

2nd Cycle Universal Periodic Review BRAZIL

Joint submission by relevant stakeholders on the rights of persons with disabilities in Brazil

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Revised English version

Submitted by:



Associação Brasileira
para a Ação por Direitos
das Pessoas com Autismo

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com Deficiência**

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1. ***Recognizing the important role played by civil society in the process of implementing and monitoring the Convention on the Rights of Persons with Disabilities and the need for increased involvement in the processes necessary to implement these rights at the national level, the following organizations take this opportunity to provide comments and contributions to the Universal Periodic Review process, hoping thus to give visibility to the Convention and contribute to implementation of the rights of people with disabilities provided by this human rights convention.***

Introduction

2. Brazil is a country of continental dimensions and is part of the list of nations with higher levels of social inequality in the world. According to the *Instituto de Pesquisa Econômica Aplicada* (IPEA), 10 million people live with less than US\$ 1 per day. Approximately 54 million people (30% of the population) are considered poor. Of these, 34 million live in poverty and 20 million in extreme poverty.
3. In this scenario of poverty and inequality, disability stands out. According to preliminary data from the last Census, there are 45.6 million people with disability in Brazil - or approximately 23.9% of the population.
4. Among the Brazilian regions, the north and northeast represented higher percentage of disability incidence than the national average - 16.7% and 16.1%, respectively. According to data from the census of the *Instituto Brasileiro de Geografia e Estatística* (IBGE) in 2000, 15.3% of women and 13.7% of men have some form of disability. When comparing ethnic origin, disability is higher among indigenous peoples (17%) and African descent - or afrodescendent (17.5%) and browns (pardo) (17%) - as designated by the IBGE. Among people over 15 years old, the deficiency represents 18.8%. The rural population represents 15.1% and 14.3% are urban population considering the total of persons with disabilities in the country, according to the same survey.
5. The School Census (Censo Escolar) of 2010 indicates 10% increase in enrollment made in Special Education - from 639,718 in 2009 came to 702,603, of which 218,271 (31%) are in special classes or schools exclusive and 484,332 (69%) in common classes. Enrollment of students with disabilities are basically concentrated in elementary education (74.4%), with little presence in high school (4%) and infant education (9.8%) and higher education and adult (11.3%). Currently 30% of the nation's public schools are considered accessible.

6. The UN Convention on the Rights of Persons with Disabilities was the first human rights treaty incorporated the Brazilian legal system with the status of constitutional law. This achievement was a result of the efforts of groups engaged in promoting and protecting the rights of persons with disabilities, members of civil society, nongovernmental organizations, activists in the area of human rights and people with disabilities, as well as public and academic authorities.
7. After more than two years that the Convention entered into force, Brazil must submit its official report to the UN Committee on the Rights of Persons with Disabilities. From April to June 2011, the Brazilian government, through the National Secretariat for Promoting the Rights of Persons with Disabilities, through the Public Consultation No. 01/2011, has opened the text of the report for comments and contributions from civil society. Until de closure of this UPR submission, Brazil, however, has not yet sent its report to the UN Committee on the Rights of Persons with Disabilities.
8. In 2008, Brazil submitted the first report submitted under the Universal Periodic Review process. [\[2\]](#) The report dealt with women's rights and racial equality, land rights, education, health and work, adequate food, combating poverty and social inequality, the practice of torture and extrajudicial executions, right to public citizen security, memory and truth, sexual orientation and gender identity, the rights of indigenous people and children and adolescents.
9. About the rights of persons with disabilities, the document brought only a few percentage data on the situation of this population in Brazil, references to the First National Conference on the Rights of Persons with Disabilities (2006), the National Program of Accessibility and the process of ratifying the Convention on the Rights of Persons with Disabilities that was, at that time, still on process. This content was insufficient to provide a picture of the invisibility and exclusion faced by people with disabilities in the country.
10. The effective implementation of the rights guaranteed by the Convention on the Rights of Persons with Disabilities requires that the Universal Periodic Review process gives greater visibility to the inequalities that still contribute to the lack of participation of persons with disabilities on an equal basis with others, in all aspects of life such as access to education with quality and basic public services, to health care, transportation and adequate housing, ensuring employability and ability to exercise rights.

Legislative Measures

11. Through the recent Decree. 7612 of 17 November 2011, the Brazilian government instituted the National Plan of the Rights of Persons with Disabilities – *Plano Viver sem Limite* (Living Without Limits Plan). In addition to adopting the social model of disability and the concept of people with disabilities provided in the Convention, the plan focuses on measures aimed at ensuring access to education, health care, accessibility and social inclusion. [3] The actions foreseen in the plan tend to indicate a greater realization of the rights of people with disabilities at national level. Gradually the government has been mobilizing in order to adopt effective measures to harmonize the national legislation to the content of this human rights treaty ratified by the State in 2008.
12. On the other hand, there is a concern about the official Portuguese version of the Convention translated by the Brazilian government, which is inaccurate in the translation of the preamble and Article 1, which can lead to misconceptions about who are or may be considered a person with disability under the social model of disability adopted by the treaty.
13. In Article 1, the text of the Portuguese official version in Brazil says "*[p]eople with disabilities * are those * who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others*". In the original English, in turn, included *people with disabilities include those who (...)*". The use of different expressions makes all the difference in the interpretation of who is the target audience of treaty. The Convention does not propose a definition that limits the persons that is protected by it, just highlights those that that at least should be included. The writing in Portuguese, in this sense, is more restrictive.
14. In the letter 'E' of the Preamble - which is not legally binding, but supports the understanding of the treaty and the new concept of disability in which it is based -, the official Portuguese version in Brazil says, that "*Recognizing that disability is an evolving concept and that disability results from the interaction between people with *disabilities* (...) and barriers, using the own concept of disability to describe the concept itself, but the original version says that "disability results from the interaction between people with impairments and the barriers..."* establishing a key concept for the disability social approach.
15. Inaccurate translation can result in misunderstandings about the target audience of the international standard, preventing certain groups of people to benefit from the rights guaranteed in the CRPD and take part in the process of discussing, implementing and monitoring the Convention. An example is the persons with

psychosocial disabilities, who are not recognized as people with disabilities in Brazil, despite their activism for the implementation of the Convention at the international level.

16. There are only few measures adopted in the legislative framework - which are crucially important as first steps to ensure the realization of the rights contained in the Convention. 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 legislations, criminalize discrimination based on disability, including the denial of provision of reasonable adaptation and ensure the recognition of all people with disabilities as citizens before the law.

Recommendations:

17. **The Brazilian government should make efforts to correct misunderstandings in the translation of the CDPD contained in the preamble and Article 1 in accordance with the original text of the CRPD.**
18. **Update the legal framework including the definition of persons with disabilities and ensure an effective non-discrimination law for persons with disabilities, including the denial of reasonable accommodation as discrimination, and ensuring recognition of all persons with disabilities as persons before the law, as stated by the CRPD.**

Recognition as a person before the law

19. In Brazil, under current law, people with disabilities still face limitations to fully exercise their legal capacity – here understood as the ability to have and exercise rights.
20. The Brazilian civil law provides for the possibility of fully or partially limiting the exercise of legal capacity through a process called interdiction, based on the medical model of disability. In most cases, the rights of citizenship are fully limited. Often people with intellectual and psychosocial disabilities are prevented from practicing acts of civil life and directly affecting the full exercise of the rights to public and political participation and to live in the community, in opposition to Article 12 of the CRPD - which deals with the mechanisms of supported decision making - There are, however, few statistics available about the processes of interdiction and the way the judiciary branch is positioning itself as to the exercise of legal capacity of persons with disabilities.

21. The implementation of Article 12 of the Convention requires the humanization of the judiciary, as well as major changes in national legislation in order that operates gradually transition from the current substitutive decision-making model by the supported decision-making process. In this sense, it is imperative that the content of Article 12 of the Convention is studied, interpreted and entirely understood. The Brazilian government must be committed to invest in initiatives aimed at giving effect to the content of article 12 and to involve persons with disabilities in this process. Only after this initial moment of joint construction it will be possible to think about further legislative reforms are considered necessary to achieve the rights guaranteed to all persons with disabilities in Article 12.

Recommendations:

22. Efforts to carry out initiatives aimed to study and give effect to the normative content of article 12 and to involve persons with disabilities themselves in the process in view of constructing proposals to modify the Civil Code, the Code of Civil Procedure and other regulations so that its contents are in compliance with Article 12 of the CRPD.

23. Mapping, in order to evaluate the possibility of revocation, laws, measures and practices which hinder the exercise of legal capacity of persons with disabilities, particularly those with intellectual disabilities, addressing the exercise of civil rights, including those with a financial or personal character, and political rights, such as the right to vote and be voted for any person with disability.

24. Adopt the supported decision-making model, defining the supportive measures and the necessary safeguards to guarantee the exercise of legal capacity and recognition before the law for all people with disabilities on an equal basis.

Social Protection

25. In relation to the support provided by the state, an instrument that is being used is called the Continuous Cash Benefit (BPC), regulated by Decree n. 6,214 of September 26, 2007. Part of basic social protection under the Social Assistance System (SUAS) instituted by the Ministry of Social Development and Hunger Alleviation, in accordance with the provisions of the National Policy for Social Assistance – PNAS, it is granted to people with disabilities, or older than 65 years whose *family* income is less than $\frac{1}{4}$ of the minimum wage, currently set at R \$ 545.00 (five hundred and forty-five reais), about \$ 340 (three hundred forty U.S. dollars Americans).

26. Decree n. 7,617 of November 17th, 2011 broke new ground by establishing that the salary earned by a person with disabilities as an apprentice do not count as part of the monthly gross income therefore allowing the accumulation of the wage and the BPC in this hypothesis. It also provided that the beneficiary of the BPC can enter the labor market and have the benefit temporarily suspended, and if in this period cannot stay at work or do not acquire the right to another social security benefit, the person may returns to the BPC without going through the application process or evaluation of disability and degree of impairment by the National Institute of Social Security (INSS).
27. It happens that for many people with disabilities living in situation of poverty that receives the BPC it is still not worth starting a professional career – which starting salaries are usually low and unattractive - since the entry into the labor market still implies the loss of support provided by the State - even now only temporarily.
28. The judicial interdiction, although is not required to obtain the benefit, also has been used by families, especially from people with intellectual disabilities, to have access to this benefit. In many cases, the income received by the guardian ends up being used for other purposes, such as primary needs of the family and not to meet the basic needs of the person with disability, what makes it difficult the process of achieving independence and autonomy by the person.

Recommendations:

- 29. Recognizing the relevance of BPC for millions of Brazilians with disabilities as a social protection policy, make improvements to ensure that the BPC is used as a tool to promote inclusion and participation of people with disabilities on an equal basis in all aspects of life.**
- 30. Ensure that the BPC granted is not suspended in case of persons with disability who enter the formal labor market and receive a sum up to the minimum wage.**
- 31. Study and implement alternatives to guarantee that the receiving and accreditation for the BPC do not establish, in any case, as a prerequisite, the need for setting aside the civil rights of people with disabilities.**

Deinstitutionalization

32. Despite the enactment of Law no. 10216 of April 6, 2001 - known as the Psychiatric Reform Act – it is still part of the reality of people with intellectual and

psychosocial disabilities in Brazil segregated life in long stay shelters. Authorities from the Judiciary Branch, when notified about the situation of violence or abandonment of people with disabilities, refer them to long stay shelters.

33. These shelters in most cases become a life sentence for the victim, who is isolated from community life and their basic fundamental rights, and are often a place where other forms of violence happen and are not always recorded.

Recommendation:

34. **Establish policy of deinstitutionalization coupled with the creation of supporting services to community life, with such goals that in a reasonable period of time, there will be no longer people living segregated from their communities on the basis of disability, in accordance with art. 19 of the CRPD.**
35. **Ensure that people with disabilities in situations of abandonment, or that for any reason have been left without family support, are supported to live in the community, in a non-segregated way, in inclusive residences and supported by the State to access other goods, services and policies such as health, education, social security and other they need to build an independent life.**

Bodies monitoring the implementation

36. In Brazil, the bodies responsible for social control and participation of persons with disabilities are the so called “Councils of Rights”. Most councils have mixed composition, with the participation of Civil Society and Government, as is the case of CONADE - National Council for the Rights of Persons with Disabilities. Due to factors such as lack of mandate set by law and financial dependency on the government, there is debate about whether or not CONADE would have guaranteed the status of the CRPD monitoring body, in accordance with Article 33.
37. Brazil does not count on any National Human Rights Institution, accredited and in accordance with the Paris Principles, which undermines independent monitoring of the CRPD and other human rights treaties which the State is party.

Recommendations:

38. **Creation of a National Human Rights Institution, with the status and operation fully based in the Paris Principles, with a broad mandate set by law to monitor not only the CRPD, but all human rights treaties signed by Brazil. The institution should have technical and operational capacity and financial autonomy to exercise its powers and a pluralistic permanent**

representative composition, with guaranteed representation of persons with disabilities.

39. Appointment of an independent body responsible for monitoring the CRPD in accordance with Article 33.2.

Accessibility at the Municipality Levels

40. For years, human rights defenders in the area of rights of persons with disabilities report and claim that public sector policies should be implemented in municipalities. This is the locus where people live, work, study, relate to friends and family, have access to art and culture, with sports activities, religious, and others. With the publication of the research "Profile of Brazilian Municipalities", in 2010 (conducted by IBGE in 2009) in the 5,565 municipalities of Brazil, findings are no longer empirical but turned into true X-ray of public policies for persons with disabilities in municipalities. [\[ii\]](#) Although accessibility issues are related to the elimination of architectural barriers, the adaptation of public transportation and communication, the research did not provide any data on the communication.
41. With respect to architectural barriers, while many municipalities in the Southeast Region and the State of São Paulo had a master plan (*plano diretor*), only about a third of these meets the accessibility standards. In addition, most of the cities have formal codes for new building (*código de obras*), but less than a third follow the accessibility standards, which undermines the necessary adaptations, as well as the performance of new buildings or renovations, which could improve mobility status of persons with disabilities.
42. As for bus transportation, it exists in more than half the municipalities in the Southeast Region and the State of São Paulo, reaching just over a third of the municipalities of Brazil. Most of these transport systems do not meet accessibility standards, despite granting tariff exemptions for persons with disabilities - what has shown very little efficacy.
43. In places of public entertainment (arts, culture and sports) the situation is even more disrespectful since few municipalities have adapted transportation and accommodation of persons with disabilities or limited mobility.
44. An emblematic case refers to accessibility in buildings of municipal governments - which are usually the best maintained by administration of a city. [\[iii\]](#) Although the situation is slightly better in the cities in the Southeast Region and the State of São Paulo, it turns out that only 6.0% of Brazilian municipalities have 5 or more than 5

items of accessibility, which is very little considering that the items surveyed are the most basic and easy to implement.

Education in the Municipalities

45. Regarding education [\[Iv\]](#), the same survey "Profile of Brazilian Municipalities," (IBGE) reveals that the majority of municipalities in Brazil, Southeast Region and the State of Sao Paulo have municipal education plans, which allows a continuity of work, adapting curriculum to the region, a clearer definition of priorities, and greater autonomy. However, significantly fewer municipalities have human rights education in the school curricula, which could include issues relating to persons with disabilities.
46. Most municipalities conducts teacher training, but a smaller number conducts teacher training on human rights. Training on how to deal with students with special need is not among the priorities.
47. Education enables people to participate in civic life, and even in municipalities where there are schools able to accommodate persons with disabilities, the lack of support given to students with disabilities, of capacity building to teachers and of human rights education, affect the inclusion in school.

Employment and income [\[V\]](#)

48. Still according to research conducted by IBGE in 2009, most municipalities in southeastern Brazil and in the State of Sao Paulo have programs or actions to generate jobs and income, but a negligible amount take into account persons with disabilities.
49. The great majority of the municipalities hired staff in the 24 months preceding the survey. A smaller number hired through public competition (*concurso público*) even fewer published notice of tender to reserve places for persons with disabilities.

Municipal Councils for the Defense of Rights [\[Vi\]](#)

50. Data from the survey conducted by IBGE in 2009 show that the number of municipalities that have City Council of Rights of Persons with Disabilities is really low. This applies to all the country, including the Southeast region and the State of Sao Paulo – even if this last has show some timid improvements in this regard .

51. The Councils are characterized by being advisory, regulatory, normative and supervisory bodies. The failure to exercise the supervisory function contributes to the low level of compliance with current legislation, especially regarding the right to accessibility. In addition, most Councils are linked to social work bodies (*órgão de assistência social*), which demonstrates that public officials don't have a "right perspective" to the rights of persons with disabilities.

Recommendations:

52. Promote awareness campaigns for municipal administrators (mayors, vice mayors and city counselors) and local communities on issues of rights of persons with disabilities – considering that 2012 is an election year at the municipality's level;

53. Provide line of credits (*linha de crédito*) for local governments to promote, in large-scale, legal and physical adaptations needed to allow accessibility to all persons with disabilities;

54. Organize comprehensive training programs for municipal officials, to sensitize on the need to include persons with disabilities, especially for those responsible for the sectors of construction, education, employment and welfare;

55. Working with urgency in transversal policies, ie, policies that take into account at the same time, the various aspects that involve the full participation of persons with disabilities in society on an equal basis with others. It is pointless to get a job, generator of income, if you can not get to the workplace by lack of accessible transportation. Therefore, accessibility, training and employment and income generation are policies that must go together.

[1] The Convention was ratified with a special quorum of 3/5 vote of the members of two legislative houses (Chamber of Deputies and Senate) in two rounds of voting, paying attention to Constitutional Amendment No. 45, December 08, 2004, which added to Article 5 of the Federal Constitution a § 3 providing that treaties and international conventions on human rights that are approved in each house of Congress, in two shifts, three fifths of the votes of its members, shall be equivalent to constitutional amendments. The legislative branch, represented by the Senate, approved the text of the Convention through Legislative Decree no. 186 of July 9, 2008, which was promulgated by the Executive through the Federal Decree.6949, to August 25, 2009, and shall have binding

force on the side of the rules which occupy the highest level within the hierarchy of legal norms.

[2] Available in <http://portal.mj.gov.br/sedh/co/internacional/rpu.pdf> .Accessed on 11/28/2011.

[3] Available at http://www.planalto.gov.br/ccivil_03/ Ato2011-2014/2011/Decreto/D7612.htm .Accessed on 11/28/2011.

[4] IPEA considers people in poverty, those with monthly household income *per capita* up to half the minimum wage and in conditions of extreme poverty, which has a monthly household income *per capita* up to a quarter of the minimum wage.

ii.

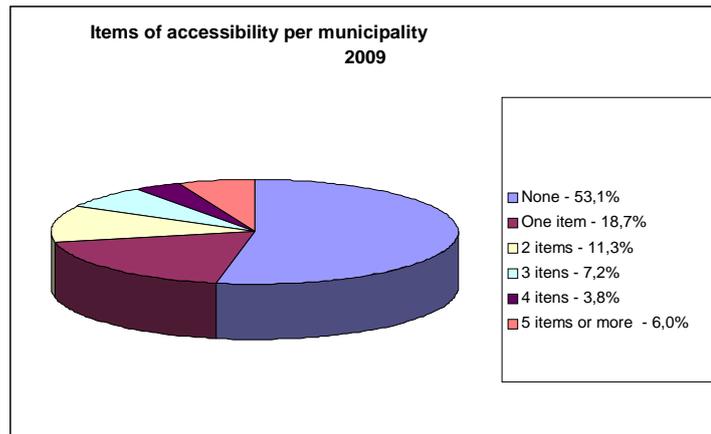
MUNICIPALITIES	BRAZIL		Southeast Region		Sao Paulo State	
	Qty	%	Qty	%	Qty	%
Total	5565	100	1668	100	645	100
With master plans (planos diretor)	2318	41.6	680	40.8	305	47.3
That follow accessibility standards	1653	29.7	502	30.1	220	34.1
With code of works (código de obras)	3208	57.6	1014	60.8	371	57.5
That follow accessibility standards	1675	30.1	525	31.5	189	23.3
With urban transportation by bus	2018	36.3	837	50.2	327	50.1
That follow accessibility standards	589	10.6	278	16.7	136	21.1
Granting duty-free	1596	28.7	690	41.4	316	49.0
That have adapted to transportation and accommodation for Persons with Disabilities in public arts and sports places	567	10.2	212	12.7	106	16.4
That have places for persons in wheelchairs in public arts and sports places	279	5.0%	107	6.4	64	9.9

Source: Profile of Brazilian Municipalities, 2009 - IBGE

iii.

MUNICIPALITIES	BRAZIL		Southeast Region		Sao Paulo State	
	Qty	%	Qty	%	Qty	%
TOTAL	5565	100	1668	100	645	100
City hall building with any item accessibility	2611	46.9	879	(52.7)	432	67.0
City hall building with no items accessibility	2954	53.1	789	47.3	213	33.0

Source: Profile of Brazilian Municipalities, 2009 - IBGE



Source: Profile of Brazilian Municipalities, 2009 - IBGE

[iv] Education:

MUNICIPALITIES	BRAZIL		Southeast Region		Sao Paulo State	
	Qty	%	Qty	%	Qty	%
Total	5565	100	1668	100	645	100
With municipal education plan	3138	56.4	1212	72.7	361	56.0
Municipal plan has human rights education in the curriculum	1632	29.3	565	33.9	162	25.1
With teacher training	3436	61.7	945	56.7	399	61.9
With teacher training in human rights	2056	36.9	531	31.8	222	34.4
Expansion of services to students with special educational needs	1333	24.0	421	(25/2)	183	28.4
Municipal schools able to accommodate persons with disabilities	2936	52.8	958	57.4	435	67.4

Source: Profile of Brazilian Municipalities, 2009 - IBGE

[v] Generation of Labour and Income:

MUNICIPALITIES	BRAZIL		Southeast Region		Sao Paulo State	
	Qty	%	Qty	%	Qty	%
Total	5565	100	1668	100	645	100
With program or actions to generate jobs and income	3307	59.4	963	57.7	459	71.2
With program or actions to generate jobs and income to persons with disabilities	440	7.9	130	7.8	65	10.1
With staff hired in the last 24 months	5259	94.5	1620	97.1	630	97.7
Call for tender in the last 24 months	2968	53.3	981	58.8	505	78,3
Call for tender to reserve places for persons with disabilities	2505	45.0	863	51.7	432	67.0

Source: Profile of Brazilian Municipalities, 2009 - IBGE

[vi] The City Councils of Defense of Rights:

MUNICIPALITIES	BRAZIL		REGION IS		STATE SP	
	Qty	%	Qty	%	Qty	%
Total	5565	100	1668	100	645	100
With City Council for the Defense of Rights of Persons with Disabilities	490	- 8.8%	242	14.6	153	23.7
Advisory	354	6.4	172	10.3	114	17.7
Board	384	6.9	178	10.7	105	16.3
Normative	204	3.7	88	5.3%	88	13.6
Supervisory	320	5.8	147	-8.8%	84	13.0%
Linked to the governing body of human rights	11	0.2	5	0.3	4	-0.6%
Linked to the national manager of social assistance	395	7.1	185	11.9	105	16.8

Source: Profile of Brazilian Municipalities, 2009 - IBGE