



Federative Republic of Brazil

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**Submission by CIVICUS: World Alliance for Citizen Participation, NGO in General Consultative Status
with ECOSOC**

and

Conectas Human Rights

CIVICUS: World Alliance for Citizen Participation

Inés M. Pousadela,
ines.pousadela@civicus.org
Renate Bloem,
renate.bloem@civicus.org

Tel: +41 22 733 3435
www.civicus.org

Conectas Human Rights

Ana Cernov,
ana.cernov@conectas.org

Tel: +55 11 3884 7440
www.conectas.org

1. (A) Introduction

- 1.1 CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, we proudly promote marginalised voices, especially from the Global South, and have members in more than 160 countries throughout the world.
- 1.2 Conectas is a non-governmental and not-for-profit organization founded in São Paulo/Brazil in September 2001. It was accorded consultative status with the ECOSOC-UN in 2006, and observer status with the African Commission on Human and Peoples' Rights in 2009. Conectas' mission is to promote the realization of human rights and consolidation of the Rule of Law in the Global South - Africa, Asia and Latin America.
- 1.3 In this document CIVICUS and Conectas examine the Government of Brazil's compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Brazil's fulfilment of the rights to freedom of association, assembly, and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in May 2012. To this end, we assess Brazil's implementation of recommendations received during the 2nd UPR cycle relating to these issues and provide a number of specific, action-orientated follow-up recommendations.
- 1.4 During the 2nd UPR cycle, the Government of Brazil received twenty recommendations relating to the above-mentioned freedoms/civic space. All of these recommendations were accepted. An evaluation of a range of legal sources and human rights documentation addressed in subsequent sections of this submission demonstrate that the Government of Brazil has fully implemented only one out of the 20 recommendations received. It did so by extending the coverage of the HRDs protection programme to reach all the states of the Federation. At the same time, the government has persistently failed to address unwarranted restrictions on civic space since its last UPR examination, and acute implementation gaps were found with regard to the right to freedom of peaceful assembly and the conditions in which human rights defenders do their work.
- 1.5 CIVICUS and Conectas are deeply concerned by the endemic levels of violence against Brazilian journalists and human rights defenders, and particularly against land rights, indigenous and environmental activists.
- 1.6 CIVICUS and Conectas are further alarmed by the increasingly frequent invocation and use of legal and extra-legal restrictions on the right to free assembly in Brazil.

- In Section B, CIVICUS and Conectas examine Brazil's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of association.
- In Section C, CIVICUS and Conectas examine Brazil's implementation of UPR recommendations and compliance with international human rights standards related to the protection of human rights defenders, civil society activists and journalists.
- In Section D, CIVICUS and Conectas examine Brazil's implementation of UPR recommendations and compliance with international human rights standards concerning freedom of expression, independence of the media and access to information.
- In Section E, CIVICUS and Conectas examine Brazil's implementation of UPR recommendations and compliance with international human rights standards related to freedom of assembly.
- In Section F, CIVICUS and Conectas make a number of recommendations to address the concerns listed.

2. (B) Freedom of association

- 2.1** During Brazil's examination under the 2nd UPR cycle, the government received one recommendation on the right to freedom of association, which it accepted. Under this recommendation, Brazil committed to ratifying ILO (International Labour Organisation) Convention No. 87 concerning freedom of association and protection of the right to organise. This convention, however, has not yet been ratified by Brazil, indicating that Brazil has not implemented the recommendation received in this area of concern.¹
- 2.2** Articles 5, 8 and 37 of the Brazilian Constitution all guarantee the right to freedom of association². Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Brazil is a state party, also guarantees freedom of association. However, despite these commitments, the Brazilian Congress recently adopted new anti-terrorist legislation which a group of UN Special Rapporteurs characterised as being "too broad" and warned that it could be used to target social movements and undermine fundamental public freedoms, including the freedom of

¹ ILO, C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948, <http://goo.gl/wYqK8o>. Brazil's ratification status available in <http://goo.gl/tzozy0>.

² Constitution of the Federative Republic of Brazil, 1988, <http://goo.gl/OE5e3u>.

association.³ Both the IACHR rapporteur for freedom of expression and the OHCHR office in Latin America have expressed their concern about this law.

- 2.3** Although no legislation bans access to foreign funding for CSOs, procedures for receiving such funds have become increasingly cumbersome as a result of new regulations, including those contained in Law No. 13.260 (2016). Drafted partly in response to a recommendation made by the Financial Action Task Force on Money Laundering and Terrorist Financing (FATF), Law No. 13.260 operates on the basis of too vague a definition of terrorism, including “preparatory acts” than can be considered as having the “unequivocal aim of consummating such crime”,⁴ therefore leaving wide margins for interpretation by police officers and judges.

3. (C) Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists

- 3.1** Under Brazil’s previous UPR examination, the government received twelve recommendations on the protection of human rights defenders, journalists and civil society representatives. The government committed to several relevant recommendations including to “adopt a policy of taking an explicit and published decision on instituting a federal investigation and prosecution in all cases involving violence against human rights defenders” (119.79) and “pass legislation, without undue delay, to confirm the official status of the National Programme for the Protection of Human Rights Defenders, and give priority to its wide implementation” (119.80). Additionally, the government of Brazil also received five recommendations concerning indigenous peoples, particularly on their “right to be consulted” where their “traditional lands, territories and resources” are concerned (119.164) and on their right “to defend their constitutional right to ancestral lands without discrimination” (119.167). All of these recommendations were accepted. However, as examined in this section, the government has failed to effectively operationalize any of these recommendations. None of the recommendations on the protection of journalists, human rights and indigenous rights defenders and other civil society activists has been fully implemented.

- 3.2** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection to human rights defenders. The ICCPR

³ UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, 4 November 2015, “Brazil Anti-Terrorism Law Too Broad, UN Experts Warn”, <http://goo.gl/psC5dQ>; UN Human Rights-Office of the High Commissioner, 26 February 2016, “Brazil: UN human rights criticizes approval of anti-terrorism law”, <http://goo.gl/1zQgV4>.

⁴ Law No. 13.260, 16 March 2016, <https://goo.gl/QWTFTP>, Art. 5.

further guarantees the freedoms of expression, association and assembly. Brazil's National Programme for the Protection of Human Rights Defenders was established by decree in 2004 and came into force in 2005.⁵ The program was restructured by decree in 2016; a law was introduced in Congress in 2009 in order to institutionalise the program but has not yet been passed.⁶ Nevertheless, the mechanism is now active in all the states of the Federation –in 5 out of 27 states, through programmes established at the state level.⁷ Targeted extra-judicially killings of civil society activists and human rights defenders, however, have continued happening at an alarming rate.

- 3.3** Criminal legislation is routinely used against HRDs in Brazil, particularly but not exclusively against indigenous, environmental, peasant and land rights defenders. Typical charges against them include invasions of industrial or agricultural establishments, sabotage, vandalism, arson, attempted murder and resistance to arrest, as codified in Brazil's Criminal Code.⁸ Although the newly adopted Anti-Terrorist Law explicitly states that its provisions “do not apply to the individual or collective behaviour of persons involved in political demonstrations or social, union, religious, class or professional movements moved by social or petitioning aims” (art. 2), it is feared that its wide definition of what constitutes a terrorist act could be used against HRDs. Additionally, Law No. 12.850 (2013) on criminal organizations was recently used for the first time against activists from social movements. Activists from the Landless Movement (MST in its Portuguese initials) were raided and arrested under this law for questioning the ownership of an unproductive property in the State of Goiás, known for its agribusiness developments.⁹
- 3.4** On several occasions over the past decade, Rosivaldo Ferreira da Silva, the leader of the Tupinambá indigenous community of Buerarema, Bahía state, has been persecuted for his activism in support of the demarcation of his tribe's ancestral lands. In addition to being harassed, threatened and defamed by non-state actors reportedly under the aegis of local landowners, he has been subjected to arbitrary

⁵ Regarding legal formalization, coverage, and implementation challenges, see FOCUS by Protection International, A Global Observatory of National Policies on Defenders' Protection, <http://focus.protectionline.org/countries/brasil/>.

⁶ Ministério Público Federal, 5 October 2015, “Para MPF, é preciso normatizar programa de proteção a defensores dos direitos humanos ameaçados”, <http://goo.gl/JG3TOD>; Participação em foco, 28 April 2016, “Dilma assinado decreto que estrutura Programa de Proteção aos Defensores de Direitos Humanos em Conferência Conjuntas”, <http://goo.gl/4kMqur>.

⁷ Cf. Secretaria de Direitos Humanos, *Programa de Proteção aos Defensores dos Direitos Humanos – PPDDH*, Brasília, September 2015, in <http://goo.gl/Af7kGA>.

⁸ Brazilian Criminal Code (Decree No. 2.849 of 1940, modified by Law No. 9.777 of 1998, http://www.oas.org/juridico/mla/pt/bra/pt_bra-int-text-cp.pdf.

⁹ Law No. 12.850, 2 August 2013, <http://goo.gl/mRYd3x>.

arrests and accused of numerous crimes, including homicide. In 2014, while wanted for alleged murder, his passport was revoked and he was unable to travel to an overseas event during which he was expected to speak out against violations of indigenous peoples' rights in Brazil. Charges against him were later dropped for lack of evidence.¹⁰ As recently as April 2016, right after visiting another Tupinambá village engaged in resistance against sand mining on their traditional land, da Silva and his brother were arrested for alleged "illegal carrying of firearms", "bodily harm to a worker", "threats of assault", "resisting arrest" and "contempt of authority".¹¹ The work of activists from the Landless Workers Movement (MST), which advocates land reform and is one of the largest social movements in the region, has also increasingly been criminalised on the basis of a body of legislation that typifies the movement's main tactic - land occupations - as a serious crime. Earlier this year MST activist Luiz Batista Borges was the first to be charged in the State of Goiás under Federal Law No. 12.859/2013 on criminal organisations.¹²

3.5 The authorities have also unwarrantedly attempted to criminalise the work of HRDs advocating for increased democratic governance and greater adherence to civil rights issues. Daniel Biral and Silvia Daskal, who work with the civil society group, AdvogadosAtivistas (Activist Lawyers), were arrested on 1 July 2014 while attending a public meeting to discuss abuses committed by the Sao Paulo police during the World Cup protests. The activists were arrested for "contempt of authority" after asking an officer why he did not have his identification information of display, as required by law, and Biral was badly beaten on the way to the police station. They were later released, but Biral's complaint against the officers who attacked him was not officially recorded.¹³

3.6 HRDs, and particularly land, indigenous and environmental rights defenders, have also been stigmatized, threatened, physically attacked and killed, and their organizations infiltrated and subjected to surveillance.¹⁴ According to a Global

¹⁰Rede Bahia, 4 May 2014, "Apontadocomosuspeitoem crime, Cacique Babaudeixaprisão no DF", <http://goo.gl/LK5K7d>.

¹¹ For a full account of a decade-long history of criminalization against this HRD, see ConselhoIndigenistaMisionário, 7 April 2016, "Com acusaçõescontraditórias, PM prende cacique BabauTupinambá e oirmãona Bahia", <http://goo.gl/c78oT7>.

¹²Biodiversidad en América Latina y el Caribe, 10 June 2016, "Campañainternacional contra la crecientecriminalización de los movimientossociales en Brasil", <http://goo.gl/glb5it>.

¹³ UOL, 2 July 2014, "<PMs me disseram: 'É hora de vocêmorrer'> ,dizadvogadopresoemato", <http://goo.gl/2tM7SK>. See also IACHR, 31 December 2015, *Criminalization of Human Rights Defenders*, <http://goo.gl/ZbQCJL>.

¹⁴ For an example, see the case of the BrazilianXingu Alive Forever Movement (MXVPS) in Amazon Watch, 26 February 2013, "Worker Admits to Spying on Social Movement in Belo Monte Dam Case", <http://goo.gl/bOfGoC>.

Witness report, in 2014 Brazil had the highest number of killings of environmental defenders in the world.¹⁵ In 2015, the Pastoral Land Commission (CPT) reported 49 deaths linked to land conflicts, mostly in Northern states with powerful agribusiness interests.¹⁶ Overall, the Brazilian Committee of Human Rights Defenders reported the murders of at least 24 HRDs in the first four months of 2016.¹⁷ Among environmental defenders, 11 murders occurred in the first half of 2016 in the state of Rondônia alone.¹⁸

- 3.7** Recently, in the state of Paraíba, land reform activist Ivanildo Francisco da Silva, also the municipal president of the Workers' Party (PT), was shot dead in his home in April 2016.¹⁹ Other significant drivers of violence against HRDs are large-scale infrastructure and energy projects, particularly hydroelectric plants. Perpetrators include not just police and security forces but also non-state actors such as private security guards, and impunity prevails. In many fatal cases, victims had reported threats and intimidation but received little or no protection. Emblematic of this trend is the case of Raimundo dos Santos Rodrigues, a member of the Advisory Council of the Biological Reserve of Gurupi and of the Chico Mendes Institute for Biodiversity Conservation who was killed in Maranhão in August 2015 for reporting environmental crimes by local landowners and logging companies.²⁰
- 3.8** Much of the violence against indigenous HRDs appears to be correlated with what a recent report of the Special Rapporteur on the rights of indigenous peoples following a mission to Brazil defines as “a worrying regression in the protection of indigenous peoples' rights,” and particularly of the provisions concerning land demarcation and prior consultation with affected indigenous peoples (or other minority groups, such as the Quilombola communities) in the context of mining or hydroelectric megaprojects. According to the United Nations' Special Rapporteur, “concerns were also raised in relation to attempts to change or enact national legislation that directly impact their rights, such as the Mining Code, without meaningful prior consultation with concerned indigenous peoples.” The ILO 169

¹⁵ Global Witness (2015) *How many more? 2014's deadly environment: the killing and intimidation of environmental and land activists, with a spotlight on Honduras*, <https://goo.gl/ghGnsW>.

¹⁶ Comissão Pastoral da Terra, October-November 2015, “Violência no campo bate recorde seaneano”, <http://goo.gl/upBv3Y>.

¹⁷ FLD, 1 June 2016, “Brazil Tops List for Killings of HRDs in 2016”, <http://goo.gl/253g9K>.

¹⁸ Rondônia Rede Amazônica, 25 August 2016, “RO já registrou, em 2016, 11 mortes de posseiros em conflito agrário, diz CPT”, <http://goo.gl/WaBpV8>.

¹⁹ Comissão Pastoral da Terra, 7 April 2016, “Trabalhador rural é assassinado em casa, na Paraíba”, <http://goo.gl/VLWXnr>.

²⁰ Article 19 (2016) *A deadly shade of green. Threats to environmental human rights defenders in Latin America*, <http://goo.gl/SyyDwj>.

Core Convention was ratified by Brazil in 2004 but guidelines for its implementation were never issued.²¹

3.9 A number of journalists were targeted for similar reasons as HRDs, such as reporting on the impact of lucrative megaprojects, denouncing corruption and public mismanagement, and covering protests. According to Reporters Without Borders, six journalists were killed in Brazil in 2015.²² Among them was 30-year-old blogger Ítalo Eduardo Diniz Barros, fatally shot from a motorcycle on 13 November 2015 in Maranhão state, after receiving repeated threats about the content of his blog.²³ As with murdered HRDs, impunity in cases of assassinated journalists remains high. In its annual Impunity Index, which calculates the number of unsolved journalist murders as a percentage of a country's population.²⁴ Media workers covering protests have also been targeted. The Brazilian Association of Investigative Journalism (ABRAJI) documented 190 cases of aggressions against reporters during the FIFA World Cup in 2014 alone, most (but not all) of which were committed by police forces.²⁵ Most recently, João Miranda do Carmo, who ran and edited a news website in the state of Goiás, and was known for "demanding answers from politicians, police and local officials" was murdered when shot 13 times on 24 July 2016.²⁶

4. (D) Freedom of expression, independence of the media and access to information

4.1 Under the 2nd UPR cycle, the government received one recommendation relating to freedom of expression and access to information, which the government supported. Specifically, the government pledged to "consider freedom of expression concerns when drafting cybercrime legislation" (119.130). However, as discussed below, the Brazilian government holds a mixed record in implementing this recommendation. While the so-called Marco Civil da Internet (Law No. 12.965), which governs the use of the Internet in Brazil, is a decisive step forward, bill 215/2015, currently under

²¹A/HRC/33/42/Add.1, *Report of the Special Rapporteur on the rights of indigenous peoples on her mission to Brazil*, 8 August 2016, <http://goo.gl/NiH5Gi>.

²²CPJ, "71 Journalists Killed in 2015/Motive Confirmed", <https://cpj.org/killed/2015/>.

²³ Knight Center, 18 November 2015, "Blogger killed in northeastern Brazil; second journalist murdered in country in less than a week", <http://goo.gl/JPx7ne>.

²⁴ See CPJ, 8 October 2015, "Getting Away With Murder. CPJ's 2015 Global Impunity Index spotlights countries where journalists are slain and the killers go free", <https://goo.gl/owSGsp>.

²⁵ABRAJI, 24 June 2014, "Abraji assegura que em um ano houve 190 agressões a jornalistas em protestos no Brasil", <http://goo.gl/1X1GXh>.

²⁶ The Guardian, 30 August 2016, "Two men detained after the murder of a Brazilian journalist", <http://goo.gl/4YKV44>.

consideration of Congress, would be a significant setback. The government's frequent requests to remove online content also undermine the freedom on the web.

- 4.2** Article 19 of the ICCPR guarantees the right to freedom of expression and opinion. Articles 5 and 220 of the Constitution of Brazil also guarantee the right to freedom of expression²⁷. However, despite these obligations, Brazilian legislation criminalises various legitimate expressions of opinion, and threats of defamation charges have often resulted in self-censorship.
- 4.3** Articles 138, 139 and 140 of the Brazilian Criminal Code define calumny, defamation and slander as crimes punishable with fines and even imprisonment.²⁸ Law No. 10.741 of 2003 increased the penalties for defamation in cases where the injury concerns race, colour, ethnicity, religion or origin, and allowed for penalties to be increased by up to a third if the defamed person is elderly or disabled.²⁹ On the basis of the broad language of these provisions, and given the lack of an express prohibition of their application to online expression, these articles of the Criminal Code have also been applied to Internet and mobile communications. Additionally, a bill currently up for congressional debate³⁰ would punish “crimes against honour” committed on social networks and would allow for information on Internet users to be retained without a warrant. Civil society representatives fear that, if passed, this law would undermine the protections guaranteed under Brazil’s online bill of rights, the Marco Civil da Internet, adopted in 2014.³¹ Although it has been welcomed as a significant step forward, the Marco Civil Bill has also been criticised for provisions such as those allowing providers to store search histories and emails for up to six months (and IPs for a year). Access to information is also now recognized as a right since Law No. 12.527, passed in 2011, went into effect in May 2012.³²

²⁷Constitution of the Federative Republic of Brazil, 1988, <http://english.tse.jus.br/arquivos/federal-constitution>.

²⁸ Brazilian Criminal Code (Decree No. 2.849 of 1940, modified by Law No. 9.777 of 1998, http://www.oas.org/juridico/mla/pt/bra/pt_bra-int-text-cp.pdf.

²⁹ Law No. 10.741, 1 October 2003, <http://goo.gl/AvrpBm>.

³⁰ PL215/2015, currently (August 2016) ready for plenary discussion, <http://goo.gl/niXRZ2>. For civil society opposition to the bill, see <http://plespiao.org.br>.

³¹ Law No. 12.965, 23 April 2014, <http://goo.gl/GXczjJ>. The Marco Civil da Internet (Civil Rights Framework for the Web) is based on the idea of net neutrality, that is, the principle that Internet service providers should enable proper access to all content and applications regardless of the source or content; bans service providers from providing third parties with information on their clients without their consent; and places foreign providers under national jurisdiction even if they are not physically located in the country.

³² Law No. 12.527, 18 November 2011, <http://goo.gl/kCfYzu>. Implementation statistics (May 2012- December 2014) have been quite encouraging so far, with more than 75% of requested information being provided, either partially or totally. See Controladoria-Geral da União (2014) *3º Relatório sobre a Implementação da Lei No. 12.527: Lei de Acesso a Informação*, <https://goo.gl/J8jvBH>.

- 4.4 Although defamation is still criminalised, prison sentences are rare in Brazil. Most lawsuits against journalists and bloggers are filed under civil (as opposed to criminal) statutes, which are just as effective in encouraging self-censorship.³³ Judicial censorship, defined as the resort by powerbrokers to legal orders issued by local judges that make it extremely costly for media outlets and independent journalist to report critically about them, is extremely common.³⁴ Lúcio Flávio Pinto, an award-winning reporter, has been sued 33 times for his work, and in November 2012 he was ordered to pay more than 200,000 dollars to businessman Romulo Maiorana Júnior and his family company for a story published in 2005 where he stated that Maiorana's media group had pressured politicians and companies into giving them advertising. Less frequent but still significant are instances of criminal charges brought against journalists. Such was the case of José Cristian Goes, whose conviction, carrying a prison sentence, was confirmed by an Appeals Court in the state of Sergipe in October 2013. Goes was sued for injury by a state court judge who believed he was depicted in an unflattering manner in a blog posted by Goes. Goes' prison sentence was later converted into community service, a relatively common occurrence in Brazil.³⁵
- 4.5 Government requests to remove online content are fairly common in Brazil. According to a Google Transparency Report,³⁶ Brazil was the country with the highest number of court-ordered requests (43%) made to Google between July and December 2012. In the context of the 2012 presidential elections, more than 300 requests – almost half of the total - related to alleged violations of the Electoral Code.³⁷

5. (E) Freedom of peaceful assembly

- 5.1 During Brazil's examination under the 2nd UPR cycle, the government did not receive any recommendation that was explicitly labelled as relating to the freedom of peaceful assembly. However, a recommendation was received suggesting the government revise "the human rights training programmes for the security forces, emphasizing the use of force according to the criteria of necessity and

³³ CPJ, *Critics are not criminals. Comparative study of criminal defamation laws in the Americas*, <https://goo.gl/C2noXH>.

³⁴ CPJ, 6 May 2014, *Halftime for the Brazilian press*, <http://goo.gl/cj14iy>.

³⁵ Ibid. See also Knight Center, 29 January 2013, "O caso do jornalista Lúcio Flávio Pinto: emblema do assédio judicial no Brasil", <https://goo.gl/UvgnzB>; and Consultor Jurídico, 8 July 2013, "Sem citar nome, jornalista é condenada por injúria", <https://goo.gl/bFwHvZ>.

³⁶ Google launched the Transparency Report in 2010 in order to "provide hard evidence on how laws and policies affect access to information online". See <https://www.google.com/transparencyreport/>.

³⁷ MercoPress, 29 April 2013, "Brazil government leader in online censorship requests, says Google Transparency Report", <http://goo.gl/3AA5MZ>.

proportionality” (119.65), the implementation of which can indeed be construed as conducive to the effective enjoyment of the freedom of peaceful assembly. The government supported this recommendation but, as evidenced below, it has failed to adequately implement it.

- 5.2** Article 21 of the ICCPR guarantees the freedom of peaceful assembly. In addition, article 5 of the Brazilian Constitution also guarantees the right “to petition the Government in defence of rights or against illegal acts or abuse of power”³⁸. However, demonstrations have often been repressed by the security forces
- 5.3** The 2016 Counterterrorism Law ³⁹ introduced the figure of “terrorism” in the Criminal Code and applied it to a number of actions that were already covered in other laws, but that now, as a result of being labelled as terrorism, can entail prison terms of up to 30 years. Civil society representatives and intergovernmental bodies have warned that its vague definition of what constitutes terrorism could lead to it being used to criminalise peaceful demonstrators.⁴⁰ According to the new legislation, for example, anyone accused of planning to commit crimes – preparatory acts– can be charged with terrorism. Since the inclusion of damages to property was vetoed by President Dilma Rousseff when signing the law, two additional pieces of legislation are already being discussed in Congress in order to include damages to property under the definition of terrorism and remove the guarantees that social and political organizations will not be accused of terrorism while resorting to their regular strategies and tactics.
- 5.4** Arbitrary detentions and the criminalization of peaceful protests were commonplace even before the new legislation was enacted. A symbolic case is that of Rafael Braga Vieira, who was arrested during the 2013 anti-government protests and sentenced to five years in prison for merely carrying two bottles of cleaning material.⁴¹ During the World Cup protests, dozens of people were detained preventively in Rio de Janeiro. Ahead of the final, university lecturer Camila Jourdan, who was accused of criminal association and of carrying and storing explosives, was held in prison for 13 days and then banned from participating in protests while the case against her continued.⁴²

³⁸Constitution of the Federative Republic of Brazil, 1988, <http://english.tse.jus.br/arquivos/federal-constitution>.

³⁹ Law No. 13.260, 16 March 2016, <https://goo.gl/QWTFTP>.

⁴⁰ Blog dos Desenvolvimentistas, 3 October 2015, *Manifesto de repúdio a tipificação do terrorismo*, <https://goo.gl/ek5QA0>. See also HRW, 13 November 2015, “Brazil: Counterterrorism Bill Endangers Basic Rights”, <https://goo.gl/RptWPL>.

⁴¹ Al Jazeera America, 24 December 2014, “Jailed at Christmas: Rio man the lone prisoner from 2013 protests”, <https://goo.gl/JYA4Bu>.

⁴²Vice News, 3 November 2015, “Activists Planning Protests at Rio Olympics Are Worried They Could Be Charged With Terrorism”, <https://goo.gl/VdTEFw>.

- 5.5** Excessive force and arbitrary arrest were also repeatedly used against demonstrators during the 2013 wave of anti-government protests. Typical violations of human rights within the context of these protests include failure of police to identify themselves, arbitrary detentions, disproportionate deployment of police officers, disproportionate use of less-lethal weapons and, in at least four demonstrations, the use of lethal weapons. According to investigations by local and international watchdog groups, very few members of the security forces who committed acts of violence and other rights violations against protesters were sanctioned by the State.
- 5.6** Due in part to the widespread impunity for abuses against protesters, police forces have increasingly used excessive and unjustifiably coercive tactics to suppress protests.⁴³ In 2014, hundreds of demonstrators were arbitrarily detained as the military police violently dispersed largely peaceful protests staged in several cities before and during the football World Cup. Again during the Rio 2016 Olympics, police were deployed to prevent demonstrations and protests against corruption and overspending on the Games and dispersed protesters with tear gas and stun grenades.⁴⁴ In the days following the official opening of the Olympics, there were routine reports of spectators being censored or removed from the venues by security guards for protesting against Brazil's acting president by shouting political slogans or merely sporting a "For a Temer" T-shirt.⁴⁵

6. (F) Recommendations to the Government of Brazil

CIVICUS and Conectas call on the Government of Brazil to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.

At a minimum, the following conditions should be guaranteed: freedom of association, freedom of expression, freedom of peaceful assembly, the right to operate free from unwarranted state interference, the right to communicate

⁴³ Article 19, *Streets under attack: The 2014 and 2015 protests*, <https://goo.gl/eoLTwb>. See also Truthout, 17 February 2015, "Protests in Brazil and their Repression", <https://goo.gl/Ro54P3>; Think Progress, 4 August 2015, "Police brutality in Brazil is out of control", <http://goo.gl/chxlGw>; AI, 22 January 2016, "Brazil: Police repression mars peaceful protest in São Paulo", <https://goo.gl/LpR5Ub>.

⁴⁴ Reuters, 6 August 2016, "Brazil police use tear gas, stun grenades at Rio protest", <https://goo.gl/CSRUuX>; Daily Mail, 6 August 2016, "Police fire tear gas at angry mobs outside Olympic opening ceremony as anti-Games demos hit cities across Brazil", <http://goo.gl/ti1pPg>; Rio On Watch, 9 August 2016, "Rio Residents Protest Olympics Impacts at 'Exclusion Games' Demonstration", <http://goo.gl/ILWGUJ>.

⁴⁵ Conectas, 11 August 2016, *Public statement: Olympics and democracy*, <http://goo.gl/Yh1tnC>; NPR, 9 August 2016, "Controversy grows in Rio over political protests during Olympics", <http://goo.gl/xoig9x>.

and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made:

6.1 Regarding freedom of association

- Take measures to foster a safe, respectful, enabling environment for civil society, including through removing legal and policy measures that unwarrantedly limit the right to association.
- Ratify ILO (International Labour Organisation) Convention No. 87 concerning freedom of association and protection of the right to organise.

6.2 Regarding the protection of human rights defenders

- Ensure a safe and secure environment for civil society members, journalists and human rights defenders to carry out their legitimate activities without fear or undue hindrance, obstruction or legal and administrative harassment.
- Repeal Law No. 13.260 so its vague definitions of terrorism cannot be used to criminalize human rights defenders.
- Conduct impartial, thorough and effective investigations into all cases of attacks, harassment, and intimidation against HRDs and bring perpetrators of such offences to justice.
- Adopt a specific law confirming the official status of the national program for the protection of human rights defenders in accordance with Council resolution 27.31 of the Human Rights Council. Bill 4575/2009 has been proposed in 2009 and has not progressed since 2011.
- Expand the Protection Program for Human Rights Defenders (PPDDH) to explicitly include journalists and bloggers who have been received threats or suffered murder attempts. Involve CSOs, and particularly freedom of expression and press organizations, in the process of developing this program, which should be established by law and applied both at the federal and the state levels.
- Address violence and discrimination against indigenous and quilombola HRDs by guaranteeing appropriate tools and mechanisms for meaningful good-faith prior consultation and participation of the communities regarding large-scale or high-impact development projects, and ensuring participatory impact assessments and redress for any harm caused.
- Senior government officials should publicly condemn instances of harassment and intimidation of civil society activists and organisations.

6.3 Regarding freedom of expression, independence of the media and access to information

- Ensure freedom of expression and media freedom by all bringing national legislation into line with international standards, including article 19 of the International Covenant on Civil and Political Rights (ICCPR).
- Reform defamation legislation and privacy provisions to ensure that they are not used to censor reporting on sensitive issues, including online.
- Federalize crimes against free expression and give federal authorities broader jurisdiction to investigate and prosecute such crimes. In the meantime, ensure the implementation of Constitutional Amendment 45 granting the Attorney General's Office the power to transfer a case to federal jurisdiction when serious human rights violations are suspected.
- Amend the Marco Civil da Internet by repealing and prohibiting data retention requirements that are not necessary to network performance, replacing them with provisions allowing for preservation requests authorized by the judiciary; and by removing liability of application providers and Internet service providers for the actions of their users.
- Avoid or narrowly circumscribe any notice-and-takedown laws in future legislation about the web.
- Ensure that journalists and writers may work freely and without fear of retribution for expressing critical opinions or covering topics that the government or private actors may find sensitive.
- Guarantee the safety of journalists during demonstrations by training law enforcement and establishing police protocols based on the non-violence procedures adopted by the Council for the Defence of Human Rights in Resolution No. 6 of 18 June 2013.
- Develop an action plan ensuring that Internet laws comply with the government's commitment to guarantee freedom of expression and information, so as to ensure free access to electronic media, liberalize electronic media ownership rules and allow national bloggers, journalists, other Internet users to play a full and active role in promoting and protecting human rights.
- Refrain from adopting any laws providing for censorship or undue control over the content of either social or conventional media and ensure that freedom of expression is safeguarded in all forms, including the arts.
- Guarantee unfettered access for all persons in Brazil to domestic and foreign media information, both offline and online.
- Establish mechanisms to facilitate public access to information in line with best practices available.

6.4 Regarding freedom of assembly

- Adopt best practices on freedom of peaceful assembly as put forward by the UN Special Rapporteur on the Right to Peaceful Assembly and Association in his annual report (2012) which calls for simple notification rather than explicit permission to assemble.
- Repeal Law No. 13.260 so its vague definitions of terrorism cannot be used to criminalise the legitimate exercise of the right to freedom of assembly.
- All demonstrators, journalists and human rights defenders detained for exercising their right to freedom of peaceful assembly should be unconditionally and immediately released. Their cases should be reviewed to prevent further harassment.
- Repeal all current attempts to enact legislation that would restrict the possibility of protests, e.g. the banning of masks, closure of roads and occupation of public buildings. All restrictions must be in conformity with the constitution and international standards.
- Review and if necessary update existing human rights training for police and security forces with the assistance of independent nongovernmental organizations to foster more consistent application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.
- Internal mechanisms for the prompt investigation of police abuse following protests should be implemented and publicised. Results of these investigations should be made public.
- Implement transparent and strict control of less lethal ammunition. Every single use of these weapons must be lawfully justified by a written statement issued by a public official.
- Implement and equip the state and federal public prosecutors' special bodies to exert the constitutional commandment of "external control of police activity."
- Best practices on the proper management of assemblies, as proposed by the joint report #A/HRC/31/66 by the UN Special Rapporteurs on freedom of peaceful assembly and extrajudicial executions, should be adopted under national law.
- Provide recourse for judicial review and effective remedy, including compensation, in cases of unlawful denial of the right to freedom of assembly by state authorities.

6.5 Regarding access to UN Special Procedures mandate holders

- The Government should extend a standing invitation to all UN Special Procedure mandate holders and prioritize official visits with the: 1) Special Rapporteur on the situation of human rights defenders; 2) Special Rapporteur on the rights to freedom of peaceful assembly and of association; 3) Special Rapporteur on the rights of indigenous peoples; and 4) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

6.6 Regarding State engagement with civil society

- Implement transparent and inclusive mechanisms of public consultations with civil society organizations on all issues mentioned above and enable more effective involvement of civil society in the preparation of law and policy. More specifically, recognize and institutionalize the right of communities potentially affected by investment and extractive projects to genuine free, prior and informed consent.
- Include civil society organizations in the UPR process before finalising and submitting the national report.
- Systematically consult with civil society and NGOs on the implementation of UPR including by holding periodical comprehensive consultations with a diverse range of civil society actors.
- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.