should take legislative measures to allow for the withdrawal of parental rights of perpetrators in relation to the children conceived as a result of rape, taking into consideration their best interests:</p> <p>(a) Where a person is subject to a criminal proceeding for the crime of rape, parental rights to the child conceived as a result of the alleged rape will be suspended until a final decision is determined in the criminal process.</p> <p>(b) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to a child conceived as a result of rape, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. Incidents of violence against women should be taken into account when deciding on parental rights.</p> <p>(c) Where a person is convicted of the crime of rape, there should be a presumption against parental rights to any child conceived by that person, taking into consideration the best interest of the child, while alimony and compensation should be granted irrespective of such withdrawal of parental rights. These provisions are without prejudice to the child's right to enjoy any benefit accruing from their paternity.</p>	<p>None found.</p>	<p>Based on research conducted for this report, legislation specifically addressing withdrawal of parental rights was not identified.</p>
<p>C. Investigation, prosecution and trial</p>		
<p>Article 11. Victim-centred approach</p> <p>(a) A victim-centred approach places the victim at the centre of all responses, including by ensuring that they are kept informed about their rights, the legal process and progress of the case and are</p>	<p>Maria de Penha Law, Law No. 11,340/2006</p> <p>Articles 10 to 12 details the procedures which should be accorded to rape victims in the context of domestic violence, which includes assistance by</p>	<p>The Maria de Penha Law protections are limited to the context of domestic violence/abuse cases.</p>

<p>supported throughout the process, and free legal aid is available where appropriate;</p> <p>(b) The number of interviews of the victim should be kept to a minimum and interviews carried out only where strictly necessary for the purposes of the criminal investigation;</p> <p>(c) Examinations to collect medico-legal evidence are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings;</p> <p>(d) Victims should be able to be accompanied by their legal representative(s) and support persons of their choice, unless a reasoned decision has been made to the contrary.</p>	<p>the police authorities and a multidisciplinary assistance team created to support the Courts of Domestic and Family Violence.</p>	
<p>Article 12 – Child victims and witnesses of rape</p> <p>(a) Every child victim or witness of rape has the right to have his or her best interests given primary consideration.</p> <p>(b) Every child victim or witness of rape shall be treated according to the following general principles:</p> <p>(i.) A child victim or witness of crime shall be treated in a caring and sensitive manner that is respectful of his or her dignity throughout the legal proceedings, taking into account his or her personal situation and immediate and special needs, age, gender, disabilities if any and level of maturity.</p> <p>(ii.) Interference in the child’s private life shall be limited to the minimum necessary as defined by law in order to ensure high standards of evidence and a fair and equitable outcome of the proceedings.</p> <p>(iii.) The privacy of a child victim or witness shall be protected.</p> <p>(iv.) Information that would tend to identify a child as a</p>	<p>None found.</p>	<p>Based on research conducted for this report, legislation specifically addressing the treatment of child victims and witness of rape was not identified.</p>

witness or victim shall not be published without the express permission of the court.

(v.) A child victim or witness shall have the right to express his or her views, opinions and beliefs freely, in his or her own words, and shall have the right to contribute to decisions affecting his or her life, including those taken in the course of the justice process.

(c) A child victim or witness shall be assigned a lawyer by the State free of charge throughout the justice process in the following instances:

(i.) At his or her request;

(ii.) At the request of his or her parents or guardian;

(iii.) At the request of the support person, if one has been designated;

(iv.) Pursuant to an order of the court on its own motion, if the court considers the assignment of a lawyer to be in the best interests of the child.

(d) If at any stage in the justice process the safety of a child victim or witness is deemed to be at risk, the competent authority shall arrange to have protective measures put in place for the child. Those measures may include the following:

(i.) Avoiding direct contact between a child victim or witness and the accused at any point in the justice process;

(ii.) Requesting restraining orders from a competent court;

(iii.) Requesting a pretrial detention order for the accused from a competent court, with "no contact" bail conditions;

(iv.) Requesting an order from a competent court to place the accused under house arrest;

(v.) Requesting protection for a child victim or witness by the

<p>police or other relevant agencies:</p> <p>(vi.) Making or requesting from competent authorities' other protective measures that may be deemed appropriate</p>		
<p>Article 13. Investigation</p> <p>(a) Investigators/police officers should not delay investigation nor refuse to record the crime or initiate an investigation solely based on delayed reporting of the crime;</p> <p>(b) Investigators/police officers should promptly give the victim written acknowledgement of receipt of their complaint;</p> <p>(c) Investigators/police officers should promptly and effectively record and investigate all allegations/reports made by the victim or other witnesses/organizations and ensure that the official report of the complaint is filed in all cases;</p> <p>(d) Investigators/police officers should promptly respond to requests for assistance and protection, advise the victim of their rights, and support the victim in filing a complaint and in accessing relevant services;</p> <p>(e) Investigators/police officers should conduct initial interviews in a gender-sensitive and trauma-informed manner and with due respect for the right to privacy.</p> <p>(f) Investigators/police officers should conduct interviews of victims without unjustified delay after the rape complaint has been made to the competent investigative authority, in a language understood by the victim and with the support of an interpreter, if necessary;</p> <p>(g) Investigators should conduct risk assessments, considering the seriousness of the situation and the risk of repeated rape or lethal violence, including possession of firearms by the perpetrator and issue effective protection orders including ex parte protection orders or other measures to</p>	<p>Maria de Penha Law, Law No. 11,340/2006</p> <p>Articles 10 to 12 details the procedures which should be accorded to rape victims in the context of domestic violence, which includes assistance by the police authorities and a multidisciplinary assistance team created to support the Courts of Domestic and Family Violence.</p>	<p>The Maria de Penha Law protections are limited to the context of domestic violence/abuse cases.</p>

<p>protect the victim and their family as necessary;</p> <p>(h) There should be a complaint mechanism accessible to victims who were mistreated by the police or if their case was mishandled.</p>		
<p>Article 14. Ex officio prosecution</p> <p>(a) The investigation and prosecution of rape should be conducted ex officio. The State has the obligation to carry out an effective investigation and prosecute the crime, which should not be wholly dependent on a report or accusation made by the victim and may continue even if the victim has withdrawn their statement;</p> <p>(b) Any prosecutor who discontinues a rape case should provide a formal and timely written explanation to the victim of the reasons why the case was dropped.</p>	<p>None found.</p>	<p>Based on research conducted for this report, legislation specifically addressing ex officio prosecution was not identified.</p>
<p>Article 15. Timely and without undue delay</p> <p>(a) Investigations and judicial proceedings should be carried out in a timely manner without undue delay, while taking into consideration the rights of the victim during all stages of the criminal proceedings;</p> <p>(b) All reports of rape should be taken seriously and investigated promptly, thoroughly and impartially;</p> <p>(c) All evidence properly collected and decision on cases that should be prosecuted without any prejudicial stereotypical views of the victim or any other reason which would deny effective access to justice to victims.</p>	<p>None found specific to rape.</p> <p>However, for rape which occurs in the context of domestic violence, Article 12 of the Maria de Penha Law (Law No. 11,340/2006) specifies the police proceedings accorded to the victim, which includes immediately registering the occurrence, collecting all evidence and conducting necessary expert examinations.</p>	<p>The Maria de Penha Law protections are limited to the context of domestic violence/abuse cases.</p>
<p>Article 16. Evidentiary requirements, rape shield provisions</p> <p>States should ensure an objective, gender-sensitive assessment of the evidence in rape cases:</p> <p>(a) Introduction of evidence regarding the victim's past sexual history or behaviour should be generally prohibited at all stages of the legal process, including cross-examination;</p>	<p>None found.</p>	<p>Based on research conducted for this report, legislation specifically addressing the evidentiary requirements and rape shield provisions was not identified.</p>

<p>and should be permitted only when relevant and necessary;</p> <p>(b) There should never be an absolute requirement that any specific piece of evidence be available for a prosecution to go ahead, such as medical evidence, which may not be available, particularly after a delay in reporting, or if there is a delay in starting the investigation;</p> <p>(c) There should be no requirement for the testimony of the victim to be otherwise corroborated in order for that testimony to be considered credible, reliable and sufficient as a basis for conviction, considered in the context of the particular case;</p> <p>(d) Lack of evidence of resistance such as physical injuries to the body must never, in and of itself, be taken as proof of consent to the sexual act.</p> <p>(e) No adverse inference shall be drawn from a delay of any length between the alleged commission of rape and the reporting thereof.</p>		
<p>Article 17. Statutory Limitations</p> <p>(a) The prosecution of rape should not be subject to any period of limitation in any circumstances, whether carried out in times of peace or conflict;</p> <p>(b) If statutes of limitation are in place, in the case of child victims, statutes should allow sufficient time for the initiation of proceedings after the victim has reached the age of majority.</p>	None found.	Based on research conducted for this report, legislation specifically addressing statutory limitations for the prosecution of rape was not identified.
<p>Article 18. Jurisdiction and Cooperation between States</p> <p>States should:</p> <ul style="list-style-type: none"> i. Establish jurisdiction over offences of rape, when the offence is committed: ii. in their territory; or iii. on board a ship flying their flag; or iv. on board an aircraft registered under their laws; or v. by one of their nationals. 	None found.	Based on research conducted for this report, legislation specifically addressing jurisdiction and cooperation between states was not identified.

<p>(a) Ensure that their jurisdiction is not subordinated to the condition that the acts of rape are criminalised in the territory where they were committed.</p> <p>(b) Establish jurisdiction over offences of rape when the offence is committed in the context of conflict, war crimes, crimes against humanity, genocide, widespread or systematic attack, national disturbances or humanitarian crises.</p> <p>(c) States should endeavour to co-operate with each other, to the widest extent possible, for the purpose of preventing, investigating and prosecuting all rape cases, protecting and providing assistance to victims and providing mutual legal and other necessary assistance in criminal matters, extradition and enforcement of relevant civil and criminal judgments by judicial authorities of other States, including protection orders.</p>		
<p>Article 19. Prohibition of mandatory reconciliation or mediation</p> <p>The law should expressly prohibit any form of mandatory conciliation or mediation in cases of rape, both before and during legal proceedings.</p> <p>(a) Cases of violence against women, and particularly of rape and sexual violence, should not be referred to mandatory alternative dispute resolution procedures.</p> <p>(b) Plea bargains should be strongly discouraged in cases of rape and especially when the offence was committed against a victim who was a child at the time of the crime.</p>	<p>None found.</p>	<p>Based on research conducted for this report, legislation specifically addressing a prohibition of mandatory reconciliation or mediation was not identified.</p>
<p>Article 20. Victim-centred protection measures</p> <p>States should take all necessary legislative measures to ensure that the rights and interests of victims are protected at all stages of the investigation and judicial proceedings, in particular by:</p> <p>(a) Providing for the protection of victims, their family members and witnesses from intimidation, retaliation and secondary victimization, including</p>	<p>None found specific to rape.</p> <p>However, for rape which occurs in the context of domestic violence, Article 12 of the Maria de Penha Law (Law No. 11,340/2006) specifies the police proceedings accorded to the victim, which includes commencing urgent protective measures at the victim's request and sending such request to the judge within 48 hours.</p>	<p>The Maria de Penha Law protections are limited to the context of domestic violence/abuse cases.</p>

through physical protection of victims and their family members where necessary;

(b) Ensuring avoidance of contact between a victim and the alleged perpetrator(s) within premises where criminal investigations or trials are conducted, including by providing separate waiting areas, entrances and exits and staggered arrival and departure times; by permitting victims to give evidence remotely or through the use of communication technology in a place the victim deems safe; or by utilizing witness protection boxes or screens in courtrooms to avoid visual contact between the victim and the alleged perpetrator(s);

(c) Protecting the privacy of victims and preventing public dissemination of any information that could lead to the identification of the victim including by prohibiting the media from identifying victims of rape before conclusion of the trial and without the victims' consent afterwards, privacy when reporting to the police, closure of the courtroom during proceedings and the like;

(d) Providing victims with adequate and timely information, in a language they understand throughout the criminal justice process, on their rights and available support services, the progress of the investigation and legal proceedings, their role therein and the outcome of the case;

(e) Enabling victims to exercise their right to legal aid, interpretation and court support, including the right to be accompanied and represented in court by a specialized service or by any other independent support persons chosen by the victim.

(f) Assessing the victim's specific needs to enable their effective participation in the criminal proceedings; and ensuring that child victims and victims with specific needs are afforded special support and protection measures to ensure they are able to participate as fully as possible in the proceedings at the same time as protecting their best interests. Such special measures may include but are not limited to:

<p>(i.) ensuring that interviews with the victim are conducted in their home or residence or in premises specially designed or adapted for that purpose by an interviewer of the same sex without undue delay;</p> <p>(ii.) ensuring the presence of parents or a person trusted by the child while recording a child's testimony, which could include representatives from specialist civil society organizations working to address or support victims of rape; and</p> <p>(iii.) in the case of victims with physical, psychological, mental, or intellectual impairment or disabilities, obtaining the assistance of a special educator, psychologist or other person familiar with appropriate communication techniques for example braille, sign language or other electronic and information technology accessible to people with specific needs, before interviewing or recording the statement of the victim;</p> <p>(iv.) ensuring that interviews with the victim are carried out by or through professionals trained for that purpose;</p> <p>(v) ensuring interpretation and or translation services;</p> <p>(vi) ensuring psycho-social and legal support, and covering travel expenses incurred.</p> <p>(g) Ensuring that protection orders are efficient, available and easily accessible, could be issued ex parte and that victims are not subjected to undue delays in their applications for protection orders and other protective measures and that all allegations of rape are heard in a timely and impartial manner.</p>		
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